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Key Principles (Statutory Interpretation, Rules, and Discretion)

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I. Administrative Law: Key Principles

Administrative decision-making touches the lives of every Canadian, from the food we eat to our workplace, our homes, how we get around, and the social and economic relationships that define our society. This reality highlights both the volume and the diversity of administrative justice.

The rise of public agencies, boards, and commissions (often referred to as ABCs) dates back to the nineteenth century, but has dramatically increased since the Second World War, as has the breadth and complexity of the responsibilities of these ABCs. There are now about 1,500 agencies in Canada, of which 580 are in Ontario alone (including over 200 administrative tribunals). They range widely in size and nature, from the Wolf Damage Assessment Board to the Ontario Labour Relations Board. They also vary in the way they function and in their relations with the government and the public. As then Justice Louis LeBel observed in one administrative law case,

“[N]ot all administrative bodies are the same. Indeed, this is an understatement. At first glance, labour boards, police commissions and milk control boards may seem to have about as much in common as assembly lines, cops, and cows!”¹

Administrative decision-makers are governed by a range of institutional and statutory structures. Some decision-makers work in administrative agencies ... while others work in government departments, for regulators, or in autonomous Crown Corporations. Some public decision-makers act through exercises of administrative discretion (for example, where an Immigration and Citizenship officer decides when someone qualifies as a refugee or which radio station will get a license from the CRTC) while others (such as a labour board or human rights tribunal) resolve disputes, but all exercise a public authority set out in a statute, and as a result, all are subject to the principles of administrative law.

As discussed in the first chapter, administrative law primarily regulates the activities of the executive branch of government (as opposed to the legislative or judicial branches), and also, together with constitutional law, coordinates the relationship between the three branches of government. The executive branch of government includes government departments and ministries, as well as the broader public sector of bodies and ABCs that operate under statutory authority. It is the body of rules and principles that regulate the actions of those exercising public authority. Administrative law also encompasses the authority of the superior courts to supervise how these departments and ABCs carry out their powers, the procedures that these courts follow, and the remedies that the courts can provide when departments or ABCs act outside their authority or exercise their powers in an unreasonable or unfair manner.

¹ *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307 at para 158.

Administrative law is founded on a variety of underlying and fundamental principles, including:

1. Decision-makers who exercise powers granted by statute always have boundaries to that authority. No public authority is unlimited. Those who act under public authority must stay within their legal authority, or jurisdiction, and are guided in their decision-making by statutory intent.
2. Administrators must exercise their judgment in a reasonable manner when they have discretion in making decisions.
3. Administrators must follow fair procedures when making decisions that affect a person's rights or interests. This principle is known as "procedural fairness" or, in some cases, "due process" or "natural justice."
4. Only those to whom the legislature has delegated authority to carry out a function may act under that authority. Public authority must be clear.
5. To be valid, subordinate (or delegated) legislation must conform to the statute under which it is passed. In other words, regulations and by-laws must be consistent with the objectives of their enabling statutes and the scope of the regulatory powers set out in those statutes.
6. If decision-makers violate any of the above principles, the superior courts have the authority to intervene to rectify this failure. This intervention is called "judicial review." It is an important mechanism for preventing abuse of executive power because it is available even when the legislature has made no provision for an appeal of executive actions. As well, any law that a legislature passes to prevent judicial review is unconstitutional and therefore invalid.

These principles are discussed in this chapter. For a more detailed discussion of procedural fairness, see Chapters 5, Fairness: Impartiality and Bias, and 6, Constitutional Rights in Administrative Law; for a more detailed discussion of judicial review on substantive grounds (for example, reasonableness), see Chapter 7, The Standard of Review in Administrative Law.

A. Why Did Administrative Law Develop?

The executive branch of government evolved to include, in addition to government departments, a new sector of administrative agencies, boards, and commissions. The main reason for the creation of these bodies was that governments were taking on a much larger role in regulating social and economic activities, which led to growing demand for greater transparency and accountability, as well as recourse for those adversely affected by administrative decision-making. As well as moving into new areas of regulation, governments were developing and applying more complex standards and rules, which in turn required more specialized expertise and more customized processes and policies. To support this expanded role, the powers of central departments

were increased, and the new agencies were given wide-ranging responsibilities intended to complement—or, in some cases, replace—various functions otherwise performed by departments. Their responsibilities included legislation, enforcement, administration, and adjudication.

