

ENHANCING FAIRNESS, EFFICIENCY, AND ACCESSIBILITY IN CANADA'S ADMINISTRATIVE LEGAL SYSTEM

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Abstract

This research paper provides a comprehensive analysis of the Canadian administrative legal system, examining its foundational principles, the evolution of judicial oversight, and the key challenges it faces today. The report traces the development of judicial review standards through landmark cases like *Dunsmuir* and *Vavilov*, highlighting the ongoing debate regarding the consistent application of a "robust reasonableness" standard. It identifies a persistent access to justice crisis, which disproportionately affects self-represented and vulnerable individuals, and explores how emerging technologies present both opportunities for greater efficiency and significant risks to fundamental fairness. While the success of British Columbia's Civil Resolution Tribunal demonstrates the potential of online dispute resolution, the opaque use of automated decision-making systems in other areas, such as immigration, raises profound questions about transparency, accountability, and the right to a human decision. The paper concludes with a blueprint for reform that calls for a multi-faceted approach, including a new regulatory framework for artificial intelligence, an expansion of user-centered digital services, and a renewed emphasis on strengthening the independence and perceived importance of administrative tribunals as a cornerstone of a fair and accessible legal system.

Introduction

This report provides a comprehensive analysis of the contemporary Canadian administrative legal system, identifying key challenges and offering a values-driven blueprint for reform. The administrative state, a crucial third pillar of government, is tasked with implementing a vast array of policies and programs through a network of agencies, ministers, and quasi-judicial tribunals. While this system has brought expertise and efficiency to public administration, it is currently grappling with significant strains, including a complex and at times confusing judicial review framework, a persistent access to justice crisis, and the profound legal and ethical challenges posed by emerging technologies like automated decision-making (ADM).

Through an examination of landmark judicial decisions such as *Dunsmuir* and *Vavilov*, the report traces the evolution of judicial oversight and argues that while *Vavilov* has brought a welcome measure of clarity, its application remains a subject of judicial debate. The report highlights the British Columbia Civil Resolution Tribunal (CRT) as a case study in the successful use of technology to improve accessibility, but contrasts this with the profound risks of ADM systems in

areas like immigration, which threaten to create opaque, unaccountable, and potentially biased decision-making.

Ultimately, this paper argues that meaningful improvement requires a coordinated, multi-faceted approach. The analysis suggests that a fundamental, systemic issue is the structural and conceptual de-emphasis of administrative justice, which undermines its importance despite its critical role in the lives of ordinary Canadians. We must move beyond piecemeal reforms and embrace a vision that prioritizes fairness, transparency, and the human element. The recommendations advanced in this report call for a new regulatory framework for Artificial Intelligence (AI), a renewed commitment to plain-language and user-centered design, and a sustained effort to reinforce the independence and legitimacy of administrative tribunals as a cornerstone of Canadian democracy.

General Objective

The general objective of this research paper is to provide a comprehensive analysis of the Canadian administrative legal system, identify its key challenges, and propose a multi-faceted, values-driven blueprint for reform. The ultimate goal is to enhance the system's fairness, efficiency, and accessibility for all Canadians by addressing its structural deficiencies and adapting to new technologies.

Specific Objectives

The specific objectives of the paper are to:

- Analyze the core institutional and conceptual foundations of Canadian administrative law, including the principles of the rule of law and procedural fairness.
- Trace the evolution of the judicial review framework from *Dunsmuir* to *Vavilov* and evaluate the ongoing challenges in applying a consistent standard of review.
- Examine the pervasive "access to justice" crisis and the significant barriers faced by self-represented and vulnerable litigants.
- Evaluate the dual impact of technology by exploring the opportunities of online dispute resolution (ODR) and the significant risks posed by opaque automated decision-making (ADM) systems.
- Propose concrete recommendations for reform, including a new regulatory framework for artificial intelligence, measures to strengthen the independence and procedural fairness of administrative tribunals, and strategies to expand access to justice through user-centered design.
- Advocate for a conceptual shift that elevates the perceived status of administrative justice to ensure that these critical institutions receive the resources and recognition necessary to fulfill their democratic purpose.

