SUPREME COURT OF NOVA SCOTIA
Citation: *Chambers v. Dalhousie University*, 2013 NSSC 430

Date: 20131227
Docket: Hfx No. 410558
Registry: Halifax

Between:

Roslyn Chambers

Applicant

v.

Dalhousie University

Respondent

Judge: The Honourable Justice Patrick J. Duncan

Heard: July 16, 2013 in Halifax, Nova Scotia

Counsel: Roslyn Chambers, Self-represented Applicant
Rebecca Saturley and Michelle Black, for the Respondent

By the Court:

Introduction

[1] Roslyn Chambers applies for a judicial review of a decision of the Dalhousie University Senate Appeals Committee which denied her appeal of the decisions of the Studies Committee of the Faculty of Law Studies Committee.

Background

[2] The applicant failed two first year law school exams and failed to achieve an overall average of 55 percent. She was advised by the Faculty of Law that in these circumstances she would not be permitted to advance to second year studies but could repeat first year. Subsequent to learning of her two course failures and her failure to achieve the required average she sought retroactive accommodation and requested first informally, then by formal appeal to the Studies Committee, that she be permitted to write supplemental examinations. She provided documentation of the stressors that she claimed affected her performance on the exams as well as supporting medical documentation.

[3] On June 19, 2012 the Studies Committee denied her appeal.

[4] On June 25, 2012 the applicant made an informal request in writing for reconsideration, citing concerns she had with the appeal process. After responding to the various concerns raised, the informal request was denied on June 27, 2012.

[5] On August 1, 2012 and on August 20, 2012 the applicant made two formal requests for reconsideration that were denied by the Studies Committee on August 31, 2012.

[6] On September 12, 2012 the applicant appealed the Studies Committee's decisions to the Senate Appeals Committee.

[7] On October 23, 2012 the Senate Appeals Committee heard the applicant's appeal. Ms. Chambers represented herself. She produced evidence, gave testimony and was supported in her case by the testimony of two witnesses. The

respondent also presented evidence and testimony. The panel asked questions of both the applicant and respondent and concluded the hearing.

[8] At the Senate Appeals Committee, the applicant raised no objection concerning the composition of the Senate Appeals Committee Panel or its jurisdiction.

[9] In an eighteen page written decision dated November 15, 2012, the Senate Appeals Committee denied the applicant's appeal. The applicant now seeks judicial review of that decision.

Standards of Judicial Review

[10] In *New Brunswick (Board of Management) v. Dunsmuir* 2008 SCC 9 the Supreme Court of Canada clarified there are only two standards of review of administrative decisions, those being, correctness and reasonableness. In keeping with the reasoning in *Dunsmuir,* a measure of deference has come to be accepted as appropriate where, as here, a particular decision has been allocated to administrative decision-makers in matters that relate to their special role, function and expertise. Jurisprudence has clearly established that such deference is to be accorded in matters related to the academic functions of educational institutions. *S*ee, *Mulligan v. Laurentian University*, 2008 ONCA 523; *Alsaigh v. University of Ottawa*, 2012 ONSC 2313; *Deng v. University of Toronto*, 2011 ONSC 835.

[11] The applicant's submissions raise three issues:

Issue 1: Did the Senate Appeals Committee err in its decision?

[12] The standard of review that I must employ in review of the decision on the basis of error is one of reasonableness. The role of the reviewing judge is limited.

[13] In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 the court again confirmed that in determining whether a decision is reasonable, the inquiry for a reviewing court is about "justification, transparency and intelligibility". The reasons must be read together with the outcome, and serve the purpose of showing whether the result falls within a range of possible outcomes. Reasons need not include all the arguments or details the reviewing judge would have preferred, but

that does not impugn the validity of either the reasons or the result. If the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir, supra,* criteria are met.

[14] To be clear, I am not to reweigh the evidence or substitute my own appreciation of the appropriate solution, but rather I must determine if the outcome falls within a range of reasonable outcomes.

[15] In the present case a review of the SAC decision demonstrates it carefully considered the applicant's arguments in the context of the SAC mandate. The panel made decisions based on the arguments presented to it and conducted appropriate analysis having regard to the burden imposed upon the applicant at that stage. The reasoning justified the decision. The hearing process and decision were transparent and intelligible. The decision certainly fell within a range of reasonable outcomes.

Issue 2: Did the Senate Appeals Committee breach the principles of natural justice?

[16] When breach of natural justice is alleged the applicable standard of review is one of correctness. It is a question of law. When applying the correctness standard in respect to jurisdictional and some other questions of law, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question and decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer.

