

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF MONCTON

File: MM-53-2024

Neutral Citation: 2025 NBKB 036

BETWEEN:

MOUNT ALLISON FACULTY ASSOCIATION,

applicant

- and -

MOUNT ALLISON UNIVERSITY,

respondent

DECISION

BEFORE: Madam Justice Christa Bourque

AT: Moncton, New Brunswick

DATE OF HEARING: October 8, 2024

DATE OF WRITTEN DECISION: February 14, 2025

APPEARANCES: Brenda Comeau, for the applicant

Clarence Bennett, K.C., for the respondent

BOURQUE, J.

OVERVIEW

[1] The applicant, Mount Allison Faculty Association, filed a grievance against the respondent, Mount Allison University, asserting that the University's engagement of Manulife to administer short-term sick leave violated the collective agreement between the parties. The applicant also argued that some of the information Manulife requested from employees was unreasonable. After hearing the grievance, the arbitrator ruled in favour of the respondent.

[2] The arbitrator determined that the respondent's use of Manulife fell within its management rights under the collective agreement. This conclusion was supported by relevant case law and the language of the agreement, which did not explicitly prohibit third-party administration of sick leave. The arbitrator also addressed concerns regarding the scope of information requested by Manulife, ruling that such requests should be evaluated on a case-by-case basis.

[3] The applicant now seeks judicial review, arguing that the arbitrator's findings on both issues were unreasonable. Conversely, the respondent contends that the decision was reasonable and ought to be upheld.

FACTS

[4] The applicant, the Mount Allison Faculty Association—a trade union representing faculty and librarians at Mount Allison University—filed a

grievance against the respondent University following its decision to outsource the administration of certain short-term sick leave benefits to Manulife. The respondent, Mount Allison University, a corporate entity operating in Sackville, New Brunswick, had previously managed short-term sick leave benefits internally but implemented this change in 2023. The new policy specifically applied to cases involving complex medical issues or where leave exceeded 30 days.

- [5] On April 28, 2023, the applicant filed a grievance alleging that the respondent's use of Manulife violated Articles 4, 11, and 25 of the collective agreement. It argued that the change was implemented without proper negotiation, that Manulife's involvement occurred too early in the process, and that the nature of the information requested from union members was intrusive and unreasonable. More specifically the applicant stated as follows in its grievance:

In the year 2022, the Employer began to refer full-time members on short-term sick leave to Manulife for sick leave management. Since Manulife is serving the Employer, the Employer is responsible for Manulife's conduct.

Notwithstanding Full-time Clause 25.02, members are being directed to interact with Manulife without negotiating this with MAFA. MAFA is concerned that this management is beginning far too early in the sick-leave period, that Manulife is asking questions of members that are inappropriate early in a sick leave, and that Manulife rather than the Employer is providing direction to members despite the fact that management rights rest with the Employer rather than Manulife. In one case a member was called back to work without adequate documentation and without consultation with the union.

- [6] The respondent denied the grievance on May 29, 2023, asserting its management rights under Article 4.01 of the collective agreement, which

allows contracting out services unless explicitly restricted by the agreement. It maintained that referring cases to Manulife was limited to specific situations—complex medical issues or leave requests exceeding 30 days—and was necessary for determining eligibility and facilitating accommodation and return-to-work processes. The respondent emphasized that the information requested by Manulife was reasonable and essential for evaluating claims and argued that its processes adhered to privacy and confidentiality standards outlined in the Absence Management Access Agreement. Furthermore, the respondent rejected the applicant's assertion that Manulife's practices constituted harassment, arguing that requesting detailed medical information in certain circumstances is standard practice and supported by arbitral precedents. The following excerpts outline key aspects of the response to the grievance:

The University is able to contract out the administration of the management of short-term sick leave. The ability to contract out is part of an employer's valid exercise of management rights. Nothing in the Collective Agreement prevents the University from contracting out the assessment of medical information to determine the validity of sick leave and to assess whether an employee can be accommodated.

