



Recent Trends in Administrative Law -Western Provincial Update

By

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INTRODUCTION

This paper addresses two different emerging issues or trends in administrative law. Part I of the paper discusses the increasing tendency in British Columbia to apply the public interest standing test in a restrictive manner that imposes new burdens on those seeking standing. Part II of the paper considers the role of appellate tribunals and the standard of review applicable to the process and decision of a first level decision-maker.

PART I – STANDING UP FOR PUBLIC INTEREST STANDING

(a) The Development of the Current Approach to Public Interest Standing

Historically, only the Attorney General could maintain an action in the public interest. This was overruled in *Thorson v. Attorney General of Canada* (“Thorson”)¹ where Laskin J (as he then was) found that to uphold the rule would leave citizens at the mercy of the Attorney General and essentially immunize legislation from judicial review in situations where the Attorney General felt a challenge was unnecessary. Laskin J also found that leaving the decision to challenge legislation at the mercy of the Attorney General was particularly disturbing given that in Canada’s federal system, the Attorney General is also “the legal officer of a Government obliged to enforce legislation enacted by Parliament”.² In departing from the existing rule, the Supreme Court of Canada justified the shift in approach, in part, by noting “the right of the citizenry to constitutional behaviour by Parliament where the issue in such behaviour is justifiable as a legal question.”³

Post-Thorson, the Supreme Court of Canada further developed the principles governing public interest standing in *Nova Scotia Board of Censors v. McNeil* (“McNeil”)⁴, *Canada (Minister of Justice)*

¹ [1975] 1 S.C.R. 138.

² *Ibid.* at 146.

³ *Ibid.* at 163.

⁴ [1976] 2 S.C.R. 265.

v. Borowski (“Borowski”)⁵, and Finlay v. Canada (Minister of Finance) (“Finlay”)⁶. Together, these cases, which have come to be known as the public interest quartet, set out the following test for public interest standing:

1. Is there a serious issue as to the invalidity of the legislation?
2. Is the plaintiff affected directly by or has a genuine interest in the validity of the legislation?
3. Is there no other reasonable and effective manner in which the issue may be brought before the Court?

(b) Trends in Public Interest Standing Cases

While the legal test for public interest standing is well established, the application of that test in particular cases has been less clear. Recent decisions in British Columbia have called into question the courts’ consistency in applying the test for public interest standing, particularly the first and third elements of the test. The courts have in some cases taken an overly technical approach to the ‘serious issue to be tried’ element, while in others cases have respected that this is a low threshold requirement and have conducted a relatively cursory review of the issues. With respect to the third element of the test, recent decisions in BC have distorted this requirement by considering whether the challenge could be brought by a private litigant, instead of examining whether a challenge would in fact be brought. Another trend has been the consistent opposition by the Attorney General to public interest standing. Together, these trends have raised the threshold for litigants seeking public interest standing with the result that important governmental action is being shielded from judicial scrutiny.

(i) A Narrow Approach to the ‘Serious Issue’ Requirement

The first step of the public interest standing test requires that the party seeking standing demonstrate that there is a serious issue as to the invalidity of the legislation. While traditionally only legislation could be challenged using public interest standing, this has evolved to include more

⁵ [1981] 2 S.C.R. 575.

⁶ [1986] 2 S.C.R. 607.

broadly government acts or decisions.⁷ The expansion of public interest standing to include challenges to government actions and decisions is supported by the generous and liberal approach to standing as indicated in the Canadian Charter of Rights and Freedoms (the “Charter”).

The first element of the public interest standing test has traditionally involved a relatively low threshold. Provided that the claim wasn’t frivolous or vexatious, the first element of the test was generally satisfied, particularly where the case involved issues of public importance. A different approach however was taken by the Supreme Court of British Columbia in *The Canadian Bar Association v. HMTQ et al.* (“Canadian Bar Association”)⁸ where the Court took a very technical approach to this requirement and as a result denied standing. *Canadian Bar Association* involved a challenge by the Canadian Bar Association (the “CBA”) to the provincial government’s civil legal aid program on the basis that its provisions were inadequate and that this amounted to a breach of Charter rights, written and unwritten provisions of the Constitution, and international human rights instruments. In considering whether the CBA had standing to bring the challenge, the Court began by reviewing the Supreme Court of Canada’s expansion of public interest standing in *Finlay* to situations involving government actions, but found that this only applied in circumstances where a challenge to administrative action was analogous to a challenge to legislation. At paragraph 45 of the decision, the Court stated:

