IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR

Citation: *Long Harbour Employers Association Inc. v. Resource Development Trades Council of Newfoundland and Labrador*, 2023 NLCA 24
Date: August 15, 2023
Docket Number: 202101H0075

BETWEEN:

LONG HARBOUR EMPLOYERS ASSOCIATION INC. — APPELLANT

AND:

RESOURCE DEVELOPMENT TRADES COUNCIL OF NEWFOUNDLAND AND LABRADOR — FIRST RESPONDENT

AND:

LABOURERS INTERNATIONAL UNION, LOCAL 1208 — SECOND RESPONDENT

AND:

JOHN F. ROIL — THIRD RESPONDENT

Coram: F.P. O'Brien, W.H. Goodridge and F.J. Knickle JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador, General Division 201901G3880 (2021 NLSC 134)

Appeal Heard: October 19, 2022
Judgment Rendered: August 15, 2023

Reasons for Judgment by: F.P. O'Brien J.A.
Concurred in by: W.H. Goodridge and F.J. Knickle JJ.A.

Counsel for the Appellant: Stephanie Sheppard
Counsel for the First Respondent: David Goodland, KC
Counsel for the Second Respondent: No appearance
Counsel for the Third Respondent: No appearance

Authorities Cited:

CASES CITED: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42; *Canada Fluorspar (NL) Inc. v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9220*, 2022 NLCA 21, 7 C.A.N.L.R. 447; *O'Rourke v. Workplace Health, Safety and Compensation Commission*, 2022 NLCA 14, 7 C.A.N.L.R. 349; *Seraj v. Memorial University of Newfoundland*, 2022 NLCA 42, 7 C.A.N.L.R. 758; *Law Society of Newfoundland and Labrador v. Buckingham*, 2023 NLCA 17; *Mount Pearl (City) v. Workplace Health, Safety and Compensation Review Division*, 2008 NLCA 69, 282 Nfld. & P.E.I.R. 14; *Canada (Commissioner of Competition v. Rogers Communications Inc.*, 2023 FCA 16; *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, 2011 SCC 59, [2011] 3 S.C.R. 616; *Andritz Hydro Canada Ltd. v. The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 179*, 2023 SKCA 69; *AlumaSafway Inc. v. The International Association of Heat & Frost Insulators and Asbestos Workers, Local 119*, 2022 SKCA 99; *Canada (Attorney General) v. Burke*, 2021 FCA 18; *Maracle v. Travellers Indemnity Co. of Canada*, [1991] 2 S.C.R. 50; *Alexion Pharmaceuticals Inc. v. Canada (Attorney General)*, 2021 FCA 157, leave to appeal to SCC refused, 39858 (24 March 2022); *United Food and Commercial Workers Canada Union, Local No 401 v. Sofina Foods Inc.*, 2021 ABCA 191.

STATUTES CONSIDERED: *Labour Relations Act*, RSNL 1990, c. L-1, section 70.

F.P. O'Brien J.A.:

Overview

[1] This appeal arises in the context of a labour dispute and involves the review of a labour arbitrator's decision.

[2] A nickel processing plant was constructed at a site near the town of Long Harbour, Newfoundland and Labrador. The construction of the plant was declared a "special project" by the *Vale Inco Long Harbour Processing Plant Special Project Order*, pursuant to section 70 of the *Labour Relations Act*, RSNL 1990, c. L-1.

[3] A collective agreement was in place respecting the special project, with two parties to the agreement.

[4] The first party was the appellant, the Long Harbour Employers Association Inc. (the umbrella employers' organization representing all employers, contractors, and sub-contractors performing work on the special project at the site), hereafter referred to as the employer.

[5] The second party was the first respondent, the Resource Development Trades Council of Newfoundland and Labrador (the umbrella council of trade unions representing all trade unions and unionized employees working on the special project at the site), hereafter referred to as the union.

[6] Pursuant to the collective agreement, employees represented by the union included 14 individuals who did janitorial work at various buildings at the construction site.

[7] In discussions between the employer and the union in early 2016, the employer advised the union of its intention to end the employment of the 14 janitorial workers as of April 1, 2016. The union did not object and the workers' employment ended on the date proposed. After their employment ended, the union filed a grievance on behalf of the workers, pursuant to the collective agreement.

[8] The matter proceeded to arbitration, with an experienced labour arbitrator chosen to hear the grievance. The arbitrator decided that the union was estopped

from proceeding with the grievance. He found that the union was aware of and had agreed to, or acquiesced in, the employer's action to end the janitorial workers' employment. In the result, he dismissed the grievance (Arbitrator's Decision, Appeal Book, Volume 1, Tab 5).

[9] The union applied to the Supreme Court of Newfoundland and Labrador for judicial review of the arbitrator's decision.

[10] On judicial review, the Judge found that the arbitrator erred in his application of estoppel because he made no specific finding that the employer had actually relied, to its detriment, on the fact that the union had accepted or acquiesced in the employer's termination of the workers' employment.

[11] The Judge concluded that this rendered the arbitrator's decision unreasonable. As a result, he allowed the application, quashed the arbitrator's decision, and remitted the matter to arbitration (*Resource Development Trades Council of Newfoundland and Labrador v. Long Harbour Employers Association Inc*., 2021 NLSC 134, the Judge's Decision).

[12] The employer appealed. The appeal concerns whether the arbitrator's decision was reasonable, and whether the Judge was correct on judicial review in concluding that the decision was not reasonable.

[13] For the reasons that follow, I would conclude that the arbitrator's decision met the standard of reasonableness as described by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653.

[14] As the decision was reasonable, I would conclude that judicial intervention was unwarranted. Accordingly, I would allow the appeal.

Standard of Review on Appeal

[15] In *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, the Supreme Court of Canada set out the analytical approach to be followed on an appeal of a judicial review of an administrative decision.

[16] As explained in *Agraira*, in an appeal from an application for judicial review an appellate court considers whether the Judge hearing the judicial review application chose the correct standard of review, and applied it properly (para. 47). The approach to appellate review described in *Agraira* has been confirmed by the Supreme Court of Canada in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, at paragraphs 10-12.

