Law Reform Commission of Saskatchewan

Appeals from the Exercise of Statutory Powers of Decision

Final Report

March 2012

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 some statutes do not provide for appeals. This paper makes recommendations respecting the right to appeal, grounds of appeal and structure of appeals.

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Table of Contents

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 some statutes do not provide for appeals. This paper makes recommendations respecting the right to appeal, grounds of appeal and structure of appeals.

OBJECTS OF REPORT

The objects of this Report are:

(i) to provide a clear choice between judicial and appellate review; and
(ii) to provide suggested language to indicate a legislative intention as to the form of review intended.

The Report demonstrates a marked preference in favour of appellate review rather than judicial review.

SUMMARY OF RECOMMENDATIONS

THE RIGHT TO APPEAL

1. There should be a right of appeal from the exercise of all statutory powers of decision.

2. Statutes that create a statutory power of decision and expressly prohibit appeal or judicial review should be amended to allow an appeal or review. The default provision should be a right of appeal.

3. When a statute containing a statutory power of decision is in the process of being amended or reviewed, a right of appeal should be inserted if none is present.

4. It should be standard practice to include an appeal right when a new statutory power of decision is enacted.

5. A right of appeal from the exercise of a statutory power of decision is appropriately denied when the statutory power is deemed to involve the balancing of polycentric interests.

6. Leave to appeal should not ordinarily be required, but may be a more appropriate way to discourage unnecessary or frivolous appeals than denying a right of appeal.

GROUNDS OF APPEAL

1. (1) Except as provided below, all appeals from the exercise of a statutory power of decision shall be limited to questions of law.

(2) On an appeal on a question of law, the issues that the court is to consider shall include whether the decision-maker applied the correct law, and properly applied the law to the facts found by the decision-maker. The court shall not substitute its own view of the evidence unless the findings of fact made by the decision-maker amount to palpable and overriding error.

2. (1) Appeals shall be permitted on questions of fact and law from:

> (a) decisions of discipline committees of professional organizations governed by statute; and
> (b) any other decision specified by statute.

(2) On an appeal on a question of fact, the court may substitute its view of the evidence for the findings of fact made by the decision-maker.

3. (1) On an appeal on a question of law, the court may defer, to the extent it considers appropriate, to the decision-maker's interpretation of the statute governing the decision and any technical rule within the expertise of the decision-maker.

(2) On an appeal on a question of fact, the court may defer, to the extent it considers appropriate, to any finding of fact by the decision-maker that is within the scope of the decision-maker's expertise and technical knowledge.

4. On any appeal from the exercise of a statutory power of decision, the court shall apply the rules of natural justice.

STRUCTURE OF APPEALS

1. Procedural rules applicable to appeals from the exercise of statutory powers of decision should be left to the Rules of Court, and procedural rules presently contained in any statute should be removed.

2. All appeals from the exercise of statutory powers of decision should be directed to the Court of Queen's Bench.

3. All appeals from the exercise of statutory powers of decision should be brought within 30 days of the decision.

1. 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]

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 of decision 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 uncertain. Most commentators on administrative law agree that judicial review is a complex and difficult branch of the law. Largely for this reason, legislators have supplemented judicial review with statutory rights to appeal from decisions made by tribunals and officials exercising statutory powers. Clearly stated appeal provisions can supersede judicial review, making resort to it unnecessary in most cases.

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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 exercises of statutory authority, such as the power to make regulations or orders of general application, by the fact that they affect specific individuals or corporations. The term appears to have been coined in the Ontario *Statutory Powers Procedure Act*, adopted in 1966 (see now RSO 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,
>
> (a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or
>
> (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. [s 1(1)].

[2] See e.g. Law Reform Commission of Saskatchewan, *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.

The right of appeal from a decision must be expressly stated in the statute that creates the power of decision.[3] This report is concerned with such rights of appeal. Unfortunately, the rights of appeal presently contained in our statutes do not always achieve their intended purposes. They are often uncertain in scope. In *Dunsmuir v New Brunswick*, the most recent Supreme Court of Canada decision on the scope of judicial review, the court failed to agree on the extent of the overlap between judicial review and statutory appeals.[4]

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 statutory 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 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.
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> 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 discernible policy considerations and should constitute a rational scheme.[5]

This point of view has been echoed by the New Zealand Law Commission and other law reform

[3] There is no inherent right to appeal a statutory decision. The right to appeal must be contained in legislation. See David Phillip Jones & Anne S de Villars, *Principles of Administrative Law*, 2d ed (Scarborough, Ont: Carswell, 1994) at 446.
[4] 2008 SCC 9 [*Dunsmuir*].
[5] Jones & de Villars, *supra* note 3 at 470.

agencies, but the problem remains.[6] It is ironic that law reformers, courts and legislators have directed more attention to clarifying judicial review than to rationalizing rights of appeal, an exercise that would make judicial review redundant in many 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.[7] The recommendation was not adopted, even though the subsequent adoption of the *Administrative Procedures Act* would have provided an appropriate vehicle for a generalized right of appeal.[8]

One reason why more attention has not been paid to rights of appeal is that the appropriate principles are not easy to identify. The 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.

