

**SUPREME COURT OF CANADA**

|  |  |
| --- | --- |
| **Citation:** Nor-Man Regional Health Authority Inc. *v.* Manitoba Association of Health Care Professionals, 2011 SCC 59, [2011] 3 S.C.R. 616 | **Date:** 20111202  **Docket:** 33795 |

**Between:**

**Nor-Man Regional Health Authority Inc.**

Appellant

and

**Manitoba Association of Health Care Professionals**

Respondent

- and -

**Attorney General of British Columbia**

Intervener

**Coram:** McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Rothstein and Cromwell JJ.

|  |  |
| --- | --- |
| **Reasons for Judgment:**  (paras. 1 to 62) | Fish J. (McLachlin C.J. and LeBel, Deschamps, Abella, Rothstein and Cromwell JJ. concurring) |

Nor‑Man Regional Health Authority Inc. *v.* Manitoba Association of Health Care Professionals, 2011 SCC 59, [2011] 3 S.C.R. 616

Nor‑Man Regional Health Authority Inc. *Appellant*

v.

Manitoba Association of Health Care Professionals *Respondent*

and

Attorney General of British Columbia *Intervener*

**Indexed as: Nor‑Man Regional Health Authority Inc. *v.* Manitoba Association of Health Care Professionals**

2011 SCC 59

File No.: 33795.

2011:  October 20; 2011:  December 2.

Present: McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Rothstein and Cromwell JJ.

on appeal from the court of appeal for manitoba

*Labour relations — Grievances — Arbitral award — Standard of review — Arbitrator imposing estoppel on union’s claim for redress under collective agreement — Whether arbitral award applying common law or equitable remedy is reviewable on standard of reasonableness or correctness.*

P contended that she was entitled, upon 20 years of employment, to a bonus week of vacation pursuant to the terms of the collective agreement between Nor‑Man and P’s Union. Her request was denied by Nor‑Man. The arbitrator decided that the employer’s practice of excluding casual service in calculating vacation benefits breached the terms of the collective agreement. However, the Union was barred by its long‑standing acquiescence from grieving the employer’s application of the disputed provisions of the collective agreement. The arbitrator held that the Union was estopped from asserting its strict rights under the disputed provisions of the collective agreement until the expiry of the agreement. The Union’s application for judicial review was dismissed on the basis that the arbitrator’s award was reasonable. The Court of Appeal held that correctness was the governing standard of review and it set aside the estoppel imposed by the arbitrator.

*Held*: The appeal should be allowed.

Broadly stated, the issue is whether arbitral awards that apply common law or equitable remedies are for that reason subject to judicial review for correctness. It is well established that, as a general rule, reasonableness is the standard of review governing arbitral awards under a collective agreement. The equitable remedy of estoppel imposed here by the arbitrator does not involve a question of central importance to the legal system as a whole that was beyond the expertise of the arbitrator. It therefore cannot be said to fall within that established category of question ― nor any other ― subject to review for correctness. Furthermore, a contextual analysis confirms that reasonableness, not correctness, is the appropriate standard of review. Deference is appropriate in this case.

Rigidity in the dispute resolution process risks not only the disintegration of the relationship, but also industrial discord. Labour arbitrators require the flexibility to craft appropriate remedial doctrines when the need arises. Labour arbitrators are not legally bound to apply equitable and common law principles ― including estoppel ― in the same manner as courts of law. Labour arbitrators may properly develop doctrines and fashion remedies appropriate in their field, drawing inspiration from general legal principles, 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 grievances of which they are seized. The broad mandate of arbitrators flows from the broad grant of authority vested in arbitrators by collective agreements, statutes such as *The Labour Relations Act* (“*LRA*”), and from their distinctive role in fostering peace in industrial relations. They are well equipped by their expertise to adapt the legal and equitable doctrines they find relevant within the sphere of arbitral creativity. The domain reserved to arbitral discretion is by no means boundless. An arbitral award that flexes a common law or equitable principle in a manner that does not reasonably respond to the distinctive nature of labour relations necessarily remains subject to judicial review for its reasonableness.

Here, the labour arbitrator’s award can hardly be considered unreasonable. His reasons are not just transparent and intelligible, but coherent as well. The arbitrator adapted and applied the equitable doctrine of estoppel in a manner 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 P’s grievance. The arbitrator’s reasons are amply sufficient to explain why he imposed the remedy of estoppel in this case.

