

## Contents

<b>Introduction</b> .....	<b>1</b>
<b>Paul Daly:</b> Why is Standard of Review so Addictive? .....	1
Postscript .....	4
<b>The Hon. Justice David Stratas:</b> A Decade of <i>Dunsmuir</i> : Please No More .....	7
Introduction .....	7
<i>Dunsmuir</i> and the law of substantive review .....	8
The nature of administrative law as the cause for confusion?.....	8
The real cause of the confusion .....	8
Doctrine and principle: why they matter.....	9
In the law of substantive review, is doctrinal decision-making possible? ...	10
What <i>Dunsmuir</i> has wrought .....	10
Other post- <i>Dunsmuir</i> cases .....	12
Conclusion concerning the post- <i>Dunsmuir</i> cases.....	16
What of <i>Dunsmuir</i> ? .....	16
<b>The Background to <i>Dunsmuir</i>/Le contexte de <i>Dunsmuir</i></b> .....	<b>19</b>
<b>Martine Valois:</b> Si l'histoire de la norme m'était contée: évolution et circonvolutions du principe de déférence au Canada .....	19
I. Compétence et légalité.....	20
II. Caractère raisonnable et retenue judiciaire.....	24
III. Norme de contrôle et limites du contrôle judiciaire.....	27
<b>Clarence Bennett:</b> David <i>Dunsmuir</i> — An Unlikely Administrative Law Celebrity .....	31
Standard of Review.....	32
Standard of Review as an Avenue to Appeal.....	32
Conclusion .....	34
<b><i>Dunsmuir</i> and Public Employment/<i>Dunsmuir</i> et la fonction publique</b> .....	<b>35</b>
<b>Matthew Lewans:</b> On the Privilege of Public Employment.....	35
<b>Nicolas Lambert:</b> <i>Dunsmuir v. New Brunswick</i> — the Savviness of Standards of Review .....	39
<b>The Philosophy of <i>Dunsmuir</i>/La philosophie de <i>Dunsmuir</i></b> .....	<b>43</b>
<b>Mark D. Walters:</b> Theorizing Administrative Law — Does <i>Dunsmuir</i> have a Philosophy? .....	43
<b>Mary Liston:</b> Deference as respect: Lost in translation? .....	47
The road to hell is paved with . . . pre- <i>Southam</i> formalism .....	48
What deference as respect meant in its original context .....	49
[Lack of] attention to the [non-]reasons that were [not] offered.....	50
Democratic deference as respect .....	52
Deference is dead, long live deference!.....	53
<b>Andrew Green:</b> The Search for a Simpler Test: <i>Dunsmuir</i> and Categories....	55

<b>Léonid Sirota: The Paradox of Simplicity in Canadian Administrative Law</b> .....	59
<b>Evan Fox-Decent &amp; Alexander Pless: <i>Dunsmuir</i> and Jurisdiction</b> .....	65
<b>Sheila Wildeman: The road to <i>Dunsmuir</i> or, on re-reading administrative law's bumpy kinky chain novel in the fading light of "a culture of justification"</b> .....	69
The Background to <i>Dunsmuir</i> II .....	71
Fast Forward .....	75
Toward a Counter-Hegemonic Culture of Justification .....	77
Conclusion: Foregrounding the Background .....	81
<b>Correctness Review/La norme de la décision correcte</b> .....	<b>83</b>
<b>Mark Mancini: The Dark Art of Deference: Dubious Assumptions of Expertise On Home Statute Interpretation</b> .....	83
<b>Lauren Wihak: The Withering of Correctness Review</b> .....	89
<b>Shaun Fluker: The Return of Correctness in Judicial Review</b> .....	95
<b>Martin Olszynski: <i>Dunsmuir</i> is Dead — Long Live <i>Dunsmuir</i>!</b>	
An Argument for a Presumption of Correctness .....	99
What has <i>Dunsmuir</i> Wrought? .....	99
<i>Garneau</i> : "The day has [still] not yet come" .....	101
Re-building <i>Dunsmuir</i> .....	102
<b>Reasonableness Review/La norme de la décision raisonnable</b> .....	<b>107</b>
<b>David Mullan: The True Legacy of <i>Dunsmuir</i> — Disguised Correctness Review?</b> .....	107
<b>The Hon. Joseph T. Robertson, Q.C.: "<i>Dunsmuir's</i> Demise &amp; The Rise of Disguised Correctness Review"</b> .....	111
<b>Eddie Clark: <i>Dunsmuir</i> and the hows and whys of judicial review</b> .....	119
<b><i>Dunsmuir</i> and Fairness/<i>Dunsmuir</i> et l'équité procédurale</b> .....	<b>123</b>
<b>Laverne Jacobs: Transparency and Institutional Bias in Canadian Administrative Law: Why the <i>Dunsmuirian</i> Approach is Not Enough</b> .....	123
(a) The value of transparency within modern government accountability .....	123
(b) <i>Dunsmuir</i> and procedural fairness generally .....	124
(c) Institutional Bias as an Issue of Procedural Fairness .....	125
(d) Transparency: Tempering <i>Dunsmuir's</i> Effect .....	126
<b><i>Dunsmuir</i> and the Constitution/<i>Dunsmuir</i> et la constitution</b> .....	<b>129</b>
<b>Audrey Macklin: Charter Rights and Charter-Lite</b> .....	129
Introduction .....	129
(a) What is a <i>Charter</i> Value? .....	133
(b) Normative Primacy and Priority .....	134
(c) Democratic Legitimacy vs. Independence .....	137
Conclusion .....	138

