APPEALS FROM EXERCISE OF STATUTORY POWERS OF DECISION
CONSULTATION PAPER

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EXECUTIVE SUMMARY

This paper is concerned with appeals to the courts from decisions directly affecting individuals that are made by officials under statutory authorization. Such appeals are usually provided for by statute. However, there is a lack of consistency in the form and scope of statutory appeal rights, and there are some statutes that do not provide for appeals. This paper is intended to be the first step toward rationalization of appeal rights. It reviews the current law, and formulates a series of questions for discussion about the form and content appeal provisions should have.

It should be noted that this paper does not discuss imposition of what the governing legislation refers to as "administrative penalties". These penalties require separate consideration, and will be discussed by the Commission in another paper.

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I. INTRODUCTION

Saskatchewan legislation often delegates authority to make decisions directly affecting the rights of individuals to boards, commissions, and public officials. These statutory powers of decision are necessary tools for regulation of a wide range of public and private activities. They confer authority to grant licenses and permits, authorize disciplinary hearings by professional associations, grant permission to undertake regulated activities, resolve disputes with government agencies, and enforce regulations[1].

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[1] The term "statutory powers of decision," now widely used in administrative law text books, encompasses both what are referred to as "administrative" and "quasi-judicial" powers. The significance of the distinction has been reduced over time by the courts, which now require both "quasi-judicial" tribunals and officials who make decisions directly affecting individuals without a formal hearing to adhere to minimum standards of fairness.

Statutory powers of decision are distinguished from other statutory authorities, such as the power to make regulations or orders of general application, by the fact that they are directed at specific individuals or corporations. The term appears to have been coined in the Ontario *Statutory Powers Procedure Act*, adopted in 1966 (see now R.S.O. 1990, c. 22). The definition in the Ontario *Act* gives some indication of the scope of the term:

> "Statutory power of decision" means a power or right, conferred by or under a statute, to make a decision deciding or prescribing,
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> (a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or
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> (b) the eligibility of any person or party to receive, or to the continuation of, a benefit or license, whether the person is legally entitled thereto or not. [section 1(1)].

Because the livelihood, business interests, and property rights of citizens are often at stake when a statutory power of decision is exercised, it is important that decisions are made fairly and properly. This goal can be furthered in a variety of ways.[2] Independent review of decisions is obviously one way to do so, and in many cases, may be the most effective protection for citizens when a statutory power is exercised. Most statutory powers of decision are subject to judicial review, an authority vested in the courts by common law rather than by statute. However, the scope of judicial review is narrow, focusing primarily on procedure and procedural fairness. For that reason, it is often supplemented by a statutory right to appeal a decision to the courts.

The right of appeal from a decision must be expressly stated in the statute that creates the power of decision.[3] Appeal rights differ from statute to statute. Some statutes do not allow appeals. While differences in appeal rights may be justified by differences in the subject matter, many of the differences that presently exist in Saskatchewan law seem to be a product of history and circumstance. The review of the powers of decision in Saskatchewan statutes set out in the Appendix demonstrates that appeal provisions do not evidence any consistent policy or set of principles.

This state of affairs is not confined to Saskatchewan. Jones and de Villars, authors of a leading text book on Canadian administrative law, conclude that:

> [Canadian] legislators have not developed a comprehensive philosophy concerning the desirability and establishment of appeals from administrative decisions. It is

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[2] See for example, the Commission's *Model Code of Administrative Procedure for Saskatchewan Administrative Tribunals* (October, 2005) and *Handbook of Professional Disciplinary Procedure* (March 2007). These publications are intended to help ensure that fair, unbiased procedures are adopted when a hearing is required to make a statutory decision.

[3] Note that there is no inherent right to appeal a statutory decision. The right to appeal must be contained in legislation. See Jones and de Villars, Principles of Administrative Law, (2nd), Toronto, 1994, p.446.

> apparent that there is no rationale as to whether an appeal lies to a court (and, if so, to which level of court), whether the appeal is to be *de novo* . . . or whether it is to be limited to a question of law or jurisdiction[4].

A recent issues paper published by the New Zealand Law Commission observed that:

> We reviewed the existing appeal rights for 62 tribunals. . . . [I]t would be wrong to assume that appeal rights should be the same for all classes of tribunal, [but] we believe that the inconsistencies apparent in this table [of statutory provisions] are greater than can be justified.[5]

Jones and de Villars are of the opinion that:

> This state of affairs is unsatisfactory. The legislative branch should give considerably more attention to whether there should be an appeal, to whom it should lie, and upon what basis it should be heard; and these decisions should be based on discernable policy considerations and should constitute a rational scheme[6].

This point of view has been echoed by the New Zealand Law Commission and other law reform agencies.[7] But the problem remains. It is ironic that law reformers and legislators have directed

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[4] Jones and de Villars, *Principles of Administrative Law, (2nd),* Toronto, 1994, p.470.

[5] New Zealand Law Commission, *Tribunals in New Zealand,* January, 2008, p.119.

[6] Jones and de Villars, *Principles of Administrative Law, (2nd),* Toronto, 1994, p.470.

[7] See recommendations of the New Zealand Law Commission, *Tribunals in New Zealand,* January, 2008, p.129. More consistent, and even uniform, appeal provisions were recommended in England at least as early as the Franks Committee Report (*Report of the Committee on Administrative Tribunals and Inquiries)* in 1957.

considerably more attention to clarifying judicial review than to rationalizing rights of appeal, even though a well-designed appeals system would almost certainly make judicial review unnecessary in most cases. Jones and de Villars note, for example, that a committee of the Alberta legislature recommended a uniform minimum right of appeal from decisions of administrative tribunals[8], but the recommendation was not adopted, even though the subsequent adoption of the *Administrative Procedures Act*[9] would have provided an appropriate vehicle for a generalized right of appeal[10].

One reason why more attention has not been paid to rights of appeal is that the appropriate principles are not easy to identify. Apparent inconsistency is partly a reflection of the fact that statutory powers of decision cover a wide range of subject matter. Consistency does not necessarily mean uniformity. No simple formula is apt to be satisfactory in all cases. Distinctions based on differences in subject matter, procedure, and impact must be made between statutory powers when rights of appeal are considered.

Consider, for example, appeals from professional discipline committees. Members of the 50 self-governing professions regulated by statute in Saskatchewan may be disciplined by their professional associations, following rules set out in their governing statutes. Decisions made by discipline committees affect the ability of professionals to earn a livelihood. As the *McRuer Report* observed:

> The most obvious feature of the power of a self-governing body to discipline its members is clearly that it is a judicial power . It is a power whose exercise may have the most far-reaching effects upon the individual who is disciplined. Where a

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[8] Report of the Special Committee on Boards and Tribunals (Alberta Legislature, 1965).

[9] See Alberta *Administrative Procedures Act*, R.S.A. 1980, c.A-2. The Act was adopted in 1966. The Ontario *Administrative Procedures Act* (above) similarly fails to deal with appeals. The Franks Committee recommendation was applied in England to only a restricted list of tribunals (see *Tribunals and Inquires Act, 1971, c. 62* [England]).

[10] Jones and de Villars, *Principles of Administrative Law, (2nd),* Toronto, 1994, p. 460.

> conviction may result in what has aptly and justifiably been termed economic death, it is vital that procedural safeguards to ensure fairness be clearly established and rigorously observed.[11]

The case for applying broad rights of appeal in such cases is obviously stronger than in cases in which a statutory decision merely implements a minor regulation. But policy making is complicated by the fact that many powers of decision, such as those granting or suspending licenses, fall between these poles.

A distinction should also be made between decisions made by administrative tribunals that are expected to hold hearings and act as impartial adjudicators, and decisions made under statutory authority by a regulator (whether an individual or a board) not required to hold a hearing. The legislation governing discipline committees usually requires a hearing. In many other cases, tribunals are established to review decisions made by officials. At present, an appeal to the courts is allowed from the decisions of all discipline committees, but not consistently from all other tribunals.

The scope of permitted appeals also differs. There is little consistency in appeal rights. Different approaches are justifiable in some cases, but formulating appropriate distinctions may be difficult.

