



Volume 17, No. 2
November/Novembre
2009

Administrative Law Section
Section du droit administratif

In this Issue:

[Message From the Chair](#)

[Law Commission of Ontario
Consultation on the Law as it
Affects Persons with
Disabilities](#)

[Something Remarkable is
Happening at Queen's Park](#)

[Administrative Law Cases at
the Supreme Court of Canada](#)

Message From the Chair

*John Higgins**

It is a privilege to assume the role of Chair of the OBA's Administrative Law Section and to work with such dedicated and innovative executive members. I would like to thank and congratulate past chair Andrew Wray for his leadership over the past two years, during which the section hosted so many successful events and participated in the preparation of OBA submissions in areas of relevance to our members.

Since our last issue in May, past chair Andrew Wray co-chaired a half-day program on July 11, 2009, entitled *Ontario's New Human Rights System: Lessons from its First Year* with Jo-Anne Pickle of the Constitutional, Civil Liberties and Human Rights Section and Kevin Robinson from the Labour and Employment Law Section. A future Human Rights Tribunal Update is being planned for June, 2010.

On November 24, 2009, Greg Levine and Soussanna Karas will co-chair a dinner meeting of the Administrative Law Section: [Fairness Now - Administrative Justice, Ombudsmanship and Institutions](#). Speakers will be Fiona Crean (Ombudsman, City of Toronto), Laura Bradbury (WSIB Fair Practices Commissioner) and Nora Farrell (Ombudsperson, Ryerson University). Join us for what promises to be an engaging discussion of this emerging area, including the powers and methods of ombudspersons, their interaction with the legal community and their vision of ombudsmanship.

On February 16, join us at the OBA's Institute on Continuing Legal Education for *Second Guesses: Reconsiderations, Judicial Reviews and Appeals*, co-chaired by myself and Ed Montigny. This is a half-day program featuring a distinguished group of administrative law experts drawn from the tribunal community, the practising bar, and the bench. The program will cover the internal reconsideration process, as well as judicial reviews and appeals to court, with tips on factum writing, getting leave to appeal, and putting your best foot forward in court.

Editor: [Soussanna S Karas](#)
OBA Editor: [Cheryl Crocker](#)

Our section has been very involved in two OBA submissions prepared in recent months. Ed Montigny and Laverne Jacobs of our executive made a major contribution to the OBA's submission to the *Law Commission of*

Ontario on The Law as it Affects Persons with Disabilities. (See Ed Montigny's article in this newsletter describing this important submission.)

More recently, Ron Ellis, assisted by Greg Levine, Laverne Jacobs and Jeff Cowan, wrote a submission that was sent by the OBA to the Office of the Premier on the subject of "Adjudicative Agencies Governance Legislative Framework," an upcoming legislative initiative by the Ontario government. In a recent development, the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* has now been introduced as Schedule 5 to Bill 212, the *Good Government Act*, and will soon go to committee hearings. (See Ron Ellis' article in this newsletter describing this initiative and our submission.)

In conclusion, I'd like to draw to your attention two recent decisions of the Court of Appeal that may be of interest. In *Clifford v. Ontario Municipal Employees Retirement System* [2009] O.J. No. 3900, Goudge J.A., writing for the Court, indicates that the correctness standard of review will apply to the question of whether there is a legal obligation to provide reasons, and whether the reasons in a given case meet that standard.

And in *Abdoulrab v. Ontario (Labour Relations Board)*, [2009] O.J. No. 2524, 95 O.R. (3d) 641, Juriansz J.A., again writing for the Court, rejects an argument that in applying the reasonableness standard, the Divisional Court had erred by failing to articulate its own view of correct statutory meaning and then deciding whether the tribunal's decision fell within an acceptable "margin of error." In a post-Dunsmuir application of the Supreme Court's decision in *Law Society of New Brunswick v. Ryan*, the Court finds this argument to be a "grave misconception" of the reasonableness standard. Rather, there is a range of outcomes that are acceptable and the reasonableness standard assesses whether the decision falls within that range by examining whether the decision is justifiable, transparent and intelligible, and defensible in respect of the facts and the law.

**John Higgins, Senior Adjudicator and Manager of Adjudication, Office of the Information and Privacy Commissioner/Ontario*

Law Commission of Ontario Consultation on the Law as it Affects Persons with Disabilities

*Ed Montigny**

In the Fall of 2007, the Board of Governors of the Law Commission of Ontario (LCO) approved a project on the law as it affects persons with disabilities. The project is not intended to focus on reform of any one specific issue. Instead its purpose is to develop a principled analytical framework that can be used as a tool for shaping legislative initiatives or reforming of current laws that will or do impact the lives of people with disabilities. Given the scope and complexity of the initiative, it will be a multi-year, multi-stage project.

The project recognizes that despite significant developments in promoting the equality rights of persons with disabilities over the last few decades, persons with disabilities continue to experience significant and wide-ranging disadvantage. In particular they are significantly more likely to live with a low-income. The project aims to help improve this situation.

One key challenge involves answering the basic question - what is meant by the term 'person with a disability'. Currently the law adopts a multiplicity of approaches to, and definitions of, disability. The particular approach used to define and/or determine 'disability' can have an impact on whether disability is viewed as an individual problem caused by a person's limitations or whether disability is understood to be caused by barriers, attitudes and stereotypical assumptions a person with a disability encounters.

A particular approach to the understanding of disability can also have a major impact upon a person's eligibility for entitlement to various forms of support and services. In particular, the principles employed to determine how disability is understood by the state can determine how people with disabilities are viewed and what priority disability issues are given when deciding how to allocate limited public funds. According to the approach in which disability is seen as a private personal issue, people with disabilities are expected to fit themselves in the social and physical environment as best they can while receiving whatever level of support or assistance the state or society decide to offer. When equality and human rights principles are applied to the understanding of disability, society as a whole is considered to have a positive obligation to modify the social and physical environment to the extent necessary to permit persons with disabilities to participate fully in all aspects of life.

As a first stage of this project the LCO asked for input from a wide range of groups and agencies to assist them in determining what approaches would prove most useful in enhancing the rights and equality of persons with disabilities. The OBA responded to this request and organized a working group to produce submissions on behalf of the Association. Various OBA sections such as Administrative Law; Constitutional, Civil Liberties and Human Rights; Education Law; Labour and Employment Law, and the Equal Opportunity Committee were represented. Over a period of weeks the working group responded to LCO questions. Despite a wide range of opinions and perspectives among working group members, there was consensus on the set of principles members endorsed to guide legislation and law reform. Members also suggested numerous areas where further detailed study is required to highlight possible law reform initiatives.

