

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

BETWEEN:

BELL CANADA and BELL MEDIA INC.

Appellants

-and-

ATTORNEY GENERAL OF CANADA

Respondent

-and-

**CANADIAN RADIO-TELEVISION and
TELECOMMUNICATIONS COMMISSION**

Interveners (Pursuant to Rule 22(3)(c)(iv))

And in the Matter of:

S.C.C. Court File No. 37897

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

AND BETWEEN:

**NATIONAL FOOTBALL LEAGUE, NFL INTERNATIONAL LLC and NFL
PRODUCTIONS LLC**

Appellants

-and-

ATTORNEY GENERAL OF CANADA

Respondent

-and-

**CANADIAN RADIO-TELEVISION and
TELECOMMUNICATIONS COMMISSION**

Interveners (Pursuant to Rule 22(3)(c)(iv))

(Style of Cause Continued on Next Page)

**FACTUM OF THE INTERVENER,
ATTORNEY GENERAL OF SASKATCHEWAN**
(Pursuant to Rules 37 & 42 of the Rules of the Supreme Court of Canada)

And in the Matter of:

S.C.C. Court File No. 37748

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

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

-and-

ALEXANDER VAVILOV

Respondent

(Counsel Information)

**Attorney General of Saskatchewan
The Deputy Minister of Justice &
Deputy Attorney General**
900 -1874 Scarth Street
Regina, SK S4P 4B3

**Laura Mazenc
Kyle McCreary**
Telephone (306)787-6272
FAX: (306)787-0581
E-mail: laura.mazenc@gov.sk.ca

*Counsel for the Intervener,
Attorney General of Saskatchewan*

Gowling WLG (Canada) LLP
160 Elgin Street,
Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt
Telephone: (613) 786-8695
FAX: (613) 788-3509
E-mail: lynne.watt@gowlingwlg.com

*Ottawa Agent for Counsel for the Intervener,
Attorney General of Saskatchewan*

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. Holtorn &
Richard Lizius**

Telephone: (416) 601-8200
FAX: (416) 868-0673
E-mail: smason@mccarthy.ca

*Counsel for the Appellants in Bell Canada (#37896)
& NFL (#37897)*

Attorney General of Canada
The Exchange Tower
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

**Michael H. Morris
Roger Flaim
Laura Tausky**
Telephone: (416) 973-9704
FAX: (416) 973-0809
E-mail: michael.morris@justice.gc.ca

*Counsel for the Respondents in Bell Canada (#37896)
& NFL (#37897)*

Attorney General of Canada
130 King Street West
Suite 3400, Box 36
Toronto, ON M5X 1K6

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

Counsel for the Appellant, Vavilov (#37748)

Jackman Nazami & Associates
596 St. Clair Avenue West, Unit 3
Toronto, ON M6C 1A6

Hadayt Nazam
Telephone: (416) 653-9964
FAX: (416) 653-1036
E-mail: hadayt@rogers.com

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

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

*Ottawa Agent for Counsel for the Appellants in Bell
Canada (#37896) & NFL (#37897)*

Department of Justice
50 O'Connor Street
Suite 500
Ottawa, ON K1A 0H8

Christopher M. Rupar
Telephone: (613) 670-6290
FAX: (613) 954-1920
E-mail: chirstopher.rupar@justice.gc.ca

*Ottawa Agent for Counsel for the Respondents in Bell
Canada (#37896) & NFL (#37897)*

Attorney General of Canada
50 O'Connor Street, Suite 500, Room 557
Ottawa, ON K1A 0H8

Christopher M. Rupar
Telephone: (613) 670-6290
FAX: (613) 954-1920
E-mail: christopher.rupar@justice.gc.ca

*Ottawa Agent for Counsel for the Appellant, Vavilov
(#37748)*

Champ and Associates
43 Florence Street
Ottawa, ON K2P 0W6

Bijon Roy
Telephone: (613) 237-4740
FAX: (613) 232-2680
E-mail: pchamp@champlaw.ca

Counsel for the Respondent Vavilov (#37748)

University of McGill

3644 Peel
Old Chancellor Day Hall, Faculty of Law,
Montreal, QC H3A 1W9

Daniel Jutras

Telephone: (514) 398-6604
FAX: (514) 398-4659
E-mail: daniel.jutras@mcgill.ca

*Counsel for Amicus curiae in Bell Canada (#37896);
NFL (#37897) & Vavilov (#37748)*

Irving Mitchell Kalichman LLP

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

Audrey Boctor

Telephone: (514) 934-7737
FAX: (514) 935-2999
E-mail: aboctor@imk.ca

*Counsel for Amicus curiae in Bell Canada (#37896);
NFL (#37897) & Vavilov (#37748)*

AND TO THE INTERVENERS:

**Canadian Radio-Television and
Telecommunications Commission**

Les Terrasse de la Chaudière, 1 Promenade du Portage
Gatineau, QC J8X 4B1

Crystal Hulley-Craig

Telephone: (819) 956-2095
FAX: (819) 953-0589
E-mail: crystal.hulley@crtc.gc.ca

*Counsel for the Intervener, Canadian Radio-
Television and Telecommunications Commission -
Bell Canada (#37896) & NFL (#37897)*

