# DEFINITIONS



## 1. Generally

The standard of review the Supreme Court applies in appellate cases identifies the level of deference the Court must accord a district court's decision. **Cole v. Valley Ice Garden, L.L.C.**, 2005 MT 115, ¶ 3, 327 Mont. 99, 113 P.3d 275. The Montana Supreme Court has clarified that: "Basically, our cases fall into two categories--those that apply a de novo standard of review, thus treating our review of the trial court's decision as a legal question--and those that apply an abuse of discretion standard of review, effectively treating the court's decision as an evidentiary issue." **Johnson v. Costco Wholesale**, 2007 MT 43, ¶ 15, 336 Mont. 105, 152 P.3d 727. Where an issue presented on appeal does not involve an exercise of discretion by the district court, the appellate court's review of the district court's legal conclusions is de novo, or plenary. See **Giambra v. Kelsey**, 2007 MT 158, ¶ 26, 338 Mont. 19, 162 P.3d 134. An appellate court reviews discretionary trial court rulings for an abuse of discretion. See **Giambra**, ¶ 28. When a district court judge is presented with, and resolves, conflicting evidence, the Supreme Court reviews the district court's factual findings to determine whether they are supported by substantial credible evidence and whether they are clearly erroneous. **Cole**, ¶ 3.

In Montana, there are two levels on which appellate review may occur. A district court has appellate jurisdiction "in cases arising in justices' courts and other courts of limited jurisdiction in their respective districts" (this includes, for instance, decisions of special masters). Section 3-5-303, MCA. The Montana Supreme Court has appellate jurisdiction over "all cases at law and in equity;" that is, it reviews district court decisions when the district court either exercises its original jurisdiction or acts in an appellate capacity. See § 3-2-203, MCA. The level of deference to which a district court's determination on a given issue is entitled may vary depending on whether the district court is acting as the fact-finder.

**2. De Novo Review**

De novo means "anew." Black's Law Dictionary, 8th Ed. (Bryan A. Garner, ed. 2004). We have explained that "the word 'anew' means anew, de novo, from start to finish,--from beginning to end." White Sulphur Springs v. Voise, 136 Mont. 1, 5, 343 P.2d 855, 857 (1959). For instance, a trial de novo means "trying the matter anew, the same as if it had not been heard before and as if no decision had previously been rendered." **McDunn v. Arnold**, 2013 MT 138, ¶ 22, 370 Mont. 270, 303 P.3d 1279. In de novo review, the Supreme Court independently reviews the record, using the same criteria used by the district court, to determine whether judgment is appropriate. **Siebken v. Voderberg**, 2012 MT 291, ¶ 20, 367 Mont. 344, 291 P.3d 572. The court is "not required to affirm simply because the [lower court's application]...was not unreasonable or arbitrary... the issue is not whether the [lower court]...had some reasonable basis for its conclusion...but whether, in view of the findings of fact, this Court agrees that the conclusion was the most appropriate application of the statute to the facts." **Anderson v. Carlsons Transp.,** 178 Mont. 290, 293, 583 P.2d 440, 443 (1978). Further, "an appellate court is not bound by the findings of the trial court, but is free to draw its own conclusions from the evidence presented." **Sharp v. Hoerner Waldorf Corp.**, 178 Mont. 419, 423, 584 P.2d 1298, 1300 (1978). De novo review is appropriately applied to questions of law, where no deference is given to the trial court's determination because the trial court's decision does not hinge on an exercise of the court's discretion. Costco Wholesale, ¶ 19.

In de novo review of agency proceedings, the appellate court's review consists of considering whether the agency "erred in law or whether its decision is wholly unsupported by the evidence or clearly arbitrary or capricious." **Winchell v. Mont. Dep't of Natural Resources & Conservation**, 1999 MT 11, ¶ 11, 293 Mont. 89, 972 P.2d 1132.