PART I: THE INSTITUTIONAL AND CONCEPTUAL FOUNDATIONS OF CANADIAN ADMINISTRATIVE LAW

Chapter 1: The Administrative State in Context: Origins and Rationale

The foundational premise of Canadian administrative law is that it is the body of law that governs the exercise of power delegated by statute to various components of the executive branch of government. This delegation is a practical necessity in a modern, highly regulated society where Parliament and the courts cannot directly address the vast and intricate array of regulatory functions required. These delegated powers are exercised by a wide range of administrative decision-makers (ADM), including ministers, government departments, and a complex network of administrative tribunals and agencies.

This system is concerned with three primary functions: the procedural expectations that ADMs must meet, the substantive constraints they must observe to avoid errors, and the remedial structures available through judicial review to challenge their decisions. This tripartite framework highlights the dual purpose of the system: it must enable the government to carry out its functions efficiently while simultaneously ensuring that all actions adhere to the principle of the rule of law. A central tension is inherent in this design, namely, the aspiration to create a capable and expert public administration that is also accountable and respectful of liberal-democratic norms. This fundamental conflict, between the objectives of neutrality and expertise on one hand and democracy and individual rights on the other, is a recurring theme that underpins the entire administrative law framework in Canada.

Chapter 2: Defining Principles: The Rule of Law and Procedural Fairness

The rule of law serves as the foundational principle that mandates that all government actors, including administrative decision-makers, must operate within the bounds of their legal authority. This concept is a core purpose of administrative law, as it ensures that delegated power is exercised in a "proper" manner. It is this principle that provides the basis for judicial oversight, as superior courts have an inherent common law power to review any administrative decision to ensure it is lawful, reasonable, and fair.

Beyond the rule of law, the system is guided by the principles of procedural fairness, which concern the rights of individuals to participate in decisions that affect their rights, privileges, or interests. These rights are derived from a combination of legal sources, including the common law, enabling legislation, general statutes that impose procedural rules, and constitutional principles such as the *Canadian Charter of Rights and Freedoms*. The two core principles of natural justice are the right to be heard (*audi alteram partem*) and the right to be judged impartially (*nemo iudex in sua causa*). A common law duty of fairness can also be invoked when a decision is sufficiently administrative, affects the claimant's interests, and is based on a statutory power. Furthermore, a "legitimate expectation" of a particular procedure can create a duty of fairness where a public authority has promised to follow a certain process and an individual has relied upon that promise. The content of this duty is not fixed but is determined by a contextual analysis of factors such as the nature of the decision, the statutory scheme, and the importance of the interest at stake.

Chapter 3: The Role of Tribunals: Independence, Expertise, and the Hybrid Nature of Quasi-Judicial Bodies

Administrative tribunals are a central component of the Canadian administrative state, acting as a parallel, specialized system of justice that is distinct from, yet supervised by, the traditional court

system. As quasi-judicial bodies, they make decisions on behalf of federal, provincial, and territorial governments in areas where it would be impractical or inappropriate for a government department to do so directly. The mandates of these tribunals are incredibly diverse and specialized, handling a vast range of disputes from social security appeals and veterans' affairs to human rights, labour relations, and Indigenous land claims. The creation of these bodies is rooted in the need for specialized expertise and greater efficiency in public administration.

However, a fundamental contradiction exists within this system. The very design of administrative tribunals, while intended to deliver specialized justice, has led to ongoing debates regarding their independence and impartiality. The process for appointing tribunal members is typically by order-in-council, which can lead to concerns about political influence. While the rationale for tribunals is efficiency and expertise, they are often evaluated against a judicial model of independence that may not be appropriate for bodies designed to be "multifunctional" and that "stray from the traditional adversarial model".

This situation reflects a deeper, systemic issue: despite the scale and social importance of administrative tribunals, they are often seen as being at the "bottom of the judicial hierarchy or outside of it". Their adjudicators, who handle a massive caseload of complex and socially sensitive issues that have major consequences for litigants, often have less training, formal protections, and resources than judges of the general court system. The very terminology of "quasi-judicial" can be seen as diminishing their importance. This structural and conceptual de-emphasis of administrative justice has profound consequences, as it can lead to under-resourcing and a lack of public awareness and trust. Part of improving Canada's administrative legal system may therefore require a conceptual shift that elevates the perceived status and importance of administrative justice, ensuring that these critical institutions receive the resources and recognition commensurate with their role.

