THIS EXAMINATION CONSISTS OF 15 PAGES
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THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – APRIL 2015 EXAM

LAW 372
Administrative Law

Section 002
Professor Mary Liston

TOTAL MARKS: 100

EXAM-ONLY WRITERS

TIME ALLOWED: 3 HOURS
including reading/review time

COMBINED ASSIGNMENT / EXAM WRITERS

TIME ALLOWED: 2 HOURS
including reading/review time

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NOTE:

1. This is an OPEN BOOK examination. You may bring COURSE MATERIALS into the exam such as: the casebook, cases, materials posted on the course website, and your own notes. You may NOT use library books.

2. The exam is composed of three (3) Parts.

3. Students writing the 100% final option should answer all of the questions in Parts A and B. Statutory and other legal materials can be found in Appendix 1.

4. Students writing the 100% final option should answer only <u>one</u> of the questions in Part C.

5. **<u>If you chose the OPTIONAL ESSAY, answer ONLY the questions which have been indicated in Parts A and B. Do NOT answer any of Part C.</u>

6. The marks and suggested time for each question are in the margin and you should budget your time accordingly. 30 minutes has been allocated for reading/reviewing out of the total time. Please put your exam code on all booklets used.

7. If you are handwriting, please DOUBLE-SPACE your answers and try to write legibly.

Part A

35 Marks: 50 minutes

Note: Relevant statutory materials are found in Appendix 1.

*****If you chose the OPTIONAL ESSAY ASSIGNMENT, answer ONLY Questions 2 and 3 in Part A.*****

Azamat and Pamela Sagdiyev are Hungarian citizens who entered Toronto, Canada in January 2013. They applied for refugee status based on their alleged fears of persecution in Hungary because of their Roma ethnicity. Azamat alleges that he suffered discrimination, abuse, harassment and intimidation throughout his life in Hungary, recounting several incidents where police physically attacked him. He claims to have been attacked by a group of right-wing extremist men and when he went to the police station to report the incident, the officer said "Isn't it possible that you started the whole thing?" He never heard back from the police. Pamela, his wife, alleges that she suffered racially-motivated verbal abuse in her workplace and was told, after she complained, that if she didn't like it, she could find another job. Their, daughter, who has also accompanied them, claims to have been abused in elementary school by her teacher and the principal of the school said, after she complained, that she should go to another school. The Sagdiyev's finally fled Hungary since it appeared that the right-wing Jobbik ("Movement for a Better Hungary") Party would win the next election—the party partly runs on a Hungarian nationalist, anti-Roma, and anti-Semitic platform.

They successfully applied to Legal Aid for assistance with their Basis of Refugee Claim Form. A young lawyer helped them fill out their Form and submitted it to the Refugee Protection Division ["RPD"] of the Immigration and Refugee Board. In the October 2013, the Sagdiyev's were informed by Legal Aid that their case would no longer receive funding. Because they could not afford the fees, they could no longer retain the lawyer. On June 15, 2014, they received a Notice to Appear before the RPD. In addition to the other required information, they were notified that a hearing date was set for July 21, 2014. In the short time before the hearing, they tried to secure another lawyer, but couldn't and ultimately ended up at the Law Students Legal Clinic (the "Clinic"). The Clinic told them that, unfortunately, law students could not represent them due to the short timeline. The Clinic, however, did submit a letter to the RPD asking for a six-week postponement of the hearing so that students could adequately prepare and provided alternative dates where students could attend the hearing. The letter was dated five days prior to the July hearing date. The RPD never responded to this letter.

Several irregularities occurred at the hearing. First, the interpreter for the hearing said that he was having "ear problems" that day and would need to have the seating arranged so that he could hear better. Secondly, the RPD Officer (the "Member") who was supposed to hear their claim—Mr. Goulyash—was double-booked that morning. Normally, a Member hears two claims per day: one in the morning, one in the afternoon.

The Member decided to hear the Sagdiyev's claim first but was impatient throughout the hearing. He repeatedly asked them to speak faster so that he could hear both claims that morning, and berated the interpreter for his slow interpretive pace. During the hearing, the Member said to the interpreter: "Don't bother translating this part because we have time issues and I already know the story." When the interpreter objected, he responded, "Oh alright then. Do translate and waste more time."

