Publisher's Note

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Brown

Judicial Review of Administrative Action in Canada

This award-winning publication is an in-depth presentation of the law of judicial review of administrative action in Canada. Written by Donald J. M. Brown, Q.C. and The Honourable John M. Evans, both widely regarded as experts in the field of Administrative Law, *Judicial Review of Administrative Action in Canada* offers a substantive view of the law along with practical guidance on the issues that can arise in the judicial review process. This publication is a comprehensive research and working tool for administrative bodies, practitioners and legal scholars and is used across Canada and in academic and court libraries throughout the common law world. Designed to be a primary source of the statute and case law in the field of judicial review, the text also includes important legislation, regulations, rules, forms and practice directions for each jurisdiction.

Judicial Review of Administrative Action in Canada was the recipient of the prestigious Mundell Medal in 1999. A highly sought after prize, the Mundell Medal is awarded for a "distinguished contribution to letters and law".

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This 3-volume looseleaf captures developments in this ever-changing subject that is relevant to so many areas of the law. In a continuing effort to ensure that the legislation and other documentation throughout the treatise are current and relevant, this release includes significant updates made to the commentary and case law.

What's New in this Update

This release features a retrospective article of administrative law in the Supreme Court of Canada over the past year, written by The Honourable John M. Evans, and updates to the case law and commentary in the following chapters: 9 (Pre-Hearing, Participatory Rights: Notice, Disclosure, Delay and Adjournments), 10 (The Hearing and Participatory Rights), 11 (Interest, Bias and Independence), 12 (Review of the Decision-Making Process), 13 (The Grant of Authority), 14 (Review of the Exercise of Authority: Administrative Adjudication), and 15 (Review of Exercise of Authority: Review for Unreasonableness).

Highlights

Vires Review — The Scope of the Duty of Fairness — The Standard of Review — Correctness

In *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, a divided Court held that whether or not the Board's adoption of a regulation was valid was to be determined on the basis of "reasonableness." This decision has brought into clearer focus an approach that had begun to appear in the Court's earlier decisions in *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 and *Green v. Law Society of Manitoba*, 2017 SCC 20, to the effect that the question was to be viewed as one of whether the "home statute" reasonably construed permitted the administrative action in question. The Court disagreed with the British Columbia Court of Appeal which had held that the question was one of *vires*, which was to be determined without deference, albeit giving the legislation a generous and liberal interpretation.

The only indication as to there being more to come on this question can be discerned from the last sentence of the last paragraph of the majority's reasons:

> We need not delve into this debate in the present appeal. Where the statute confers a broad power on a board to determine what

> regulations are necessary or advisable to accomplish the statute's goals, the question the court must answer is not one of vires in the traditional sense, but whether the regulation at issue represents a reasonable exercise of the delegated power, having regard to those goals, as we explained in *Catalyst* and *Green*, two recent post *Dunsmuir* decisions of this Court where the Court unanimously identified the applicable standard of review in this regard to be reasonableness. In any event, s. 26.2(1) of the Regulation plainly falls within the broad authority granted by s. 225 of the *Act* as an exercise of statutory interpretation. This is so even if no deference is accorded to the Board and if we disregard all of the external policy considerations offered in support of its position.

Needless to say, the minority (Côté, Brown, and Rowe JJ.) stressed the fact that this type of question had consistently been viewed as one of *vires* in the past and it was so regarded as recently as the Court's decisions in *Dunsmuir* and in *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19. Thus, the question may well be addressed in the future as the Court has recently granted leave in three cases in order to revisit its decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9.