[17] This approach has been followed by this Court, including in the decisions of *Canada Fluorspar (NL) Inc. v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9220*, 2022 NLCA 21, 7 C.A.N.L.R. 447; *O'Rourke v. Workplace Health, Safety and Compensation Commission*, 2022 NLCA 14, 7 C.A.N.L.R. 349; and *Seraj v. Memorial University of Newfoundland*, 2022 NLCA 42, 7 C.A.N.L.R. 758.

[18] As observed in *Canada Fluorspar (NL) Inc.*, "the appellate court must view the matter from the perspective of the applications judge whose function is to determine whether the decision of the administrative tribunal is reviewable on a standard of correctness or reasonableness, and to apply that standard …" (para. 12). (See also *O'Rourke*, at para. 16; *Seraj*, at para. 51; and *Law Society of Newfoundland and Labrador v. Buckingham*, 2023 NLCA 17, at para. 25).

[19] As such, "the applications judge's decision is reviewable by this Court on a standard of correctness" (*Canada Fluorspar (NL) Inc.*, at para. 14, citing *Mount Pearl (City) v. Workplace Health, Safety and Compensation Review Division*, 2008 NLCA 69, 282 Nfld. & P.E.I.R. 14, at para. 15).

Issues

[20] Accordingly, the appeal will consider two issues:

1. Was the applications Judge correct in identifying reasonableness as the standard of review?

2. Was the applications Judge correct in concluding that the arbitrator's decision was unreasonable?

Issue 1: Was the applications Judge correct in identifying reasonableness as the standard of review?

[21] The Judge identified reasonableness as the standard of review on the judicial review application. In selecting reasonableness as the appropriate standard, the Judge followed the direction of the Supreme Court of Canada.

[22] The Supreme Court of Canada in *Vavilov* identified reasonableness as the presumptive standard to be used (see, for example, paras. 16, 23, 30) unless the matter under review falls into one of a number of exceptional categories, as described in *Vavilov*, which would necessitate a different standard (see generally, at para. 17, and a more detailed discussion in paras. 33-72).

[23] As none of these exceptional categories applied in the present case, the applications Judge correctly identified reasonableness as the standard by which to review the arbitrator's decision.

Issue 2: Was the applications Judge correct in concluding that the arbitrator's decision was unreasonable?

Background

The "turnover process" and discussions between the union and employer

[24] The evidence on which the arbitrator based his finding of estoppel included testimony regarding a so-called "turnover process". The evidence at the arbitration hearing indicated that, during construction, the designated representatives of the union and the employer would discuss when a particular building would be "turned over" to the control of the project owner. When such a turnover occurred, the collective agreement would no longer apply and the respective union workers' employment at that building would end.

[25] These discussions would involve the employer's explanation or rationale as to why it had decided that it was appropriate to turn over a building at a given time, the employer's proposal as to when the turnover would occur, and the proposed employment end-date for the impacted union workers.

[26] The evidence at the arbitration hearing was that this turnover process was first used at the construction site in 2014, resulting at that time in the termination

of employment of other union employees, unrelated to the janitorial workers in the present appeal.

[27] The specific turnover discussions that preceded the termination of the janitorial workers took place in the spring of 2016 between two individuals: Ray Ryall, the union's designated representative on site, and Sabrina Kelly, the employer's designated representative on site.

[28] The arbitrator described Ms. Kelly's evidence regarding discussions about the proposed turnover, and the resulting job loss for the janitorial employees:

> Sabrina Kelly gave evidence about her interactions with Ray Ryall as Site Representative for [the union] during the period in 2016 when the transfer of temporary infrastructure was happening. She explained that as this turnover process was unfolding, she had discussions with Ray Ryall "*on a regular basis*" and that she sent him a map of the entire site (Exhibit MF 7) including information about the turnover of these buildings so that he was aware of the probable impact that turnover would have on various [unions] … .
>
> (Arbitrator's Decision, at page 76)

[29] The arbitrator noted Ms. Kelly's evidence that Mr. Ryall understood the implications of the turnover process, expressed no concern from the union's perspective, and made no objection to the employer's intended action:

> Kelly observed that she and Ray Ryall had many conversations about [the project owner's] underlying principle that … once a building was occupied only by Vale employees, the Project Agreement was no longer to be applied to that building. She explained that on more than one occasion, she and Ryall would mention the turnover of these temporary buildings in the context of discussing this transfer principle. As Ryall had expressed his understanding of it to her, "*Vale employees are in there now, so we don't have jurisdiction - right?*" Kelly would always confirm that principle to him. Kelly insisted that Ryall expressed no objection to her at any time during 2016.
>
> (Arbitrator's Decision, at page 76)
>
> …
>
> Kelly noted in her evidence that no union representative expressed any concerns about this process as it unfolded in 2016 and no grievances, other than the one here filed by [the union] in May 2016, had ever been filed … on behalf of any union representing

> workers in other disciplines at the site.
>
> (Arbitrator's Decision, at page 79)

[30] In summary, Ms. Kelly testified she advised Mr. Ryall that, as a direct consequence of the turnover process, the janitorial workers in question would cease to be employed at the site effective March 31, 2016. Her evidence was that there was no objection from the union, the turnover occurred, and the janitorial workers' employment ended on April 1, 2016.

[31] The arbitrator accepted Ms. Kelly's evidence. Mr. Ryall did not testify. Based on the evidence, the arbitrator made factual findings that the employer had advised the union of its decision to end the workers' employment, that the union understood, accepted, and did not object to the proposed action, and that the employer then subsequently proceeded to terminate the workers' employment. Another contractor was hired to do the janitorial work.

[32] These factual findings led directly to the arbitrator's conclusion that there was an estoppel.

The Judge's decision on judicial review

The Judge found no error respecting the arbitrator's factual findings

[33] On the judicial review application, the union argued that the arbitrator erred in his factual findings. The union alleged that the factual findings, on which the arbitrator based his conclusion that there was an estoppel, were unsupported by or contrary to the evidence. The Judge rejected this argument.

[34] In doing so the Judge itemized some of the arbitrator's factual findings in this respect, including that:

- The employer had invoked its view of the turnover process for other facilities and structures since 2014;

- Sabrina Kelly … explained the employer's rationale for its turnover process to Ray Ryall … on several occasions prior to April 1, 2016;

- It appeared to Sabrina Kelly that Ray Ryall understood and accepted the employer's interpretation of the collective agreement as it applied to the turnover process;

- Ray Ryall was not called to testify;

- Ray Ryall as site representative … in accepting the interpretation of the collective agreement as applied to the turnover process … was administering the agreement in the field, not agreeing to an amendment of it; and

- Ray Ryall knew and understood the consequences of the employer's turnover process.