In June 2009, the Commission issued a consultation paper, *Appeals from Exercise of Statutory Powers of Decision.*[9] It contained a broad discussion of appeals from decisions made by officials and tribunals. The Commission thanks those who responded to the consultation paper. We received extensive comments from tribunals and agencies exercising statutory powers, and from members of the Administrative and Labour Law Section of the Canadian Bar Association, Saskatchewan Branch.

The Commission believes that administrative fairness requires that rights to appeal from statutory powers of decision should conform to consistent principles. The first goal of the Commission's recommendations is principled consistency. The second is clarification of appeal rights. We believe that administrative law litigation can be simplified and reduced if these goals

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[6] See New Zealand Law Commission, *Tribunals in New Zealand* (January 2008) at 129. More consistent, and even uniform, appeal provisions were recommended in England at least as early as the Franks Committee Report: UK, *Report of the Committee on Administrative Tribunals and Inquiries*, Cmnd 218 (London: Her Majesty's Stationary Office, 1957)[*Franks Committee Report*].

[7] Jones & de Villars, *supra* note 3 at 460; *Report of the Special Committee on Boards and Tribunals to the legislative assembly of Alberta* (Edmonton: no publisher, 1965)(Chair: Carlton W. Clement)[*Report of the Special Committee*].

[8] See Alberta's *Administrative Procedures Act*, RSA 1980, c A-2. The Act was adopted in 1966. The Ontario *Statutory Powers Procedures Act*, *supra* note 1, similarly fails to deal with appeals. The Franks Committee Report recommendation, *ibid*, was applied in England to only a restricted list of tribunals: *Tribunals and Inquiries Act 1971* (UK), c 62.

[9] Law Reform Commission of Saskatchewan, *Appeals from Exercise of Statutory Powers of Decision: Consultation Paper* (June 2009) [Consultation Paper].

are implemented. A properly developed appeals system would make the difficulty and uncertainty of judicial review unnecessary in most cases.

In our opinion, these goals can be implemented by developing model appeal provisions for different classes of statutory powers of decision. This report recommends model provisions that can be applied to powers of decision in Saskatchewan statutes. The discussion in this report focuses on three elements of the appeal regime: whether an appeal right is appropriate, grounds for appeal, and certain procedural rules that are typically contained in appeal provisions.[10]

Despite the variety of subject matter to which statutory powers of decision apply, we have concluded that two model provisions, distinguished primarily by the grounds of appeal appropriate in each case, will cover most of the statutory powers of decision for which a right of appeal is appropriate. Legislators may find reasons for creating some exceptions, but we believe the models we recommend are at least an appropriate starting point.

2. PRINCIPLES OF A CONSISTENT APPROACH TO APPEALS

2.1 The right of appeal

2.1.1 General rule

In Saskatchewan, a few statutes explicitly provide that no appeal lies to the court from a statutory power of decision.[11] Four statutes expressly confine the role of the courts to judicial review.[12]

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[10] The scope of the discussion in this report is more narrowly focused than in the Consultation Paper, *ibid*. Readers are referred to the Consultation Paper for a broader discussion of statutory appeals.

[11] These provisions usually state simply that no appeal lies. See e.g. section 83 of *The Securities Act, 1988*, SS 1988-89, c S-42.2, which allows the Securities Commission to permit an exception from certain requirements imposed on trading in securities. Subsection 83(3) provides that "...a decision of the Commission made pursuant to subsection (1) is final and there is no appeal from that decision."

[12] *The Amusement Ride Safety Act*, SS 1986, c A-18.2; *The Electrical Licensing Act*, SS 1988-89, c E-7.2; *The Gas Licensing Act*, SS 1988-89, c G-4.1; *The Municipal Board Act*, SS 1988-89, c M-23.2. For example, *The Amusement Ride Safety Act* provides:

> 32(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.
> (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

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 judgments of the court.[13]

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.[14] Jones and de Villars reflect the opinion of a majority of academic commentators when they suggest that the "principles of good public administration usually require that at least one level of appeal exist with respect to any delegate's decision."[15]

The Commission is of the opinion that an appeal should ordinarily be available from the exercise of a statutory power of decision. Subject to the exception discussed below, the general rule should be that a right of appeal lies from all exercises of a statutory power of decision. In principle, an appeal provision should be inserted in every statute that creates a statutory power of decision. As a first step toward this goal, all statutes that expressly prohibit appeals or judicial review should be examined, and those that do not fall into the exceptions described below should be amended to provide for appeals. However, there are almost certainly some statutes that include statutory powers of decision but are simply silent on the question of appeal. The Commission has not attempted to identify such statutes. The Commission suggests that when a statute containing a statutory power of decision is being amended or reviewed, a right of appeal should be inserted if none is present. Similarly, it should be standard practice to include an appeal right when new statutory powers of decision are enacted.

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inconsistent with this Act.

[13] *Report of the Special Committee*, *supra* note 7 at 42.

[14] *Franks Committee Report*, *supra* note 6.

[15] Jones & de Villars, *supra* note 3 at 446.

