Some thoughts on Essential Concepts
for Re-thinking Standards of Review in Administrative Law

The Supreme Court of Canada has granted leave to appeal in three cases, unusually giving reasons indicating that it will use these cases to re-think standards of review in administrative law.[1]

> The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-471-16, 2017 FCA 249, dated December 18, 2017, is granted with costs in the cause.
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> The appeal will be heard with *Bell Canada, et al. v. Attorney General of Canada* (37896), and with *Minister of Citizenship and Immigration v. Alexander Vavilov* (37748).
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> The Court is of the view that these appeals provide an opportunity to consider the nature and scope of judicial review of administrative action, as addressed in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9, and subsequent cases. To that end, the appellants and respondent are invited to address the question of standard of review in their written and oral submissions on the appeal, and shall be allowed to file and serve a factum on appeal of at most 45 pages.

The Court has tentatively scheduled a three day hearing in December 2018.

Previous landmarks in the evolution of standards of review

The Supreme Court of Canada has reviewed the standard of review about once every ten years:

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1. *National Football League, et al. v. Attorney General of Canada*, SCC case number 37897, 10 May 2018. See https://scc-csc.lexum.com/scc-csc/scc-l-csc-a/en/item/17084/index.do. Note that all three of these cases come from the Federal Court of Appeal; none of them comes from a provincial court of appeal (and none of them comes from British Columbia which has largely legislated the standard of review). And note that the "standard of review" is not synonymous with "the nature and scope of judicial review of administrative action" is not synonymous with standard of review".

- **1970** ***Metropolitan Life Insurance Company***: [2] Chief Justice Cartwright for the unanimous Court adopted the House of Lords' analysis in *Anisminic*[3] that a wide category of possible errors were jurisdictional in nature and could be corrected by the reviewing court. The characterization of the error as "jurisdictional" was essential to enabling the Court to avoid the effect of the privative clause in the legislation.

- **1979** ***New Brunswick Liquor***:[4] Justice Dickson for the unanimous Court said:

> With respect, I do not think that the language of "preliminary or collateral matter" assists in the inquiry into the Board's jurisdiction. One can, I suppose, in most circumstances subdivide the matter before an administrative tribunal into a series of tasks or questions and, without too much difficulty, characterize one of the questions as a "preliminary or collateral matter".... Underlying this sort of language is, however, another and, in my opinion, a preferable approach to jurisdictional problems, namely, that jurisdiction is typically to be determined at the outset of the inquiry.
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> The question of what is and is not jurisdictional is often very difficult to determine. The courts, in my view, should not be alert to brand as jurisdictional, and therefore subject to broader curial review, that which may be doubtfully so.
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> [Emphasis added.]

As a corollary, this case also developed the concept that the courts could review a decision within jurisdiction which was patently unreasonable.

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2. [1970] S.C.R. 425.

3. *Anisminic Ltd. v. Foreign Compensation Commission*, [1969] 2 W.L.R. 163 (HL).

4. *Canadian Union of Public Employees v. New Brunswick Liquor Corporation*, [1979] 2 S.C.R. 227 at 233. For a contrast, see *Bell v. Ontario Human Rights Commission*, [1971] S.C.R. 756 involving a preliminary jurisdictional issue (whether a rental property was a "self-contained domestic establishment".

- **1988 *Bibeault***:[5] Justice Beetz for the unanimous Court developed the "pragmatic and functional approach" for determining the intention of the Legislature about whether a particular matter/issue/question was to be within the jurisdiction of the statutory delegate to determine or a jurisdictional limitation on what the statutory delegate could definitively determine:

