	(iii) Ambiguity	27A-68
	(c) Where Decision Not Yet Made, Is a Nullity, Or An Issue	
	Remains Outstanding	27A-70
	(i) Reconsidering Before Final Decision Made	27A-70
	(ii) Reserving Jurisdiction	27A-78
	(iii) Compliance With Procedural and Form Requirements	
	(iv) No Jurisdiction to Make Order	
	(v) Failure to Comply With Natural Justice or Fairness	
	(vi) Failure to Dispose of Issue	
	(vii) Who Determines Integrity of Original Order	
	(d) Fraud and Other Circumstances Undermining Integrity	
	(i) Fraud	
	(ii) Other Circumstances Undermining the Integrity of the	
	Process	27A-108
27A.5	Agency Reconsideration and Judicial Review	
	Chapter 27A Update	
	1	1
	CHAPTER 27B	
	External Review of Agency Decisions:	
	Petitions to Cabinet	
	1 cutions to Cabinet	
27B.1	Petitions To Cabinet	27B-1
27B.2	The Legal Characteristics Of A Petition To Cabinet	
27B.3	Provisions For Petitions	
27B.4	Concerns Respecting Petitions To Cabinet	
27B.5	Form	
27B.6	Parties To Petition Proceedings	27B-17
	-	
	CHAPTER 27C	
	External Review of Agency Decisions:	
	Appeals to Court	
	PF	
27C.1	Existence Of Right To Appeal To A Court	27C-1
27C.2	What Can Be Achieved By Appealing A Decision	27C-4
	(a) Securing Delay By Appealing A Decision (Stays)	27C-4
	(i) Where To Look To Determine If Appeal Stays Decision	127C-5
	(ii) Effect Of Stay	27C-8
	(iii) Test For Stay	27C-8
	(b) Securing Redress Through Appeal (Standard of Review)	27C-9
	(i) Application of Dunsmuir Standard Of Review Approac	
	Statutory Appeals	27C-10
	(ii) Dunsmuir Standard Of Review	
27C.3	The Extent Of A Right To Appeal	
27C.4	Seeking Appeal Before Agency Proceedings Are Completed	
	(a) Prematurity	
	(b) Appeal Of Interim and Final Decisions	

27C.5	Who Can Appeal	27C-21
	(a) Entities Which Are Directly Affected	27C-21
	(b) Ability Of Agency To Appeal Or Participate On Appeal	27C-23
27C.5A	Interventions	27C-29
27C.6	Leave To Appeal	27C-29
27C.7	Timing and Time Limits	27C-35
	(a) Appeal Should Be Brought Respecting Decision Which	
	First Embodies Decision Sought To Be Appealed	27C-35
	(b) Mandatory or Directory Time Limit To Appeal Decision	27C-37
	(c) When Does A Time Limit To Appeal Begin To Run	27C-38
	(d) Authority To Extend Time Limits To Bring Appeal	27C-40
	(i) Existence of Authority To Extend Time Limits To Ap	peal 27C-40
	(ii) Test Respecting Extension of Time To Appeal	27C-43
27C.8	Raising New Issues Or Admitting New Evidence on Appeal	
	(a) Raising New Issues on Appeal	27C-45
	(b) Admitting New Evidence On Appeal	27C-50
27C.9	Nature of Appeal: De Novo or Traditional "On the Record"	27C-56
27C.10	Appellate Review of Discretion	27C-64
27C.11	Burden Of Proof On Appeal	
	Chapter 27C Update	27C Update-1
	CHAPTER 28 External Review of Agency Decisions: Judicial Review	
20.1	N. C. ID. CILLID.	20.1
28.1	Nature, Source and Purpose of Judicial Review	