**Cases Cited**

**Applied:** *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160; **referred to:***Agassiz School Division No. 13 (Re)*, [1997] M.G.A.D. No. 61 (QL); *Manitoba (Department of Family Services and Housing) and C.U.P.E., Loc. 2153 (Murdock) (Re)* (2005), 142 L.A.C. (4th) 173; *Ryan v. Moore*, 2005 SCC 38, [2005] 2 S.C.R. 53; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77; *Toronto (City) Board of Education v. O.S.S.T.F., District 15*, [1997] 1 S.C.R. 487; *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42, [2003] 2 S.C.R. 157; *Re Corporation of the City of Penticton and Canadian Union of Public Employees, Local 608* (1978), 18 L.A.C. (2d) 307; *Montréal (City) v. Montreal Port Authority*, 2010 SCC 14, [2010] 1 S.C.R. 427; *Maracle v. Travellers Indemnity Co. of Canada*, [1991] 2 S.C.R. 50.

**Statutes and Regulations Cited**

*Labour Relations Act*, R.S.M. 1987, c. L10, ss. 121, 128(2).

APPEAL from a judgment of the Manitoba Court of Appeal (Monnin, Steel and Freedman JJ.A.), 2010 MBCA 55, 255 Man. R. (2d) 93, 486 W.A.C. 93, 319 D.L.R. (4th) 193, 194 L.A.C. (4th) 193, 5 Admin. L.R. (5th) 291, 85 C.C.E.L. (3d) 163, [2010] 7 W.W.R. 1, 2010 CLLC ¶220‑034, [2010] M.J. No. 166 (QL), 2010 CarswellMan 217, reversing a decision of Bryk J., 2009 MBQB 213, 243 Man. R. (2d) 281, 98 Admin. L.R. (4th) 266, 2009 CLLC ¶220‑048, [2009] M.J. No. 289 (QL), 2009 CarswellMan 386. Appeal allowed.

*Bryan P. Schwartz*, *William S. Gardner* and *Todd C. Andres*, for the appellant.

*Jacob Giesbrecht*, for the respondent.

*Jonathan Eades* and *Meghan Butler*, for the intervener.

The judgment of the Court was delivered by

Fish J. —

I

1. An experienced labour arbitrator endorsed in this case the union’s interpretation of vacation benefit clauses in its collective agreement with the employer ― but imposed an estoppel on the union’s claim for redress.
2. Essentially, the arbitrator held that the union was barred by its long- standing acquiescence from grieving the employer’s application of the disputed provisions. Given the employer’s consistent and open practice of calculating vacation entitlements as it did, and the employer’s detrimental reliance on the union’s acquiescence, it would be unfair, the arbitrator found, for the union to now hold the employer to the strict terms of the collective agreement in that regard.
3. The union’s application for judicial review was dismissed in the Manitoba Court of Queen’s Bench on the ground that the arbitrator’s award was reasonable (2009 MBQB 213, 243 Man. R. (2d) 281). The Manitoba Court of Appeal held that *correctness* ―not reasonableness ― was the governing standard of review (2010 MBCA 55, 255 Man. R. (2d) 93). Applying that standard here, the Court of Appeal set aside the estoppel imposed by the arbitrator.
4. In my respectful view, the Court of Appeal erred in reviewing the arbitrator’s decision for correctness: reasonableness is the applicable standard.
5. Labour 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.
6. 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. They must, of course, 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.
7. The arbitrator’s decision in this case falls well within those bounds. I would allow the appeal and restore his award.

II

1. At the time of her grievance in July 2008, Jacqueline Plaisier had been employed continuously for 20 years ― though at times only on a casual basis ― by Nor-Man Regional Health Authority Inc. (“Nor-Man”).
2. Ms. Plaisier contended that she was entitled upon 20 years of employment to a “bonus” week of vacation pursuant to arts. 1104 and 1105 of the collective agreement between Nor-Man and Ms. Plaisier’s union, the Manitoba Association of Health Care Professionals (the “Union”). Nor-Man denied her request on the ground that, in its view, Ms. Plaisier’s time as a casual employee did not count for the purposes of art. 1105.
3. Articles 1104 and 1105 of the collective agreement provided during the relevant period as follows:

1104 Employees shall be entitled to paid vacation, calculated on the basis of vacation earned at the following rates:

|  |  |
| --- | --- |
| Length of Employment  In the first (1st) to third (3rd) year inclusive  In the fourth (4th) to [tenth] (10th) year inclusive  In the eleventh (11th) to twentieth (20th) year inclusive  In the twenty-first (21st) and subsequent years | Rate at which vacation earned  Twenty (20) working days per year\*  Twenty-five (25) working days per year  Thirty (30) working days per year  Thirty-five [(35)] working days per year |

\*for employees hired prior to August 31, 1989, the rate shall be “twenty-one” (21) days instead of “twenty” (20).