> The concept of the preliminary or collateral question diverts the courts from the real problem of judicial review: it substitutes the question of "Is this a preliminary or collateral question to the exercise of the tribunal's power?" for the only question which should be asked, "Did the legislator intend the question to be within the jurisdiction conferred on the tribunal?"
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> [T]he first step in the analysis ... involves determining the jurisdiction of the administrative tribunal. At this stage, the Court examines not only the wording of the enactment conferring jurisdiction on the administrative tribunal, the reason for its existence, the area of expertise of its members and the nature of the problem before the tribunal. At this initial stage a pragmatic or functional analysis is just as suited to a case ... where a patently unreasonable error is alleged on a question within the jurisdiction of the tribunal, as in a case where simple error is alleged regarding a provision limiting jurisdiction, the first step involves determining the tribunal's jurisdiction.
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> This development seems to me to offer three advantages. First, it focuses the Court's inquiry directly on the intent of the legislator rather than on interpretation of an isolated provision.... Second, a pragmatic and functional analysis is better suited to the concept of jurisdiction and the consequences that flow from a grant of powers.... The true problem of judicial review is to discover whether the legislator intended the tribunal's decision on those matters to be binding on the parties to the dispute, subject to the right of appeal if any.... The third and perhaps most important of the reasons why a pragmatic or functional analysis seems more advantageous is that it puts renewed emphasis on the superintending and reforming function of the superior courts. When an administrative tribunal exceeds its jurisdiction, the illegality of its act is as serious as if it had acted in bad faith or ignored the rules of natural justice. The role of the superior courts in maintaining the rule of law is so important that it is given constitutional protection: *Crevier v. Attorney General of Quebec*, [1981] 2 S.C.R. 220. Yet, the importance of judicial review implies that it should not be exercised unnecessarily, lest this extraordinary remedy lose its

5. *U.E.S. Local 298 v. Bibeault,* [1988] 2 S.C.R. 1048 at 1087*ff.*

meaning.

- **1998 *Pushpanathan***:[6] Justice Bastarache for the majority semi-codified the pragmatic and functional approach to "standards of review analysis" into four factors:

    1. Whether there is a privative clause which would speak in favour of a more deferential standard (although absence of a privative clause does not necessarily invoke the correctness standard).

    2. Whether the statutory delegate has greater expertise on the matter in question.

    3. The purpose of the Act as a whole, and the provision at issue in particular.

    4. The "nature of the problem"—whether a question of law or fact.

  The minority[7] dissented because the issue was a question of law; the Board could not be said to have any particular expertise in legal matters; and therefore the issue was whether the Board's decision was correct.

- **2008 *Dunsmuir***:[8] Justices Bastarache and LeBel writing for the majority:

    (a) Merged the "patently unreasonable" and "reasonableness *simpliciter*" standards of review into a new "reasonableness" standard which is

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6. *Pushpanathan v. Canada (M.C.I.)*, [1998] 1 S.C.R. 982. The majority consisted of Justices L'Heureux-Dubé, Gonthier, McLachlin and Bastarache.

7. Justices Cory and Major.

8. 2008 SCC 9, [2008] 1 S.C.R. 190. The majority consisted of Chief Justice McLachlin and Justices Bastarache, LeBel, Fish and Abella. Justice Binnie wrote separate concurring reasons. Justices Deschamps, Charron and Rothstein dissented.

concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process and whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

(b) While reasonableness may frequently be the applicable standard of review,[9] the correctness standard of review will apply in four categories of cases (and possibly a few other circumstances):

1. Questions regarding the division of powers between Parliament and the provincial legislatures, and some other constitutional questions.

2. True questions of jurisdiction or *vires* in the narrow sense of whether the tribunal had the authority to explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter (as opposed to the extensive catalogue of jurisdictional errors referred to in *Metropolitan Insurance*).

3. Where the question at issue is one of general law that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise.

4. Questions regarding the jurisdictional lines between two or more competing specialized tribunals.

(c) A standard of review analysis is not required in every case; existing jurisprudence may have already identified the appropriate standard of

9. In the subsequent decision in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, the majority of the Court held that there was a rebuttable presumption that reasonableness is the applicable standard of review. In practice, it has become quite difficult to rebut this presumption.

review.[10]

Importantly, *Dunsmuir* makes it clear that not all questions of law engage the correctness standard of review.