At the beginning of the hearing, the Member asked if the Sagdiyev's wished to proceed without counsel. The transcript for the hearing reads as follows:

RPD MEMBER:	"Yeah, yeah, yeah, you said it before. There's an issue with the lawyer. You had a lawyer, you don't have a lawyer, then you had a new lawyer, then you don't know if you have that lawyer. Now you're here without a lawyer. What the heck is going on here?
MALE CLAIMANT:	We did not get enough money from Legal Aid. It was only enough to prepare our initial claim.
RPD MEMBER:	Fine, fine, fine. So the point is—are you going to proceed today without a lawyer?
MALE CLAIMANT:	[A spate of words in the Romani language which the interpreter, who only knows Hungarian, cannot understand.]
RPD MEMBER:	Hey! Slow it down! Slow it down! Make short sentences.
MALE CLAIMANT:	If we have to proceed, then we can.
RPD MEMBER:	You have to ...
MALE CLAIMANT:	On the other hand ...
RPD MEMBER:	What??!
MALE CLAIMANT:	They told us they sent a letter here asking for more time ...
RPD MEMBER:	No. You can't. I got that letter. You just have to go ahead, alright? Just tell them that and I'll continue, okay? Just tell them that. I know the arguments already.
MALE CLAIMANT:	I don't understand. [Whispering between claimant and interpreter, but no interpretation given.]
RPD MEMBER:	Okay, yeah. You had access to a lawyer, but then you lost your old lawyer and your new lawyer. What did Oscar Wilde say? Oh, I remember—this is funny: "To lose one lawyer may be regarded as a misfortune; to lose both looks like carelessness." A lawyer who handles a file has to be ready to go at the hearing. Yours wasn't ready and isn't here. So, you have to go ahead with this hearing.

The Member noted down that the applicants had agreed to proceed and had not requested an adjournment. Because he was pressed for time, the Member provided brief oral reasons, indicating that written reasons would come later. The Member rejected the daughter's claim because she did not testify orally. Pamela also did not testify but had indicated she agreed with Azamat's testimony. The Member stated that he made negative credibility findings against both Azamat and Pamela based on inconsistencies in their oral evidence. In passing, Mr. Goulyash mentioned that he was relying on the new 2014 Hungary Report on country conditions, which was not part of the package that the Sagdiyevs received before the hearing. Usually, counsel requests any updated documents prior to a hearing but, because they were unrepresented, they did not know to do this. Because the document was so new, it contained information about the state of human rights in Hungary, about which they did not know.

The Sagdiyev's are challenging the Member's negative decision in Federal Court. You are a clerk at Federal Court and your supervising judge has asked you to provide your opinion on the following questions concerning procedural fairness. To provide this opinion, make sure you apply the appropriate frameworks and tests.

1. What is the standard of review for procedural fairness? [5 marks]

2. In your opinion, did the process used by the RPD Member breach the duty to hear the other side? [15 marks]

3. In your opinion, could you raise a bias argument against the RPD Member? [10 marks]

4. What remedy would you request at Federal Court? [5 marks]

Part B

40 Marks: 60 minutes

Note: Relevant legal materials are found in the Appendix.

Note: The BC ATA does not apply in this fact pattern.

*****If you chose the OPTIONAL ESSAY ASSIGNMENT, answer ONLY Questions 2 and 3 in Part B.*****

Andy Dufresne, the petitioner, is a prisoner in Thompson Rivers Correctional Centre ("TRCC") where he has been incarcerated since March 2014. He is a 58-year-old recovering addict with a speech impediment, a minor mental disability, and is HIV-positive. He has difficulty communicating. In his interactions with prison staff, he has often relied on fellow inmates to act as interpreters. When he arrived at TRCC he had 8 teeth and had lost his partial dentures in an altercation that occurred before jail. In April 2014, he saw the prison physician, Dr. Diamond, who provided him with partial dentures that did not properly fit. The physician then referred him to the prison dentist. They also discussed Andy's wish to get off methadone.

On June 9, 2014, Andy visited Dr. Byron Hadley, the prison dentist. Dr. Hadley put Andy under anaesthetic and extracted some of his teeth, which were rotting. This was to enable him to retain partial dentures but also to prevent infections that would exacerbate his pre-existing medical condition. On June 16, they met again, and Dr. Hadley extracted the rest of Andy's teeth. Not only did that make it impossible for Andy to wear partial dentures, it rendered him completely toothless. His health suffered because he couldn't eat properly. Being toothless, he could only consume a liquid or soft food diet and he subsequently lost weight. He must also take his antiviral medication with food and he has missed some doses because the medication makes him nauseous without solid food. If he misses too many doses, he risks deterioration of his already compromised immune system.