<b>Kate Glover:</b> <i>Dunsmuir</i> & the Constitutional Status of the Administrative State .....	141
<b>Indigenous Peoples and Dunsmuir/Les peuples autochtones et Dunsmuir.....</b>	<b>147</b>
<b>Janna Promislow:</b> Deference with a Difference: <i>Dunsmuir</i> and Aboriginal Rights .....	147
<b>Naiomi Metallic:</b> Deference and Legal Frameworks Not Designed By, For or With Us .....	153
<b>Teaching Dunsmuir/Enseigner Dunsmuir .....</b>	<b>159</b>
<b>Craig Forcese:</b> Through a glass, darkly — Teaching Canada’s administrative law standard of review .....	159
<b>Narelle Bedford:</b> Transcending Jurisdictions — Teaching <i>Dunsmuir</i> in Australia .....	163
<i>Dunsmuir</i> — the Australian context.....	163
Observation One — Identify the universals.....	164
Observation Two — Embrace technology.....	165
Conclusion .....	166
<b>Judicial Perspectives/Regards de la magistrature .....</b>	<b>167</b>
<b>The Hon. Joseph T. Robertson, Q.C.:</b> “The Merits of <i>Dunsmuir</i> : Rightly or Wrongly Decided (Then & Today)?” .....	167
<b>Hon. John M. Evans:</b> Reflections on <i>Dunsmuir</i> of a Recovering Judge.....	175
Introduction .....	175
<i>Dunsmuir</i> as judicial law reform .....	175
A single reasonableness standard.....	176
Reasonableness review: reasons and outcome .....	178
Selecting the standard of review: correctness or reasonableness? .....	181
Non-adjudicative decision makers .....	184
<b>Comparative Perspectives/Regards comparatifs.....</b>	<b>187</b>
<b>Janina Boughey:</b> <i>Dunsmuir</i> ’s Influence in Australia.....	187
<b>Dean R. Knight:</b> Locating <i>Dunsmuir</i> ’s Meta-structure Within Anglo-Commonwealth Traditions .....	191
<b>Jeff Pojanowski:</b> <i>Dunsmuir</i> : A View from South of the Border.....	197
<b>The Application of Dunsmuir/L’application de Dunsmuir .....</b>	<b>201</b>
<b>Robert Danay:</b> Did <i>Dunsmuir</i> simplify the Standard of Review? An Empirical Assessment .....	201
Methodology.....	202
Results: No Apparent Reduction in Legal Argument on Standard of Review .....	202
Conclusion: Vindication for Madam Justice Abella?.....	204
<b>William Lahey and Diana Ginn:</b> How the Lower Courts are “doing <i>Dunsmuir</i> ” .....	205

<b>Gerald Heckman:</b> The Supreme Court and questions of law in immigration and refugee law decision-making.....	209
Rebutting the <i>Dunsmuir</i> presumption of reasonableness review:	
general questions of law of central importance to the legal system	
and outside the adjudicator’s expertise .....	211
The role of the certified question in the choice of standard of review ...	215
Does the choice of standard of review make any difference?.....	215
<b>Alice Woolley:</b> Stranger Things — A defence of <i>Dunsmuir</i> .....	217
<b>Moving on from <i>Dunsmuir</i>/Faut-il passer à autre chose? .....</b>	<b>225</b>
<b>Lorne Sossin:</b> <i>Dunsmuir</i> — Plus ça change Redux .....	225
<b>Peter Gall:</b> <i>Dunsmuir</i> : Reasonableness and the Rule of Law.....	229
<b>The Hon. Justice David Stratas:</b> Looking Past <i>Dunsmuir</i> :	
Beginning Afresh .....	235
Introduction .....	235
Identification of settled doctrine and well-accepted principles .....	235
Some doctrine and well-accepted principles .....	235
Deducing operational rules from the doctrine and principles:	
an introduction.....	237
Judicial policies .....	239
Some possible deductions .....	240
A few words about a longstanding, uniquely Canadian predilection ....	242
Some suggested operational rules .....	243
Personal comments.....	247
<b>Summary/Résumé.....</b>	<b>249</b>
<b>Michel Bastarache, QC, CC:</b> <i>Dunsmuir</i> 10 Years Later .....	249
Institutional Constraints.....	249
Our Objective in <i>Dunsmuir</i> .....	251
Post- <i>Dunsmuir</i> .....	253
<b>Louis LeBel:</b> L’ordre et le rêve — Le contrôle judiciaire après <i>Dunsmuir</i> ...	257