28.2	Ability Of State To Bar, Limit Or Stream Judicial Review	
	(a) Ability Of State To Limit But Not Completely Bar Judicial	
20.2	(b) Ability Of State To Stream or Designate Review Process	
28.3	Matters Susceptible To Judicial Review	
	(a) Judicial Review Is Available Only Respecting State Action.	28-16
	(b) Judicial Review Concerned Only With State Action Of A	20.17
	Public Nature	28-17
	(c) Judicial Review Only Concerned With Questions Which Are Justiciable	29.24
	(i) Decisions Which The Courts Are Precluded From	20-24
	Interfering With Out Of Respect For	
	Constitutional Roles Assigned To Them And	
	The Executive	28-26
	(ii) Decisions Which Are Purely Political In Nature	
	(iii) Statutory Provisions Which Are Intended To Be	20-31
	Enforced Through The Legislature Rather	
	Than The Courts	28-37
	(iv) The Purely Internal Matters Of Religion Which	20-37
	Do Not Intrude Upon Civil Rights,	
	Contract Or Property Rights	28-39

	(a)	Matter Must Raise A Ground Of Review Recognized	
		By Administrative Law	28-40
	(e)	Judicial Review Only Concerned With State Actions That	
		Have An Actual Impact	28-41
28.4	The	Discretionary Nature Of Judicial Review	28-43
	(a)	Court Has Discretion To Intervene Through Judicial Review	28-43
	(b)	Intervention Through Judicial Review Must Serve Some Purpos	se 28-45
	(c)	Raising An Issue For The First Time On Judicial Review	28-47
	(d)	Unreasonable Delay In Seeking Judicial Review	28-48
	(e)	Prematurity	28-51
		(i) Court Will Not Entertain Judicial Review Where	
		It Is Premature To Do So	28-51
		(ii) Reasons Underlying Prematurity Principle	28-58
		(iii) Adequate Alternative Remedy	28-66
		(A) Judicial Reluctance To Intervene Through	
		Judicial Review Where An Alternative Route	
		Capable of Providing An	
		Adequate Remedy Exists	28-67
		(B) Where An Express Statutory Process Exists To	
		Review Decision	28-68
		(C) Where Agency Proceedings Still Underway	28-72
		(D) Jurisdictional or Fairness Errors Are	
		No Exception To Prematurity	28-74.1
		(E) Alternative Route Of Review Must Be Adequate	28-76
		(iv) The Reasonableness Approach To Prematurity	28-91
28.5	Jud	icial Review As A Precondition To Other Actions	28-101
28.6	The	Roots Of Judicial Review: The Prerogative Remedies	28-118
28.7		ndard Of Review	
	(a)	What Is "Standard Of Review"	28-128
	(b)	The Shifting Concept Of Standard Of Review	28-129
		(i) Standard of Review Evolved Over Time	28-129
		(ii) Reviewing Court Must Correctly Identify	
		Standard of Review	28-130
	(c)	Why Is There A Shifting Concept Of	
		Standard Of Review	28-133
	(d)	Privative Clauses	28-139
	(e)		
		(i) The "Let Live" Period: 1900 - 1945	
		(ii) The Interventionist Period	28-144
		(iii) The Curial Deference Period	28-147
		(iv) The Pragmatic and Functional Period	
		(A) Who is Best Suited to Decide?	
