YOUNG ANDERSON
BARRISTERS & SOLICITORS

JUDICIAL REVIEW: WHAT YOU NEED TO KNOW

NOVEMBER 22, 2019

Sukhbir Manhas

JUDICIAL REVIEW: WHAT YOU NEED TO KNOW

I. INTRODUCTION

Judicial review is the mechanism by which the courts supervise those who exercise statutory powers to ensure that they do not overstep their delegated authority. The role of judicial review in today's society and, in particular, in the context of local government decision-making was described by the Supreme Court of Canada in *Catalyst Paper Corp.* v. *North Cowichan* as follows:

> 10 It is a fundamental principle of the rule of law that state power must be exercised in accordance with the law. The corollary of this constitutionally protected principle is that superior courts may be called upon to review whether particular exercises of state power fall outside the law. We call this function "judicial review".
>
> 11 Municipalities do not have direct powers under the Constitution. They possess only those powers that provincial legislatures delegate to them. This means that they must act within the legislative constraints the province has imposed on them. If they do not, their decisions or bylaws may be set aside on judicial review.
>
> 12 A municipality's decisions and bylaws, like all administrative acts, may be reviewed in two ways. First, the requirements of procedural fairness and legislative scheme governing a municipality may require that the municipality comply with certain procedural requirements, such as notice or voting requirements. If a municipality fails to abide by these procedures, a decision or bylaw may be invalid. But in addition to meeting these bare legal requirements, municipal acts may be set aside because they fall outside the scope of what the empowering legislative scheme contemplated. This substantive review is premised on the fundamental assumption derived from the rule of law that a legislature does not intend the power it delegates to be exercised unreasonably, or in some cases, incorrectly.

From the foregoing, it can be seen that, as local governments are creatures of statute, and only have the powers delegated to them by the Provincial and Federal governments, judicial review is available in relation to all aspects of local government action, whether it be the exercise of their natural person powers or the exercise of legislative and quasi-judicial powers.

In this regard, judicial review proceedings may be brought against local governments on either procedural fairness grounds or on substantive grounds.

In light of the breadth of the availability of judicial review in relation to local government action, all local governments should have a fundamental understanding of judicial review and how it may impact their activities.

II. STANDARD OF REVIEW

A. Judicial Review on Procedural Fairness Grounds

In *Seaspan Ferries Corporation v. British Columbia Ferry Services Inc.*, the British Columbia Court of Appeal stated that the standard of review applicable to issues of procedural fairness is that of "fairness" as follows:

> A tribunal is entitled to choose its own procedures, as long as those procedures are consistent with statutory requirements. On review, the courts will determine whether the procedures that the tribunal adopted conformed with the requirements of procedural fairness. In making that assessment, the courts do not owe deference to the tribunal's own assessment that its procedures were fair. On the other hand, where a court concludes that the procedures met the requirements of procedural fairness, it will not interfere with the tribunal's choice of procedures.

However, the Supreme Court of Canada stated, in *Mission Institution v. Khela*, that the standard of review applicable to issues of procedural fairness is that of "correctness".

Regardless of how the standard of review is described, in the context of judicial review on grounds of procedural fairness, the courts are not required to show deference to the decision-makers determination of the fairness of its own procedures. In this respect, the courts are entitled to substitute their view of what is procedurally fair for that of the decision-maker.

B. Judicial Review on Substantive Grounds

In *Catalyst*, the Supreme Court of Canada considered the standard of review to be applied by courts engaged in judicial review on substantive grounds, and set out the applicable general principles as follows:

> 13 A court conducting substantive review of the exercise of delegated powers must first determine the appropriate standard of review. This depends on a number of factors, including the presence of a privative clause in the enabling statute, the nature of the body to which the power is delegated, and whether the question falls within the body's area of expertise. Two standards are available: reasonableness and correctness. See, generally, *Dunsmuir*… at para. 55. If the applicable standard of review is correctness, the reviewing court requires, as the label suggests, that the administrative body be correct. If the applicable standard of review is reasonableness, the reviewing court requires that the decision be reasonable, having regard to the processes followed and

> whether the outcome falls within a reasonable range of alternatives in light of the legislative scheme and contextual factors relevant to the exercise of the power: *Dunsmuir*, at para. 47.