The more the government intervened in the daily lives of citizens, and the broader the powers granted to its departments and agencies, the more important it became to implement a system of rules for scrutinizing and regulating these activities. In particular, it was essential to maintain the separation of powers among the three branches of government by preventing departments and agencies that were part of the executive branch from encroaching on the functions of the legislative and judicial branches. It was also necessary to promote the accountability of departments and agencies; to ensure that they acted fairly; and, at the same time, to protect their independence.

These objectives were achieved by developing a body of law that constrained the actions of government departments and ABCs. Initially, the courts took the lead by developing a set of fairness principles. Later, these and other principles and rules were codified in statutes. Administrative bodies, in turn, developed processes, rules, and practices adapting standards to the particular needs of particular ABCs. This cumulative body of judicial, legislative, and administrative principles and rules is what we now know as “administrative law.”

B. Who Is Subject to Administrative Law?

Administrative law governs the exercise of powers granted by statute. Thus, any individual or body exercising a power granted by statute or regulation is subject to the principles of administrative law. This means that, in addition to government entities, organizations such as universities, hospitals, and self-regulating professions that are established or given powers by statute must follow the principles of administrative law when exercising those powers.

Although administrative law applies primarily to bodies created by statute when they make decisions authorized or required by statute, this general description is incomplete. For example, the courts will intervene from time to time to ensure that statutory bodies act properly even when they are carrying out functions that *do not* involve statutory decision-making, such as investigation or the making of non-binding recommendations.

In addition, the same principles of law apply to ensure that certain non-government, non-statutory voluntary organizations, such as trade associations, clubs, and churches, abide by their own rules and apply those rules fairly when they are taking action that affects the interests or rights of their members. That is, the organizations must stay within their jurisdiction as set out in their own rules (rather than in a statute), and must follow a fair procedure when, for example, they wish to revoke a membership or fire a staff member. For example, a religious organization has a legal duty to explain to members being expelled the reason for doing so.

Administrative law rules may also apply to the actions of private entities in the circumstances where those entities are bidding for government contracts, or in the circumstances where private entities or public–private partnerships are carrying out government functions or are fulfilling a government contract.

These fundamental principles find their expression in a range of concepts that form the foundation of administrative law. These include the concepts of jurisdiction, discretion, delegation, and judicial review. We turn now to exploring each of these concepts.

II. Jurisdiction

Jurisdiction is a central concept of administrative law. Simply defined, it refers to the scope of the authority or powers conferred on a government body or official by legislation or by common law. The concept of jurisdiction is expressed in the principle that government bodies and officials must always act within their legal authority or powers. If an administrator does something outside his or her jurisdiction, that action is invalid because it is *ultra vires* (Latin for “outside his or her powers”), and the decision may be struck down by a court.

This notion of jurisdiction is important for two reasons that relate to Canada’s Constitution, discussed in Chapter 1, Administrative Law Within Canada’s Constitution and Legal System. The first is the rule of law and the requirement that all exercise of public authority be limited. The second is the separation of powers, which sets out that Parliament or a provincial/territorial legislature makes laws, courts interpret laws, and the executive implements laws. These are features of the unwritten Constitution in Canada and so cannot be altered by statute or government action. For example, a statute that purported to confer unlimited discretion on a government official or that transferred the legislative powers of Parliament to another body would be unconstitutional.

A. Sources of Jurisdiction: Statutes and Common Law

Government departments and agencies are created by statute. Their jurisdiction, therefore, is generally limited to the powers granted explicitly to them in the relevant statutes. Sometimes, regulations may be issued pursuant to statutory authority that also comprise legislative direction for government departments and agencies. Those regulations, however, cannot create powers that are not already present in the legislation pursuant to which the regulation is made. Regulatory distinctions must be authorized by statute, either expressly or by necessary implication.

