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▼HAD-1▼ **Objects of administrative law.** Generally speaking, administrative law is a subset of public law, and its objective is to regulate the relationships between the government and the governed – the population. The responsibility of administrative law is to control the governmental powers and it represents the body of general principles which shape the exercise of these powers by public authorities. Given that any statutory authority or discretion must be delegated by legislation and that Parliament and the legislatures are sovereign within their jurisdictional spheres, it is the duty of administrative law to ensure that agencies and decision-makers stay within the boundaries of their competence. One of the main objects of administrative law is to protect individual rights and to provide a remedy for decisions which are outside the competence of the decision-maker, or an abuse of the legislative scheme. However, given the complexity of governmental action, administrative law must also ensure effective performance of tasks and duties assigned by statute to public bodies. Administrative law must then allow certain flexibility but, in turn, must also ensure governmental accountability in the decision-making process.

Delegation of authority. The scope of administrative law includes not only governmental activity, but the structure of government. Rule-making is not only the prerogative of Parliament and the legislatures: while any delegation of rule-making or regulatory authority must originate in Parliament or a legislature, the regulation-making itself may be sub-delegated to another body. Such bodies include the Executive or the Governor-in-Council, a municipal body, or non-elected bodies such as a federal board, tribunal or commission. Any delegation of authority, however, is subject to legal limitations provided by statute. Any decision-maker only has the jurisdiction to make decisions within the four corners of his or her delegated authority. First, a decision-maker will have to interpret exactly what its authority is, and then undertake the difficult task of determining whether the conditions precedent to the decision-making process are present. If they are, then the decision-maker will be allowed to make a determination. Consequently, the scope of administrative law will be, in such cases, to ensure that the decision-maker correctly interpreted its jurisdiction (the legal bounds of the competence to decide).

Protection against abuse of power. Administrative law is concerned with the abuse of power. Even if the decision-maker is rightfully within its competence in considering an issue, there are a variety of actions that may be taken which may be considered to be abusive. There is no such thing as an unfettered or absolute administrative power. In this regard, administrative law functions as a shield protecting citizens, and acts to constrain governmental powers within their legal bounds. For example, it may be that a negative decision was taken without following the basic rules of natural justice or procedural fairness. Principles of administrative law may, depending on the nature of the decision and the statutory power involved, quash the decision and send the matter back to the public authority to be reconsidered.

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(1) General

▼HAD-2▼ **Meaning of jurisdiction.** Jurisdiction is a "term of art" which has been both confusing and elusive. Jurisdiction simply means the authority to embark into an inquiry and make an order. Essentially, all statutory grants of authority may be expressed in the following manner: if "X" may be established, then the decision-maker may or shall do "Y". "X" may consist of a number of different elements, factual, legal and discretionary.[1] Hence, a court can intervene if a decision-maker has improperly interpreted the scope of its jurisdiction and commenced a specific activity which is outside its competence. If, for any reason, a decision-maker was to embark on a specific inquiry for which it has no authority, a court would quash the decision, as it was *ultra vires* its jurisdiction. The history of administrative law demonstrates that courts have often interfered with this type of decision on the basis of correctness, a concept known to most jurists today.

Losing jurisdiction. On the other hand, the term jurisdiction has also been interpreted in a much wider sense. The definition above excludes factual errors, breaches of natural fairness, the consideration of irrelevant evidence or the reaching of an unreasonable decision from the realm of "jurisdictional errors". Throughout history, there have been many judicial dilemmas on how to treat this problem. The Supreme Court of Canada has now resolved this dilemma by indicating that jurisdiction should be used in the narrow sense of whether or not the tribunal had the authority to make the relevant inquiry. Thus, true jurisdiction questions will only arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter.[2] This approach has had a huge impact in that, since *Dunsmuir*, the Supreme Court of Canada has not identified a single question of true jurisdiction.[3]

Preliminary or collateral question. The result of this evolution was the creation of a concept: the "preliminary or collateral question". This test was used to determine whether the decision-maker properly interpreted its discretion in the "narrow" sense. The question is "preliminary" because the decision-maker may not even start the substantive inquiry before it has properly decided this matter. If the decision-maker correctly[4] addresses the preliminary or collateral question, it may then consider the substance of the inquiry.