However, in the case at bar, there is no challenge to legislation or to administrative action said to be *ultra vires*. Instead, there is a challenge attacking a failure to legislate or a failure to have a scheme in place that meets appropriate constitutional criteria as contended by the CBA.⁹

The Court found that the CBA did not take issue with any specific legislation or government act, but instead sought to challenge the entirety of the program and that this did not constitute a government act or decision for the purpose of the public interest standing test. Of note, the Court acknowledged that the provision of civil legal aid is a serious public issue but held that this does not render it a serious issue for the purpose of the public interest standing test.

⁷ *Ibid.*

⁸ 2006 BCSC 1342 (CanLII), *aff’d* 2008 BCCA 92.

⁹ *Ibid.* at para. 45.

A few observations can be made. To start, the over technical approach taken by the Court in interpreting ‘government act or decision’ fails to take into consideration the increasing degree of government regulation and the resulting increase of government action through complex regulatory and administrative schemes often composed of a variety of legislative tools including regulations, policies, and guidelines. The extensive intervention of the state in the affairs of its citizens was acknowledged in *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)* (“Canadian Council of Churches”) wherein the Supreme Court of Canada stated:

...there can be no doubt that the complexity of society has spawned ever more complex issues for resolution by the courts. Modern society requires regulation to survive. Transportation by motor vehicles and aircraft requires greater regulation for public safety than did travel by covered wagon. Light and power provided by nuclear energy requires greater control than did the kerosene lamp.¹⁰

The Court went on to say that increased regulation has contributed to the growth of the concept of public rights and as such, “the validity of government intervention must be reviewed by courts”.¹¹ The effect of the BC Supreme Court’s technical and narrow approach to the ‘serious issue’ requirement in *Canadian Bar Association* fails to recognize these realities. The decision in *Canadian Bar Association* restricts the ability of citizens to challenge the entirety of a government response to an important public issue despite the fact that the government’s approach may in fact ignore its citizens’ constitutional rights. The irony is that individual aspects of the scheme can be challenged, but its cumulative effects cannot. The ultimate result is to restrict the application of public interest standing and to immunize government programs from judicial review.

A second related observation is that the adoption of such a narrow approach fails to give meaning to “the right of the citizenry to constitutional behaviour by Parliament” and to have the Court judge whether behaviour meets that standard.”¹² By adopting a narrow interpretation of ‘government act or decision’, the Court has shielded government schemes from judicial review even though the government program in question may neglect Charter requirements. This is not to say

¹⁰ [1992] 1 S.C.R. 236 at para. 29.

¹¹ *Ibid.*

¹² *Supra* note 1 at 163, emphasis added.

that governments should be held accountable by the courts for their political decisions. However, where the legislature has created a scheme to deal with a public issue, that scheme must not infringe constitutional requirements and surely it is in the public interest to have the judiciary decide this issue.

A final observation, perhaps the most troubling, is that the BC Supreme Court's analysis of the 'serious issue' requirement in *Canadian Bar Association* was a very detailed and technical analysis. This is a departure from the Supreme Court of Canada's approach in the standing quartet where the Court has acknowledged that this element of the public interest standing test involves a relatively low threshold. For instance, in *Canadian Council of Churches*, the Supreme Court of Canada was faced with a challenge to the federal government's refugee determination process. In addressing the 'serious issue' requirement, the Supreme Court of Canada conducted a very superficial review of the issues raised, and stated:

In many ways the statement of claim more closely resembles submissions that might be made to a parliamentary committee considering the legislation than it does an attack on the validity of the provisions of the legislation.¹³

Nonetheless, the Court concluded that it was "prepared to accept that some aspects of the statement of claim could be said to raise a serious issue as to the validity of the legislation."¹⁴ In fact, this relatively low threshold was acknowledged and applied by the Supreme Court of BC in its recent decisions in *British Columbia Nurses' Union v. Attorney General of British Columbia* ("British Columbia Nurses Union")¹⁵ and *Downtown Eastside Sex Workers united Against Violence Society v. Attorney General (Canada)* ("Downtown Eastside").¹⁶ This may suggest that the Court's approach in the *Canadian Bar Association* case does not signal a trend towards raising the threshold but these cases do reveal an

¹³ *Supra* note 10 at para. 38.