2.1.2 Exceptions

In the Commission's opinion, the case for limiting or denying an appeal is convincing when a tribunal is given authority to make discretionary decisions balancing "multiple" or "polycentric" interests. The administrative regime in such cases is usually structured to include these interests; the decisions reached by them should ordinarily be respected. The courts have held that even the scope of judicial review should be narrow when polycentric interests are weighed by the tribunal. Labour relations boards are perhaps the clearest example. The Saskatchewan *Trade Union Act* contains a privative clause that expressly denies both a right of appeal and judicial review.[16] Whether a particular 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.

Principled arguments have been made for exempting some other classes of statutory powers of decisions from appeal. The Commission believes that because the right of appeal is a fundamental part of our system of justice, the right should be denied only in exceptional cases. Some possible exceptions were discussed in the consultation paper. The Commission is of the opinion that the arguments made to support these exemptions are not persuasive. Some point to situations in which a right of appeal would seldom be exercised. Under *The Electrical Inspection Act, 1993* and *The Gas Inspection Act, 1993* for example, the only issue on appeal is whether a permit was in fact obtained before work was commenced on an electrical installation or gas installation, something that will rarely be in issue.[17] But the existence of a right to appeal in such cases does no harm. There is, at present, a right of appeal to the courts under both of these Acts.

A more serious argument can be made that appeals from tribunals are less necessary than appeals from decisions made without a formal hearing. Tribunals are independent adjudicators

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[16] *The Trade Union Act*, RSS 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 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 confers 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.

[17] *The Electrical Inspection Act, 1993, supra* note 12, s 28.2; *The Gas Inspection Act, 1993, supra* note 12, s 35.2.

providing court-like protections for those who appear before them. However, at least if the tribunal hears cases 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.*[18] 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 license 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."[19] 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.[20]

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*, for example, most decisions of officials of the Saskatchewan Financial Services Commission may be reviewed by a hearing before the Commission, and an appeal lies on the merits of the decision of the Commission to the Court of Queen's Bench.[21] 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* are issued by the Minister, while liquor vendors' licenses under *The Alcohol and Gaming Regulation Act, 1997* are issued by the Liquor and Gaming Authority.[22] No appeal to the courts is allowed in either of these cases, but appeals are allowed under most other licensing Acts in Saskatchewan.

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[18] SS 1997, c A-18.011.
[19] Jones & de Villars, *supra* note 3 at 446.
[20] New Zealand Law Commission, *supra* note 6 at 119.
[21] *The Securities Act, 1988*, *supra* note 11.
[22] *The Agricultural Implements Act*, RSS 1978, c A-10; *The Alcohol and Gaming Regulation Act, 1997*, *supra* note 18.

The Commission believes that this inconsistency is most easily and fairly resolved by providing for appeals from all tribunal decisions. Most tribunal decisions are appealable in Saskatchewan at present. Extending the right of appeal to all (except those balancing polycentric interests) would err, if at all, on the side of ensuring that justice is done in all cases.

A rationale for limiting appeal rights that is sometimes advanced by administrators and regulators is the desirability of efficient, timely decision-making. Appeals can generate delay and expense. As the New Zealand Law Commission observed, "[a] sequence of appeals can cause objectionable delay and frustration to the parties and may ultimately be counterproductive."[23] 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.[24] In some jurisdictions, frequent and sometimes frivolous appeals have become a problem. These often involve cases in which considerable sums of money are involved, so that appeals are made routinely because the possibility of success, even if remote, outweighs the cost of appeal. In Saskatchewan, such circumstances are rare, but some examples were brought to the Commission's attention.

A report on administrative justice in Ontario, where the cost and delay created by frequent appeals has become a problem, recommended that leave to appeal from decisions of tribunals should be required.[25] Leave requirements are unusual in Saskatchewan, and the Commission believes that there is no reason at present to make them less so. But when there is a demonstrated problem, a leave requirement is a more appropriate way to discourage unnecessary or frivolous appeals than denying a right of appeal.

Recommendations: The Right to Appeal

1. There should be a right of appeal from the exercise of all statutory powers of decision.

2. Statutes that create a statutory power of decision and expressly prohibit appeal or judicial

[23] New Zealand Law Commission, *supra* note 6 at 118.
[24] The Consultation Paper, *supra* note 9, discussed some possible exceptions. For example, *The Agricultural Leaseholds Act*, RSS 1978, c A-12, permits an agricultural tenant whose lease has expired to re-enter to harvest a crop planted during the term of the lease. The Act provides for resolution of a dispute by the Provincial Mediation Board, from which no appeal lies.
[25] Ontario, Agency Reform Commission, *Excellence in Administrative Justice: Delivering Better Service: a Consultation on Reform of Ontario's Regulatory and Adjudicative Agencies* (Agency Reform Commission, 1997).

review should be amended to allow an appeal or review. The default provision should be a right of appeal.

3. When a statute containing a statutory power of decision is in the process of being amended or reviewed, a right of appeal should be inserted if none is present.

4. It should be standard practice to include an appeal right when a new statutory power of decision is enacted.

5. A right of appeal from the exercise of a statutory power of decision is appropriately denied when the statutory power is deemed to involve the balancing of polycentric interests.

6. Leave to appeal should not ordinarily be required, but may be a more appropriate way to discourage unnecessary or frivolous appeals than denying a right of appeal.