Related issues

In addition to the linear development described above, there have been important cases about a wide range of standard of review issues, including: whether the same analysis and deference applies to statutory rights of appeal;[11] determining the *vires* of delegated legislation[12] or discretionary or legislative decisions which are not adjudicative in nature;[13] whether the analysis (and the possibility of different standards of review) is to be applied to different issues or only to the statutory delegate's decision as a whole;[14] whether the absence of adequate reasons is a stand-alone ground of review,[15] and whether the court can infer

10. But see the subsequent decision in Agraira v. Canada (Public Safety and Emergency Preparedness), 2013 SCC 36, [2013] 2 S.C.R. 559 and *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2013 SCC 47, [2016] 2 S.C.R. 293 where the relevant precedent were held to be inconsistent with recent developments in common law principles of judicial review.

11. For example: *Q. v. College of Physicians and Surgeons (British Columbia)*, 2003 SCC 19, [2003] 1 S.C.R. 226; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557; *Canada (Director of Investigation & Research) v. Southam Inc.*, [1997] 1 S.C.R. 748; *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16.

12. *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810; *Green v. Law Society of Manitoba*, 2017 SCC 20.

13. *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40; *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86, [2002] 4 S.C.R. 710.

14. *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650, 2007 SCC 15.

15. *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708.

reasons or consider reasons which the statutory delegate might have given;[16] whether standards of review analysis applies to procedural fairness issues;[17] whether administrative appellate bodies are to apply this type of standards of review analysis;[18] the realization that determining that reasonableness is the applicable standard of review does not automatically mean that the impugned decision is reasonable;[19] how "reasonableness" is to be determined and applied in particular cases;[20] whether there is a spectrum of "reasonableness";[21] whether a deferential standard of review can reconcile differing lines of (reasonable) decisions;[22] how the principles of statutory interpretation relate to the determination of the applicable standard of review, and in particular to the application of the reasonableness standard;[23] whether reasonableness could be the only standard of review;[24] and, more fundamentally, how

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16. *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, [2011] 3 S.C.R. 654, 2011 SCC 61; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, [2013] 2 S.C.R. 559, 2013 SCC 36.

17. For example, compare *Moreau-Bérubé v. New Brunswick*, 2002 SCC 11 ("fair") with *Mission Institution v. Khela*, 2014 SCC 24 at paras. 79, 80 and 89 ("correctness").

18. For examples, see *Newton v. Criminal Trial Lawyers' Association*, 2010 ABCA 399; *Lum v. Council of the Alberta Dental Association and College, Review Board*, 2015 ABQB 12.

19. Any more than *NB Liquor* meant that patently unreasonable was the test for all grounds of review, or that errors in acquiring or exercising jurisdiction did not exist: see Justice Beetz in *Bibeault*, [1988] 2 S.C.R. 1048 at 1085.

20. Compare the majority and minority decisions in the Supreme Court of Canada (and the decisions in the Ontario Court of Appeal and Divisional Court) in *Groia v. Law Society of Upper Canada*, 2018 SCC 27.

21. *Ryan v. Law Society (New Brunswick)*, 2003 SCC 20, [2003] 1 S.C.R. 247.

22. *Domtar Inc. v. Québec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 S.C.R. 756; *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770.

23. *Canada (Canadian Human Rights Commission) v. Canada*, 2011 SCC 53, [2011] 3 S.C.R. 471 ("*Mowat*"); *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22.

