

BREAKING CASE LAW

*Dunsmuir v. New
Brunswick*, [2008] 1
SCR190, 2008 SCC 9

*Chak v. Alberta
(Human Rights
Commission)*,
2017 ABCA 88

Suite 2250
10104 – 103 Avenue
Edmonton, Alberta
T5J 0H8

Tel 780.448.9275
Fax 780.423.0163
shoresjardine.com



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Public Law not Applicable
to Employment Contract

Dunsmuir v. New Brunswick, [2008] 1 SCR190, 2008 SCC 9
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The Supreme Court of Canada decision in *Dunsmuir v. New Brunswick* is well known as one of the leading cases on the standard of review. However, it is not as well known for the actual matter in dispute. A lawyer working for the Provincial Government in New Brunswick was dismissed and he challenged the dismissal claiming he had a right to seek judicial review of his dismissal. He was not suing for damages for wrongful dismissal. Rather, he wanted to get his job back by seeking to have his dismissal overturned on the basis of procedural unfairness. The Supreme Court of Canada stated that the rights of the employee are governed by private law as set out in his contract of employment.

The Alberta Court of Appeal dealt with a similar case in *Chak v. Alberta (Human Rights Commission)*. The applicant had been employed as a lawyer with the Human Rights Commission and was terminated on a without cause basis and paid severance. The lawyer applied for judicial review claiming that his dismissal was procedurally unfair. The Human Rights Commission successfully applied for summary dismissal of the application for judicial review. The lawyer appealed to the Court of Appeal and the appeal was dismissed. The Court of Appeal confirmed the principle originally set out in *Dunsmuir* that a person employed by a public agency or board under an employment contract will have his employment relationship, including his termination, governed by the employment contract. Even though the lawyer's employment and subsequent termination was done with the approval of the Deputy Minister and Associate Deputy Minister of Justice, the lawyer was not entitled to seek judicial review of his termination. He had a right to sue for wrongful dismissal, but no right to ask the Court to overturn the termination of his employment.