2.2 Grounds of appeal

2.2.1 The need for reform

Of the 128 Saskatchewan statutory powers of decision listed in the Appendix that are subject to appeal, 13 may be appealed on matters of "law or jurisdiction" and 20 on matters of "law". Since jurisdiction is a matter of law, there is little real distinction between these formulas. Only two statutes explicitly provide for appeal on "questions of fact and law", but six provide for appeal by trial *de novo,* a new hearing before the court at which facts and law will of course be at issue. The majority (85 statutes) that create a statutory power of decision merely allow an appeal without specifying its scope.[26]

This collection of appeal formulas is deficient in at least two respects. First, as the first part of this report suggested, there appears to be no consistent principle guiding the choice of grounds for appeal. A recent issues paper published by the New Zealand Law Commission found a similar problem in New Zealand:

> 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

[26] See Appendix, below.

> believe that the inconsistencies apparent in this table [of statutory provisions] are greater than can be justified.[27]

Jones and de Villars' Canadian administrative law text bluntly states that the law in this regard is "unsatisfactory." Legislatures, they argue, "should give considerably more attention" to the grounds of appeal, and adopt a policy designed to reduce the appeal formulas to "a rational scheme."[28]

Second, the appeal formulas presently contained in the statutes do not succeed in providing clear direction to the courts. An appeal on matters of "law" or "law and jurisdiction" may be intended to be analogous to an appeal in an ordinary civil matter. 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") 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. Only if a statute allowed an appeal on law and fact would it be correct for the court hearing the appeal to reconsider the evidence and make its own findings of fact in all cases. However, it has been suggested in some decisions that appeals on law and fact are more narrowly confined. Judicial review was originally confined to questions of jurisdiction, which included failure to apply the proper law. Thus appeals on grounds of law and jurisdiction might have been intended by drafters to be no more than an effort to replicate grounds for judicial review.[29]

The courts have not provided a consistent resolution to these problems of interpretation. When the statute does not specify grounds for appeal, the uncertainty in the law is even greater. For a time, the courts seem to have preferred a broad interpretation of appeal provisions. There is a line of authority holding that when a statute confers a general right of appeal, an appeal on the

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[27] New Zealand Law Commission, *supra* note 6 at 119.
[28] Jones & de Villars, *supra* note 3 at 470.
[29] The language used in *The Court of Appeal Act, 2000,* SS 2000, c 42.1, s 14 may muddy this issue. The Act states that the court may "draw inferences of fact." This has been narrowly interpreted to mean only that the Saskatchewan Court of Appeal, like other appeal courts in the common law world, may disturb the findings of fact made at trial if they are obviously not supported by the evidence. See *HL v Canada (Attorney General*), 2005 SCC 25, [2005] 1 SCR 401. Thus it may be that legislative drafters who wanted to replicate the ordinary appellate jurisdiction thought it necessary to use the language of *The Court of Appeal Act, 2000*, and provide for appeals on "fact and law."

merits, that is, on fact and law, is implied.[30] But this approach was never universally adopted, and it is possible to discern a more restricted approach in some recent decisions.[31]

One of the reasons why the courts have not resolved the issues discussed above is that in the last 25 years, the scope of judicial review has been expanded, making statutory appeals less important. In some cases, the courts have applied judicial review standards even when a statutory right of appeal exists.[32] The willingness of the courts to do so was almost certainly encouraged by the lack of clarity and consistency in the statutory appeal provisions considered by the courts. In the Commission's opinion, it would have been better if legislation had clarified statutory appeals. Despite removal of many of the old procedural hurdles that applications for judicial review once had to surmount, a reformed appeal regime would be more satisfactory than judicial review. As the New Zealand Law Commission observed, "[r]ights of appeal are... likely to be cheaper and speedier to exercise" than judicial review.[33]

It should not be forgotten that judicial review and appeals serve somewhat different purposes. 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*, has observed, judicial review "engages the rule of law."[34] It rests on the principle that "fundamental rights will be safeguarded" by the independent, supervisory function of the courts.[35] It is for this reason that the courts have insisted that judicial review cannot be entirely excluded by privative clauses in legislation. However, as Sossin also notes, statutory powers of decision "are created for the very purpose of providing an alternative to courts."[36] Judicial review should not be lightly undertaken: "Judges must show deference to the administrative decision-makers."[37] 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

[30] Jones & de Villars, *supra* note 3 at 451. See *Forster v Saskatchewan Teachers' Federation* (1992), 89 DLR (4th) 283 (Sask CA) [*Forster*].
[31] *Dunsmuir*, *supra* note 4; see Part 2.2.2, below.
[32] See *Q v College of Physicians and Surgeons (British Columbia),* 2003 SCC 19. See also *Owens v Saskatchewan (Human Rights Commission)*, 2006 SKCA 41 [*Owens*], and *Whatcott v Saskatchewan (Human Rights Tribunal*), 2007 SKQB 450.
[33] New Zealand Law Commission, *supra* note 6 at 118.
[34] Lorne Sossin, "Dunsmuir - Plus ça change?" (Roundtable on *Dunsmuir,* University of Toronto, Faculty of Law, 4 June 2008) at 2, online: University of Toronto Faculty of Law <http://www.law.utoronto.ca>.
[35] *Ibid.*
[36] *Ibid.*
[37] *Ibid.*

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. In *Dunsmuir*, the process was described thus:

> 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.[38]

What the court called a "standard of review analysis" is inherently difficult because the court is intervening where it is not invited by the Legislature. It must take care even though it is seeking to act in the interests of justice.