In *Nanaimo (City) v. Rascal Trucking Ltd.*, the Supreme Court of Canada considered the issue of standard of review in the specific context of local government decision-making.

With respect to judicial review in relation to the jurisdiction of local governments, the Court noted the following:

- Local governments exercise a plenary set of legislative and executive powers but do not have an independent constitutional status;
- Local governments are political bodies;
- Neither experience nor proficiency in municipal law and municipal planning is required to be elected as a local government elected official; and,
- Local government decisions are more often by-products of the local political milieu than a considered attempt to follow legal or institutional precedent and are necessarily motivated by political considerations and not by an entirely impartial application of expertise.

In that context, the Court held that the standard of review to be applied by the courts on judicial review of local government decision-making on jurisdictional grounds is a standard of correctness. In other words, the reviewing court considers whether it agrees that the decision-maker has jurisdiction and, if it does not, it may substitute its own decision.

With respect to judicial review in relation to the intra vires decisions of local governments (i.e., decisions that are within local government jurisdiction), the Court noted the following:

- Local government elected officials are elected to represent their community and are accountable to their constituents; and
- Local governments often balance complex and divergent interests in arriving at decisions in the public interest.

In that context, the Court held that these considerations warrant that intra vires decisions of local governments be reviewed by the courts on a deferential standard; the standard of patent unreasonableness. Since *Rascal Trucking*, the standard of patent unreasonableness has been replaced by the standard of reasonableness, as described in *Catalyst*. As explained in *Catalyst*, under the standard of reasonableness, the reviewing court does not consider whether it agrees

with the decision of the decision-maker. Rather, the reviewing court considers whether the decision is reasonable, taking into account the processes followed and whether the decision falls within the range of possible acceptable outcomes considering the context in which the decision was made, including the statutory scheme.

Recently, in two of its decisions, the British Columbia Court of Appeal has cast some question on whether the standard of review on judicial review of local government decision-making on jurisdictional questions remains to be a standard of correctness or if it has been replaced with a standard of reasonableness.

In *Fraser Mills Properties Ltd. v. Coquitlam (City),* the Court of Appeal considered the standard of review applicable to a building inspector's interpretation and application of ss. 559(2) and 561(3) of the *Local Government Act*. After reviewing several recent decisions of the Supreme Court of Canada, the Court held as follows:

> [22] Today, the starting point in determining the appropriate standard of review is the presumption that an administrative body interpreting its home statute or a statute closely related to its functions will be granted deference, and be subject to a reasonableness standard of review: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at para. 39; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 at para. 22. It is now clear that the standard of review framework set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9 and refined in subsequent cases applies to all types of administrative bodies, and not merely to adjudicative tribunals: *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40 at para. 54. Accordingly, in the absence of authority to the contrary, the decision of municipal officials not to grant a DCC exemption would be subject to a reasonableness standard of review.
>
> …
>
> [33] The decision under review in this case involves a municipal official (a building inspector) applying the provisions of a statute closely related to his administrative functions (s. 561(3) of the *LGA*). There are no previous decisions dictating a standard of review for such decisions other than the deferential standard of reasonableness. I conclude that the City's decision, is, therefore, reviewable on a standard of reasonableness.

In *Compagna v. Nanaimo (City)*, the Court of Appeal considered the standard of review applicable to a building inspector's interpretation of section 56 of the *Community Charter*, and held that the applicable standard of review was reasonableness, stating the following in support of that conclusion:

> [46] These issues also involve statutory interpretation of the *Community Charter*. The authorities are clear that an administrative body's interpretation of its home statute is presumed not to be a question of jurisdiction reviewable on a correctness standard but a question of statutory interpretation entitled to deference: *Fraser Mills* at para. 22.

However, in its most recent decision on the issue of the standard of review applicable to judicial review on jurisdictional grounds of local government decision-making, the Court of Appeal stated, without discussion, that issues of statutory interpretation and of law attract a standard of review of correctness (see: *Canadian Plastic Bag Association v. Victoria (City)*).