This was merely the first step in the LCO process. The expectation is that after analysing the general submissions, LCO will be seeking further more detailed input on a variety of areas, such as education, employment accommodation, transportation, income security and the administration of justice. These further consultations will offer OBA members ample opportunity to join the working group and contribute their expertise and insight to this valuable project to ensure that the OBA supports all efforts to promote the equality and human dignity of all persons.

**Ed Montgigny is the Vice Chair Admin Law Section, Member of the Equal Opportunity Committee, Past-Chair of SOGIC National. He can be contacted by phone: 416-482-8255, Toll-free: 1-866-482-2724; or e-mail: montignye@lao.on.ca*

This article was originally published in the October 2009, Vol. 34. No.5 edition of Briefly Speaking.

Something Remarkable is Happening at Queen's Park

*Ron Ellis**

The Ontario Government is preparing precedent-setting legislation that will codify ground-breaking improvements in the “management, accountability and governance of adjudicative agencies”. The “something remarkable” is that this is the first legislative initiative in Canadian history (outside of Quebec – the perennial exception in all things administrative law) to recognize the fundamental distinction between regulatory agencies and adjudicative agencies, and, more importantly, the first to recognize that there are foundational, structural and administrative requirements that are generic to adjudicative agencies of all stripes and which need to be embedded in legislation.

A Consultation Notice concerning the new legislation was issued in September. The lead on this legislation is coming directly from the Office of the Premier which, as the Notice advises, has established an “ad hoc Administrative Justice Advisory Committee” to provide advice and oversight on the development of the legislation. The Notice indicates that the legislation will be “in keeping” with the Government’s “Agency Modernization commitment and its ongoing efforts to develop a modern transparent and consistent governance structure for public agencies”.

The Consultation Notice advises that the improvements to be codified are, in general terms, those that have “already been developed to improve the management, accountability and governance of adjudicative agencies”. The legislative goals it specifically identifies are as follows:

1. Require transparency, accountability and governance norms based on existing guidelines and directives;
2. Define standard roles, responsibilities and accountabilities;
3. Standardize recruitment, appointment and reappointment processes;
4. Allow for a more effective, coordinated and responsive approach to ensuring the best use of available resources and ongoing support to the important work of these agencies, while respecting their independence in adjudicative decision making; and
5. Enhance the quality of provided services.

While the Notice describes these goals in general terms, there is one concrete point of particular interest. The processes that are to be “standardized” are said to include not only the appointments process but also the reappointment process. Assuming that the commitment to “transparency” will extend to that process as to the others, we have here what seems to be an avowed intention to make the arbitrary refusal of a meritorious reappointment, for undisclosed reasons, unlawful. This arguably accords with the requirements of the common law of judicial independence for adjudicative tribunal members¹ and perhaps also with the constitutional requirements.² However, outside of Quebec, both of those requirements have been traditionally disrespected and it is, therefore, in historic terms, groundbreaking for Ontario to be officially saying goodbye, as far as adjudicative agencies are

concerned, to the bad old days of the change-of-government-revolving-door syndrome and of tribunal-member vulnerability to paying for unpopular decisions with their jobs. If that is true, those interested in the health of our administrative justice system should be celebrating.

Given what we know about what this Government has “already developed” by way of “improving the management, accountability and governance of Adjudicative Agencies” – to use the Notice of Consultation language – it is possible to envisage a set of particular things that one might expect to find on the legislative agenda in addition to the reappointment provisions, and they are all good.

1. A statutory, template/framework structure designed to facilitate future clustering-initiatives akin to the current clustering project respecting the five land and environment agencies.
2. Statutory definitions of job descriptions, qualifications, and core competencies for adjudicative agency members and chairs akin to those progressive definitions the government has promulgated in its new “Governance Tools”.³
3. The tying of adjudicative agency compensation levels to levels for comparable jobs in the public service, thus ensuring competitive compensation packages and eliminating the traditional long droughts between pay increases – the last one lasting for 20 years.
4. Provision for an objective, merit-based *and competitive*⁴ selection and appointment process in which the agency chair’s recommendations will be the principal determinative, and, as noted previously, an objective and merit-based reappointments process in which the agency chair’s recommendations will also be largely determinative.
5. Mandatory codes of conduct for agencies and their chairs and members.

The OBA has responded to the Consultation Notice with a formal Submission.⁵ The Submission supported the legislative agenda that could be reasonably anticipated based on the Notice of Consultation, all largely as set out above. As well, it made a set of additional recommendations to the following effect.⁶

1. That the qualifications legislation includes both a legislated set of core requirements and an opening for particular agencies to add pertinent, supplemental requirements in the filling of particular vacancies.
2. That the process for reappointments be merit-based but not competitive in the sense of not having incumbent members competing with new applicants, and that both reappointments and the refusal of reappointments be required to be justified on the basis of regular, performance evaluations, such as those now the rule at the B.C. WCAT.
3. That an independent committee – perhaps the Administrative Justice Advisory Committee mentioned in the Notice of Consultation – be required to sign off on any chair recommendation against a reappointment.
4. That provision be made for the possibility of “separation packages” for members whose reappointments are not to be approved because of average performance that is below the agency’s standards but does not amount to “cause” for dismissal.

-
5. That the government's current 10-year cap on the total time any particular member may serve on the same tribunal be reviewed. Given a system that would now include merit-based and competitive selection processes, and performance-based and objective reappointment decisions, the Submission pointed out the difficulty of justifying an annual, arbitrary removal from the system of the experience, expertise and effectiveness of a full year's cohort of successful and well performing appointees; it also suggested that it was especially hard to see the justification given the positive experience in Ontario with a number of successful tribunals that traditionally had no limit on the number of reappointments.
 6. In ensuring "best uses of resources and ongoing support while enhancing independence" – one of the goals specified in the Notice – the OBA Submission suggests that consideration be given to transferring the responsibility for both the administrative support for all adjudicative agencies, and the reporting relationship for all adjudicative agencies, to a new "Ministry of Administrative Justice" – an idea that has recently surfaced in discussions amongst advocates in the legal clinic community – or, alternatively, to a dedicated structure such as an "Administrative Justice Office", within an existing ministry such as the Ministry of the Attorney General. The elimination of the conflicts of interest that plague our current administrative justice system would be one of the important benefits of this proposed change. The UK's recent legislated transformation of its administrative justice system was cited as a precedent.