¹⁴ *Ibid.*

¹⁵ 2008 BCSC 321 (CanLII) at para. 26.

¹⁶ 2008 BCSC 1726 (CanLII).

inconsistency in the Court's approach to public interest standing that public interest litigants should find troubling.¹⁷

(ii) Inconsistency in the 'No Other Reasonable and Effective Manner' Requirement

A second trend in public interest cases has been the distortion and inconsistent application of the third element of the test, the 'no other reasonable and effective manner' requirement. The rationale behind this requirement is that "the granting of public interest standing is not required when, on a balance of probabilities, it can be shown that the measure will be subject to attack by a private litigant."¹⁸ The test for this requirement is not whether a private litigant can bring the challenge, but whether they will bring the challenge.

In assessing whether there exists another reasonable and effective manner to bring the challenge, a number of recent decisions have failed to acknowledge that while some private litigants have the necessary legal standing to bring a challenge, they may have no motivation and no practical ability to do so. Motivation and ability of a private litigant go to the heart of determining the probability of whether a challenge will be brought. This issue was addressed by the Supreme Court of Canada in *Borowski*. In that case, the Court found that while doctors and hospitals performing therapeutic abortions had the necessary private standing to bring a challenge to legislation exempting therapeutic abortions from criminal sanction, there was no reason for them to do so as they were "protected by the legislation and would have no reason to attack it."¹⁹ The Court also found that "there was no reason why a pregnant woman desirous of obtaining an abortion should challenge the legislation which is for her benefit."²⁰ *Borowski* illustrates that the mere possibility that a private litigant could bring a challenge is not enough to meet the third requirement of the public interest standing test. The real question is whether a challenge is more probable than not and in considering this question the motivation of possible private litigants is highly relevant, if not determinative.

¹⁷ The BCSC also held that the Statement of Claim filed by the CBA disclosed no reasonable cause of action. The Court of Appeal affirmed this aspect of the decision and therefore did not directly address the standing issue.

¹⁸ *Supra* note 10 at para 36.

¹⁹ *Supra* note 5 at 596.

²⁰ *Ibid.* at 597.

The Supreme Court of Canada's approach in *Borowski* can be contrasted with the Supreme Court of British Columbia's approach in the recent decision in *British Columbia Nurses Union*. This case involved allegations that the Medical Services Commission had failed to fulfill its statutory duty to enforce the Medicare Protection Act by permitting various private healthcare clinics to bill patients directly for publicly insured health services. The AGBC challenged the BCNU's standing to bring the challenge. One of the AG's arguments was that the case could more properly be brought by a patient who had been improperly billed for a medical service. In response, BCNU argued that individuals who have agreed to pay for treatment do not generally complain about the process as "they have received a benefit for which they have agreed to pay" and as such, "litigation would function to strip the individual claimant of a benefit that he or she actively sought to obtain."²¹ In rejecting this argument, the Court found that a challenge could be brought by a patient receiving publicly funded treatment whose wait time was extended due to illegal treatments, or by medical practitioners affected by the Commission's failure to fulfill its statutory duty. However, the Court did not go on to assess whether it was more probable than not that these possible litigants would in fact bring an action. Failure to conduct this enquiry results in a shift in the test from whether it is probable that a private litigant will bring a challenge to whether it is possible. The ultimate effect of this distinction is to distort the test for public interest standing in a manner that restricts public interest standing.

The Court took a similar approach in *Canadian Bar Association* where it held that elements of the challenge were better brought by individuals affected by the allegedly inadequate legal aid system. Standing was also challenged in the 2008 case brought by the *Downtown Eastside Sex Workers United Against Violence* challenging the prostitution provisions of the Criminal Code on the basis that they subject sex workers to an increased likelihood of violence. The federal Crown challenged the Plaintiff's standing, arguing that there were better and more effective ways for the constitutional issues to be raised, for example in any one of the numerous prosecutions that took place each year under the provisions. The Court accepted this argument and denied standing.

