

# Case Law Update: Nor-Man Regional Health Authority v Manitoba, 2011 SCC 59

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2011 SCC 59 (Released December 2, 2011)

## **Administrative Law Labour Law Standard of Review-Labour Arbitration**

This decision concerned the appropriate standard of review of an arbitrator's finding that an estoppel claim barred the union's grievance. The union applied for judicial review of the decision. The application was reviewed on the standard of reasonableness and dismissed. On appeal the Manitoba Court held that the arbitral decision should have been reviewed on the standard of correctness and overturned the arbitrator's ruling.

The Court unanimously held that the standard of review was reasonableness and granted the employer's appeal.

The Court noted that an arbitrator's mandate is unique, informed by the particular context of labour relations, and that arbitrators are not required to apply legal principles as a court would. The Court also noted that estoppel, applied in this context is an arbitral remedy and that the application of estoppel in a labour arbitration should not be confused with the application of promissory estoppel or other equitable remedies. The Court highlighted the centrality of this context in finding that an arbitrator's application of an estoppel remedy is not a question "both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise" but instead a decision that falls squarely within the expertise of the arbitrator, and therefore reviewable on the standard of reasonableness. The Court's analysis placed a particular emphasis on the broad discretion that labour arbitrators are granted by their governing statutes and by the nature of the Canadian labour relations regime, which the Court held requires flexibility in crafting remedies in light of the ongoing relationship between the employer and the bargaining agent.

The Court concluded that the arbitrator's application of estoppel was reasonable as it was "reasonably consistent with the objectives and purposes of the LRA, the principles of labour relations, the nature of the collective bargaining process, and the factual matrix of [the grievor's] grievance."



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