24. Suggested by Justice Abella in *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770.

deference relates to the Rule of Law.[25]

Justice David Stratas from the Federal Court of Appeal has accurately described the whole area of judicial review as a "never ending construction site".[26] That may be because the issue is not simple, even though there is a human tendency to yearn for simplicity. To paraphrase Justice Beetz from *Bibeault*:[27]

> The chief problem in a case of judicial review is determining the jurisdiction [or reasonableness of the decision] of the tribunal whose decision is impugned. The courts, including this Court, have often remarked on the difficulty of the task. I doubt whether it is possible to state a simple and precise rule for identifying a question of jurisdiction [or defining what is reasonable], given the fluidity of the concept of jurisdiction [and reasonableness] and the many ways in which [jurisdiction and powers are] conferred on administrative tribunals....
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> Considering the challenge posed by statutory interpretation even in the most favourable circumstances, the great number of rules of interpretation and their inconsistencies, it is hardly surprising that the courts have recognized how difficult it is to determine the jurisdiction [or reasonableness of a decision] of an administrative tribunal....
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> [Parenthetical notes added.]

Now, ten years after *Dunsmuir*, the Supreme Court has decided once again to revisit the nature and scope of judicial review, including standards of review. This may be the result of the suggestion by Justice Abella in *Wilson* that "reasonableness" could become the universal standard of review. Whatever the outcome of its reconsideration of the nature and

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25. See Justice Cromwell's reasons in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, [2011] 3 S.C.R. 654, 2011 SCC 61; and see the dissents in *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22; and the two recent *Trinity Western* decisions, 2018 SCC 33 and 34.

26. The Canadian Law of Judicial Review: A Plea for Doctrinal Coherence and Consistency, February 27, 2016, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2733751.

27. [1988] 2 S.C.R. 1048 at 1087*ff*.

scope of judicial review, the Supreme Court will need to come to a common understanding about the essential concepts which underlie administrative law, which has often been lacking in the majority and minority judgments in its recent decisions.

Essential concepts in reviewing the nature and scope of judicial review

The following are some of the essential concepts inherent in the nature and scope of judicial review of administrative action?

1. What is the purpose of judicial review?

The purpose of judicial review is to ensure that decisions and actions comply with the intention of the Legislature. Legislative intent is the "polar star" of all forms of judicial review.[28] To some extent, therefore, all judicial review is an exercise in statutory interpretation about the jurisdiction or authority of the statutory delegate: Did the Legislature intend the statutory delegate to deal definitively with the particular matter in dispute, or did it intend some things to be "jurisdictional givens"?[29]

There is a tension on the one hand between honouring the Rule of Law,[30] and on the other hand giving credence to the statutory delegates upon whom the democratically elected Legislature has conferred authority to make decisions or take actions.

The Supreme Court needs to clearly articulate how the re-tooled standards of review analysis

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28. Justice Binnie in *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29 at para. 149.

29. See Justice Cromwell's discussion of this point in *Alberta Teachers' Association v. Alberta (Information and Privacy Commissioner*), 2011 SCC 61.

30. Including constitutional limitations on the ability of the legislature to restrict or abolish judicial review: *Crevier v. Quebec (A.G.)*, [1981] 2 S.C.R. 220.

will resolve this tension and achieve the fundamental purpose of judicial review.

2. Recognition of the sources of the *courts'* authority to review decisions or actions by statutory delegates

The re-tooled analysis will need recognize that the *courts'* own authority to perform judicial review does not arise in a vacuum.

There are two sources of the *courts'* authority to review decisions or actions by statutory delegates:

- On the one hand, the phrase "judicial review" historically referred to the superior courts' inherent jurisdiction to use the prerogative remedies[31] to supervise the decisions or actions by statutory delegates. Justice Slatter[32] has described this as "external judicial review" because there is no provision about judicial review in the delegates' statutory framework. With one exception,[33] the availability of all of the prerogative remedies requires some defect in statutory delegate's jurisdiction to do what it did. While recognizing the courts' current tendency to avoid referring to the concept of a statutory delegate's "jurisdiction", there must nevertheless be a recognition that the courts' authority to issue prerogative remedies necessarily entails determining whether the statutory delegates did or did not do what the Legislature intended. This is the conceptual basis for the courts' ability to set aside decisions that are unreasonable,[34] breach procedural fairness,

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31. And later, declarations.

32. In *Edmonton (City) v. Edmonton East (Capilano)*, 2015 ABCA 85.

33. An error of law on the face of the record.

34. In the *Wednesbury* sense of unreasonable.

are protected by a privative clause, or contain some other defect justifying the issuance of a prerogative remedy.