(Judge's Decision, at para. 20)

[35] The Judge stated that the arbitrator had found "there were numerous discussions between Kelly and Ryall between 2014 and 2016" (Judge's Decision, at para. 28).

[36] He also noted the arbitrator's finding that, based on these discussions, Mr. Ryall would have been aware that the buildings serviced by the janitorial workers were to be turned over to the employer, with a resulting loss of employment:

> However, the Arbitrator in his reasons quoted Kelly's testimony that she had discussions with Ryall "on a regular basis," that she sent a map to Ryall showing the turnover plan, and that "she explained in significant detail that she met with Ryall on a number of occasions and explained to him what the employer was doing in the turnover of temporary infrastructure and why it was doing it."

(Judge's Decision, at para. 29)

[37] The Judge concluded that the arbitrator's "factual findings regarding these discussions were supported by the evidence recorded and recounted by the Arbitrator." As such, he found "no basis for this Court to reconsider these findings of fact" (Judge's Decision, at para. 29).

The Judge found that the arbitrator identified the correct test for estoppel

[38] The Judge also found that the arbitrator correctly stated the law of estoppel.

[39] He noted that the arbitrator "set out the doctrine of equitable estoppel as described in Donald J.M. Brown and David M. Beatty, *Canadian Labour Arbitration,* 5th ed. loose-leaf (Toronto: Carswell, 2019) a leading labour arbitration text" (Judge's Decision, at para. 21). The elements of estoppel outlined by the arbitrator, in citing the excerpt from Brown and Beatty, included the element of detrimental reliance.

[40] The Judge stated that both parties agreed that the arbitrator's statement "accurately describes the doctrine of equitable estoppel", and they agreed that the arbitrator "correctly stated the principles underpinning the arbitral remedy of estoppel" (Judge's Decision, at paras. 22, 31).

[41] There is no suggestion that the arbitrator erred, or misdirected himself, respecting the law.

The Judge found that the arbitrator erred by failing to make a finding of detrimental reliance

[42] However, the Judge held that the arbitrator erred by failing to find that the employer had relied, to its detriment, on the union's acquiescence. That is, the Judge stated that the arbitrator erred because he made no finding that the employer had actually relied on the union's acceptance of the employers' decision to terminate the janitorial workers' employment.

[43] The Judge concluded that, while the arbitrator considered the elements of estoppel, "his reasons did not include a finding of reliance that would justify the imposition of estoppel …" (Judge's Decision, at para. 50).

[44] He held that "it is not reasonable for a labour arbitrator to find estoppel without first deciding that there has been reliance" (Judge's Decision, at para. 37).

[45] As a result, the Judge found that the arbitrator's decision was unreasonable.

Analysis

Was the arbitrator's decision reasonable?

[46] For the reasons that follow, I would conclude that the arbitrator's decision that the union was estopped from grieving was reasonable, and that the Judge erred in finding that the decision was unreasonable.

[47] The conclusion that the arbitrator's decision was reasonable is based on three considerations.

[48] The first is that a review of the arbitrator's decision itself reveals that it includes many of the hallmarks of reasonableness as described by the Supreme Court of Canada in *Vavilov*.

[49] The second consideration is the context in which the arbitrator applied estoppel. As discussed below, the Supreme Court of Canada has indicated that reviewing courts must be cognizant of the special context in which labour arbitration decisions are made, and ensure that a flexible, not rigid, approach is taken in reviewing decisions made in this context. This contextual consideration also supports that the decision was reasonable.

[50] The third consideration relates to a specific finding of the Judge on judicial review. The Judge determined that the "sequence of events as found by the Arbitrator is not consistent with a conclusion that the … turnover decision was made in reliance on the acquiescence by Ryall" (Judge's Decision, at para. 45). As discussed below, the sequence of events does not foreclose the arbitrator's conclusion that there was estoppel arising from the union's acquiescence; nor does it render the arbitrator's decision unreasonable.

[51] These considerations will be discussed next, beginning with the arbitrator's decision.

I. The arbitrator's decision contains many of the hallmarks of reasonableness, as described in *Vavilov*

[52] In assessing the reasonableness of an administrative decision, in this case the decision of the arbitrator, the starting point is the decision itself (*Vavilov,* at paras. 83-84).

[53] In *Vavilov*, the Supreme Court of Canada signaled its intention to "develop and strengthen a culture of justification in administrative decision making", and indicated that "the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (paras. 2, 83).

[54] The Court observed in *Vavilov* that "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (para. 85).

[55] As will be discussed more fully below, reasonableness must also be considered in the context in which the administrative decision is made (paras. 88-90), and the review cannot be "divorced … from the institutional context in which the decision was made …" (*Vavilov*, at para. 91).

[56] Judicial intervention may be warranted in circumstances where an administrative decision maker's reasons "reveal that the decision is based on an unreasonable chain of analysis" (para. 96), or where the decision contains "shortcomings or flaws" that "are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at paras. 100-101).

[57] A reviewing court must assess whether there has been a "failure of rationality internal to the reasoning process" and whether a "decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it" (*Vavilov*, at para. 101).

[58] The Supreme Court in *Vavilov* observed that "a reviewing court must ultimately be satisfied that the decision maker's reasoning 'adds up' " (para. 104), and that the reasoning should not "cause a reviewing court to lose confidence in the outcome reached" (para. 106).

[59] The Court noted that "a reasonable decision is one that is justified in light of the facts" and "the decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account" (*Vavilov*, at para. 126).

[60] Further, the decision should be responsive to the parties submissions, because the "principles of justification and transparency require that an

administrative decision maker's reasons meaningfully account for the central issues … raised by the parties" (*Vavilov*, at para. 127).

[61] In summary, a reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99).

[62] In the present case, the arbitrator considered the extensive evidence at the arbitration hearing, which "lasted more than 23 days, spread over 2 years with a total of 15 witnesses" (Arbitrator's Decision, at page 60). Based on the evidence, the arbitrator made factual findings, identified and applied the law of estoppel in the context of a labour relations dispute, and concluded that the union was estopped from grieving, based on its acquiescence.

