

October 1<sup>st</sup> Class

## Review

- Difference between internal review and judicial review
- Changes occurring in this field: Paradis Honey v Canada
- Domtar: conflicting interpretations by administrative tribunals
  - Just because ADM decision is tainted, doesn't mean it is bad law
  - Inconsistency of treatment is not a ground for judicial review
- Harelkin: lack of procedural fairness in university complaint process
  - Court said you must exhaust all internal appeals first
  - SCC: university internal process could address procedural fairness
  - Whether JR taken too quickly because of time and money involved
  - Court rules that internal review could have save money and time
- Fear of courts of getting involved is differing views of differing courts

## Paradis Honey Ltd v Canada

- Honeybee keepers challenging prohibition on import of packaged honey bees from US
- Imports came in two forms and supplemented Canadian deficit of honey during winters
- Agricultural minister had discretion to prevent toxic substances and disease into Canada
- Same minister was given discretion to issue/prevent permits for importation
- Honeybee keepers wanted \$2million for loss of profits
- Foreseeable such a decision would cause such harm and damage to honeybee keepers
- Minister only consulted honey council of Canada, had benefit of sustaining prohibition
- It might have succeeded in JR but here
- He viewed that should not mix public law and private law in tort
- First, judicial review is not available on the merits of the case
- Remedies originated in private law setting
- Judicial review typically does not include monetary remedies
- Can get monetary remedies through:
  - Breach of contract for malfeasance
  - Public law test
- Monetary relief is obiter (not binding)
- Par 132: Public law found primarily in admin law and judicial review
- Grant relief when public authority acts unacceptable or indefensibly in admin law sense and when, as a matter of discretion, a remedy should be granted
- Two components – unacceptability or indefensibility in admin law sense and exercise of remedial discretion – supply a useful framework for analyzing when monetary relief may be had in an action in public law against a public authority
- Monetary relief is novel and should be incremental revolution
- In exam question: Look at whether reading the case generally on holistic sense, when notice to strike has no possibility of success, and debatable issues regarding the adequacy of the allegations
- "Reasonable prospect of success":

- Context of law
- Two aspects of his decision are significant.
  1. First, on the question of whether the Supreme Court's decision in R. v. Imperial Tobacco Canada Ltd. creates a policy bar to recovery, Justice Stratas found that *Imperial Tobacco* does not establish "any hard and fast rule that decisions made under a general public duty, government policy or core policy are protected from a negligence claim."
  2. Second, Justice Stratas proposed that instead of addressing the wrongful conduct of public authorities through the traditional framework of negligence, a new cause of action should be recognized that would be based on public law principles. That cause of action would allow individuals to claim against public authorities who have acted in an indefensible or unacceptable manner. The monetary relief for such a claim would be subjected to the court's remedial discretion.

#### Provincial Administrative Procedural Codes

- Ontario Statutory Powers Procedure Act
  - If originating statute conflicts with this Act, then Act prevails
- Alberta Procedures and Jurisdiction Act
- BC Administrative Tribunals Act
- These are the bare minimum, there could be more procedural requirements

#### Procedural Fairness

- Roles for procedural fairness varies
- Example is the Immigration & Refugee Citizenship Canada Procedural Outlines
  - Fair & unbiased assessment of application
  - Informed of ADM concerns
  - Meaningful opportunity to provide a response to concerns about application

#### Sources:

- Common law
- Context & nature of procedural obligation
- Enabling statutes
- Decision making exists in a spectrum
  - Look at where that decision making falls on spectrum and the procedural fairness requirements it triggers

#### Example: Procedural Fairness and Immigration Admissibility based on Medical Condition

- Applicants for PR can be refused if medical condition will cause "excessive demand" on Canada's health and social system

- ADMs “must consider all supporting evid evidence presented by applicant regardir demand on health and social services, an

#### Nicholson v Haldimand Norfolk

- Whether there was procedural fairness r
- Statute is Police Act 197tti, Section 27
- Page 3, Par 2: distinction between less th
- “He cannot be denied ANY protection”
- Court describes it as a minimal level of pr
- Important decision, moving from no stan

#### Threshold Text & Trigger

- Nature of decision **must be administrativ**
- **Must be FINAL decision**
- Public exercise of power **must originate f relationship between admin agency and**
- Decision **must affect the appellant’s righ**

#### Cardinal v Kent

- Prisoners were kept in isolation, in contr them to general population
- Director did not follow the recommendal
- **Duty of procedural fairness lay on every nature, and affects the rights and intere**
- Court is examining the context in determ exercising his authority under statutory p

#### Baker v Canada

- Modern test for procedural fairness:
  1. Nature of decision and process followe
  2. Nature of statutory scheme
  3. Important of decision on individual's life
  4. Legitimate expectations of parties
  5. Procedures chosen by tribunal

Reading:

Pages 186-2tti3  
 Canada v Mavi  
 Canada v Agraira  
 Sassin Article

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