**ADMINISTRATIVE LAW –**

SPPA: Statutory Powers Procedure Act (Ont)

JRPA: Judicial Review Procedure Act (Ont)

FCA: Federal Courts Act (Fed)

**Original Exercise of Delegated Decision Making Power**

**SOURCE OF POWER**: statute or regulation. Look at who has the power, what power had been delegated and how is the power to be exercised

**LIMITS ON POWER**:

* 1. Constitution: (1) can't contravene the Charter (2) division of powers
* 2. Common law:
* Procedural Limits: **natural justice** and **fairness** –*Statutory Powers Procedure Act* applies when hearing is required. Otherwise, common law imposes these rights to some extent
* Natural Justice: applies to judicial/quasi-judicial. Includes
  + Right to be heard (notice, make representations, etc.) and
  + Right to an impartial decision maker (free of reasonable apprehension of bias – personal or institutional) –
* Fairness: available even outside judicial/quasi-judicial. Content of the duty depends on various factors –
* Jurisdiction limits: decision maker must operate within the poser that has been delegated
* Errors of laws: Ex: Error of law to base decision on irrelevant factors, or failure to consider relevant factors

**Control/Challenge of the original exercise of the delegated power**

* Must find a statutory provision permitting a challenge, i.e. appeal, review, reconsideration
* Should exhaust all these options first before resorting to courts by way of JR

**Judicial Review**

*(courts control of DDM independently of any stat authority)*

*Div court and Fed Courts are created by statute, thus all power must come from statute but OSCJ is court of inherent jurisdiction*

* PROVINCIAL: Ont. Div. Court and procedure in *Judicial Review Procedure Act* and R. 68 –
  + Also have power in appropriate circumstances to review decisions of “inferior courts”
* FEDERAL: Federal Courts and procedure in *Federal Courts Act* and *Federal Court Rules* –
  + Cannot review actions of a body created by a prov. statute
* SCJ: In limited circumstances -may review acts of federal bodies in (1) constitutional challenges & (2) habeas corpus P.
* Errors that permit judicial intervention –
* Two step approach

1. Determine the appropriate standard of review for the particular element of the decision

* Correctness: courts don’t show deference, undertake their own analysis
* Reasonableness: calls for more deference, decision reasonable if it falls within a range of acceptable answers
* *Dunsmir* test to determine standard of review
* Determine the nature of the question. Is it a question of fact, law, mixed law and fact, or policy, or an exercise of discretion?
* Based on the nature of the question, does the existing jurisprudence “satisfactorily” point to a standard of review?
* If there is no helpful jurisprudence, perform a contextual analysis and consider the following factors: the nature of the question, the existence or absence of a privative clause, the relative expertise of the decision-maker, and the enabling statute.

1. Scrutinize that element of the decision using the appropriate standard of review

* RELIEF: Broad powers in FCA and JRPA –**cannot** award damages, can award costs. Perogitive writs: Includes mandamus (compel performance of legal duty); certiorari (set aside decision); prohibition (restrain a decision); habeas corpous (justify detention); quo warranto (remove from office). Equitable remedies: declaration & injunction