		(B) Formalization Of Three Standards Of Review	
		(C) Getting to the Correct Standard:	
		The Pragmatic and Functional Approach	28-155
		(D) The Pragmatic And Functional Approach —	
		"The Emperor's New Clothes"	28-162
28.8	The	Dunsmuir Era	

	(a)	Rejection Of The Pragmatic and Functional				
		Standard of Review Analysis2	8-166			
	(b)	Dunsmuir: Overview	8-168			
28.9	Dunsmuir: The Two Standards Of Review Under Dunsmuir:					
		Correctness and Reasonableness	8-172			
	(a)	Dunsmuir: What Is Meant By The Correctness				
		Standard Of Review2	8-173			
	(b)	What Is Meant By The Reasonableness Standard Of Review2				
		Correctness or Reasonableness — The Importance of Context2				
		What Falls Outside of Reasonableness				
	(e)	Examples Of Errors Leading To Finding Of Unreasonableness2	8-185			
		(i) Failing To Take Into Account A Relevant				
		Consideration Or Criteria2	8-185			
		(ii) Failing To Determine An Essential Aspect Of The Case2				
		(iii) Failing To Take Into Account Relevant Facts	8-186			
		(iv) Reaching Conclusions On An Insufficient, Incorrect,				
		Or Irrelevant Evidentiary Basis2	8-187			
		(v) Misunderstanding Material Pieces Of Evidence	8-189			
		(vi) Requiring An Undue Amount Of Evidence To				
		Establish A Fact (I.E. Adopting An Incorrect				
		Standard Of Proof)2	8-190			
		(vii) Failing to Properly Apply Principles Respecting				
		Legislative Interpretation2	8-190			
		(viii) Interpreting Legislation In A Way That Would				
		Enable It To Operate Beyond Its Intended Purposes2	8-191			
		(ix) Issuing An Unclear Order Or Order Which Is				
		Impossible To Comply With Is Unreasonable2	8-193			
		(x) Misunderstanding Or Misapplication Of A Legal Principle2	8-194			
		(xi) Absence Of Any Comprehensible Reasons For Decision2	8-195			
	(f)	Error Must Be Material To Make Decision Unreasonable	8-196			
	(g)	Reasoning As Well As Conclusion Must Be Reasonable2	8-197			
	(h)					
		Decision Is Reasonable2				
	(i)	The Precedential Value Of A Finding Of Reasonableness 28-				
28.10	Dun	asmuir: Determining The Appropriate Standard Of Review 28-	202.9			
	(a)	e	202.0			
	<i>a</i> >	Appropriate Standard Of Review	202.9			
	(b)	Different Standards May Apply To Different Issues	202.0			
	()	Within One Decision				
		Legislature Can Direct Appropriate Standard				
		Agreement Of The Parties	8-204			
	(e)	Desire For Consistency Does Not Change Reasonableness	0.206			
	(0)	Into Correctness 2				
	(f)	Dunsmuir's Two Steps To Determining Standard of Review2				
	(g)	Step One: Earlier Jurisprudence				
	(h)	Step Two: Analysis Of Relevant Factors				
	(i)	Application Of <i>Dunsmuir</i> To Statutory Appeals				
	(j)	Dunsmuir And Other Forms Of Review	8-231			

		(<i>i</i>)	References To Court And Stated Cases	28-231
		(ii)	Statutory Reviews	28-232
		(iii)	Civil Suits For Damages	28-233
28.11	Det	ermini	ng Deference On The Basis Of The Nature Of The Question	28-234
	(a)	Discr	retionary Decisions	28-235
		(<i>i</i>)	Determination as to Existence or Extent of Discretion	28-236
		(ii)	Identification/Application Of Legal Principles	
			Respecting Discretion	28-237
		(iii)	Merits Of The Discretionary Decision	
	(b)	Ques	tions Of Fact	28-244
		(<i>i</i>)	What Is A Question Of Fact	28-244
		(ii)	Standard Of Review Respecting Questions Of Fact	28-246
	(c)	Mixe	d Questions Of Fact And Law	
		(<i>i</i>)	What Is A Mixed Question Of Fact And Law	28-250
		(ii)	Standard of Review Respecting Mixed Questions	
			Of Fact And Law	28-258
	(d)	Ques	tions Of Natural Justice And Fairness	28-259
