S.C.C. Court File No. 37896

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N:

BELL CANADA , et al.

APPELLANTS (Appellants)

-and-

ATTORNEY GENERAL OF CANADA

RESPONDENT (Respondents)

-and-

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION, et al.

INTERVENERS

DANIEL JUTRAS AND AUDREY BOCTOR

AMICUS CURIAE

S.C.C. Court File No. 37748

A N D B E T W E E N:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

APPELLANT (Respondent)

-and-

ALEXANDER VAVILOV

RESPONDENT (Appellant)

ATTORNEY GENERAL OF ONTARIO, et al.

INTERVENERS

-and-

DANIEL JUTRAS AND AUDREY BOCTOR

AMICUS CURIAE

S.C.C. Court File No. 37897

A N D B E T W E E N:

NATIONAL FOOTBALL LEAGUE, et al.

APPELLANTS (Appellants)

-and-

ATTORNEY GENERAL OF CANADA

RESPONDENT (Respondents)

-and-

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION, et al.

INTERVENERS

-and-

DANIEL JUTRAS AND AUDREY BOCTOR

AMICUS CURIAE

FACTUM OF THE INTERVENERS, WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL (ONTARIO), WORKERS' COMPENSATION APPEALS TRIBUNAL (NORTHWEST TERRITORIES AND NUNAVUT), WORKERS'

COMPENSATION APPEALS TRIBUNAL (NOVA SCOTIA), APPEALS COMMISSION FOR ALBERTA WORKERS' COMPENSATION AND WORKERS' COMPENSATION APPEALS TRIBUNAL (NEW BRUNSWICK)

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada)*

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
7th Fl. – 505 University Avenue
Toronto, ON M5G 2P2

Michelle Alton
David Corbett
Kayla Seyler
Ana Rodriguez
Tel: (416) 314-8800
Fax: (416) 326-5164
E-mail: Michelle.Alton@wst.gov.on.ca

Counsel for the Interveners, Workplace Safety and Insurance Appeals Tribunal (Ontario), Counsel for the Interveners, Workers' Compensation Appeals Tribunal (Northwest Territories and Nunavut), Workers' Compensation Appeals Tribunal (Nova Scotia), Appeals Commission for Alberta Workers' Compensation and Workers' Compensation Appeals Tribunal (New Brunswick)

SUPREME ADVOCACY LLP
340 Gilmour St., Suite 100
Ottawa, ON K2P 0R3

Marie-France Major
Tel.: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for Counsel for the Interveners, Workplace Safety and Insurance Appeals Tribunal (Ontario), Counsel for the Interveners, Workers' Compensation Appeals Tribunal (Northwest Territories and Nunavut), Workers' Compensation Appeals Tribunal (Nova Scotia), Appeals Commission for Alberta Workers' Compensation and Workers' Compensation Appeals Tribunal (New Brunswick)

S.C.C. Court File No. 37896

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N :

BELL CANADA and BELL MEDIA INC.

APPELLANT (Appellants)

-and-

ATTORNEY GENERAL OF CANADA

RESPONDENT (Respondents)

-and-

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

INTERVENER

-and-

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL FOR SASKATCHEWAN, ADVOCACY CENTRE FOR TENANTS ONTARIO, ONTARIO SECURITIES COMMISSION, BRITISH COLUMBIA SECURITIES COMMISSION AND ALBERTA SECURITIES COMMISSION, ECOJUSTICE CANADA SOCIETY, WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL (ONTARIO), WORKERS' COMPENSATION APPEALS TRIBUNAL (NORTHWEST TERRITORIES AND NUNAVUT), WORKERS' COMPENSATION APPEALS TRIBUNAL (NOVA SCOTIA), APPEALS COMMISSION FOR ALBERTA WORKERS' COMPENSATION AND WORKERS' COMPENSATION APPEALS TRIBUNAL (NEW BRUNSWICK), BRITISH COLUMBIA INTERNATIONAL COMMERCIAL ARBITRATION CENTRE FOUNDATION, COUNCIL OF CANADIAN ADMINISTRATIVE TRIBUNALS, CAMBRIDGE COMPARATIVE ADMINISTRATIVE LAW FORUM, NATIONAL ACADEMY OF ARBITRATORS, ONTARIO LABOUR-MANAGEMENT ARBITRATORS' ASSOCIATION AND CONFÉRENCE DES ARBITRES DU QUÉBEC, CANADIAN LABOUR CONGRESS, NATIONAL ASSOCIATION OF PHARMACY REGULATORY AUTHORITIES, QUEEN'S PRISON LAW CLINIC, ADVOCATES FOR THE RULE OF LAW, SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC, CANADIAN BAR ASSOCIATION, FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA, BLUE ANT MEDIA INC., CANADIAN BROADCASTING CORPORATION, DHX MEDIA LTD., GROUPE V MEDIA INC., INDEPENDENT BROADCAST GROUP, ABORIGINAL PEOPLES TELEVISION NETWORK, ALLARCO ENTERTAINMENT INC., BBC KIDS, CHANNEL ZERO, ETHNIC CHANNELS GROUP LTD., HOLLYWOOD SUITE, OUTTV NETWORK INC., STINGRAY DIGITAL GROUP INC., TV5 QUÉBEC CANADA, ZOOMERMEDIA LTD. AND PELMOREX WEATHER NETWORKS (TELEVISION) INC., TELUS COMMUNICATIONS INC., ASSOCIATION OF CANADIAN ADVERTISERS AND ALLIANCE OF CANADIAN CINEMA, TELEVISION AND RADIO ARTISTS

INTERVENERS

-and-

DANIEL JUTRAS AND AUDREY BOCTOR

AMICUS CURIAE

S.C.C. Court File No. 37748

AND BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

APPELLANT (Respondent)

-and-

ALEXANDER VAVILOV

RESPONDENT (Appellant)