In December, 2018, the Supreme Court heard appeals on standard of review issues, and it is anticipated that the Court will be undertaking a significant review of the law in the area. It may be that the Court in those appeals will provide further guidance in relation to the issue of the standard of review applicable to local government jurisdiction. It is expected that the decisions in those appeals will be released in the coming months.

The foregoing being said, in the meantime, it would be prudent for local governments to approach jurisdictional questions with a standard of review of correctness in mind.

III. GROUNDS OF JUDICIAL REVIEW

A. Procedural Fairness

The content of the duty of procedural fairness was addressed in *Baker v. Canada (Minister of Citizenship and Immigration)* as follows:

> 21 The existence of a duty of fairness, however, does not determine what requirements will be applicable in a given set of circumstances. As I wrote in *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p. 682, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case". All of the circumstances must be considered in order to determine the content of the duty of procedural fairness: *Knight*, at pp. 682-83; *Cardinal*, supra, at p. 654; *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City),* [1990] 3 S.C.R. 1170*,* per Sopinka J.
>
> 22 Although the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected, it is helpful to review the criteria that should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances. I emphasize

> that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

In *Baker*, the Court identified the following factors as being relevant to the determination of the content of the duty of procedural fairness:

- The nature of the decision being made and the process followed in making it;
- The nature of the statutory scheme and the terms of the statute pursuant to which the body operates;
- The importance of the decision to the individual or individuals affected;
- The legitimate expectations of the person challenging the decision; and
- The choices of procedure made by the decision-maker itself.

With respect to the first factor, the courts have recognized that there is either no duty of fairness or the duty is very limited where the nature of the decision is legislative.

In *Smith v. Surrey (City)*, the British Columbia Supreme Court stated the following about the duty of procedural fairness and the legislative acts of local governments:

> 28 Municipalities are statutory instruments of local government with legislative powers delegated to them by the Provincial Government. The making, amending or repealing of bylaws are the means of exercising this delegated legislative power. See, for instance, the decisions in *McMartin and Gage v. City of Vancouver* (1968), 65 W.W.R. 385 (B.C.C.A.) and *Hall v. Maple Ridge (District)* (1992), 79 B.C.L.R. (2d) 134. When Council considers bylaws at any of the readings which are necessary when it exercises its legislative authority, it is generally the case that a court is not in a position to interfere with that exercise of legislative power. Only the electorate from time to time can pass judgment on whether Mayors and Councillors are exercising their legislative powers in a way which is acceptable to the voting citizens of their municipality.
>
> …
>
> 40 In reviewing the various decisions dealing with this doctrine, it must be kept in mind that the doctrine is part of the rules of procedural fairness which govern administrative bodies and that it does not apply to a municipality acting in its legislative process: *Reference re Canada Assistance Plan (Canada)*, [1991] 2

> S.C.R. 525, 58 B.C.L.R. (2d) 1, 1 Admin. L.R. (2d) l, [1991] 6 W.W.R. 1 (sub nom. *Reference re Constitutional Question Act (British Columbia)* 127 N.R. 161, 1 B.C.A.C. 241, 1 W.A.C. 241 (sub nom. *Re Canada Assistance Plan (British Columbia)* 83 D.L.R. (4th) 297.

In *Maple Ridge (District) v. Thornhill Aggregates Ltd.*, the British Columbia Court of Appeal held that there is no right to a hearing in the context of consideration of an amendment to an official community plan bylaw where the amendment was denied before any statutorily required public hearing. In this regard, the Court stated the following:

> 28 In order to obtain a TIUP, an OCP must first designate the area in question as one where a TIUP may be allowed. Maple Ridge's OCP has not designated the Allard land to permit a TIUP. The amendment of an OCP requires a public hearing.
>
> 29 The decision of the Maple Ridge council not to proceed with the proposed amendment to the OCP is a legislative function. As stated by Crossland J. in Blyth v. Northumberland (County) (1990), 2 M.P.L.R. (2d) 155 at 165 (Ont. C.J. Gn. Div.)):
>
> > ... the council is not dealing with a matter involving a conflict of interest between private individuals. There is no duty to conduct a public hearing before coming to the decision of passing the by-laws. Nor is the council required to determine disputable questions of law and fact or to exercise a limited or "judicial" discretion. As such, the county council in passing the by-laws is not acting in a quasi-judicial capacity: see J.M. Evans, de Smith's Judicial Review of Administrative Action, 4th ed. (London: Stevens & Sons, 1980) at pp. 175-177. Rather, the county council is exercising a legislative function which does not involve council in judicial procedures requiring a fair hearing: Rogers, The Law of Canadian Municipal Corporations, supra, at pp. 221-222.
>
> 30 There is no common law right to a hearing in the case of legislative acts…

More recently, the British Columbia Supreme Court considered the duty of procedural fairness in the context of local government decision-making.