With respect to the nature of the information requested, Association members can be required to provide: certification that they are absent and unable to work because they are ill or injured, information on the general nature of the illness or injury, that the member has and is following a treatment plan, the date of the expected return to work, and what work the employee can or cannot do. The Association and the member have obligations in facilitating the accommodation process and the request of this information is not harassment as suggested by the Association.

[...]

As the Collective Agreement has not been breached, the grievance is denied.

While matters such as these are better managed through the joint liaison process or through general discussion the employer will discuss with Manulife how they carry out their activities and to determine if changes are

required. We do not want Association members to feel harassed or mistreated and will relay these concerns to Manulife to ensure that they are managing sick leave in a manner consistent with the values of the University.

- [7] The grievance proceeded to arbitration, with a hearing held on August 21, 2023, before arbitrator Michel Doucet. Both parties presented evidence and arguments. The applicant underscored the intrusive nature of Manulife’s information requests and the stress caused by its frequent communications. It contended that the process exceeded what was necessary to administer short-term sick leave benefits and violated the collective agreement. The respondent, in contrast, defended its decision to outsource sick leave administration, emphasising that it was a legitimate exercise of management rights. It asserted that the involvement of Manulife was both limited and justified, citing the need for comprehensive medical information to support claims in complex cases. The respondent also referenced arbitral decisions that support the reasonableness of contracting out such services and requesting additional medical information when necessary.
- [8] At the hearing, the applicant presented evidence that members were required to complete an “Employee Declaration” form, authorise the collection and disclosure of personal information, and provide extensive medical details through an “Attending Physician Statement” completed by their healthcare provider. Additionally, Manulife’s process involved frequent communications, including weekly phone calls and emails, which members found to be stressful and confusing. The applicant presented evidence, including testimony from a member who described these interactions as

intrusive, a 105-page communication log from Manulife documenting repeated requests for additional medical information, as well as blank copies of the forms the employee was required to complete.

[9] More specifically, the arbitrator listed the evidence presented at the hearing which included the following:

Witness Testimonies:

- Dr. Jeff Martin: Professional Officer and Executive Director of MAFA, who testified about the normal procedure for short-term sick leave as per the Collective Agreement and the concerns raised by union members regarding the new process involving Manulife.
- Witness "A": A union member who shared their personal experience with Manulife, detailing the stress and confusion caused by the process and the intrusive nature of the information requests.

Employer's Witness:

- Robert Ingliss: Vice-President, Finance and Administration at Mount Allison University, who explained the rationale behind contracting Manulife for managing disability absences due to the University's size and the complexity of managing 450 employees.

Documents:

- Collective Agreement (2019-2022): Provided the contractual framework and specific articles (4, 11, 25, and 36.08) relevant to the grievance.
- Grievance Filed by MAFA (April 28, 2023): Detailed the union's allegations against the Employer.
- Employer's Response to the Grievance (May 29, 2023): Outlined the Employer's justification for contracting out the management of short-term sick leave to Manulife.
- Referral to Arbitration (July 12, 2023): Documented the formal referral of the grievance to arbitration.
- Manulife Employee Declaration and Attending Physician's Statement: Forms used by Manulife to gather medical information from employees.
- Emails: Correspondence between "A" and Ashley Martin, a human resources consultant at Mount Allison University, detailing the approval of "A's" medical leave and the referral to Manulife.
- Absence Management Access Agreement: The agreement between Mount Allison University and Manulife outlining the terms of their service.

Additional Evidence:

- Manulife's Denial of "A's" Appeal (March 22, 2023): Documented the outcome of "A's" appeal process with Manulife.
- Emails between "A" and University Representatives: Provided context and details about the communication and decisions made regarding "A's" sick leave.

[10] The witness referred to as "A" testified about their experience with Manulife during their sick leave. They provided a doctor's note to the respondent on January 11, 2023, requesting sick leave from January 5 to January 15, 2023, due to serious medical reasons. This leave was later extended to February 27, 2023, with another doctor's note. "A" was informed by the respondent that their leave was approved and supported until February 27, 2023, but was later referred to Manulife for further management.