-and-

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL FOR SASKATCHEWAN, CANADIAN COUNCIL FOR REFUGEES, ADVOCACY CENTRE FOR TENANTS ONTARIO, ONTARIO SECURITIES COMMISSION, BRITISH COLUMBIA SECURITIES COMMISSION AND ALBERTA SECURITIES COMMISSION, ECOJUSTICE CANADA SOCIETY, WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL (ONTARIO), WORKERS' COMPENSATION APPEALS TRIBUNAL (NORTHWEST TERRITORIES AND NUNAVUT) AND WORKERS' COMPENSATION APPEALS TRIBUNAL (NOVA SCOTIA), APPEALS COMMISSION FOR ALBERTA WORKERS' COMPENSATION AND WORKERS' COMPENSATION APPEALS TRIBUNAL (NEW BRUNSWICK), BRITISH COLUMBIA INTERNATIONAL COMMERCIAL ARBITRATION CENTRE FOUNDATION, COUNCIL OF CANADIAN ADMINISTRATIVE TRIBUNALS, NATIONAL ACADEMY OF ARBITRATORS, ONTARIO LABOUR-MANAGEMENT ARBITRATORS' ASSOCIATION AND CONFÉRENCE DES ARBITRES DU QUÉBEC, CANADIAN LABOUR CONGRESS, NATIONAL ASSOCIATION OF PHARMACY REGULATORY AUTHORITIES, QUEEN'S PRISON LAW CLINIC, ADVOCATES FOR THE RULE OF LAW, PARKDALE COMMUNITY LEGAL SERVICES, CAMBRIDGE COMPARATIVE ADMINISTRATIVE LAW FORUM, SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC, CANADIAN BAR ASSOCIATION, CANADIAN ASSOCIATION OF REFUGEE LAWYERS, COMMUNITY & LEGAL AID SERVICES PROGRAMME, ASSOCIATION QUÉBÉCOISE DES AVOCATS ET AVOCATES EN DROIT DE L'IMMIGRATION, FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

INTERVENERS

-and-

DANIEL JUTRAS AND AUDREY BOCTOR

AMICUS CURIAE

S.C.C. Court File No. 37897

AND BETWEEN:

NATIONAL FOOTBALL LEAGUE, NFL INTERNATIONAL LLC and NFL PRODUCTIONS LLC

APPELLANT (Appellants)

-and-

ATTORNEY GENERAL OF CANADA

RESPONDENT (Respondents)

-and-

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

INTERVENER

-and-

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL FOR SASKATCHEWAN, ADVOCACY CENTRE FOR TENANTS ONTARIO, ONTARIO SECURITIES COMMISSION, BRITISH COLUMBIA SECURITIES COMMISSION AND ALBERTA SECURITIES COMMISSION, ECOJUSTICE CANADA SOCIETY, WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL (ONTARIO), WORKERS' COMPENSATION APPEALS TRIBUNAL (NORTHWEST TERRITORIES AND NUNAVUT), WORKERS' COMPENSATION APPEALS TRIBUNAL (NOVA SCOTIA), APPEALS COMMISSION FOR ALBERTA WORKERS' COMPENSATION AND WORKERS' COMPENSATION APPEALS TRIBUNAL (NEW BRUNSWICK), BRITISH COLUMBIA INTERNATIONAL COMMERCIAL ARBITRATION CENTRE FOUNDATION, COUNCIL OF CANADIAN ADMINISTRATIVE TRIBUNALS, CAMBRIDGE COMPARATIVE ADMINISTRATIVE LAW FORUM, NATIONAL ACADEMY OF ARBITRATORS, ONTARIO LABOUR-MANAGEMENT ARBITRATORS' ASSOCIATION AND CONFÉRENCE DES ARBITRES DU QUÉBEC, CANADIAN LABOUR CONGRESS, NATIONAL ASSOCIATION OF PHARMACY REGULATORY AUTHORITIES, QUEEN'S PRISON LAW CLINIC, ADVOCATES FOR THE RULE OF LAW, SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC, CANADIAN BAR ASSOCIATION, FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA, TELUS COMMUNICATIONS INC., ASSOCIATION OF CANADIAN ADVERTISERS AND ALLIANCE OF CANADIAN CINEMA, TELEVISION AND RADIO ARTISTS

INTERVENERS

-and-

DANIEL JUTRAS AND AUDREY BOCTOR

AMICUS CURIAE

ATTORNEY GENERAL OF CANADA
130 King Street West
Suite 3400, Box 36
Toronto, Ontario M5X 1K6

John Provart
Marianne Zoric
Tel: (416) 973-1346
Fax: (416) 954-8982
E-mail: john.provart@justice.gc.ca

Counsel for the Appellant, Minister of Citizenship and Immigration (SCC 37748)

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
50 0'Connor Street, Suite 500, Room 556
Ottawa, ON K2P 6L2

Christopher M. Rupar
Tel.: (613) 941-2351
Fax: (613) 954-1920
Email: Christopher.rupar@justice.gc.ca

Agent for Counsel for the Appellant, Minister of Citizenship and Immigration (SCC 37748)

MCCARTHY TÉTRAULT LLP
66 Wellington Street West
Suite 5300, Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Steven G. Mason
Brandon Kain
Steven Tanner
James S.S Holtom
Richard Lizius
Tel: (416) 601-8200
Fax: (416) 868-0673
E-mail: smason@mccarthy.ca

Counsel for the Appellant, Bell Canada, and Bell Media Inc. (SCC 37896)

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario K1P 1C3

Jeffrey W. Beedell
Tel: (613) 786-0171
Fax: (613) 788-3587
E-mail: jeff.beedell@gowlingwlg.com

Agent for Counsel for the Appellant, Bell Canada, and Bell Media Inc. (SCC 37896)

MCCARTHY TÉTRAULT LLP
66 Wellington Street West
Suite 5300, Toronto Dominion Bank Tower
Toronto, Ontario M5K 1E6

Steven G. Mason
Brandon Kain
Richard Lizius
Tel: (416) 601-8200
Fax: (416) 868-0673
E-mail: smason@mccarthy.ca

Counsel for the Appellant, National Football League, NFL International LLC and NFL Productions LLC (SCC 37897)

GOWLING WLG (CANADA) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario K1P 1C3

Jeffrey W. Beedell
Tel: (613) 786-0171
Fax: (613) 788-3587
E-mail: jeff.beedell@gowlingwlg.com

Agent for Counsel for the Appellant, National Football League , NFL International LLC and NFL Productions LLC (SCC 37897)

ATTORNEY GENERAL OF CANADA
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, Ontario M5H 1T1

Michael H. Morris
Roger Flaim
Laura Tausky
Tel: (647) 256-7539
FAX: (416) 952-4518
E-mail: michael.morris@justice.gc.ca

Counsel for the Respondent, Attorney

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
50 0'Connor Street, Suite 500, Room 556
Ottawa, ON K2P 6L2

Christopher M. Rupar
Tel.: (613) 941-2351
Fax: (613) 954-1920
Email: Christopher.rupar@justice.gc.ca

Agent for Counsel for the Respondent, Attorney General of Canada (SCC 37896, 37897)

General of Canada (SCC 37896, 37897)

JACKMAN NAZAMI & ASSOCIATES
596 St. Clair Avenue West, Unit 3
Toronto, Ontario
M6C 1A6

Hadayt Nazami

Tel: (416) 653-9964
Fax: (416) 653-1036
E-mail: hadayt@rogers.com

Counsel for the Respondent, Alexander Vavilov

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION
Les Terrasse de la Chaudière, Central Building
1 Promenade du Portage
Gatineau, Quebec J8X 4B1