[63] As such, and as will be described in further detail below, the arbitrator's decision includes many of the hallmarks of reasonableness described in *Vavilov*.

The arbitrator's factual findings were supported by the evidence

[64] The arbitrator accepted Ms. Kelly's evidence that she and Mr. Ryall specifically discussed the turnover of the buildings where the janitorial employees had been working, resulting in the termination of their employment. He noted that Ms. Kelly was "uncontradicted" in her evidence that she and Mr. Ryall had clear discussions about the employer's intended actions, and the consequences for the workers involved.

[65] The arbitrator observed that Mr. Ryall did not testify, and that the union offered no other evidence to refute Ms. Kelly's testimony that the union, through Mr. Ryall, had appeared to agree to the employer's expressed plan:

> Sabrina Kelly testified about her conversations with Ray Ryall, as Site Representative for [the union], where she explained the turnover process of these temporary infrastructures before that action actually unfolded. Ryall was not called as a witness, so Kelly's evidence stands as uncontradicted.
>
> (Arbitrator's Decision, at page 98)

[66] The arbitrator accepted Ms. Kelly's evidence in this respect:

> Thus, I accept the evidence of Sabrina Kelly that in the spring of 2016, she did explain the process and rationale for turnover of temporary infrastructure to the [union's] Site Representative prior to the buildings being assumed by [the project owner's] operations control on April 1, 2016. Kelly testified that she and Ryall had a number of conversations about the Employer's approach and that Ryall appeared to agree that turnover at that time and in that manner was acceptable from the [union's] perspective. There is no evidence which supports any attempt by Ryall to disavow Kelly of his or the [union's] apparent acceptance of that planned activity. Ryall was not called as a witness to explain his understanding from their discussions.

(Arbitrator's Decision, at page 98)

[67] He noted the lack of any objection from the union regarding the proposed turnover:

> If the Employer was not entitled to act as it did in the proposed turnover, then Ryall should have protested the turnover process or made evident his disagreement with the Employer's interpretation of its rights under [the collective agreement].

(Arbitrator's Decision, at page 99)

[68] Notably, in respect of detrimental reliance, the arbitrator also specifically found that, there being no objection from the union to the proposed action, the employer "subsequently acted on its plans and terminated the service contracts with its construction contractors", thereby ending the worker's employment (Arbitrator's Decision, at page 99). This was consistent with the employer's view that it had relied on the union's acceptance of its position that the collective agreement no longer applied with respect to the employees, and that it was free to take the action it did.

[69] In summary, the arbitrator's factual determinations were grounded in the evidence, "justified in light of the facts" and properly considered "the evidentiary record and the general factual matrix" (*Vavilov*, at para. 126). See also *Canada (Commissioner of Competition) v. Rogers Communications Inc.*, 2023 FCA 16, at paragraph 15.

[70] Consistent with the requirements in *Vavilov* for an "internally coherent and rational chain of analysis and that is justified in relation to the facts and law that

constrain the decision maker" (para. 85), the arbitrator next considered the law of estoppel in relation to the facts.

The arbitrator outlined and considered the law of estoppel

[71] The arbitrator framed his analysis in these terms: *Does the [union] Site Representative's action or acquiescence constitute an estoppel?*

[72] He began by identifying the requirements of estoppel, which included the element of detrimental reliance. He referenced Brown and Beatty's text, *Canadian Labour Arbitration*, in considering the doctrine of estoppel, as follows:

> The law and practice of estoppel is well established in judicial and arbitral jurisprudence. The opening of the section on '*Estoppel*' from Brown & Beatty's text, *Canadian Labour Arbitration*, explains the principle in this way …
>
> > *The concept of equitable estoppel is well developed at common law and has been expressed in this way:*
> >
> > > *The principle, as I understand it, is that where one party has by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave to promise or assurance cannot afterwords be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration, but only by his word.*
>
> *One arbitrator has summarized the doctrine in the following terms:*
>
> > *It is apparent that there are two aspects of the doctrine so stated. There must be a course of conduct in which both parties act or both consent and in which the party who later seeks to set up the estoppel is led to suppose that the strict legal rights will not be enforced. It follows that the party against whom the estoppel is set up will not be allowed to enforce his strict rights if it would be inequitable to do so. The main situation where it would be inequitable for strict legal to be upheld would be where the party now setting up the estoppel has relied to his detriment.*

> *Thus, the essentials of estoppel are: a clear and unequivocal representation … which may be made by words or conduct, or in some circumstances it may result from silence or acquiescence intended to be relied on by the party to whom it was directed; although that intention may be inferred from what reasonable [sic] should have been understood; some reliance in the form of some action or inaction; and detriment resulting therefrom …*
>
> (Arbitrator's Decision, at pages 99-100)

[73] Having correctly identified the elements of estoppel, the arbitrator applied the law to the facts of this matter, concluding that the union was informed and understood the consequences of the employer's intended action:

> Kelly explained in significant detail that she met with Ryall on a number of occasions and explained to him what the Employer was doing in the turnover of temporary infrastructure and why it was doing it. …
>
> I am satisfied, based on Kelly's uncontradicted evidence, that Ryall knew and understood the consequences of the Employer's intended course of action. …
>
> A collective agreement, while generally drafted in a factual vacuum, must always be interpreted in context of real life factual situations. Ryall was, according to Kelly's evidence, clearly aware of the consequences of the Employer's decisions to change control of those buildings.
>
> (Arbitrator's Decision, at pages 100-101)

[74] A reasonable decision is one that is "justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, see also paras. 85, 101). The application of the law of estoppel was a relevant legal constraint in this matter.

[75] In considering the proper application of estoppel in this context, the arbitrator was guided by, and referenced, the Supreme Court of Canada's decision in *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, 2011 SCC 59, [2011] 3 S.C.R. 616.

[76] In *Nor-Man*, as in the present matter under appeal, the issue was whether an arbitrator's use of estoppel in the labour arbitration context was reasonable.

[77] The arbitrator in the present case cited a passage from *Nor-Man* in which the Supreme Court of Canada commented on two decisions where arbitrators had found estoppel arising from an employer relying on a union's acquiescence. In commenting on these decisions, the Supreme Court of Canada observed in *Nor-Man* that, in both cases, the "arbitrators were alive to the foundational principles of estoppel".