Other jurisdictional errors. The other errors that could make any decision-maker lose its jurisdiction (*i.e.*, acting in bad faith, basing the decision on extraneous matters, failing to take relevant factors into account, breaching the provisions of natural justice) are related to both the "X's" and the "may/shall do Y" in the above-mentioned formula. Since the decision-maker has the authority to consider the issue, but makes an error in its weighing of the evidence, a court should be able to intervene, but should be much more deferential in doing so. The rationale for allowing the intervention of the courts is that, through statutory interpretation, courts determine that it could not have been the intention of Parliament to have the jurisdiction exercised in that manner.

Deference to public bodies. In reviewing the jurisdiction, or in answering the preliminary or collateral question, a reviewing court deals with basic statutory interpretation, a legal concept. The application of jurisdiction, by the delegated authority, is merely an exercise of construing the statutory language of the provision and applying it to the facts. On the other hand, when reviewing the rationality or the weighing of various factors, a reviewing court is tasked with the review of

factual and substantive considerations – a much more difficult endeavour. However, while courts always deferred to substantive decisions by decision-makers within their jurisdictions, it took much longer for courts to do the same with regard to the preliminary or collateral question. Because of the development of the concept of government, Parliament has delegated the jurisdiction to adjudicate and, to a certain extent, regulate specific and highly technical fields. Since the public bodies to which these tasks were delegated have more expertise in the field than courts, courts were faced with situations where even in the interpretation of the enabling statute, the decision-maker had more expertise than the courts. The difficulty in the application of the "preliminary or collateral question", given the often highly complex and technical meaning of jurisdiction-conferring provisions, has led courts to abandon this phase of the judicial review. The preliminary or collateral question has now been abandoned.[5]

Notes

1. P.P. Craig, *Principles of Administrative Law*, 5th ed. (London: Thomson, Sweet & Maxwell) at 475.
2. *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 at para. 59, [2008] 1 S.C.R. 190 (S.C.C.).
3. *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Assn.*, [2011] S.C.J. No. 61 at paras. 33-34, [2011] 3 S.C.R. 654 (S.C.C.).
4. With the advent of the standard of review or pragmatic and functional analysis, the standard of review of this decision may also be reasonableness: *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 at para. 59, [2008] 1 S.C.R. 190 (S.C.C.); *Association des courtiers et agents immobiliers du Québec v. Proprio Direct Inc.*, [2008] S.C.J. No. 32, 2008 SCC 32 (S.C.C.).
5. *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, [2012] S.C.J. No. 10 at para. 34, [2012] 1 S.C.R. 364 (S.C.C.).

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(2) *Ultra Vires*

▼HAD-3▼ **Acting outside jurisdiction.** The principle that a public authority may not act outside its powers (or act *ultra vires*) might appropriately be considered as the focal principle of administrative law.[1] Statutory bodies to which specific jurisdictions are delegated may only deal with matters over which they have the authority, and may not abuse that authority. They must always demonstrate that their actions are within the four corners of their jurisdiction and fall squarely within the boundaries set by legislation. If a court determines that the public body or decision-maker acted outside the powers allocated to it, its actions will be declared to be void because they are ultra vires. If a public authority makes an order for which it has no authority, this order will be illegal and of no use. Since the decision has no legal basis on which to stand, it is a nullity. This conclusion applies to both types of jurisdictional errors discussed in ▼HAD-2▼: whether the decision-maker never had the authority to even inquire on the issue, or if the decision-maker subsequently lost jurisdiction following a manifest error.