PART II: JUDICIAL OVERSIGHT AND THE EVOLVING STANDARD OF REVIEW

Chapter 4: The Framework of Judicial Review: Purpose and Process

Superior courts in Canada maintain a critical supervisory role over the administrative state through the process of judicial review. This inherent power, derived from the common law and originating from the four original writs of *certiorari*, *prohibition*, *mandamus*, and *habeas corpus*, ensures that administrative decision-makers remain within the boundaries of their authority. The purpose of judicial review is not to serve as an appeal where the court re-argues the case or substitutes its own findings of fact for those of the administrative body. Instead, it is a process by which a court examines the decision-making process to ensure that the administrative body's final decision was fair, reasonable, and lawful.

Bringing an application for judicial review is subject to several procedural barriers. A court will generally not hear an application until all alternative remedies within the administrative process have been exhausted, as courts are reluctant to interfere with ongoing administrative proceedings. Furthermore, judicial review applications can be dismissed if they are filed prematurely or if they are brought with undue delay, as most jurisdictions have statutory time limits, such as the 30-day limit in Ontario and the Federal Court for many matters.

Chapter 5: A Decade of Doctrinal Change: From *Dunsmuir* to *Vavilov*

The landscape of judicial review in Canada has been shaped by a series of landmark Supreme Court decisions, all of which sought to bring greater clarity and coherence to the standards of review. Prior to the 2019 decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, the governing framework was established by the 2008 decision in *Dunsmuir v. New Brunswick*. In that case, the Supreme Court of Canada sought to simplify the judicial review framework by merging the previously distinct standards of "reasonableness *simpliciter*" and "patent unreasonableness" into a single reasonableness standard. The *Dunsmuir* framework also established a two-standard system of review: correctness and reasonableness. The standard to be applied was determined through a contextual analysis, which considered factors such as precedents, the decision-maker's expertise, and the nature of the legal question itself. While this framework was intended to be more workable, it still led to significant debate and a continued search for doctrinal clarity.

The *Vavilov* judgment was a decisive step in this evolution, establishing the current framework and revising the approach to judicial review. The central shift was the establishment of a strong presumption that reasonableness is the applicable standard for all judicial reviews of administrative decisions. This presumptive standard removes the need for courts to engage in the kind of detailed contextual analysis that characterized the pre-*Vavilov* landscape. The court in *Vavilov* also clarified the narrow categories where the correctness standard still applies, including constitutional questions and questions of law of central importance to the legal system as a whole. A notable change was the clarification that "true questions of jurisdiction," a long-standing source of legal debate, are no longer a separate category for correctness review and are now subject to the presumptive reasonableness standard.

The *Vavilov* decision, while intended to bring stability and a greater measure of deference to administrative expertise, has not completely resolved the underlying tension between judicial oversight and deference. The new framework's emphasis on a "robust" reasonableness review has led to a mixed application by lower courts. For instance, while some courts have properly interpreted the guidance by looking at the "entire record" of the administrative decision without substituting their own analysis, other courts have been seen as treating the new standard as an invitation to conduct a *de novo* analysis and to substitute their preferred outcome for that of the administrative decision-maker. This disparity in application suggests that the doctrinal pendulum, while intended to swing towards greater deference, may not have fully settled. The ongoing debate and close monitoring by legal bodies, such as the Canadian Bar Association, underscore that the fundamental challenge of ensuring consistent judicial application of the standard of review persists despite the Supreme Court's clear guidance.

Table 1: Evolution of the Standard of Review Framework

Aspect	Pre-Vavilov Framework (<i>Dunsmuir</i>)	Post-Vavilov Framework (<i>Vavilov</i>)
Reasonableness Standard	Reasonableness (<i>simpliciter</i>) and Patent Unreasonableness standards were merged into a single reasonableness standard.	A presumptive standard for all administrative decisions, with the burden on the applicant to prove an exception.

Aspect	Pre-Vavilov Framework (<i>Dunsmuir</i>)	Post-Vavilov Framework (<i>Vavilov</i>)
Correctness Standard	Applied to jurisdictional questions and some other questions of law of central importance to the legal system.	Applied only in narrow, specified exceptions, such as constitutional questions and questions about the jurisdictional boundaries between administrative bodies.
Methodology	Standard determined through a "contextual analysis" weighing various factors, including the decision-maker's expertise and the presence of a privative clause.	Standard is presumptively reasonable, removing the need for contextual analysis at the outset.
Key Changes	The framework attempted to simplify the law but was criticized for leading to ongoing debate and complexity in its application.	