As the headline to this piece noted, something remarkable is indeed happening at Queen's Park and those readers who have a stake in the administrative justice system, or in the success of a particular adjudicative agency, should sit up and take notice. This is historic stuff, and the government will need our help if it is to get this right. Moreover, when the inevitable opposition from those with interests in the status quo start to be heard, it will need our support.

Stay tuned.

*Ron Ellis can be contacted by e-mail: rellis@idirect.com; or phone; 416-425-7412

¹ See *The Attorney General of Québec v. Barreau du Montréal*, [2001] J.Q. No. 3882 (C.A.), leave to appeal refused (2002), 2002 CarswellQue 2078 (S.C.C.). The Court of Appeal held that fixed-term adjudicative appointments do not satisfy independence requirements for an adjudicative tribunal unless it is accompanied by a reappointment process that is fair and objective. In *Barreau*, the independence requirement arose from the quasi-constitutional, Quebec Charter of Human Rights and Freedoms, but it also arises, as we know, from the common law of judicial independence applicable to adjudicative tribunals, and the content of the constitutional requirement of independence is not different from the content of the common law requirement.

² This argument assumes that the Supreme Court of British Columbia's finding in *McKenzie v. British Columbia (Minister of Public Safety and Solicitor General)* (2006), 272 D.L.R. (4th) 455, that the unwritten constitutional principle of judicial independence first identified in *PEI Provincial Judges Reference* applies to at least some tribunals will eventually prevail generally with respect to adjudicative tribunals.

³ For those not familiar with these job descriptions, qualifications and core competencies, be assured that they are everything any administrative justice reformer could ask for. To see them go to UOntario.ca/AgencyGovernance,U and click on the Regulatory and Adjudicative Agencies box, and then click on the PDF's listed at the bottom of that page.

⁴ The precedent for this was set in section 32(3) of the statute governing the new Human Rights Tribunal of Ontario.

⁵ Ontario Bar Association, "Submission to The Office of the Premier, Administrative Justice Initiatives Project Respecting Adjudicative Agencies Governance Legislative Framework", Dated October 2, 2009, and submitted to: Mike Uhlmann, Project Director, Administrative Justice Initiatives, by Carole J. Brown, President, Ontario Bar Association.

⁶ For the Submission's own wording see the Submission itself which will be found on the OBA website under Public Affairs/Submissions.

Administrative Law Cases at the Supreme Court of Canada

Spring-Fall 2009 (April 23, to October 22, 2009)

*Martin G. Masse and **Corinne Brûlé

Summaries taken from Eugene Meehan's Supreme Court of Canada Law Letter

Leave to Appeal Dismissed

ABORIGINAL LAW: BAND MEMBERSHIP

Tsuu T'ina Nation v. Fred Frasier, Florence Peshee and Regina Noe (Alta. C.A., April 9, 2009) (33202)

The Applicant and Respondents had been engaged in litigation over issues relating to the Respondents' status as band members and their occupation of residences located at Black Bear Crossing, a former barracks of the Canadian Armed Forces and now part of the Applicant's reserve. In *Tsuu T'ina Nation v. Bearchief*, 2008 ABCA 74, 165 A.C.W.S. (3d) 730, the Alberta C.A. held the Applicant could not evict non-members from Black Bear Crossing until certain membership claims were resolved. The Applicant commenced a fresh action to determine whether non-members could be evicted if all Black Bear Crossing residents, including members, were served with eviction notices. An application for an eviction and possession order was adjourned several times "on the condition that the status quo with respect to the residences of the Respondents at Black Bear Crossing, as it relates to water, gas, and electricity, is to be maintained and is not to be changed as a result of actions taken by the Applicant". Various utilities to the residences were subsequently interrupted, which the Applicant claimed was due to health and safety issues. Further court orders were granted ordering the restoring and maintaining of utilities. Some of the parties settled and a subsequent court order authorized the termination of utilities, but not before the Applicant was found in contempt of the previous court orders. The C.A. declared the appeals from the first three orders moot, and dismissed the appeal from the contempt order.

"The application for leave to appeal ... is dismissed with costs."

ABORIGINAL LAW: HISTORICAL FLOODING

Chief Denton George, et al v. Attorney General of Canada and Royal Canadian Mounted Police (Fed. C.A., April 24, 2009) (33226)

In the 1940s, the Applicant First Nations' reserves were damaged by flooding due to water control structures built by the Prairie Farm Rehabilitation Administration. The flow of watercourses was also impeded. In addition to engaging in compensation negotiations, the First Nations passed by-laws creating offences for trespass, which was defined to include the flooding of land from external sources. They sent Notices of Violation to the PFRA and the Saskatchewan Watershed Authority indicating that, unless the diversion was terminated, enforcement would follow. The First Nations requested assistance with enforcement from the RCMP, but it declined to lay charges, concluding that the by-laws were

unenforceable. The First Nations objected to the decision, but, having consulted with counsel, the RCMP confirmed the decision. The counsel consulted had earlier attended a negotiation meeting involving PFRA. Judicial review of the decision not to lay charges was sought. It was denied, as was a further appeal.

“The application for leave to appeal ... is dismissed with costs.”

ADMINISTRATIVE LAW: JURISDICTION

Roy Swanson Farms Ltd., et al v. Alberta (Energy and Utilities Board), et al (Alta. C.A., May 5, 2009) (33265)

One of the Respondents, Montana Alberta Tie Ltd. (“MATL”), was granted a permit to construct an international power line (“IPL”) by the National Energy Board (NEB) along a specified corridor running between Lethbridge, Alberta and Great Falls, Montana. The NEB conducted an environmental assessment and extensive public consultations prior to the issuance of the permit. MATL’s subsequent application to the Alberta Energy and Utilities Board (“EUB”) to construct and operate the IPL received approval, conditional upon MATL fulfilling certain mitigating measures to, inter alia, appease the concerns of affected landowners. The *National Energy Board Act* provided for two alternative processes for the approval of IPLs. The certificate process involved the exercise of federal law only and entailed a public hearing where all aspects of the approval are determined, including the location and detailed routing of the IPL. The permit process involved both federal authority and delegated provincial authority, allowing an applicant to obtain authorization to construct and operate an IPL without a public hearing. An applicant was entitled to elect which process it invokes. In this case, MATL elected to pursue the permit process for approval to construct and operate the IPL. The Applicants were landowners who were among many interested parties who submitted letters challenging the need for and the proposed routing of the IPL. They raised many environmental and public health concerns. At issue was the location of the transmission line and the jurisdiction of the EUB to determine that location. The Board decided it had limited jurisdiction to consider alternate routes for the international power line and that the line was in the public interest. The C.A. dismissed the appeal.