At the end of the summer, Andy complained to the Warden that he did not understand that all of his teeth would be removed and that he wouldn't have agreed to the procedure had he known about the outcome. In early September, the Deputy Warden responded that: "For medical issues, we defer to medical professionals and their decisions. Moreover, prison policy requires you to apply for extended health benefits from the province to pay for dentures." The Deputy Warden suggested that Andy consult Dr. Hadley again. Dr. Hadley helped Andy fill out the extended health benefit form in early October 2014. As part of the form, Dr. Hadley indicated that Andy could not pay any portion of the costs for dentures ($1,000.00) and that the lack of dentures caused only physical and psychological discomfort, but did not impair Andy's general health. Space existed on the form for the further comments, which is often—but not in this case—used to incorporate the criteria set out in the Corrections Branch Policy Manual (the "Manual") for the potential provision of dentures to inmates by TRCC. A copy of this form was given to the Warden.

The Warden, Bob Gunton, requested that Dr. Diamond examine Andy. Not knowing that the appointment was at the request of the Warden, Andy agreed to the examination. Dr. Diamond sent an internal report to Warden Gunton with the following information:

- Dr. Diamond asked Dr. Hadley about the dental procedure. Dr. Hadley insisted that Andy clearly understood the conversation about the necessity of tooth removal. Removal of the rotting and soon-to-be-rotting teeth was essential to prevent the spread of opportunistic infections that could imperil an HIV-positive individual. Dentures could not be fitted until his mouth healed.
- Dr. Hadley indicated that it seemed to him that Andy might have misrepresented the extent of his communication and mental problems.
- Dr. Hadley records do not include any references to consent or to financial responsibility for replacement of missing or extracted teeth.
- Unbeknownst to all officials, Andy had weaned himself off methadone. Dr. Diamond was of the view that this was the cause of the lack of appetite, weight loss, and food problems, not the lack of dentures. Andy was therefore misrepresenting the problem as a dental/dietary problem rather than the voluntary withdrawal from methadone.
- In Dr. Diamond's opinion, no demonstrable injury to Andy's health existed from having his teeth removed and not receiving replacement dentures immediately.

After the appointment, Dr. Hadley informed Andy that the request for replacement dentures under extended health coverage was denied because Andy had no funds. Andy sent another request to Warden Gunton asking that TRCC provide him with dentures.

Relying on the information in the internal report, Warden Gunton wrote:

> As per your most recent request, I have reviewed your case with the MD and the dentist. We all concur that you were informed about the procedure. No severe injuries resulted from this procedure. Your digestive problems are not a result of this dental procedure. In light of this, I conclude that we will not be providing you with dentures at this time. Moreover, you are due to be released soon and you no longer meet the Manual criteria regarding the provision of dentures at our cost.

You are articling at a small law firm that, because of one of the partner's dedication to the rule of law, handles prison cases pro bono and has agreed to take on Andy's case. In preparation, the partner would like your opinion on the following matters concerning substantive review of the Warden's decision. He thinks that this is a good case to test the new proportionality analysis in administrative law.

1. What *Charter* values do you think apply in Andy's case? Does it appear that Warden Gunton consider relevant legislative objectives and applicable *Charter* values in his decision and, if so, how? [10 marks]

2. Do you consider Warden Gunton's reasons to be adequate? [10 marks]

3. How would a court review this decision? Do you think a reviewing court would conclude that this decision unreasonably and disproportionately harmed a *Charter* value? [10 marks]

4. What remedy would you request from the court? Could you, for example ask the court to compel TRCC to provide Andy with replacement dentures or any other appropriate relief? [10 marks]

PART C

25 Marks: 40 minutes

Note: Relevant legal materials are found in the Appendix.

****If you chose the OPTIONAL ESSAY ASSIGNMENT, do NOT answer any question in Part C.****

Write an essay answer addressing ONE of the following questions.

1. As you now know, procedural fairness traditionally does not require a standard of review analysis. This does not mean, however, that the jurisprudence is entirely clear on this matter. Some judges say that procedural fairness issues should be reviewed on a "correctness" standard. Others suggest that the appropriate standard is "fairness". Justice John Evans (FCA) wrote in a recent case:

> "In short, whether an agency's procedural arrangements, general or specific, comply with the duty of fairness is for a reviewing court to decide on the correctness standard, but in making that determination it must be respectful of the agency's choices. It is thus appropriate for a reviewing court to give weight to the manner in which an agency has sought to balance maximum participation on the one hand, and efficient and effective decision-making on the other. In recognition of the agency's expertise, a degree of deference to an administrator's procedural choice may be particularly important when the procedural model of the agency under review differs significantly from the judicial model with which courts are most familiar."