Crystal Hulley-Craig
Tel: (819) 956-2095
Fax: (819) 953-0589
E-mail: crystal.hulley@crtc.gc.ca

Counsel for the Intervener, Canadian Radio- Television and Telecommunications Commission (SCC 37896, 37897)

MCGILL UNIVERSITY
3644 Peel Room 20
Old Chancellor Day Hall, Faculty of Law
Montreal, Quebec H3A 1W9

Daniel Jutras
Tel: (514) 398-1453
Fax: (514) 398-4659
E-mail: daniel.jutras@mcgill.ca

Amicus Curiae (SCC 37748, 37896, 37897)

CHAMP AND ASSOCIATES
43 Florence Street
Ottawa, Ontario
K2P 0W6
Bijon Roy
Tel: (613) 237-4740
Fax: (613) 232-2680
E-mail: broy@champlaw.ca

Agent for, Counsel for the Respondent, Alexander Vavilov

SUPREME ADVOCACY LLP
340 Gilmour St.
Ottawa, ON K2P 0R3

Marie-France Major
Tel.: (613) 695-8855 ext 102
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for the Amicus Curiae, Daniel Jutras, and Audrey Boctor SCC 37748, 37896, 37897)

IMK LLP
Alexis Nihon Plaza, Tower 2
3500 De Maisonneuve Blvd. West
Montreal, Quebec H3Z 3C1

Audrey Boctor
Tel: (514) 934-7737
Fax: (514) 935-2999
E-mail: aboctor@imk.ca

Amicus Curiae SCC 37748, 37896, 37897)

ATTORNEY GENERAL OF ONTARIO
8th fl. – 720 Bay Street
Toronto, Ontario M5G 2K1

Sara Blake
Judie Im
Tel: (416) 326-4155
Fax: (416) 326-4181
E-mail: sara.blake@jus.gov.on.ca

Counsel for the Intervener, Attorney General of Ontario.

NELLIGAN O'BRIEN PAYNE LLP
300 - 50 O'Connor Street
Ottawa, Ontario
K1P 6L2

Christopher Rootham
Michael Ryan
Tel: (613) 231-8311
Fax: (613) 788-3667
E-mail: christopher.rootham@nelligan.ca

Counsel for the Intervener, Telus Communications Inc.

THE LAW OFFICE OF JAMIE LIEW
39 Fern Avenue
Ottawa, Ontario K1Y 3S2

Tel: (613) 808-5592
Fax: (888) 843-3413
E-mail: jamie.liew@uottawa.ca

SUPREME ADVOCACY LLP
340 Gilmour St.
Ottawa, ON K2P 0R3

Marie-France Major
Tel.: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for Counsel for the Intervener, Attorney General of Ontario

Counsel for the Intervener, Canadian Council for Refugees.

ADVOCACY CENTRE FOR TENANTS ONTARIO
1500 - 55 University Avenue
Toronto, Ontario
M5J 2H7

Karen Andrews
Tel: (416) 597-5855
Fax: (416) 597-5821
E-mail: andrews@lao.on.ca

Counsel for the Intervener, Advocacy Centre for Tenants (Ontario)

SUPREME ADVOCACY LLP
340 Gilmour St.
Ottawa, ON K2P 0R3

Marie-France Major
Tel.: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for Counsel for the Intervener, Advocacy Centre for Tenants (Ontario)

ONTARIO SECURITIES COMMISSION
2200 - 20 Queen Street West
Toronto, Ontario M5H 3S8

Matthew H. Britton
Jennifer M. Lynch
Paloma Ellard
David Hainey
Don Young
Tel: (416) 593-8294
Fax: (416) 593-2319
E-mail: mbritton@osc.gov.on.ca

Counsel for the Interveners, Ontario Securities Commission, BC Securities Commission and Alberta Securities Commission.

CONWAY BAXTER WILSON LLP
400-411 Roosevelt Avenue
Ottawa, Ontario K2A 3X9

Benjamin Grant
Tel: (613) 780-2008
Fax: (613) 688-0271
E-mail: bgrant@conway.pro

Agent for Counsel for the Interveners, Ontario Securities Commission, BC Securities Commission and Alberta Securities Commission.

ECOJUSTICE CANADA SOCIETY
1910 - 777 Bay Street
PO BOX 106
Toronto, Ontario M5G 2C8

Laura Bowman
Bronwyn Roe
Tel: (416) 368-7533
Fax: (416) 363-2746
E-mail: lbowman@ecojustice.ca

SUPREME LAW GROUP
900 - 275 Slater Street
Ottawa, ON K1P 5H9

Moira Dillon
Tel.: (613) 691-1224
Fax: (613) 691-1338
Email: mdillon@supremelawgroup.ca

Agent for Counsel for the Intervener, Ecojustice Canada Society

Counsel for the Intervener, Ecojustice Canada Society

SHORES JARDINE LLP
10104 - 103 Avenue
Suite 2250
Edmonton, Alberta T5J 0H8

William W. Shores, Q.C.
Kirk N. Lambrecht, Q.C.
Tel: (780) 448-9275
Fax: (780) 423-0163
E-mail: bill@shoresjardine.com

Counsel for the Intervener, National Association of Pharmacy Regulatory Authorities

SUPREME ADVOCACY LLP
340 Gilmour St., Suite 100
Ottawa, ON K2P 0R3

Marie-France Major
Tel.: (613) 695-8855 ext 102
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for Counsel for the Intervener, National Association of Pharmacy Regulatory Authorities

ATTORNEY GENERAL FOR SASKATCHEWAN
900 - 1874 Scarth Street
Regina, Saskatchewan S4P 4B3

Laura Mazenc
Tel: (306) 787-6272
Fax: (306) 787-0581
E-mail: laura.mazenc@gov.sk.ca

Counsel for the Intervener, AG of Saskatchewan

GOWLING WLG (Canada) LLP
2600 - 160 Elgin St
Ottawa, ON K1P 1C3

D. Lynne Watt
Tel.: (613) 786-8695
Fax: (613) 563-9869
Email: lynne.watt@gowlingwlg.com

Agent for Counsel for the AG of Saskatchewan

FASKEN MARTINEAU DUMOULIN LLP
2900 - 550 Burrard Street
Vancouver, British Columbia V6C 0A3

Gavin R. Cameron
Tom Posyniak
Telephone: (604) 631-4756
FAX: (604) 631-3232
E-mail: gcameron@fasken.com

Counsel for the Intervener, BC International Commercial Arbitration Centre Foundation

FASKEN MARTINEAU DuMOULIN LLP
55 Metcalfe Street, Suite 1300
Ottawa ON, K1P 6L5

Sophie Arseneault
Tel.: (613) 696-6904
Fax: (613) 230-6423
Email: sarseneault@fasken.com

Agent for Counsel for the Intervener, BC International Commercial Arbitration Centre Foundation

LAX O'SULLIVAN LISUS GOTTLIEB LLP
2750 - 145 King St. West
Toronto, Ontario M5H 1J8

Terrence J. O'Sullivan
Paul Mitchell
James Renihan
Tel: (416) 644-5359
Fax: (416) 598-3730
E-mail: tosullivan@counsel-toronto.com

Counsel for the Intervener, Council of Canadian Administrative Tribunals.