PART III: A SYSTEM UNDER STRAIN: KEY CHALLENGES AND DEFICIENCIES

Chapter 6: The Access to Justice Crisis: Barriers for the Self-Represented and Vulnerable

A critical challenge facing the Canadian administrative legal system is the persistent "access to justice problem". While the administrative state is intended to be a more accessible form of justice than the traditional court system, there are "significant and long-standing obstacles" that make it difficult for ordinary people to access administrative justice. A major manifestation of this crisis is the high volume of self-represented litigants, who have become the norm rather than the exception in many tribunal settings. These individuals face significant procedural and substantive hurdles, including complex, time-consuming processes, dense legal language, and an overwhelming amount of documentation. Many people, particularly those with low literacy levels, are ill-equipped to navigate these challenges on their own.

The issue extends beyond simple procedural complexity. The challenges for vulnerable and equity-denied communities, such as persons with disabilities, are systemic and substantive. These communities often face a disproportionate number of barriers, including economic marginalization and systemic ableism, which hinder their ability to act as litigants or even to shape the structure and content of legal rules. Addressing these barriers requires a comprehensive approach that moves beyond procedural fixes and confronts the deeply ingrained power dynamics and paternalistic attitudes that impact how legal professionals perceive and treat litigants with disabilities.

Chapter 7: The Double-Edged Sword of Technology

The administrative legal system is at a critical juncture, with technology offering both a profound opportunity for improvement and a significant threat to fairness and accountability.

Opportunities: The Promise of Digital Transformation

Digital transformation initiatives, driven by rising public expectations for convenient and transparent government services, hold the promise of improving the efficiency and accessibility of the justice system. The British Columbia Civil Resolution Tribunal (CRT) stands as a leading example of how technology can be harnessed for the public good. As Canada's first online tribunal, the CRT provides an accessible and affordable way to resolve a variety of civil law disputes without the need for a lawyer or a physical court appearance. The CRT's success is rooted in its user-centered design, which offers self-help tools and encourages a collaborative, problem-solving approach to dispute resolution. Its "Solution Explorer" tool provides free, customized legal information and has helped to resolve disputes without the need for a formal claim. The tribunal's annual reports demonstrate its positive impact, with high participant satisfaction rates and an expedited process for sensitive matters like intimate image claims, highlighting its ability to address complex social issues with a timely and accessible process.

Risks: Automated Decision-Making and Algorithmic Bias

In contrast to the CRT's success, the rapid and often opaque deployment of Automated Decision-Making (ADM) systems presents significant legal and ethical challenges. In areas like immigration, ADM systems are being used to triage visa applications and analyze fraud patterns, quietly augmenting or even replacing the judgment of human decision-makers. The core concern with these systems is the "black box" problem, where the proprietary nature of the algorithms and a lack of transparency make it impossible for end-users, or even their lawyers, to understand how a decision was reached.

This lack of transparency and accountability has profound human rights and Charter implications. The use of ADMs can lead to racial and data-based discrimination, and raises fundamental questions about whether there is a right to a human decision. The systems are particularly impactful on vulnerable individuals who are least able to contest their use. The pursuit of efficiency, a key driver behind the adoption of these technologies, can therefore actively undermine the principle of fairness. This creates a paradox where a system that becomes more "efficient" for government may become less "accessible" for the citizen, thereby exacerbating the very access to justice crisis it was intended to solve.

Table 2: The Dual Impact of Technology on Administrative Justice

Area of Impact	Benefits (e.g., ODR)	Risks/Challenges (e.g., ADM)
Access	Online dispute resolution (ODR) and self-help tools make services more accessible and affordable, especially for those without a lawyer.	Lack of digital access or literacy can create new barriers. Opaque technology makes it difficult for vulnerable individuals to understand and challenge decisions.
Efficiency	Digital services enable faster e-filing, shorter resolution times, and reduce administrative burdens.	ADM's are deployed to automate high-volume, low-risk cases, but can lead to complex litigation and costly, delayed Access to Information requests.