[78] Noting that the circumstances in *Nor-Man* were comparable to the circumstances in the matter before him (in that both dealt with an arbitrator's application of estoppel in a labour context), the arbitrator in the present case concluded that the Supreme Court of Canada's comment in *Nor-Man* was "compelling on the facts here" (Arbitrator's Decision, at page 101).

[79] The arbitrator stated:

> A case cited by the Employer gives support to the application of estoppel in a factual situation somewhat similar to this. In *M.A.H.C.P. v. Nor-Man Regional Health Authority Inc.*, the Supreme Court of Canada was tasked with an appeal from the judicial review of an arbitrator's decision to invoke estoppel against a union. … At paragraph 15 of the decision, Justice Fish, commenting on two arbitral precedents that had been cited in support of the employer's reliance on estoppel, in writing for the Court, observed that:
>
> > *Both arbitrators were alive to the foundational principles of estoppel. Essentially, they both found that the union was fixed with knowledge — constructive, if not actual — of the employer's mistaken application of the disputed clauses throughout the relevant time; that the union's silence amounted to acquiescence in the employer's practice; that this sufficiently fulfilled the intention requirement of estoppel; that the employer could reasonably rely on the union's acquiescence; that the employer's reliance was to its detriment; and that all of this had the effect of altering the legal relations between the parties.*
>
> That comment is compelling on the facts here.
>
> (Arbitrator's Decision, at page 101)

The arbitrator concluded, based on the facts and law, that there was an estoppel

[80] Applying the law of estoppel to the facts, the arbitrator determined that the facts supported the conclusion that the union was estopped from proceeding with

the grievance, based on the "clear evidence of estoppel arising from the communications between Kelly and Ryall in the spring of 2016". The arbitrator stated:

> For all of these reasons, I have concluded that the [union] is now estopped from asserting its right to require compliance with the terms of [the collective agreement] in the March/April 2016 turnover process of the buildings involved here because of the [union's] acquiescence in the light of those discussions between Kelly and Ryall.
>
> (Arbitrator's Decision, at page 102)

[81] He found that a practice had developed regarding turnover discussions between Ms. Kelly and Mr. Ryall, and that the union was informed that the janitorial workers' employment would cease. He determined that the union was estopped from proceeding with the grievance because it did not object, but rather that it had accepted and acquiesced to the employer's proposed action:

> Based on the foregoing analysis, the Grievance is dismissed based on the estoppel created by acquiescence and inaction of the Site Representative of the [union] who was aware of the Employer's plans to transfer control of the buildings involved in this dispute from construction to operations control on April 1, 2016.
>
> (Arbitrator's Decision, at page 103)

[82] The arbitrator concluded that there was "clear evidence of estoppel arising from the communications between Kelly and Ryall in the spring of 2016", and that the union was "estopped from asserting its right to require compliance" with the collective agreement "because of the [union's] acquiescence in the light of those discussions between Kelly and Ryall" (Arbitrator's Decision, at page 102).

[83] Further, the decision reveals that the arbitrator considered and was responsive to both parties' submissions on estoppel, and was mindful of the requirement to "meaningfully account for the central issues … raised by the parties" (*Vavilov*, at para. 127).

[84] Based on the evidence, the arbitrator accepted the employer's position that "… past practice and/or estoppel prohibit the [union] from success in these factual circumstances" (Arbitrator's Decision, at page 85).

[85] In doing so, the arbitrator rejected the union's argument that "if Ryall's acquiescence did amount to implied consent" he lacked authority to agree to the turnover process (Arbitrator's Decision, at page 99). The union had argued that it was unaware of the discussions regarding turnover. Moreover, it also argued that any decision on turnover could only be made by the union management "at the table", and not by Mr. Ryall, because it constituted a change to the collective agreement.

[86] The arbitrator rejected this submission and found that Mr. Ryall, as the designated union representative, knew and understood the consequences of the employer's plan. The arbitrator found that "[w]hether Ryall conveyed that consequence fully or adequately to other persons within the [union] is irrelevant", because Mr. Ryall "was charged with administering the [collective agreement] and that was what he and Kelly were doing in their early 2016 conversations" (Arbitrator's Decision, at pages 100-101).

[87] As a result, the arbitrator found that no further approval from the union "table" was required because Ms. Kelly and Mr. Ryall were not changing the agreement, but "simply administering and interpreting it in the light of arising factual circumstances", as they were required to do (Arbitrator's Decision, at pages 100-101). The arbitrator's determination in this regard was not disturbed on judicial review.

Conclusion on this point

[88] *Vavilov* requires a coherent and rational analytical process, leading to a conclusion that is grounded in this reasoning process and justified in relation to relevant factual or legal constraints (paras. 85, 99).

[89] From the above excerpts, it is apparent from the arbitrator's decision that he made factual findings that were supported by the evidence, identified the correct legal test for estoppel, was alive to all of the required elements of estoppel (including detrimental reliance), and applied the law of estoppel to the facts as he found them. A direct line of analysis is evident, flowing from the evidentiary findings, to the identification and application of the law, to the conclusion. (See, for example, *Andritz Hydro Canada Ltd. v. The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 179*, 2023 SKCA 69, at para. 47).

[90] As such the decision, and the analysis contained therein, "bears the hallmarks of reasonableness" as described in *Vavilov*, and supports that the arbitrator's finding of estoppel was reasonable (*AlumaSafway Inc. v. The International Association of Heat & Frost Insulators and Asbestos Workers, Local 119*, 2022 SKCA 99, at paras. 81-84). (See also *Andritz*, at para. 47).

II. The contextual consideration: Applying estoppel in the labour arbitration context

[91] The second consideration that supports the conclusion that the decision was reasonable is the context in which it was made.

[92] As the Supreme Court of Canada noted in *Vavilov*, context is important. The reasonableness of a decision must be considered in the context in which it is made (paras. 88-90), and a reasonableness review cannot be "divorced … from the institutional context in which the decision was made …" (para. 91).

[93] The application of the doctrine of estoppel in the labour relations context is a relevant consideration in the present matter.

[94] The Supreme Court of Canada has provided guidance on how a reviewing court should assess the reasonableness of an arbitrator's finding of estoppel in the labour relations context. The Court has indicated that a reviewing court must be cognizant of the special context in which labour arbitration decisions are made, and that a flexible approach is required.