Attorney General of Ontario

720 Bay Street, 8th Floor
Toronto, ON M5G 2K1

**Sara Blake
Judie Im**

Telephone: (416) 326-4155
FAX: (416) 326-4181
E-mail: sara.blake@jus.gov.on.ca

Counsel for the Intervener, AG Ontario

*Ottawa Agent for Counsel for the Respondent Vavilov
(#37748)*

Supreme Advocacy LLP

100- 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major

Telephone: (613) 695-8855 Ext: 102
FAX: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

*Ottawa Agent for Amicus curiae in Bell Canada
(#37896); NFL (#37897) & Vavilov (#37748)*

Supreme Advocacy LLP

100- 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major

Telephone: (613) 695-8855 Ext: 102
FAX: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

*Ottawa Agent for Amicus curiae in Bell Canada
(#37896); NFL (#37897) & Vavilov (#37748)*

Supreme Advocacy LLP

100- 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major

Telephone: (613) 695-8855 Ext: 102
FAX: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

Ottawa Agent for the Intervener, AG Ontario

Procureure générale du Québec
1200, Route de l'Église, 3e étage
Québec, QC G1V 4M1

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

Counsel for the Intervener, AG Québec

Attorney General of British Columbia
PO Box 9280 Stn Prov Govt
Victoria, BC V8W 9J7

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

Counsel for the Intervener, AG British Columbia

Nelligan O'Brien Payne LLP
300 - 50 O'Connor Street
Ottawa, ON K1P 6L2

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

Counsel for the Intervener, Telus Communications Inc.

Advocacy Centre for Tenants Ontario
1500 - 55 University Avenue
Toronto, ON M5J 2H7

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

Counsel for the for the Intervener, Advocacy Centre for Tenants Ontario (Vavilov #37748)

Noël & Associés
111 rue Champlain
Gatineau, QC J8X 3R1

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

Ottawa Agent for Counsel for the Intervener, AG Québec

Michael J. Sobkins
331 Somerset Street West
Ottawa, ON K2P 0J8
Telephone: (613) 282-1712
FAX: (613) 288-2896
E-mail: msobkin@sympatico.ca

Ottawa Agent for Counsel for the Intervener, AG British Columbia

Supreme Advocacy LLP
100- 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major
Telephone: (613) 695-8855 Ext: 102
FAX: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

Ottawa Agent for the Intervener, Advocacy Centre for Tenants Ontario (Vavilov #37748)

Ontario Securities Commission
2200 - 20 Queen Street West
Toronto, ON M5H 3S8

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

*Counsel for the Interveners, Ontario, British
Columbia and Alberta Securities Commissions*

Ecojustice Canada Society
1910 - 777 Bay Street
Toronto, ON M5G 2C8

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

*Counsel for the Intervener, Ecojustice Canada
Society*

Workplace Safety and Insurance Appeals Tribunal
505 University Avenue, 7th Floor
Toronto, ON M5G 2P2

**Michelle Alton, David Corbett
Kayla Seyler & Ana Rodriguez**
Telephone: (416) 573-1704
FAX: (416) 326-5164
E-mail: Michelle.Alton@wst.gov.on.ca

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

Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, B.C. V6C 0A3

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

*Counsel for the Intervener, B.C. International
Commercial Arbitration Centre Foundation*

Conway Baxter Wilson LLP
400-411 Roosevelt Avenue
Ottawa, ON K2A 3X9

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

*Ottawa Agent for the Interveners, Ontario, British
Columbia and Alberta Securities Commissions*

Supreme Law Group
900 - 275 Slater Street
Ottawa, ON K1P 5H9

Moira Dillon
Telephone: (613) 691-1224
FAX: (613) 691-1338
E-mail: mdillon@supremelawgroup.ca

*Ottawa Agent for Counsel for the Intervener,
Ecojustice Canada Society*

Supreme Advocacy LLP
100- 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major
Telephone: (613) 695-8855 Ext: 102
FAX: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

*Ottawa Agent for the Intervener, Workplace Safety
and Insurance Appeals Tribunal (ON); Workers'
Compensation Appeals Tribunal (Northwest
Territories and Nunavut) and Workers'
Compensation Appeals Tribunal (Nova Scotia); and,
Appeals Commission for Alberta Workers'
Compensation and Workers' Compensation Appeals
Tribunal (New Brunswick)*

Fasken Martineau DuMoulin LLP
55 rue Metcalfe, Bureau 1300
Ottawa, ON K1P 6L5

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

*Ottawa Agent for Counsel for the Intervener, B.C.
International Commercial Arbitration Centre
Foundation*

Lax O'Sullivan Lisus Gottlieb LLP
2750 - 145 King St. West
Toronto, ON M5H 1J8

**Terrence J. O'Sullivan, Paul Mitchell
And James Renihan**
Telephone: (416) 644-5359
FAX: (416) 598-3730
E-mail: tosullivan@counsel-toronto.com

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

Susan L. Stewart
7 L'Estrange Place
Toronto, ON M6S 4S6

Telephone: (416) 531-3736
FAX: (416) 604-2897
E-mail: [sstewart@idirect.ca](mailto:ssewart@idirect.ca)

*Counsel for the Intervener, National Academy of
Arbitrators*

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street, 35th floor
Toronto, ON M5V 3H1
Telephone: (416) 646-4300

**Linda R. Rothstein, Michael Fenrick
Angela E. Rae & Anne Marie Heenan**
Telephone : (416)646-4300
FAX: (416) 646-4301
E-mail: linda.rothstein@paliareroland.com