Meaning of doctrine. The doctrine of *ultra vires* has also been given a very wide meaning. Courts have extended the meaning to limit the powers of Parliament. Given that Parliament is sovereign, it may delegate any decision to a public body. Since courts may not interfere with actions that are within the competence of the decision-maker as authorized by Parliament, courts have had to resort to implied limitations to the delegated authority. The doctrine of *ultra vires* has permitted courts to intervene in errors within the jurisdiction of the decision-maker, as described above. By interpreting an implicit duty of fairness, for example, into the decision-making process, courts have been able, through the use of the doctrine, to strike abusive decisions when they were, at first glance, legal. Because courts can stretch the meaning of the doctrine to mean almost anything, by finding limitations in Parliament's grant of jurisdiction, the doctrine has become somewhat artificial in its application.

Note

1. H.W.R. Wade & C.F. Forsyth, *Administrative Law*, 9th ed. (Oxford: Oxford University Press, 2004) at 35; see *Boddington v. British Transport Police*, [1999] 2 A.C. 143 at 171, *per* Lord Steyn (H.L.).

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3. Procedural Rights

▼HAD-4▼ **Procedural fairness and natural justice.** "Procedural fairness" and "natural justice" are procedural rights which courts have held must be met before it can be said that a statutory decision-maker has acted fairly and thus *intra vires*. The two terms evolved over time as gradations on a continuum determined by the type of decision, and its impact on individuals. Originally, principles of natural justice applied only to judicial or quasi-judicial decisions, and they did not apply when the decision was administrative in nature. Today, administrative law has departed from the old categories and it is no longer necessary to differentiate between the types of decisions. Over time, that distinction was eliminated in favour of an assessment on the impact of the decision on individuals. A substantial impact required that the procedure conform with "natural justice" (and higher procedural standards), while those having a lesser impact are said to attract "fairness" (and a lesser standard).

Scope. Both concepts attract the same type of rights, the difference between the two being found in the degree of protection to which individual procedural rights may apply. It is important to note that, on the whole, natural justice and fairness refer to *procedures*. The principles of natural justice and fairness apply to every person exercising a statutory power to make a decision which affects the rights, privileges or interests of an individual. However, legislative powers (powers to make regulations or policy guidelines or rules), are treated somewhat differently in that, generally, the duty of fairness does not apply.[1]

Applicable procedure. Most administrative tribunals are required to follow some basic rules of procedure, whether by statute or common law. However, there is no set procedure or code applying to all administrative decision-makers. The general rule is that when the decision-maker's enabling statute does not relieve it from procedural duties and where no written rules of procedure exist in the statute or regulations, a tribunal may choose the procedure best suited to the task at hand, provided that all parties are treated fairly.[2] Nevertheless, it is desirable that the tribunal's procedure be consistent from case to case.

Factors in determining whether duty of fairness applies. The Supreme Court of Canada has set out certain general principles for determining whether circumstances warrant a duty of fairness. Specifically, the Court has stated that there is, "as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual".[3] Subsequently, the Court held that the existence of a general duty to act fairly will depend on the consideration of three factors:

1. The nature of the decision to be made by the administrative body;
2. The relationship existing between that body and the individual; and
3. The effect of that decision on the individual's rights.[4]

Additional factors. In another case, the Supreme Court reinforced the notion that the duty of procedural fairness is flexible and variable and will depend on an appreciation of the context of the particular statute and the rights affected. The Court enumerated the following factors relevant to determining the content of the duty of fairness:

1. The nature of the decision being made and process followed in making it;
2. The nature of the statutory scheme and the terms of the statute pursuant to which the body operates. Greater procedural protections, for example, will be required when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted;

3. The importance of the decision to the individual or individuals affected;
4. The legitimate expectations of the person challenging the decision. If the claimant has a legitimate expectation that a certain procedure will be followed, this procedure will be required by the duty of fairness;
5. The choices of procedure made by the Agency itself.[5]

Other decisions have provided additional elements to consider, but the requirements of the duty of fairness are determined by the particular circumstances in each case. The overarching requirement is fairness, and this central notion of the just exercise of power should not be diluted or obscured by lists that were developed to be helpful, but not exhaustive.[6]

Natural justice. The common law principle of natural justice includes two important elements:

1. The right to be heard before a decision is made affecting a person's interest; and
2. The right to an impartial decision-maker.