The common law also confers discretionary prerogative authority on the executive branch. This provides government officials with the jurisdiction to act on a diffuse set of powers, including (but not limited to) the power to appoint diplomats, to send peacekeepers abroad, and to issue passports and pardons.

In addition to the above, there are two other limited sources of jurisdiction for departments and agencies. First, at common law, agencies may be said to have whatever additional powers are necessarily incidental to their explicit powers. A court will find these additional powers by necessary implication only where the jurisdiction sought is necessary to accomplish the objectives of the legislative scheme and is essential to the body fulfilling its mandate.

For example, suppose the statute that regulates a particular type of business requires all operators of such businesses to submit a financial statement prepared by an accountant to the regulator each year. An operator who is an accountant submits a financial statement and claims to have complied with the requirement. However, even though the statute does not state that the financial statement must be prepared by someone independent of the operator, it may be interpreted to mean this. The power to require an independent accountant can be implied because this is necessary to fulfill the purpose of the provision, which is to monitor the financial transactions of these businesses in order to ensure that the public is protected.

This implied powers doctrine is a source of *substantive* jurisdiction.

Second, agencies may have implied *procedural* powers (and obligations) at common law. Agencies have common law authority to create and follow procedures not provided for in their statutes, but only to the extent that these procedures are reasonably necessary to allow them to carry out their statutory obligations. For example, even without explicit power, a tribunal will be considered to have the power to grant or refuse an adjournment or to grant a stay of an administrative action appealed to the tribunal until the tribunal has held its hearing on whether to uphold the action, since these powers are necessary for the tribunal to exercise its other powers effectively. The doctrine of procedural fairness at common law is discussed further in Chapters 4, Fairness: The Right to Be Heard, and 5, Fairness: Impartiality and Bias.

This common law source of jurisdiction is known as the inherent powers doctrine and is expressed as the rule that “every agency is the master of its own process.”

B. Requirement to Act Within Jurisdiction

As discussed in Chapter 1, when making any decision, government bodies and officials are bound by the rule of law. This has two important consequences related to jurisdiction:

1. The powers and duties of any government department, agency, or official are limited to those established by a law.
2. Any department or agency that has powers and duties under legislation must follow the procedures set out in the legislation when exercising those powers and duties.

Agencies, boards, and commissions, as well as departments and their officials, do not have the right or the authority to ignore provisions of the law even if they believe

that they are justified in doing so. Their task is not to determine what the law *should* be; that function belongs to the elected members of the legislature or the municipal council. The role of agencies and officials is to interpret and apply the law as it is written, in every case that comes before them.

An agency acts outside its jurisdiction if it does something that its statutory or common law powers do not authorize it to do, or if it fails or refuses to do something that it is legally required to do. In these cases, a superior court may require the agency to take an alternative action that *is* within its jurisdiction. As mentioned, this inherent right of superior courts is called “judicial review” and is discussed later in this chapter.

III. Discretion

The role of an administrator becomes more important and more complicated when the law does not provide the answer. In many cases, the law grants discretion to an official, or the right to choose from a variety of options. Where discretion is granted, it is no longer appropriate to speak of whether the decision was “right” or “wrong” but rather whether it was “reasonable” and “fair.”

Most statutory authority is discretionary. Legislators cannot contemplate all of the circumstances and conduct to be regulated within a field of activity. Someone must be given the responsibility of applying the legislation to each situation as it arises. Statutory grants of discretion typically indicate that a decision-maker “may” take certain action. Discretion may be conferred so that considerations of public policy and the public interest may be taken into account when applying the statute to specific circumstances.²

A. Requirement to Exercise Discretion in a Fair or Reasonable Manner

When an official is granted discretion, just applying the law to the facts often will not provide the “right” answer; typically, it may also be necessary to determine which of several possible applications of the law is the most fair or reasonable in the circumstances. However, this does not mean that officials are free to do whatever they think is fair or reasonable. The rule of law requires that decisions be based on the intent and purpose of the statute granting the discretion, not on an official’s personal beliefs and values or arbitrary considerations. Otherwise, the exercise of discretion in decision-making would lead to perpetual inconsistency and uncertainty—a situation contrary to the purpose of laws.