In each of these cases, the Court in my view failed to properly assess whether a private challenge was realistic. In addition to not considering whether a private litigant would be motivated

²¹ *Supra* note 15 at para 41.

to bring a challenge, courts also failed to seriously consider the private litigant's financial means and emotional realities. Rather, the Court's approach in both cases was to list past cases and current on-going cases in which the private litigants were capable of, and in some cases had, raised similar challenges without the need for public interest standing. What is disappointing about this response is that it merely deflects the issues of financial means and emotional capability but does not answer them. The mere fact that private litigants have in the past brought unsuccessful challenges or that they are presently in a legal position to do so, does not address whether it is more probable than not that the issue will be brought in the future. To fairly consider this issue, the court must seriously consider the financial or emotional capability of the private litigant. By failing to consider these practical realities, the courts have again transformed the test into whether a private litigant can bring the challenge instead of enquiring whether a private litigant will bring the challenge. Again, this shift distorts the public interest standing test and raises significantly the threshold for obtaining standing.

A final observation on the application of the 'no other reasonable and effective manner' is that, as in the case of the first requirement, recent BC decisions reveal inconsistencies in its application. While in *Canadian Bar Association and Downtown Eastside*, the Supreme Court of British Columbia applied the more restrictive analysis described above, in *Morton v. British Columbia (Agriculture and Lands)* ("Morton"),²² the same court chose to take a different approach. Instead, it focused on the fact that the potential private litigant would likely be affected by the legislation in a different manner than the groups bringing the challenge by way of public interest standing. The Court stated at paragraph 92 of its decision:

Will the challenge to the legislation come before the court if the petitioners are not given standing? It is not inconceivable that the legislation might be challenged by an unsuccessful application for a fish farm licences but such an individual would not necessarily be affected by the impugned legislation in the way or the extent that the petitioners may be.

[Emphasis added.]

²² 2009 BCSC 136 (CanLII).

The Court's consideration of the nature of the interest and degree of the effect on the private litigant is inconsistent with its previous analysis of this third requirement. While such a consideration may actually help those seeking public interest standing, it nonetheless again demonstrates the Court's inconsistent approach.

The theory underlying the third element of the public interest standing test is understandable and reflects the Court's view that constitutional issues are best decided on clear and specific facts and that a proper evidentiary foundation is required. However, where the constitutional issues are systemic in nature, this rationale loses force. In each of *Canadian Bar Association*, *Downtown Eastside Sex Workers* and *BCNU*, the challenges transcended individual circumstances and called into question broader governmental action. In each case it could not fairly be said that the Court lacked sufficient evidence to properly decide the issues. I would also argue that the piece-meal approach to litigation that flows from the Court's approach in these cases is not the best way for dealing with these types of systemic issues. Cases such as these that raise issues of broad public importance are often better brought by organizations such as the Canadian Bar Association or the BCNU that can marshal sufficient resources to ensure that the Court has the benefit of a full evidentiary record and a broad range of legal arguments.

(iii) Return of the Crown's Fiat

A final observation worth noting is the consistent position taken by the Attorney General opposing public interest standing. Although the Attorney General is no longer the sole guardian of the public interest, the decision to regularly oppose public interesting standing gives the appearance that the Attorney General considers himself to be the safe keeper of provincial laws, responsible for shielding them from challenge. While the Attorney General has a legitimate interest in ensuring that provincial laws are upheld, the strategy of attacking standing instead of engaging in a principled debate about the merits of the legislation is questionable. The decision to grant public interest standing ultimately lies with the Court, and unless the case truly calls for it, the Attorney General should, in my view, focus his efforts on defending the merits of the challenge. As the principal law enforcement office of the Crown, the Attorney General should be more concerned with the legality of the laws he is responsible for enforcing, than the identity of those challenging them. In regularly opposing public interest standing, the Attorney General gives the appearance of harkening back to the days when the Attorney General's fiat was required in order to sue the Crown.

In sum, these trends in public interest standing cases give cause for concern. Together they raise the burden on litigants seeking public interest standing thus impeding judicial scrutiny of important public issues. This is not to say that any and every case that a public interest group wants to bring should be permitted to proceed or that there should be no screening of parties and no assessment of whether a particular party is properly situated to bring a claim. However, given the extent of state involvement in the lives of citizens and given the cost, in both time and money, of private litigation, it is my view that public interest standing should be granted liberally to permit valid public interest organizations to subject important government action to judicial scrutiny.