[11] Manulife requested additional information, including an "Employee Declaration" and an "Attendant Physician Statement." On February 27, 2023, Manulife informed "A" that their medical leave was supported only until February 14, 2023, and recommended a return to work on March 1, 2023. "A" felt this contradicted their doctor's opinion and was not ready to return to work. They described the interaction with Manulife as confusing and stressful, feeling compelled to comply with Manulife's requirements. However, "A" acknowledged that their relationship with the case manager and the respondent was not antagonistic and they did not feel bullied, but experienced "passive pressure."

- [12] "A" decided to appeal Manulife's decision, and during the appeal process, the respondent continued to support their medical absence. The appeal was ultimately denied on March 22, 2023. " A" testified they found the weekly calls from Manulife's case manager intrusive and would have preferred if the respondent had made the calls. Just over a month later, the applicant filed its policy grievance.
- [13] On December 5, 2023, the arbitrator issued a decision in favour of the respondent, concluding that the use of Manulife to administer short-term sick leave benefits did not violate the collective agreement. The arbitrator determined the respondent's actions were within its management rights and there was no explicit restriction in the agreement against outsourcing this function. However, the arbitrator noted that Manulife's authorization form needed revisions to enhance clarity and simplicity, and stated that Manulife should not request more information than is reasonably necessary.
- [14] Dissatisfied with the decision, the applicant filed this application for judicial review on March 4, 2024, claiming that the arbitrator's ruling was unreasonable. The applicant argued the decision failed to adequately address the intrusive nature of Manulife's practices and their impact on its members. It also emphasized its belief that the respondent's outsourcing decision and Manulife's subsequent administration of sick leave benefits breached the collective agreement.

Summary of arbitrator's Decision

[15] At the outset of his decision, the arbitrator noted that the presence of only three witnesses and the fact that their evidence concluded in under four hours did not suggest that the facts of this case were straightforward. He added that this assertion is supported by the substantial volume of documents submitted as evidence. Furthermore, he remarked that the complexity was increased by the importance of the issues raised by the parties, which called for a very thorough examination of the documents, relevant authorities, and the somewhat limited evidence provided by the witnesses.

[16] In the initial stage of his analysis, the arbitrator was required to examine the wording of the collective agreement. The relevant and applicable portions of that agreement are:

ARTICLE 4 -MANAGEMENT RIGHTS

4.01 The Employer retains all powers consistent with the terms of *The Mount Allison University Act, 1993*, as amended, to manage and operate without any limitations except those limitations which are set out in the Agreement. The Employer shall exercise its management functions in a manner that is fair, reasonable, and consistent with the provisions of this Agreement.

Article 25 - Leaves of Absence

Sick Leave

25.01 b) An employee not covered by the sick leave plan in Clause 25.01 a) who, as a result of illness or bodily injury, is disabled from performing the employee's professional responsibilities to the Employer shall receive for six (6) calendar months the salary the employee would have received if the employee had not become so disabled less any monies received in compensation under the Workers' Compensation Act or any other source. The employee shall receive other benefits of employment on the same basis as the employee's salary subject to the terms of the benefits involved.

25.02 An employee who is or will be so disabled shall inform the appropriate department head or program director and Dean, or the University Librarian, or, in the case of a teacher, the manager of the teacher's work unit, of the illness or bodily injury as soon as possible after the disability commences or after the employee knows it is likely to commence in order that adequate alternate arrangements can be made to see that the employee's professional responsibilities to the Employer are met.

- [17] In his analysis of whether the respondent violated the collective agreement by contracting out the management of short-term sick leave, the arbitrator noted that jurisprudence generally acknowledges an employer's right to contract out services unless explicitly prohibited by the collective agreement. In this instance, he determined that Article 4.01 granted the respondent broad management rights, provided they are exercised fairly and reasonably. The arbitrator found no evidence that the respondent's decision to outsource was unfair or unreasonable. The respondent maintained oversight by referring only complex cases or those involving absences exceeding 30 days to Manulife, ensuring ongoing institutional involvement.
- [18] The arbitrator concluded that Article 25.02, which mandates that employees inform their supervisors about illnesses, was not violated. Employees were still obligated to report illnesses to their supervisors prior to any referral to Manulife. Therefore, the contracting-out arrangement did not modify or reduce the original reporting duties specified in the collective agreement.
- [19] The arbitrator next addressed the applicant's concerns regarding the scope and intrusiveness of the information requested by Manulife. Acknowledging