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

Goldblatt Partners LLP
20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8

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

*Counsel for the Intervener, Canadian Labour
Congress*

Supreme Advocacy LLP
100 - 340 Gilmour Street
Ottawa, ON K2P 0R3

Eugene Meehan, Q.C.
Telephone: (613) 695-8855 Ext: 101
FAX: (613) 695-8580
E-mail: emeehan@supremeadvocacy.ca

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

CazaSaikaley LLP
220 avenue Laurier Ouest
Ottawa, ON K1P 5Z9

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

*Ottawa Agent for Counsel for the Intervener,
National Academy of Arbitrators*

CazaSaikaley LLP
220 avenue Laurier Ouest
Ottawa, ON K1P 5Z9

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

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

Goldblatt Partners LLP
500-30 Metcalfe St.
Ottawa, ON K1P 5L4

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

*Ottawa Agent for Counsel for the Intervener,
Canadian Labour Congress*

Shores Jardine LLP

10104 - 103 Avenue, Suite 2250
Edmonton, AB T5J 0H8

William W. Shores, Q.C.

Kirk N. Lambrecht, Q.C.

Telephone: (780) 448-9275

FAX: (780) 423-0163

E-mail: bill@shoresjardine.com

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

Stockwoods LLP

77 King Street West, Suite 4130

P.O. Box 140

Toronto, ON M5K 1H1

Brendan Van Nijenhuis

Andrea Gonslaves

Telephone: (416) 593-7200

FAX: (416) 593-9345

E-mail: brendanvn@stockwoods.ca

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

McCarthy Tétrault LLP

745 Thurlow Street, Suite 2400

Vancouver, BC V6E 0C5

Adam Goldenberg, Robyn Gifford

& Asher Honickman

Telephone: (604) 643-7100

FAX: (604) 643-7900

E-mail: agoldenberg@mccarthy.ca

*Counsel for the Intervener, Advocates for the Rule of
Law (Bell #37896 & NFL #37897)*

**Cambridge Comparative Administrative Law
Forum**

Cambridge University - The Faculty of Law

The David Williams Building - 10 West Road

Cambridge, U.K. CB3 9DZ

Bruno Gélinas-Faucher

Telephone: (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*

Supreme Advocacy LLP

100- 340 Gilmour Street

Ottawa, ON K2P 0R3

Marie-France Major

Telephone: (613) 695-8855 Ext: 102

FAX: (613) 695-8580

E-mail: mfmajor@supremeadvocacy.ca

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

Power Law

130 Albert Street

Suite 1103

Ottawa, ON K1P 5G4

Maxine Vincelette

Telephone: (613) 702-5561

FAX: (613) 702-5561

E-mail: mvincelette@powerlaw.ca

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

Power Law

130 Albert Street, Suite 1103

Ottawa, ON K1P 5G4

Darius Bossé

Telephone: (613) 702-5566

FAX: (613) 702-5566

E-mail: DBosse@juristespower.ca

*Ottawa Agents for Counsel for the Intervener,
Advocates for the Rule of Law (Bell #37896 & NFL
#37897)*

Power Law

130 Albert Street

Suite 1103

Ottawa, Ontario K1P 5G4

Maxine Vincelette

Telephone: (613) 702-5561

FAX: (613) 702-5561

E-mail: mvincelette@powerlaw.ca

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

Lenczner Slaght Royce Smith Griffin LLP

Suite 2600
130 Adelaide Street West
Toronto, ON M5H 3P5

J. Thomas Curry & Sam Johansen

Telephone: (416) 865-3096
FAX: (416) 865-9010
E-mail: tcurry@litigate.com

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

Fasken Martineau DuMoulin LLP

Bureau 3700, C.P. 242
800, Place Victoria
Montréal, QC H4Z 1E9

Christian Leblanc & Michael Shortt

Telephone: (514) 397-7545
FAX: (514) 397-7600
E-mail: cleblanc@fasken.com

Counsel for the Interveners, Blue Ant Media Inc., Canadian Broadcasting Corporation, DHX Media Ltd., Groupe V Média inc.; Broadcast Group, Aboriginal Peoples Television Network, Allarco Entertainment Inc., BBC Kids, Channel Zero, Ethnic Channels Group Ltd.; and, Hollywood Suite, OUTtv Network Inc., Stingray Digital Group Inc., TV5 Québec Canada, Zoomermedia Ltd. and Pelmorex Weather Networks (Television) Inc. (Bell #37896)

CazaSaikaley LLP

220 avenue Laurier Ouest
Ottawa, ON K1P 5Z9

Alyssa Tomkins

Telephone: (613) 565-2292
FAX: (613) 565-2087
E-mail: atomkins@plaideurs.ca

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

Power Law

130 Albert Street
Suite 1103
Ottawa, ON K1P 5G4

Maxine Vincelette

Telephone: (613) 702-5561
FAX: (613) 702-5561
E-mail: mvincelette@powerlaw.ca

Ottawa Agent for the Intervener, Association of Canadian Advertisers and the Alliance of Canadian Cinema, Television and Radio Artists

