The Appellate Function and Standards of Review

THE HON. MALCOLM ROWE, JENNA TOPAN, FLORENCE MÉTHOT, JENNAH KHALED AND JEANNE MAYRAND-THIBERT

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ABSTRACT:

Appellate standards of review structure the relationship between trial and appellate courts by defining when appellate intervention is permissible. Their function is to ensure that appeals serve their intended role. Appellate standards of review also serve to maintain deference to trial courts, so they too can fulfill their proper function.

A trial court's primary role is adjudicating disputes based on evidence and established legal principles. Appellate courts main functions consist of error correction and law making. They do not rehear cases. Rather, they assess whether trial decisions contain errors warranting intervention. Standards of review formalize this process by determining the degree of deference owed.

The different standards for questions of law, questions of fact and mixed questions of fact and law uphold key adjudicative goals, including conformity to law, fairness, efficiency, finality, and public confidence in the judicial system. They balance the need for legal consistency with respect for the trial court's institutional role. By structuring appellate review, standards of review reinforce the proper coordination of first-instance and appellate adjudication, ensuring the legal system operates coherently and predictably.

Keywords: *Standards of review, appellate courts, trial courts, deference, error correction, adjudication goals, correctness—overriding and palpable error*

I. INTRODUCTION

This article deals with how standards of review structure the relationship between triers of first instance and appellate courts. It focuses on appellate courts of appeal, though what is set out applies to other appellate courts, *e.g.* Ontario's Divisional Court and provincial Superior Courts hearing appeals from summary convictions. It does not address the role of the Supreme Court of Canada, as it differs somewhat from the role of intermediate appellate courts.

In the vast majority of cases, decisions by trial courts are final. That is how our court system is intended to operate. That being so, what is the purpose of appellate courts? The answer to this question relates to the goals of adjudication. These goals are met largely by trial courts; however, for those goals to be met more fully appellate courts need to *complement* what trial courts do. The complementary functioning of trial and appellate courts is intended to achieve the goals of adjudication, which are, *inter alia*: conformity to law, including consistency in its statement and application;[1] fairness; efficiency; finality; orderly development and adaptation of the law by courts[2] and public confidence in the judicial system.[3]

There are broader goals for the legal system overall, *e.g.* the rule of law and access to justice. Such broader goals are supported by a combination of institutions, including the courts, legislatures, executive agencies (such as

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1 *Ledcor Construction Ltd v Northbridge Indemnity Insurance Co*, 2016 SCC 37 (CanLII), [2016] 2 SCR 23 at para 35 [*Ledcor*]; *Housen v Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 SCR 235 at para 9 [*Housen*]; Robert J Sharpe, *Good Judgment: Making Judicial Decisions*, (Toronto: University of Toronto Press, 2018) at 214; Daniel Jutras, "The Narrowing Scope of Appellate Review: Has the Pendulum Swung Too Far", 2006 32-1 Manitoba Law Journal 61, 2006 CanLIIDocs 124, at 63-64).

2 *Ledcor*, *supra* note 1 at para 35.

3 Jutras, *supra* note 1 at 63-64.

the Department of Justice, police, prosecution services, legal aid, correctional facilities, and regulatory bodies), the private bar, faculties of law, and non-governmental organizations that concern themselves with legal issues. Courts are part of this wider legal community and play a critical role as regards to broader goals for the legal system.

This paper advances two theses: first, that the judicial system has goals, noted above, which work in tandem with each other and second, that standards of review structure the complementary functions of trial and appellate courts. Standards of review give practical effect to a logic embedded in the legal system.

This article deals primarily with civil law, rather than criminal law, though much of what is set out also applies to criminal law. It does not deal with *rights* of appeal, and the related matter of grounds of appeal. It also does not deal with administrative law, as judicial review differs in key ways from appeals. As *stare decisis* is a common law doctrine, where this is relied on, care must be taken as regards methodological differences with the *Civil code of Quebec*.

II. Goals of adjudication within the Canadian Judicial System

The main function of trial courts is to resolve particular disputes, based on facts and settled law.[4] The role of an appellate court is not to provide a new forum for parties to relitigate their dispute.[5] Thus, appeals are not a "second kick at the can." As the Supreme Court stated in *Housen*, citing *Underwood v. Ocean City Realty Ltd*:

> The appellate court must not retry a case and must not substitute its views for the views of the trial judge according to what the appellate courts think the evidence establishes on its view of the balance of probabilities.[6]

Rather, the role of the appellate courts is both a) error-correction; and b) law-making, which is a function of the call for universality, i.e. the process of settling law that governs the work of first-instance judges.[7] This latter role of the appellate courts is to delineate and refine legal rules to ensure their

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4 *Ledcor, supra* note 1 at para 35; *Housen, supra* note 1 at para 9.

