

THE STANDING AND ROLE OF TRIBUNALS ON JUDICIAL REVIEW¹

There is nothing mysterious about what the courts will be doing in determining standing. Judges, and sometimes, legislatures will engage in a determination of values, just as they do in other contexts in which they are engaged. Indeed, one attraction of standing is that it lays bare rather easily how value-driven judicial decisions are...²

Introduction	2
First Principles	3
Standing Generally	4
Tribunal Standing: The <i>NUL</i> Case	6
<i>NUL</i> “Modified”	8
Recent Standing Decisions	12
<i>Alberta v. Alberta (Labour Relations Board)</i> – August 14, 1998.....	12
<i>Bransen Construction Ltd. v. C.J.A., Local 1386</i> – March 28, 2002.....	13
<i>British Columbia (Securities Commission) v. Pacific International Securities Inc.</i> – July 3, 2002	15
<i>Eckervogt v. British Columbia (Minister of Employment & Investment)</i> – February 13, 2003.....	16
<i>Imperial Oil Limited et al. v. Alberta (Minister of Environment)</i> – April 30, 2003	16
<i>Bonnyville Adjacent Landowners Group v. Bonnyville (Municipal District) No. 87</i> – May 27, 2003	19
<i>Turcotte v. Moncton (City)</i> – July 10, 2003.....	20
<i>Children’s Lawyer for Ontario v. Goodis</i> – August 14, 2003	21
<i>Alberta Energy Co. v. Goodwell Petroleum Corp.</i> – October 2, 2003	24
Federal Court Practice	25
A New Approach Forming?.....	28
Appendix 1	31
[From <i>NUL</i> (pages 708-711, S.C.R.’s)].....	31
Appendix 2	34
[From <i>Bransen Construction Ltd.</i>].....	34

INTRODUCTION

1. Preparing a paper that might be of some value to colleagues on this topic presents a daunting challenge for two reasons. First, the area of law remains unclear. As Justice Robertson stated in *Bransen Construction*:

¹ The writer gratefully acknowledges the research assistance of C. Proctor, Student-at-Law.

² W.A. Bogart, *The Lessons of Liberalized Standing?* Osgoode Hall Law Journal [Vol. 27, No. 1] p. 195 at 198.

The jurisprudence does not offer bright line tests for deciding whether to grant a tribunal intervenor status.³

Secondly, this area has already benefited from a resurgence of considered analysis in the helpful writings of other commentators.⁴

2. Accordingly, the purpose of this paper is not to recommend “bright lines” or to reiterate paths already travelled, but to offer a resource as a foundation for your own consideration of the topic, when case specific needs arise. Also, of course, the paper is intended to provide a point of departure for the writer’s oral comments.

FIRST PRINCIPLES

3. Standing, or *locus standi*, refers to the right to initiate, to appear in, or to be heard in, legal proceedings.
4. A tribunal is a statutory creation. All its powers, express or implied, derive from its empowering statute(s).
5. All statutes are in the public interest.⁵
6. The Attorney General acts as the guardian of the public interest.⁶
7. Judicial review involves the Court reviewing the *vires* of a tribunal’s process and decision(s).

³ *Infra*, see text associated with footnotes 44 ff.

⁴ See for example: L. Jacobs and T. Kuttner, “Discovering What Tribunals Do: Tribunal Standing Before the Courts” (2002), 81 Can. Bar Rev. 616; L. Jacobs, “Recent Developments in Tribunal Standing: Bransen Construction Ltd. and Tribunal Impartiality”, 50 Admin. L.R. (3d) 123; T. N. Rankin, Q.C., “Boards and Courts”: “Tribunal Standing In Western Canadian Jurisprudence” presented to the CBA’s November 2003 National Administrative Law and Labour & Employment Law CLE Conference entitled “Pushing The Boundaries: Standing, Privacy and Practical Issues”; and J. Higgins, “Standing of an Expert Tribunal in Judicial Reviews of Its Decisions”, National Administrative Law Section Newsletter, November 26, 2003.

⁵ See for example, *Royal Canadian Mounted Police Act (Can.) (Re) (C.A.)*, [1990] F.C.J. No. 1133, per MacGruigan, J.A., at para. 34.

⁶ See for example the discussion at paras. 46-7 of *Hy & Zel’s Inc.*, *infra*, n.11.