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street
35th floor
Toronto, Ontario M5V 3H1

Linda R. Rothstein
Michael Fenrick
Angela E. Rae
Anne Marie Heenan
Tel: (416) 646-4300
Fax: (416) 646-4301
E-mail: linda.rothstein@paliareroland.com

Counsel for the Interveners, Ontario Labour- Management Arbitrators' Association and Conférence des arbitres du Québec

SUSAN L. STEWART
7 L'Estrange Place
Toronto, Ontario M6S 4S6

Tel: (416) 531-3736
Fax: (416) 604-2897
E-mail: sstewart@idirect.ca

Counsel for the Intervener, National Academy of Arbitrators

SUPREME ADVOCACY LLP
340 Gilmour St.
Ottawa, ON K2P 0R3

Eugene Meehan, Q.C
Marie-France Major
Tel.: (613) 695-8855
Fax: (613) 695-8580
Email: emeehan@supremeadvocacy.ca
mfmajor@supremeadvocacy.ca

Agent for Counsel for the Intervener, Council of Canadian Administrative Tribunals

CAZASAIKALEY LLP
220 avenue Laurier Ouest
Ottawa, Ontario K1P 5Z9

Alyssa Tomkins
Tel: (613) 565-2292
Fax: (613) 565-2087
E-mail: atomkins@plaideurs.ca

Agent for Counsel for the Interveners, Ontario Labour- Management Arbitrators' Association and Conférence des arbitres du Québec

CAZASAIKALEY LLP
220 avenue Laurier Ouest
Ottawa, Ontario K1P 5Z9

Alyssa Tomkins
Tel: (613) 565-2292
Fax: (613) 565-2087
E-mail: atomkins@plaideurs.ca

Agent for Counsel for the Intervener, National Academy of Arbitrators

GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1100
Toronto, Ontario
M5G 2G8

Steven Barrett
Tel: (416) 979-6422
Fax: (416) 591-7333
E-mail: sbarrett@goldblattpartners.com

Counsel for the Intervener, Canadian Labour Congress

GOLDBLATT PARTNERS LLP
500-30 Metcalfe St.
Ottawa, Ontario
K1P 5L4

Colleen Bauman
Tel: (613) 482-2463
Fax: (613) 235-3041
E-mail: cbauman@goldblattpartners.com

Agent for counsel for the Intervener, Canadian Labour Congress

PROCUREURE GÉNÉRALE DU QUÉBEC
1200, Route de l'Église
3e étage
Québec, Quebec G1V 4M1

Stéphane Rochette
Tel: (418) 643-6552
Fax: (418) 643-9749
E-mail: stephane.rochette@justice.gouv.qc.ca

Counsel for the Intervener, AG Quebec

NOËL & ASSOCIÉS
111 rue Champlain
Gatineau, Quebec J8X 3R1

Sylvie Labbé
Tel: (819) 771-7393
Fax: (819) 771-5397
E-mail: s.labbe@noelassocies.com

Agent for Counsel for the Intervener, AG Quebec

STOCKWOODS LLP
77 King Street West, Suite 4130
P.O. Box 140
Toronto, Ontario M5K 1H1

Brendan Van Niejenhuis
Andrea Gonslaves
Tel: (416) 593-7200
Fax: (416) 593-9345
E-mail: brendanvn@stockwoods.ca

Counsel for the Intervener, Queen's Prison Law Clinic

POWER LAW
130 Albert Street
Suite 1103
Ottawa, Ontario K1P 5G4

Maxine Vincelette
Tel : (613) 702-5561
Fax : (613) 702-5561
E-mail : mvincelette@powerlaw.ca

Agent for Counsel for the Intervener, Queen's Prison Law Clinic

ATTORNEY GENERAL OF BRITISH COLUMBIA
PO Box 9280 Stn Prov Govt
Victoria, British Columbia
V8W 9J7

Leah Greathead
Micah Rankin
Tel: (250) 356-8892
Fax: (250) 356-9154
E-mail: leah.greathead@gov.bc.ca

Counsel for the Intervener, AG British Columbia

MICHAEL J. SOBKIN
331 Somerset Street West
Ottawa, Ontario
K2P 0J8
Tel: (613) 282-1712
Fax: (613) 288-2896
E-mail: msobkin@sympatico.ca

Agent for Counsel for the Intervener, AG British Columbia

MCCARTHY TÉTRAULT LLP
745 Thurlow Street, Suite 2400
Vancouver, British Columbia
V6E 0C5

Adam Goldenberg
Robyn Gifford
Asher Honickman
Tel: (604) 643-7100
Fax: (604) 643-7900
E-mail: agoldenberg@mccarthy.ca

Counsel for the Intervener, Advocates for the Rule of Law

POWER LAW
130 Albert Street
Suite 1103
Ottawa, Ontario
K1P 5G4

Darius Bossé
Tel: (613) 702-5566
Fax: (613) 702-5566
E-mail: DBosse@juristespower.ca

Agent for Counsel for the Intervener, Advocates for the Rule of Law

PARKDALE COMMUNITY LEGAL SERVICES
1266 Queen Street West
Toronto, Ontario M6K 1L3

Toni Schweitzer
Ronald Poulton
Tel: (416) 531-2411
Fax: (416) 531-0885
E-mail: schweit@lao.on.ca

Counsel for the Intervener, Parkdale Community Legal Services

COMMUNITY LEGAL SERVICES OF OTTAWA-SOUTH OFFICE
406 - 1355 Bank Street
Ottawa, Ontario K1H 8K7

Elaine Simon
Tel: (613) 733-0140
Fax: (613) 733-0401
E-mail: simone@lao.on.ca

Agent for Counsel for the Intervener, Parkdale Community Legal Services

CAMBRIDGE COMPARATIVE ADMINISTRATIVE LAW FORUM
Cambridge University - The Faculty of Law
The David Williams Building - 10 West Road
Cambridge, United Kingdom CB3 9DZ