“The application for an extension of time and the motion to expedite the application for leave to appeal are granted. The application for leave to appeal...is dismissed with costs to the Respondents Naturener Energy Canada Inc., Naturener USA LLC and Montana Alberta Tie Ltd.”

ADMINISTRATIVE LAW: TENDERS

Irving Shipbuilding Inc. and Fleetway Inc. v. Attorney General of Canada and CSMG Inc. (Fed. C.A., April 16, 2009) (33208)

Public Works and Government Services Canada issued a request for proposals soliciting bids for a contract to provide in-service support to Canada’s Victoria Class submarines. The Applicants were subcontractors to a failed bid by BAE Systems Projects (Canada) Ltd. The Applicants sought judicial review of the bidding process, alleging it was tainted by a conflict of interest and a reasonable apprehension of bias. BAE did not join in the application for judicial review. The Attorney General brought a motion to dismiss the application, arguing that the Applicants, as subcontractors, have no standing to seek judicial review. Prothonotary Tabib dismissed the motion. The Federal Court, Trial

Division, agreed that it was not plain and obvious that the Applicants had no standing. The issue of standing was referred to the judge hearing the application for judicial review. The judicial review was dismissed, as was the appeal to the C.A.

“The application for leave to appeal ... is dismissed with costs.”

IMMIGRATION: EXTENSIONS OF TIME FOR JUDICIAL REVIEW

Qianhui Deng, Administrator on behalf of the Estate of Shiming Deng (deceased) v. Minister of Public Safety and Emergency Preparedness (Fed. C.A., February 26, 2009)(33142)

An immigration officer prepared a report under s. 44 of the Immigration and Refugee Protection Act in which he expressed the opinion that Mr. Shiming Deng was inadmissible to Canada for serious criminality as a result of a conviction for assault. A senior immigration officer reviewed the report and then referred Mr. Deng to the Immigration Division for an admissibility hearing. On November 22, 2005, Mr. Deng died in tragic circumstances. Nearly two years later, the Applicant, who was the father of Mr. Deng and the administrator of his estate, brought an application for leave to commence judicial review proceedings and sought an order granting an extension of time for filing and serving the application. The object of the challenge was the referral to the admissibility hearing and the confiscation of his dead son’s passport. A judge of the Federal Court sitting as a motions judge granted the Applicant leave to commence judicial review proceedings and set out a time frame for completing the proceedings. The C.A. dismissed the appeal.

“The application for leave to appeal ... is dismissed without costs.”

FEDERAL COURT: STANDARD OF REVIEW

Hratch Sahaguian v. Her Majesty the Queen (Fed. C.A., February 3, 2009) (33077)

The Applicant filed a statement of claim against the Respondent in the Federal Court. The Respondent filed a motion to strike the statement of claim on the ground that it disclosed no reasonable cause of action and was frivolous. The motion was allowed by the prothonotary. The Applicant sought to appeal the decision to the Federal Court, but was unsuccessful. The Federal C.A. dismissed the Applicant’s appeal of that decision. It wrote (paras. 3-4):

“In front of this Court, the appellant was given the opportunity to expand on his personal situation, allowing the panel to better understand the motivation behind his lawsuit. Following a constructive exchange with the Court, the appellant admitted that he could not show where Beaudry J. had committed an error in upholding the Prothonotary’s decision on the basis that the appellant’s statement of claim, as drafted, was fatally flawed and showed no valid cause of action against the respondent.”

“The application for leave to appeal ... is dismissed without costs.”

ADMINISTRATIVE LAW: CONFLICTS OF INTEREST

Democracy Watch v. Conflict of Interest and Ethics Commissioner (Fed. C.A., January 21, 2009) (33086)

The Applicant made a request to the Respondent Conflict of Interest and Ethics Commissioner for an investigation of and ruling on decisions and participation in decisions by Prime Minister Harper and Minister of Justice Nicholson, and for a recusal ruling for all Cabinet ministers concerning the Mulroney-Schreiber situation. The Commissioner responded to the Applicant, explaining she did not have sufficient credible evidence to suggest that Mr. Harper, Mr. Nicholson, or any other individual mentioned in the Applicant's letter was in a conflict of interest in violation of the *Conflict of Interest Act*. Accordingly, the Commissioner found she did not have sufficient grounds to begin an examination pursuant to s. 45(1) of the Act. The Federal C.A. dismissed judicial review.

"The application for leave to appeal ... is dismissed with costs."

ADMINISTRATIVE LAW: DUTY TO REPRESENT; NATURAL JUSTICE

Dimitrios Papadopoulos v. Communications, Energy and Paperworkers Union of Canada, Corus Entertainment Inc. (Fed. C.A., December 22, 2008)(33044)

Mr. Papadopoulos was hired by Corus Entertainment Inc. in 1997 as a radio operator in Montreal. In December 2004, he received notice that his night shift was being eliminated in four days, and his income would drop significantly as a result. He wrote to the chief union steward and the employer, alleging non-compliance with several provisions of the applicable collective agreement. The union steward replied, on the same date, that most of the provisions in question applied only to full-time employees, whereas he was part-time. Mr. Papadopoulos disputed that conclusion and argued he was full-time. Over time, relations between Mr. Papadopoulos and the employer became acrimonious, and he filed a grievance alleging constructive dismissal. The union did not pursue the grievance. Mr. Papadopoulos then filed a complaint against the union, alleging that it had acted in a manner that was arbitrary, discriminatory or in bad faith in his case, contrary to s. 37 of the *Canada Labour Code*. The Canada Industrial Relations Board dismissed the complaint and also dismissed the application for review. The Federal C.A. dismissed the applications for judicial review of the two decisions, holding the Applicant had failed to show the rules of natural justice had been violated or that the decisions of the Board were unreasonable in the circumstances.

"The application for leave to appeal ... is dismissed with costs to the respondent Communications, Energy and Paperworkers Union of Canada."