Unlike appeals, judicial review is available in all cases in which a statutory power of decision is involved. The supervisory function of the courts that underlies judicial review is regarded as so important that the courts will even override so-called privative clauses in legislation that purport to limit or exclude judicial review.[12] Judicial review is concerned primarily with procedure. However,

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[11] Ontario Royal Commission Inquiry into Civil Rights, 1968-71.

[12] For example, *The Trade Union Act* (R.S.S. 1978, c. T-17) provides:

> 21 There is no appeal from an order or decision of the board under this Act, the board may determine any question of fact necessary to its

the courts have included within the ambit of procedural requirements certain "principles of natural justice." In the last 25 years, the scope of natural justice has been extended by the courts. The principles are intended to ensure that when statutory decisions are made, the individual affected will have an opportunity to be heard by an unbiased decision maker.

It can be argued that the principles of natural justice, and therefore judicial review, are adequate protection in some cases, making broad appeal rights less necessary. But judicial review is limited in scope. Just how far the scope of judicial review extends varies from case to case, depending on complex and uncertain rules developed by the courts. It has been suggested that clear appeal rights are preferable to reliance on judicial review in most cases. Nevertheless, sorting out the roles of judicial review and appeal requires careful consideration.

When an appeal is allowed, it may be confined to "a question of law", or "a question of law and jurisdiction". This formula usually limits review on appeal to determining whether the law was properly stated, and whether the law was properly applied to the facts, as determined by the decision maker. It does not allow the court to substitute its own conclusions about the evidence for those of the decision maker. This is similar to the role of an appeal court when it reviews a decision from a lower court.[13]

In other cases, the relevant statute may allow the court to reconsider the decision of a tribunal or

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> jurisdiction, and its proceedings, orders and decisions shall not be reviewable by any court of law or by any certiorari, mandamus, prohibition, injunction or other proceeding whatever.

Nevertheless, the courts have reviewed decisions of the board. See the recent decision in *United Brotherhood of Carpenters and Joiners of America, Local 1985 v. Graham Construction and Engineering Ltd.*, 2008 SKCA 67 (CanLII).

[13] See below.

official on "a question of fact or law." Some authorities refer to such appeals as "appeals on the merits of the decision." This formula may signal a less deferential standard of review, allowing the court to find the facts, drawing its own conclusions in appropriate cases from the evidence. Usually, the court will not hear new evidence, relying instead on transcripts or other records. In a few cases, a court is permitted to hold a "trial *de novo*,"a rehearing of the case.

The appropriate choice between these approaches may depend on several factors, including the impact of the decision, the availability of a record, the expertise of the decision-maker, and whether the appeal is from a tribunal or a regulator.

The Commission believes that justice and administrative fairness require that rights to appeal from statutory powers of decision should conform to consistent principles. These principles should address these issues:

1. Whether appeals should be available from all statutory decisions.
2. When appeals should be permitted on the merits rather than on law and jurisdiction.
3. Appeal procedures.

It may be desirable to develop legislative language to distinguish the level of deference to administrative decision makers on questions of fact and policy appropriate to different types of decision maker.

As the discussion above suggests, there are some difficult issues that must be addressed in order to formulate and apply a consistent set of principles. This consultation paper attempts to identify these issues and provide background for discussion of them.

We welcome your comments.

II. PRINCIPLES OF A CONSISTENT APPROACH TO APPEALS

1. When is a right of appeal appropriate?

The Alberta Committee on Boards and Tribunals found "a widespread and nearly unanimous desire for a right of appeal to the Courts" from decisions of administrative tribunals. The Committee concluded that:

> [T]here is embedded in the democratic principles of the administration of justice a right to appeal by a person who considers himself aggrieved, and the Committee is of the view that this principle should be more fully recognized in administrative law than at present. It would give citizens who are affected by the decisions of a tribunal a right comparable to the one they have traditionally had in respect to judgements of the court.[14]

The Committee recommended that there should be at least a right of appeal on questions of law and jurisdiction from decisions of all tribunals. In England, the Franks Committee recommended a general right of appeal from tribunal decisions on "fact, law, and merits."[15]

In Saskatchewan, 15 statutes explicitly provide that no appeal lies to the court from a statutory power

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[14] Report of the Special Committee on Boards and Tribunals (Alberta Legislature, 1965).

[15] Report of the Committee on Administrative Tribunals and Inquiries (England,1957).

of decision,[16] and four others expressly confine the role of the courts to judicial review.[17] Of these 19 cases, 11 prohibit appeals from tribunal decisions.[18]

While it is difficult to challenge the fundamental premise of the Alberta Committee, there are some cases in which refusal to permit an appeal to the courts from exercise of a statutory power of decision may be justified.

The case for limiting or denying an appeal is perhaps strongest when a tribunal must balance what have been referred to as "polycentric interests." The administrative regime in such cases may be structured to include these interests. Labour relations boards are perhaps the clearest example. Tribunals like this are less analogous to courts than other statutory decision makers. However, procedural fairness remains important, and the courts will enforce it on judicial review.[19] Whether

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[16] These provisions usually state simply that no appeal lies. See for example, section 83 of *The Securities Act*, 1988, S.S. 1988-89, c. S-42.2, which allows the Securities Commission to permit an exception from certain requirements imposed on trading in securities. Section 83(2) provides that " . . . a decision of the Commission made pursuant to subsection (1) is final and there is no appeal from that decision."

[17] For example, *The Amusement Ride Safety Act,* S.S. 1986, c. A-18.2 provides:

> 33(1) A person aggrieved by a notice, order, decision, requirement or direction of the chief inspector may apply to Her Majesty's Court of Queen's Bench for Saskatchewan for judicial review within 30 days of the chief inspector's notice, order, decision, requirement or direction.
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> (2) The Queen's Bench Rules respecting judicial review, other than Rules 664(2) and 667(2), apply to proceedings pursuant to this section to the extent that they are not inconsistent with this Act.

[18] See Appendix

[19] *The Trade Union Act* (R.S.S. 1978, c. T-17) provides:

> 21 There is no appeal from an order or decision of the board under this

a tribunal should be exempted from appeals on these grounds is a matter of policy, and will not be discussed further here. But it is apparent that not all tribunals and decision makers exempted from appeals under Saskatchewan law at present fall into the polycentric category.

The Alberta and English proposals do not apply to statutory decisions made by officials who are not required to hold hearings. If an official's action is identified as a true statutory power of decision,[20] should it be treated differently from a decision-making power exercised by a tribunal? It may be that statutory decision-making powers assigned to officials involve less important matters than those assigned to tribunals. This may justify limiting rights of appeal, but the issue in such cases may not be the form of the decision-making power so much as the impact of the decision on the affected person.

It has sometimes been suggested that appeals from tribunals are less necessary than appeals from decisions made without a formal hearing because tribunals are independent adjudicators providing court-like protections for those who appear before them. However, at least if the tribunal hears cases

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> Act, the board may determine any question of fact necessary to its jurisdiction, and its proceedings, orders and decisions shall not be reviewable by any court of law or by any certiorari, mandamus, prohibition, injunction or other proceeding whatever.

Similar provisions are contained in other legislation that confer decision making power on the Board.

Note that, despite the privative clause in *The Trade Union Act,* the courts have applied judicial review to decisions of the Board. However, in this and other cases in which appeal rights are limited as a matter of policy, even judicial review is constrained, enforcing only minimum standards of procedural fairness (see below).

[20] It should be noted that it may not always be clear when a decision impacts directly enough upon an individual to classify it as a "statutory power of decision." The Appendix includes several statutes that expressly state that no appeal is allowed from the decision of an official or tribunal which probably do not involve statutory powers of decision as defined here.

at first instance, it may be analogous to a lower court, from which an appeal will usually lie. The case for limiting appeal rights is perhaps stronger when a tribunal itself is given an appellate role, reviewing decisions made at first instance by either an official or another tribunal. This is the case, for example, under *The Alcohol and Gaming Regulation Act, 1997.*[21] Liquor vendors' licenses are issued by the Liquor and Gaming Authority. On the request of the licensee, the Liquor and Gaming Licensing Commission is required to hold a hearing when a licence is refused or suspended. There is no appeal from the decision reached at the hearing.

