UPDATE ON RECENT CASES

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On March 7th, the Supreme Court of Canada changed the law with regard to the standard of review used by the courts to review decisions of administrative tribunals, which includes decisions made by the Municipal Government Board. In the past, the court would undertake a four step analysis (called the functional and pragmatic approach) to determine whether to review a decision on the standard of correctness, reasonableness or patent unreasonableness. These 3 standards were part of a spectrum for review - if the correctness standard was used, the court would give no deference to the Board's decision, in the middle of the spectrum the reasonableness standard accorded the tribunal's decision some deference, and at the other end of the spectrum was patent unreasonableness, which meant that the court would not interfere with the tribunal's findings unless it was blatantly obvious that the tribunal made a error. In Dunsmuir v. New Brunswick, the Supreme Court held that there are no longer three standards of review - patent unreasonableness has been removed and instead the courts will only review tribunal decisions using either the correctness or reasonableness standard. Dunsmuir is a significant change in administrative law, however it is too early to tell how this new development will be applied by the Alberta courts. We will be following this closely and will report to you any Alberta cases that consider Dunsmuir.

The Court of Appeal recently heard an appeal of the Queen's Bench decision Calgary (City) v. Alberta (MGB), (the "Hudson Bay case"). That case dealt the meaning of "assessed person" and whether an anchor tenant can appeal the assessment of the shopping center owner. The Court of Appeal will also be hearing an appeal of an unreported case Calgary (City) v. Nortel Networks, where the Court of Queen's Bench quashed the MGB's decision because of a breach of natural justice and procedural fairness related to disclosure of evidence and a party's right to know the case against them in sufficient detail to prepare a meaningful response. We'll report on these decisions once the Court of Appeal issues its decisions.

A copy of the Dunsmuir, Hudson’s Bay and Nortel decisions are located on the right hand side of this screen.

This article is intended to provide comments on recent legal developments and is not intended to give legal advice. You should seek legal advice on matters of concern to you.