In *1139652 B.C. Ltd. v. Whistler (Resort Municipality)*, the Supreme Court held that a local government's consideration of issuance of a development variance permit did not give rise to a right in favour of the applicant for a hearing or to make submissions in reply to comments made by the public.

In *3L Developments Inc. v. Comox Valley (Regional District),* the Supreme Court held that a local government's consideration of an amendment to a regional growth strategy did not give rise to a right in favour of the applicant to respond to staff reports reviewing and advising in relation to the application.

B. Substantive Grounds – Selected Examples

1. Challenges Based on Lack of Jurisdiction

Judicial review of a local government decision on the basis of lack of jurisdiction can take one of two forms. The challenge can be based on the argument that the local government did not have any statutory authority for the decision or it can be based on the argument that the local government failed to meet a prerequisite to the exercise of the statutory authority.

An example of a challenge to a local government decision on the basis of a total lack of jurisdiction is found in *Rascal Trucking*. In that case, the challenge to the City of Nanaimo's resolutions declaring a pile of dirt to be a nuisance and requiring its removal was that section 936 of the *Municipal Act* did not have the statutory authority to pass the resolutions. Section 936 provided that the City could declare a building, structure or erection of any kind in or on private land a nuisance, and could direct and order that it be removed. In the end, the Supreme Court of Canada held, on a standard of review of correctness, that the City's resolutions were authorized by the section.

Judicial review of a local government decision based on a total lack of jurisdiction, such as in *Rascal Trucking*, are less likely to succeed today in light of the current approach adopted by the courts to the interpretation of local government enabling legislation. In *United Taxi Drivers' Fellowship* v. *Calgary (City)*, the Supreme Court of Canada described that approach as follows:

> The evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes empowering municipalities. This notable shift in the nature of municipalities was acknowledged by McLachlin J. (as she then was) in *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, at pp. 244-45. The "benevolent" and "strict" construction dichotomy has been set aside, and a broad and purposive approach to the interpretation of municipal powers has been embraced: *Nanaimo*, supra, at para. 18. This interpretive approach has evolved concomitantly with the modern method of drafting municipal legislation. ...This shift in legislative drafting reflects the true nature of modern municipalities which require greater flexibility in fulfilling their statutory purposes: *Shell Canada*, at pp. 238 and 245.

An example of a challenge to a local government decision on the basis of a lack of jurisdiction as a result of failure to satisfy a statutory prerequisite to the exercise of jurisdiction can be found in *Blair v. West Vancouver (District)*, where the British Columbia Supreme Court set aside a rezoning bylaw on the basis that the statutorily required notice of public hearing was deficient.

In that case, the Court emphasized that local governments, as creatures of statute, must strictly comply with all applicable statutory requirements and that failure to do so would render their actions invalid.

The foregoing being said, the requirement to strictly comply with statutory requirements does not extend to internal procedural requirements of the local government (see: *Virdis v. North Vancouver (City)*).

2. Challenges Based on Bad Faith/Improper Purposes

In *Hauff v. Vancouver (City)*, the British Columbia Court of Appeal set aside a downzoning bylaw by the City. The Court found that the City, after developing a Parks Acquisition Program to buy up waterfront property in Point Grey, downzoned property to lower its value and assist the City in acquiring it in the future. Having come to that conclusion, the Court held that the downzoning bylaw was enacted in bad faith and for an improper purpose, and set it aside on that basis.