Bruno Gélinas-Faucher
Tel: (737) 838-3023 Ext: 44
Fax: (514) 565-9877
E-mail: bruno.gelinas.faucher@gmail.com

Counsel for the Intervener, Cambridge Comparative Administrative Law Forum

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP
Suite 2600 130 Adelaide Street West
Toronto, Ontario M5H 3P5

J. Thomas Curry
Sam Johansen
Tel: (416) 865-3096
Fax: (416) 865-9010
E-mail: tcurry@litigate.com

Counsel for the Interveners, Association of Canadian Advertisers and the Alliance of Canadian Cinema, Television and Radio Artists

CAZASAIKALEY LLP
220 avenue Laurier Ouest
Ottawa, Ontario
K1P 5Z9

Alyssa Tomkins
James Plotkin
Michel Bastarache
Tel: (613) 565-2292
Fax: (613) 565-2087
E-mail: atomkins@plaideurs.ca

Counsel for the Interveners, Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic

POWER LAW
130 Albert Street
Suite 1103
Ottawa, Ontario K1P 5G4

Maxine Vincelette
Tel: (613) 702-5561
Fax: (613) 702-5561
E-mail: mvincelette@powerlaw.ca

Agent for Counsel for the Intervener, Cambridge Comparative Administrative Law Forum

POWER LAW
130 Albert Street
Suite 1103
Ottawa, Ontario
K1P 5G4

Maxine Vincelette
Tel: (613) 702-5561
Fax: (613) 702-5561
E-mail: mvincelette@powerlaw.ca

Agent for Counsel for the Interveners, Association of Canadian Advertisers and the Alliance of Canadian Cinema, Television and Radio Artists

UNIVERSITÉ D'OTTAWA
Common Law Section
57 Louis Pasteur St.
Ottawa, Ontario
K1N 6N5

David Fewer
Tel: (613) 562-5800 Ext: 2558
Fax: (613) 562-5417
E-mail: david.fewer@uottawa.ca

Agent for Counsel for the Interveners, Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic

FASKEN MARTINEAU DUMOULIN LLP
Bureau 3700, C.P. 242
800, Place Victoria
Montréal, Quebec H4Z 1E9

Christian Leblanc
Michael Shortt
Tel: (514) 397-7545
Fax: (514) 397-7600
E-mail: cleblanc@fasken.com

Counsel for the Interveners, Blue Ant Media Inc., Canadian Boradcasting Corporation, DHX Media Lts., Groupe V Media Inc., Independent Brodcast Group, Aboriginal Peoples Television Netork, Allarco Entertainment Inc., BBC Kids, Chanel Zero, Ethnic Channels Group Ltd., Hollywood Suite, OUTtv Network Inc., Stingray Digital Group Inc., TV5 Québec Canada, Zoomermedia LTd. and Pelmorex Weather Networks (Television) Inc.

FASKEN MARTINEAU DUMOULIN LLP
1300 – 55 rue Metcalfe
Ottawa, Ontario K1P 6L5

Sophie Arseneault
Tel: (613) 236-3882
Fax: (613) 230-6423
E-mail: sarseneault@fasken.com

Agent for Counsel for the Interveners, Blue Ant Media Inc., Canadian Boradcasting Corporation, DHX Media Lts., Groupe V Media Inc., Independent Brodcast Group, Aboriginal Peoples Television Netork, Allarco Entertainment Inc., BBC Kids, Chanel Zero, Ethnic Channels Group Ltd., Hollywood Suite, OUTtv Network Inc., Stingray Digital Group Inc., TV5 Québec Canada, Zoomermedia LTd. and Pelmorex Weather Networks (Television) Inc.

STEWART MCKELVEY
65 Grafton Street
P.O. Box 2140, Station Central
Charlottetown, Prince Edward Island
C1A 8B9

Jonathan M. Coady
Justin L. Milne
Tel: (902) 629-4520
Fax: (902) 566-5283
E-mail: jcoady@stewartmckelvey.com

Counsel for the Intervener, Canadian Bar Association

GOWLING WLG (CANADA) LLP
160 Elgin Street
Suite 2600
Ottawa, Ontario K1P 1C3

Guy Régimbald
Telephone: (613) 786-0197
Fax: (613) 563-9869
E-mail: guy.regimbald@gowlingwlg.com

Agent for Counsel for the Intervener, Canadian Bar Association

LEGAL AID ONTARIO
Refugee Law Office
20 Dundas Street West
Toronto, Ontario M5G 2H1

Anthony Navaneelan
Audrey Macklin
Tel: (416) 977-8111 Ext: 7181

COMMUNITY LEGAL SERVICES OTTAWA
1301 Richmond Road
Ottawa, Ontario K2B 7Y4

Nicholas Hersh
Tel: (613) 596-1641
Fax: (613) 596-3364

Fax: (416) 977-5567
E-mail: navanea@lao.on.ca

Counsel for the Intervener, Canadian Association of Refugee Lawyers

COMMUNITY & LEGAL AID SERVICES PROGRAMME
York University, Osgoode Hall Law School
Ignat Kaneff Build
4700 Keele Street
Toronto, Ontario M3J 1P3

Subodh Bharati
Tel: (416) 736-5029
Fax: (416) 736-5564
E-mail: sbharati@osgoode.yorku.ca

Counsel for the Intervener, Community and Legal Aid Service Programme

HADEKEL SHAMS S.E.N.C.R.L.
305, rue Bellechasse est, bureau 400A
Montréal, Quebec
H2S 1W9

Peter Shams
Claudia Andrea Molina
Guillaume Cliche-Rivard
David Berger
Tel: (514) 439-0800
Fax: (514) 439-0798
E-mail: peter@hadekelshams.ca

Counsel for the Interveners, Association Québécoise des avocats et avocates en droit de l'immigration

CONWAY BAXTER WILSON LLP
400 - 411 Roosevelt Avenue
Ottawa, Ontario
K2A 3X9

David P. Taylor
Sarah Clarke
Tel: (613) 691-0368
E-mail: hershni@lao.on.ca

Agent for Counsel for the Intervener, Canadian Association of Refugee Lawyers

SUPREME ADVOCACY LLP
340 Gilmour St., Suite 100
Ottawa, ON K2P 0R3

Marie-France Major
Tel.: (613) 695-8855 ext 102
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for Counsel for the Intervener, Community and Legal Aid Service Programme

STIKEMAN ELLIOTT LLP
1600 - 50 O'Connor Street
Ottawa, Ontario
K1P 6L2

Nicholas Peter McHaffie
Tel: (613) 566-0546
Fax: (613) 230-8877

Fax: (613) 688-0271
E-mail: dtaylor@conway.pro

Counsel for the Intervener, First Nations Child and Family Caring Society of Canada

E-mail: nmchaffie@stikeman.com

Agent for counsel for the Intervener, First Nations Child and Family Caring Society of Canada

TABLE OF CONTENTS

PAGE

PART I: OVERVIEW

1. The courts' approach to judicial review must continue to be premised on a presumption of deference to the decisions of administrative agencies, such as the expert and specialized appellate agencies that are part of the discrete workers' compensation scheme established in each province and territory.

