# Law Reform Proposal
# of the CBA Administrative Law (BC Branch) Section
# Executive

## (a) General description of the issue: the patent unreasonableness anachronism

The Administrative Tribunals Act, SBC 2004, c.45 which is one of the central statutes in British Columbia in regard to Administrative Law, contains an applicable standard of review of "patently unreasonableness" (see sections 58(2)(a) and 59(3)), that is currently out of step with more recent common law jurisprudence with regard to the applicable standard of review. In the leading case of Dunsmuir v New Brunswick, 2008 SCC 9, [2008] 1 SCR 190, the Supreme Court of Canada did away with the patently unreasonable standard and simply articulated the standard of review of deference as one of "reasonableness". This development in the common law occurred after the enactment of the Administrative Tribunals Act; when the statute was originally enacted there were three standards of review at common law, one of which was "patent unreasonableness".

## (b) Current state of the law with reference to the applicable legislation and case law

As noted above, the Administrative Tribunals Act is currently out of step with the common law as enunciated in Dunsmuir. This is undesirable and has the potential for confusion. The disconnect between the Administrative Tribunals Act and the common law of standard of review has been noted in British Columbia jurisprudence on a variety of occasions, including the following statement from Saunders JA in Manz v Sundher, 2009 BCCA 92 at para 5:

> As a result of Dunsmuir, the common law of judicial review no longer invokes the standard of patently unreasonable while British Columbia, through the Administrative Tribunals Act, embraces that standard for certain tribunals and certain issues. In other words, British Columbia's legislation now departs from the common law as recently expressed in Dunsmuir.

See also Canada (Citizenship and Immigration) v Khosa, 2009 SCC 12 at para 19; Falc v Mainstreet Equity Corp, 2009 BCSC 410 at para 9; Sahota v Director of the Residential Tenancy Branch, 2010 BCSC 750 at paras 20-22; Victoria Times Colonist v. Communications, Energy and Paperworkers Union of Canada, Local 25-G, 2009 BCCA 229.

## (c) Recommendation for law reform

Our subsection respectfully recommends that the government take steps to synthesize the Administrative Tribunals Act with the current state of the common law standard of review jurisprudence. The patent unreasonableness standard in the Administrative Tribunals Act should be jettisoned in favour of a reasonableness standard of review, and the Act should be synthesized with the current common law standard of review jurisprudence. We would be pleased to provide any further support needed to develop a more detailed proposal in this regard.

We also recommend in the process that the government take stock of the current tribunals in British Columbia and consider whether the Administrative Tribunals Act (or portions of it) should be extended to tribunals that are currently not subject to this statutory scheme.

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