Jones and de Villars suggest that an internal appeal within a regulatory agency may satisfy the "principles of good public administration," which "usually require that at least one level of appeal exist with respect to any delegate's decision."[22] The New Zealand Law Commission agrees that the case for appeal to the courts is less compelling in the case of appellate tribunals, but is not convinced that appeals are never appropriate in such cases:

> The absence of a right of appeal might be justified for some . . . [New Zealand] tribunals . . . because a number of these tribunals are appellate tribunals. There may still however be grounds for providing a second or subsequent right of appeal on a question of law from the decisions of appellate bodies that hear first appeals.[23]

In any event, no consistent distinction between appeals from tribunals and appeals from other statutory decisions is evident from the statutes. Under *The Securities Act, 1988*[24], for example, most

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[21] A-18.011.

[22] Jones and de Villars, *Principles of Administrative Law, (2nd),* Toronto, 1994, p. 446.

[23] New Zealand Law Commission, *Tribunals in New Zealand,* January, 2008, p. 119.

[24] S.S. 1988-89, c. S-42.2.

decisions of officials of the Securities Commission may be reviewed by hearing before the Commission, and an appeal lies on the merits of the decision of the Commission to the Court of Queen's Bench. In some cases under the present law, similar decisions are made by both tribunals and officials. For example, dealers' licenses under *The Agricultural Implements Act*[25] are issued by the Minister, while liquor vendors' licenses under *The Alcohol and Gaming Regulation Act, 1997*[26] are issued by the Liquor and Gaming Authority. No appeal is allowed in either of these cases, but appeals are allowed under most other licensing legislation in Saskatchewan.

Several more general arguments have been advanced to justify limiting appeal rights. A rationale often advanced by administrators and regulators is the desirability of efficient, timely decision making. Appeals can generate delay and expense. Thus, for example, the report of an Ontario government task force on administrative justice in 1997 did not recommend general extension of appeal rights, and would in fact make all appeals subject to leave of the court.[27]

The New Zealand Law Commission observes:

> Although it is generally desirable to provide a right of appeal, rights of appeal are at odds with the principle of finality. A sequence of appeals can cause objectionable delay and frustration to the parties and may ultimately be counterproductive.

The New Zealand Commission points to examples of tribunals in which there is a perceived need for "speed and certainty"and where "cost, delays and legal technicalities" would be particularly problematic. It suggests that "where there is a need for an immediate final decision and the matters

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[25] R.S.S. 1978, c. A-10.

[26] A-18.011.

[27] Excellence in Administrative Justice (Government of Ontario, September, 1997).

in issue are relatively less important, full rights of appeal may not be justified."

However, the New Zealand Commission recognizes that these factors need to be balanced against others:

> The decision to include a right of appeal and the scope and nature of such a right needs to therefore be balanced against the cost, delay and significance of the matter at issue. Adding cost and delay to the process of obtaining a final authoritative decision will be justified where the importance of the matters under decision warrants this.[28]

Few of the Saskatchewan tribunals from which no appeal lies appear to require that final decisions be reached so quickly that appeals are clearly a problem. *The Agricultural Leaseholds Act* may be an exception.[29] The *Act* permits an agricultural tenant whose lease has expired to re-enter to harvest a crop planted during the term of the lease. Section 5 of the *Act* provides for resolution of a dispute by the Provincial Mediation Board. Section 9 provides that:

> 9 Every order of the Provincial Mediation Board under this Act is final and is not subject to appeal and no such order shall be questioned or reviewed, restrained or set aside by prohibition, injunction, certiorari, or any other process or proceeding in any court.

It may be that the need to get crops off the land quickly justifies making the Mediation Board decision final. Another exception may be orders made by the Chief Inspector under *The Amusement*

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[28] New Zealand Law Commission, *Tribunals in New Zealand,* January, 2008, p.118.

[29] R.S.S. 1978, c. A-12.

Ride Safety Act, which need to be settled quickly in most cases.[30]

Finality of a decision may be justified in some cases in order to discourage protracted litigation, which may generate costs and delay that unduly prejudice one of the parties.

When the subject matter of a decision has important consequences for the person it affects, it is difficult to justify denial of a right to appeal in order to avoid delay or even costs. It is likely because the right to carry on a profession or occupation is so important that appeals are allowed from all discipline committees in Saskatchewan. Appeals are typically allowed in discipline legislation in other provinces as well.[31] Although perhaps rarely as critical to the livelihood of individuals as professional credentials, other licenses and permits may be economically important to those who hold them. The absence of a right to appeal when a dealer's license is refused or suspended under *The Agricultural Implements Act*[32] may require reconsideration on this ground. *The Alcohol and Gaming Regulation Act, 1997*[33] contains a privative clause. However, while an appeal to the courts is not permitted, the *Act* does provide for a hearing before the Liquor and Gaming Licensing Commission when a license is suspended or refused.

Lack of appeal rights from statutory decisions is sometimes justified on the ground that the decisions

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[30] S.S. 1986, c. A-18.2, s. 36 permits judicial review but not appeal.

[31] James T. Casey, The Regulation of Professions in Canada, Toronto: Carswell (loose leaf), 15-1.

[32] See R.S.S. 1978, c. A-10, s. 26.

[33] c. A-18.011, s. 36 provides:

> 36 Subject to clause 35(1)(j), every decision or order of the commission is final, and no order, decision or proceeding of the commission shall be questioned or reviewed, restrained or removed by prohibition, injunction, certiorari, mandamus or any other process or proceeding in any court.

involve technical subject matter. Officials and tribunal members in such cases are chosen for their expertise. The New Zealand Law Commission observes:

> The fact that an original decision-making body has specialist expertise or a role in making decisions consistently throughout New Zealand might also be a reason for either not providing a right of appeal or restricting a right of appeal to a question of law. Rights of appeal from some tribunals, such as the Copyright Tribunal and the Legal Aid Review Panel, appear to be limited to appeals on questions of law for this reason.[34]

However, when an appeal involves a question of law, the court may be the most appropriate adjudicator in any event. As Jones and de Villars note:

> [J]udges are specialists in the area of errors of law and jurisdiction. Indeed, this has always been the role of superior courts. No statutory delegate can be said to have greater competence in this area.[35]

As the courts have observed, even appeals from decisions involving highly technical matters may not always turn on the expertise of the decision-maker.[36] In addition, when an appeal on the merits is permitted, the courts have deferred to the expertise of decision-makers when it is appropriate to do so.[37]

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[34] New Zealand Law Commission, *Tribunals in New Zealand,* January, 2008, p. 118.

[35] Jones and de Villars, *Principles of Administrative Law, (2nd),* Toronto, 1994, p. 471.

[36] See *Whitehouse v. Sun Oil Co.*, [1982] 6 WWR 289 (Alta. C.A.).

[37] See below.

No Saskatchewan statutory powers appear to involve matters that are so technical that they clearly should not be subject to appeal to the courts. However, in some cases in which there are no compelling reasons to require an appeal, the technical nature of the decision may justify withholding the right. For example, a decision of the Teacher Classification Board determining the classification of a teacher is not subject to appeal.[38] Application of classification criteria is a technical matter, and it could be argued that an appeal to the courts would not achieve much, even though a teacher's classification has some economic effect. Similar considerations may apply to issue of licenses under *The Electrical Licensing Act*[39] and *The Gas Licensing Act*.[40]

2. When is a right of appeal limited to issues of law and jurisdiction appropriate?

Of the 102 Saskatchewan statutory powers of decision that are subject to appeal, 12 may be appealed on matters of "law and jurisdiction,[41]" and 18 on matters of "law.[42]" Since jurisdiction is a matter of

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[38] The Education Act, 1995, S.S. 1995, c. E-0.2, s. 271.

[39] S.S. 1988-89, c. E-7.2, s.31, permits judicial review but not appeal.

[40] S.S. 1988-89, c. G-4.1, s. 26, permits judicial review but not appeal.

[41] A typical example is *The Agri-Food Act, 2004*, S.S. 2004, c. A-15.21:

> 29(2) Any person who is aggrieved by an act or omission of an agency [development commission, development board or marketing board] may appeal that act or omission to the [Agri-Food] appeal committee in the prescribed manner.
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> 33(1)Any party to an appeal may appeal the appeal committee's decision on a question of law or jurisdiction to a judge of the Court of Queen's Bench within 45 days after the date of the decision.

law, there is little real distinction between these formulas. This discussion will not distinguish between them.