2. Courts do not have a monopoly on adjudicating all legal issues. Courts are also not necessarily the most qualified or the best suited to adjudicate the specialized matters that have been delegated to administrative tribunals. A presumption of deference recognizes the important adjudicative role of administrative agencies in the Canadian legal system and is also necessary to ensure overall access to justice.

3. In the modern legal landscape, a presumption of deference on judicial review best promotes the flexible adjudicative processes that expert administrative agencies have been designed to provide. A presumption of deference also best balances legislative supremacy with upholding the rule of law's objective of ensuring that decisions of administrative agencies are fair, reasonable and made within appropriate boundaries.

4. Courts do not need to submit to the decisions of administrative agencies, but they must respect the decisions of these entities and adopt a supervisory approach premised on avoiding interference unless required by justice.

5. In particular, the Court should reject arguments that would eliminate deference to adjudicative tribunals on pure questions of law, issues of statutory interpretation, and the determination of questions of law to which there are only two possible answers.

PART II: QUESTION IN ISSUE

6. The Coalition restricts its submissions in these appeals to addressing the appropriate nature and scope of judicial review of administrative decision-making.

7. The Coalition submits that:

a. The appropriate approach to judicial review must respect the important adjudicative role of administrative agencies.

b. An overall presumption of deference for decisions of administrative adjudicative agencies should be maintained, particularly when these agencies are interpreting home or closely related statutes.

c. Judicial intervention should occur only when required by justice, particularly as this type of approach ensures access to justice.

d. The presumption of deference should be rebutted only in clear and specific circumstances.

e. Any judicial review on the basis of reasonableness must begin by examining the reasons for decision.

PART III: STATEMENT OF ARGUMENT

A. Judicial Review must respect the Adjudicative Role of Administrative Agencies

8. It is well established that judicial review is "intimately connected" with preserving the "rule of law", which requires that all official powers be exercised within legal authority, fairly, and reasonably.[1]

9. Accordingly, a primary function of judicial review is to ensure the legality, reasonableness and fairness of an administrative agency's processes as well as substantive outcomes.[2] The Courts, in their constitutional supervisory role, must be able to intervene when necessary to uphold the rule of law and promote justice, having the "last word" on whether an administrative body has acted within the legal boundaries of the authority bestowed on it.[3]

10. At the same time, however, judicial review must also sustain legislative supremacy and respect the decisions of legislatures to delegate decision-making in certain areas to administrative agencies, and the goals behind such delegation.[4]

11. The modern reality is that many important matters that were once under the jurisdiction of the common law courts have been delegated to be determined by specialized and expert administrative agencies.

12. It is therefore essential that courts continue to accept that they no longer "have a monopoly on deciding all questions of law"[5] and must consequently give appropriate deference to the decisions of administrative agencies.

---

[1] *Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII)("*Dunsmuir*") at paras. 27 - 29.
[2] *Dunsmuir*, at para. 28.
[3] *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd*., 2016 SCC 47 (CanLII) ("*Edmonton*") at para. 21.
[4] *Edmonton* at para. 21.
[5] *Wilson v. Atomic Energy of Canada Ltd*., 2016 SCC 29 (CanLII) ("Wilson") at para. 30 referring to *Dunsmuir*, at para. 30, citing Justice Thomas Cromwell, "Appellate Review: Policy and Pragmatism", *2006 Isaac Pitblado Lectures*, at p. V-12.

13. Fundamentally, judicial review must respect the important adjudicative role of administrative agencies in the Canadian legal system, and restrict a court from unnecessarily interfering in an administrative agency's decision-making processes and outcomes.

B. Overall Presumption of Deference must be Maintained

14. In the *Dunsmuir* decision, this Court established a framework for judicial review based upon a presumption of deference to decisions of administrative decision-makers when performing their assigned statutory roles. This framework identified deference as the best way to balance the rule of law and legislative supremacy, the two fundamental albeit at times competing principles underlying judicial review.[6]

15. The foundational premise underlying this presumption of deference was that judicial interference should be permitted only when required by justice.[7] In a practical sense, this has meant that except in limited and specific circumstances, courts must respect the reasons underlying why a legislature has delegated adjudication in a particular area to an administrative agency, and refrain from unnecessarily interfering in the agency's decision-making in the name of either correctness or reasonableness review.[8]

16. The Coalition submits that this presumption of deference must be maintained.

17. The *Dunsmuir* framework and presumption of deference has received steady support from this Court,[9] including the recognition that, save in limited circumstances, legislative supremacy and the rule of law are both best sustained by deferring to the legislature's delegated decision-maker.[10]

18. Maintaining the overall presumption of deference also best recognizes and respects the specialized expertise of administrative agencies.

19. Administrative agencies are continually immersed in adjudicating matters arising from the complex administrative schemes under which they receive their authority. This consistent engagement in legal and policy matters arising in a specialized area allows these agencies to

---

[6] *Edmonton*, at para. 21.
[7] *Dunsmuir*, para. 43.
[8] *Dunsmuir*, para. 27.
[9] See for example, *Wilson*, at paras. 21, 27 and 72 and *Edmonton*, at para. 20.
[10] *Groia v. Law Society of Upper Canada*, 2018 SCC 27 ("*Groia*") at para. 178.

develop significant expertise in the imperatives and nuances of the legislative regime, as well as sensitivity to the system's stakeholders.[11]

20. In light of their familiarity with the broad policy context in which they function, in many circumstances, administrative agencies are actually more qualified and better suited than the courts to adjudicate matters arising in these discrete areas, including issues of statutory interpretation or other pure questions of law.[12]

21. Providing deference best recognizes and takes advantage of the specialized expertise of these administrative agencies and also appropriately acknowledges the different roles of the courts and administrative agencies within the Canadian constitutional system.[13]

22. Certain matters should be left "in the hands" of administrative decision-makers so that they can draw on their particular expertise.[14] Courts, having different functions and specialization, should not unduly interfere with expert administrative agencies discharging the adjudicative functions that have been delegated to them.[15]

23. The Coalition's practical experience with the overall presumption of deference also supports the preservation of the current approach to judicial review. In general, Coalition members have found that the presumption of deference is accepted and applied by reviewing courts who recognize the specialized expertise of Coalition agencies.