The actual content of each of these rights depends on the nature of the decision and the context in which it is made — *i.e.*, "the duty of fairness recognizes that meaningful participation can occur in different ways in different situations".[7] In other words, the duty of procedural fairness is not a fixed standard in all cases.[8]

Notes

1. See *Martineau v. Matsqui Institution*, [1979] S.C.J. No. 121, [1980] 1 S.C.R. 602 (S.C.C.); *Reference Re Canada Assistance Plan* (B.C.), [1991] S.C.J. No. 60, [1991] 2 S.C.R. 525 (S.C.C.).
2. *Prassad v. Canada (Minister of Employment and Immigration)*, [1989] S.C.J. No. 25, [1989] 1 S.C.R. 560 (S.C.C.); *Re First Investors Corp.*, [1988] A.J. No. 1105, 54 D.L.R. (4th) 730 (Alta. C.A.).
3. *Cardinal v. Kent Institution*, [1985] S.C.J. No. 78, [1985] 2 S.C.R. 643 at 653 (S.C.C.).
4. *Knight v. Indian Head School Division No. 19*, [1990] S.C.J. No. 26 at para. 24, [1990] 1 S.C.R. 653 (S.C.C.).
5. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39 at paras. 23-27, [1999] 2 S.C.R. 817 (S.C.C.).
6. *Canada (Attorney General) v. Mavi*, [2011] S.C.J. No. 30 at para. 42, [2011] 2 S.C.R. 504 (S.C.C.); *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39 at para. 28, [1999] 2 S.C.R. 817 (S.C.C.).
7. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39 at para. 33, [1999] 2 S.C.R. 817 (S.C.C.).
8. *Canada (Attorney General) v. Mavi*, [2011] S.C.J. No. 30, [2011] 2 S.C.R. 504 (S.C.C.)

(1) General

▼HAD-5▼ **Nature of judicial review.** Judicial review is the procedure whereby courts will look at the decision of a public body and determine if the decision is within the jurisdiction of the decision-maker. Theoretically, courts should not look at the merits of the decision and reweigh the factors taken into consideration. A judicial review is not akin to an appeal. On judicial review, a court may only determine if the decision under review is legal, that is, whether it is one of the decisions that the administrative body could make the boundaries of its statutorily delegated authority.

Function of judicial review. Judicial review is the tool that was devised to enable the superior courts to supervise administrative decision-makers, and intervene to ensure that they do not exceed their statutory powers. Consequently, the function of judicial review is to ensure the legality, reasonableness and fairness of the administrative process, all in accordance with the rule of law, while at the same time upholding the legislative intent to delegate the decision-making process to an administrative decision-maker.[1]

Inherent jurisdiction of courts. Parliament or the legislature may, for purposes of expertise, economy, efficiency or other *bona fide* reasons, intend to preclude any right to appeal any administrative decision to the superior courts. However, judicial review allows superior courts, entrusted with an "inherent" jurisdiction under the rule of law to supervise the legality of any action, to perform its supervisory function and even quash decisions that are *ultra vires*. Intervention is thus possible, on judicial review, even where a strong privative clause was put in place by the legislature. As guardian of the rule of law and legislative supremacy, superior courts cannot have their authority diminished by any legislative attempt to shield an administrative decision from their supervisory powers. The inherent power of superior courts to review administrative action is constitutionally protected by sections 96-101 of the *Constitution Act, 1867*.[2] The result of this combination is that administrative action may sometimes not be appealed, but may always be judicially reviewed by the courts of inherent jurisdiction. Judicial review seeks to address an underlying tension between the rule of law and the principle of Parliamentary sovereignty which finds an expression in the initiatives of Parliament and legislatures to create various administrative bodies and endow them with broad powers.[3]

Prerogative remedies. On judicial review, courts have historically used the prerogative remedies to exercise supervisory jurisdiction. Those remedies include *certiorari*, *mandamus*, prohibition, *quo warranto* and *habeas corpus*. These remedies may all be used in different situations.