A right to appeal on questions of law and jurisdiction is the most restrictive general appeal that can be attached to statutory decisions. The Alberta Committee on Boards and Tribunals regarded an appeal on questions of law and jurisdiction as a minimum right, which should be provided in all cases:

> The Committee is unanimously and firmly of the view that in every case there should be a right of appeal to the Supreme Court of Alberta on a question of jurisdiction and a question of law. No legitimate reason can be put forward why a tribunal to whom the legislature has delegated certain defined authority should be permitted with impunity to transgress the bounds of the jurisdiction that it was intended to exercise. Similarly, there should be no excuse for a tribunal misapplying, or ignoring the law, to which all citizens of the province are subject, in favour of its own views as to what

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> (2) The judge of the Court of Queen's Bench hearing the appeal shall consider only the record of the proceedings of the appeal committee with respect to the appealed decision and the evidence presented at those proceedings.
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> (3) There is no further appeal from the decision of a judge of the Court of Queen's Bench pursuant to this section.

[42] A typical example is *The Irrigation Act, 1996*, S.S. 1996, c. I-14.1:

> 76(1) Any person who is aggrieved by a decision [e.g., to provide financial assistance, transfer ownership of irrigation works] of the minister pursuant to this Act may appeal that decision, on a question of law only, to a judge of the Court of Queen's Bench.
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> (2) An appeal pursuant to subsection (1) must be brought within 30 days after the date of the decision appealed from.

should be applicable to persons that are affected by its decisions.[43]

If a uniform minimum right of appeal is deemed desirable, appeal on questions of law and jurisdiction may be appropriate.

In some cases, broader rights of appeal may be justified, but there are also circumstances in which limiting rights of appeal to matters of law and jurisdiction may be particularly appropriate. When the initial decision has already been reviewed by a tribunal, the value of a further review of the facts is reduced. It may be particularly appropriate in such cases to limit further review by the courts to matters of law and jurisdiction. Similarly, appeals on matters of law and jurisdiction may be particularly appropriate when highly technical decisions made by experts are under review.

This standard is likely intended to be analogous to the right of appeal from decisions of the lower courts to the Court of Appeal. On appeal from the decision of a lower court, an appeal court considers whether the decision maker applied the correct law, interpreted it correctly, and properly applied the law to the facts found by the decision maker. The conclusions drawn from the evidence ("findings of fact") made by the decision-maker at first instance are not reviewed on appeal unless they are obviously not supported by the evidence. The appellate court will substitute its own view of the evidence only "on a standard of palpable and overriding error."[44] This may be the standard intended by the legislative drafters who made provision for appeals from administrative decisions

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[43] Report of the Special Committee on Boards and Tribunals (Alberta Legislature, 1965).

[44] See *H.L. v. Canada (Attorney General)*, [2005] 1 S.C.R. 401, 2005 SCC 25, which clarified the jurisdiction of the Saskatchewan Court of Appeal, holding that the Court of Appeal should substitute its own view of the evidence only "on a standard of palpable and overriding error." It should be noted that this case was litigated because of uncertainty about the language of *The Court of Appeal Act, 2000*, S.S. 2000, c. C-42.1, s. 14, which defines the scope of appeals with respect to fact and law. This suggests that care must be taken in formulating the scope of appeals from statutory decisions.

on matters of "law" or "law and jurisdiction". However, there is overlap between the ambit of appeals and judicial review. The approach of the courts to appeals from administrative decisions has been strongly influenced by the law governing judicial review.

Judicial review supervises statutory decision makers to ensure that the decision is within the legal authority (jurisdiction) of the decision maker, and made in accordance with the law. As Professor Lorne Sossin, commenting on the recent Supreme Court decision in *Dunsmuir v. New Brunswick*,[45] has observed, judicial review "engages the rule of law." It rests on the principle that "fundamental rights will be safeguarded" by the independent, supervisory function of the courts. It is for this reason that the courts have insisted that judicial review cannot be entirely excluded. However, as Sossin also notes, statutory powers of decision "are created for the very purpose of providing an alternative to courts." Judicial review should not be lightly undertaken: "Judges must show deference to the administrative decision-makers."[46] On judicial review, the threshold question is when it is appropriate for the courts to interfere with administrative decisions in the interest of fundamental justice. In an effort to find the right balance, courts have formulated standards of review applicable to different classes of cases. This has proved to be both conceptually and practically difficult. In *Dunsmuir,* the Supreme Court of Canada has attempted to clarify and simplify standards of review. The court has reduced the standards to two -- "correctness" in most cases involving questions of law and jurisdiction, and "reasonableness" in cases in which greater deference to the administrative decision-maker is appropriate. The Court applied what it referred to as a "standard of review analysis" to choose between correctness and reasonableness standards:

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[45] Dunsmuir v. New Brunswick, 2008 SCC 9 (CanLII); 69 Admin. L.R. (4th) 1.

[46] Lorne Sossin, "*Dunsmuir* - Plus ça change," Roundtable on *Dunsmuir,* June 4, 2008, University of Toronto Faculty of Law.

> 62 In summary, the process of judicial review involves two steps. First, courts 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 factors making it possible to identify the proper standard of review.
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> 63 The existing approach to determining the appropriate standard of review has commonly been referred to as "pragmatic and functional". That name is unimportant. Reviewing courts must not get fixated on the label at the expense of a proper understanding of what the inquiry actually entails. Because the phrase "pragmatic and functional approach" may have misguided courts in the past, we prefer to refer simply to the "standard of review analysis" in the future.
>
> 64 The analysis must be contextual. As mentioned above, it is dependent on the application of a number of relevant factors, including: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of enabling legislation; (3) the nature of the question at issue, and; (4) the expertise of the tribunal. In many cases, it will not be necessary to consider all of the factors, as some of them may be determinative in the application of the reasonableness standard in a specific case.

In other decisions, the Supreme Court has held that, on statutory appeals from administrative tribunals, it is appropriate to apply the standards of review developed in the context of judicial review.[47] When a statute provides for an appeal on matters of law, it is likely that the "correctness" approach will be held to be appropriate. As the Saskatchewan Court of Appeal observed in *Hellquest*

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[47] *Q. v. College of Physicians and Surgeons (British Columbia),* 2003 SCC 19 (CanLII), [2003] 1 S.C.R. 226 (S.C.C.). See also *Hellquest v. Owens*, 2006 SKCA 41 (CanLII), [2006] 7 W.W.R. 433 (Sask. C.A.) and *Whatcott v. Saskatchewan (Human Rights Tribunal*), 2007 SKQB 450 (CanLII), (2007), 306 Sask. R. 186 (QB).

v. Owens, the fact that an appeal is provided by statute suggests that less deference is owed to the tribunal than the "reasonableness" test would require. Questions of law are within the scope of the expertise of the courts rather than technical experts on a specialist tribunal. As the decision in *Hellquest* also noted:

> The Supreme Court, broadly speaking, has said that questions which impact future decisions of lawyers and judges will tend to attract relatively little deference. Issues of more limited interest and those of a purely factual nature will attract more deference. [48]

At least in the context of appeals on matters of law, the "correctness" standard is likely little different from the traditional appellate court approach to appeals from decisions of lower courts. However, it may be desirable to clarify the standard of review when a right of appeal on questions of law is legislated. The New Zealand Law Commission suggests that "rights of appeal are . . . likely to be cheaper and speedier to exercise" than judicial review.[49] In Canada, lack of clarity in appeal provisions and importation of standards of review from judicial review may have compromised this proposition.

Statutory appeal rights are in themselves authorization to interfere with administrative decisions. Because appeals are authorized by statute, the courts do not require justification to interfere with administrative decisions when there is a right of appeal. The issue of identifying an appropriate standard of review arises primarily because legislators have often failed to define the scope of appeals. Despite *Dunsmuir,* the common law principles governing standards of review can be expected to remain complex and difficult to apply. The problem of choosing an appropriate standard can be avoided when an appeal is substituted for judicial review by specifying the standard in the

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[48] Hellquest v. Owens, 2006 SKCA 41 (CanLII), [2006] 7 W.W.R. 433 (Sask. C.A.).