5 Sharpe, *supra* note 1 at 214, citing *Ledcor, supra* note 1 at para 51.

6 *Housen v Nikolaisen*, 2002 SCC 33 at para 3, citing *Underwood v Ocean City Realty Ltd* (9187), 12 B.C.L.R. (2d) 199 (C.A.) at 204.

7 The Honourable R.P. Kerans, *Standards of Review Employed by Appellate Courts* (Edmonton: Juriliber Limited, 1994) at 5-10.

universal application.[8] Thus, appellate courts operate at a higher level of generality.[9] In *Housen*, the Supreme Court stated:

> There is no suggestion that appellate court judges are somehow smarter and thus capable of reaching a better result. Their role is not to write better judgments but to review the reasons in light of the arguments of the parties and the relevant evidence, and then to uphold the decision unless a palpable error [of fact or an error of law] leading to a wrong result has been made by the trial judge.[10]

The goals of adjudication are not watertight compartments and are mutually supportive. For example, adjudication that is fair, efficient, consistent and universal (and seen to be so) increases public confidence. There are also trade-offs between goals, for example, to correct mistakes (conformity to law) but also to achieve a result at a reasonable cost, which is a policy concern (related to efficiency and finality).[11]

The availability and scope of appeals is a matter of institutional design, which also reflects compromise between competing objectives.[12]

Appellate standards of review perform an analogous function. Through them, the proper coordination of trial and appellate levels is achieved by limiting the grounds on which a trial decision can be overturned.

III. HOW STANDARDS OF REVIEW STRUCTURE THE COMPLEMENTARY RELATIONSHIP

Standards of review define what departures from settled rules warrant appellate intervention to vary the result or order a new trial. An appellate standard of review "defines what an appellate or reviewing court can and cannot do in relation to a first-instance decision."[13]

As Professor Daniel Jutras explained:

> Through the standard of review, the proper coordination of trial and appellate levels is achieved by limiting the grounds on which a trial decision can be overturned. In this sense, the standard of appellate review is just one additional vehicle to give effect to the compromise between competing aspirations and policies. Just as we can exclude appeals in some cases, or subject them to

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8 *Housen*, *supra* note 1 at para 9.

9 *Ledcor*, *supra* note 1 at para 35; *Association des parents ayants droit de Yellowknife v Northwest Territories (Attorney General)*, 2015 NWTCA 2, 593 A.R. 180 at para 23.

10 *Housen*, *supra* note 1 at para 4.

11 Jutras, *supra* note 1 at 65.

12 *Ibid* at 65-66.

13 Sharpe, *supra* note 1 at 203.

> permission in others, we can set the standard of review at any level we deem appropriate, as to discourage appeals that we consider to be unwarranted.[14]

Further to this point, Justice Yves-Marie Morissette wrote that:

> The standards of appellate review as they exist today strike a delicate balance between promoting the systemic coherence of the law in force here and now, and exercising the appropriate measure of quality control over the many judgments and decision of courts of first instance and tribunals. It is also a fragile balance because it can be upset by institutional and other pressures on the appellate process. Without it, the rule of law is weakened and perhaps meaningfully curtailed.[15]

As Justice Jamie Saunders held in *R. v. Skinner*:

> The phrase "standard of review" is a label used to explain the margin or tolerance for deviation allowed during appellate review, depending upon the category of issue or question challenged on appeal. It is a convenient way to describe the view-finder, the lens, through which we, as appellate judges examine the error alleged to have occurred in the court below.[16]

Degree of deference is a key element of what it is that a standard of review seeks to regulate. As Justice Robert Sharpe wrote:

> Deference defines the measure of respect the reviewing or appellate court must accord the decision under review. Deference reminds the reviewing or appellate court that first-instance decision-makers have certain institutional advantages in dealing with questions of fact, policy, and certain questions of law that are central to their mandate. Deference instructs reviewing or appellate courts to refrain from approaching the case as if they were the first-instance decision-maker.[17]

Sharpe JA wrote that without deference, we would risk "effectively compressing the system into a single rank of court."[18] To disregard deference would be to turn appeals into *de novo* proceedings on the trial record.