[95] This flexible approach was described in detail by the Supreme Court of Canada in *Nor-Man*, where it was stated that "[l]abour arbitrators are not legally bound to apply equitable and common law principles — including estoppel — in the same manner as courts of law. Theirs is a different mission, informed by the particular context of labour relations" (paras. 5-6). (See also *Canada (Attorney General) v. Burke*, 2021 FCA 18, at para. 5).

[96] The Supreme Court in *Nor-Man* noted that arbitrators may need to adapt legal principles (such as estoppel) in this context; in order to "assist them in the pursuit of that mission, arbitrators are given a broad mandate in adapting the legal principles they find relevant to the grievances of which they are seized …" (para. 6).

[97] An arbitrator applying the doctrine of estoppel in the context of a labour grievance must "exercise that mandate reasonably, in a manner that is consistent with the objectives and purposes of the statutory scheme, the principles of labour relations, the nature of the collective bargaining process, and the factual matrix of the grievance" (*Nor-Man*, at para. 6).

[98] In other words, "labour arbitrators are authorized by their broad statutory and contractual mandates — and well equipped by their expertise — to adapt the legal and equitable doctrines they find relevant within the contained sphere of arbitral creativity" (*Nor-Man*, at para. 45).

[99] In *Nor-Man*, the Supreme Court of Canada further noted that allowing arbitrators to craft appropriate remedies, such as estoppel, is important in maintaining balance and accord within a collective agreement context. That is why arbitrators require this flexibility. The Court stated that the "peaceful continuity of the relationship depends on a system of grievance arbitration that is sensitive to the immediate and long-term interests of both the employees and the employer" (para. 48).

[100] As such, estoppel must be applied in a manner that is responsive to the labour relations context. As the Supreme Court observed in *Nor-Man*, "arbitrators are uniquely placed to respond to the exigencies of the employer-employee relationship" and "they require the flexibility to craft appropriate remedial doctrines when the need arises: Rigidity in the dispute resolution process risks not only the disintegration of the relationship, but also industrial discord" (para. 49).

[101] The *Nor-Man* decision, similar to the matter on appeal, involved "an experienced labour arbitrator" who "imposed an estoppel on the union's claim for redress" based on the union's acquiescence, and the employer's reliance on the acquiescence (*Nor-Man*, at para. 1).

[102] The Supreme Court in *Nor-Man* referenced a passage from Paul C. Weiler, former Chairman of the British Columbia Labour Relations Board and then Professor Emeritus at Harvard University, wherein he offered an example to illustrate how estoppel arises from a union's acquiescence.

[103] The example Weiler provided, like the present situation on appeal, involved an arbitrator finding estoppel where a union made no objection to an employer's

proposed action, and the employer proceeded with its action. Weiler suggested that allowing a grievance to proceed in such circumstances could erode trust in the collective bargaining/industrial relations regime, and be contrary to the objectives of labour relations legislation.

[104] The passage is relevant to the arbitrator's decision in the present case. As referenced by the Supreme Court of Canada at paragraph 50 in *Nor-Man*, Mr. Weiler observed:

> … By and large, it is the employer which takes the initiative in making operational decisions within the framework of the collective agreement. If the union leadership does not like certain management actions, then it will object to them and will carry a grievance forward about the matter. The other side of that coin is that if management does take action, and the union officials are fully aware of it, and no objection is forthcoming, then the only reasonable inference the employer can draw is that its position is acceptable. Suppose the employer commits itself on that assumption. But the union later on takes a second look and feels that it might have a good argument under the collective agreement, and the union now asks the arbitrator to enforce its strict legal rights for events that have already occurred. It is apparent on its face that it would be inequitable and unfair to permit such a sudden reversal to the detriment of the other side. In the words of the Board in [*Corporation of the District of Burnaby and Canadian Union of Public Employees, Local 23*, [1978] 2 C.L.R.B.R. 99, at p. 103], "It is hard to imagine a better recipe for eroding the atmosphere of trust and co-operation which is required for good labour management relations, ultimately breeding industrial unrest in the relationship — all contrary to the objectives of the Labour Code" . …

[105] Noting Weiler's observation, the Supreme Court of Canada provided direction to reviewing courts assessing the reasonableness of an arbitrator's decision in this context. The Supreme Court of Canada stated: "reviewing courts must remain alive to these distinctive features of the collective bargaining relationship, and reserve to arbitrators the right to craft labour specific remedial doctrines". The Court indicated that, in this context, and "within this domain, arbitral awards command judicial deference" (*Nor-Man*, at para. 51).

[106] Accordingly, in assessing the reasonableness of the arbitrator's decision, and his application of estoppel in the present matter, the Supreme Court of Canada's guidance about "the distinctive features of the collective bargaining relationship" in which the decision was made, is a relevant contextual consideration (*Nor-Man*, at para. 51).

The *Nor-Man* contextual issues are relevant to the *Vavilov* reasonableness assessment

[107] The Supreme Court of Canada in *Vavilov* referenced and incorporated its earlier observations from *Nor-Man*, confirming that administrative decision makers "will not necessarily be required to apply equitable and common law principles in the same manner as courts in order for their decisions to be reasonable" (*Vavilov*, at para. 113).

[108] The Supreme Court in *Vavilov*, at paragraph 113, citing *Nor-Man*, again noted that "it may be reasonable for a decision maker to adapt a common law or equitable doctrine to its administrative context: see *Nor-Man* … at paras., 5-6, 44-45, 52, 54 and 60".

[109] The Court made this clear in *Vavilov*, stating that "a decision maker that rigidly applies a common law doctrine without adapting it to the relevant administrative context may be acting unreasonably … . In short, whether an administrative decision maker has acted reasonably in adapting a legal or equitable doctrine involves a highly context-specific determination" (para. 113).

Applying the contextual considerations from *Nor-Man* supports the conclusion that the arbitrator's decision is reasonable

[110] As previously noted, the arbitrator referenced *Nor-Man* in support of his conclusion of estoppel.

[111] He included a passage from *Nor-Man* describing arbitration decisions where estoppel arose from union acquiescence. The Supreme Court of Canada commented in *Nor-Man* that the arbitrators in these decisions "were alive to the foundational principles of estoppel", that "the union's silence amounted to acquiescence", that the "employer could reasonably rely on the union's acquiescence", and that the "employer's reliance was to its detriment" (para. 19). The arbitrator in the present appeal concluded that this passage from *Nor-Man* was "compelling on the facts here" (Arbitrator's Decision, at page 101).