. . .

1105 An additional week of paid vacation shall be granted to an employee in the year of her twentieth (20th) anniversary of employment, and at five (5) year intervals thereafter. Such additional vacation shall be taken in the vacation year during which the anniversary will occur. This provision shall apply to all employees employed on August 31, 1989. It ceases to apply to employees hired after August 31, 1989.

1. In denying her request, Nor-Man advised Ms. Plaisier that her “anniversary of employment” under art. 1105 was, at the earliest, May 30, 1999 ― the date she began to accrue seniority. Under the collective agreement, her casual employment did not count toward seniority. It therefore had no bearing, according to Nor-Man, on Ms. Plaisier’s eligibility for a bonus week of vacation.
2. Since 1988, Nor-Man had consistently applied arts. 1104 and 1105 according to the “seniority date” of its employees. And the Union had never challenged this practice until Ms. Plaisier’s grievance ― some twenty years and at least five collective agreements later.

III

1. Ms. Plaisier’s grievance went to arbitration under *The Labour Relations Act*, R.S.M. 1987, c. L10 (“*LRA*”), before a sole arbitrator, R. A. Simpson. Two main issues were dealt with at the grievance arbitration: (1) What is the correct interpretation of arts. 1104 and 1105 of the collective agreement? and (2) Is the Union estopped from asserting its rights accordingly? ([2008] M.G.A.D. No. 30 (QL)).
2. On the first issue, the arbitrator endorsed the Union’s interpretation of arts. 1104 and 1105. He explained his conclusion this way:

Length of employment is not necessarily synonymous with seniority, but is the period of time during which the employee has been continuously employed by the employer. . . . There are employment settings where each casual engagement may reflect a new employment relationship. There are employment settings where a change in status to or from casual and permanent will cause a break in the employment relationship. Here, no such break occurs. . . . Although there have been many changes in [Ms. Plaisier’s] status throughout her career, she has been employed by the Employer since July 12, 1988. That would be her employment date for determining length of employment and anniversary of employment under Articles 1104 and 1105 of the Collective Agreement. [para. 89]

1. After concluding that the Union’s interpretation of arts. 1104 and 1105 was correct, the arbitrator declined to enforce them accordingly.
2. On this branch of the grievance, the arbitrator reasoned as follows:

Having regard to the Statement of Agreed Facts, the accompanying exhibits, and the vivavoce testimony, the Employer’s practice has been long standing, consistent, and open. All employees were made aware of the practice through the annual Employees Confirmation of Vacation Sheets, and all employees and the Union were made aware of the practice through the annual Seniority Reports, both provided and posted. Questions pertaining to the practice have been asked and answered. If the Union was not aware, it certainly ought to have been aware of the Employer’s application of Articles 1104 and 1105. It would be unfair to permit the Union to enforce its interpretation of Articles 1104 and 1105. The Employer was entitled to assume that the Union had accepted its practice, and to rely on that acceptance in not seeking to negotiate a change or to exercise a right to effect a service break with a change in employment status. [para. 96]

1. The arbitrator cited with approval two arbitral precedents in which the doctrine of estoppel was similarly applied in a labour relations context (*Agassiz School Division No. 13* *(Re)*, [1997] M.G.A.D. No. 61 (QL) (Arbitrator Graham) (“*Agassiz*”), and *Manitoba (Department of Family Services and Housing) and C.U.P.E., Loc. 2153 (Murdock) (Re)* (2005), 142 L.A.C. (4th) 173 (Arbitrator Peltz) (“*Murdock*”)).
2. In both instances, the employer was found by the arbitrator to have applied the relevant clauses of its collective agreement incorrectly ― in *Agassiz*, for at least twenty-five years; in *Murdock*, for at least three*.* And in both instances, estoppel was imposed against the union for reasons that in essence mirror the arbitral award in this case.
3. 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.
4. Thus, in *Murdock*, the arbitrator first reviewed in detail the essential elements of an estoppel, its effects, and the arbitral award in *Agassiz*. He then concluded as follows:

. . . there was a representation by silence in this case, sufficient to meet the test for an equitable estoppel and barring the Union from asserting its strict legal rights under Article 15.03(a) of the collective agreement. While the Union did not know about the practice, it had constructive or imputed notice. Under all the circumstances, it would be inequitable to allow the Union to enforce its rights against the Employer after a period of acquiescence which extended into collective bargaining. [p. 192]

1. The arbitrator in this case applied *Agassiz* and *Murdock* to the facts as he found them and, as I have already mentioned, imposed an estoppel against the Union. This estoppel was to terminate upon the expiry of the collective agreement, on March 31, 2010.
2. The Union’s application for judicial review was dismissed in the Manitoba Court of Queen’s Bench, where Bryk J. held that the appropriate standard of review was reasonableness. In his view, this followed from the existence of a privative clause in the *LRA* and the nature of the disputed issue ― a mixed question of fact and law that was neither of central importance to the legal system as a whole nor beyond the expertise of the arbitrator.
3. Bryk J. then concluded that the arbitrator’s decision was not unreasonable. He found that it was intelligible, justifiable and “f[ell] within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47).
4. The Manitoba Court of Appeal held that Bryk J. had erred in applying the reasonableness standard of review to the arbitrator’s finding of estoppel. In the court’s view, correctness was the applicable standard since the arbitrator’s finding of estoppel raised a question of law that was of central importance to the legal system as a whole and did not fall within the expertise of labour arbitrators (*Dunsmuir*, at paras. 55 and 60).
5. The Court of Appeal then concluded that the arbitrator had misconstrued the doctrine of promissory estoppel. It held that promissory estoppel, as a matter of law, requires a finding that the promisor intended to affect its legal relations with the promisee. Yet here, the arbitrator had found only that the promisor (the Union) ought to have known how the promisee (Nor-Man) was calculating employees’ vacation entitlements, and had made no finding as to the Union’s intent.
6. On this ground alone, the Court of Appeal set aside the arbitrator’s finding of estoppel.
7. For the sake of clarity, I pause here to mention that the arbitrator never mentioned “promissory estoppel”. Nor did he purport to apply the doctrine of promissory estoppel as a matter of law. Rather, like the precedents on which he relied, the arbitrator simply referred to the remedy he awarded as an “estoppel”.
8. In fairness to the Court of Appeal, I acknowledge that the estoppel applied by the arbitrator resembles promissory estoppel more closely than any of the other estoppels identified by this Court in *Ryan v. Moore*, 2005 SCC 38, [2005] 2 S.C.R. 53, at para. 52. It nonetheless remains *an arbitral remedy* and not a strict application by the arbitrator of the doctrine of promissory estoppel applicable in courts of law.

IV

1. The standard of review applicable in this case is governed by *Dunsmuir*.
2. *Dunsmuir* makes clear that “[a]n exhaustive review is not required in every case to determine the proper standard of review” (para. 57). A reviewing court should therefore first inquire “whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question” (*Dunsmuir*, at para. 62; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160, at para. 24). Only where this “first inquiry proves unfruitful, [must courts] proceed to an analysis of the factors making it possible to identify the proper standard of review” (*Dunsmuir*, at para. 62).
3. Prevailing case law clearly establishes that arbitral awards under a collective agreement are subject, as a general rule, to the reasonableness standard of review.
4. Stated narrowly, the issue on this appeal is whether the arbitrator’s imposition of an estoppel brings his award within an exception to that general rule. Stated more broadly, the issue is whether arbitral awards that apply common law or equitable remedies are for that reason subject to judicial review for correctness.
5. Stated either way, the issue comes before us squarely for the first time in this case. And, as we have seen, the courts below reached opposing conclusions as to the governing standard of review.
6. In this light, I think it best to adhere, in substance if not in form, to the analytical template set out in *Dunsmuir* and adopted in *Smith*. This will serve to explain why reasonableness ― not correctness ― is the appropriate standard in cases such as this. And it will help to determine whether the award conforms to that standard.