		(<i>i</i>)	Fairness Questions Subject To Correctness Standard	28-260
		(ii)	Should Fairness Questions Be Subject To	
			Reasonableness Standard	28-264
		(iii)	Statutory Procedure Requirements	28-273
	(e)	Ques	tions Of Law	
		(<i>i</i>)	Question of Law Generally (Including Agency's	
			Interpretation Of Its Own Or Related Legislation)	28-276
		(ii)	What Legislation Is Closely Connected To	
		` ′	An Agency's Functions	28-286
		(iii)	Presumption Of Reasonableness Standard Can Be Rebutted	
		(iv)	Application Of Presumption Of Deference	
			Re Questions Of Law To Agencies Other Than	
			Formal Adjudicative Tribunals	28-295
		(v)	Deference Re Questions Of Law Does Not Mean	
			"Anything Goes"	28-300.3
		(vi)	Deference To Agency's Interpretation Of Own Statute	
			When Offered In Argument	28-301
		(vii)	Concerns Respecting Presumption Of Deference For Agenc	y
			Interpretation Of Law	28-302
	(f)	Cons	titutional Questions	28-312
		(<i>i</i>)	Agency Determinations Of Constitutionality	
			Respecting The Actions Of Others —	
			Including Legislation	28-314
		(ii)	Whether Agency Decisions Properly Reflect	
			Charter Values	28-318
	(g)	Ques	tions Of True Jurisdiction	28-329
		(<i>i</i>)	Standard Of Review Respecting	
			True Jurisdictional Questions	28-329
		(ii)	What Are Questions Of True Jurisdiction	
		(iii)	What Does The Judicial Review Concept Of	
			True Jurisdiction Mean At The Agency Level	28-348

	(h)	Questions Of Law Of Central Importance To The Legal System	
		As A Whole And Outside Of Agency's Expertise	28-350
		(i) Standard Of Review Respecting Questions Of Law	
		Of Central Importance To The Legal System	
		As A Whole	28-351
		(ii) What Is A Question Of Central Importance To	
		The Legal System As A Whole?	28-351
		(iii) Cases Illustrating Questions Of Law Of	
		Central Importance To The Legal System	
		As A Whole	
		(iv) Question Must Also Fall Outside Of Agency's Expertise	28-369
	(i)	Questions Drawing Jurisdictional Lines Between Expert Agencies	28-373
28.12	The	Other Three Dunsmuir Factors	
	(a)	The Presence Or Absence Of A Privative Clause	28-375
	(b)	The Purpose Of The Tribunal As Determined By	
		The Interpretation Of Enabling Legislation	28-379
		The Expertise Of The Tribunal	
28.13	The	e Existence Of A Right Of Appeal As A Dunsmuir Factor	28-387
28.14	Jud	icial Stays Of On-Going Agency Proceedings	
		Pending Judicial Review	28-391
	(a)	Must Seek Stay To Suspend Agency Proceedings Or Order	28-391
	(b)	Act Promptly To Secure Stay	28-394
	(c)	The Test For A Stay	28-396
	(d)	Same Test For Injunctive Relief	28-397
	(e)	The Individual Criteria That Must Be Met To Secure A Stay	
		(i) Serious Question	28-398
		(ii) Irreparable Harm	
		(iii) Balance of Convenience	
28.15		sing New Issues On Judicial Review	
28.16	Age	ency Participation In A Judicial Review Of Its Own Decision	
	(a)	· ·	
	(b)		
	(c)		
	(d)	The Liberal Approach To Agency Participation	28-425
		(i) The Road To The Liberal Approach To	
		Agency Participation	28-426
		(ii) Cases Illustrating The Application Of The	
		Liberal Approach To Agency Participation	
		Prior To Ontario Energy Board	28-436
		(iii) The Liberal Approach As Embodied In	
		Supreme Court Of Canada Decision In	
		Ontario Energy Board	28-440
		(iv) Addressing The Merits Of A Decision Under	
		Ontario Energy Board	
•0.4=		Agency Interventions And Costs	
28.17		ervenors	
28.18		tice of Constitutional Question	
	(a)	Legislative Requirements for Notice of Constitutional Questions	28-456

	(b)	Failure to Give Notice as Required	28-464		