The courts have therefore developed a rule that discretion must be exercised reasonably. There are several principles that govern whether the exercise of discretion is

² Sara Blake, *Administrative Law in Canada*, 5th ed (Toronto: LexisNexis Butterworths, 2011) at 99.

reasonable or unreasonable. Among these are principles requiring decision-makers to avoid looking at options either too broadly or too narrowly.

B. Limits on the Right to Choose Among Options

There are four limits on a decision-maker's right to choose among options:

1. Discretion must be exercised within the decision-maker's authority. The source for that authority generally will be found in the statutes and regulations that empower the decision-maker to engage in certain activities. The fundamental rule in the exercise of discretion is that the choices made must be consistent both with the purpose of the statute and with its wording. In other words, all discretion has limits. In recent years, the courts have stated that not only must discretion be exercised in accordance with the purpose and wording of the statute that grants the discretionary power, but "administrative decision-makers must act consistently with the *values* underlying the grant of discretion, including *Charter* values."³
2. In making choices, officials must consider only relevant factors—those that are consistent with the purpose and wording of the statute and relate to the issues officials are to decide. They must not take into account extraneous or irrelevant factors—those that are outside the scope of the statute or have no relevance to the issues in the particular case. This rule is closely related to the first rule.
3. Similar cases should be treated in a similar way, and different cases should be treated differently from each other. There must be no discrimination between persons on the basis of irrelevant considerations.
4. Discretion must be exercised in good faith. Officials act in bad faith when they deliberately ignore the limits set out above for an improper purpose. For example, if the exercise of discretion is influenced by outside pressure or by the official's personal feelings toward a party, the choice is made not only on the basis of an irrelevant factor, but also in bad faith.

C. Limits on the Authority to Rule Out Options: The Rule Against Fettering Discretion

While the principles set out above require officials to rule out irrelevant or inappropriate options, there are also principles that require them *to consider* other options. When officials rule out options that the law requires them to consider, they are said to be fettering their discretion.

In certain situations, officials may have statutory authority to refuse to deal with matters over which they have jurisdiction. For example, a statute may give an official

3 *Doré v Barreau du Québec*, [2012] 1 SCR 395, 2012 SCC 12 at para 24.

authority not to process a request where it is obvious that the request has no possibility of success. Similarly, a tribunal may have statutory authority not to hear a case where the documents submitted indicate that the case has absolutely no merit.

Generally, however, the authority to rule out options is subject to two limitations:

1. An official with a power to exercise discretion cannot refuse to exercise that discretion. If an official has discretion, he or she must use it to make a decision on a matter within his or her jurisdiction when called upon to do so by a member of the public entitled to a ruling. The official cannot say, “I don’t like any of the options, so I refuse to make a decision.” The official is required to select one of the available options. These options often include granting the request, refusing the request, or granting the request subject to appropriate terms and conditions. The official cannot say, “I am not going to consider whether I should exercise my discretion favourably or not.”
2. An official with a power to exercise discretion cannot refuse to consider any factor that is relevant in deciding which option to choose. For example, some environmental protection laws permit government officials to order the current owner and all past owners of a property to pay for cleaning up pollution associated with the property, regardless of whether they contributed to causing it; in other words, an official has discretion to order a person who has not owned a property for ten years to clean up pollution caused by the current owner just recently. However, this does not mean that the official can disregard the fact that the previous owner had nothing to do with causing the pollution. This is a relevant factor that must be considered in deciding whether to order that person to pay for the cleanup.

Officials have no authority to refuse to exercise their discretion in the ways described above. As long as the law allows them choices, they are required to give genuine consideration to each of those choices.

