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BC Court of Appeal decision regarding appeals from administrative tribunals.

In 2008, the Supreme Court of Canada rendered a landmark decision on a standard of review in appeals from administrative tribunals. This decision, *Dunsmuir v. New Brunswick* dictated that an appellate court reviewing the decision of an administrative tribunal must base its review on one of two standards depending on the circumstances. These are: correctness and reasonableness. The standard of "correctness" is reserved for narrow questions of jurisdiction "where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter" or questions of the general law outside the adjudicator's area of expertise and of central importance to the legal system as a whole.

In British Columbia, the issue is further complicated by a statute, the *Administrative Tribunals Act* which recognizes three standards of review. In a recent decision of our Court of Appeal, the Court clarified the application of the *Dunsmuir* standards to administrative determinations of tribunals not specifically referenced to the *Administrative Tribunals Act*.

In this case, a disciplinary decision of the Association of Professional Engineers and Geoscientists of British Columbia, the Court of Appeal held that the *Administrative Tribunals Act*, does not apply to the decisions of the Association as it has its own enabling legislation which does not refer to the Act. The court went on to hold that *Dunsmuir* applied.

The Court held, in paragraph 20 of its reasons that *Dunsmuir* offers a two-step process to determine the standard of review. "First, the reviewing judge must determine if the existing jurisprudence has already determined the standard of review to be applied to the question at issue. If not, the court must engage in a "standard of review analysis" that is contextual and includes a consideration of the following relevant factors: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by its enabling statute; (3) the nature of the question at issue; and (4) the expertise of the tribunal." The court went on to confirm that the standards of review of correctness and reasonableness apply to both judicial review and statutory appeals from decisions of administrative tribunals.

While there will, no doubt, be further cases refining the *Dunsmuir* standards, this case goes a long way to eliminate some of the existing confusion. In the final result, the Court of Appeal applied to the reasonableness standard which acknowledges that there is a range of possible, acceptable outcomes which are defensible in respect of the facts and law. The court went on to say: "reasonableness requires courts to give deference to a professional body's interpretation of its own professional standards so long as it is justified, transparent and intelligible."