WHAT'S NEW

ISSUE 1 - January 2012

In an effort to keep the Labour Relations Community informed on an ongoing basis of happenings at the Labour Relations Board, the Board produces a monthly newsletter - "What's New." The following is Issue 1 for January 2012.

NEWS AROUND THE BOARD

Welcome Back! – The Board is very pleased to announce the return of Tannis Brown, Director of Settlement, from her recent maternity leave. All is well with Tannis and the new growing family.

RECENT CASES

Newfoundland and Labrador Nurses' Union v. Her Majesty the Queen in Right of Newfoundland and Labrador et al. 2011 SCC 62

On December 15, 2011 the Supreme Court of Canada issued a significant decision clarifying the requirement that administrative tribunals provide reasons and the sufficiency of those reasons. The decision made the following findings:

- the adequacy of reasons is not a stand-alone basis for quashing a decision;
- a reviewing court should not undertake two discrete analyses – one for the reasons and a separate one for the result – rather - reasons must be read together with the outcome and serve the purpose of showing whether the results fall within a range of possible outcomes;
- reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred and are not required to make an explicit finding on each constituent element, however subordinate, leading to a final conclusion;
- reasons that allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes meet the *Dunsmuir* criteria;
- reviewing judges should pay "respectful attention" to the decision-maker's reasons and be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fateful;
- the Court's decision in *Baker* does not stand for the proposition that reasons are always required;
- nor does *Baker* mean alleged deficiencies or flaws in the reasons fall under the category of a breach of the duty of procedural fairness subject to the correctness standard – rather – any challenge must be made within the reasonableness analysis.

Leave to Appeal Granted

On January 19, 2012, the Supreme Court of Canada granted Construction Labour Relations – An Alberta Association leave to appeal from the decision of the Alberta Court of Appeal in *CLRA v. Driver Iron Inc, International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local Union No. 720.*

The Court of Appeal, overturning the decision of the Court of Queen's Bench and, in turn, the Labour Relations Board, found the Board had erred by failing to expressly address an argument advanced by Driver Iron that went to the essence of the issue before the Board – the proper interpretation of section 176(2) - was unreasonable.

The appeal will likely address the issue of the adequacy of the Board's reasons and when alleged deficiencies in reasons amount to an unreasonable decision. It may also address the substantive issue of when an employer is covered by section 176 and the consequences of being a section 176 employer.

Interestingly, the granting of the leave follows on the heels of the Supreme Court's decision in ***Newfoundland and Labrador Nurses' Union v. Her Majesty the Queen in Right of Newfoundland and Labrador et al.*** **2011 SCC 62** discussed above.