the sensitive nature of medical information, he reiterated that employers are entitled to access such information only when necessary and with the employee's consent. Any requested information must be proportionate to the specific requirements of the case. He cited relevant case law indicating that while a basic doctor's note may suffice for initial sick leave, more detailed information might reasonably be required for prolonged or complex cases to verify eligibility and manage accommodations. He concluded that the medical evidence required by Manulife must be tailored to each specific case, as there is no blanket "one size fits all" information request. It must consider the case it has before it. In certain circumstances, more detailed information will be necessary, while in others, only limited information will be required.

[20] Although the arbitrator found the respondent's referral process to Manulife to be fair and reasonable, he highlighted certain deficiencies in Manulife's authorization forms. He recommended that the forms be revised for clarity to ensure that employees understand what information they are consenting to share. Additionally, he suggested that Manulife limit its requests to information directly relevant to the employee's medical situation and ensure that any collected data is destroyed once it has served its purpose.

[21] The arbitrator also considered the applicant's claim that the process violated the *Right to Information and Protection of Privacy Act* (RIPPA), SNB 2009 c.R.-10.6. However, he concluded that there was no evidence to support this assertion and deemed it unnecessary to explore the issue further.

The Parties' position on this Application

The applicant

- [22] The applicant contends that the arbitrator's decision was unreasonable for several reasons. First, it argues he erred in concluding that the respondent did not violate Articles 4.01 and 25.02 of the collective agreement by outsourcing the management of short-term sick leave benefits to Manulife. Specifically, Article 25.02 requires employees to inform their respective Dean, Librarian, or Manager when requesting sick leave, and it does not provide for employees to communicate directly with Manulife. According to the applicant, such communication exceeds the scope of the collective agreement. Second, the applicant asserts that the arbitrator failed to adequately address whether the information requested and collected by Manulife on behalf of the respondent was reasonable. The arbitrator's conclusion—"maybe yes, in some cases, and maybe no in others"—is criticized for lacking clarity and failing to effectively resolve this issue.
- [23] Furthermore, the applicant points out inconsistencies in the arbitrator's reasoning. While the arbitrator acknowledges that Manulife, acting on behalf of the employer, holds no greater right to information than the employer itself, he does not deem Manulife's requests unreasonable, despite the forms asking for detailed and intrusive information that exceeds what is necessary for short-term sick leave applications. This inconsistency, the applicant argues, undermines the arbitrator's decision. The applicant also criticizes the arbitrator's failure to address privacy concerns,

particularly whether Manulife's information collection process infringed upon *RTIPPA*. The applicant contends there was sufficient evidence for the arbitrator to evaluate this issue, and the omission creates a substantial gap in the reasoning.

[24] Lastly, the applicant refers to jurisprudence in similar cases, such as *Rio Tinto Alcan v. Unifor, Local 2301* [2021] B.C.C.A.A.A. No. 95 and *Association of the University of New Brunswick Teachers v. University of New Brunswick*, August 5, 2024 unreported, where arbitrators deemed Manulife's information requests overly intrusive and unreasonable. The applicant contends that these cases clearly support its position and that the arbitrator's failure to adhere to these cases further highlights the unreasonableness of the decision.

[25] In summary, the applicant contends the arbitrator's decision falls short of the standard of reasonableness. The decision lacks internal consistency, fails to address crucial issues such as the reasonableness of Manulife's practices and privacy concerns, and is at odds with the case law. Consequently, the applicant argues that the decision should not be upheld.

The respondent

[26] The respondent presented several key arguments. First, it contended that the appropriate standard of review for the arbitrator's decision is reasonableness, as outlined by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. It argued

that none of the exceptions requiring a correctness standard applied, thereby reinforcing the position that the arbitrator's decision should be evaluated for reasonableness rather than correctness.