ADMINISTRATIVE LAW: AERONAUTICS

Insight Instrument Corporation v. Minister of Transport (Fed. C.A. October 9, 2008) (32983)
Insight Instrument Corporation manufactured specialty instruments for small aircraft. Since 1990, Transport Canada designated Insight as an approved maintenance organization (AMO). Insight's AMO status required it to comply with its Quality Program Manual (QPM), which included periodic self-audits pursuant to the Canadian Aviation Regulations. In turn, inspectors from Transport Canada carried out conformance audits to ensure that AMOs are complying with their QPMs. In February 2004, an inspector found that Insight had not carried out a self-audit between September 2001 and February 2004. Transport Canada issued a Notice of Assessment of a monetary penalty (\$1,250.00) to Insight in November 2004, under s. 7.7 of the *Aeronautics Act*. Insight sought to review that decision before the Transportation Appeal Tribunal of Canada (TATC). The TATC member confirmed the assessment but

reduced the amount to \$400.00. Insight appealed to the TATC Appeal Panel. The Appeal Panel dismissed the appeal. On an application for judicial review in the Federal Court, Insight argued the Appeal Panel erred in finding it had not carried out a self-audit during the time period, and that the one-year limitation period in s. 26 of the *Aeronautics Act* ought to have precluded Transport Canada from initiating any proceedings against it for alleged non-compliance. The Federal Court dismissed Insight's application for judicial review. The Federal C.A. dismissed Insight's appeal.

"The application for an extension of time is granted and the application for leave to appeal ... is dismissed with costs."

ADMINISTRATIVE LAW: REASONABLE APPREHENSION OF BIAS

Matthew Merchant v. Law Society of Alberta (Alta. C.A. October 10, 2008) (32954)

A Hearing Committee of the Law Society of Alberta found Matthew Merchant guilty of six citations. The hearing was adjourned to argue the issue of sanctions. During the adjournment, the Chair of the Hearing Committee telephoned a lawyer who was a complainant and witness in the proceedings. Mr. Merchant had stated in the course of the hearing that he had sent a letter of apology to the complainant, and the Hearing Chair asked the complainant whether the letter of apology had been received. The complainant advised that he had received the letter. When the hearing reconvened, the Committee ordered the immediate disbarment of Mr. Merchant. The telephone conversation between the Hearing Chair and the complainant was not made known during that proceeding. Subsequent to the completion of the hearing, the prosecutor telephoned the complainant to advise him of the result. At that time, the complainant told the prosecutor about the telephone conversation with the Hearing Chair. The prosecutor then wrote to counsel for Mr. Merchant and advised him of the call. Notwithstanding a right of appeal in the *Alberta Legal Profession Act*, Mr. Merchant brought an application for judicial review for an order quashing or setting aside the findings of the Hearing Committee, on the basis that the fact and content of the telephone call between the Chair and the complainant gave rise to a reasonable apprehension of bias. The Court of Queen's Bench granted Mr. Merchant's application for judicial review, quashing the findings of the Law Society's Hearing Committee because of a reasonable apprehension of bias. The Alberta C.A. allowed the Law Society's appeal, quashed the order of the Court of Queen's Bench and dismissed Mr. Merchant's application for judicial review.

"The application for an extension of time is granted and the application for leave to appeal ... is dismissed with costs."

ADMINISTRATIVE LAW & TRANSPORTATION LAW: STANDARD OF REVIEW

Canadian National Railway Company v. Canadian Transportation Agency (Fed. C.A. November 24, 2008) (32976)

The Canadian Transportation Agency was empowered under an Act to Amend the *Canada Transportation Act*, with adjusting one aspect of the volume-related composite price index used in capping the revenue earned by the Canadian National Railway Company ("CN") and the Canadian Pacific Railway Company for the transportation of western grain. The Agency's decisions implementing s. 57 gave rise to several appeals which were heard together. In particular, the Agency elected to release an interim decision setting the Index for the 2007-08 crop year, followed by a final decision which

retroactively set the Index for that crop year following consultation. CN and CP objected to the proposed procedure and later appealed. Three other decisions followed, sparking four other appeals by CN or CP. After wide consultation, the Agency retroactively set the Index at 1.0639 for the entire 2007-08 crop year, replacing the Index set earlier. The railways appealed this decision. Another appeal followed. All the decisions were stayed pending disposition of the appeals. The Federal C.A. dismissed all appeals.

“The application for leave to appeal ... is dismissed without costs.”

IMMIGRATION: SPONSORSHIP

Philippe Kaleba v. Ministère de l'Emploi et de la Solidarité sociale (Que. C.A., July 2, 2009) (33251)

In 1987, Mr. Kaleba undertook to sponsor some of his children, thereby obligating himself to provide for their basic needs for a period of 10 years, as established in the *Regulation* respecting the selection of foreign nationals. Mr. Kaleba also undertook to reimburse the Quebec government for any sum it paid the sponsored persons under the *Social Aid Act*, or the *Act respecting income security*. For various periods between April 1996 and May 2005, the sponsored persons received income security benefits. The Quebec government claimed reimbursement of those benefits. The Minister of Employment and Social Solidarity made two review decisions, one in July 2001 and the other in January 2006, claiming \$46,294.70 from Mr. Kaleba. The Administrative Tribunal of Québec dismissed Mr. Kaleba's proceedings against those decisions. The motion for review of that decision was also dismissed. The Superior Court dismissed the motion for judicial review, and the C.A. refused leave to appeal.

“The application for leave to appeal ... is dismissed without costs.”

FISHERIES: DUE DILIGENCE DEFENCE

Her Majesty the Queen v. Emil K. Fishing Corporation (B.C.C.A. December 1, 2008) (32902)

While a vessel operated by the Respondent was fishing for pink and chum salmon, its catch one day included sockeye and coho. Fish of these species were not authorized to be caught, and ought to have been segregated and returned to the sea. The amount of incidental catch was considered by fisheries officials to be beyond acceptable limits, and the Respondent charged with unlawfully retaining and possessing incidental catch in violation of the *Fisheries Act*. The B.C. Provincial Court acquitted the Respondent of five counts under the *Fisheries Act*. The B.C.S.C. dismissed the summary conviction appeal. The C.A. dismissed the appeal.

“The application for an extension of time is granted and the application for leave to appeal ... is dismissed.”