Deference differs from judicial restraint, which relates to the separation of powers among the branches of government. This is reflected in the "respect" courts afford to decisions on issues properly to be made by the legislature or the executive, bearing in mind that such decisions are potentially subject to review under administrative law or constitutional law.

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14 Jutras, *supra* note 1 at 66, 76.

15 Yves-Marie Morissette, "Appellate Standards of Review Then and Now" (2017) 55 18 J Appellate Practice & Process at 87.

16 *R v Skinner*, 2016 NSCA 54, NSJ No 255, at para 17.

17 Sharpe, *supra* note 1 at 204, 208.

18 *Ibid* at 216, citing *R v Yelle*, 2013 NWTCA 2.

IV. STRUCTURING THE RELATIONSHIP BETWEEN TRIERS OF FIRST INSTANCE AND APPELLATE COURTS ADVANCES THE GOALS OF ADJUDICATION

This section will discuss four types of questions and their applicable standards of review.[19]

A. *Questions of fact*

Questions of fact are about "what actually took place between the parties."[20] Did the trial judge err in reaching a conclusion based on their assessment of the probative value of the evidence or of the factual inferences that can be drawn from evidence and proven facts?[21]

Inferences as to facts are given similar deference.[22] The assessment of credibility is part of the weighing of evidence to arrive at findings of fact. The Supreme Court has adopted the same standard of review for assessments of credibility as for findings of fact, *i.e.* palpable and overriding error.[23]

The standard of review of palpable and overriding error is a deferential standard. The error of the fact finder must be obvious and readily seen (palpable) and it must play a significant role in the decision (overriding).[24] Per Justice Morissette: "it should be self evident by now that a palpable and overriding error is not in the nature of the proverbial needle in a haystack (*une aiguille dans une botte de foin*) but is instead in the nature of a biblical beam in the eye (*une poutre dans l'oeil*)."[25] The same standard of review applies for questions of fact in civil and criminal proceedings.[26]

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19 *Ledcor, supra* note 1 at para 36; *Housen, supra* note 1 at paras 11-14; Jutras *supra* note 1 at 69.

20 *Housen, supra* note 1 at para 101, per Gonthier, dissenting.

21 Frédéric Bachand, « Le traitement en appel des questions de fait, questions de droit et questions mixtes » 2007 86-1 *Revue du Barreau canadien* 69, 2007 CanLIIDocs 97 at 101.

22 *Ibid* at 104; *Housen*, *supra* note 1

23 *R v Gagnon,* 2006 SCC 17, at para 10; *R v Kruk*, 2024 SCC 7; *Housen*, *supra* note 1 at paras 8, 10, and 19; *St-Jean v Mercier*, 2002 SCC 15, at paras 33-36; *Benhaim v St Germain*, 2016 SCC 48, at paras 36-37.

24 Jutras, *supra* note 1 at p. 74l; Morissette, *supra* note 15 at 78.

25 Morissette, *supra* note 15 at 80; *JG v Nadeau,* 2016 QCCA 167, at para 77.

26 Morissette, *supra* note 15 at 73l; *R v Regan,* 2002 SCC 12, at paras 117-118; *R v Oickle,* 2000 SCC 38, at para 71.

The standard of review as it relates to questions of fact reflects several of the goals of adjudication.

Efficiency and finality: These goals point toward a single level of adjudication. Deferring to a trial judge's findings of fact serves efficiency and finality by setting limits on the scope of judicial review. Wide-ranging review of a trial judge's factual findings would result in needless duplication of judicial proceedings, involving time and cost, and other resources. There would be little if any improvement in the result if appellate courts conducted review of all the trial judges' factual findings.[27] The extension of the standard of palpable and overriding error for social and legislative fact in *Bedford* [28] and *Carter*[29] has been said to further the goal of efficiency and finality.[30] Sharpe interprets this extension of the overriding and palpable error standard to social and legislative facts as empowering trial judges to strike down laws on the basis of new facts about the law operations. For him, this represents "a significant shift in decision making authority away from the appellate courts [...] in favour of trial judges."[31]

Fairness: Factual errors can be overturned when it would be unfair or unjust to leave them undisturbed.[32] This maintains fairness and, thereby, confidence in the system.