[27] To support the reasonableness of the arbitrator's decision, the respondent made several points. Regarding the use of a third party, it argued that the arbitrator's approval of Manulife's role in administering short-term sick leave benefits was reasonable, citing cases that affirm employers' rights to outsource such functions. It emphasized that this practice is widely accepted and supported by previous arbitral decisions. On the issue of compliance with the collective agreement, the respondent maintained the arbitrator correctly determined that Mount Allison University did not breach Articles 4.01 or 25.02. It contended that the arbitrator's interpretation of these provisions was consistent with the evidence and relevant case law. Additionally, concerning information requests, the respondent argued the arbitrator reasonably evaluated the concerns regarding the scope of information requested by Manulife. It highlighted the arbitrator's case-by-case approach, which acknowledged the varying levels of detail required based on individual circumstances and noted that this approach was supported by the jurisprudence.

[28] Addressing privacy concerns, the respondent argued the arbitrator reasonably concluded there was no evidence to substantiate the applicant's claim that Manulife's information collection process violated *RTIPPA*. It

further contended the arbitrator's decision not to delve deeper into this issue was justified because compelling evidence did not support the allegations.

[29] The respondent also defended the arbitrator's reasoning as clear, understandable, and well-supported. It emphasized that the decision was coherent and firmly based in the legal and factual context of the case.

ISSUES

[30] The following issues must be decided in this application:

1. What is the appropriate standard of review?
2. Does the arbitrator's decision satisfy the applicable standard in relation to his conclusions on the following issues:
 - Did the respondent's engagement of Manulife breach the relevant provisions of the collective agreement?
 - Was the information requested and collected by Manulife reasonable?
 - Did the information requested and collected by Manulife contravene the *Right to Information and Protection of Privacy Act* (RTIPPA)?

LAW AND ANALYSIS

The Applicable Standard of Review - Reasonableness

[31] In the landmark case of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, supra, the Supreme Court of Canada established a new analytical framework for the judicial review of administrative decisions. This framework clarified the approach that courts should adopt when reviewing

decisions made by administrative tribunals, commissions, and other administrative bodies.

[32] As the majority in *Vavilov* noted, the decision outlines “a new course forward for determining the standard of review that applies when a Court reviews the merits of an administrative decision” (*Vavilov*, para. 2).

[33] Under this framework, courts are required to apply a presumption of reasonableness when reviewing decisions made by administrative decision-makers. This presumption reflects deference to these decision-makers’ expertise and specialized knowledge, ensuring that courts do not unnecessarily substitute their own judgment.

[34] However, the Supreme Court stressed that this presumption of reasonableness is not absolute. To maintain the rule of law, courts must apply a standard of correctness in certain categories of legal questions, including:

1. Constitutional questions,
2. General questions of law that are of central importance to the legal system as a whole, and
3. Questions related to the jurisdictional boundaries between two or more administrative bodies.

[35] Both parties agree that none of the exceptions requiring a correctness standard apply in this case, and the applicable standard is that of

reasonableness. A decision is deemed reasonable if it is grounded in rational and logical reasoning and is tenable in light of relevant factual and legal constraints. In *Carpenters and Joiners, Local 1386 v. Ferro-Chemical Crete Engineering*, 2021 NBQB 143, Justice Morrison quoted the following excerpts from the *Vavilov* decision, which summarise the standard of reasonableness:

(...)

a. [...] the purpose of reasons, when they are required, is to demonstrate 'justification, transparency and intelligibility' [...] (*Vavilov*, para. 81)

b. [...] the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. (*Vavilov*, para. 83)

c. [...] where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. (*Vavilov*, para. 84)

d. [...] a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision. (*Vavilov*, para. 85)

e. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome: *Delta Air Lines*, at paras. 26-28. To allow a reviewing court to do so would be to allow an administrative decision maker to abdicate its responsibility to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion. (*Vavilov*, para. 96)

f. The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. (*Vavilov*, para. 100)

g. [...] a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis [...] (*Vavilov*, para. 103)

h. In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers. (*Vavilov*, para. 105)

i. It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker” [...] (*Vavilov*, para. 125)

j. [...] a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, at para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. (*Vavilov*, para. 126)

k. Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” (*Newfoundland Nurses*, at para. 25), or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. (*Vavilov*, para. 128)