Fasken Martineau DuMoulin LLP

55 rue Metcalfe
Bureau 1300
Ottawa, ON K1P 6L5

Sophie Arseneault

Telephone: (613) 236-3882
FAX: (613) 230-6423
E-mail: sarseneault@fasken.com

Ottawa Agent for Counsel for the Interveners, Blue Ant Media Inc., Canadian Broadcasting Corporation, DHX Media Ltd., Groupe V Média inc.; Broadcast Group, Aboriginal Peoples Television Network, Allarco Entertainment Inc., BBC Kids, Channel Zero, Ethnic Channels Group Ltd.; and, Hollywood Suite, OUTtv Network Inc., Stingray Digital Group Inc., TV5 Québec Canada, Zoomermedia Ltd. and Pelmorex Weather Networks (Television) Inc. (Bell #37896)

Université d'Ottawa

Common Law Section
57 Louis Pasteur St.
Ottawa, ON K1N 6N5

David Fewer

Telephone: (613) 562-5800 Ext: 2558
FAX: (613) 562-5417
E-mail: david.fewer@uottawa.ca

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

Stewart McKelvey
65 Grafton Street
P.O. Box 2140, Station Central
Charlottetown, PEI C1A 8B9

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

Counsel for the Intervener, Canadian Bar Association

Clarke Child & Family Law
36 Toronto Street, Suite 950
Toronto, ON M5C 2C5

Sarah Clarke
Telephone: (416)260-3030
Fax: (647-689-3286
E-mail: sarah@childandfamilylaw.ca

-and-

Stikeman Elliott LLP
1600 - 50 O'Connor Street
Ottawa, ON K1P 6L2

Nicholas Peter McHaffie
Telephone: (613) 566-0546
FAX: (613) 230-8877
E-mail: nmchaffie@stikeman.com

-and-

Conway Baxter Wilson LLP
400-411 Roosevelt Avenue
Ottawa, ON K2A 3X9

David P. Taylor
Telephone: (613) 780-2008
FAX: (613) 688-0271
E-mail: bgrant@conway.pro

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

The Law Office of Jamie Liew
39 Fern Avenue
Ottawa, ON K1Y 3S2

Jamie Liew, Gerald Heckman & Jean Lash
Telephone: (613) 808-5592
FAX: (888) 843-3413
E-mail: jamie.liew@uottawa.ca

Gowling WLG (Canada) LLP
160 Elgin Street
Suite 2600
Ottawa, ON K1P 1C3

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

Ottawa Agent for the Intervener, Canadian Bar Association

Stikeman Elliott LLP
1600 - 50 O'Connor Street
Ottawa, ON K1P 6L2

Nicholas Peter McHaffie
Telephone: (613) 566-0546
FAX: (613) 230-8877
E-mail: nmchaffie@stikeman.com

Ottawa Agent for the Interveners, First Nations Child and Family Caring Society of Canada

Community Legal Services of Ottawa
1355 Bank Street Suite 406
Ottawa, ON K1H 8K7

Jaime Lefebvre
Telephone: (613) 733-0140
FAX: (613)733-0401
E-mail: lefebvj@lao.on.ca

Counsel for the Intervener, Canadian Council for Refugees (Vavilov #37748)

Parkdale Community Legal Services
1266 Queen Street West
Toronto, ON M6K 1L3

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

Counsel for the Intervener, Parkdale Community Legal Services (Vavilov #37748)

Legal Aid Ontario
Refugee Law Office
20 Dundas Street West
Toronto, ON M5G 2H1
Anthony Navaneelan
Audrey Macklin
Telephone: (416) 977-8111 Ext: 7181
FAX: (416) 977-5567
E-mail: navanea@lao.on.ca

Counsel for the Intervener, Canadian Association of Refugee Lawyers (Vavilov #37748)

Community & Legal Aid Services Programme
York University, Osgoode Hall Law School Ignat
Kaneff Build, 4700 Keele Street
Toronto, ON M3J 1P3

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

Counsel for the Intervener, Community & Legal Aid Services Programme (Vavilov #37748)

Hadkel Shams s.e.n.c.r.l.
305, rue Bellechasse est, bureau 400A
Montréal, QC H2S 1W9

Peter Shams, Claudia Andrea Molina
Guillaume Cliche-Rivard & David Berger
Telephone: (514) 439-0800
FAX: (514) 439-0798
E-mail: peter@hadkelshams.ca

Counsel for the Intervener, Association québécoise des avocats et avocates en droit de l'immigration (Vavilov #37748)

Ottawa Agent for Counsel for the Intervener, Canadian Council for Refugees (Vavilov #37748)

Community Legal Services of Ottawa-South Office
406 - 1355 Bank Street
Ottawa, ON K1H 8K7

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

Ottawa Agent for Counsel for the Intervener, Parkdale Community Legal Services (Vavilov #37748)

Community Legal Services Ottawa
1301 Richmond Road
Ottawa, ON K2B 7Y4

Nicholas Hersh
Telephone: (613) 596-1641
FAX: (613) 596-3364
E-mail: hershni@lao.on.ca

Ottawa Agent for Counsel for the Intervener, Canadian Association of Refugee Lawyers (Vavilov #37748)

Supreme Advocacy LLP
100- 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major
Telephone: (613) 695-8855 Ext: 102
FAX: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

Ottawa Agent for Counsel for the Intervener, Community & Legal Aid Services Programme (Vavilov #37748)

Yavar Hameed
43 Florence Street
Ottawa, ON K2P 0W6

Telephone (613)232-2688
FAX: (613)232-2680
E-mail: yhameed@hameedlaw.ca

Ottawa Agent for Counsel for the Intervener, Association québécoise des avocats et avocates en droit de l'immigration (Vavilov #37748)

