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JUDICIAL REVIEW IN LABOUR LAW

Richard J. Charney and Thomas E.F. Brady

Release No. 2, May 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in October 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the October 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This award-winning looseleaf service provides a comprehensive overview of what the courts have done, and are currently doing, when confronted with applications for judicial review of decisions made by labour tribunals. It discusses current case law from all Canadian jurisdictions and includes a discussion of the procedure and remedies available.

What's New in this Update:

This release features the addition of case digests to Appendix A: New Developments relating to the judicial review of labour relations board decisions, arbitration decisions and statutory adjudications between July 29 and December 31, 2021. This release also updates Appendix SLL: Selected Legal Literature and Appendix WP: Words and Phrases to December 31, 2021. Finally, two new articles have been added to Appendix RA: Related Articles.

Highlights:

NEW DEVELOPMENTS — In *UFCW, Local 1400 v. P& Milling Group*, the union filed grievances against the employer's refusal to pay sick leave to employees absent from work because of self-isolation requirements due to COVID-19. The arbitrator denied the grievances on the basis that the denial of sick leave was consistent with the plain reading of the Sick Leave Program in the collective agreement. The Saskatchewan Court of Queen's Bench allowed the unions application for judicial review. The arbitrator's decision that "sick leave" did not include innocent absences by reasons of mandated quarantines was unreasonable. The definition of "sick" in the collective agreement must be remedial, purposive and informed by real world circumstances.

RELATED ARTICLES — The article *Tribunal Expertise in Judicial Review: A Conceptual Purgatory*, by – Andrea A. Cole and Michelle Flaherty, has been added to Appendix RA. The February 2019 article seeks to reconcile the theoretical importance of administrative tribunals' expertise and the lack of direction from courts regarding how such expertise should be assessed on judicial review – including in relation to labour arbitrations. The article discusses the Supreme Court of Canada's decision in *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.* in relation to the practical realities faced by reviewing courts, counsels and tribunal administrators.

RELATED ARTICLES — The article *Reasons First: Post-Vavilov Considerations for Tribunal Participation on Judicial Review*

of Appeal – What impact will the Supreme Court of Canada’s decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* have on the extent of tribunals’ participation in judicial review applications of those tribunals’ decisions? The article discusses that issue – including by tracing labour-related jurisprudence – with the focus on the significance of tribunals’ ability to ‘helpfully elucidate the issues’ and ensure a “fully informed adjudication”.

WORDS AND PHRASES — With this release, the Words and Phrases entries in the text have been updated to 2021, and several significant new Words and Phrases entries from multiple jurisdictions have been added to the text. Examples of newly added entries include **common interest privilege**, ***de minimis non curat lex***, **estoppel**, **foresee**, **fresh evidence**, **palpable error** and **sale** from decisions in the Ontario, Alberta, Canada, British Columbia and New Brunswick jurisdictions.

ProView Developments

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