- On the other hand, some legislative schemes provide for an appeal to the courts from decisions or actions of statutory delegates. Justice Slatter has referred to this as "internal judicial review" because the source of the courts' authority to review decisions or actions by the statutory delegates is included in (ie. internal to) the legislative scheme.[35] In such a case, the grounds for appeal and the extent of the courts' powers on the appeal are determined (or limited) by the specific statutory provision which incorporated the Legislature's intention about what the court is to do. Without such a statutory provision, no appeal lies to the courts from a decision or action by a statutory delegate.

Since *Dr. Q.*, the Supreme Court has confusingly used the phrase "judicial review" to refer to both types of review by the courts, and has applied the same standard of review analysis to both. Doing this, however, obscures the fundamental question of where does the court in each case get authority to supervise the impugned decision or action by the statutory delegate. It also diminishes (a) the intention of the Legislature to give the courts the final say when it has provided statutory rights of appeal, (b) the opportunity for the court to bring uniformity and consistency to administrative decisions made by differently populated panels, and (c) the possibility of the court using its appellate power to make the final decision and end the

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35. The legislation may also provide for appeals to an administrative body, which is another form of "internal appeal". What the administrative appellate body can do is determined by the terms of the specific legislative provision creating the appeal.

    Perhaps anomalously, some statutes provide for "judicial review" (as opposed to an appeal). The usual purpose for such a legislative provision is to shorten the time period within which an application for judicial review can be made (for example, reviewing decisions by labour arbitrators or information and privacy commissioners).

litigation (as opposed to remitting the matter back to the statutory delegate which made the original decision).

3. The distinction between *grounds* for review and *standards* of review

There also needs to be a recognition that there is a distinction between the grounds for judicial review (the types of errors that would cause the court to intervene) and the applicable standard of review (the intensity with which the court will examine the alleged error).[36]

Re-tooling standards of review analysis is not synonymous with re-thinking the nature and scope of judicial review of administrative action.

4. What is the justification for deference?

A re-tooled standards of review analysis must articulate why and when should the courts defer to a statutory delegate's decision or action (which is the essence of applying the reasonableness standard of review), as opposed to substituting their own decision (which is the essence of the correctness standard of review)? Doing this will require a conceptual justification for deference (absent a specific statutory provision prescribing deference)[37]

One can easily justify deference where the initial decision-maker is better placed or better qualified to make the impugned decision—such as findings of fact or technical matters

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36. One particular area of confusion is "unreasonable" in the *Wednesbury* sense as a ground for review and "unreasonable" under *Dunsmuir* as the standard for reviewing a whole host of alleged grounds.

37. Such as a privative clause, or a statutory provision prescribing a deferential standard of review (for example, in certain provisions in the B.C. *Administrative Tribunals Act*). Indeed, how will the Court's re-worked standards of review relate to statutory provisions prescribing the standard of review?

involving expertise[38] which the court does not have. One can also justify deference to decisions involving the exercise of discretion.[39]

However, much more difficult questions arise when it is suggested that the court should defer on questions of law. Why? Why does post-*Dunsmuir* jurisprudence restrict the courts to correcting only those errors of law that are general in nature, central to the administration of the judicial system, and outside the expertise of the statutory delegate? Why is Canadian law different from the law of England in this respect? Why is there a presumption that a deferential standard of review applies to a statutory delegate's interpretation of its home statute[40] regardless of the nature of the provision in question (recalling Justice Cromwell's observation that limitations are very often contained in the home statute)? Why should the court defer on a question of law where there is a specific statutory provision allowing for appeals on questions of law?

In addition, there needs to be a justification for the courts to apply a more deferential standard of review on statutory appeals in the administrative law context compared to the standard applicable to questions of law in normal litigation (*Housen v. Nicholaisen*).[41]

Any re-thinking of standards of review will necessarily have to grapple with the justification for a deferential standard of review, and particularly when applied to questions of law.