[49] New Zealand Law Commission, *Tribunals in New Zealand,* January, 2008, p.118.

statute setting out the appeal right.

Dunsmuir itself, and particularly the opinions that depart from the majority analysis, may provide guidance in formulating statutory standards of review upon appeal. Both Mr. Justice Binnie and Madame Justice Deschamps recognize more explicitly than the majority that the existence of a statutory right of review implies less deference to the initial decision maker. Deschamps further argues that in cases in which there is no privative clause, the difference between the appropriate standard of review is more similar to the standards applied by appeal courts in other contexts than is sometimes assumed. In regard to questions of fact, Deschamps notes that the Court has consistently held that when administrative review of questions of fact is authorized, the court's role is similar to its role on appeal in ordinary civil matters:

> 161 Whether undergoing appellate review or administrative law review, decisions on questions of fact always attract deference. The use of different terminology "palpable and overriding error" versus "unreasonable decision" does not change the substance of the review. Indeed, in the context of appellate review of court decisions, this Court has recognized that these expressions as well as others all encapsulate the same principle of deference with respect to a trial judge's findings of fact . . . Therefore, when the issue is limited to questions of fact, there is no need to enquire into any other factor in order to determine that deference is owed to an administrative decision maker.

The court's approach to questions of law is more complicated. Deference is appropriate when technical rules within the expertise of the administrative decision maker are at issue. A privative clause may ensure this deference. Where there is no privative clause, on judicial review the court must determine whether deference is appropriate. However, Deschamps suggests that when a statutory right of appeal on questions of law exists, no deference is required:

> 162 Questions of law, by contrast, require more thorough scrutiny when deference is evaluated, and the particular context of administrative decision making can make judicial review different than appellate review. Although superior courts have a core expertise to interpret questions of law, Parliament or a legislature may have provided that the decision of an administrative body is protected from judicial review by a privative clause. When an administrative body is created to interpret and apply certain legal rules, it develops specific expertise in exercising its jurisdiction and has a more comprehensive view of those rules. Where there is a privative clause, Parliament or a legislature's intent to leave the final decision to that body cannot be doubted and deference is usually owed to the body.
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> 163 However, privative clauses cannot totally shield an administrative body from review. Parliament, or a legislature, cannot have intended that the body would be protected were it to overstep its delegated powers. Moreover, if such a body is asked to interpret laws in respect of which it does not have expertise, the constitutional responsibility of the superior courts as guardians of the rule of law compels them to insure that laws falling outside an administrative body's core expertise are interpreted correctly. This reduced deference insures that laws of general application, such as the Constitution, the common law and the *Civil Code*, are interpreted correctly and consistently. Consistency of the law is of prime societal importance. Finally, deference is not owed on questions of law where Parliament or a legislature has provided for a statutory right of review on such questions.

When deference is owed to a tribunal or other decision-maker on questions of law, it is because the decision maker has particular expertise in regard to the regulatory regime it supervises. The majority agree with Deschamps that "when an administrative body is created to interpret and apply certain

legal rules, it develops specific expertise in exercising its jurisdiction and has a more comprehensive view of those rules." However, she more clearly distinguishes cases in which there is a privative clause from cases in which there is a statutory right of review.

But even these distinctions may not focus on the most important point. It can be argued that there should always be deference to an expert decision-maker, even on questions of law, when the decision-maker's enabling statute is at issue. The court can be assumed to have more expertise on other issues of law. This may be a distinction worth incorporating into a statutory standard of review applicable to appeals. Binnie writes that:

> 124 A court is right to insist that its view of the correct opinion (i.e. the "correctness" standard of review) is accepted on questions concerning the Constitution, the common law, and the interpretation of a statute other than the administrator's enabling statute (the "home statute") or a rule or statute closely connected with it.

He suggests that it would not be difficult to allow a deference that is limited to the "home statute":

> 128 It should be sufficient to frame a rule exempting from the correctness standard the provisions of the home statute and closely related statutes which require the expertise of the administrative decision maker (as in the labour board example). Apart from that exception, we should prefer clarity to needless complexity and hold that the last word on questions of general law should be left to judges.

3. When is a right of appeal on questions of fact appropriate?

When appeal is authorized by statute, review of matters of law and jurisdiction is likely an appropriate minimum. However, in some cases, the formula may be too limited to satisfy the perceived need for fairness. The Franks Committee argued that appeals on the merits from all tribunal decisions should be the standard formula.[50] The New Zealand Law Commission recommends that "a cautious approach should be taken when considering limiting appeals to questions of law."[51]

Of the 102 Saskatchewan statutory powers of decision that are subject to appeal, only two expressly provide for appeal on "questions of fact and law."[52] Six provide for appeal by trial *de novo,*[53] a new

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[50] Report of the Committee on Administrative Tribunals and Inquiries (England, 1957).

[51] New Zealand Law Commission, *Tribunals in New Zealand,* January, 2008, p. 120.

[52] A typical example is *The Heritage Property Act*, S.S. 1979-80, c. H-2.2:

68 7) If an applicant or a permit holder feels himself aggrieved by a decision of the minister pursuant to subsection (6), he may appeal, on a question of fact or law, to Her Majesty's Court of Queen's Bench for Saskatchewan.

[53] A typical example is *The Chartered Accountants Act,* 1986, S.S. 1986, c. C-7.1. Note that a trial *de novo* is not required in all cases:

> 28(4) On the application of the appellant or the institute, the council or a judge of the court may order that the appeal be heard by way of trial *de novo*.
>
> (5) In hearing an appeal, the council or the judge, as the case may be, shall:
>
> (a) dismiss the appeal;
>
> (b) quash the finding of guilty;
>
> (c) direct a new hearing or further inquiries by the discipline committee; or

hearing before the court at which facts and law will be at issue. However, these figures may be misleading. Sixty-four of the 102 statutes allow appeals without specifying the scope of the appeal. Although the scope of appeals in these cases is not entirely certain, a general right of appeal "on the merits," that is, on fact and law, has sometimes been implied by the courts in the absence of any limitation.[54]

The Alberta Committee on Boards and Tribunals was concerned that a uniform right of appeal on the facts would be hard to rationalize, given the variety of subject matters before tribunals. It concluded that

> [T]here cannot be generalizations on the question of appeals on facts. A specific solution should be sought for each specific problem: The nature of the jurisdiction exercised by each tribunal requires examination, a balance must be struck between efficiency of administration and the demands of justice, having regard to the purposes of the statute.[55]

However, as noted above, the Franks Committee recommended that appeals on the merits should be available from all decisions of administrative tribunals.[56] The New Zealand Law Commission also prefers appeals on questions of both law and fact:

(d) vary the order of the discipline committee;

and may make any order as to costs that it or he considers appropriate.

[54] Jones and de Villars, *Principles of Administrative Law, (2nd*), Toronto, 1994, p.451. See *Forster v Saskatchewan Teachers' Federation* (1992), 89 DLR (4th) 283 (Sask. CA).

[55] Report of the Special Committee on Boards and Tribunals (Alberta Legislature, 1965).

[56] Report of the Committee on Administrative Tribunals and Inquiries (England, 1957).

> It is sometimes very difficult to distinguish between questions of law and fact. . . . Alongside the difficulty in defining the concepts, concerns have also arisen about the effect of limiting an appeal to a question of law, because the appellate body cannot overturn the decision at first instance in the event of factual error. . . Limiting the scope of appeal may consequently leave an individual with no right of redress where factual errors have been made. It can also lead to appellants struggling to "dress up" what is essentially a factual issue as one of law. . . We think that the adoption of a standard rule that appeals should be on matters of law only would be problematic for the reasons outlined.[57]

Appeals on the merits do not mean that the courts will not defer to tribunals and officials in appropriate cases. Thus, for example, findings of fact based on the credibility of witnesses will usually not be disturbed on appeal. Casey notes that "the authorities are legion that findings of a disciplinary tribunal with respect to professional misconduct and as to appropriate sentence should be given great weight and not lightly interfered with" on appeal[58]. Deference may also be given to the findings of expert decision makers. In *Bell Canada v Canada (CRTC)*, the Supreme Court held that

> [W]ithin the context of a statutory appeal from an administrative tribunal, additional consideration must be given to the principle of specialization of duties. Although an appeal tribunal has the right to disagree with the lower tribunal on issues which fall within the scope of the statutory appeal, curial deference should be given to the

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[57] New Zealand Law Commission, *Tribunals in New Zealand,* January, 2008, p.120-121.