28.19	Evidence on Judicial Review				
	(a)	Admissibility Driven By Purpose Of Judicial Review	28-471		
	(b)				
		(i) The Common Law Meaning Of Record	28-477		
		(ii) Legislated Definition of Record	28-490		
	(c)	Evidence From Outside of the Record			
		(i) Evidence From Outside The Record To Establish			
		Errors That Cannot Be Ascertained From			
		Only The Record Itself	28-496		
		(ii) Evidence To Better Understand The Record/Issues	28-501		
		(iii) Fresh Evidence Where Necessary			
		"In The Interests Of Justice"	28-502		
	(d)	Mechanism For Bringing Forward Evidence Which Is			
		Not Evident On The Record	28-503		
	(e)	Confidentiality Of The Record	28-504		
	(f)	Evidence From the Decision-maker	28-505		
		(i) Common Law Privilege Against Testimonial Compulsion	28-506		
		(ii) Which Agencies Enjoy Common Law Privilege	28-513		
		(iii) What Constitutes A Prima Facie Case	28-515		
		(iv) Statutory Testimonial Privilege	28-517		
		(v) Decision-Maker's Personal Notes	28-527		
		(A) Personal Notes Should Share In Relevant			
		Privilege Against Testimonial Immunity	28-527		
		(B) Access Legislation and Personal Notes	28-530		
28.20	Qua	ashing the Decision	28-532		
	(a)	2 3			
		Court Makes the Decision Itself			
	(c)	Court Prohibits Further Proceedings Respecting the Matter	28-544		
	(d)	Court Makes No Direction Respecting			
		Consequences of Quashing			
		Partial Quashing of Decision			
28.21	Jud	licial Review in the Federal Courts			
	(a)				
	(b)	·			
	(c)				
	(d)				
	(e)	•			
		(i) Jurisdiction Granted By The Federal Courts Act	28-561		
		(ii) Continued Judicial Review Authority Of			
		The Provincial Superior Courts			
		(A) Where Jurisdiction Not Transferred To Federal Courts	28-565		
		(B) Where Federal Parliament Lacked			
		Constitutional Authority To Transfer			
		Jurisdiction To Federal Courts	28-570		
		(iii) Where Concurrent Jurisdiction Is Shared By			
		Federal And Provincial Superior Courts			
	(f)	Grounds for Review in the Federal Courts	28-572.3		

	(g) Remedies
	(h) Interim Relief
	(i) Appeal Rights Bar Judicial Review28-579
	Chapter 28 Update
	CHAPTER 29
	Implied Powers of an Agency
29.1	The Necessity for a Grant of Authority
29.1	Determining an Implied Grant of Authority
29.3	Determining the Practical Necessity
27.3	Chapter 29 Update
	CHAPTER 29A
	Contempt
29A.1	Introduction
29A.2	Definition 29A-3
29A.3	Civil and Criminal Contempt
	(a) Types of Criminal Contempt
	(b) Matters Which are not Criminal Contempts29A-12
29A.4	Contempt Before (In facie) and Outside of (Ex facie) the Court 29A-17
	(a) Contempt in the Presence of the Court29A-17
	(b) Contempt out of the Presence of the Court29A-19
	(c) Failure to Obey Orders
	(i) Third Parties
	(ii) Where Order Not Formally Issued29A-22
	(iii) Void Orders and the Rule Against Collateral Attack29A-23
29A.5	Contempt Power of Administrative Agencies
	(a) Sources of Contempt Authority
	(b) Agency Contempt Power Usually Expressed in Terms of
	Courts of Record
	(i) Types of Courts29A-40
	(ii) Common Law Power of Courts of Record to Cite For
	Contempt
	(c) Agency Power of Contempt Contingent on Statutory
	Grant
29A.6	Development of Agency Contempt Power In Canada
	(a) Re Diamond and the Ontario Municipal Board: Restrictive
	Interpretation of Grant of "Powers of Supreme
	Court"
	(b) Re Hawkins and Halifax County Residential Tenancies Commission:
	Philosophy Behind Restrictive Approach
	(c) Canadian Broadcasting Corp. v. Cordeau: Supreme Court of
	Canada Endorses Restrictive Approach29A-47