Maintaining confidence: A deferential standard of review for findings of fact reflects a presumption of competence in trial judges. As was explained in *Housen*:

> The presumption underlying the structure of our court system is that a trial judge is competent to decide the case before him or her, and that a just and fair outcome will result from the trial process. Frequent and unlimited appeals would undermine this presumption and weaken public confidence in the trial process. An appeal is the exception rather than the rule.[33]

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27 *Housen*, *supra* note 1 at para 16; *Schwartz v. Canada*, [1996] 1 SCR 254, at para 32; *Canada (Attorney General) v Bedford*, 2013 SCC 72 at paras 50-53 [*Bedford*].

28 *Bedford*, *supra* note 27.

29 *Carter v Canada (Attorney General)*, 2015 SCC 5.

30 Sharpe, *supra* note 1 at 214.

31 *Ibid* at 215-216.

32 Jutras, *supra* note 1 at 63.

33 *Housen*, *supra* note 1 at para 17. See also Jutras, *supra* note 1 at 63; Sharpe, *supra* note 1 at 210.

B. *Questions of law*

Questions of law "are questions about what the correct legal test is."[34] A question of law is related to the legal framework applied to the facts of the case.[35]

What constitutes a question of law can be difficult to define.[36] According to Justice Bachand, two fundamental characteristics distinguish conclusions of law from mixed conclusions of fact and law: first, conclusions of law have normative dimensions; and second, they are detached from the factual context of the dispute.

The standard of review for questions of law is correctness, or "mere error." As Justice Morissette explains, "the standard of mere error [...] and the standard of correctness are the same."[37]An appellate court makes its own decision on a question of law; how a trial judge dealt with it is not relevant to that determination. The appellate court is entitled to substitute its view given that there is only one correct answer.[38]

The standard of review as it relates to questions of law reflects several goals of adjudication:

Conformity to law: This principle requires appellate courts to ensure that the same legal rules are applied in similar situations.[39] Conformity to law is foundational to the rule of law.[40] Correctness for questions of law is justified by the fundamental responsibility of courts to correctly interpret and apply the law.[41] The same standard of review applies in both criminal and civil cases.

Orderly development and adaptation of the law: Applying the correctness standard furthers the law-making role of appellate courts. [42] Because the decisions of appellate courts have "precedential effect" and will become

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34 *Canada (Director of Investigation and Research) v Southam Inc*, [1997] 1 SCR 748 at para 35; *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53, at para 49 [*Sattva*]; *Ledcor, supra* note 1 at para 33; *Housen, supra* note 1 at para 101, per Gonthier dissenting.

35 Bachand, *supra* note 21 at 107.

36 Kerans, *supra* note 7 at 156.

37 Morissette, *supra* note 15 at 73. About these standards, Morrisette further explains: "what they mean for a judge exercising appellate review is crystal clear: they mean 'I get to decide, period.'"

38 *Housen*, *supra* note 1 at para 8.

39 *Ibid* at para 9.

40 Jutras, *supra* note 1 at 63.

41 Bachand, *supra* note 21 at 107-108; Sharpe, *supra* note 1 at 209-210.

42 *Housen, supra* note 1 at para 9.

binding on lower courts, it is important that questions of law be settled on appeal on a correctness standard so rules are applied uniformly.[43]

Maintaining confidence: Confidence in judicial institutions requires legal tests to be stated clearly and applied uniformly.[44] Conformity to law, discussed above, therefore furthers this other goal of maintaining confidence in judicial institutions.

C. *Questions of mixed fact and law*

Questions of mixed fact and law involve applying a legal standard to a set of facts.[45] While the jurisprudence is unclear as to how to precisely identify mixed questions of fact and law, a widely held view is that "[m]atters of mixed fact and law lie along a spectrum."[46] Depending on where these questions are situated on the spectrum, the degree of deference owed by an appellate court will vary.

There are different standards of review depending on whether it is a criminal or a civil case, and whether there is an extricable question of law. This is an important, but frequently overlooked difference. In criminal cases, when reviewing the application of a legal test, appellate courts apply a standard of review of correctness.[47] In a civil case, the standard of review is palpable and overriding error for the application of a legal test, save where there is an extricable error of law, in which instance the standard of review is correctness.[48]

What is an extricable question of law? Extricability is addressed in *Housen*. When a legal principle is not readily extricable, then the matter is one of mixed fact and law.[49] In *Ledcor*, the Court explained that for questions of mixed fact and law, the correctness standard applies to extricable errors of law (such as an incorrect principle). Where it is "difficult to extricate the legal questions from the factual, appellate courts defer on questions of mixed fact and law."[50]

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43 Sharpe, *supra* note 1 at 210.