LABOUR LAW: SUCCESSOR CORPORATIONS

International Association of Machinists and Aerospace Workers, Local Lodge No. 99 v. Finning International Inc. et al (Alta. C.A. December 2, 2008) (32982)

The International Association of Machinists and Aerospace Workers, Local Lodge No. 99 (the “Union”) brought a successorship application pursuant to s. 46(1) of the Alberta *Labour Relations Code*, seeking a

declaration that Tracker Logistics is a successor employer to Finning International. The Union also complained of unfair labour practices by Finning. The application resulted from an agreement between Finning and Tracker whereby Tracker agreed to provide warehouse, distribution and related services to Finning. The contracting out by Finning to Tracker resulted in the immediate layoff of 70 Union employees. The Alberta Labour Relations Board concluded there had been unfair labour practices but Finning's contracting out of its warehousing services did not constitute a successorship. It concluded that the storage or warehousing of Finning's parts inventory did not satisfy the "part of a business" test required to found a s. 46(1) successorship, as the storage or warehousing was not a functioning entity viable unto itself nor sufficiently distinguishable to be severable from the whole of Finning's business. The Board held that Finning had contracted out the warehousing of its parts inventory without any transfer of capital, assets, equipment, managerial skills, employees or corporate knowledge. The Union sought judicial review of the dismissal of its successorship application. The Court of Queen's Bench dismissed the Union's application for judicial review. The C.A. dismissed the Union's appeal.

"The application for leave to appeal ... is dismissed with costs to the respondents Finning International Inc. and Tracker Logistics Inc."

Leaves to Appeal Granted

INTERNATIONAL LITIGATION: JURISDICTIONAL IMMUNITY; ENFORCEMENT OF FOREIGN JUDGMENTS

Kuwait Airways Corporation v. Republic of Iraq and Bombardier Aerospace (Que. C.A., April 15, 2009) (33145)

In 1991, the Applicant Kuwait Airways Corporation ("KAC") brought proceedings in England against the Iraqi Airways Company ("IAC") and the Respondent Republic of Iraq, the owner of IAC. KAC claimed the return of ten of its aircraft and aircraft parts that had been appropriated by IAC during the Gulf War. The question of jurisdictional immunity arose in relation to both IAC and Iraq. As of 1993, Iraq was no longer directly a party to the proceedings because the writ had not been validly served on it. The English courts initially found that IAC had limited jurisdictional immunity but set aside that decision following additional proceedings and found that it had no immunity. In 2005, the English courts ordered IAC to pay KAC more than \$1 billion Canadian in principal and interest. In accordance with English law, KAC then applied to add Iraq as a second defendant, but only for the costs of the actions, which amounted to about \$84 million Canadian. The English court allowed the application, finding that Iraq did not have jurisdictional immunity in the circumstances because it had funded, supervised and controlled the litigation with KAC and all the defences raised by IAC, which was a "commercial transaction" within the meaning of the State Immunity Act 1978 (U.K.), 1978, c. 33. KAC then applied to have the English judgment recognized in Quebec. It also arranged for the seizure before judgment of two immovables owned by Iraq in Montreal and some aircraft built for Iraq by the Respondent Bombardier Aerospace that had not yet been delivered. Iraq filed a motion for declinatory exception, asking that the proceedings be dismissed for lack of jurisdiction because of the immunity provided for in s. 3 of the *State Immunity Act*. The courts below allowed Iraq's application and refused to recognize the English judgment. They found that funding, supervising and controlling the litigation and the defences raised by IAC was not a "commercial activity" within the meaning of the *State Immunity Act*. The exception to jurisdictional immunity was therefore inapplicable.

"with costs in the cause."

ADMINISTRATIVE LAW: CROWN AGENCY LIABILITY

Parrish & Heimbecker Limited v. Her Majesty the Queen in Right of Canada as Represented by the Minister of Agriculture and Agri-Food, Attorney General of Canada and Canadian Food Inspection Agency (Fed. C.A., November 21, 2008) (33006)

The Applicant commenced an action against the Crown, alleging the Respondent agency unlawfully revoked its import permits and issued new permits imposing more onerous conditions. The Agency responded by bringing a motion to strike out the Applicant's statement of claim on the basis the court had no jurisdiction to entertain the action so long as the Agency's decisions with respect to the revocation and re-issuance of the permits had not been set aside in proceedings taken under s. 18 of the *Federal Courts Act*. The prothonotary concluded that the action was caught by the Federal C.A.'s decision in *Grenier v. Canada*, 2005 FCA 348, [2006] 2 F.C.R. 287, and stayed the action. The appeal from the prothonotary's order was dismissed. The C.A. dismissed the appeal.

"The application for extension of time is granted and the application for leave to appeal ... is granted with costs to the applicant in any event of the cause."

ADMINISTRATIVE LAW: CROWN AGENCY LIABILITY

Attorney General of Canada v. TeleZone Inc. (Ont. C.A., December 24, 2008) (33041)

The plaintiff commenced a proceeding against the federal Crown in the Ontario Superior Court of Justice. The claim was, generally, for damages for breach of contract or negligence. It arose from a decision of the Ministry of Industry rejecting the plaintiff's application for a licence, but did not seek to impugn the decision. Rather, the plaintiff alleged, notably, that the licensing criteria had not been applied fairly and in good faith. The Attorney General of Canada brought a motion pursuant to rule 21.01(3) of the *Rules of Civil Procedure*, to dismiss the action for lack of jurisdiction. Relying on *Grenier v. Canada (Attorney General)* 2005, 262 D.L.R. (4th) 337 (F.C.A.), and s. 18 of the *Federal Courts Act* ("FCA"), the Attorney General asserted that since an essential element of the claim involved an attack on a decision of a "federal board, commission or tribunal" within the meaning of the FCA, jurisdiction lay in the Federal Court. The motion was dismissed on the ground that the Attorney General had not established that it was plain and obvious that the Ontario court did not have jurisdiction. The C.A. dismissed the appeal, holding that the claim clearly fell within the jurisdiction of the Superior Court, since it did not seek the type of relief outlined in s. 18 of the FCA. Also, it did not constitute a collateral attack of an administrative decision, since it did not seek to impugn the underlying decision to reject the application for a licence.

"The application for leave to appeal ... is granted with costs to the applicant in any event of the cause."