Statutory appeals should be able to avoid some of the difficulties of judicial review. A right of appeal is conferred by the same legislation that creates the power of decision. The legislation invites the courts to hear appeals from the exercise of the statutory power of decision. 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. As the Saskatchewan Court of Appeal observed in *Owens v Saskatchewan (Human Rights Commission)*, the fact that an appeal is provided by statute suggests that less deference is owed to the tribunal than the "reasonableness" test would require.[39] In *Dunsmuir*, the judges did not agree on the relationship between judicial review and statutory appeals, but both Mr. Justice Binnie (in minority concurring reasons) and Madam Justice Deschamps (in minority concurring reasons) explicitly recognized that the existence of a statutory right of review largely eliminates the need for a standard of review analysis.

[38] *Dunsmuir*, *supra* note 4 at para 62.
[39] *Owens supra* note 32 at paras 30-39.

It has been suggested that because the courts have extended the standards of review applicable on judicial review to statutory appeals, rationalizing statutory appeals is no longer necessary. It is suggested that the courts will in any event set the rules, overriding legislated grounds of appeal. However, the Commission is of the opinion that there is an important place for statutory appeals. If legislation clearly articulates grounds of appeal, the courts will find it difficult and undesirable to substitute rules derived from judicial review for the statutory rules. As Deschamps J. suggests in *Dunsmuir,* the standard of review applicable when there is a statutory right of appeal would look very much like the ordinary appellate jurisdiction of the courts.[40] Legislated grounds of appeal could provide a clear and less difficult alternative to judicial review in most cases.

2.2.2 Model grounds of appeal

2.2.2.1 General considerations

Three appeal formulas are presently contained in Saskatchewan statutes: appeals on questions of "law" or "law or jurisdiction," appeals on questions of "law and fact," and appeals *de novo*, a rehearing before the court. The Alberta Committee on Boards and Tribunals regarded an appeal on questions of law or jurisdiction as a minimum right that should be provided in all cases.[41] The Franks Committee in England recommended that appeals from tribunals should be "on the merits" (law and fact) in all cases.[42] The New Zealand Law Commission reached the conclusion that a single formula should not be imposed, but suggested that "[a] cautious approach should be taken when considering limiting appeals to questions of law."[43]

We agree with the New Zealand Commission that a single formula is not sufficient. However, for reasons that will be discussed below, the Commission believes that an appeal on questions of law should be the minimum requirement and the basic rule. We have identified some circumstances in which an appeal on law and fact would be more appropriate and policy-makers may identify others. In the result, the Commission recommends two basic formulas: one allowing appeals on questions of law, the other allowing appeals on questions of law and fact.

The six statutes that presently provide for trial *de novo* are all concerned with appeals from

[40] *Dunsmuir*, *supra* note 4 at paras 160-166.
[41] *Report of the Special Committee*, *supra* note 7.
[42] *Franks Committee Report*, *supra* note 6.
[43] New Zealand Law Commission, *supra* note 6 at 120.

tribunals imposing discipline on members of professional associations. We believe these are anomalies. The rights of professionals in disciplinary proceedings are adequately protected if appeals are allowed on law and fact without a rehearing of the evidence. However, we recognize that there may be historical reasons why trial *de novo* is authorized by these statutes.

Because of the uncertainty about the scope of appeals on matters of "law" and "law and fact" the models recommended by the Commission attempt to define the scope of appeal on both of these grounds in sufficient detail to make the grounds clear.

The proposed formulas also include some matters that are not directly related to the law-fact distinction. These arise out of the overlap between judicial review and appeal. Application of the rules of natural justice formulated by the courts to ensure fairness in administrative proceedings and the deference rules developed in the context of judicial review can both be regarded as matters of law, but we believe it would be desirable to expressly bring both within the ambit of statutory appeals. The goal of these recommendations is clarity. We believe these recommendations are necessary to define the line between appeals and judicial review and to avoid unnecessary judicial review. Without this clarity, it might be just as well to leave review of administrative decisions entirely to judicial review.

Judicial review arose from the inherent jurisdiction of the courts to supervise all judicial or quasi-judicial activities. The standards of review applicable on judicial review cannot be dictated by the Legislature, any more than the Legislature can oust judicial review with a privative clause. On the other hand, a statutory right of appeal is created by the Legislature, which can define the grounds of appeal as it chooses. Of course, an appeal does not oust judicial review any more than a privative clause does, but it is not likely that the courts will override a carefully articulated statutory appeal formula.