In practice, the rule against fettering discretion means that tribunals, for example, cannot make any binding rules that would require different panels to make consistent decisions in similar cases or that would prevent panel members (adjudicators) from considering all options. Consequently, tribunals can never ensure that their decisions are entirely consistent. Nevertheless, adjudicators, as well as other government administrators, should attempt to minimize the degree of inconsistency in their own decisions and between their decisions and those of other panel members or officials without fettering the discretion of their officials. The next section discusses several ways that this may be accomplished. While decision-makers cannot fetter their exercise of discretion, they also must keep in mind the boundaries of all discretion, described by the Supreme Court in the following terms:

[D]iscretion must still be exercised in a manner that is within a reasonable interpretation of the margin of manoeuvre contemplated by the legislature, in accordance with the

principles ... of administrative law governing the exercise of discretion, and consistent with the *Canadian Charter of Rights and Freedoms*.⁴

D. Ways to Minimize Uncertainty and Inconsistency Without Fettering Discretion

1. Policies and Guidelines

Where inconsistency in the exercise of discretion is a potential problem, it is advisable for the government department or agency to develop policies or guidelines to promote both consistency and fairness in decision-making. However, these must never be treated as binding rules or be used to justify the exclusion of choices provided by the law. A requirement to follow such directives slavishly would be a fettering of discretion.

The Supreme Court dealt with this issue in *Kanthasamy v Canada (Citizenship and Immigration)*.⁵ The decision-maker in this case treated the guidelines as a strict legal standard, and the court found that such slavish obedience to the guidelines was an unreasonable use of discretion. Guidelines can be useful, but they must be used to provide guidance to decision-makers when they choose to exercise their discretion. Rather than treat guidelines as a strict legal standard, they should be seen as a useful tool in indicating what constitutes a reasonable interpretation of a given provision.

Sometimes, a government department will establish policies for its administrators to apply in carrying out their functions, including the exercise of discretion. If a tribunal is called upon to review how those administrators did their job and if it has the power to substitute its own views as to how the regulatory regime should apply, it is usually also appropriate for the tribunal to consider those government policies. However, the tribunal may not treat the policies as strict requirements, or this too will constitute a fettering of discretion.

The original decision-maker or the tribunal reviewing the decision must follow ministerial directives only when required to do so by statute. If there is no statutory requirement, the directives should be considered, but both the original decision-maker and the reviewing tribunal can refuse to follow the directives, provided that the facts of a particular case justify their choice.

Government departments and agencies do not always provide their administrators with policies or principles to assist them in discretionary decision-making. When a tribunal reviews a decision made under such circumstances, it is helpful if the tribunal has established its own guidelines for deciding whether or not to overturn the decision. Guidelines may either emerge from the decisions of individual tribunal members or be developed by the tribunal as a whole. Both approaches are appropriate as long as the guidelines are not used to fetter discretion.

⁴ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at 853-54, L'Heureux-Dubé J.

⁵ [2015] 3 SCR 909, 2015 SCC 61.

If guidelines are developed by the tribunal as a whole, they should generally be published. Parties to cases brought before the tribunal are entitled to know in advance what criteria the tribunal will apply in exercising its discretion.

The existence of publicly available guidelines can, in some cases, give rise to a legitimate expectation that such guidelines will be followed. This was the case in *Agraira v Canada (Public Safety and Emergency Preparedness)*,⁶ where the court affirmed that when guidelines create clear, unambiguous procedural frameworks for decision-makers, the parties to the case have a legitimate expectation that the guidelines will be followed. Decision-makers must consider guidelines seriously, as they are an important tool in achieving an acceptable level of consistency in administrative decisions.

That said, decision-makers must be careful that they do not follow the guidelines as if they were legislative rules. In *Thamotharem v Canada (Minister of Citizenship and Immigration)*,⁷ the language in the guidelines expressly permitted the decision-maker to depart from the standard procedure in exceptional circumstances. The court in this instance emphasized that the guidelines were valid precisely because it was possible for decision-makers to deviate from the expected practice indicated in the guidelines in light of particular facts.⁸

2. Consultation and Board Meetings

When an official is considering making a decision that would be inconsistent with an earlier decision of the department or agency, consultation with others may be helpful. Government officials are generally free to consult other staff members when making decisions, and they are not generally required to disclose those consultations. Tribunal members in adjudicative contexts, on the other hand, are more constrained in their ability to consult outside the hearing.