PART II – DEFERENCE AND APPELLATE TRIBUNALS

(a) Superior Courts vs. Appellate Tribunals

A second current issue in administrative law is the proper standard of review to be applied by appellate tribunals when reviewing the decisions of lower statutory bodies or decision-makers. As the need for regulation in today's modern world increases, government reaction has been to establish complex administrative and regulatory schemes. Often, these schemes include a first level decision-maker whose decisions can be appealed to a specialized appellate tribunal. A specialized tribunal's decision may in some cases be further appealed to a court of law, albeit sometimes only on questions of law or jurisdiction. Some argue that as the appellate tribunal and the court are both engaging in reviewing previous decisions, their approach should be similar. That is, both appellate tribunals and courts, in hearing appeals from administrative decision-makers, should engage in the same standard of review analysis in order to determine the amount of deference that should be given to the initial decision-maker.

However, recent cases²³ have suggested that such an approach disregards the intent of the legislature and the fundamental differences between an appeal from an administrative scheme to a superior court and an appeal within an administrative scheme to a specialized appellate tribunal. The correct approach is for the appellate tribunal to consider its function, procedural powers, expertise and remedial powers in order to ascertain the form of review to be undertaken. In some

²³ See for example *B.C. Chicken Marketing Board v. B.C. Marketing Board*, 2002 BCCA 473 (CanLII); *Paul v. British Columbia (Forest Appeals Commission)*, [2003] 2 S.C.R. 585; and *Lennox and Addington Family and Children's Services v. W.E.*, 2007 CanLII 38120 (ON S.C.D.C.).

cases these factors may indicate the necessity of a hearing *de novo* on the issue, while in other cases they may indicate that the appellate tribunal should restrict its review to considering the record and the decision and ensuring that no errors were made. The essential principle is that appellate tribunals should not automatically defer to the process or decision undertaken by the initial decision-maker. Deference is not the default position. Instead, the appellate tribunal must ascertain the intent of the legislature and conduct its review accordingly.²⁴

(b) Ascertaining the Intent of the Legislature

To determine the nature of the appeal intended by the legislature, the appellate tribunal must look to its enabling statute for guidance. The appellate tribunal's adjudicative powers, procedural process, expertise and remedial powers as set out in the legislation will together provide insight into the type of appeal intended.

With respect to the nature of the body and its procedural powers, generally the initial decision-maker usually fulfills an administrative function, whereas most appellate tribunals are adjudicative bodies. This distinction is important. While the appellate tribunals usually have the power to hold formal hearings with witnesses, sworn testimony, and oral and written submissions, the administrator's role is typically restricted to reviewing an application or written submissions and rendering a decision. As held by the British Columbia Court of Appeal in *B.C. Chicken Marketing Board v. B.C. Marketing Board* ("Chicken Marketing Board"), this type of statutory regime indicates that the appeal should be a full hearing into the merits of the case and therefore no deference to the process and decision of the initial decision-maker should be given.²⁵

Another factor to consider is existence of a formal record. While administrative decision-makers rarely create a formal record, an adjudicative appellate tribunal is generally required to do so. Lack of a formal record by the initial decision-maker indicates that the appellate tribunals should adopt a non-deferential approach to their review. In traditional appeals, as undertaken by a superior court, the court may be required to assess the reasonableness of the decision in light of the record

²⁴ For a deeper discussion on these issues see Falzon, Frank A.V., *Appeals to Administrative Tribunals* (2005) 18 C.J.A.L.P. 1 at 19.

²⁵ *Ibid.* at para. 12.

before the decision-maker. This is an impossible task for an appellate tribunal if no real record exists. On the same note, a lack of sufficient reasons provided by the administrative decision-maker poses a serious issue for an appellate tribunal reviewing the decision as a true appeal²⁶. How can a reviewing body consider whether reviewable errors formed part of the decision if there is insufficient documentation of the decision-maker's reasoning process? This factor again supports an approach whereby the appellate tribunal gives no deference to the process or decision of the initial decision-maker. As noted by the BC Court of Appeal in *Chicken Marketing Board*:

Where the Chicken Board has heard no evidence, information or argument and has offered no reasons for its decision, the Marketing Board has little alternative under its statutory adjudication regime other than to determine the facts and issues based on the evidence and argument presented to it.²⁷