The courts have applied their own standards of review on appeals and in fact found it necessary to do so in the interests of justice, because appeal provisions have all too often been silent or unclear on the standards to be applied. But Justices Deschamps and Binnie, the judges who commented on appeals in *Dunsmuir*, recognized that a statutory appeal is different than judicial review. The simple fact that the issue of standards arises on appeal is enough, in their opinion, to conclude that the simple "correctness" standard is appropriate. If the recommendations set out below were adopted, we believe the courts would be inclined to follow the lead of Justices Deschamps and Binnie. This would eliminate much of the difficulty in applying *Dunsmuir.*

2.2.2.2 Appeals on questions of law

The Alberta Committee on Boards and Tribunals regarded an appeal on questions of law as a minimum right:

> 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 should be applicable to persons that are affected by its decisions.[44]

In 33 existing statutes, the grounds of appeal are now either law or law or jurisdiction. This is the most common formula among statutes that specify the grounds of appeal. If this standard essentially replicates the ordinary appellate function of the courts, it is attractive for that very reason. It is the standard long deemed appropriate in civil matters. Saskatchewan administrative tribunals are expected to hold hearings and apply procedural standards that are not unlike those in the courts.[45] Tribunal decisions should generally be treated in a similar manner to decisions of lower courts, thus limiting appeals to matters of law. A significant exception, appeals from discipline committees, will be discussed below. The exception is justified by the impact of the decisions made by discipline committees.

The scope of appeal on questions of law should reflect the ordinary appellate jurisdiction of the courts. 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") 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 on a standard of palpable and overriding error only.[46] For reasons discussed above, this formula should be included in legislation authorizing appeals on questions of law.

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[44] *Report of the Special Committee*, *supra* note 7 at 42-43.
[45] See *Model Code of Administrative Procedure for Saskatchewan Administrative Tribunals*, *supra* note 2.
[46] *HL v Canada (Attorney General)*, *supra* note 29.

2.2.2.3 Appeals on questions of law and fact

The Commission has identified one class of statutory power of decision that we believe should be subject to appeals on the grounds of fact and law: decisions of discipline committees of professional associations governed by statute.

Only one statute explicitly states that an appeal lies from the exercise of a statutory power of decision on grounds of law and fact.[47] However, in some cases in which the grounds of appeal are not specified, the courts have allowed appeals on questions of law and fact. Most of these involve discipline committees, which the Commission believes should be subject to broad grounds of appeal.

Approximately 50 professional discipline committees are established by statute in Saskatchewan. They are tribunals that hold hearings and are expected to apply high procedural standards.[48] Nevertheless, the courts have generally held that questions of fact can be reviewed on appeal in these cases.[49] The Commission is of the opinion that there is good reason to preserve this rule.

The potential impact of discipline proceedings on the livelihood and career of the individuals subjected to them makes it desirable to allow broad appeal rights. 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 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.[50]

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[47] *The Heritage Property Act*, SS 1979-80, c H-2.2.
[48] See *Handbook of Professional Disciplinary Procedure*, *supra* note 2.
[49] See *Forster*, *supra* note 30. Recent decisions have made it clear that deference will ordinarily be given to findings by discipline committees, but this does not preclude the court from making appropriate findings of fact. See *Law Society of New Brunswick v Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247 [*Ryan*].
[50] Ontario, *Royal Commission Inquiry into Civil Rights*, vol 3 (Toronto: Queen's Printer, 1968) at 1181 (Chair: James Chalmers McRuer).

There are likely other circumstances that would make appeals on questions of fact and law appropriate. These would include other tribunals that make decisions with far-reaching effects on the individual. Such tribunals can only be identified on a case-by-case basis. We leave it to policy-makers to identify them. It may also be possible to identify another broad class of decisions that should be subject to appeals on matters of fact and law. A decision of an official who does not hold a hearing is less analogous to the decision of a lower court than the decision of a tribunal. Although all decision-makers are required to act fairly, the danger of a miscarriage is greater when no hearing is required. On the other hand, many decisions made without hearing relate to minor matters, or are factually cut-and-dried. Appeals in such cases can be expected to be rare. On balance, the Commission has concluded that there should be no general rule that appeals on both fact and law should be allowed in such cases.

2.2.2.4 Deference

The courts have always given deference to decision-makers, particularly when an issue involves matters within the decision-maker's particular expertise or knowledge. Casey observes that "[t]he authorities are legion that the findings of a disciplinary tribunal with respect to professional misconduct and as to appropriate sentence should be given great weight and should not be lightly interfered with" on appeal.[51] In *Bell Canada v Canadian Radio-Television & Telecommunications Commission (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 opinion of the lower tribunal on issues which fall squarely within its area of expertise.[52]

The recent effort of the Supreme Court, culminating in *Dunsmuir*, to develop standards of review, is largely an exercise to identify appropriate degrees of deference. 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

[51] James T Casey, *The Regulation of Professions in Canada*, loose-leaf (Scarborough, Ont: Carswell, 1994) at 15-6.
[52] [1989] 1 SCR 1722 at para 33. See also *Caswell v Alexandra Petroleums*, [1972] 3 WWR 706 (Alta CA).

fact rather than law.[53]

In *Dunsmuir*, Justices Binnie and Deschamps were of the opinion that when there is a statutory right of appeal, the "correctness" standard is always appropriate. This standard allows for limited deference. It could be argued that since the courts have long recognized that some degree of deference is appropriate, there is no need to codify or reference it in statutory appeal provisions. However, because the law remains uncertain, the Commission is of the opinion that deference should be dealt with by statute.