ADMINISTRATIVE LAW: CROWN AGENCY LIABILITY

Attorney General of Canada v. Fielding Chemical Technologies (Ont. C.A., December 24, 2008) (33042)

The plaintiff commenced a proceeding against the federal Crown in the Ontario Superior Court of Justice. The claim was, generally, for damages for the tort of misfeasance in public office. It arose from a

series of orders issued by the Government of Canada and banning the export of toxic waste to the U.S. The claim did not seek to impugn the orders. Rather, the plaintiff alleged that the orders had been issued for the purpose of protecting the Canadian waste disposal industry, and not for the purpose of protecting the environment and human health, as required by the applicable legislation, and that the government officials who had authorized or approved them had engaged in misfeasance in public office. The Attorney General of Canada brought a motion pursuant to rule 21.01(3) of the *Rules of Civil Procedure*, to dismiss the action for lack of jurisdiction. Relying on *Grenier v. Canada (Attorney General)* 2005, 262 D.L.R. (4th) 337 (F.C.A.), and s. 18 of the *Federal Courts Act* ("FCA"), the Attorney General asserted that since an essential element of the claim involved an attack on a decision of a "federal board, commission or tribunal" within the meaning of the FCA, jurisdiction lay in the Federal Court. The motion was dismissed on the ground that the Attorney General had not established that it was plain and obvious that the Ontario court did not have jurisdiction. The C.A. dismissed the appeal, holding that the claim clearly fell within the jurisdiction of the Superior Court, since it did not seek the type of relief outlined in s. 18 of the FCA. Also, it did not constitute a collateral attack of an administrative decision, since it did not seek to impugn the underlying orders.

"The application for leave to appeal ... is granted with costs to the applicant in any event of the cause."

ADMINISTRATIVE LAW: CROWN AGENCY LIABILITY

Attorney General of Canada and James Blackler, also known as Jim Blackler v. Michiel McArthur (Ont. C.A., December 24, 2008) (33043)

The plaintiff commenced a proceeding against the federal Crown in the Ontario Superior Court of Justice. The claim was, generally, for damages for the tort of wrongful or false imprisonment and for breach of *Charter* rights. The plaintiff had been held in involuntary solitary confinement continuously for four years and six months in penitentiaries where the Applicant Blackler was the warden. The plaintiff did not seek to impugn the decisions to place him in administrative segregation. Rather, he alleged that such a long period of confinement constituted arbitrary detention and cruel and unusual punishment, and alleged that the decisions contravened the applicable legislation and regulations and had been made negligently or deliberately and maliciously. The Attorney General of Canada brought a motion pursuant to rule 21.01(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to dismiss the action for lack of jurisdiction. Relying on *Grenier v. Canada (Attorney General)* 2005, 262 D.L.R. (4th) 337 (F.C.A.), and s. 18 of the *Federal Courts Act* ("FCA"), the Attorney General asserted that since an essential element of the claim involved an attack on a decision of a "federal board, commission or tribunal" within the meaning of the FCA, jurisdiction lay in the Federal Court. The motions judge, applying *Grenier*, held that before seeking damages against the Crown arising from an administrative decision, it was first necessary to be successful in an application to the Federal Court for judicial review of the decision at issue. The C.A. allowed the appeal, holding that the claim clearly fell within the jurisdiction of the Superior Court, since it did not seek the type of relief outlined in s. 18 of the FCA. Also, it did not constitute a collateral attack of an administrative decision, since it did not seek to impugn the underlying administrative decisions.

"The application for leave to appeal ... is granted with costs to the applicant in any event of the cause."

ADMINISTRATIVE LAW: CROWN AGENCY LIABILITY

Dennis Manuge v. Her Majesty the Queen (Fed. C.A., February 3, 2009) (33103)

Mr. Manuge was a member of the Canadian Forces for over nine years until his compulsory release for medical reasons in December 2003. When he was released, he qualified for a long-term disability pension under a mandatory disability plan, which was created pursuant to s. 39 of the *National Defence Act*. Because of a particular deduction in the plan, Mr. Manuge received 59 percent of his income before his release from the Forces. In March 2007, he filed an action against the Crown with the Federal Court, challenging the lawfulness of the plan and its constitutional validity. He alleged that it infringed his right to equality under s. 15 of the Charter, and claimed the Crown did not fulfil its obligations under public law, breached its fiduciary duty towards him, acted in bad faith and was unjustly enriched by its conduct. He sought relief in the form of various declarations, orders for reimbursement, and damages. Mr. Manuge subsequently amended his action asking that it be certified as a class action. The Crown, relying on *Canada v. Grenier*, 2005 FCA 348, objected to the action on the ground that Mr. Manuge should have proceeded by way of judicial review since the challenge involved a decision of a “federal board, commission or other tribunal” within the meaning of the *Federal Courts Act*. The Federal Court dismissed the objection and certified the proceeding as a class action, but the Federal C.A. overturned the decision, holding that since Mr. Manuge’s claim sought to impugn the lawfulness of a joint decision of the Minister of National Defence and the Chief of the Defence Staff, *Grenier* applied and a prior judicial review proceeding was necessary. It granted Mr. Manuge 30 days to serve and file an application for judicial review and suspended the action until a final decision was made on the application.

“The application for leave to appeal ... is granted with costs to the applicant in any event of the cause.”
Judgments

Leaves to Appeal Dismissed

ABORIGINAL LAW: REGISTRATION AS STATUS INDIAN

Angel Etches (now known as Angel Sue Larkman), Dorothy Ann Flood (née Batisse) and Laura Mary Flood (née Batisse) v. The Department of Indian Affairs et al (Ont. C.A., February 27, 2009) (33140)

In 1952, the Applicant, Laura Flood, was voluntarily enfranchised as Indian by an Order-in-Council. In 1985, the *Indian Act* was amended to allow those who had previously lost their Indian status for a variety of reasons to re-register. Laura Flood applied to the Registrar of the Indian Register, and was registered pursuant to s. 6(1)(d) of the *Indian Act*, which allows for the registration of those who had been previously enfranchised voluntarily. Because she re-registered after having been enfranchised, her daughter, Applicant Dorothy Flood, was required to register pursuant to s. 6(2). Since the descendants of those registered under s. 6(2) are not entitled to registration, Dorothy Flood’s daughter, Applicant Angel Larkman, was not entitled to be registered as an Indian. The Applicants, Laura Flood, Dorothy Flood and Angel Larkman, appealed to the Registrar, seeking registration pursuant to s. 6(1)(a). The Registrar refused and the Applicants appealed to the Ontario Superior Court, seeking to have Laura Flood registered as if she had never been enfranchised. This would result in her registration being made pursuant to s. 6(1)(a), which would, in turn, if certain conditions were met, secure entitlement to registration for her descendants as well. The Superior Court judge allowed the appeal. The central issue in that appeal was whether, in carrying out the duties prescribed by statute, the Registrar had the authority or the discretion to look behind an Order-in-Council enfranchising someone and to rule on its validity. The Superior Court held the Registrar had that authority and reversed the decision of the

Registrar and ordered all the Applicants be registered in the Register under s. 6(1)(a). The C.A. rejected the conclusions of the Superior Court, allowed the appeal, set aside the Superior Court decision and restored the Registrar's decision.