[17] The Faculty of Law Studies Committee was obliged to ensure that the rules of procedural fairness and natural justice were followed, and the Senate Appeals Committee was likewise obliged to ensure that this had been done. Where there has been a breach of natural justice or procedural fairness at the hearings stage, the decision cannot stand.

[18] Natural justice requires that a person be given a fair opportunity to make their case or to meet the case against them. I am satisfied the applicant was given every opportunity to make her case and meet the case against her at the initial hearing and at the SAC.

[19] The applicant alleges the SAC erred in relation to the principles of natural justice in its assessment of the reasonable apprehension of bias as related to:

(a) the marking of the property exam;

(b) the composition of the Law Studies Committee; and

(c) the role of Associate Dean Michael Deturbide.

[20] The onus of demonstrating bias lies with the person who is alleging its existence. It must be a real likelihood of bias in the sense that it is probable and not a mere suspicion. Further, whether a reasonable apprehension of bias arises will depend entirely on the facts of the case. (For an extensive review of bias in the Canadian context see *R. v. Hill*, 2011 ONSC 3935, a decision written by Kennedy J. of the Ontario Superior Court of Justice.)

[21] I am satisfied that neither the marking of the property exam nor the role of Associate Dean Michael Deturbide are proper subjects of judicial review. The sole question to consider is whether reasonable apprehension, (i.e. probable bias) has been demonstrated by the applicant to exist at the Studies Committee.

[22] The applicant alleges that because a power imbalance existed among members of the Studies Committee (all law professors) a reasonable apprehension of bias exists. The applicant also points out that two of the members of the Committee were the two professors who failed her and it was not sufficient that they recused themselves from hearing their respective matters.

[23] I am satisfied that the applicant failed to meet the burden upon her to establish a reasonable apprehension of bias. I am further satisfied that the SAC correctly identified the applicant's concerns, analysed the facts of the case and properly concluded that the claims of bias were not justified. I adopt their reasoning as being correct. The SAC panel wrote, beginning at p.10, as follows:

> The appellant claims that two members of the Studies Committee had a direct interest in the case because they were the instructors of record for the courses whose grades the appellant was appealing. The appellant claims that these members' involvement in hearing the appeal biased or created a perception of

> bias, which constituted a denial of natural justice. The July 19th, 2012 decision explicitly states that
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> > Professor Craig recused herself from any deliberations relating to your Tort Law appeals, and Professor Ginn did the same with respect to your Property Law Appeals.
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> Furthermore, the August 31st, 2012 decision of August 7th, 2012, and August 20th, 2012 requests for reconsideration stated that
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> > Professors Ginn and Craig, the instructors of your Property and Torts courses, respectively, recused themselves from the deliberations.
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> While Studies Committee fully complied with all regulations, in their July 19th, 2012 decision, it is possible to envision, how a perception of bias could be created if the appellant believed that the Studies Committee was considering her case en masse. However, this issue was resolved in the August 31st, 2012 decision of the request for reconsideration. That is the Studies Committee took all possible measures to avoid any perceptions of bias. Consequently, in the panel's opinion, the claims of bias or perceptions of bias are not justified. Hence, there was no denial of natural justice in this instance.

[24] The applicant has not raised or presented any evidence of bias on the part of the SAC and I do not find that any such bias exists.

Issue 3: Did the SAC act outside its jurisdiction?

[25] In her pre-hearing submissions the applicant raised the question as to whether the Senate Appeals Committee (SAC) acted outside its jurisdiction. Again, the standard of review is one of correctness.

[26] The SAC correctly outlined its jurisdiction at the outset of its written decision dismissing the applicant's appeal as follows:

> …the Senate Academic Appeals Committee shall hear appeals where the student alleges that there were irregularities or unfairness in the application of the regulations in question or denial of natural justice in the previous appeals proceedings. These were the provisions under which this appeal was argued.
>
> Given the background of this case, it is important to reiterate that the Senate Academic Appeals Committee has a circumscribed mandate. The Committee is

> not an investigative body. Specifically, the Committee does not determine whether a decision made by a lower panel is correct, but whether it was made correctly. That is, that the rules and regulations were applied in a fair and unbiased manner and that there was no denial of natural justice.
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> (SAC Decision, at p.1)

[27] The SAC further indicated, correctly, that it had no jurisdiction over issues of human rights, (there being another body to address such issues.)

[28] A review of the record makes it clear the decision rendered by the SAC was wholly within the jurisdiction of the SAC.

Conclusion

[29] The application for judicial review is dismissed. If necessary I will hear the parties on the issue of costs.

Duncan, J.