Deference to the decision-maker on questions of fact is built into the ordinary appellate jurisdiction of the courts. In *Dunsmuir*, Madam Justice Deschamps observed that the rule that the court can disturb findings of fact only in exceptional circumstances is an application of the "principle of deference with respect to a trial judge's findings of fact."[54] Thus, on appeals on questions of law, no special rule recognizing deference to the decision-maker's findings of fact is required. When an appeal is allowed on questions of fact, it would be desirable to recognize deference in regard to findings of fact in the general terms of the *Bell Canada* case. This would allow the court to defer to the specialized knowledge of a decision-maker to the extent the court deems it appropriate to do so.

There is general agreement that deference is appropriate on questions of law in some circumstances. In *Dunsmuir*, Justices Lebel and Bastarache observed that "[d]eference may also be warranted where an administrative tribunal has developed particular expertise in the application of a general common law or civil law rule in relation to a specific statutory context."[55] Justice Deschamps suggested that when a statutory right of appeal on questions of law exists, there are circumstances when it would be beneficial to recognize that deference is appropriate on appeal. The approach suggested by Justice Binnie could be adopted in appeal provisions. He wrote that a court is right to insist that its view of the correct interpretation 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":

> It should be sufficient to frame a rule exempting from the correctness standard

[53] *Ryan*, *supra* note 49.
[54] *Dunsmuir*, *supra* note 4 at para 161.
[55] *Ibid* at para 54.

> 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.[56]

It should be noted that the Commission's recommendation is intended to clarify, not to change the deference rules or prevent the courts from further developing them. It is perhaps issues about deference that are most likely to cause some sort of collision between the Legislature and the courts. Our recommendation tries to avoid this difficulty. It is stated in permissive language and designed to make sure that the grounds of appeal recommendations are not interpreted as an effort to preclude the deference now exercised by the courts.

2.2.2.5 Natural justice

All decision makers are subject to the rules of natural justice developed by the courts to ensure that all *quasi-judicial* decisions are made fairly. The basic principles of the rules have been summarized as follows:

> The first two fundamental principles of natural justice are that a person whose interests may be affected by a decision should firstly be given notice of the case to be met or the allegations made against them and secondly, an opportunity to be heard. The third fundamental principle of natural justice is that the decision maker should be disinterested and impartial. The policy reason behind all three aspects of the rules of natural justice is the same: namely, not only must justice be done, but it must manifestly be seen to be done. It is a matter of important public policy that there be no lack of public confidence in the impartiality of adjudicative tribunals.[57]

In practice, the requirements of natural justice differ with the circumstances. More is required, for example, of a tribunal than of an official who makes a decision in a less formal manner. For that reason, it is not practical or desirable to codify the rules in appeal provisions. However, the Commission is of the opinion that it would be useful to state expressly in appeal provisions that

[56] *Ibid* at para 128.
[57] Casey, *supra* note 51 at 1-10.

the court shall apply the rules of natural justice on appeal.

Recommendations: Grounds of Appeal

1. (1) Except as provided below, all appeals from the exercise of a statutory power of decision shall be limited to questions of law.

(2) On an appeal on a question of law, the issues that the court is to consider shall include whether the decision-maker applied the correct law, and properly applied the law to the facts found by the decision-maker. The court shall not substitute its own view of the evidence unless the findings of fact made by the decision-maker amount to palpable and overriding error.

2. (1) Appeals shall be permitted on questions of fact and law from:

(a) decisions of discipline committees of professional associations governed by statute; and
(b) any other decision specified by statute.

(2) On an appeal on a question of fact, the court may substitute its view of the evidence for the findings of fact made by the decision-maker.

3. (1) On an appeal on a question of law, the court may defer, to the extent it considers appropriate, to the decision-maker's interpretation of the statute governing the decision and any technical rule within the expertise of the decision-maker.

(2) On an appeal on a question of fact, the court may defer, to the extent it considers appropriate, to any finding of fact by the decision-maker that is within the scope of the decision-maker's expertise and technical knowledge.

4. On any appeal from the exercise of a statutory power of decision, the court shall apply the rules of natural justice.

2.3 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.[58] Appeals to the Court of 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 that should be addressed in all appeal provisions.

2.3.1 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 a discernible pattern about which level of court should hear...an appeal" in Canada and the New Zealand Law Commission found that a similar situation exists in that country.[59]

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 regards the choice of court as a critical matter.

In the Commission's opinion, the Saskatchewan practice of directing appeals to the Court of Queen's Bench is satisfactory. It would be desirable in principle to make this the universal rule. We recognize, however, that there may be historical reasons for some exceptions.

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[58] Saskatchewan, *The Queen's Bench Rules*, r 441 provides:

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

[59] Jones & de Villars, *supra* note 3 at 448; New Zealand Law Commission, *supra* note 6 at 124.

2.3.2 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 six months can be found. The 30 day period contained in most statutes is an appropriate rule.

Recommendations: Structure of Appeals

1. Procedural rules applicable to appeals from the exercise of statutory powers of decision should be left to the Rules of Court, and procedural rules presently contained in any statute should be removed.