"The application for leave to appeal ... is dismissed."

Appeals - Judgment

PENSIONS: DEFINED BENEFIT & DEFINED CONTRIBUTIONS; STANDARD OF REVIEW

Nolan v. Kerry (Canada) Inc. (Ont. C.A., June 5, 2007) (32205)

"The respondent Company has administered a pension plan ("Plan") for its employees since 1954. The Plan text required contributions from both the employees and the Company and a separate trust agreement provided that these contributions were to be paid into a trust ("Trust") created under the trust agreement and held in a trust fund ("Fund"). By 2001, the Fund had been in an actuarially determined surplus position for a number of years. Until 1984, the Company paid the Plan expenses directly. In 1985, following amendments to the Plan documents, third-party Plan expenses for actuarial, investment management and audit services were paid from the Fund. As of 1985, the Company also started taking contribution holidays from its funding obligations.

Prior to 2000, the Plan existed solely as a defined benefit ("DB") pension plan. In 2000, the Plan text was amended again in order to introduce a defined contribution ("DC") component. The DB pension component continued for existing employees, but was closed to new employees; thereafter, all newly hired employees would join the DC component. Employees who were DB members had the option of converting to the DC component. As a result of these amendments, employees were divided into Part 1 Members, who participated in the Plan's DB provisions and Part 2 Members who, after January 1, 2000, participated in the DC part of the Plan. The Fund was constituted in two separate funding vehicles with two separate trustees. The Company announced its intention to take contributions holidays from its obligations to DC members by using the surplus accumulated in the Fund from the DB component, which still covered DB members, to satisfy the premiums owing to the DC component.

After the Company introduced the amendments in 2000, certain former employees of the Company and members of the Plan (the "Committee") asked the Ontario Superintendent of Financial Services to investigate the Company's payment of Plan expenses from the Fund and its contribution holidays. The Superintendent issued two Notices of Proposal. Under the first, the Superintendent proposed to order that the Company reimburse the Fund for expenses that had not been incurred for the exclusive benefit of Plan members. Under the second, the Superintendent proposed to refuse, among other things, to order the Company to reimburse the Fund for the contribution holidays it had taken. Both the Company and the Committee requested a hearing before the Financial Services Tribunal to challenge the Notices of Proposal. The Tribunal held that: (1) all of the Plan expenses at issue could be paid from the Fund, except for \$6,455 in consulting fees related to the introduction of the DC part of the Plan; and (2) the Company was entitled to take contribution holidays while the Fund was in a surplus position. The Tribunal did recognize that the Plan documents as amended in 2000 did not permit DC contribution holidays. However, it held the Company could retroactively amend the Plan provisions to designate the DC members as beneficiaries of the Fund, thereby allowing the Company to fund its DC contributions from the DB surplus. The Tribunal also refused to award costs payable out of the Fund.

On appeal, the Divisional Court held that the expenses at issue could not be paid out of the Fund as they were not for the exclusive benefit of the employees and such payment would constitute a partial revocation of the Trust. The court, although it upheld the Tribunal's decision that DB contribution holidays were permitted, ruled that the surplus in the Fund accumulated under the DB arrangement could not be used to fund the Company's contribution obligations to the DC arrangement. It also held that, while the Tribunal was correct that it did not have jurisdiction to award costs out of the Fund, the court could do so. On the relevant issues, the Court of Appeal, allowed the Company's appeal, dismissed the Committee's cross-appeal and upheld the Tribunal's rulings."

The SCC held (with 2 of 7 judges "dissenting in part") that the appeal is dismissed.

Justice Rothstein wrote as follows (at pages 11-13):

"The questions at issue in this appeal are largely questions of law, in that they involve the interpretation of pension plans and related texts...However, the Tribunal does have expertise in the interpretation of such texts, being both close to the industry and more familiar with the administrative scheme of pension law.

Having regard to the purpose of the Tribunal, the nature of the questions and the expertise of the Tribunal, the appropriate standard of review is reasonableness for the issues of Plan expenses, DB contribution holidays and DC contribution holidays.

The issue of the Tribunal's authority to order costs from the Fund requires the interpretation of the Tribunal's enabling statute, the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28. As noted in *Dunsmuir*, at para. 54, '[d]eference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity.'

On the other hand, para. 59 of *Dunsmuir* states that 'administrative bodies must also be correct in their determinations of true questions of jurisdiction or vires'. However, para. 59 goes on to note that it is important "to take a robust view of jurisdiction" and that true questions of jurisdiction 'will be narrow'. Administrative tribunals are creatures of statute and questions that arise over a tribunal's authority that engage the interpretation of a tribunal's constating statute might in one sense be characterized as jurisdictional. However, the admonition of para. 59 of *Dunsmuir* is that courts should be cautious in doing so for fear of returning 'to the jurisdiction/preliminary question doctrine that plagued the jurisprudence in this area for many years'.

The inference to be drawn from paras. 54 and 59 of *Dunsmuir* is that courts should usually defer when the tribunal is interpreting its own statute and will only exceptionally apply a correctness of standard when interpretation of that statute raises a broad question of the tribunal's authority. Here there is no question that the Tribunal has the statutory authority to enquire into the matter of costs; the issue involves the Tribunal interpreting its constating statute to determine the parameters of the costs order it may make. The question of costs is one that is incidental to the broad power of the Tribunal to review decisions of the Superintendent in the context of the regulation of pensions. It is one over which the Court should adopt a deferential standard of review to the Tribunal's decision."

*Martin G. Masse, Lang Michener LLP, Ottawa

***Corinne Brûlé, Lang Michener LLP, Ottawa*