[58] James T. Casey, The Regulation of Professions in Canada, Toronto: Carswell (loose leaf), 15-6.

> opinion of the lower tribunal on issues that fall squarely within its area of expertise.[59]

Application of the standards of review developed in the context of judicial review to administrative tribunals imports the notion of deference.[60] When the tribunal is required to bring specialized knowledge to bear, the courts have applied the more deferential "reasonableness" standard rather than the "correctness" standard, at least when the issue is one of fact rather than law.[61] Appropriate deference to findings of fact by tribunals may make appeal on the merits acceptable in a broad range of cases.

In some circumstances appeals on the facts may be particularly appropriate. When an appeal is from an official who did not hold a hearing, rather than from a tribunal, a strong argument can be made that review of the facts relied upon by the decision-maker should be available.

Appeals from all 50 discipline committees established under Saskatchewan legislation are either on the merits or by way of trial *de novo.*[62] The potential impact of discipline proceedings on the

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[59] [1989] 1 SCR 1722. See also *Caswell v Alexandra Petroleums*, [1972] 3 WWR 706 (Alta. CA).

[60] See above.

[61] *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, 2003 SCC 20. See also *Art Hauser Centre Board Inc. v. Canadian Union of Public Employees Local No. 882, 2008* SKCA 121.

[62] Most of the statutes establishing discipline committees do not specify the scope of appeal. In *Forster v Saskatchewan Teachers' Federation* (1992), 89 DLR (4th) 283 (Sask. CA) the Court of Appeal recognized a general right of appeal on the merits. However, more recent decisions have made it clear that deference will ordinarily be given to findings by discipline committees by applying the "reasonableness" standard. See *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, 2003 SCC.

livelihood and career of the individuals subjected to them makes it desirable to allow broad appeal rights. It may be desirable in disciplinary proceedings to allow appeals on matters of fact. If deference is given to the discipline committee, an appropriate balance may be achieved.

An appeal "on a question of fact and law" presumably permits the court to make its own findings of fact from the evidence, but is usually confined to the evidence that was before the decision-maker. This evidence is made available to the court in the record of proceedings. This may include transcripts, documents presented to the decision maker, reasons for decision, and other records kept by the decision-maker. The court will usually not hear new evidence or rehear the testimony of witnesses. Thus it has been held that even an unrestricted general right of appeal is "not a warrant for us to retry the case."[63] Nevertheless, there may be circumstances in which a trial *de novo* would be more appropriate than an appeal on the record.

Appeal from two Saskatchewan discipline committees may be by trial *de novo* if the court so orders on the application of either of the parties to the appeal. This no doubt reflects the importance of disciplinary decisions, though trial *de novo* is not provided for on appeal from other disciplinary committees. It could be argued that a trial *de novo* should be available on appeal from all discipline committees, either as a matter of right, or on order of the court.

Similar considerations may explain why trial *de novo* is specified in some other statutes. For example, *The Health Information Protection Act*[64] governs the important and sometimes controversial issue of access to health care records of individuals. The *Act* stipulates that appeal to the court is by way of trial *de novo.*[65]

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[63] *Re Canadian Tire Corp*., (1987) 23 Admin. L. R. 285 (Ont. Div. Ct.).

[64] S.S. 1999, c. H-0.021.

[65] Sections 50 and 51. Section 51 provides in part:

The record of proceedings required to be kept by tribunals and other decision makers differs from statute to statute. While discipline committees may keep a transcript of proceedings, other decision-makers may not do so. As a practical matter, onerous record-keeping requirements would not be appropriate for all decision makers, but lack of a transcript may make it difficult for a court to conduct an appeal on the evidence presented to the decision-maker. The general appeal provision in most Saskatchewan legislation would likely permit the court to go beyond the record if it appeared to be necessary to do so,[66] but it might be desirable to make this authority clear. A full trial *de novo* may not be necessary for this purpose. It may be sufficient to give the court authority to "hear or receive such evidence as it sees fit" in order to properly determine the issues on appeal.

4. Structure of appeals

The amount of detail contained in provisions authorizing appeals differs from statute to statute. Some statutes specify that an appeal is by way of notice of motion. This is generally not necessary or desirable. The courts have the jurisdiction to govern their own procedure. The normal procedure on appeal to the Court of Queen's Bench is by way of notice of motion.[67] Appeals to the Court of

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> 51(1) On an appeal, the court:
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> (a) shall determine the matter *de novo*; and
>
> (b) may examine any record in private in order to determine on the merits whether the information in the record may be withheld pursuant to this Act.

[66]See *Whitehouse v Sun Oil Co.*, [1982] 6 WWR 289 (Alta. CA) in which the court asserted a right to hear evidence on an appeal from a tribunal.

[67]QB Rule 441 provides:

> 441(1) All applications both in court and in chambers shall be by notice of motion except where otherwise specially provided.

Appeal should ordinarily conform to the procedure established by the court. Some of the additional detail in the more detailed statutory appeal provisions might also be left to the Rules of Court.

There remain some procedural matters which should be addressed in all appeal provisions.

1. What court should hear an appeal? Almost all appeal provisions in Saskatchewan law assign appeals to the Court of Queen's Bench. Saskatchewan appears to be more consistent in this regard than many other jurisdictions. Jones and de Villars observe that "there does not appear to be any discernible pattern about which level of court should hear an appeal" in Canada, [68] and the New Zealand Law Commission found that a similar situation exists in that country.[69]

Arguments can be made in favour of each level of court. Appeal courts are of course accustomed to hearing appeals, but proceedings in the trial courts may be more expeditious. Neither Jones and de Villars nor the New Zealand Law Commission regard the choice of court as a critical matter. However, some appropriate distinctions might be made. By analogy, the Court of Appeal may be the appropriate choice when the appeal is from an intermediate appeal before an administrative tribunal. The Court of Queen's Bench may be appropriate when appeals on matter of fact are allowed, since findings of fact are part of the routine of the court.

> (2) Where under any statute an application may be made to the court or to a judge, such application shall be made by notice of motion unless the statute or the rules otherwise provide.
>
> (3) The court or a judge, if satisfied that delay caused by proceedings in the ordinary way would or might entail an irreparable or serious mischief, may make an order ex parte upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the court or a judge may think just; and any party affected by such order may move to set it aside or to vary it.

[68] Jones and de Villars, *Principles of Administrative Law, (2nd*), Toronto, 1994, p. 448.

[69] New Zealand Law Commission, *Tribunals in New Zealand,* January, 2008, p. 124.

2. Should leave of the court be required? At present, leave of the court is not usually required in Saskatchewan when appeal to the court from a decision of a statutory decision-maker is authorized. Leave requirements are common in some jurisdictions. In Ontario, it has been suggested that a leave requirement should be imposed on all appeals from statutory decisions in order to further the goals of efficiency and finality[70]. The discussion above suggests that other factors may trump these goals in some cases. Nevertheless, leave may be appropriate when the appeal is from an intermediate appeal before an administrative tribunal.

3. Further appeals. An appeal from a decision of the Court of Queen's Bench to the Court of Appeal is allowed only if it is specifically provided for by statute. In a minority of cases, the statute governing exercise of a statutory power of decision expressly prohibits a further appeal,[71] but this merely restates the general law. There is no clear pattern in the statutes in regard to further appeals, except perhaps that appeals from discipline committees are usually appealable. The New Zealand Law Commission found a similar state of affairs, and could find no reason for it. The Commission suggests that a "more consistent approach" is desirable.[72]

4. Time allowed for appeal. There is no good reason for a wide variation in the time allowed to bring an appeal. Many Saskatchewan statutes set out a 30 day appeal period, but periods of 15 and 45 days, and 6 months can be found. The 30 day period contained in most statutes may be an appropriate rule.

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[70]*Excellence in Administrative Justice* (Government of Ontario, September, 1997).

