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JUDICIAL REVIEW OF ADMINISTRATIVE ACTION IN CANADA

Brown and Evans
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This award-winning publication is an in-depth presentation of the law of judicial review of administrative action in Canada. Written by Donald J. M. Brown, Q.C. and The Honourable John M. Evans, both widely regarded as experts in the field of Administrative Law, *Judicial Review of Administrative Action in Canada* offers a substantive view of the law along with practical guidance on the issues that can arise in the judicial review process. This publication is a comprehensive research and working tool for administrative bodies, practitioners and legal scholars and is used across Canada and in academic and court libraries throughout the common law world. Designed to be a primary source of the statute and case law in the field of judicial review, the text also includes important legislation, regulations, rules, forms and practice directions for each jurisdiction.

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Judicial Review of Administrative Action in Canada was the recipient of the prestigious Mundell Medal in 1999. A highly sought after prize, the Mundell Medal is awarded for a “distinguished contribution to letters and law”.

This 3-volume looseleaf captures developments in this ever-changing subject that is relevant to so many areas of the law. In a continuing effort to ensure that the legislation and other documentation throughout the treatise are current and relevant, this release includes significant updates made to the commentary and case law.

What’s New in this Update

This release features updates to the case law and commentary in the following chapters: 8 (Statutory and Constitutional Procedural Requirements), 9 (Pre-Hearing Participatory Rights: Notice, Disclosure, Delay and Adjournments), 10 (The Hearing and Participatory Rights), 12 (Review of the Decision-Making Process), 13 (The Grant of Authority), and 14 (Review of the Exercise of Authority: Administrative Adjudication).

Highlights — Note of Developments in Administrative Law in 2025

The *Charter*

In *Binance Holdings Limited v. Ontario Securities Commission*, 2025 ONCA 751 the Court of Appeal held that a summons for production of documents was unconstitutionally overbroad and breached section 8 of the *Charter*. The Court found that the summons issued by the Securities Commission amounted to a fishing expedition, was a “speculative search for documents” with no “reasoned basis for believing that they may be relevant” to the issue at hand and therefore contrary to section 8.

Successful *Charter* challenges in regulatory proceedings are, by and large, hard to establish. There is some question as to whether the Court of Appeal’s decision marks a change in the Courts approach to these questions and whether this will have an ongoing impact on investigative practices of the Commission and other regulatory bodies.

In *Saskatchewan (Minister of Education) v. UR Pride Centre for Sexuality and Gender Diversity*, 2025 SKCA 74, the issue UR Pride Centre brought a constitutional challenge to a law requiring schools to obtain parental consent before using pronouns or names chosen by students under the age of 16. The Government pre-emptively invoked the *Charter*’s notwithstanding clause and argued that the use of section 33 of the

Charter insulated the law from judicial review. The Saskatchewan Court of Appeal disagreed and held that courts have jurisdiction to assess alleged *Charter* violations, even where the government has invoked the notwithstanding clause. According to the Court of Appeal, a declaration made pursuant to s. 33 does not mean that the Act or Provision at issue does is consistent with the *Charter of Rights and Freedoms*. Nor, significantly, does invoking section 33 nullify the jurisdiction of superior courts to issue a declaration to that effect. The Government of Saskatchewan is seeking leave to appeal that decision.

In *Drover v. Canada (Attorney General)*, 2025 ONCA 468, Mr. Drover was terminated from his position as an electoral officer because he breached the residency requirements under the *Canada Elections Act*. Mr. Drover had been appointed an electoral officer in the Carleton district but subsequently moved outside the Carleton boundaries. He challenged his termination on the grounds that the residency requirement breached his rights under section 7 of the *Charter*.

The majority concluded that a person's choice of where to live was a "quintessentially private decision" and that it fell "within the irreducible sphere of deeply personal decision-making with which the state should not interfere except in accordance with principles of fundamental justice" and that as such it was protected by section 7. Of note, the dissent noted that the majority's decision amounted to a significant expansion of section 7 insofar as it effectively resulted in the "establishment of a judicially enforced, free standing right to liberty".

Unreasonable decisions

In *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21 the Supreme Court clarified a number of several aspects of administrative law. In particular, the Court noted that the presumption of reasonableness review is not rebutted by the possibility of competing statutory interpretations and that citing precedents that are not on-point or relevant to the issue before the decision-maker is not reasonable.

Relying on *Vavilov*, the SCC disagreed with the appellant's position that correctness should apply where a possibility of multiple competing statutory interpretations would lead to an absurd result. The SCC also found that the IAD's decision was unreasonable, at least in part because it merely cited case without justifying or explaining its relevance. The SCC further noted that the IAD failed to undertake the required statutory interpretation, in particular in light of the unreason-

able reliance on distinguishable precedent.

In 667895 *B.C. Ltd. v. Delta (City)*, 2025 BCCA 279 the British Columbia Court of Appeal found the lack of written reasons to explain and justify the decision was grounds to quash the decision. The Court noted that a staff report, relied on by the City of Delta, was insufficient grounds to justify a declaration that a specific address was needed for highway use. Section 132(4) of the *Land Title Act* required the City to give reasons for the declaration. The Court of Appeal found that the staff report did not “meaningfully account” for the issues and concerns raised by the appellant.