

EQUITABLE REMEDIES AT TRIBUNALS? ONLY IF STATUTORY

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Pleas for equity often ring out in courtrooms. Lawyers may invoke inherent jurisdiction of the courts and common law precedent to seek relief. Are adjudicative tribunals required to consider similar requests? Recent appellate case law shows that there is a strong limitation on the grant of equitable relief by an administrative tribunal.

In *Alberta v. McGeady*,^[1] the Supreme Court of Canada has dismissed leave against an appellate decision upholding a lower court decision.^[2] The *McGeady* decision upheld the importance of a tribunal's enabling statute. The Supreme Court's denial of leave makes the decision persuasive across Canada.

The Board's Award of a Remedy

Mr. McGeady applied for statutory benefits arising from knee problems. The first adjudicator denied benefits on account of section 6(1) of the Public Service Long Term Disability Continuance Plan Regulation (Regulation). The first-level appeal adjudicator upheld the initial denial of benefits. Mr. McGeady, supported by the Alberta Union of Provincial Employees, sought to appeal to Alberta's Long Term Disability Second Level Appeal Board (Board).^[3]

The Board granted Mr. McGeady relief on a "broader view of the circumstances" and in part due to fairness and justice.^[4]

The Alberta Court of Queen's Bench subsequently overturned the decision of the Board.^[5] The lower court's decision is foreshadowed in the first paragraph by the following sentence:

This case is noteworthy because the Appeal Board deliberately ignored the governing statutory provision and based its decision on a standard it made up.

The Court of Appeal Rejects Equity

On appeal to the Court of Appeal, the issue was framed with at least nuanced difference. The Board's decision was characterized as arising from equity and the issue was whether the Board had properly interpreted its granted authority.^[6]

The Court of Appeal held that the Board awarded disability benefits even though under its statutory authority

it had no specific authority to do so.^[7] The court considered the *Public Service Act*, the *Administrative Procedures and Jurisdiction Act* and the Regulation to determine if the Board had broad powers to grant the benefits. The court did not find statutory language granting the Board broad authority to take action it considered proper.^[8]

The Court of Appeal held that the award granting benefits was in direct conflict with words in the related statute and therefore unreasonable.^[9]

Equity (or Other Remedies) Require Statutory Basis

The Court of Appeal distinguished the legislation of other tribunals, such as the Alberta Labour Relations Board. The court pointed out that these tribunals may have broader authority.^[10] However, although not considered by the court in *McGeady*, even in these types of adjudicative tribunals, courts have sought statutory authority for the granting of a remedy.^[11]

Any grant of equitable relief made by an administrative tribunal should arise from some language in statute or regulation. Parties arguing cases before administrative tribunals should ensure that the relief they are seeking (or the relief sought by the other side) has an arguable home in the tribunal's enabling legislation.

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1 *Alberta v McGeady*, 2015 ABCA 54, leave to appeal to S.C.C. refused:

<http://www.scc-csc.gc.ca/case-dossier/info/sum-som-eng.aspx?cas=36334>.

2 *Alberta v McGeady*, 2014 ABQB 104.

3 *Alberta v McGeady*, 2014 ABQB 104 at paras. 6-14.

4 *Alberta v McGeady*, 2014 ABQB 104 at para. 16.

5 *Alberta v McGeady*, 2014 ABQB 104 at para. 58.

6 *Alberta v McGeady*, 2015 ABCA 54 at para. 2.

7 *Alberta v McGeady*, 2015 ABCA 54 at para. 6.

8 *Alberta v McGeady*, 2015 ABCA 54 at para. 7.

9 *Alberta v McGeady*, 2015 ABCA 54 at para. 8.

10 *Alberta v McGeady*, 2015 ABCA 54 at para. 7.

11 For example, in *Canada (Canadian Human Rights Commission) v Canada (AG)*, 2011 SCC 53, the Supreme

Court held that legal costs could not be awarded to a Human Rights applicant as "expenses".

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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