C. Presumption of Deference Best Ensures Access to Justice

24. A presumption of deference is also vitally linked to ensuring access to justice.

25. As identified by this Court, ensuring access to justice is one of the greatest challenges facing the Canadian legal system as the lack of available forums for effective and accessible adjudication threatens the rule of law.[16]

26. Administrative agencies are specifically designed to promote accessibility, and are

---

[11] *Dunsmuir*, at para. 49, quoting D. J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004), 17 *C.J.A.L.P.* 59, at p. 93.
[12] *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67 (CanLII) ("*McLean*) at para. 31. See also *Edmonton* at para. 33 and *Groia* at para. 178.
[13] *Dunsmuir*, at para. 49.
[14] *Dunsmuir*, at para. 49.
[15] *Dunsmuir*, at para. 27.
[16] *Hryniak v. Mauldin*, 2014 SCC 7 (CanLII) at para. 1.

generally more expeditious, flexible and context sensitive than the courts.[17]

27. A presumption of deference on judicial review fosters accessibility by deferring to the legislative choice to delegate certain matters to these less formal but specialized adjudicative agencies and thereby providing stakeholders with options for speedier and more accessible adjudication.[18]

28. Quite simply, adjudicative agencies fill an important accessibility gap in the Canadian legal system. As acknowledged by former Chief Justice McLachlin, without the flexible and swift adjudication that these agencies provide, the rule of law in the modern regulatory state would falter and fail.[19]

29. Therefore, balancing the rule of law and the imperatives of legislative intention and supremacy in the context of judicial review is not just about protecting a court's constitutional supervisory role. It also helps ensure that adjudicative agencies can fulfill their mandates to adjudicate the matters that have been delegated to them, and avoiding unnecessary court intervention that will only complicate and unnecessarily hinder accessible adjudication.

30. Unwarranted back and forth between the courts and administrative agencies will only threaten the accessibility and proportionality that these administrative agencies have been specifically designed to provide. Accordingly, deference is required to ensure that adjudication in a wide range of areas remains primarily in the jurisdiction of these administrative agencies.

31. The workers' compensation schemes that have been established in each province and territory are highly specialized, self-contained legal regimes with their own independent, expert appellate structure. The removal of the adjudication of workers' compensation matters from the court system has been described by this Court as the "overall purpose" of workers' compensation legislation.[20] A core policy goal of this system is to provide efficient, timely and low cost

---

[17] *Rasanen v. Rosemount Instruments Ltd*., 1994 CanLII 608 (ONCA) and *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 (CanLII) at para. 68.
[18] *Edmonton*, at para. 22.
[19] The Right Honourable Beverley McLachlin, P.C. Chief of Justice of Canada, "Administrative Tribunals and the Courts: An Evolutionary Relationship", (Address at the 6th Annual Conference of the Council of Canadian Administrative Tribunals, Toronto, Ontario, May 27, 2013).
[20] *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44 (CanLII) ("*Marine Services*") at para. 82.

resolution of claims without the need to resort to civil proceedings.[21]

32. In order to preserve the integrity of these accessible processes for both workers and employers, it is important that deference to the decisions of the expert, appellate administrative decision-makers in each province and territory be maintained.

33. Applying a general correctness standard of review will only encourage judicial review as a common and costly recourse that delays resolution and inhibits access to justice. In contrast, providing deference will insulate the administrative process against unnecessary court intervention and maintain the broad accessibility on which the workers' compensation scheme is premised.

D. Presumption of Deference must apply to the Interpretation of Home Statutes

34. Unless the overall presumption of deference is rebutted, deference must be provided to both the factual and legal decisions made by an administrative decision-maker.

35. Judicial deference to all aspects of an administrative agency's decisions is presumptively warranted by the legislature delegating the adjudication to a specialized adjudicative agency. This presumption of deference should only be rebutted in the clearest of circumstances.[22]

36. It is particularly well-established that where an administrative agency interprets its "home" or a closely related statute, deference should be provided, with the decision being reviewed on the standard of reasonableness.[23]

37. The Coalition submits that the provision of deference to the statutory interpretation of an agency's home statute must be maintained as it is particularly important for ensuring accessibility. This approach of overall deference for statutory interpretation of a home statue also recognizes the specialized expertise of delegated decision-makers. Many administrative agencies are better suited to understand the policy concerns and context needed to resolve any ambiguities in their home or closely related statute in light of their familiarity and nuanced

---

[21] *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, 1997 CanLII 316 (SCC), at para. 27, citing *Medwid v. Ontario*, 1988 CanLII 193 (ON SC) and *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, 2016 SCC 25 (CanLII) at para. 31.
[22] *Dunsmuir*, at para. 146.
[23] *Edmonton*, at para. 22; *Groia*, at para. 46; *McLean* at para. 33; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31 ("*CHRC*") at para. 27.

understanding of the overall legislative and policy scheme.[24]

38. A presumption of deference for statutory interpretation of a home statute also helps simplify the standard of review analysis.[25]

E. Presumption of Deference should only be Rebutted in Clear and Specific Circumstances

39. Every time an administrative decision is judicially reviewed, the initial question for the reviewing court is: What is the appropriate standard of review for this particular issue, being determined by this particular decision-maker?[26]

40. Both the intention of the legislature, particularly as it relates to ensuring access to justice, as well as the need to uphold the rule of law, must be considered in this analysis.[27]

41. Accordingly, the Coalition submits that the presumption of deference for the decision of an administrative agency should only be rebutted if:

i. There is clear statutory language setting out the legislature's intention for the decisions of the particular agency to be given less or no deference, and/or

ii. The nature of the question being determined requires that less or no deference be provided.

42. This approach builds on the major contextual factors that have been identified as particularly important by this Court[28] and clearly relates the determination of the appropriate standard of review back to the two important principles underlying judicial review. This approach also simplifies the analysis and makes "more room" for the operation of the doctrine of precedent when determining the appropriate standard of review of an administrative agency's decision.[29]

Legislative Intention

43. A legislature's intention with respect to the deference that should be provided to a particular administrative agency can best be determined from a review of the nature of the

---

[24] *CHRC*, at para. 55.
[25] *CHRC*, at para. 27.
[26] *Edmonton*, at para. 71
[27] *Dunsmuir*, at para. 27.
[28] See for example *Dunsmuir*, at para. 64.
[29] *Edmonton*, at para. 71.

legislative scheme itself.[30]

44. The creation of discrete administrative regimes in which decision-makers have or will develop in a mature institutional setting specialized expertise are sure signposts of legislative intention that the decisions of the particular administrative agency receive deference. A privative clause also further indicates deference as it is an express statutory direction from the legislature indicating that interference in an administrative agency's decisions should be limited.[31]