[112] Further, *Nor-Man*, like the present appeal, considered whether an arbitrator's alleged failure to make an express finding on a specific element of estoppel rendered the decision unreasonable.

[113] In the present appeal, the Judge on judicial review concluded that the arbitrator erred in applying estoppel by failing to make a finding that the employer had relied on the union's acquiescence.

[114] In *Nor-Man*, the Supreme Court of Canada addressed a similar argument. The union argued that the arbitrator had erred in finding estoppel because the arbitrator failed to make a specific factual finding required for estoppel, namely that the union intended to affect its legal relations with the employer.

[115] The union in *Nor-Man* argued that the requirements for estoppel established by the Supreme Court of Canada in its earlier decision in *Maracle v. Travellers Indemnity Co. of Canada*, [1991] 2 S.C.R. 50, at page 57, were therefore not met, and that the arbitrator had erred by failing to make this finding about intention to affect legal relations.

[116] The Supreme Court of Canada rejected this argument that the "arbitrator failed to apply *Maracle* to the letter", and found no error in the arbitrator's decision (*Nor-Man*, at para. 60).

[117] Acknowledging the labour relations context in which estoppel was applied, the Supreme Court in *Nor-Man* stated that the "question is not whether the labour arbitrator failed to apply *Maracle* to the letter, but whether he adapted and applied the equitable doctrine of estoppel in a manner reasonably consistent with the objectives and purposes of the [*Labour Relations Act*], the principles of labour relations, the nature of the collective bargaining process, and the factual matrix of [the] grievance" (para. 60).

[118] The Supreme Court concluded that the arbitrator had done so, and found the arbitrator's decision to be reasonable.

[119] The reasoning and result in *Nor-Man* is apposite here, as the arbitrator in the present appeal applied the doctrine of estoppel appropriately in the context, and in light of the evidence.

[120] It is clear from the decision that the arbitrator understood the labour relations context and found that: a turnover practice had developed and discussions occurred regarding turnover; the union was apprised of the employer's decision and proposed plan regarding turnover; the union understood

the consequences for its members; the union did not oppose or object in any way to the proposed action and the employer proceeded.

[121] While the Judge clearly referenced and discussed *Nor-Man*, and noted that the doctrine of estoppel is to be applied with less rigidity in a labour arbitration context, (see, for example, the Judge's Decision, at paras. 32-38, 49), ultimately the Judge's decision does not evince the level of flexibility directed by the Supreme Court in *Nor-Man*.

[122] For example, with respect to detrimental reliance, the arbitrator made a link between the union's acquiescence and the employer's termination of the contract. The arbitrator stated that, there being no objection from the union, the employer "subsequently acted on its plans and terminated the service contracts", thereby ending the workers' employment (Arbitrator's Decision, at page 99). This denotes the arbitrator's line of reasoning, connecting the employer's reliance on the union's acquiescence to the employer's subsequent action to end the contract.

[123] Further, once the janitorial workers' service contract ended, a different contractor was hired to replace the workers, and carry out the work in question. In his decision, the arbitrator again directly connects the union's failure to object with the consequence that followed, namely the hiring of a new contractor to replace the janitorial workers. The arbitrator makes this connection, stating that "no union representative expressed any concerns about this [turnover] process as it unfolded in 2016 … [c]onsequently … another contractor … was then hired effective on April 1, 2016 … to perform janitorial services … at the buildings involved in this dispute" (Arbitrator's Decision, at pages 79-80).

[124] The arbitrator's use of the term "consequently" in this context arguably denotes his view that the employer's reliance on the union's acquiescence caused, and led directly to, a significant change in the *status quo*; that is, the termination of the janitorial workers' contract, and the hiring of a new contractor.

[125] However, the Judge found that the arbitrator's language did not satisfy the requirement of reliance.

[126] The Judge stated: "Other than the use of the word "[c]onsequently", the Arbitrator never expressly considered whether there was a causal connection between acquiescence on the part of the [union] and the … decision to turn over the buildings to operations" (Judge's Decision, at para. 41). The Judge went on

to conclude: "The legal constraints imposed on the Arbitrator required that he find the essential element of reliance before imposing the remedy of estoppel" (para. 51).

[127] With respect, I am unable to agree with this view. The arbitrator's words readily permit an express finding of detrimental reliance. The use of such words as "subsequently" and "consequently" denote a cause and effect relationship, wherein the union's acquiescence resulted in the termination of the janitorial workers' contract and the formation of a new one, with a different contractor.

[128] The arbitrator's decision indicates that the employer acted in reliance on, and as a consequence of, the union's agreement with the employer's decision that the janitorial workers' employment would end. The language in the arbitrator's decision also signifies his view that the employer relied and acted on the understanding that the union would not later change its view, and contest these terminations.

[129] Importing flexibility into judicial review reflects the reality of the labour relations context. Weiler, in *Nor-Man*, explained detrimental reliance in this context. He stated that once an employer commits itself to action, and the union does not object but agrees with that action, it is not acceptable if "the union later on takes a second look" and grieves the action because it "feels that it might have a good argument under the collective agreement". In such circumstances, detrimental reliance results as it is "apparent on its face that it would be inequitable and unfair to permit such a sudden reversal to the detriment of the other side" (*Nor-Man*, at para. 50).

[130] As further observed in *Nor-Man*, it is "hard to imagine a better recipe for eroding the atmosphere of trust and co-operation which is required for good labour management relations, ultimately breeding industrial unrest in the relationship …" (para. 50).

[131] In this case the arbitrator assessed the evidence and, based on his conclusion, determined that the requirements of estoppel were met. Arguments of estoppel are not uncommon in the labour relations context, and presumably would be familiar to an experienced arbitrator. Labour arbitrators are frequently tasked with considering and applying estoppel and, unless a decision is reached in an unreasonable manner, "within this domain, arbitral awards command judicial deference" (*Nor-Man*, at para. 51). In this context, the arbitrator's finding

of estoppel based on the evidence in this matter, and his description of the cause and effect circumstances regarding how detrimental reliance occurred here, is not unreasonable.