However, the presence of an improper purpose will not always be fatal. In *Koslowski v. West Vancouver (Municipality)*, West Vancouver had considered a change to its zoning bylaw that would prevent the residential development of certain property. The owners obtained an interim injunction to prevent that bylaw from being enacted. The City then enacted a bylaw to expropriate the property "for sewerage and drainage purposes". The City had installed a sewer line running the length of the property some years earlier but had not acquired an easement at that time. The City had strongly opposed the residential development of the property and had focused on sewers only when the rezoning failed. The Court held, however, that the existence of another purpose in addition to that stated in the bylaw ("for the purpose of acquiring a site for a system of sewerage and drainage works") did not render the bylaw illegal. In response to the argument that the City's predominant purpose had been "beyond its power", the Court stated:

> ... The fact that council had more than one purpose, and the fact that one of its purposes may have been its predominant purpose, and beyond its power, does not prevent council from acting lawfully if it also has an honest purpose that is within its statutory powers.
>
> Where is the line to be drawn? When there is more than one purpose, as in this case, the test of predominant purpose may not be appropriate to determine legality because it is not always possible to ascertain the predominant purpose, or the scales may be weighted only slightly one way or the other. In my view, legislative action should be upheld in most cases as long as the court is satisfied that council does in fact have a lawful purpose and it acts in good faith. In such circumstances good faith is a proper test by which to judge the conduct of council. If council acts in good faith, and it has one or more lawful purposes, then its enactments should not be set aside.

In *CMHC v. North Vancouver (District)*, the British Columbia Court of Appeal upheld the downzoning by the District of significant land holdings of the Canada Mortgage and Housing Corporation ("CMHC") from residential use to parks, recreation and open space use to preserve, for some period into the future, the status quo with respect to the lands. At the time of the downzoning, the lands had not been developed in accordance with the previous residential zoning applicable to them, and were generally in a natural forested state. The Court of Appeal held that, notwithstanding that some members of Council had indicated a desire to preserve the lands for public use as park, the purpose of the downzoning was to "[prevent] a large area of land which has never been developed from being the subject of intense development". The Court of Appeal held that this was an entirely proper purpose.

3. Challenges Based on Taking into Account Irrelevant Considerations or Failing to Take into Account Relevant Considerations

In *Pucci v. North Vancouver (City)*, the British Columbia Supreme Court considered, in the context of the denial of a rezoning application, both allegations that the City took into account irrelevant considerations and that the City failed to take into account relevant considerations. In that case, the City had received complaints in relation to the use of the subject property for two illegal suites and had, over a period of 20 years, at times taken enforcement steps in relation to the unlawful use and at other times had indicated to the property owner that the City had a moratorium on enforcement and would not be enforcing during that time frame. Eventually, in response to the City seeking to enforce its bylaw requirements in relation to the unlawful use, the property owner applied to rezone the property to legalize the use.

In denying the rezoning, the issues that engaged the City on the application were the extent to which the property owner had failed to comply with the existing bylaws and the impact it would have on the community's confidence in the integrity of the zoning process. The Court held that these issues were relevant to the City's consideration of rezoning application. That being said, the Court took issue with the City's failure to consider those issues in the full context of the available relevant information. The Court held that the staff report setting out the history of the matter did not accurately describe that history and led to an erroneous assumption about the nature and extent of what was described as the "bad behaviour" of the property owner. On that basis, the Court set aside the denial of the rezoning application and remitted the matter back to the City for reconsideration in light of all of the relevant considerations.

4. Challenges Based on Unreasonableness

In *Catalyst*, the Supreme Court of Canada said the following about a reasonableness challenge to local government action:

> 24 It is thus clear that courts reviewing bylaws for reasonableness must approach the task against the backdrop of the wide variety of factors that elected municipal councillors may legitimately consider in enacting bylaws. The applicable test is this: only if the bylaw is one no reasonable body informed by these factors could have taken will the bylaw be set aside. The fact that wide deference is owed to municipal councils does not mean that they have *carte blanche*.
>
> 25 Reasonableness limits municipal councils in the sense that the substance of their bylaws must conform to the rationale of the statutory regime set up by the legislature. The range of reasonable outcomes is thus circumscribed by the purview of the legislative scheme that empowers a municipality to pass a bylaw.
>
> …
>
> 32 To summarize, the ultimate question is whether the taxation bylaw falls within a reasonable range of outcomes. This must be judged on the approach the courts have traditionally adopted in reviewing bylaws passed by municipal councils. Municipal councils passing bylaws are entitled to consider not merely the objective considerations bearing directly on the matter, but broader social, economic and political issues. In judging the reasonableness of a bylaw, it is appropriate to consider both process and the content of the bylaw.