Notes

1. *Canada (Attorney General) v. TeleZone Inc.*, [2010] S.C.J. No. 62 at para. 24, [2010] 3 S.C.R. 585 (S.C.C.): "Judicial review is directed at the legality, reasonableness, and fairness of the procedures employed and actions taken by government decision makers. It is designed to enforce the rule of law and adherence to the Constitution. Its overall objective is good governance."
2. (U.K.), 30 & 31 Vict., c. 3, ss. 96-101; see also *Crevier v. Québec (Attorney General)*, [1981] S.C.J. No. 80, [1981] 2 S.C.R. 220 (S.C.C.); U.E.S., *Local 298 v. Bibeault*, [1988] S.C.J. No. 101, [1988] 2 S.C.R. 1048 at 1090 (S.C.C.).
3. *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 at para. 27, [2008] 1 S.C.R. 190 (S.C.C.).

(2) Standard of Review

▼HAD-6▼ **Purpose.** Since judicial review is a consequence of the relationship between the principle of Parliamentary sovereignty and the inherent power of courts to review the legality of actions of "inferior tribunals", courts have recognized that the intensity of review should be different on judicial review. On judicial review, the reviewing court must recognize that Parliament may delegate its authority to a statutory delegate and not to the reviewing court. Thus, other than constitutional constraints, courts may only determine whether the decision-maker remained within the boundaries of its jurisdiction. Such an exercise is usually one of statutory interpretation and not a review of the merits of the decision. The purpose of the standard of review is thus to balance the intention of Parliament to delegate a final decision to a public body with the fundamental rules of the Constitution and the rule of law, in order to determine the extent of the scrutiny it will apply to the decision under review.

Standard of review analysis. Even where there is a privative clause, Parliament is not always very explicit when it delegates a jurisdiction to a public body. It may be that the public body's interpretation of its own jurisdiction will be preferable to that of the court. Consequently, courts have had to negotiate these conceptual difficulties, and recently developed the pragmatic and functional analysis (which has now been dubbed the "standard of review analysis").[1] This analysis allows the courts to determine the intensity with which it will review administrative decisions, depending on a proper interpretation of four factors:

1. The presence or absence of a privative clause;
2. The purpose of the tribunal and of the Act as a whole;
3. The "nature of the problem" — whether the question is one of fact or law; and
4. The expertise of the decision-maker.[2]

The factors must be considered as a whole, and not all factors will necessarily be relevant in every case. A contextualized approach is required. Factors should not be taken as items on a checklist of criteria that need to be individually analyzed, categorized and balanced in each case to determine whether deference is appropriate or not.[3]

Different common law standards. Previously, three common law standards of review had been identified, ranging from patent unreasonableness at the more deferential end of the spectrum, through reasonableness, to correctness at the more exacting end of the spectrum.[4] The three standards were collapsed into two standards of review by the Supreme Court of Canada in *Dunsmuir*: correctness and reasonableness.[5] In determining which standard of review is applicable, the decision-maker must first ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the four factors to identify the proper standard of review.[6]

Different standards respecting same decision. Where a decision involves multiple considerations, different standards may apply to different aspects of the decision. For example, a decision that involved determination by the Alberta Labour Relations Board of constitutional issues but also the operations and organizational structure of the employer was subject to two standards of review. Specifically, determinations of the Board with respect to the constitutional issue was reviewed on the standard of correctness, whereas the findings of fact regarding the operations and structure of the employer were reviewed on the standard of reasonableness.[7] However, the application of more than one standard of review to a tribunal's decision is an exceptional practice that should be avoided.[8]

Previous determination of appropriate standard. The Supreme Court of Canada has identified specific types of decisions that will attract a reasonableness or correctness standard of review. Where these types of decisions are being considered, the court will not have to examine the relevant factors to determine the appropriate standard of review. The standard of correctness applies to the following decisions:

1. Constitutional issues;
2. A question 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'";
3. The drawing of jurisdictional lines between two or more competing specialized tribunals; and
4. A "true question of jurisdiction or *vires*".