A. **Questions of Law Reviewed De Novo**

- The Supreme Court reviews a district court's conclusions of law de novo to determine whether the court's interpretation and application of the law are correct. **State v. Howard**, 2008 MT 173, ¶ 8, 343 Mont. 378, 184 P.3d 344 abrogated on other grounds by **State v. Stops**, 2013 MT 131, 370 Mont. 226, 301 P.3d 811. The Supreme Court's review of questions of law is plenary; the Court reviews the decision to determine whether the lower court's conclusion of law is correct. **State v. Brown**, 1999 MT 133, ¶ 15, 294 Mont. 509, 982 P.2d 468. The Court has used the terms de novo and "plenary" synonymously. See **Johnson v. Costco Wholesale**, 2007 MT 43, ¶ 19, 336 Mont. 105, 152 P.3d 727.

- On questions of law, the parties are entitled to full review by the appellate court without special deference to the views of the trial court. **Johnson v. Costco Wholesale**, 2007 MT 43, ¶ 18, 336 Mont. 105, 152 P.3d 727 (citing 9A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, § 5236, 238 (2d ed., West Supp. 2006)). Accord **State v. Couture**, 2010 MT 201, ¶ 47 n. 2, 357 Mont. 398, 240 P.3d 987; **State v. Zimmerman**, 2014 MT 173, ¶ 11, 375 Mont. 374, 328 P.3d 1132.
- Summary judgment. **Siebken v. Voderberg**, 2012 MT 291, ¶ 16, 367 Mont. 344, 291 P.3d 572.
- Judgment as a matter of law: Since the assessment of the sufficiency of the evidence and the application of the law to that assessment cannot involve discretion—that is, since no deference is given to the trial court—the question is one of law to which the de novo or plenary standard of review applies. **Johnson v. Costco Wholesale**, 2007 MT 43, ¶ 19, 336 Mont. 105, 152 P.3d 727.
- Statutory interpretation. **LHC, Inc. v. Alvarez**, 2007 MT 123, ¶ 13, 337 Mont. 294, 160 P.3d 502; **State v. Gallagher**, 2005 MT 336, ¶ 16, 330 Mont. 65, 125 P.3d 1141 (question of whether district court correctly designated defendant as a persistent felony offender was a question of statutory interpretation, reviewable de novo).
- Denial of motion to dismiss in a criminal case. **State v. LeMay**, 2011 MT 323, ¶ 27, 363 Mont. 172, 266 P.3d 1278.
- Whether a party has been afforded his or her right to a trial de novo. **McDunn v. Arnold**, 2013 MT 138, ¶ 10, 370 Mont. 270, 303 P.3d 1279.
- Construction and interpretation of a contract. **Cole v. Valley Ice Garden, L.L.C.**, 2005 MT 115, ¶ 24, 327 Mont. 99, 113 P.3d 275.
- Whether contract (plea agreement) was breached. **State v. Shepard**, 2010 MT 20, ¶ 8, 355 Mont. 114, 225 P.3d 1217.
- Sufficiency of the evidence. **Giambra v. Kelsey**, 2007 MT 158, ¶ 29, 338 Mont. 19, 162 P.3d 134.
- Whether district court's action conforms to statutory requirements. **Jacobsen v. Thomas**, 2006 MT 212, ¶ 13, 333 Mont. 323, 142 P.3d 859.
- District court's decision to dismiss a claim based on lack of subject matter jurisdiction. **State v. Boucher**, 2002 MT 114, ¶ 10, 309 Mont. 514, 48 P.3d 21.
- Whether a party has waived the right to trial by jury. **Balyeat Law, P.C. v. Harrison**, 1999 MT 144, ¶ 18, 295 Mont. 13, 983 P.2d 902.

- Constitutional law questions. **State v. Racz**, 2007 MT 244, ¶ 13, 339 Mont. 218, 168 P.3d 685.
- Discretionary rulings based on legal conclusions. **Jacobsen v. Allstate Ins. Co.**, 2009 MT 248, ¶ 17, 351 Mont. 464, 215 P.3d 649.
- District Court's order granting a motion to compel arbitration. **Iwen v. US. West Direct**, 1999 MT 63, ¶ 17, 293 Mont. 512, 977 P.2d 989.
- District Court's determination as to whether a party is entitled to postjudgment interest. **In re Marriage of Debuff**, 2002 MT 159, ¶ 15, 310 Mont. 382, 50 P.3d 1070.
- District Court's finding of actual innocence. **State v. Beach**, 2013 MT 130, ¶ 8, 370 Mont. 163, 302 P.3d 47.