In a similar approach, Lebel J. in *Mission Institute v Khela*, 2014 SCC 24, selected a correctness standard, but accorded a "margin of deference" to the decision-maker on procedural matters. Finally, Justice Stratas (FCA) has argued that in some circumstances, a reviewing court should use import the *Dunsmuir* Standard of Review analysis into review for procedural fairness so that reasonableness could be selected and applied because it is more "respectful" and "deferential". Remember that regardless of the approach, if a reviewing court concludes that the duty of fairness was breached, no deference is shown to this jurisdictional error and the court will demand that the procedural error or deficiency be cured.

Do you agree or disagree that reviewing courts should now acknowledge that a deferential approach to questions of procedural fairness is appropriate in some cases? If yes, should we understand it as fairness, reasonableness, or correctness with a margin of deference?

2. **Be it resolved: The BC Legislature should repeal sections 58 and 59 of the *Administrative Tribunals Act* (*ATA*), which set out standards of review.**

You are a participant in a legal debate on this proposition at the next Canadian Bar Association conference on Administrative Law. Note that one influential judge has said on this matter: "As a result of *Alberta Teachers' Association* and *McLean* it is now settled law that, with the lonely exception of those tribunals and statutory powers of decision to which BC's *Administrative Tribunal Act* applies, reasonableness is the standard of review presumptively applicable to tribunals' interpretation of their enabling or a closely related statute." In light of the changes

to the jurisprudence wrought by *Dunsmuir*, *Alberta Teachers'*, *Doré* and subsequent cases, does the *ATA* no longer make any sense? Drawing on arguments for and against this position in terms of the jurisprudential history and the reasons for codification that we have discussed and examined in class, provide one argument **for** this position and one argument **against** this repeal.

3. A raging debate recently occurred in the federal courts about the standard of review for questions of law involving interpretation of the enabling legislation. The controversy concerns whether or not a reviewing court should adopt a presumption of deference for "Ministerial interpretations" of his or her home statute (which includes both a Minister and also the interpretations provided by lower-ranking statutory delegates). *Alberta Teachers' Association*, *Agraira* and *McLean* all stand for the proposition that deference extends to ANY administrative decision-maker interpreting his or her home statute.

   Two polarized positions on this issue were advanced. Justice Mainville (FCA) argued: "As I indicated [in previous decisions], assuming without clear legislative authority that Parliament intends to defer to the executive for the interpretation of its laws is, in my view, a paradigm shift in the fabric of Canada's constitution." He would therefore not extend deference to ministerial interpretations of the home statute, unless the enabling statute gave clear indications to do so.

   Justice Stratas (FCA) directly disagreed with Justice Mainville saying:

   > "I am reluctant to carve out administrative decisions from the *Alberta Teachers' Association* approach merely because the administrative decision-maker is a Minister ... . For one thing, the *Alberta Teachers' Association* approach aptly handles the breadth of Ministerial decision-making, which comes in all shapes and sizes, and arises in different contexts for different purposes. In addition, Ministerial decision-making power is commonly delegated, as happened here. It would be arbitrary to apply the *Alberta Teachers' Association* approach to decisions of administrative board members appointed by a Minister (or, practically speaking, a group of Ministers in the form of the Governor in Council), but [not to apply the presumption of reasonableness] to decisions of delegates chosen by a Minister."

   Stratas JA's preferred approach was to adopt the presumption of reasonableness, but permit it to be rebutted using the Standard of Review factors.

   You are clerking at the Supreme Court where a case at bar may permit the judges to revisit the jurisprudential baseline laid down in *Alberta Teachers' Association, Agraira* and *McLean* so far as they indicate that Ministerial interpretations of provisions in home statutes benefit from the presumption of deference. Thinking about the two opinions at FCA, and about current administrative law jurisprudence, what would you advise the SCC to do?

END OF EXAMINATION

Appendix 1

Statutory Materials: Parts A

1. *Refugee Protection Division Rules,* SOR/2012-25

INFORMATION AND DOCUMENTS TO BE PROVIDED

Claims for Refugee Protection

Fixing date, time and location of hearing

3. (1) As soon as a claim for refugee protection is referred to the Division, or as soon as possible before it is deemed to be referred, an officer must fix a date, time and location for the claimant to attend a hearing on the claim, within the time limits set out in the Regulations, from the dates, times and locations provided by the Division.