[36] While some of the following quote overlaps with Justice Morison’s analysis above, *Stratas J.A.* of the Federal Court of Appeal, a recognized authority on judicial review, offers a particularly insightful examination of *Vavilov*’s approach to the role of the reviewing Court. He stated as follows in the case of *Alexion Pharmaceuticals Inc. v. Canada (Attorney General)*, 2021 FCA 157 at paragraphs 22-25:

[22] However, *Vavilov* reminds reviewing courts that they are only reviewing courts. They must not apply the requirement of a reasoned explanation in a way that transforms reasonableness review into correctness review. That would return us to the bad old days in the 1960’s

and 1970's when reviewing courts would come up with any old excuse to strike down decisions they disliked—and often did: see *Canadian Copyright Licensing Agency (Access Copyright) v. Canada*, 2018 FCA 58, 422 D.L.R. (4th) 112, [2018] 4 F.C.R. D-3, at paragraphs 61–65.

[23] Reviewing courts will mistakenly fall into correctness review when they assess reasons “against a standard of perfection” and hold administrators to the “standards of academic logicians”: *Vavilov*, at paragraphs 91 and 104.

[24] Reviewing courts must remember that administrators, not the reviewing courts, are the merits-deciders: *Namgis First Nation v. Canada (Fisheries and Oceans)*, 2019 FCA 149; *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2014 FCA 245, [2015] 4 F.C.R. 75; *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 N.R. 297, at paragraphs 14–20; *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263, 9 Admin. L.R. (6th) 296, at paragraphs 13–28. In deciding the merits, administrators, some of whom are not lawyers, may not “deploy the same array of legal techniques that might be expected of a lawyer or judge” and so “‘administrative justice’ will not always look like ‘judicial justice’”: *Vavilov*, at paragraphs 92 and 119. To expect otherwise is to overly judicialize administrative processes, threatening their efficiency and potentially undermining the very reasons why the legislator entrusted this jurisdiction to the administrator in the first place: see, e.g., *Canadian Union of Public Employees, Local 301 v. Montreal (City)*, 1997 CanLII 386 (SCC), [1997] 1 S.C.R. 793, (1997), 144 D.L.R. (4th) 577, at paragraph 39.

[25] In the end, “a reviewing court must ultimately be satisfied that the [administrator’s] reasoning ‘adds up’”: *Vavilov*, at paragraph 104.

Was the arbitrator’s decision reasonable concerning his findings on whether Manulife’s engagement breached the relevant provisions of the collective agreement?

[37] Considering the above, I find the arbitrator’s decision reasonable that the management of short-term sick leave, which was outsourced to Manulife, did not constitute a breach of the collective agreement under articles 4.01 or 25.02.

[38] The arbitrator’s decision reflects a careful consideration of the evidence presented at the hearing, guided by applicable jurisprudence. He

acknowledged the limited testimony provided, which inevitably influenced the outcome.

[39] There is no indication the arbitrator misapprehended the evidence in a way that would compromise the reasonableness of his decision. On the contrary, his ruling is both reasonable and defensible, grounded in the available evidence, the wording of the collective agreement, party submissions, and relevant legal principles.

[40] The decision to permit a third party (Manulife) to administer sick leave was found to be reasonable by the arbitrator. In arriving at his conclusion, the arbitrator examined the relevant sections of the collective agreement and held that outsourcing sick leave management fell within Mount Allison's management rights. This finding aligns with arbitral precedents supporting third-party administration of medical claims in appropriate cases. The arbitrator also considered *Metrolinx-Go Transit v. Amalgamated Transit Union Local 1587*, 2022 ONSC 4824, a case heavily relied upon by the applicant. However, he determined it was not directly applicable due to differences in the specific wording of the collective agreement in that case.

[41] Moreover, the arbitrator found no evidence suggesting the decision to contract out sick leave management was unfair or unreasonable. He determined the respondent retained oversight, with only complex cases or those exceeding 30 days being referred to the third party.