B. **Mixed Questions of Law and Fact**

The Supreme Court reviews mixed questions of law and fact de novo. **Whitlow v. State**, 2008 MT 140, ¶ 9, 343 Mont. 90, 183 P.3d 861. The Supreme Court reviews a district court's application of the rules of civil procedure to undisputed facts, a purely legal question, de novo. **Citizens Awareness Network v. Mont. Bd. of Envtl. Review**, 2010 MT 10, ¶ 13, 355 Mont. 60, 227 P.3d 583.

We generally review situations where the applicable law is undisputed and the issue is whether the facts satisfy the statutory standard, as mixed questions of law and fact. We review missed questions of law and fact de novo. **Citizens Right to Recall v. State**, 2006 MT 192, ¶ 6, 333 Mont. 153, 142 P.3d 764.

We apply de novo review to mixed questions of law and fact, including the district court's application of controlling legal principles to its factual findings. In such cases, the district court's application of controlling legal principles will not be disturbed unless they are clearly erroneous. Thus, although we review the district court's factual determinations for clear error, whether those facts satisfy the legal standard is reviewed de novo. Such a bifurcated standard of review affords appropriate deference to the trial court's fact-finding role and responsibility, while providing this Court with the opportunity to review legal conclusions and the application of legal standards de novo. **BNSF Ry. Co. v. Cringle**, 2012 MT 143, ¶ 16, 365 Mont. 304, 281 P.3d 203.

- Ineffective assistance of counsel. **Whitlow v. State**, 2008 MT 140, ¶ 9, 343 Mont. 90, 183 P.3d 861.
- Whether a plea is voluntary. **State v. Warclub**, 2005 MT 149, ¶¶ 21-24, 327 Mont. 352, 114 P.3d 254 (Court reviews mixed question of voluntariness to determine whether the district court's interpretation of the law—and application of the law to facts—is correct).

### 3. Correctness

The Supreme Court's standard of review "relating to conclusions of law, whether the conclusions are made by an agency, workers' compensation court, or trial court, is whether the tribunal's interpretation of the law is correct." **Steer, Inc. v. Dept. of Revenue**, 245 Mont. 470, 474-75, 803 P.2d 601, 603 (1990). The review is plenary. **Palmer by Diacon v. Farmer Ins. Exch.**, 261 Mont. 91, 101, 861 P.2d 895, 901 (1993). The Supreme Court is not bound by the lower court's conclusions of law, but remains free to reach its own conclusions. **Scott v. Scott**, 283 Mont. 169, 173, 939 P.2d 998, 1000 (1997). The reason for this is that no discretion is involved when a tribunal arrives at a conclusion of law—rather, the court either correctly or incorrectly applies the law. **Steer, Inc. v. Dept. of Revenue**, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990). We have conflated this standard with de novo review, stating: "[W]e review a District Court's conclusions of law de novo, determining their correctness." **Wiser v. State**, 2006 MT 20, ¶ 13, 331 Mont. 28, 129 P.3d 133. See also, e.g. **Friends of the Wild Swan v. D.N.R.C.**, 2005 MT 351, ¶ 6, 330 Mont. 186, 127 P.3d 394.

The following is a non-exhaustive list of contexts in which the Court has applied the correctness standard of review:

- Arbitrability. **Ratchye v. Lucas**, 1998 MT 87, ¶ 14, 288 Mont. 345, 957 P.2d 1128.
- Failure to state a claim upon which relief may be granted. **Snetsinger v. Mont. Univ. Sys.**, 2004 MT 390, ¶ 11, 325 Mont. 148, 104 P.3d 445; **Finstad v. W.R. Grace & Co.-Conn.**, 2000 MT 228, ¶ 24, 301 Mont. 240, 8 P.3d 778.
- District Court's legal conclusion that agency's conclusions of law were correct. See **Bitterroot River Protective Ass'n v. Bitterroot Conservation Dist**., 2008 MT 377, ¶ 18, 346 Mont. 507, 198 P.3d 219.
- Whether agency's conclusion of law is correct. **Baldridge v. Bd. of Trustees**, 264 Mont. 199, 205, 870 P.2d 711, 714-15 (1993).
- Question of constitutional law. **Schuff v. A.T. Klemens & Son**, 2000 MT 357, ¶ 28, 303 Mont. 274, 16 P.3d 1002.
- Whether District Court correctly applied statute. See **Schuff v. A.T. Klemens & Son**, 2000 MT 357, ¶ 29, 303 Mont. 274, 16 P.3d 1002.
- Whether District Court correctly interpreted statute. **Kreger v. Francis**, 271 Mont. 444, ___, 898 P.2d 672, 674 (1995).
- Attorney fees recoverable as an element of damages. **Jacobsen v. Allstate Ins. Co.**, 2009 MT 248, ¶ 17, 351 Mont. 464, 215 P.3d 649.