Except where a statute governing a tribunal excludes or places stricter limits on the right to consult, it is acceptable for an adjudicator to seek advice from other tribunal members, staff, counsel, or the chair as long as

- the adjudicator makes the final decision,
- the consultation is voluntary on the adjudicator's part,
- no one who is consulted puts pressure on the adjudicator to make a particular decision,
- the consultation is not secret, and
- no new issues or facts are introduced without the parties being notified and permitted to comment.

6 2013 SCC 36, [2013] 2 SCR 559.

7 [2008] 1 FCR 385, 2007 FCA 198.

8 *Ibid.*

3. Caution in Overturning Discretionary Decisions

In some cases, a tribunal reviewing discretionary decisions of a government official has statutory authority to overturn a particular decision only if the official exceeded jurisdiction or acted unreasonably, in the sense of acting outside his or her mandate, ignoring relevant evidence, or deciding on the basis of irrelevant factors. In other cases, however, the tribunal is given broad discretion to substitute its own decision for that of the official.

Broad discretion must be exercised with caution. Where a tribunal imposes its discretion on a front-line decision-maker, even though the first decision was one that a decision-maker could reasonably make, this undermines the certainty and predictability of outcome that a legal system is expected to provide. Therefore, even if there are no explicit limits on a tribunal's exercise of discretion, discretionary decisions by other administrators are usually overturned only if they are unreasonable or if the administrator followed an improper procedure in reaching the decision (discussed in Chapters 4 and 5 on fairness). In either case, the tribunal should make its reasons for overturning the decision clear.

IV. Delegation

In general, an official to whom the legislature has delegated decision-making power may not delegate that power to someone else. Such delegation is called subdelegation. The rule against subdelegation is expressed in the Latin phrase *delegatus non potest delegare*, which means “a delegate cannot delegate.” In other words, because statutes delegate authority to an executive decision-maker or administrative body, it is not open to those bodies to in turn empower others to make the decision authorized by such statutes. This general rule has been affirmed numerous times by all levels of court, and by the Ontario Court of Appeal in *Jackson v Ontario (Minister of Natural Resources)*.⁹

The purpose of the rule against subdelegation is to preserve the quality of decisions, ensure the fairness of decisions, and respect the intent of the legislature. The presumption behind the rule is that the legislature has chosen the delegate carefully, and another person may not possess the same knowledge, skills, or qualifications. Equally important is the fact that accountability for decisions may be compromised when decision-making takes place outside the established structure for the exercise of statutory powers. The rule against subdelegation is another example of the more general rule that a body must stay within its jurisdiction; if the legislature has delegated to someone jurisdiction to do something, this does not confer jurisdiction on some other person to do that thing.

Subdelegation is permitted in certain circumstances. For example, the rule against subdelegation does not apply to a minister delegating statutory powers to public servants in his or her ministry. Where a statute says that the ministry “may” do

9 2009 ONCA 846.

something, this is sufficient to allow the minister to delegate even discretionary decisions to ministry staff.

Subdelegation is also permitted in circumstances where it is specifically authorized by a statute. In addition, the power to subdelegate can sometimes be implied from the statutory context, even though it is not expressly granted. (This was the case in *Jackson v Ontario*,¹⁰ where the Court of Appeal concluded that the absence of explicit authority in the legislation did not preclude the Governor in Council from delegating her authority to the provincial minister.) Where there is no express or implied statutory authorization, whether subdelegation is allowed may depend on whether the power being delegated can be described as purely administrative (often requiring little or no exercise of discretion) or as quasi-judicial. Courts are more willing to uphold the subdelegation of purely administrative functions than the authority to make decisions involving the exercise of discretion or the determination of substantive rights.

Where a delegate is required to follow a specific procedure in making a decision or setting standards, the delegate is not allowed to circumvent these requirements by delegating the decision to a different official who is not subject to the same restraints.