The standard of reasonableness applies to decisions:

1. Relating to the interpretation of the tribunal's enabling (or "home") statute or "statutes closely connected to its function, with which it will have particular familiarity";
2. Raising issues of fact, discretion or policy; or
3. Involving inextricably intertwined legal and factual issues.[9]

Patent unreasonableness. The standard of patent unreasonableness, which was eliminated as a common law standard in *Dunsmuir*, is the most deferential of all the standards of review. A patently unreasonable decision is one where the defect is immediate or obvious. If the defect is apparent on the face of the tribunal's reasons, then the tribunal's decision is patently unreasonable.[10] Patent unreasonableness has also been described as "clearly irrational" or "evidently not in accordance with reason".[11] A decision that is patently unreasonable is so flawed that no amount of curial deference can justify letting it stand. By its nature, the application of patent unreasonableness will be rare. A definition of patently unreasonable is difficult, but it may be said that the result must almost border on the absurd.[12] This standard is still applicable where specified under statute.[13]

Reasonableness standard. In *Dunsmuir*, the Supreme Court of Canada collapsed the standards of patent unreasonableness and reasoanbleness *simpliciter* into a single form of "reasonableness" review.[14] As posited by *Dunsmuir*, reasonableness is a deferential standard animated by the principle that certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.[15] There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.[16] The "justification, transparency and intelligibility" standard represents a respectful appreciation that a wide range of specialized decision-makers routinely render decisions in their respective spheres of expertise, using concepts and language often unique to their areas and rendering decisions that are often counterintuitive to a generalist.[17]

Correctness. The correctness standard of review is the least deferential of the standards. Basically, the court will undertake its own reasoning process to arrive at the result it rules as correct.[18] After having made the final determination, the court will then subsequently look at the decision-maker's decision. If the court's decision is different than that of the decision-maker, it will substitute its judgment. It is important to note that the conceptual procedure used by the courts, in using the standard of correctness, is different than the other two standards of review. When the standard is correctness, the court will not look at the decision of the delegated authority. It will simply conduct its own assessment and then compare its decision with that of the decision-maker. However, the procedure is the complete opposite of the other two standards. A court should not at any point ask itself what the correct, or even better, decision would have been.[19] The rationale for the different approach is simple. Where the standard of review is correctness, only one decision is open to the decision-maker.

Legislated standards of review. Common law standards of review can be displaced by specific legislative direction.[20] For example, as noted above, while *Dunsmuir* created a new standard of reasonableness review that had the effect of eliminating the patently unreasonable standard, this standard is still applicable where specified under statute.[21] However, courts will be reluctant to find that a legislative provision is intended to set a standard of review.[22]

Notes

1. See *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9, [2008] 1 S.C.R. 190 (S.C.C.); see also *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, [2011] S.C.J. No. 53, [2011] 3 S.C.R. 471 (S.C.C.). Throughout this work, the "pragmatic and functional analysis" and "standard of review analysis" will be used interchangeably, as they refer to the same criteria.
2. *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 at para. 64, [2008] 1 S.C.R. 190 (S.C.C.); see also *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] S.C.J. No. 46, [1998] 1 S.C.R. 982 (S.C.C.).
3. *Canada (Citizenship and Immigration) v. Khosa*, [2009] S.C.J. No. 12 at para. 54, [2009] 1 S.C.R. 339 (S.C.C.).
4. *Law Society of New Brunswick v. Ryan*, [2003] S.C.J. No. 17 at para. 45, [2003] 1 S.C.R. 247 (S.C.C.); *Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.*, [2001] S.C.J. No. 37 at para. 24, [2001] 2 S.C.R. 100 (S.C.C.).