...

Factors

(3) In fixing the date, time and location for the hearing, the officer must consider

(a) the claimant's preference of location; and

(b) counsel's availability, if the claimant has retained counsel at the time of referral and the officer has been informed that counsel will be available to attend a hearing on one of the dates provided by the Division.

Providing information to claimant in writing

(4) The officer must

(a) notify the claimant in writing by way of a notice to appear

(i) of the date, time and location of the hearing of the claim; and

(b) provide to the claimant information in writing

(i) explaining how and when to provide a Basis of Claim Form and other documents to the Division and to the Minister,

(ii) informing the claimant of the importance of obtaining relevant documentary evidence without delay,

(iii) explaining how the hearing will proceed,

(iv) informing the claimant of the obligation to notify the Division and the Minister of the claimant's contact information and any changes to that information,

(v) informing the claimant that they may, at their own expense, be represented by legal or other counsel, and

(vi) informing the claimant that the claim may be declared abandoned without further notice if the claimant fails to provide the completed Basis of Claim Form or fails to appear at the hearing.

...

Providing copies to claimant

(6) The officer must provide to the claimant a copy of any documents or information that the officer has provided to the Division in preparation for the hearing.

...

CHANGING THE DATE OR TIME OF A PROCEEDING

Written application regarding any matter in a hearing, including the procedure to be followed, and time limit

50. (1) Unless these Rules provide otherwise, an application to change the date or time of a hearing must be made in writing, without delay, and must be received by the Division no later than 10 days before the date fixed for the next proceeding.

(2) The Division must not allow a party to make an application orally at a hearing unless the party, with reasonable effort, could not have made a written application before the proceeding.

...

54. (1) Subject to subrule (5), an application to change the date or time of a hearing must be made in accordance with rule 50.

(2) The application must

(a) be made without delay;

(b) be received by the Division no later than three working days before the date fixed for the proceeding, unless the application is made for medical reasons or other emergencies; and

(c) include at least three dates and times, which are no later than 10 working days after the date originally fixed for the proceeding, on which the party is available to start or continue the proceeding.

(3) If it is not possible for the party to make the application in accordance with paragraph (2)(b), the party must appear on the date fixed for the proceeding and make the application orally before the time fixed for the proceeding.

(4) The Division must not allow the application unless there are exceptional circumstances, such as

(a) the change is required to accommodate a vulnerable person; or

(b) an emergency or other development outside the party's control and the party has acted diligently.

(5) If, at the time the officer fixed the hearing date under subrule 3(1), a claimant did not have counsel or was unable to provide the dates when their counsel would be available to attend a hearing, the claimant may make an application to change the date or time of the hearing. Subject to operational limitations, the Division must allow the application if

(a) the claimant retains counsel no later than five working days after the day on which the hearing date was fixed by the officer;

(b) the counsel retained is not available on the date fixed for the hearing;

(c) the application is made in writing;

(d) the application is made without delay and no later than five working days after the day on which the hearing date was fixed by the officer; and

(e) the claimant provides at least three dates and times when counsel is available, which are within the time limits set out in the Regulations for the hearing of the claim.

...

(10) Unless a party receives a decision from the Division allowing the application, the party must appear for the proceeding at the date and time fixed and be ready to start or continue the proceeding.

(11) If an application for a change to the date or time of a proceeding is allowed, the new date fixed by the Division must be no later than 10 working days after the date originally fixed for the proceeding or as soon as possible after that date.

2. *Refugee Protection Division Handbook for Fair and Equitable Decision-making*

Guideline 10 Guideline on Procedures with Respect to Vulnerable Persons Appearing Before the Immigration Refugee Board (IRB)

2.1 For the purposes of this Guideline, vulnerable persons are individuals whose ability to present their cases before the IRB is severely impaired. Such persons may include, but would not be limited to, the mentally ill, minors, the elderly, victims of torture, survivors of genocide and crimes against humanity, and women who have suffered gender-related persecution.

2.1(a) The Presiding Member may, during the course of a hearing, provide all reasonable accommodations to enable vulnerable persons to present their cases, including altering the time, order, and formalities of the hearing.