In practice, delegation of decision-making authority occurs across a wide spectrum of activities, and it is difficult to determine in any given case whether a delegation not explicitly authorized by a statute is valid or not.

V. Judicial Review

If an official or body is alleged to have violated any of the other fundamental principles of administrative law, the superior courts have the power to review the alleged violation and rectify it as necessary. This process is known as judicial review and is an inherent power of the superior courts, meaning that it exists even where no statute authorizes it.

Anyone who is directly and substantially affected by an administrative body's action and believes the body acted unfairly or outside its jurisdiction has the right to make an application to a superior court for judicial review, even where a statute provides no right of appeal. The right to judicial review is an aspect of the rule of law because it ensures that government decisions are made in accordance with the law, and not the personal preferences or biases of decision-makers. It is constitutional in nature, meaning that it cannot be taken away by a provision in a statute that seems to prohibit review of a body's decisions. As a result, it is available at least on limited grounds even where a statute states that it prohibits courts from reviewing an administrative body's decisions.

In addition to the inherent right of the superior courts to hear judicial review applications, some specialized courts have been established by statute specifically to hear

10 *Ibid.*

judicial review applications or have been given statutory authority to carry out this function. The Federal Court of Canada has statutory authority to conduct judicial reviews of the actions of federal government departments and agencies. In Ontario, the Divisional Court, a branch of the Superior Court of Ontario, hears judicial review applications.

Generally, courts hearing judicial review applications can

- declare that an action taken by a public official or agency is contrary to the law;
- quash a decision already made by an official or agency (in this case, the court may substitute its own decision or order, or may send the matter back to be decided again, following the correct procedures or principles);
- order an official or agency to take any action that he, she, or it is required by law to take;
- forbid a public official or agency from taking or from continuing any action that he, she, or it is prohibited by law from taking;
- require an official or agency to follow a fair procedure in making a decision; and
- order an agency to free a person who is illegally imprisoned.

For a more detailed discussion of judicial review, see Chapter 7.

VI. Conclusion

As the functions of government increasingly came to affect our lives, and because the new administrative agencies were not directly accountable to the public, it became apparent that a legal structure was needed to prevent government departments and agencies from exceeding their authority or acting in an arbitrary manner. This represented the beginning of administrative law.

Over time, the courts developed several principles of administrative law to guide and restrict the exercise of statutory powers by departments and agencies of government. Today, the fundamental principles of administrative law include procedural fairness, or natural justice, and principles related to jurisdiction, discretion, subdelegation, the validity of subordinate legislation, and judicial review.

The powers granted to a government body by statute constitute its jurisdiction, and administrative law prohibits an agency from straying beyond those powers in carrying out its functions. In addition, where government agencies have the right to choose between options in making a decision, they must exercise this discretion within their jurisdiction and in a reasonable manner; they must not fetter their discretion—that is, rule out options that the law requires them to consider—but they may promote consistency in the exercise of discretion. The rule against subdelegation prohibits a person to whom the legislature has delegated a function from delegating that function to someone else unless the legislation explicitly or implicitly authorizes such subdelegation, while the rules governing subordinate legislation—that is, regulations

and by-laws—require that, for such legislation to be valid, it must be consistent with the objectives of its enabling statute and the scope of the regulatory powers set out in that statute.

VII. Further Reading

Sara Blake, *Administrative Law in Canada*, 5th ed (Toronto: LexisNexis Canada, 2011) ch 2, 3, 5.

Colleen Flood & Lorne Sossin, *Administrative Law in Context*, 3rd ed (Toronto: Emond Montgomery, 2018) ch 8, 11, 12.

Denys Holland & John McGowan, *Delegated Legislation in Canada* (Scarborough, Ont: Carswell, 1989).

John Mark Keyes, *Executive Legislation*, 2nd ed (Toronto: Butterworths, 2010).

Robert Macaulay & James Sprague, *Practice and Procedure Before Administrative Tribunals* (Toronto: Carswell) (loose-leaf) ch 2, 3, 5B.

David J Mullan, *Administrative Law*, 3rd ed (Scarborough, Ont: Carswell, 1996) ch 3.