[42] The arbitrator was not required to address every argument or conduct an explicit analysis of each minor element leading to his conclusion. However, he meaningfully engaged with the key issues and central arguments presented by the parties, demonstrating he was alive to the matters before him. In my view, the arbitrator clearly articulated his reasons to support the outcome and his decision falls within the range of reasonable outcomes.

Was the arbitrator's decision reasonable concerning his findings that the information requested and collected by Manulife was reasonable?

[43] The arbitrator examined the reasonableness of the information requested and collected by Manulife. After reviewing the case law, he concluded that the third party has no greater right to information than the employer would in similar circumstances. He determined the process remained fair and reasonable as long as information requests did not exceed what is required to "satisfy a reasonable objective employer that the employee was, in fact, absent from work due to illness or injury" (See: Arbitration decision at paragraph 87). He held there was nothing about the case before him to suggest the information request was unfair or unreasonable. The arbitrator did stress, however, that the reasonableness of such requests must be assessed on a case-by-case basis.

[44] In my view, the arbitrator's decision on this matter is transparent, well-reasoned, and justified. It is based on coherent analysis, supported by evidence and case law, and aligns with both legal and factual constraints, making it a reasonable determination.

- [45] During the hearing, the applicant relied on two cases, *Rio Tinto Alcan v. Unifor, Local 2301*, supra, and *Association of the University of New Brunswick Teachers v. University of New Brunswick*, supra, arguing they were directly relevant. In both cases, the arbitrators found the information requested on the same Manulife forms was unreasonable.
- [46] Although the applicant framed the grievance as a policy grievance, it presented evidence from only one member, referred to as “A,” who testified about their personal circumstances. There was no indication that the forms sent to “A” by Manulife were provided to other members or that they were standard for all employees on sick leave. This put the arbitrator in a challenging position when considering the issue more broadly. However, after thoroughly reviewing the case law, he reasonably concluded that the extent of information required should be assessed on a case-by-case basis.
- [47] In his decision, the arbitrator identified certain types of information that should never be requested from employees. He also recommended that the respondent and Manulife revise the authorization forms signed by employees to make the language clearer and more straightforward.
- [48] He emphasized it would benefit all parties if the clause were rewritten in simpler terms, explicitly stating that the requested information pertains only to the employee’s current medical condition and nothing beyond that. Additionally, the clause could clarify that the information will not be shared with anyone else and will be destroyed once it has served its purpose.

Did the information requested and collected by Manulife contravene the *Right to Information and Protection of Privacy Act (RTIPPA)*?

[49] In addressing the issue of whether the information requested by Manulife violated *RTIPPA* he stated the following in his conclusions:

108. However, this being said, I am also of the opinion that a thorough review of the “Authorization Clause” that employees are required to sign when they are referred to Manulife needs to be done in order to make it clearer and simpler and to make sure that it does not go beyond what is necessary. Furthermore, I conclude that the medical information sought by Manulife cannot go beyond what is reasonably required after a case-by-case analysis.

109. Finally, I do not see any need to address the issue raised by the Union regarding whether the process violated *RTIPPA*. There is no evidence that would allow me to come to such a conclusion.

[50] I agree with the respondent’s argument that a reviewing Court should not reassess the evidence. In this case, the arbitrator found no evidence to support the claim of a *RTIPPA* violation. As a result, he had no basis to conclude that the use of the information by Manulife violated the legislation. The respondent rightly submits that it would have been unreasonable for the arbitrator to find a breach of *RTIPPA* without any evidence of a violation of the legislation’s privacy protection provisions.

[51] The arbitrator’s determination that there was no evidence to conclude that a breach of *RTIPPA* occurred was a reasonable, coherent and well-justified, decision considering the facts of the case.

CONCLUSION AND DISPOSITION

[52] In light of the above, the application is dismissed and the applicant shall pay costs to the respondent in the amount of \$3,000 plus HST.

DATED at Moncton, New Brunswick, this 14th day of February 2025.

Christa Bourque
Justice of the Court of King's Bench
New Brunswick, Trial Division