TABLE OF CONTENTS

	PAGE
PART I – OVERVIEW AND STATEMENT OF FACTS	1
PART II – STATEMENT OF QUESTIONS IN ISSUE.....	2
PART III – STATEMENT OF ARGUMENT.....	2
PART IV – SUBMISSION ON COSTS	10
PART V – ORDER REQUESTED.....	10
PART VI – TABLE OF AUTHORITIES, LEGISLATION & STATUTES.....	11

MEMORANDUM OF ARGUMENT

PART I – OVERVIEW AND STATEMENT OF FACTS

1. There are certain areas of the law where efficiency and clarity must yield to nuance and context. Standard of review is **not** one of those areas.
2. Throughout the past decade, this Court has attempted to streamline the standard of review analysis, in order to make it more accessible and efficient. Despite these efforts, confusion and inconsistency persist. It is time to simplify the analysis once and for all.
3. The Attorney General of Saskatchewan requests that the standard of review analysis be refined as follows:
 - a. Legislatures may explicitly prescribe the standard of review. In the absence of an express pronouncement, all interpretations of the decision-maker’s home statute should benefit from the established presumption that the standard of review is reasonableness.
 - b. The presumption should be rebutted only for two exceptional categories – namely, where the tribunal must determine either the constitutionality of a statutory provision or regulation, or the jurisdictional lines between competing tribunals.
 - c. If neither of these narrow categories applies, there should be no other avenue for rebutting the presumption of deference.
 - d. More specifically, there should be no opportunity for a court to undertake a contextual analysis of the legislation. The contextual approach complicates judicial analysis, delays consideration of the merits of the dispute, and “can generate uncertainty and endless litigation concerning the standard of review”.¹

¹ *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 at para 35, [2016] 2 SCR 293 [*Edmonton East*].

4. These proposed revisions would simplify the standard of review analysis, promote access to justice, and improve efficiency and predictability – thereby benefitting both litigants and courts.

PART II – STATEMENT OF QUESTIONS IN ISSUE

5. What is the appropriate framework for the standard of review analysis?

PART III – STATEMENT OF ARGUMENT

Complexity impedes access to justice.

6. Nuance certainly has its place in the law, but the corollary of nuance is complexity.
7. Statutory grants of authority to administrative decision-makers are intended to provide parties with “a speedier and less expensive form of decision-making”.²
8. This legislative intention is frustrated where the merits of the dispute are overshadowed by a cumbersome and unpredictable standard of review analysis. The current complexity of the standard of review framework has significant implications for access to justice.
9. These issues are especially acute for residents of Saskatchewan. The province’s population is dispersed among cities, towns, rural municipalities, First Nations reserves, and northern communities. The entire province is served by only ten superior court judicial centres that have court registries. In order to participate in court proceedings at these locations, many Saskatchewan residents (or their counsel) must travel significant distances, at significant cost.
10. Access to legal counsel can be a particular challenge in rural or remote locations. On average, the ratio of lawyers to residents in Saskatchewan is 1:818. In rural areas, however, the ratio is one lawyer for every 5,559 residents.³ Some communities have no lawyers,

² *Ibid.* at para 22.

³ Final Report of the Legal Services Task Team For consideration by the Minister of Justice and the Benchers of Law Society of Saskatchewan, August 2018, online: <http://publications.gov.sk.ca/documents/9/107840->

with the result that residents must travel to the nearest large center to access legal services. Furthermore, conflicts of interest may prevent the nearest lawyer from providing services to certain residents.⁴

11. An inability to obtain legal advice may not be such a problem in informal proceedings before administrative tribunals. However, access to justice barriers arise at the stage of deciding whether to challenge a tribunal's decision in court.
12. The current confusion regarding the standard of review makes it difficult for litigants to make informed decisions about whether to bring such challenges. As a result, unsuccessful parties with significant resources may initiate review proceedings that would have little chance of success based on an appropriately deferential standard of review.⁵
13. Conversely, parties with fewer resources may be ill-equipped to fund a challenge (or response) that requires extensive legal analysis of the standard of review.⁶ Higher litigation costs also reduce the probability of challenges from those whose individual interests in the proceedings are relatively small compared to the costs of litigating a complex standard of review.⁷
14. A simplified, predictable standard of review framework is likely to decrease the number of unmeritorious appeals and judicial reviews, thereby reducing costs to litigants, and promoting the finality of administrative decisions.
15. Where litigants choose to proceed with court challenges, a more streamlined standard of review analysis will limit the time and cost of legal argument. This lessens the strain on

[FINAL%20REPORT%20OF%20THE%20LEGAL%20SERVICES%20TASK%20TEAM.pdf](#)>
at p. 8.

⁴ *Ibid.* at p. 43.

⁵ Andrew Green, "Can There Be Too Much Context in Administrative Law: Setting the Standard of Review in Canadian Administrative Law" (2014) 47 *UBCL Rev* 443 at p. 467.

⁶ *Ibid.* at p. 476, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 133, [2008] 1 SCR 190 [*Dunsmuir*] per Binnie J, concurring. See also Green at p. 486.

⁷ Green, *ibid.* at pp. 465-466.

scarce judicial resources, while also improving access to justice for the affected individuals.

The contextual approach should be rejected.