IV. RESPONDING TO A JUDICIAL REVIEW

In responding to judicial review proceedings, in the absence of a statutory requirement, it is not necessary that the local government has given reasons for a legislative decision that is being challenged. In *Catalyst*, the Supreme Court of Canada stated the following:

> 29 It is important to remember that requirements of process, like the range of reasonable outcomes, vary with the context and nature of the decision-making process at issue. Formal reasons may be required for decisions that involve quasi-judicial adjudication by a municipality. But that does not apply to the process of passing municipal bylaws. To demand that councillors who have just emerged from a heated debate on the merits of a bylaw get together to produce a coherent set of reasons is to misconceive the nature of the democratic process that prevails in the Council Chamber. The reasons for a municipal bylaw are traditionally deduced from the debate, deliberations and the statements of policy that give rise to the bylaw.

> 30 Nor, contrary to Catalyst's contention, is the municipality required to formally explain the basis of a bylaw. As discussed above, municipal councils have extensive latitude in what factors they may consider in passing a bylaw. They may consider objective factors directly relating to consumption of services. But they may also consider broader social, economic and political factors that are relevant to the electorate.
>
> 31 This is not to say that it is wrong for municipal councils to explain the rationale behind their bylaws. Typically, as in this case, modern municipal councils provide information in the form of long-term plans. Nor is it to say that municipalities performing decisional or adjudicative functions are exempt from giving reasons as discussed above.

Even in relation to quasi-judicial decisions made by a local government, any requirement for the local government to give reasons, whether statutory or at common law, is limited. The British Columbia Court of Appeal considered the duty to give reasons in respect of the refusal of a business licence in *377050 B.C. Ltd. dba The Inter-City Motel v. Burnaby*. In that case, Inter-City Motel argued that the reasons given by the City for the refusal of the licence were inadequate. The Court disagreed and held that it was only necessary that Inter-City Motel be able to discern from the reasons the issues that were troubling the City. In upholding the business licence refusal, the Court stated:

> The respondent clearly knew the issues that were troubling the City. A 4 April 2006 letter from Council provided adequate reasons in the circumstances of the case. That letter replied to an inquiry made by counsel for the respondent. It noted that the Municipality did not base its decision on the contravention of any particular bylaw or policy and stated that Council exercised its authority under s. 60 of the *Community Charter* to not renew the business licence for what it considered to be reasonable cause: poor management of the operation of the motel giving rise to concerns for public safety, the enjoyment of use of neighbouring properties and a high demand for police services related to the business.
>
> Municipal councils are not courts. Their reasons should not be scrutinized with the same criteria as judicial reasons. Decisions by councils are made by a vote. The votes take into account the public interest. They also may reflect political considerations.

While the requirement for local governments to give reason for their decisions are limited, that does not mean that local governments do not have any duty to ensure that sufficient evidence is available to demonstrate to the courts on judicial review the basis on which their decisions were made.

Indeed, it is imperative that local governments document the bases on which decisions are made such that, in the event that judicial review proceedings are brought, the local government has the ready ability to put before the reviewing court the information on which the decision was made. To the greatest extent possible, this information should be contained in staff reports which can be readily attached to affidavit materials in response to the judicial review proceedings. In this manner, the local government can avoid having to require elected officials or staff members provide evidence in the judicial review proceedings.

V. REMEDIES ON JUDICIAL REVIEW

On judicial review, where the reviewing court finds that the local government had no jurisdiction to make the impugned decision, the decision will be set aside and the local government will not be permitted to revisit it. However, where the reviewing court finds that the local government had jurisdiction to make the impugned decision, but sets it aside on other grounds, the local government will be entitled to revisit the decision. In this regard, success on judicial review is usually not dispositive of the matter.

VI. CONCLUSION

Given the breadth of the availability of judicial review in relation to local government decisions, all local governments should have a fundamental understanding of judicial review and how it may impact their activities. In this paper, we have attempted to provide that understanding.

NOTES