The expertise of an appellate tribunal is also important. The fact that an appellate tribunal is composed of people from a certain discipline who are trained in that field or who have specific knowledge demonstrates the legislature's intent to create a specialized appeal board. In *Paul v. British Columbia (Forest Appeals Commission)*, the Supreme Court of Canada commented on the expertise of the Marketing Board in the *Chicken Marketing Board* case:

The Marketing Board was not a generalist court, but a specialized tribunal expected to use its expertise. That expertise would be squandered if the Marketing Board were bound to defer to the lower board and restrict its inquiry to the grounds before the lower board.²⁸

The Supreme Court is clear that the expertise of appellate tribunals clearly supports the legislature's intent to have that body consider the appeal without deferring to the process or decision of the initial administrative decision-maker.

²⁶ The term 'true appeal' refers to the type of traditional appeal undertaken by courts of law wherein no additional evidence is generally presented and the review is conducted solely on the record to determine if any reviewable errors were made by the initial decision-maker.

²⁷ *Supra* note 25 at para. 13.

²⁸ *Supra* note 23.

Finally, in addition to considering its procedural powers, appellate tribunals should also be mindful of the variety of remedial powers delegated to it. In instances where the appellate tribunal has been given a combination of powers such as to uphold, reverse, vary, sets aside, or substitute, the legislature is expressing its intent that the appellate tribunal should not simply defer to the first instance body, but instead engage its own process, review of the evidence presented and render its own decision.

In focusing its analysis on these factors, an appellate tribunal can best ascertain and respect the intent of the legislature. Once again, deference is not the rule.

(c) Resistance to the Correct Approach

Despite the British Columbia Court of Appeal's 2002 decision in *Chicken Marketing Board* which was given support by the Supreme Court of Canada one year later in *Paul*, there remains hesitation by courts and appellate tribunals to fully adopt this approach.

In *Plimmer v. Calgary (City) Police Service*²⁹, the Alberta Court of Appeal had to decide whether the Law Enforcement Review Board (the "Board") had correctly assessed the amount of deference owed to the presiding officer's decision. The Court engaged in a comparison of the functions of the officer and the Board using the four criteria of the pragmatic and functional approach and determined that due to the expertise of the officer, the limited nature of the appeal, and the polycentric nature of the problem, the appropriate standard was reasonableness.

In dissenting reasons however, Madam Justice Conrad disagreed. She rejected the pragmatic and functional approach used by the courts as not necessarily being applicable to an administrative appellate tribunal and she referred to *Chicken Marketing Board* and applied a similar analysis. After careful consideration of the nature of the Board including its mandate, procedural powers on appeal, expertise, and remedial powers, Conrad J concluded that the Board owed no deference to either the process followed by the officer, or the decision rendered. The Board was an appellate tribunal whose composition and procedural and remedial powers indicated that it the legislature intended no deference to the officer.

²⁹ *Plimmer v. Calgary (City) Police Service*, 2004 ABCA 175.

A misapprehension of the proper principles is apparent in the approach adopted by various appellate tribunals. One example is the B.C. Financial Services Tribunal (“FSC”), an appellate tribunal responsible for hearing appeals from administrative decision-makers in the financial services sector, including the Superintendent of Pensions.

In considering the appropriate standard of review to be applied to decisions of the Superintendent of Pensions, the FST has in recent decisions adopted the superior court model and applied the deferential standard of reasonableness. It did so most recently in the case of *The Board of Trustees of the Interior Lumbermen’s Pension Plan v. Superintendent of Pensions*, FST-07-037 (23 June 2008).

The decision of the Superintendent in issue concerned the proper interpretation of the pension plan document. In rendering his decision, the Superintendent was not acting in an adjudicative capacity and the governing legislation did not stipulate a particular process that the Superintendent was required to adhere to. One of the complaints on appeal in fact was that the Superintendent’s process was procedurally flawed. Nonetheless, the FST adopted a reasonableness standard of review and deferred to both the Superintendent’s process and his substantive decision when, in fact, what was required was a “full hearing into the merits of the case” as suggested by the Court of Appeal in the *Chicken Marketing Board* case.

The approach articulated in the *Chicken Marketing Board* case is intended to ensure that administrative decision-making, including appellate reviews, is carried out in a practical and efficient manner, consistent with the objectives of administrative law generally. Failure to adhere to this approach defeats those fundamental objectives.

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