5. *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 at para. 34, [2008] 1 S.C.R. 190 (S.C.C.).
6. *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 at para. 62, [2008] 1 S.C.R. 190 (S.C.C.).
7. *Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters*, [2009] S.C.J. No. 53, [2009] 3 S.C.R. 407 (S.C.C.).
8. *Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada*, [2012] S.C.J. No. 35, 432 N.R. 1 (S.C.C.).
9. *Smith v. Alliance Pipeline Ltd.*, [2011] S.C.J. No. 7 at para. 26, [2011] 1 S.C.R. 160 (S.C.C.), applying *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 at para. 62, [2008] 1 S.C.R. 190 (S.C.C.). See also *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, [2011] S.C.J. No. 59 at paras. 35-36, [2011] 3 S.C.R. 616 (S.C.C.); *Agraira v. Canada (Public Safety and Emergency Preparedness)*, [2013] S.C.J. No. 36 at paras. 49-50, 446 N.R. 65 (S.C.C.).
10. *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1996] S.C.J. No. 116 at para. 57, [1997] 1 S.C.R. 748 (S.C.C.).
11. *Canada (Attorney General) v. Public Service Alliance of Canada*, [1993] S.C.J. No. 35, [1993] 1 S.C.R. 941 at 963-64 (S.C.C.); *Centre communautaire juridique de l'Estrie v. Sherbrooke (City)*, [1996] S.C.J. No. 86 at paras. 9-12, [1996] 3 S.C.R. 84 (S.C.C.).
12. *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92*, [2004] S.C.J. No. 2 at para. 18, [2004] 1 S.C.R. 609 (S.C.C.).
13. For example, a discretionary decision by a tribunal encompassed by the (BC) *Administrative Tribunals Act, S.B.C. 2004*, c. 45, s, 59(3) cannot be set aside unless it is patently unreasonable: *British Columbia (Workers' Compensation Board) v. Figliola*, [2011] S.C.J. No. 52, [2011] 3 S.C.R. 422 (S.C.C.).
14. *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 at para. 45, [2008] 1 S.C.R. 190 (S.C.C.).
15. *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 at para. 47, [2008] 1 S.C.R. 190 (S.C.C.).
16. *Canada (Citizenship and Immigration) v. Khosa*, [2009] S.C.J. No. 12 at para. 59, [2009] 1 S.C.R. 339 (S.C.C.).
17. *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, [2011] S.C.J. No. 62 at para. 13, [2011] 3 S.C.R. 708 (S.C.C.).
18. *Law Society of New Brunswick v. Ryan*, [2003] S.C.J. No. 17 at para. 50, [2003] 1 S.C.R. 247 (S.C.C.); *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9 at para. 50, [2008] 1 S.C.R. 190 (S.C.C.).
19. *Law Society of New Brunswick v. Ryan*, [2003] S.C.J. No. 17 at para. 50, [2003] 1 S.C.R. 247 (S.C.C.).
20. *R. v. Owen*, [2003] S.C.J. No. 31, [2003] 1 S.C.R. 779 (S.C.C.); *Canada (Citizenship and Immigration) v. Khosa*, [2009] S.C.J. No. 12 at paras. 18, 51, [2009] 1 S.C.R. 339 (S.C.C.). See discussion in *United Food and Commercial Workers, Local 401 v. Alberta (Attorney General)*, [2012] A.J. No. 427, 258 C.R.R. (2d) 110 (Alta. C.A.).
21. *British Columbia (Workers' Compensation Board) v. Figliola*, [2011] S.C.J. No. 52, [2011] 3 S.C.R. 422 (S.C.C.). See Footnote 13.
22. *Canada (Citizenship and Immigration) v. Khosa*, [2009] S.C.J. No. 12 at paras. 18, 51, [2009] 1 S.C.R. 339 (S.C.C.). See discussion in *United Food and Commercial Workers, Local 401 v. Alberta (Attorney General)*, [2012] A.J. No. 427, 258 C.R.R. (2d) 110 (Alta. C.A.).

Supplemental Readings

Administrative Law

Administrative Law in Canada, 5th Edition (Blake)

Canadian Administrative Law (Régimbald)

General

Legal Problem Solving – Reasoning, Research & Writing, 6th Edition and *The Ultimate Guide to Canadian Legal Research* (Fitzgerald)

Legal Writing and Research Manual, 7th Edition, Student Edition (Whitehead and Matthewman)

Understanding Lawyers' Ethics in Canada (Woolley)

Lawyers' Ethics and Professional Regulation, 2nd Edition (Woolley, Cotter, Devlin and Law)