- Whether District Court properly applied the correct standard of review to an administrative decision. **State Pers. Div. v. Dep't of Pub. Health & Human Servs., Child Support Div**., 2002 MT 46, ¶ 61, 308 Mont. 365, 43 P.3d 305.
- Existence of a legal duty. **Jackson v. Dept. of Family Servs.**, 1998 MT 46, ¶ 31, 287 Mont. 473, 956 P.2d 35.
- Interpretation of an insurance contract. **Travelers Cas. & Sur. Co. v. Ribi Immunochem Research**, 2005 MT 50, ¶ 14, 326 Mont. 174, 108 P.3d 469.
- Decision to issue or deny a writ of mandamus. **Bostwick Props. v. Mont. Dep't of Natural Res. & Conservation**, 2009 MT 181, ¶ 15, 351 Mont. 26, 208 P.3d 868.
- Judgment as a matter of law. **McDaniel v. State**, 2009 MT 159, ¶ 13, 350 Mont. 422, 208 P.3d 817.
- Denial of a motion to dismiss in a criminal trial. **State v. Dodson**, 2009 MT 419, ¶ 31, 354 Mont. 28, 221 P.3d 687.
- Division of marital property. **Harper v. Harper**, 1999 MT 321, ¶ 17, 297 Mont. 290, 994 P.2d 1.
- Lack of subject matter jurisdiction. **Burchett v. Mastec N. Am., Inc**., 2004 MT 177, ¶ 9, 322 Mont. 93, 93 P.3d 1247.
- Award of prejudgment interest. **In re Marriage of Debuff**, 2002 MT 159, ¶ 15, 310 Mont. 382, 50 P.3d 1070.
- Whether a prior conviction can be used to enhance a criminal sentence. **State v. Allen**, 2009 MT 124, ¶ 9, 350 Mont. 204, 206 P.3d 951.
- District Court's determination as to whether or not a defendant's privilege against self-incrimination is triggered. **State v. Hill**, 2009 MT 134, ¶ 21, 350 Mont. 296, 207 P.3d 307.
- Criminal defendant's due process rights. **State v. Simmons**, 2000 MT 329, ¶ 9, 303 Mont. 60, 15 P.3d 408.

**4. Clearly Erroneous**

We review findings of fact under the clearly erroneous standard pursuant to M. R. Civ. P. 52(a). We use a three-part test to determine if a finding is clearly erroneous. First, we examine the record to determine if the findings are supported by substantial evidence. Second, we consider whether the trial court has misapprehended the effect of the evidence. Third, if both of these tests are satisfied, we may still conclude that a finding is clearly erroneous when, although there is evidence to support it, a review of the record leaves the Court with the definite and firm conviction that a mistake has been committed. **Kafka v. Mont. Dept. of Fish, Wildlife & Parks**, 2008 MT 460, ¶ 28, 348 Mont. 80, 201 P.3d 8 (citing **Interstate Prod. Credit Assn. v. DeSaye**, 250 Mont. 320, 323, 820 P.2d 1285, 1287 (1991)).

Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion; it consists of more than a mere scintilla of evidence but may be less than a preponderance. **Strom v. Logan**, 2001 MT 30, ¶ 23, 304 Mont. 176, 18 P.3d 1024.

We view evidence in the light most favorable to the prevailing party, and we leave the credibility of witnesses and the weight assigned to their testimony for the determination of the trial court. **Willis v. Fertterer**, 2013 MT 282, ¶ 25, 372 Mont. 108, 310 P.3d 544.