44 Jutras, *supra* note 1 at 67.

45 *Canada (Director of Investigation and Research) v Southam Inc*, [1997] 1 SCR 748, at para 35.

46 *Housen*, *supra* note 1 at para 36.

47 *R v Shepherd*, 2009 SCC 35, at para 20.

48 *Housen*, *supra* note at para 333.

49 *Ibid* at para 36.

50 *Ledcor*, *supra* note 1 at para 36, citing *Housen*, *supra* note 1 at para 36.

Extricability in contractual interpretation was examined by the Supreme Court in *Sattva*. The Court explained that contractual interpretation is a fact-specific exercise, and should be treated as a question of mixed fact and law for the purpose of appellate review, unless there is an "extricable question of law."[51] In *Sattva*, the Court relied on *King v. Operating Engineers Training Institute of Manitoba Inc.*[52] for the proposition that legal errors made in the course of contractual interpretation include "the application of an incorrect principle, the failure to consider a required element of a legal test, or the failure to consider a relevant factor".[53]

Further guidance on extricability was provided in *Teal Cedar Products Ltd. v. British Columbia*.[54] The Court held that:

> Courts must be vigilant in distinguishing between a party alleging that a legal test may have been altered in the course of its application (an extricable question of law; *Sattva*, at para. 53) and a party alleging that a legal test, which was unaltered, should have, when applied, resulted in a different outcome (a mixed question).[55]

Extricating a question of law is sometimes unclear.[56] Justice Morissette proposes that such questions are decided based on their potential to provide an answer that has normative reach beyond the parties' dispute.[57]

The standards of review as they relate to questions of mixed fact and law reflect several goals of adjudication:

Conformity to law: In *Housen*, Iacobucci and Major JJ. explained how the standard of review for mixed questions relates to the goal of conformity to law: "Where, however, an erroneous finding of the trial judge can be traced to an error in his or her characterization of the legal standard, then this encroaches on the law-making role of an appellate court, and less deference is required, consistent with a "correctness" standard of review." [58]

Efficiency and finality: The policy reasons that support a deferential stance to the trial judge's conclusions of fact also support deference to the

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51 *Housen*, *supra* note 1 at para 44.

52 *King v Operating Engineers Training Institute of Manitoba Inc*, 2011 MBCA 80, at para 21.

53 *Ibid* at paras 52-54. See also *Cornerbrook (City) v Bailey*, 2021 SCC 29, at para 29.

54 *Teal Cedar Products Ltd v British Columbia*, 2017 SCC 32. See also *Sattva, supra* note 34 at para 51; *Ledcor, supra* note 1 at paras 32, 39, 40, 46; Sharpe, *supra* note 1 at 212-213.

55 *Ibid* at para 45.

56 See for *e.g.* Anne Tardif and Marie-Pier Dupont, *A Judicial Review Review: The Supreme Court Weighs In (Again),* 2016 36th *Annual Civil Litigation Conference* 2, 2016 CanLIIDocs 4374, 11-13.

57 Morissette, *supra* note 15 at 75-76.

58 *Housen, supra* note 1 at para 33. See also *Sattva, supra* note 34 at para 51, *Ledcor, supra* note 1 at para 32, 39, 40, 46; Sharpe, *supra* note 1 at 212-213.

trial judge's conclusions of mixed fact and law. This serves to set limits on the scope of judicial review to reduce the number, length, and cost of appeals.[59]

Fairness: It seems that the goal of fairness justifies the application of a different standard of review in criminal law for the application of a legal test to the facts, which is a question of mixed facts and law. There are parallels to be made with the notion of proof of guilt beyond a reasonable doubt for findings of guilt *vs.* the standard of balance of probabilities typical of civil cases. There is a different standard of review in criminal cases for mixed questions related to the application of a legal test to the facts as found. In criminal cases, these are reviewable on a standard of correctness. In the civil context, these kinds of mixed questions will only be reviewable on the basis of a "mere error" in exceptional cases.[60] This differential approach can be explained by the paramount importance of preventing an accused from being wrongly convicted.[61]

Orderly development and adaptation of the law: It has been suggested that the applicable standard of review relates to the potential scope of the alleged error: if so, an appellate court will not intervene to correct an error that is likely to only have consequences for a specific party, but will intervene to correct an error that is likely to have wider repercussions.[62]

D. *Discretionary decisions*

Sharpe explains discretion as "the power to choose between two or more courses of action, each of which is thought of as permissible."[63]

To facilitate our understanding of discretion, Sharpe lays out three contexts in which discretion is found: First, in the generality of legal standards (where the room left for judges to decide); second, institutional advantage (where the trial judge possessed the advantage and should be deferred to given that they are better situated); and third, the need for finality (where the goal of efficiency requires that parties accept the result and not be permitted to appeal).[64] Discretionary questions arise whenever the application of a rule requires the weighing of a range of factors.[65]

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59 *Ibid* at para 32.