16. In *Groia v Law Society of Upper Canada*,⁸ a majority of this Court held that “[e]ven where the question under review does not fit neatly into one of the four *Dunsmuir* correctness categories, ‘a contextual analysis’ that reveals a legislative intent not to defer to a tribunal’s decision may nonetheless rebut the presumption of reasonableness”.⁹
17. Subsequently, in *Canadian Human Rights Commission v Canada*,¹⁰ this Court clarified that the contextual approach is exceptional and should be exercised sparingly. Nonetheless, the acknowledgment that the approach is available leaves open the door for litigants to argue that any given case is exceptional.
18. Saskatchewan respectfully requests that this Court abolish the contextual approach entirely.
19. Contextual analysis leaves more room for error and uncertainty, increases the risk of results-oriented reasoning, and focuses too much attention on the standard of review, rather than the merits of the dispute.¹¹ Furthermore, the more complex the test for determining the standard of review, the greater the potential for “mistakes or manipulation” in the application of the test by lower court judges.¹²
20. The Saskatchewan Court of Appeal decision in *Ready v Saskatoon Regional Health Authority*¹³ is illustrative. In that case, the substantive issue was whether the Board of the Saskatoon Regional Health Authority could terminate a doctor from his employment, and thereby effectively revoke his practitioner privileges, without following a specific

⁸ 2018 SCC 27 [*Groia*].

⁹ *Ibid.* at para 53.

¹⁰ 2018 SCC 31 [*CHRC*] at paras 28 and 45-47.

¹¹ Green, *supra*, note 5 at 450-451.

¹² *Ibid.* at p. 475; see also pp. 487 and 490.

¹³ 2017 SKCA 20 [*Ready*].

regulatory framework. The three-member panel of the Court of Appeal split three ways, primarily due to differing applications of the standard of review.

21. Ottenbreit J.A. found that the appropriate standard of review was correctness. He relied on the correctness category for “true questions of jurisdiction”, but alternatively, on a contextual analysis of the legislative framework. His entire standard of review analysis spanned **106 paragraphs**.¹⁴
22. Jackson J.A., dissenting, would have applied the presumption of deference. She found that none of the correctness categories applied, and there was no need to employ the contextual approach. Her conclusion was based on **25 paragraphs** of analysis.¹⁵
23. Ryan-Froslic J.A. wrote a separate judgment, in which she agreed with Jackson J.A. that the standard of review was reasonableness, but concurred with Ottenbreit J.A.’s finding (in the alternative) that the tribunal’s decision was unreasonable.¹⁶
24. Even without quarreling with the result of this appeal, the complexity of the judicial reasoning should be troubling. In *Dunsmuir* and the cases that followed, this Court undertook to shift the focus away from the standard of review “labyrinth” and simplify the path to reviewing the merits.¹⁷ A decade later, the standard of review analysis can still generate up to **131 paragraphs** of appellate analysis in a single case.
25. *Ready* is not the only illustration of this problem. By its very nature, the contextual approach depends on the particular legislative scheme at issue. As a result, contextual analysis may entail a detailed review of Hansard, as well tracing a legislative history that may span several decades. For example, in *Gary L. Redhead Holdings Ltd. v Swift Current*

¹⁴ *Ibid.* at paras 63-169.

¹⁵ *Ibid.* at paras 251-276.

¹⁶ *Ibid.* at paras 348-350.

¹⁷ *Wilson v Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 SCR 770 at paras 19-20.

(*Rural Municipality*),¹⁸ this type of review translated to a standard of review analysis spanning **66 paragraphs**.

26. Even in cases where the presumption of deference is ultimately applied, the need to first consider the contextual approach greatly complicates the standard of review analysis.¹⁹
27. The current confusion is untenable – from the perspectives of both judicial resource allocation and access to justice. Rejecting the contextual approach would be a logical step toward greater efficiency, predictability and fairness.

The other aspects of the standard of review framework should also be simplified.

28. Saskatchewan’s remaining arguments are secondary to the central issues discussed above. They follow in summary form, in the interest of providing a complete picture of Saskatchewan’s position on the standard of review framework:

¹⁸ 2017 SKCA 47 at paras 22-88 [*Redhead*]. Notably, the Court distinguished *Edmonton East*, despite recognizing that “little differentiates the right of appeal granted by s. 33.1 of *The Municipal Board Act* from the right of appeal considered in *Edmonton East*”: *Redhead* at para 28; see also paras 75-76. *Redhead* has since been relied upon to support a correctness standard of review in a number of subsequent cases involving the same legislative scheme: *South Hill Mall Property Holdings Inc. v Prince Albert (City)*, 2017 SKCA 52 at para 15; *Corman Park (Rural Municipality) v 618421 Saskatchewan Ltd.*, 2018 SKCA 29; *City Centre Equities Inc. v Regina (City)*, 2018 SKCA 43 at para 27; *Prince Albert (City) v Prince Albert Co-op Association Ltd.*, 2017 SKCA 53; *Aquila Holdings Ltd. v Edenwold (Rural Municipality)*, 2017 SKCA 66 at para 19; at para 9. In the first three of these five cases, the appeal was allowed and the decision of the Assessment Appeals Committee overturned.

¹⁹ See e.g. *British Columbia (Minister of Transportation and Infrastructure) v Registrar, Victoria Land Title Office*, 2018 BCCA 288 at paras 25-51.