"To clarify, our viewing the evidence 'in a light most favorable to the prevailing party' is a subset of the first prong of the three-prong standard by which we review a finding of fact asserted to be clearly erroneous, that is, whether the finding is supported by substantial evidence. For purposes of that inquiry, we view the evidence in a light most favorable to the prevailing party. The following correct statement of the complete standards of review recently provided may facilitate clarification of the standards for involuntary commitment cases: We review the findings of a district court sitting without a jury to determine if the court's findings were clearly erroneous. *See* M. R. Civ. P. 52(a). A district court's findings are clearly erroneous if substantial credible evidence does not support them, if the district court has misapprehended the effect of the evidence or if a review of the record leaves this Court with the definite and firm conviction that a mistake has been committed. *Ray v. Nansel*, 2002 MT 191, ¶ 19, 311 Mont. 135, ¶ 19, 53 P.3d 870, ¶ 19. Additionally, we must view the evidence in the light most favorable to the prevailing party when determining whether substantial credible evidence supports the district court's findings. *Ray*, ¶ 19. We review a district court's conclusions of law to determine whether those conclusions are correct. *In re Estate of Harms*, 2006 MT 320, ¶ 12, 335 Mont. 66, ¶ 12, 149 P.3d 557, ¶ 12; *Byrum v. Andren*, 2007 MT 107, ¶ 14, 337 Mont. 167, ¶ 14, 159 P.3d 1062, ¶ 14."

**In re Mental Health of A.S.B**., 2008 MT 82, ¶ 17, 342 Mont. 169, 180 P.3d 625

**5. Abuse of Discretion**

An abuse of discretion can be found if the district court acts arbitrarily without the employment of conscientious judgment or exceeds the bounds of reason resulting in substantial injustice. **State v. Sage**, 2010 MT 156, ¶ 21, 357 Mont. 99, 235 P.3d 1284.

The abuse of discretion standard applies to trial administration issues, post-trial motions, and similar rulings. **Lynch v. Reed**, 284 Mont. 321, 326, 944 P.2d 218, 221-22 (1997).

Notwithstanding this deferential standard, however, judicial discretion must be guided by the rules and principles of law; thus, our standard of review is plenary to the extent that a discretionary ruling is based on a conclusion of law. In such circumstance, we must determine whether the court correctly interpreted the law. **State v. Price**, 2006 MT 79, ¶ 17, 331 Mont. 502, 134 P.3d 45

While the denial of a temporary or permanent injunction is reviewed for "manifest abuse of discretion," deference is not applied to the district court's conclusions of law, which are reviewed de novo to determine whether its interpretation of the law is correct. **City of Whitefish v. Bd. of Co. Comm'rs of Flathead Co**., 2008 MT 436, ¶ 7, 347 Mont. 490, 199 P.3d 201; **Jefferson Co. v. Dep't of Envtl. Quality**, 2011 MT 265, ¶ 16, 362 Mont. 311, 264 P.3d 715. **Krutzfeldt Ranch , LLC v. Pinnacle Bank**, 2012 MT 15, ¶ 13, 363 Mont. 366, 272 P.3d 635.

Failure of a district court to exercise discretion is itself an abuse of discretion. **Clark Fork Coalition v. Mont. Dept. of Envtl. Quality**, 2008 MT 407, ¶ 43, 347 Mont. 197, 197 P.3d 482.

Manifest abuse of discretion

Manifest abuse of discretion is one that is obvious, evident, or unmistakable. **Faulconbridge v. State**, 2006 MT 198, ¶ 23, 333 Mont. 186, 142 P.3d 777.

**6. Arbitrary and Capricious**

"A decision is arbitrary if it comes about seemingly at random or by chance or as a capricious and unreasonable act of will. It is capricious if it is the product of a sudden, impulsive and seemingly unmotivated notion or action." **City of Livingston v. Park Conserv. Dist.**, 2013 MT 234, ¶ 10, 371 Mont. 303, 307 P.3d 317 (citation omitted).

A review by a district court or the Montana Supreme Court "of an action under the 'arbitrary and capricious' standard does not permit a reversal merely because the record contains inconsistent evidence or evidence which might support a different result. Rather, the decision being challenged must appear to be random, unreasonable or seemingly unmotivated, based on the existing record." **Silva v. City of Columbia Falls**, 258 Mont. 329, 335, 852 P.2d 671, 675.