3. *Federal Courts Act*, RSC 1985, c.F-7

Powers of Federal Court

18.1(3) On an application for judicial review, the Federal Court may

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

Grounds of review

18.1(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

(e) acted, or failed to act, by reason of fraud or perjured evidence; or

(f) acted in any other way that was contrary to law.

Statutory Materials: Parts B

1. *Corrections Act,* S.C. 2002, c. 49

33(2) Without limiting subsection (1), the Governor in Council may make regulations as follows:

(a) for the management, operation, and security of correctional centres;

(b) prescribing the powers and duties of persons employed in or about a correctional centre and the qualifications, powers and duties of probation officers;

(c) for the diet, clothing, maintenance, accommodation, employment and training of inmates;

2. *Correction Act Regulation*, S.C. Reg. 190/2006

Inmate Privileges

2 (1) Subject to subsection (2), the person in charge must ensure that an inmate is given

(a) regular meals of the type ordinarily served to inmates,

(b) access to health care ...

(2) Subsection (1) does not apply if

(a) the person in charge believes on reasonable grounds that one or more of the privileges referred to in subsection (1) cannot be given to the inmate because it may endanger the inmate or another person ...

3. *Corrections Branch Policy Manual*

9.5.1 Dental services

The Corrections Branch provides essential dental services to inmates when there is:

- Evidence of serious disease or injury that is curable or can be substantially alleviated;
- Substantial potential for harm to the inmate if care was delayed or denied.

9.5.2 Management of dental care

1. Dentists are responsible for management of the dental health care program and delivery of services to inmates.

2. They are responsible to the warden and medical director, Corrections Branch for quality of care.

3. The attending dentist, in co-ordination with health care and correctional staff, determines scheduling of inmates for dental care.

9.5.3 Services provided

1. When it is determined that dental care is essential, Corrections Branch provides service at no cost to the inmate.

2. Corrections Branch does not provide accelerated or extensive dental services prior to release for any condition that can be addressed by the inmate after release.

3. Corrections Branch does not provide elective or non-acute dental care, elective oral surgery, and orthodontic or cosmetic services.

4. Non-acute conditions that – in the opinion of the dentist – could become medical problems if left untreated during incarceration, may be addressed on a non-emergency basis.

5. Corrections Branch does not provide prostheses, such as dentures, for pre-existing conditions except when it is medically essential during incarceration. The inmate must demonstrate that the existing dentition is inadequate to consume a prison diet. Inmates who have functioned adequately in that condition prior to incarceration are not provided prostheses.

9.5.4 Dentures or partials

When, in the opinion of a qualified health care professional, it is injurious to the health of an inmate not to receive necessary dentures or partials, and the inmate is on a long-term remand or has a long period remaining on the sentence, they may be purchased:

1. An inmate who has the funds or resources is required to pay from those funds, or obtain funds from their resources to pay, in whole or in part, for the dentures or partials. When the inmate can pay only part of the costs, the remainder is the responsibility of the Corrections Branch.

2. When the inmate is without funds or resources to purchase the dentures or partials, the entire cost is the responsibility of the Corrections Branch.

3. An agreement must be completed and signed prior to the commencement of the dental work or the fabrication of a dental prosthesis to replace missing or extracted teeth. This agreement represents a mutually acceptable financial responsibility between the inmate and the correctional centre regarding identified costs.

4. The Corrections Branch does not assume responsibility for replacing missing or extracted teeth, unless a determination has been made by a qualified health care professional that missing or extracted teeth may be injurious to the well-being or life of the inmate.

5. When the inmate's dentures or partials are lost or damaged, through no fault of the inmate, and in the absence of negligence or culpability of the inmate or other inmates, the entire cost of replacement is the responsibility of the Corrections Branch.

6. Inmates may purchase dentures or partials at their own expense if the purchase is approved by the health care professional.

Statutory Materials: Parts C

1. *Administrative Tribunals Act*, SBC 2004, c.45

Standard of review if tribunal's enabling Act has a privative clause

58(1) If the tribunal's enabling Act contains a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.

(2) In a judicial review proceeding relating to expert tribunals under subsection (1)

(a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,

(b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and

(c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.

(3) For the purposes of subsection (2)(a), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,
(b) is exercised for an improper purpose,
(c) is based entirely or predominantly on irrelevant factors, or
(d) fails to take statutory requirements into account.

Standard of review if tribunal's enabling Act has no privative clause

59(1) In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

(2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3) A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,
(b) is exercised for an improper purpose,
(c) is based entirely or predominantly on irrelevant factors, or
(d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.