[132] Moreover, even if, as the Judge found, the arbitrator did not explicitly make a finding of detrimental reliance, on a fair reading of the decision it is, in the very least, strongly implied and evident. That is, the decision reveals that the arbitrator identified reliance as an element of estoppel and understood that reliance needed to be established on the facts. His consideration of the evidence, his description of the discussions between the union and employer, and his factual findings and conclusion supports that he was satisfied that all requirements of estoppel were met. (See, for example, *Alexion Pharmaceuticals Inc. v. Canada (Attorney General)*, 2021 FCA 157, at paras. 15-16).

[133] As such, if not explicit, then it is clearly implicit in the arbitrator's conclusion on estoppel that he was alive to all of the requirements of estoppel, including reliance, and applied the law of estoppel properly in the labour relations context.

[134] Further, as in *Nor-Man*, the argument that the arbitrator failed to make a specific finding or failed to apply estoppel "to the letter' is not fatal. What must be considered is the proper contextual analysis, and the guidance from *Nor-Man* that arbitrators must apply estoppel in a manner that is "reasonably consistent with the objectives and purposes of the [*Labour Relations Act*], the principles of labour relations, the nature of the collective bargaining process, and the factual matrix of [the] grievance" (para. 60). (See also *United Food and Commercial Workers Canada Union, Local No 401 v. Sofina Foods Inc.*, 2021 ABCA 191, at paras. 23, 25-26, 28).

[135] On a fair reading, and in light of the contextual considerations, the arbitrator did this. Taking into account this contextual factor further supports the conclusion that the arbitrator's decision was reasonable.

III. The sequence of events did not foreclose acquiescence, reliance or the arbitrator's ultimate finding of estoppel

[136] Finally, the Judge indicated that the timing of the discussions between Ms. Kelly and Mr. Ryall did not support the conclusion that the employer relied on the union's acquiescence.

[137] The evidence was that a decision was made by the employer to turn over the buildings in question, and that Ms. Kelly discussed this with Mr. Ryall, who, the Judge notes "indicated to Kelly he accepted that this was in compliance with the collective agreement" (Judge's Decision, at para. 44). The turnover occurred as proposed, the workers' employment ended, and the union subsequently filed the grievance.

[138] The Judge determined that the "sequence of events as found by the arbitrator is not consistent with a conclusion that the … turnover decision was made in reliance on the acquiescence by Ryall" (Judge's Decision, at para. 45).

[139] The alleged difficulty with the sequence of events appears to be that: a decision to effect the turnover was made; then there were discussions between the union and employer about the decision and the proposed consequences for the workers impacted; and then the employer took the action to terminate their employment. The suggestion is that this sequence could not have resulted in union acquiescence on which the employer relied, because the employer had made its decision before it held discussions with the union.

[140] However, the union's acquiescence, as found by the arbitrator, related to the failure to object to or oppose the proposed action once the union was apprised of the decision.

[141] Once apprised, the union's acquiescence was critical to the finding of estoppel. Presumably, had the union objected and the employer nonetheless proceeded to take the action that led to the terminations, there would be no reasonable basis to argue estoppel. However, the evidence demonstrated that the union, through discussions between Ms. Kelly and Mr. Ryall, was fully apprised of the employer's proposed course of action and made no objection.

[142] The arbitrator determined that, receiving no objection from the union, the employer "subsequently acted on its plans and terminated the service contracts with its construction contractors", thereby ending the worker's employment (Arbitrator's Decision, at page 99).

[143] The evidence was clear that the discussions between Ms. Kelly and Mr. Ryall occurred well before the action was taken to terminate the workers' employment. It was the action of the employer in terminating the employees, not simply a decision to do so, that triggered the grievance.

[144] It was the failure of the union to object when advised, and before the workers' employment ended, that was important. As stated by Weiler in *Nor-Man*: "[I]f management does take action, and the union officials are fully aware of it, and no objection is forthcoming, then the only reasonable inference the employer can draw is that its position is acceptable" (para. 50).

[145] Therefore, the sequence of events does not foreclose that there was estoppel, given the union's acquiescence and the employer's reliance in proceeding to act on its decision, upon receiving no objection from the union. The sequence of events supports the arbitrator's finding of estoppel. This would not be a basis on which to conclude that the arbitrator's decision was unreasonable.

Conclusion

The decision met the reasonableness standard in *Vavilov*

[146] For the reasons provided above, I would conclude that the arbitrator's decision contained many of the hallmarks of a reasonable decision, and satisfied the standard of reasonableness as described by the Supreme Court of Canada in *Vavilov.*

[147] This conclusion is reached having considered the arbitrator's reasons in light of the evidence, his factual findings, and his application of the law of estoppel, mindful of the importance of the contextual considerations described in *Nor-Man*.

[148] A fair review of the reasons and the arbitrator's conclusion does not "reveal that the decision is based on an unreasonable chain of analysis" (*Vavilov*, at para. 96), or indicate that it contains "shortcomings or flaws" that "are sufficiently central or significant to render the decision unreasonable" (paras. 100-101).

[149] The arbitrator's decision cannot be said to be "untenable in light of the relevant factual and legal constraints that bear on it", and the reasons provided would not "cause a reviewing court to lose confidence in the outcome reached", so as to require judicial intervention (*Vavilov*, at paras. 101,106).

[150] The Supreme Court of Canada's conclusion in *Nor-Man*, at paragraph 58, is applicable to the decision in this matter:

> In my view, the labour arbitrator's reasons are not just transparent and intelligible, but coherent as well. They set out in detail the evidence, the submissions of the parties, and the arbitrator's own analysis. The arbitrator reviewed the decisions relied on by the parties, and he identified and applied the precedents he found relevant and persuasive. They are consistent with his decision, and his reasons are amply sufficient to explain why he imposed the remedy of estoppel in this case.

Disposition

[151] As the arbitrator's decision was reasonable, I would conclude that intervention on judicial review was not warranted. Accordingly, I would allow the appeal and restore the decision of the arbitrator.

[152] In light of the result on appeal, the appellant, the Long Harbour Employers Association Inc., is entitled to costs on Column 3 in this Court and in the Supreme Court of Newfoundland and Labrador, payable by the first respondent, the Resource Development Trades Council of Newfoundland and Labrador. The second and third respondents did not appear or otherwise participate in the appeal. There shall be no award as to costs respecting these parties.

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F. P. O'Brien J.A.

I, concur:_____

W.H. Goodridge J.A.

I, concur: _____

F.J. Knickle J.A.