**A. Deference to Agency Interpretations**

- This Court will defer to an agency's legal determination where that agency is interpreting a statute that it has been authorized by the legislature to administer. **Lewis v. B&B Pawnbrokers, Inc.**, 1998 MT 302, ¶ 43, 292 Mont. 82, 968 P.2d 1145.

- We give deference to an agency's interpretation of a statute via its administrative rules unless the interpretation produces an absurd result. **Synek v. State Comp. Mut. Ins. Fund.**, 272 Mont. 246, 251, 900 P.2d 884, 887 (1995).

- The court must show deference and respect to the interpretations given the statute by the officer and agencies charged with administration. The persuasiveness of an administrative interpretation of a statute depends upon the thoroughness evident in its consideration, the validity of its reasoning and its consistency with earlier and later pronouncements of the same agency. **State by Dep't of Highways v. Midland Materials Co.**, 204 Mont. 65, 70-71, 662 P.2d 1322, 1325 (1983).

- An interpretation of federal law by the federal agency that administers it is afforded great deference. **BNSF Ry. C. v. Feit**, 2012 MT 147, ¶ 29, 365 Mont. 359, 281 P.3d 225.

- The principle of granting judicial deference to the interpretation given to a statute by an executive agency charged with its enforcement is appropriate when the statute is ambiguous. **Helena Aerie No. 16, F.O.E. v. Mont. Dep't of Revenue**, 251 Mont. 77, 82, 822 P.2d 1057, 1058 (1991).

- Where the intent of the statutes is unclear, deference will be given to the agency's interpretation. Where it appears that the legislative intent is clearly contrary to agency interpretation, the court will not hesitate to reverse on the basis of "abuse of discretion." Those challenging the agency interpretation have the burden of showing that their rights were substantially prejudiced by an arbitrary or capricious or clearly erroneous agency decision. **Carruthers v. Board of Horse Racing of Dep't of Commerce**, 216 Mont. 184, 187-88, 700 P.2d 179, 181 (1985).

- The general rule is that because of the expertise an agency has in the area it administers, the interpretation of statutes administered by the agency is given great deference by the courts. It is a well-accepted rule of statutory construction that the long and continued contemporaneous and practical interpretation of a statute by the executive officers charged with its administration and enforcement constitutes an invaluable aid in determining the meaning of a doubtful statute. Where such an interpretation has stood unchallenged for a considerable length of time it will be regarded as a great importance in arriving at the proper construction of a statute. This "deference" is analogous to an agency or officer's interpretation of a statute to estoppel, due to the reliance by the public and those having an interest in the interpretation of the law. Thus, the foregoing rule of deference applies, generally speaking, where the particular meaning of a statute has been placed in doubt, and where a particular meaning has been ascribed to a statute by an agency through a long and continued course of consistent interpretation, resulting in an identifiable reliance. Even then, such administrative interpretations are not binding on the courts; rather, they are entitled to "respectful consideration." Accordingly, the test of time and reliance may nevertheless yield to a judicial determination that construction is nevertheless wrong, based on "compelling indications." **Mont. Power Co. v. Mont. PSC**, 2001 MT 102, ¶¶ 23-25, 305 Mont. 260, 26 P.3d 91. See also **City of Great Falls v. Mont. Dept. of Pub. Serv. Regulation**, 2011 MT 144, ¶¶ 10-11, 361 Mont. 69, 254 P.3d 595.

- An administrative agency's quasi-legislative authority may be challenged pursuant to Montana statute. However, where the challenger does not meet the burden of proof, deference to the agency's decision is appropriate. **Lohmeier v. State**, 2008 MT 307, ¶¶ 27-28, 346 Mont. 23, 192 P.3d 1137.

- In determining whether the agency correctly interpreted its own rules, procedures, or policies, the agency's interpretation should be afforded great weight, and the court should defer to that interpretation unless it is plainly inconsistent with the spirit of the rule. The agency's interpretation of the rule will be sustained so long as it lies within the range of reasonable interpretation permitted by the wording.
- **Knowles v. State ex rel. Lindeen**, 2009 MT 415, ¶ 22, 353 Mont. 507, 222 P.3d 595.