2. All appeals from the exercise of statutory powers of decision should be directed to the Court of Queen's Bench.

3. All appeals from the exercise of statutory powers of decision should be brought within 30 days of the decision.

APPENDIX: Table of Appeals for Statutory Powers of Decision in Saskatchewan

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

Ministry and Act	Appeal From	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)* *This Act will replace The Management Accountants Act.	Council of Society of Management Accountants of Saskatchewan	By notice of motion	30 days

Ministry and Act	Appeal From	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
Dietitians Act	Board of Saskatchewan Dieticians Association	✓	30 days
Engineering and Geoscience Professions Act	Discipline Committee Council of Association of Professional Engineers and Geoscientists of Saskatchewan re readmission or reinstatement	✓	30 days 30 days

Ministry and Act	Appeal From	Appeal To Court of Queen's Bench	Appeal Period
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
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	To be decided in a summary way	At least 15 days before election 60 days

Ministry and Act	Appeal From	Appeal To Court of Queen's Bench	Appeal Period
	Committee, or the Discipline Hearing Committee		
Medical Radiation Technologists Act, 2006	Council of Saskatchewan Association of Medical Radiation Technologists	By notice of motion	30 days
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	✓	30 days
Opticians Act	College of Opticians	✓	30 days
Optometry Act, 1985	Council of Saskatchewan Association of Optometrists	✓	60 days
Paramedics Act	Council of Saskatchewan College of Paramedics	By notice of motion	30 days
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,	Council of Saskatchewan	✓	30 days

Ministry and Act	Appeal From	Appeal To Court of Queen's Bench	Appeal Period
1997	College of Psychologists		
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
Registered Psychiatric Nurses Act	Council of Registered Psychiatric Nurses Association of Saskatchewan	✓	30 days
Respiratory Therapists Act	Council of Saskatchewan College of Respiratory Therapists	By notice 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
Social Workers Act	Discipline Committee Council of Saskatchewan Association of Social Workers re reinstatement	✓	30 days 30 days
Speech-Language Pathologists and Audiologists Act	Discipline Committee Council of Saskatchewan	✓	30 days 30 days

Ministry and Act	Appeal From	Appeal To Court of Queen's Bench	Appeal Period
	Association of Speech-Language Pathologists and Audiologists re reinstatement		
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
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	30 days
Apprenticeship and	Saskatchewan	On a question of	30 days

Ministry and Act	Appeal From	Appeal To Court of Queen's Bench	Appeal Period
Trade Certification Act, 1999	Apprenticeship and Trade Certification Commission	law or jurisdiction	
Auctioneers Act	Registrar	By notice of motion	30 days
Automobile Accident Insurance Act	Insurer	In accordance with QB Rules respecting actions commenced by statement of claim. (Automobile Injury Appeal Commission or QB)	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
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	✓	30 days
Collection Agents Act	Registrar	By notice of motion (Registrar for a rehearing or QB)	30 days
Consumer	Director	✓	10 days

Ministry and Act	Appeal From	Appeal To Court of Queen's Bench	Appeal Period
Protection Act			
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
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,	30 days

Ministry and Act	Appeal From	Appeal To Court of Queen's Bench	Appeal Period
		in accordance with QB rules re judicial review, other than Rule 664(2) & 667(2)	
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 recommendation	The court shall determine the matter *de novo*	30 days
Heritage Property Act	Minister, a mayor or reeve re stop order Minister re granting, renewing or cancelling 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	Head's decision re	The court shall	30 days

Ministry and Act	Appeal From	Appeal To Court of Queen's Bench	Appeal Period
Freedom of Information and Protection of Privacy Act	Commissioner's recommendation	determine the matter *de novo*	
Mental Health Services Act	Director of Mental Health Services Review panel	By notice of motion By notice of motion	30 days 30 days
Mineral Taxation Act, 1983	Board of Revenue Commissioners	✓	1 month
Mortgage Brokerages and Mortgage Administrators Act	Saskatchewan Superintendent of Financial Institutions	Question of law only	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, 2010	Adjudicator re road weights and routes Council of a northern municipality re council member disqualification Local appeal board or	Notice of motion On a question of	30 days 10 business days 30 days

Ministry and Act	Appeal From	Appeal To Court of Queen's Bench	Appeal Period
	council re nuisances	law or jurisdiction (Some decisions can be appealed to the Provincial Court or QB)	
Occupational Health and Safety Act, 1993	Adjudicator	On a question of law or jurisdiction or from a stop work order	-----
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	✓	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	Hearing officer	On a question of	30 days

Ministry and Act	Appeal From	Appeal To Court of Queen's Bench	Appeal Period
Tenancies Act, 2006		law or jurisdiction	
Revenue and Financial Services Act	Board of Revenue Commissioners	✓	1 month
Safer Communities and Neighbourhoods Act	Director of Community Operations re director's certificate Director re removal order	✓ (Director to reconsider or QB)	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 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	✓	30 days
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,	Registrar of Vital Statistics	✓	1 year

Ministry and Act	**Appeal From**	**Appeal To Court of Queen's Bench**	**Appeal Period**
2009			
Water Appeal Board Act	Water Appeal Board	On a question of law	30 days
Water Power Act	Minister	✓	-----
Youth Drug Detoxification and Stabilization Act	Review panel	By notice of motion	7 days or any longer period the judge allows
	Trustee's decision	The court shall determine the matter *de novo*	30 days