Area of Impact	Benefits (e.g., ODR)	Risks/Challenges (e.g., ADM)
Fairness	ODR models promote collaboration and are designed to be user-friendly, with accommodations for diverse needs.	ADM systems lack effective regulatory safeguards and can introduce algorithmic or human-infused bias, raising human rights and Charter concerns.

**PART IV: TOWARDS A MORE EFFECTIVE ADMINISTRATIVE STATE:
RECOMMENDATIONS FOR REFORM**

Chapter 8: Enhancing Procedural Fairness and Tribunal Independence

To restore public confidence and strengthen the administrative legal system, several key reforms are necessary to enhance procedural fairness and tribunal independence. First, the appointment process for tribunal members should be re-examined to ensure greater transparency and to insulate it from political pressure. Second, mandatory, standardized training should be implemented for all administrative decision-makers to ensure a consistent application of the law and a commitment to best practices in public administration. Finally, structural safeguards should be established to reinforce the neutrality and impartiality of tribunals, particularly in a context where they are often viewed as being less independent than the courts.

Chapter 9: Regulating the Algorithm: Recommendations for AI and ADM

The proliferation of automated decision-making systems necessitates a new, comprehensive legal and regulatory framework to ensure fairness and accountability. Drawing on the work of the Law Commission of Ontario (LCO), this report recommends a framework guided by principles of "Trustworthy AI" and "human rights by design". This framework should include the following core components:

1. **Mandatory Human Rights Impact Assessments (HRIAs):** Public and private organizations regulated by the federal government should be required to conduct HRIAs before deploying new ADM systems to identify and mitigate potential human rights risks, such as data discrimination and bias.
2. **Transparency and Disclosure:** A legal duty must be placed on government departments to provide a clear, public explanation of how ADM systems function, what data they use, and how they impact final decisions. This is essential for ensuring procedural fairness and enabling effective judicial review.
3. **Human-in-the-Loop Safeguards:** Decision-making systems should be required to have a human review for all adverse or high-risk outcomes. Furthermore, the legal community should formally debate and, where appropriate, codify the "right to a human decision" to protect individual autonomy and integrity.
4. **Accessibility and Accountability:** The regulatory framework must address the need for plain-language explanations of complex systems and accessible methods for challenging decisions made with ADM technologies to prevent technology from becoming a new barrier to justice.

Chapter 10: Broadening Access: Innovations for a More Accessible System

The success of the Civil Resolution Tribunal demonstrates the potential for innovation to address the access to justice crisis. The ODR model should be strategically expanded to other jurisdictions and tribunals across Canada, but this expansion must be accompanied by a sustained focus on accessibility accommodations for those without internet access or with disabilities. All tribunals should be mandated to develop and provide plain-language guides and self-help tools, as these resources are critical for the majority of users who are self-represented. Finally, the findings from the Canadian Bar Association's submissions on legal aid reform should be carefully considered, as a robust legal aid system for administrative law matters is a vital component of a truly accessible justice system.

Chapter 11: Refining the Judicial Review Framework

While the *Vavilov* decision has brought a welcome measure of clarity, its effectiveness depends on consistent judicial application. Legal bodies and academic institutions should continue to monitor how the "robust reasonableness" standard is applied to prevent a subtle retreat into the contextual analysis it was designed to replace. To further reduce ambiguity, legislatures should be encouraged to be explicit about the intended standard of review when creating new administrative bodies or amending enabling statutes. This would provide clear guidance to both tribunals and reviewing courts, thereby enhancing predictability and coherence within the system.

Conclusion

The administrative legal system is not a static institution but a dynamic one, constantly evolving to meet the needs of a changing society. The analysis suggests that the system is at a critical juncture, faced with unprecedented challenges and opportunities. To improve it, we must move beyond piecemeal reforms and embrace a coordinated, multi-faceted approach that addresses not only the procedural and doctrinal issues but also the fundamental questions of fairness, transparency, and public trust. The ultimate measure of a successful administrative state is not merely its efficiency, but its ability to serve as a fair and accessible avenue for justice for all Canadians. The reforms proposed herein, from a new regulatory framework for AI to an expanded vision for accessible ODR, are a starting point for a national conversation aimed at achieving that goal.

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