[71]See for example *The Agri-Food Act, 2004*, S.S. 2004, c. A-15.21. Section 33, which provides for an appeal, states that "(3) There is no further appeal from the decision of a judge of the Court of Queen's Bench pursuant to this section."

[72]New Zealand Law Commission, *Tribunals in New Zealand,* January, 2008, p. 124.

III. QUESTIONS FOR CONSIDERATION

When considering answers to these questions, please keep in mind the question of whether distinctions should be made between various types of decision maker.

Rights of appeal

1. Should a right of appeal exist from all statutory decisions?

2. Is appeal to the courts appropriate or necessary when legislation provides for review of a statutory decision by an administrative tribunal?

3. If appeals are not allowed from all statutory decisions, what factors justify withholding a right of appeal?

(a) Avoiding delay and protracted litigation?

(b) Size and effect of the penalty imposed?

(c) Technical subject matter?

(d) Availability of internal review by the regulatory agency?

(e) Institutional and policy considerations?

Grounds for appeal and standards of review

4. Should the ordinary rule be that an appeal lies from a statutory decision on

(a) Matters of law (including jurisdiction)?

(b) Matters of law and fact?

(c) Other grounds?

5. Should appeals from tribunals which themselves hear appeals from officials be limited to questions of law and jurisdiction?

6. Should appeals from decision-makers deemed to be experts dealing with technical matters be limited to questions of law and jurisdiction?

7. Should appeals on matters of law and fact be available in certain classes of cases, such as

(a) appeals from discipline committees?

(b) appeals from decisions made without a hearing?

8. Should the standard of review on appeals on questions of law and jurisdiction be

(a) analogous to rights of appeal from lower court decisions?

(b) defined to incorporate the "correctness" standard of judicial review developed by the courts?

(c) left to the courts to define?

9. Should appeal provisions explicitly provide that deference be given to findings of fact within the expertise of a tribunal or other decision-maker?

10. Are there circumstances that would justify a trial *de novo* requirement?

Structure of appeals

11. Should all appeals from statutory decisions be to the Court of Queen's Bench?

12. Should leave to appeal be required when there is a right of appeal from the decision of a statutory decision-maker:

(a) in all cases?

(b) in some cases?

(c) never?

13. Should further appeals from the Court of Queen's Bench to the Court of Appeal be permitted, and if so, with or without leave?

14. Should a uniform time in which to make application for an appeal be adopted?

15. If a uniform time in which to make application for an appeal is adopted, is the 30 day period now contained in many statutes appropriate?

APPENDIX:

TABLE OF APPEALS FOR STATUTORY POWERS OF DECISION IN SASKATCHEWAN

Appeals From Decisions of Administrative Tribunals and Disciplinary Committees, Etc. to Court of Queen's Bench

Department and Act	Appeal From	Appeal To Other	Appeal To Court of Queen's Bench	Appeal Period
PROFESSIONS LEGISLATION				
Agrologists Act, 1994	Discipline Committee Council of Saskatchewan Institute of Agrologists re reinstatement			30 days 30 days
Architects Act, 1996	Discipline Committee Council of Saskatchewan Association of Architects re reinstatement			30 days 30 days
Assessment Appraisers Act	Council of Saskatchewan Assessment Appraisers' Association			30 days
Canadian Information Processing Society of Saskatchewan Act	Canadian Information Processing Society of Saskatchewan			30 days
Certified General Accountants Act, 1994	Board of governors of the Certified General Accountants Association of Saskatchewan			30 days
Certified Management Accountants Act (NYP)*	Council of Society of Management Accountants of Saskatchewan		By notice of motion	30 days
*This Act will replace The Management Accountants Act.				
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Certified Management Consultants Act	Council of Institute of Certified Management Consultants of Saskatchewan			30 days

Chartered Accountants Act, 1986	Council of the Institute of Chartered Accountants of Saskatchewan, **or** discipline committee Council re reinstatement		Judge may order that appeal re discipline be heard by trial *de novo*	30 days 6 months
Chiropractic Act, 1994	Discipline Committee, or Board of the Chiropractors' Association of Saskatchewan			30 days
Community Planning Profession Act	Council of Association of Professional Community Planners of Saskatchewan re membership admission or readmission Council re suspension or expulsion		Which may be on the record, or by trial *de novo*	30 days 30 days
Dental Disciplines Act	Discipline Committee Council (of an association) re reinstatement			30 days 30 days
Dieticians Act	Board of Saskatchewan Dieticians Association			30 days
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Engineering and Geoscience Professions Act	Discipline Committee Council of Association of Professional Engineers and Geoscientists of Saskatchewan re admission or reinstatement			30 days 30 days
Forestry Professions Act	Council of the Association of Saskatchewan Forestry Professionals			30 days
Interior Designers Act	Council of the Interior Designers Association of Saskatchewan			30 days

Land Surveyors and Professional Surveyors Act	Discipline Committee Council of Saskatchewan Land Surveyors Association re reinstatement			30 days 30 days
League of Educational Administrators, Directors and Superintendents Act, 1991	Discipline Committee Executive of League of Educational Administrators, Directors and Superintendents			30 days 30 days
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Licensed Practical Nurses Act, 2000	Discipline Committee Council of Saskatchewan Association of Licensed Practical Nurses			30 days 30 days
Management Accountants Act	Council of the Society of Management Accountants of Saskatchewan			6 months
Medical Laboratory Technologists Act	Discipline Committee or Council of the Saskatchewan Society of Medical Laboratory Technologists			30 days
Medical Profession Act, 1981	Registrar of the Council of the College of Physicians and Surgeons (eligibility to vote for members in an election) Council, Competency Committee, or the Discipline Hearing Committee		To be decided in a summary way	At least 15 days before election 60 days
Medical Radiation Technologists Act	Council of Saskatchewan Association of Medical Radiation Technologists		By notice of motion	30 days

Department and Act	Appeal From	Appeal To Other	Appeal To Court of Queen's Bench	Appeal Period
Medical Radiation Technologists Act, 2006 (NYP)	Same as above		Same as above	Same as above
Midwifery Act	Discipline Committee Council of the Saskatchewan College of Midwives re reinstatement			30 days 30 days
Naturopathy Act	Council of Saskatchewan Association of Naturopaths			1 month
Occupational Therapists Act, 1997	Council of the Saskatchewan Society of Occupational Therapists		By notice of motion	30 days
Ophthalmic Dispensers Act	Investigation Committee, Discipline Committee, or Council of the Saskatchewan Opthalmic Dispensers Association Council re reinstatment	Council **or** QB		30 days 30 days
Optometry Act, 1985	Council of Saskatchewan Association of Optometrists			60 days
Paramedics Act (NYP)	Council of Saskatchewan College of Paramedics		By notice of motion	30 days
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Pharmacy Act, 1996	Council of Saskatchewan College of Pharmacists, or Discipline Committee			30 days
Physical Therapists Act, 1998	Council of Saskatchewan College of Physical Therapists			30 days
Podiatry Act	Council of Saskatchewan College of Podiatrists			30 days

Professional Corporations Act	Council (of an association)			60 days
Psychologists Act, 1997	Council of Saskatchewan College of Psychologists			30 days
Real Estate Act	Superintendent of Real Estate			30 days
Registered Music Teachers Act, 2002	Executive of Saskatchewan Registered Music Teachers' Association			30 days
Registered Nurses Act, 1988	Discipline Committee Council of Saskatchewan Registered Nurses' Association	Council **or** QB		30 days 30 days
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Registered Psychiatric Nurses Act	Council of Registered Psychiatric Nurses Association of Saskatchewan			30 days
Respiratory Therapists Act (NYP)	Council of Saskatchewan College of Respiratory Therapists		By notie of motion	30 days
Rural Municipal Administrators Act	Executive Board of Rural Municipal Administrators' Association of Saskatchewan		By notice of motion	30 days
Saskatchewan Applied Science Technologists and Technicians Act	Board of Saskatchewan Applied Science Technologists and Technicians Association			30 days
Saskatchewan Association of School Business Officials Act, 2004	Executive of Saskatchewan Association of School Business Officials			30 days

