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<p>JUDICIAL REVIEW IN LABOUR LAW Richard J. Charney and Thomas E.F. Brady Release No. 2, April 2024</p>
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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 New Developments, Selected Legal Literature and Words and Phrases.

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Highlights:

APPENDIX A NEW DEVELOPMENTS—A:7 JULY 1, 2023—JANUARY 1, 2024—In *All Canada Crane Rental Corp. v. International Union of Operating Engineers*, 2023 CarswellOnt 15749, parties reached memorandum of agreement in April 2022 (“April MOA”) to renew expired collective agreement. However the Union membership rejected April MOA and went on strike. Article 4 of expired agreement provided for weekly room and board allowance for qualifying employees. Subsequent MOA (“May MOA”) referenced per day room and board increases, but did not mention weekly rate. The May MOA was ratified and strike ended but the Union filed grievance alleging employer breached collective agreement by failing to properly pay weekly room and board. The issue was whether Article 4, which was incorporated into renewal agreement, continued in effect as amended by April MOA, or superseded by May MOA. The Grievance was allowed as the Board determined the May MOA did not contain clear language indicating parties’ intent to take away contract benefit. The General provisions of May MOA had to yield to specific provisions of Article 4 of expired agreement. The Employer applied for judicial review but the Application was dismissed. The Standard of review was reasonableness. Courts have consistently held board’s specialized expertise in determining construction industry grievances should be afforded highest degree of deference in its interpretation of collective agreements. In this case the Employer failed to meet its onus to satisfy that decision was unreasonable.

APPENDIX A NEW DEVELOPMENTS—A:7 JULY 1, 2023—JANUARY 1, 2024—In *Ontario Teacher Candidates’ Council v. Ontario (Education)*, 2023 CarswellOnt 18442, the Applicants sought judicial review of standardized math test (MPT) that teacher candidates had to pass to become certified as teachers in Province. The Divisional Court declared that MPT infringed s. 15(1) of Canadian Charter of Rights and Freedoms. The Court found MPT had disproportionate adverse impact on entry to teaching profession for racialized teacher candidates, and that there were available alternatives to MPT which could have achieved government’s goals with less impairment of constitutionally protected rights. The Court ordered teacher candidates be certified without regard to their MPT results, and declared provisions which either prescribed or permitted administration of MPT (s. 18(1)(c) of *Ontario College of Teachers Act, 1996*; and regulation, Proficiency in Mathematics) to be of no force and effect. The Government parties appealed. The order was set aside, the Divisional Court erred in finding that MPT violated s. 15(1) of Charter. Teacher candidates who did not succeed on their first attempt but were successful on subsequent attempt were not

barred from entry to profession. There was unsupported leap in logic from observation that there were disparities in success rates on first attempts at MPT to conclusion that this demonstrated adverse impact on entry to teaching profession. It could not be concluded, based on record, that MPT had disproportionate impact on entry to teaching profession by racialized teacher candidates.

APPENDIX WORDS AND PHRASES—A new phrase has been added to the appendix; “Derivative Jurisdiction”. In *Tarek-Kaminker v. Treasury Board (Office of the Director of Public Prosecutions)*, 2023 CarswellNat 2358, 2023 CarswellNat 2357, the Court uses paragraph 73 of *Sherman Estate* [*Sherman Estate v. Donovan*, 2021 SCC 25], where the Supreme Court of Canada stated that “... protecting individuals from the threat to their dignity that arises when information revealing core aspects of their private lives is disseminated through open court proceedings is an important public interest for the purposes of the test”. Dignity is specifically defined as the ability to “... present core aspects of oneself to others in a considered and controlled manner ...”. Therefore, dignity is harmed when a person loses control over highly sensitive information about themselves. This definition of dignity is significant because it is a far broader concept that “... finds expression in almost every right and freedom guaranteed in the [Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11]”.

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