Supreme Court of British Columbia Overturns Arbitrator's Decision Due to Procedural Unfairness

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In the recent decision by the Supreme Court of British Columbia *Niroei v Bushell*, the court delved into the critical issue of **procedural fairness in arbitration**. The case, involving a dispute between a landlord (the petitioner) and tenants (the respondents), highlights the importance of adhering to principles of natural justice during arbitration proceedings.

Background

The petitioner rented out a property to the respondents under a rental agreement with a monthly rent of $3,000. On February 28, 2023, the petitioner issued a two-month notice to end tenancy, stating that the rental unit would be occupied by the petitioner's son. However, on March 1, 2023, through text messages, the parties agreed to extend the move-out date to July 1, 2023, with an increased rent of $4,000 for May and June. Crucially, during these communications, it was conveyed that **the petitioner herself would be moving into the property**, not her son.

After vacating the property, the respondents applied to the Residential Tenancy Branch (RTB) for a return of the security deposit and later sought compensation under section 51 of the **Residential Tenancy Act** (RTA) for the petitioner's alleged failure to accomplish the stated purpose of the notice to end

tenancy.

An arbitrator at the RTB heard the dispute and issued a decision granting the respondents a monetary award. The petitioner sought a judicial review, arguing that the decision was **patently unreasonable** and that the arbitrator failed to act fairly.

The Court's Analysis on Procedural Fairness

The court's decision hinged on two main issues:

1. Whether the arbitrator's decision was patently unreasonable due to misapprehension or ignorance of evidence.
2. Whether there were breaches of natural justice and procedural fairness during the arbitration proceedings.

Patent Unreasonableness and Misapprehension of Evidence

The court noted that under sections 5.1 and 84.1 of the RTA and section 58 of the **Administrative Tribunals Act** (ATA), the standard of review for findings of fact or law by the RTB is **patent unreasonableness**. A decision is patently unreasonable when it is "openly, evidently and clearly irrational."

The petitioner argued that the arbitrator ignored or misapprehended critical evidence—specifically, the text messages where the parties agreed that the petitioner would be moving into the property herself. The arbitrator had acknowledged these messages but concluded:

"I am not convinced that the evidence supports this claim. There was no clear communication that the Two Month Notice was verbally amended or modified."

The court found this conclusion illogical, stating:

"On the face of the evidence, which the arbitrator previously accepted established an amendment to the effective date of the

Two Month Notice, the finding of no clear communication was not clearly available to the arbitrator on a rational or tenable line of analysis on the evidence.”

Thus, the decision was deemed patently unreasonable because it failed to consider all material evidence relevant to the ultimate issue.

Procedural Fairness and Natural Justice

The court emphasized that procedural fairness requires that parties know the case against them and have an opportunity to respond. The petitioner raised concerns about procedural unfairness, particularly regarding the handling of late evidence and the arbitrator’s failure to identify key issues during the hearing.

Late Evidence Submission

The respondents submitted additional evidence past the RTB deadline, which the petitioner did not receive in time. The arbitrator allowed this late evidence without exploring why it was not available earlier and without advising the petitioner of her right to address any prejudice arising from its acceptance.

The court highlighted the RTB’s Rules of Procedure:

“Rule 3.17 expressly requires the arbitrator to give both parties an opportunity to be heard on the question of accepting late evidence.”

By failing to comply with this rule, the arbitrator breached principles of procedural fairness.

Failure to Identify Key Issues

During the continuation of the hearing, the arbitrator did not clarify the main issues or invite submissions on whether extenuating circumstances existed that prevented the

petitioner from accomplishing the stated purpose of the notice. The court observed:

“In my view, it was incumbent upon the arbitrator to at least clarify for the parties the main issues he must decide on and the scope of the hearing.”

Without this guidance, the petitioner could not meaningfully respond to critical aspects of the case, further breaching procedural fairness.

Conclusion

The court concluded:

“The petitioner has established the Decision was patently unreasonable and that there were breaches of the rules of natural justice and procedural fairness in relation to the conduct of the hearing before the arbitrator.”

As a result, the decision was set aside and remitted back to the RTB for reconsideration before a different arbitrator in a hearing de novo.

Implications for Arbitration Proceedings

This case underscores the essential role that procedural fairness plays in arbitration. Arbitrators must ensure that:

- **All material evidence is considered**: Ignoring or misapprehending key evidence can render a decision patently unreasonable.
- **Parties are informed of the case against them**: Failing to provide adequate notice or clarify key issues prevents parties from meaningfully participating in the proceedings.
- **Rules of Procedure are followed**: Adhering to established procedures, especially regarding the submission and acceptance of evidence, is crucial for maintaining fairness.

Key Takeaways

- **Procedural fairness is paramount**: Arbitrators have a duty to conduct proceedings fairly, ensuring both parties can present their case fully.
- **Clarity in communication is essential**: Parties should document any amendments to agreements or notices clearly and in compliance with statutory requirements.
- **Arbitrators must actively manage hearings**: By identifying key issues and guiding the process, arbitrators help prevent misunderstandings and ensure justice is served.

Final Thoughts

The court’s decision serves as a significant reminder that **procedural fairness is not a mere formality but a fundamental component of justice**. Arbitrators must be vigilant in upholding these principles to maintain the integrity of the arbitration process. As this case demonstrates, failure to do so can result in decisions being overturned, prolonging disputes and undermining confidence in the system.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com