Social Workers Act	Discipline Committee Council of Saskatchewan Association of Social Workers re reinstatement			30 days 30 days
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Speech-Language Pathologists and Audiologists Act	Discipline Committee Council of Saskatchewan Association of Speech-Language Pathologists and Audiologists re reinstatement			30 days 30 days
Urban Municipal Administrators Act	Board of the Urban Municipal Administrators' Association		On a question of law	30 days
Veterinarians Act, 1987	Discipline Committee Council of Saskatchewan Veterinary Medical Association re reinstatement			30 days 6 months
OTHER LEGISLATION				
Agri-Food Act, 2004	Agri-Food Appeal Committee		On a question of law or jurisdiction	45 days
Ambulance Act	Arbitrator		By notice of motion	30 days or further time allowed by judge
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**

Amusement Ride Safety Act	Chief Inspector		For judicial review, in accordance with QB Rules re judicial review, other than Rule 664(2) & 667(2)	30 days
Animal Products Act	Arbitrator		By notice of motion, on a question of law	30 days
Apiaries Act, 2005	Minister		On a question of law re destruction order; on amount re recovery of minister's costs	30 days
Apprenticeship and Trade Certification Act, 1999	Saskatchewan Apprenticeship and Trade Certification Commission		On a question of law or jurisdiction	30 days
Auctioneers Act	Registrar		By notice of motion	30 days
Automobile Accident Insurance Act	Insurer	Automobile Injury Appeal Commission **or** QB	In accordance with QB Rules respecting actions commenced by statement of claim. Can also apply to Court for variation of order, with leave, on material change in circumstances.	180 days, 90 days or 60 days
Builders' Lien Act	Arbitrator		On a question of law	30 days
Business Corporations Act	Director			No time limit
Business Names Act	Registrar		By notice of motion	1 year
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Cemeteries Act, 1998	Registrar of Cemeteries			30 days
Change of Name Act, 1995	Director of Vital Statistics		By notice of motion	30 days
Charitable Fund-Raising Businesses Act	Registrar of Charities			30 days
Cities Act	Local appeal board **or**, if no board, City Council		On a question of law or jurisdiction	30 days
Clean Air Act	Minister		On amount of costs and expenses	30 days
Collection Agents Act	Registrar	Registrar for a rehearing **or** QB	By notice of motion	30 days

Consumer Protection Act	Director			10 days
Credit Union Act, 1985	Registrar of Credit Unions			-----
Credit Union Act, 1998	Same as above			Same as above
Direct Sellers Act	Registrar		By notice of motion	30 days
Education Act, 1995	Board of Reference		On a question of law or jurisdiction, by notice of motion	10 days
Electrical Licensing Act	Director of Licensing		For judicial review, in accordance with QB rules re judicial review, other than Rule 664(2) & 667(2)	30 days
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Environmental Management and Protection Act, 2002	Minister		On a question of law	30 days
Farm Financial Stability Act	Appeals Committee		On a question of law	-----
Forest Resources Management Act	Minister, officer or inspector		On a question of law or jurisdiction	30 days
Freedom of Information and Protection of Privacy Act	Head of a government institution		The court shall determine the matter *de novo*	30 days
Funeral and Cremation Services Act	Superintendent of Funeral and Cremation Services			30 days
Gas Inspection Act, 1993	Chief Inspector		By notice of motion	30 days
Gas Licensing Act	Director of Licensing		For judicial review, in accordance with QB rules re judicial review, other than Rule 664(2) & 667(2)	30 days
Health Facilities Licensing Act	Minister		On a question of law or on the ground that the Minister did not act in accordance with principles of fundamental justice	30 days

Health Information Protection Act	Trustee's decision re Commissioner's recommendations		The court shall determine the matter *de novo*	30 days
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Heritage Property Act	Minister, a mayor or reeve re stop order Minister re granting or renewing a permit		 On a question of fact or law	14 days -----
Home Energy Loan Act	Registrar		By notice of motion	30 days
Irrigation Act, 1996	Minister		On a question of law	30 days
Labour-Sponsored Venture Capital Corporations Act	Minister		On interpretation of Act, issue of law, or inference to be drawn from facts	-----
Labour Standards Act	Adjudicator		On a question of law or jurisdiction, by notice of motion	21 days
Legal Aid Act	Saskatchewan Legal Aid Commission			30 days
Local Authority Freedom of Information and Protection of Privacy Act	Head's decision re Commissioner's recommendations		The court shall determine the matter *de novo*	30 days
Mental Health Services Act	Director of Mental Health Services Review panel		By notice of motion By notice of motion	30 days 30 days
Milk Control Act, 1992	Milk Control Board		On a question of law or jurisdiction	-----
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Mineral Taxation Act, 1983	Board of Revenue Commissioners			1 month
Mortgage Brokers Act	Superintendent of Insurance for Saskatchewan	Superintendent for a rehearing **or** QB	By notice of motion	30 days

Motor Dealers Act	Registrar		By notice of motion	30 days
Municipal Board Act	Saskatchewan Assessment Management Agency		On a judicial review application	-----
Municipalities Act	Adjudicator Local appeal board or council of a municipality		On a question of law, by notice of motion On a question of law or jurisdiction	30 days 30 days
Non-profit Corporations Act, 1995	Director			-----
Northern Municipalities Act	Council of a northern municipality re granting or suspending licences Council re nuisances Saskatchewan Municipal Board		 On a question of law or jurisdiction	Same as for appeal from Prov. Court 45 days 30 days
Occupational Health and Safety Act, 1993	Adjudicator		On a question of law or jurisdiction or from a stop-work order	-----
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Pension Benefits Act, 1992	Superintendent of Pensions		By notice of motion	30 days
Pest Control Products (Saskatchewan) Act	Minister			30 days
Police Act, 1990	Saskatchewan Police Commission		Of a decision to award damages for unjust dismissal	30 days
Power Corporation Act	Saskatchewan Power Corporation			30 days
Private Investigators and Security Guards Act, 1997	Saskatchewan Police Commission		On a question of law	30 days
Private Vocational Schools Regulation Act, 1995	Minister		On a question of law	30 days
Provincial Lands Act	Appeal Board		On a question of law	15 days

Public Health Act, 1994	Medical health officer			60 days/no limit re appeal of preventive detention order
Regional Health Services Act	Practitioner Staff Appeals Tribunal		On a question of law or jurisdiction	30 days
Residential Tenancies Act, 2006	Hearing officer		On a question of law or jurisdiction	30 days
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Revenue and Financial Services Act	Board of Revenue Commissioners		Form prescribed by board	1 month
Safer Communities and Neighbourhoods Act	Director of Community Operations re director's certificate Director re removal order	Director to reconsider **or** QB	Against the amount of costs and expenses	30 days 14 days
Saskatchewan Assistance Act	Unit administrator or program manager		By notice of motion, on a question of law or jurisdiction	30 days
Saskatchewan Farm Security Act	Farm Land Security Board		By notice of motion	30 days
Saskatchewan Human Rights Code	Human rights tribunal		By notice of motion, on a question of law	30 days; judge may extend appeal period if it is just and equitable to do so
Saskatchewan Insurance Act	Superintendent of Insurance		On a question of law	30 days
Saskatchewan Medical Care Insurance Act	Joint Medical Professional Review Committee			30 days
Saskatchewan Watershed Authority Act, 2005	Saskatchewan Watershed Authority		Against the amount of the costs	30 days
Department and Act	**Appeal From**	**Appeal To Other**	**Appeal To Court of Queen's Bench**	**Appeal Period**
Traffic Safety Act	Highway Traffic Board		On a question of law	30 days

Trust and Loan Corporations Act, 1997	Saskatchewan Superintendent of Financial Institutions		On a question of law	30 days
Uniform Building and Accessibility Standards	Saskatchewan Building and Accessibility Standards Appeal Board		On a question of law	30 days
Vital Statistics Act, 1995	Director of Vital Statistics			1 year
Water Appeal Board Act	Water Appeal Board		On a question of law	30 days
Water Power Act	Minister		As to the amount of compensation	-----
Youth Drug Detoxification and Stabilization Act	Review panel Trustee's decision		By notice of motion The court shall determine the matter *de novo*	7 days or any longer period the judge allows 30 days