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JUDICIAL REVIEW IN LABOUR LAW

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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 updates to Chapter 5. The Current Standard for Judicial Review, Chapter 6. Grounds for Review: Exceeding Jurisdiction, Chapter 7. Grounds for Review: Breach of Natural Justice, Chapter 10. Grounds for Review: Exceeding Jurisdiction and Chapter 11. Grounds for Review: Breach of Natural Justice.

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Highlights:

Part I. Scope, History and Evolution—Chapter 5—§ 5:5 *Vavilov* and Judicial Review in Labour Law—The Supreme Court’s decision in *Société des casinos du Québec v. Association des cadres de la Société des casinos du Québec inc.*, 2024 SCC 13, 2024 CarswellQue 3221, provides some useful nuances on applying *Vavilov*’s standard of review to a labour relations board’s decision on rights under the Charter, s. 2(d) in the case before the court. Since the question was a constitutional one, correctness review applied to the board’s findings of law and of mixed fact and law; reasonableness applied to pure findings of fact by the board.

Part II. Judicial Review of Labour Relations Boards—Chapter 6—IV. Reasonableness of the Decision—§ 6:29. Unfair Labour Practices Decisions since 1990—Patent unreasonability under the *Administrative Tribunals Act* continues to be the standard in British Columbia after *Vavilov* for review of the labour relations board on unfair labour practices: a board reconsideration decision was upheld on judicial review where a tenable line of analysis supported the board’s decision that the original panel’s remedies for the unfair favouring of one union over another by the employer in a certification application “significantly addressed” the complainant union’s disadvantages: *Unite Here, Local 40 v. Civeo Premium Services Employees LP*, 2024 BCSC 178, 2024 CarswellBC 271.

Part III. Judicial Review of Labour Arbitration Tribunals—Chapter 10—III. Absence of Evidence—§ 10:26. Affidavits—Two affidavits which summarized the testimony of several of the witnesses before the arbitrator were held to be inadmissible by the Saskatchewan Court of King’s Bench in *SaskEnergy Inc. v. Unifor, Local 649*, 2024 SKKB 96, 2024 CarswellSask 224. The affidavits were based on the affiant’s notes and personal recollections of the testimony before the arbitrator. The court found that there was no assurance of the accuracy and completeness of the affiants’ summaries, and the affidavits were aimed at showing that the arbitrator had failed to consider the truthfulness of the testimony summarized. A further affidavit simply attesting to the truthfulness of the other two affidavits was rejected as oath helping.