- a. Pre-*Dunsmuir* determinations of standard of review should no longer be relied upon. The standard of review analysis prior to *Dunsmuir* was substantively different, with questions of law typically being subject to correctness review.²⁰
- b. Legislatures may explicitly prescribe the standard of review, and such legislative pronouncements must be respected.²¹
- c. Statutory rights of appeal should not affect the deference owed to the tribunal.²²
- d. Where a tribunal considers the constitutional validity of a statutory provision, the appropriate standard of review is correctness. However, where the tribunal makes

²⁰ See generally *Redhead*, *supra* note 18 at para 34.

²¹ Saskatchewan endorses the submissions of the Minister of Citizenship and Immigration in Supreme Court of Canada Court File No. 37748, Appellant's Factum at para 47 [the *Vavilov* Appellant's Factum].

²² See generally the submissions of the Attorney General of Canada in Supreme Court of Canada Court File No. 37896 and 37897 at paras 48-55 [the *Bell* Respondent's Factum]. Statutory appeals were one factor relied upon to establish a correctness standard in *Ready*; *Redhead*; and *Montgrand v Saskatchewan Government Insurance*, 2017 SKCA 2 [*Montgrand*]; see also *Workplace Health Safety and Compensation Commission v St-Onge*, 2018 NBCA 53 at para 13. However, Saskatchewan submits that legislators may provide a right of appeal for any number of reasons. For example, the legislature may wish to limit the scope of the Court's review to questions of law (see *e.g. The Water Appeal Board Act*, SS 1983-84, c W-4.01, s. 26(1)); or specify the procedural powers of the court on appeal (see *e.g. The Arbitration Act, 1992*, SS 1992, c A-24.1, s. 9; see also ss. 7-8); or eliminate a further right of appeal beyond the superior court level (see *e.g. Saskatchewan Medical Care Insurance Act*, RSS 1978, c S-29, s. 49.21(4)). These are not signals that the tribunal should be afforded less deference – indeed, the legislative intention may be the exact opposite.

decisions applying constitutional principles, such as balancing *Charter* rights, the standard of review should be reasonableness.²³

- e. The correctness categories for “true questions of jurisdiction”²⁴ and “questions of central importance to the legal system as a whole” should be abolished.²⁵ However, a correctness category should be maintained for issues regarding the jurisdictional lines between competing tribunals.²⁶

²³ Saskatchewan endorses the submissions of the Minister of Citizenship and Immigration: *Vavilov* Respondent’s Factum at paras 64-65. For essentially the same reasons, Saskatchewan submits that deference should also be paid to a tribunal’s application of issues regarding Aboriginal rights. This latter position may require a clarification of the law as set out in *Paul v British Columbia*, 2003 SCC 55 at para 31, [2003] 2 SCR 585; *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at paras 61-62, [2004] 3 SCR 511; and *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54 at paras 76-77, [2017] 2 SCR 386.

²⁴ See generally the submissions of the Attorney General of Canada in the *Bell* Respondent’s Factum at paras 37-39.

²⁵ This category – like that of true questions of jurisdiction – is a “slippery concept” that is vulnerable to both mistakes and manipulation: see *CHRC*, *supra*, note 10 at para 38; Green, *supra*, note 5 at para 483. Since *Dunsmuir*, this Court has rejected a liberal interpretation of the “central importance” category, and has applied it only three times: *CHRC* at para 42; but see *Chagnon v Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39 at para 17.

²⁶ Generally speaking, a legislative intention for deference can be presumed from the fact of the legislature having granted authority to the tribunal: see the *Vavilov* Appellant’s Factum at para 49. However, where the issue is **which body is the object of the delegation**, this rationale may not apply. This latter correctness category should be very much exceptional, and should apply only to questions that require an explicit, preliminary determination as to **which tribunal has the authority to make the inquiry**. An example would be a situation where a labour arbitrator must explicitly determine whether he has the authority to inquire into an employee’s entitlement to workers’ compensation benefits.

- f. A statutory provision establishing concurrent jurisdiction between a tribunal and a court is not a signal for less deference.²⁷ Applying a correctness standard of review in such situations gives unsuccessful parties a greater incentive to challenge the tribunal's decision in court. This undermines the utility of the tribunal route, which is intended to give parties a more expeditious and informal alternative to court proceedings.
- g. The use of “margins of appreciation” should be rejected. There should be no variation in the levels of deference afforded to administrative decision-makers.²⁸ Finding a narrow range of reasonable outcomes should not be permitted to become the new equivalent of correctness review.²⁹

²⁷ Concurrent jurisdiction was found to indicate a correctness standard of review in this Court's decision in *Rogers Communications Inc. v Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35, [2012] 2 S.C.R. 283; see also *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 at paras 45-52, [2015] 2 SCR 3 [*Saguenay*] and *Montgrand* at paras 23-31. In *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at paras 23-24, [2013] 3 S.C.R. 895, the presumption of deference was not rebutted where there was no concurrent jurisdiction on the same legal issue. These cases raise the possibility that different standards of review may apply to the interpretation of different provisions within the same legislation, depending on whether there is concurrent jurisdiction over the same specific legal issue. With respect, this is likely to cause unnecessary confusion.

²⁸ Saskatchewan endorses the submissions of the Minister of Citizenship and Immigration in the *Vavilov* Appellant's Factum at paras 53-55.