V

1. An administrative tribunal’s decision will be reviewable for correctness if it raises a constitutional issue, a question of “general law ‘that is both of central importance to the legal system as a whole and outside the adjudicator’s specialized area of expertise’”, or a “true question of jurisdiction or *vires*”. It will be reviewable for correctness as well if it involves the drawing of jurisdictional lines between two or more competing specialized tribunals (*Dunsmuir*, at paras. 58-61; *Smith*, at para. 26; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77 (“*Toronto (City)*”), at para. 62, *per* LeBel J.).
2. The standard of reasonableness, on the other hand, normally prevails where the tribunal’s decision raises issues of fact, discretion or policy; involves inextricably intertwined legal and factual issues; or relates to the interpretation of the tribunal’s enabling (or “home”) statute or “statutes closely connected to its function, with which it will have particular familiarity” (*Dunsmuir*, at paras. 51 and 53-54; *Smith*, at para. 26).
3. In this case, the Court of Appeal held, as mentioned earlier, that correctness was the governing standard because, in its view, the issue involved a question of central importance to the legal system as a whole that was beyond the expertise of the arbitrator.
4. With respect, I see the matter differently. Our concern here is with an estoppel imposed as a remedy by an arbitrator seized of a grievance in virtue of a collective agreement. No aspect of this remedy transforms it into a question of general law “that is both of central importance to the legal system as a whole and outside the adjudicator’s specialized area of expertise” within the meaning of *Dunsmuir* (para. 60). It therefore cannot be said to fall within that established category of question ― nor any other ― subject to review for correctness pursuant to *Dunsmuir*.
5. Moreover, the second step of the standard of review inquiry mandated by *Dunsmuir* ― a contextual analysis ― confirms that reasonableness, not correctness, is the appropriate standard of review.
6. In proceeding to a contextual analysis, reviewing courts must remain sensitive to the tension between the rule of law and respect for legislatively endowed administrative bodies (*Dunsmuir*, at para. 27). Four non-exhaustive contextual factors have been identified in the jurisprudence to guide courts through this exercise: (1) the presence or absence of a privative clause; (2) the purposes of the tribunal; (3) the nature of the question at issue; and (4) the expertise of the tribunal (*Dunsmuir*, at para. 64).
7. These contextual guideposts confirm that deference is appropriate in this case. As I noted earlier, they are of assistance as well in assessing the reasonableness of a contested arbitral remedy.
8. As a starting point, it is well established that, as a general rule, reasonableness is the standard of review governing arbitral awards under a collective agreement: “This Court has often recognized the relative expertise of labour arbitrators in the interpretation of collective agreements, and counselled that the review of their decisions should be approached with deference” (*Dunsmuir*, at para. 68).
9. In this case, as we have seen, the Court of Appeal found that the arbitrator’s imposition of an estoppel was an aspect of the award that fell outside the protected zone of deference. With respect, I disagree.
10. Common law and equitable doctrines emanate from the courts. But it hardly follows that arbitrators lack either the legal authority or the expertise required to adapt and apply them in a manner more appropriate to the arbitration of disputes and grievances in a labour relations context.
11. On the contrary, 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. To this end, they may properly develop doctrines and fashion remedies appropriate in their field, drawing inspiration from general legal principles, 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 grievances of which they are seized.
12. This flows from the broad grant of authority vested in labour arbitrators by collective agreements and by statutes such as the *LRA*, which governs here. Pursuant to s. 121 of the *LRA*, for example, arbitrators and arbitration boards must consider not only the collective agreement but also “the real substance of the matter in dispute between the parties”. They are “*not bound by a strict legal interpretation of the matter in dispute*”*.* And their awards “provide a final and conclusive settlement of the matter submitted to arbitration”.
13. The broad mandate of arbitrators flows as well from their distinctive role in fostering peace in industrial relations (*Toronto (City) Board of Education v. O.S.S.T.F., District 15*, [1997] 1 S.C.R. 487 (“*O.S.S.T.F., District 15*”), at para. 36; *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42, [2003] 2 S.C.R. 157, at para. 17).
14. Collective agreements govern the ongoing relationship between employers and their employees, as represented by their unions. When disputes arise — and they inevitably will — the collective agreement is expected to survive, at least until the next round of negotiations. 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.
15. Labour arbitrators are uniquely placed to respond to the exigencies of the employer-employee relationship. But 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.
16. These are the governing principles of labour arbitration in Canada. Their purpose and underlying rationale have long been well understood by arbitrators and academics alike. More than 30 years ago, Paul C. Weiler, then Chairman of the British Columbia Labour Relations Board and now Professor Emeritus at Harvard University, underlined their importance in a dispute of particular relevance here. He explained in the following terms why the doctrine of estoppel must be applied differently in a grievance arbitration than in a court of law:

. . . a collective bargaining relationship is quite a different animal. The union and the employer deal with each other for years and years through successive agreements and renewals. They must deal with a wide variety of problems arising on a day-to-day basis across the entire spectrum of employment conditions in the workplace, and often under quite general and ambiguous contract language. 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” . . . .

(*Re Corporation of the City of Penticton and Canadian Union of Public Employees, Local 608* (1978), 18 L.A.C. (2d) 307 (B.C.L.R.B.), at p. 320)

1. 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. Within this domain, arbitral awards command judicial deference.
2. But the domain reserved to arbitral discretion is by no means boundless. An arbitral award that flexes a common law or equitable principle in a manner that does not reasonably respond to the distinctive nature of labour relations necessarily remains subject to judicial review for its reasonableness.
3. Other contextual factors favour judicial deference to labour arbitrators as they adopt and apply common law and equitable principles within their distinctive sphere: Section 128(2) of the *LRA* contains a privative clause in respect of labour arbitrators and boards of arbitration. They benefit from *institutional expertise* in resolving disputes arising under a collective agreement (*O.S.S.T.F., District 15*, at para. 37), even if they lack *personal expertise* in matters of law. *Dunsmuir* makes clear that, “at an institutional level, adjudicators . . . can be presumed to hold relative expertise in the interpretation of the legislation that gives them their mandate, as well as related legislation that they might often encounter in the course of their functions” (para. 68 (emphasis added)).

VI

1. The respondent argues that the flexible application of estoppel in the field of labour relations is a matter best left to the legislature. I would reject that submission. The requisite legislative authority already exists: It is *inherent* in the statutory scheme of the *LRA* and similar statutes across the country that labour arbitrators are already authorized ― subject to the constraints I mentioned earlier (at para. 6) ― to apply general legal principles flexibly in resolving disputes arising under collective agreements. More particularly, arbitrators have a “statutory mandate . . . to fit the principle of estoppel into the special setting and policy objectives of the world of industrial relations” (*Re Corporation of the City of Penticton*, at pp. 319-20).
2. The respondent also argues that *Toronto (City)* stands for the proposition that a labour arbitrator’s application of common law doctrines must be correct. In my view, it does not. As we have seen, the application of general rules or principles of law will not automatically be reviewed for correctness unless they raise legal issues “both of central importance to the legal system as a whole and outside the adjudicator’s specialized area of expertise” (*Toronto (City)*, at para. 62, *per* LeBel J.; *Dunsmuir*, at para. 60; *Smith*, at para. 26).

VII

1. The labour arbitrator’s imposition of estoppel in this case can hardly be considered unreasonable.
2. As LeBel J. stated in *Montréal (City) v. Montreal Port Authority*, 2010 SCC 14, [2010] 1 S.C.R. 427, at para. 38, “[t]he concept of ‘reasonableness’ relates primarily to the transparency and intelligibility of the reasons given for a decision. But it also encompasses a quality requirement that applies to those reasons and to the outcome of the decision-making process”. Similar guidance can be found in *Dunsmuir*, at para. 47.
3. 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.
4. With respect to substance, the respondent submits that the labour arbitrator did not make a factual finding that the Union intended to affect its legal relationship with Nor-Man, as required by the test for promissory estoppel laid down by this Court in *Maracle v. Travellers Indemnity Co. of Canada*, [1991] 2 S.C.R. 50, at p. 57.
5. I would reject that submission as well. 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 *LRA*, the principles of labour relations, the nature of the collective bargaining process, and the factual matrix of Ms. Plaisier’s grievance.
6. I am satisfied that he did.

VIII

1. For all of these reasons, I would allow the appeal with costs and restore the labour arbitrator’s award in its entirety.

*Appeal allowed with costs.*

Solicitors for the appellant:  Pitblado, Winnipeg.

Solicitors for the respondent:  Inkster, Christie, Hughes, Winnipeg.

Solicitor for the intervener:  Attorney General of British Columbia, Victoria.