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38. As opposed to experience. There needs to be some basis for asserting that a statutory delegate has expertise—just assuming or saying so is not sufficient.

39. And all the more when the issue is policy-laden or the decision or action is taken by a politically-accountable person like a Minister or Cabinet.

40. *Alberta Teachers Association v. Alberta (Information & Privacy Commissioner)*, 2011 SCC 61.

41. 2002 SCC 33, [2002] SCR 235.

5. What will be the relationship between the principles of statutory interpretation and any new deferential standard of review?

Assuming the result of the Supreme Court's reconsideration will include at least one deferential standard of review (such as reasonableness), there needs to be a rationalization of the relationship between that standard of review and the principles of statutory interpretation.

Applying the principles of statutory interpretation results in the correct interpretation of the legislative provision in question (as determined by the highest court to deal with the issue). This causes no difficulty if a particular alleged error of law engages the correctness standard of review. However, if the particular error engages the reasonableness standard of review, applying the principles of statutory interpretation to determine whether the statutory delegate's interpretation is "reasonable" really entails a determination that the interpretation is "correct"[42]—correctness in the guise of reasonableness. How will the re-tooled standards of review analysis resolve this dissonance?

6. What sorts of decisions will the re-worked standard apply to?

Will there be one overarching standard, or different standards applicable to different types of issues?

Adjudicative ones? Constitutional ones (division of powers, *Charter*, constitution similar

42. *Wilson v. Atomic Energy of Canada*, 2016 SCC 29.

in principle to that of the UK)? Procedural fairness?[43] Exercise of power to make delegated legislation?[44] Exercises of discretion?

7. How will one know if the standard is met?

Whatever the outcome of re-thinking standards of review analysis, the court needs to provide some explanation of why a particular standard is or isn't met in any particular case. For example, if reasonableness is the applicable standard of review in a particular case, what makes the impugned decision reasonable or unreasonable?[45] Recent jurisprudence is riddled with many 5:4 or 4:3 decisions reaching different conclusions about whether the impugned decision was reasonable. This makes it hard to predict outcome, which is one of the purposes of the law—so that future litigation can be avoided.

8. Is it possible to describe a standard of review which can be easily applied?

Given the wide range of different types of decisions and actions by very different types of statutory delegates, is it possible to find a formula of words that will be so predictive that it will operate like a mathematical formula, or be capable of being applied by artificial intelligence? Or is the whole nature of the enterprise intensely contextual requiring the application of fundamental concepts, principles and guidelines, requiring judgment?

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43. The standard for determining whether a particular procedure was fair must be "fairness", not correctness or reasonableness: see *Moreau-Bérubé c. Nouveau-Brunswick*, [2002] 1 S.C.R. 249; *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29 at para. 103; *Khosa*, 2009 SCC12 at para. 43; *Waterman v. Waterman*, 2014 NSCA 110 at para. 23.

44. Compare the different approaches in *Calgary Taxi, Catalyst, Katz,* and *Sobeys.*

45. Will there be a *range* of reasonableness (notwithstanding *Ryan v. Law Society (New Brunswick)*, 2003 SCC 20, [2003] 1 S.C.R. 247)?

While the Supreme Court's revisitation can only apply to what the courts do, is there also need for additional legislative action? Would a statutory code like the B.C. *Administrative Tribunals Act* make matters easier (or at least clearer)? Do Legislatures need to more consistently enact appeal provisions in their legislative schemes, and clearly state what they expect the courts (and internal administrative appellate bodies) to do on such appeals? Would it be helpful to create one or more generalized administrative appellate tribunal like Quebec, England and Australia have done,[46] which might remove a considerable amount of the current judicial review work load from the courts?

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46. Alberta has recently amended its *Labour Relations Code* to provide for initial review of labour arbitration decisions by the Labour Relations Board rather than judicial review in the Court of Queen's Bench (with a further right of appeal to the Court of Appeal).