**B. No Deference Warranted**

- The Public Service Commission's interpretation of the statute requires no "deference" per se. However practical the Commission's construction of the statute may appear, the statute as a whole, or in particular, certainly has not been subjected to any meaningful long and continued contemporaneous interpretation. Thus, the Commission's interpretation of the statute has simply not stood unchallenged for a considerable length of time and, obviously, has not been relied on by any party having an interest in the interpretation of the law. Thus, consistent with our standard of review, we shall focus our discussion and analysis on whether the Commission's interpretation of the statute was correct as a matter of law. **Mont. Power Co. v. Mont PSC**, 2001 MT 102, ¶27, 305 Mont. 260, 26 P.3d 91.

- In reviewing conclusions of law under the Montana Administrative Procedures Act, we determine whether the agency's interpretation of the law is correct. The conservation district argues that its decisions are entitled to deference. However, while long-standing statutory interpretations by agencies are entitled to "respectful consideration," and we have acknowledged the value of the conservation district's expertise, no discretion is involved when a tribunal arrives at a conclusion of law—the tribunal either correctly or incorrectly applies the law. **Bitterroot River Protective Ass'n v. Bietterroot Conservation Dist.**, 2008 MT 377, ¶ 18, 346 Mont. 507, 198 P.3d 219.

- This Court is not bound to an agency's definition of a statutory term. **Mont. Dep't of Revenue v. Priceline.com, Inc.**, 2015 MT 241, ¶ 14, 380 Mont. 352, 354 P.3d 631 (citing Denke v. Shoemaker, 2008 MT 418, ¶ 39, 347 Mont. 322, 198 P.3d 284 (stating that Montana courts review an agency's interpretation of law for correctness)).

- Although we give deference to the interpretation given a statute by the officers or agency charged with its administration, this does not mean that courts must rubberstamp any interpretation the agencies may give a statute. Rules of statutory construction have no application if the language of the statute is clear and unambiguous. It has always been our rule that it is the province of the courts to construe and apply the law as they find it and to maintain its integrity as it has been written by a coordinate branch of the state government. When the terms of the statute are plain, unambiguous, direct and certain, it speaks for itself and there is no room for construction. **Bay v. Dep't of Admin., Pub. Employee's Retirement Div.**, 212 Mont. 258, 265, 688 P.2d 1, 4 (1984).

- The construction of a statute by the person or agency responsible for its execution should be followed unless there are compelling indications that the construction is wrong. **D'Ewart v. Neibuer**, 228 Mont. 335, 340, 742 P.2d 1015, 1018 (1987).

### C. Less Deference May be Warranted

The Montana Supreme Court has suggested that less deference is owed to agency interpretations that are "inconsistent or recent." **Pennaco Energy, Inc. v. Mont. Bd. of Envt'l Review**, 2008 MT 425, ¶ 25, 347 Mont. 415, 199 P.3d 191. However, in **Pennaco**, the Montana Supreme Court was not persuaded that the agency's decision "should be afforded decreased deference by virtue of the fact that it [was] a reversal of an earlier decision." **Pennaco**, ¶ 39.

## 7. Substantial Evidence

Substantial evidence is relevant evidence which a reasonable person could accept as adequate to support a conclusion. **Nicholson v. United Pac. Ins. Co.**, 219 Mont. 32, 42, 710 P.2d 1342, 1348-49 (1985). Substantial evidence must be more than a mere scintilla but may be less than a preponderance of the evidence. **Carestia v. Robey**, 2013 MT 335, ¶ 7, 372 Mont. 438, 313 P.3d 169. Although it may be based on weak and conflicting evidence, to rise to the level of substantial evidence, it must be greater than trifling or frivolous. **Baird v. Norwest Bank**, 255 Mont. 317, 323, 843 P.2d 327, 331 (1992).

### A. Agency Determinations:

Judicial review of an agency decision must be confined to the record. **Knowles v. State ex rel. Lindeen**, 2009 MT 415, ¶ 20, 353 Mont. 507, 222 P.3d 595. Judicial review is confined to determining whether there is substantial evidence in the record supporting the findings of the agency. **Harmon v. Deaconess Hosp.**, 191 Mont. 285, 290, 623 P.2d 1372, 1375 (1981). The court may not substitute its judgment for that of the agency as to the weight of the evidence. **Knowles**, ¶ 21. The question is not whether there is evidence to support different findings, but whether substantial evidence supports the findings actually made. **Knowles**, ¶ 21.