60 Bachand, *supra* note 21 at 111.

61 *Ibid* at 101, 116, 119.

62 *Ibid* at 114.

63 Sharpe, *supra* note 1 at 219.

64 *Ibid* at 219.

65 Morissette, *supra* note 15 at 71.

The standard of review for discretionary decisions typically requires an "error in principle" to warrant intervention. Another way of expressing this is: a wrong legal yardstick is used, or there is a misuse of the correct yardstick, *i.e.* a departure from the legal yardstick in its utilization. There are also cases where a "misapprehension of the evidence" or a "manifestly wrong or unfit" determination invites intervention.[66]

What is an error in principle? In the family law context, trial judges' decisions should not be interfered with lightly by appellate courts absent an error in principle, a failure to consider all relevant factors, a consideration of an irrelevant factor or a lack of factual support for the judgment.[67] Finality is especially important in this context, to avoid serial litigation leading to the grinding down of a less well-off party and continued turmoil, often to the detriment of children.

In the context of sentencing, it can include "an error of law, a failure to consider a relevant factor, or an erroneous consideration of an aggravating or mitigating factor."[68] Thus, a sentence can only be interfered with if it is demonstrably unfit or if it results from an error in principle. Appellate intervention in sentences is also permitted when there is a failure to consider a relevant factor or the overemphasis of a relevant factor, where such an error had an impact on the sentence.[69]

These are a few examples of how standards of review relate to discretionary questions. This, too, reflects the goals of adjudication:

Conformity to law: Where a trial judge has erred in principle, there has been a mistaken application of the law. Absent such mistake, there is a rationale for deference "based, at least in part but sensibly enough, on the co-existence of several possible, equally valid, and perhaps even contradictory outcomes to the decision-making process."[70] Essentially, the decision-maker has a range of choice but cannot stray from the legal framework.

Fairness: Where a litigant can show an error in principle, this is a safety net for when a first instance judge departs from the governing legal framework.

Efficiency and finality: Discretion means that there is more than one acceptable result. It would be wasteful of resources to retry cases, assuming that the decision made by the trial judge is somewhere within the range of

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66 *Wong v Lee et al,* 58 OR (3d) 398, at paras 26-30.

67 *NB Minister of Health v C (GC),* [1988] 1 SCR 1073.

68 *R v Parranto*, 2021 SCC 46; *R v Friesen*, 2020 SCC 9; *R v Lacasse*, 2015 SCC 64 [*Lacasse*].

69 *Lacasse*, *supra* note 68 at paras 44, 51.

70 Morissette, *supra* note 15 at 71-72.

reasonable outcomes. Some concerns for efficiency and finality are heightened depending on context; the standard of appellate review in family law, for example, recognizes that the discretion involved in making a support order is best exercised by the judge who has heard from the parties directly. Limiting appeals of discretionary decisions is a disincentive to appeal judgments and incur additional expenses in the hope that the appeal court will have a different appreciation of the evidence. This approach favours finality. The Court noted in *Van de Perre v. Edwards* that "finality is a significant consideration in child custody cases, maybe more so than in support cases, and reinforces deference to the trial judge's decision."[71]

Maintaining confidence: Confidence is furthered by the balance struck by this standard of review; for example, if appellate courts intervene without deference to vary sentences that they consider too lenient or harsh, their interventions could undermine the credibility of the system and the authority of trial courts.[72]

V. Conclusion

Courts of appeal are critical as a complement to courts of first instance in achieving the goals of adjudication. There is a logic embedded in the rules of standard of review that supports these goals. This logic structures the relationship between trial courts and appellate courts in a way that reflects the objectives of adjudication and the judicial system. Standards of review will be reconsidered, recast, and adjusted over time to better serve these objectives.

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71 *Van de Perre v Edwards*, 2001 SCC 60, at para 13.

72 *Lacasse*, *supra* note 68 at para 12.