45. However, neither the absence of a privative clause, nor a statutory right of appeal should, on their own, be relied upon to rebut a presumption of deference.[32] Instead, express statutory language must be examined in combination with the nature of the legislative scheme in order to determine the legislature's true intent.[33]

Nature of Question

46. This Court has placed significant emphasis on the nature of the question at issue when determining the applicable standard of review.[34]

47. The Coalition submits that there are few types of questions which necessitate correctness review as judicial review on the basis of correctness should be limited to legal questions that require disposition by a judge.[35]

48. These limited types of questions will generally only include constitutional questions regarding division of powers, general questions of law with broad application that are outside the expertise of the specific administrative agency, and true jurisdictional and procedural fairness issues.[36]

49. Judicial review on the basis of correctness should generally be limited because of the different roles that the courts and administrative agencies play within the Canadian constitutional system. Unnecessary judicial review on the basis of correctness will only result in unnecessary interference – in most cases, the decisions of an administrative agency should be provided with

---

[30] *Edmonton*, at para. 85.
[31] *Dunsmuir*, at para. 55.
[32] *Edmonton* at para. 28 and *CHRC* at para. 83.
[33] *Edmonton*, at para. 73.
[34] *CHRC*, at para. 73.
[35] *Dunsmuir*, at paras. 126 – 129.
[36] See for example, *Dunsmuir* at paras. 126 – 129 and *Edmonton* at para. 24.

deference.[37]

F. Reasonableness Review must start with the Reasons for Decision

50. When the presumption of deference is not rebutted, judicial review must proceed on the basis of reasonableness, and deference is not optional.[38]

51. Review on the basis of reasonableness has been defined by this Court as being concerned "with the existence of justification, transparency and intelligibility within the decision-making process."[39]

52. Accordingly, when engaging in judicial review on the basis of reasonableness, a court must assume a supervisory role and begin its analysis by reviewing the agency's reasons for decision to ensure that it is coherent and arrives at a reasonable outcome.[40] Judicial review on the basis of reasonableness must not involve a court imposing its own views unless the decision of the administrative agency is found to be unreasonable.[41]

53. Judicial review on this basis therefore requires courts to accept that there can be multiple, legitimate possible outcomes in matters that have been delegated to be adjudicated by administrative agencies.[42] It also requires that even where there are only two possible meanings or outcomes to an issue of statutory interpretation, the courts must generally maintain a deferential posture to the review of the tribunal's conclusion on that issue.

54. Further, reasonableness review requires courts to accept that even if they disagree with an administrative agency as to the preferred outcome in a matter, this by itself does not necessarily mean that the administrative agency is "wrong" or that the decision cannot stand.[43]

55. Accordingly, when reviewing on the basis of reasonableness, a court should refrain from reweighing evidence[44] or conducting an exacting reassessment in order to support a conclusion

---

[37] *Dunsmuir*, at para. 49.
[38] *Groia*, at para. 179.
[39] *Dunsmuir*, at para. 47.
[40] *Groia*, at para. 181.
[41] *CHRC*, at para. 57.
[42] *CHRC*, at para. 55.
[43] *Dunsmuir*, at para. 125.
[44] *CHRC*, at para. 55.

that an adjudicative agency's decision is unreasonable.[45]

56. In particular, a court must avoid conducting its own analysis as this approach disrespects the important adjudicative role of administrative agencies and results in "disguised correctness review", with the court essentially attempting to assume the agency's adjudicative role.[46] If there is a logical and evidentiary underpinning for an administrative agency's decision, the decision cannot be unreasonable, and there is no basis for a court to interfere.[47]

57. Deference does not mean that a court must submit to the decision of an administrative decision-maker, but the courts must pay respect to the reasons offered.[48]

G. Conclusion

58. Overall, the Coalition submits that broad, but contextual, deference within the rule of law should be provided to the decisions of administrative agencies. The "*Dunsmuir*" approach works and should not be changed.

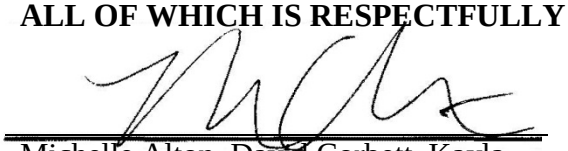
PART IV: COSTS

59. The Coalition does not seek costs in these proceedings and asks that no costs be ordered against it.

PART V: ORDER REQUESTED

60. The Coalition seeks permission to present oral argument at the appeal hearing. The Coalition takes no position with respect to the disposition of the merits of the appeals.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 25th day of October, 2018.



Michelle Alton, David Corbett, Kayla Seyler and Ana Rodriguez Garcia

Counsel for the Interveners

---

[45] *Groia*, at para. 180.
[46] *Wilson*, at para. 27 referring to David Mullan, "Unresolved Issues on Standard of Review in Canadian Judicial Review of Administrative Action — The Top Fifteen!" (2013), 4*2 Adv. Q. 1*, at pp. 76-81.
[47] *Groia*, at para. 213.
[48] *Dunsmuir*, para. 48.

PART VI – LIST OF AUTHORITIES

Authorities	**Paragraph(s)**
British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority , 2016 SCC 25 (CanLII)	31
Canada (Canadian Human Rights (Commission) v. Canada (Attorney General), 2018 SCC 31	36, 37, 38, 45, 46, 52, 53, 55
Dunsmuir v. New Brunswick, 2008 SCC 9	8, 9, 15, 19, 21, 22, 35, 40, 42, 44, 47, 48, 49, 51, 54, 57
Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd., 2016 SCC 47	9, 10, 14, 17, 20, 27, 36, 39, 42, 43, 45, 48
Groia v. Law Society of Upper Canada, 2018 SCC 27	17, 20, 36, 50, 52, 55, 56
Hryniak v. Mauldin, 2014 SCC 7	25
Marine Services International Ltd. v. Ryan Estate, 2013 SCC 44	31
McLean v. British Columbia (Securities Commission), 2013 SCC 67	20, 36
Pasiechnyk v. Saskatchewan (Workers' Compensation Board), 1997 CanLII 316 (SCC)	31
Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center), 2015 SCC 39	26
Rasanen v. Rosemount Instruments Ltd., 1994 CanLII 608 (ONCA)	26
Wilson v. Atomic Energy of Canada Ltd., 2016 SCC 29	12, 17, 56
Others	
The Right Honourable Beverley McLachlin, P.C. Chief of Justice of Canada, "Administrative Tribunals and the Courts: An Evolutionary Relationship", (Address at the 6th Annual Conference of the Council of Canadian Administrative Tribunals, Toronto, Ontario, May 27, 2013)	28