**B. Jury Verdicts:**

Where the evidence is conflicting, but substantial evidence appears in the record to support the verdict of the jury, the verdict will not be disturbed. **Brandenburger v. Toyota Motor Sales**, 162 Mont. 506, 510, 513 P.2d 268, 270 (1973). The reviewing court must accept the evidence found in the record as true, unless that evidence is so inherently impossible as not to be entitled to belief. **Brandenburger**, 162 Mont. at 509, 513 P.2d at 270. Where a verdict is based upon substantial evidence which from any point of view could have been accepted by the jury as credible, it is binding upon the reviewing court, even if it appears inherently weak. **Kitchen Krafters v. Eastside Bank**, 242 Mont. 155, 164, 789 P.2d 567, 572 (1990) (rev'd in part by **Busta v. Columbus Hosp.**, 276 Mont. 342, 370, 916 P.2d 122, 139 (1996)). The Court will not reweigh conflicting evidence. **Thayer v. Hicks**, 243 Mont. 138, 153, 793 P.2d 784, 793 (1990).

**8. Reasonableness**

- Reasonableness is a question of fact. **Stewart v. Liberty Northwest Ins. Corp.**, 2013 MT 107, ¶ 31, 370 Mont. 19, 299 P.3d 820; **Marcott v. Louisiana Pacific Corp.**, 275 Mont. 197, 202, 911 P.2d 1129, 1133 (1996)
- Reasonableness generally presents a question of fact for the trier of fact to weigh the evidence and judge the credibility of the witnesses. **Burley v. Burlington N. & Santa Fe Ry. Co.**, 2012 MT 28, ¶ 90, 364 Mont. 77, 273 P.3d 825.
- Although breach of a duty to exercise reasonable care is generally a question of fact, **Nelson v. Driscoll**, 1999 MT 193, ¶ 40, 295 Mont. 363, 983 P.2d 972, such questions may be determined as a matter of law "when reasonable minds cannot differ," **Wiley v. City of Glendive**, 272 Mont. 213, 216, 900 P.2d 310, 312 (1995). **Garza v. Forquest Ventures, Inc.**, 2015 MT 284, ¶ 38, 381 Mont. 189, 358 P.3d 189.
- When the facts are clearly established or are admitted or undisputed, the question of what is a reasonable time is one of law. The question of whether a given length

of time is reasonable can be either a question of fact or a question of law. When the surrounding circumstances are clearly established or undisputed the question is solely one of law for resolution by the court. On the other hand, when the surrounding circumstances are in dispute the question is at least partially one of fact and requires resolution by the trier of fact. **Walters v. Getter**, 232 Mont. 196, 200, 755 P.2d 574, 577 (1988).

- In determining whether an insurer had a reasonable basis in law for contesting a claim or the amount of the claim, although the determination of whether a party acted reasonably was typically a question of fact for the jury, whether an insurer was reasonable in its interpretation of legal precedent in its coverage determination is a question of law for the court. **State Farm Mut. Auto. Ins. Co. v. Freyer**, 2013 MT 301, ¶ 48, 372 Mont. 191, 312 P.3d 403.

### 9. Plain Error

This Court may discretionarily review claimed errors that implicate a criminal defendant's constitutional rights, even if no contemporaneous objection is made, where failure to review the claimed error may result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the trial or proceedings, or compromise the integrity of the judicial process. **State v. Finley**, 276 Mont. 126, 137-38, 915 P.2d 208, 215 (1996) (overruled in part on other grounds by **State v. Gallagher**, 2001 MT 39, ¶ 21, 304 Mont. 215, 19 P.3d 817). An appellant who claims plain error must identify a specific constitutional provision that has been violated. **State v. Whipple**, 2001 MT 16, ¶ 33, 304 Mont. 118, 19 P.3d 228. The power of plain error review is inherent in the appellate process itself. **State v. Pizzichiello**, 1999 MT 123, ¶ 9, 294 Mont. 436, 983 P.2d 888. Plain error review is used sparingly, on a case-by-case basis. **Finley**, 276 Mont. at 138, 915 P.2d at 215. When the Court declines to exercise plain error review, it does not decide the merits of the claim. **State v. Haagenson**, 2010 MT 95, ¶ 10, 356 Mont. 177, 232 P.3d 367.