²⁹ A common proposal for simplifying the standard of review analysis is to move to a single standard of review of reasonableness. However, such an approach may unwittingly encourage disguised correctness review. The preliminary exercise of classifying the standard as correctness or reasonableness requires the Court to pause and ask whether the nature of the question at issue commands a single answer that must be determined by the court. Removing this pause may make it all too easy to unconsciously drift into applying a lesser “margin of appreciation” at the stage of determining the range of permissible outcomes: Green, *supra*, note 5 at pp. 493-494. While some issues may have only one reasonable outcome, such situations should be very much exceptional.

- h. Questions of procedural fairness do not require a standard of review analysis in the ordinary sense. Rather, the Court should simply decide whether the procedure used by the tribunal was fair, taking into account the statutory context.³⁰

PART IV – SUBMISSION ON COSTS

29. The Intervener makes no submissions as to costs, and requests that no costs be awarded against it.

PART V – ORDER SOUGHT

30. The Intervener Attorney General of Saskatchewan requests permission to present oral argument at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Regina, Province of Saskatchewan this ^{24th} day of October, 2018.



**Attorney General of Saskatchewan
The Deputy Minister of Justice &
Deputy Attorney General
900 -1874 Scarth Street
Regina, SK S4P 4B3**

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

**Counsel for the Intervener,
Attorney General of Saskatchewan**

³⁰ Saskatchewan endorses the submissions of the Minister of Citizenship and Immigration in the *Vavilov* Appellant's Factum at para 66.

PART VI – TABLE OF AUTHORITIES

Case Law:	Paragraphs (in the memorandum)
<u><i>Aquila Holdings Ltd. v Edenwold (Rural Municipality)</i>, 2017 SKCA 66</u>	25
<u><i>British Columbia (Minister of Transportation and Infrastructure) v Registrar, Victoria Land Title Office</i>, 2018 BCCA 288</u>	26
<u><i>Canadian Human Rights Commission v Attorney General of Canada</i>, 2018 SCC 31</u>	17, 28
<u><i>Chagnon v Syndicat de la fonction publique et parapublique du Québec</i>, 2018 SCC 39</u>	28
<u><i>City Centre Equities Inc. v Regina (City)</i>, 2018 SKCA 43</u>	25
<u><i>Corman Park (Rural Municipality) v 618421 Saskatchewan Ltd.</i>, 2018 SKCA 29</u>	25
<u><i>Dunsmuir v New Brunswick</i>, 2008 SCC 9, [2008] 1 SCR 190</u>	13, 28
<u><i>Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd.</i>, 2016 SCC 47, [2016] 2 SCR 293</u>	3, 7
<u><i>Gary L. Redhead Holdings Ltd. v Swift Current (Rural Municipality)</i>, 2017 SKCA 47</u>	25, 28
<u><i>Groia v Law Society of Upper Canada</i>, 2018 SCC 27</u>	16
<u><i>Haida Nation v. British Columbia (Minister of Forests)</i>, 2004 SCC 73, [2004] 3 SCR 511</u>	28
<u><i>Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)</i>, 2017 SCC 54, [2017] 2 SCR 386</u>	28
<u><i>McLean v British Columbia (Securities Commission)</i>, 2013 SCC 67, [2013] 3 S.C.R. 895</u>	28
<u><i>Montgrand v Saskatchewan Government Insurance</i>, 2017 SKCA 2</u>	28
<u><i>Mouvement laïque québécois v Saguenay (City)</i>, 2015 SCC 16, [2015] 2 SCR 3</u>	28

PART VI – TABLE OF AUTHORITIES

Case Law:	Paragraphs (in the memorandum)
<u><i>Paul v British Columbia</i>, 2003 SCC 55, [2003] 2 SCR 585</u>	28
<u><i>Prince Albert (City) v Prince Albert Co-op Association Ltd.</i>, 2017 SKCA 53</u>	25
<u><i>Ready v Saskatoon Regional Health Authority</i>, 2017 SKCA 20</u>	20, 21, 22, 23, 28
<u><i>Rogers Communications Inc. v Society of Composers, Authors and Music Publishers of Canada</i>, 2012 SCC 35, [2012] 2 S.C.R. 283</u>	28
<u><i>South Hill Mall Property Holdings Inc. v Prince Albert (City)</i>, 2017 SKCA 52</u>	25
<u><i>Wilson v Atomic Energy of Canada Ltd.</i>, 2016 SCC 29, [2016] 1 SCR 770</u>	24
<u><i>Workplace Health Safety and Compensation Commission v St-Onge</i>, 2018 NBCA 53</u>	28
 Secondary Sources:	
Andrew Green, “ <i>Can There Be Too Much Context in Administrative Law: Setting the Standard of Review in Canadian Administrative Law</i> ” (2014) 47 UBCL Rev 443	12, 13, 19, 28
Final Report of the Legal Services Task Team for consideration by the Minister of Justice and the Benchers of Law Society of Saskatchewan, August 2018, online: < http://publications.gov.sk.ca/documents/9/107840-FINAL%20REPORT%20OF%20THE%20LEGAL%20SERVICES%20TASK%20TEAM.pdf >	10
 Legislation, Statutes:	
<u><i>The Arbitration Act, 1992</i>, SS 1992, c A-24.1</u>	
<u><i>Saskatchewan Medical Care Insurance Act</i>, RSS 1978, c S-29</u>	
<u><i>The Water Appeal Board Act</i>, SS 1983-84, c W-4.01</u>	