

# NATIONAL ROUNDTABLE ON ADMINISTRATIVE LAW

## TOWARDS A UNIFIED THEORY OF ADMINISTRATIVE LAW?

# CIAJ

Canadian Institute  
for the Administration  
of Justice

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For the Judiciary • Tribunal community • Practitioners • Academics • Students

Friday, May 29, 2020 | 11 am (Eastern Time)

### Overview

Be it resolved: Canada lacks a unified theory of administrative law. The focus of much of the Canadian administrative law community—practitioners, courts, academics—is almost exclusively on the issue of standard of review. How do we address the fact that more and more “political” and “private” decisions are being subject to judicial review, and the related issues of standing to challenge government or private decision-making? How does the immunity from judicial review in certain circumstances fit within what we understand of administrative law? Is judicial review the best mechanism for addressing breaches of the *Charter* by administrative decision-makers? How do we properly deal with the tensions between the rule of law and deference to “experts” and are all decision-makers alike in this regard? How can decision-makers ensure that their decisions are both procedurally fair, and yet timely? The list goes on.

All of these questions will ask us to ponder today: What is the goal of judicial review and administrative law more generally in Canada?” and “How do we best go about obtaining that goal in a principled fashion?” Is it possible to have a unified theory or approach to judicial review that “works” for all decision-makers?

### ONLINE PROGRAM

[REGISTRATION FORM](#)

### Co-Chairs

*Mr. Michael Gottheil*  
Chief of the Commission and  
Tribunals, Alberta Human Rights  
Commission

*Mr. Athanasios Hadjis*  
Senior Legal Counsel  
Administrative Tribunals  
Support Service of Canada

*The Honourable Justice*  
*James W. O'Reilly*  
Federal Court; CIAJ President



Participation in this program is accredited in provinces where CLE requirements for lawyers are mandatory.

## START TIME ACCORDING TO DIFFERENT TIME ZONES IN CANADA

PT: 8:00 am MT: 9:00 am CT: 10:00 am ET: 11:00 am AT: 12:00 pm NT: 12:30 pm

**NOTE:** The time zone used in the program is Eastern Time

### AGENDA | FRIDAY, MAY 29, 2020

**11 – 11:15 AM LOG IN AND ONLINE PROGRAM SET UP**

**11:15 – 11:30 AM WELCOME REMARKS AND INTRODUCTION**

*Co-chairs*

- Mr. Michael Gottheil, Chief of the Commission and Tribunals, Alberta Human Rights Commission
- Mr. Athanasios Hadjis, Senior Legal Counsel, Administrative Tribunals Support Service of Canada
- The Honourable Justice W. James O'Reilly, Federal Court; President, CIAJ

**11:30 – 11:40 AM TOWARDS A UNIFIED THEORY OF ADMINISTRATIVE LAW**

The focus of much of the administrative law community – practitioners, courts, academics – is almost exclusively on the issue of standard of review. There is no doubt that there is a need for a consistent and easily applicable legal framework for determining the standard of review applicable to administrative decisions, and that the concerns over that lack of clarity reflected in the decade's worth of jurisprudence between *Dunsmuir* and *Vavilov* were warranted. However, this almost exclusive focus on the standard of review has arguably masked a number of equally important aspects of administrative law, the principles (or lack thereof) that underlie them, and how they relate to the broader issues of access to justice and the constitutionally-mandated judicial review of government decision-making.

Each of these various aspects or subsets of administrative law have their own rationales or theories, which guide the courts and litigants in the discrete adversarial disputes where they arise. All of this asks us to ponder: What is the goal of judicial review, and administrative law more generally, in Canada, and how best do we go about reaching that goal in a principled fashion? Is it even possible to have a unified theory or approach to judicial review that “works” for all decision-makers? Or, is it enough to simply agree on a core set of underlying principles that will animate the legislature and the judiciary's approach when dealing with discrete aspects of administrative law?

*Speaker*

- Lauren J. Wihak, Lawyer, McDougall Gauley LLP Barristers + Solicitors

**11:40 AM – 12:30 PM THE VAVILOV FRAMEWORK**

In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court of Canada developed a new framework for judicial review of administrative action, focusing on two issues: selecting the standard of review and applying the reasonableness standard. Institutional design choice is central to *Vavilov*: where the legislature creates an appeal or legislates a standard of review, courts are required to respect the relevant legislative intent. Other issues raised by *Vavilov* are also relevant to this work, including the downgrading of administrative expertise and the guidance to courts and administrative decision-makers on statutory interpretation

*Speaker*

- Professor Paul Daly, Chair in Administrative Law and Governance, University of Ottawa

**12:30 – 1:15 PM      WHAT IS THE ROLE OF TRIBUNALS?**

Why do we delegate decision-making authority, and how does that impact questions of expertise and the court's role on review? How should it? Can we have a one-size fits all approach to administrative law, given the breadth of different decision-makers?

- Speaker*
- Mr. Geoff Plant, Q.C. (former Attorney General of British Columbia responsible for the introduction of the Administrative Tribunals Act in BC)

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**1:15 – 1:20 PM      FIVE-MINUTE BREAK**

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**1:20 – 2:30 PM      TIME IS ON MY SIDE—BUT SHOULD IT BE?**

Justice delayed is justice denied. We always say this, but in the administrative justice field, it is a rule that is often honoured in its breach. Is it a matter of culture? Is it a matter of resources? Is it a matter of how we structure our processes? In this session we examine the limits and possibilities of trying to achieve timely and fair dispute resolution, including the role of the courts, governments and tribunals themselves. The BC Civil Resolution Tribunal is a good example of how a number of system design elements contribute not just to speedy resolutions but more fundamentally to greater access to justice and to fair resolutions.

- Speaker*
- Ms. Shannon Salter, Chair, Civil Resolution Tribunal; Professor, Peter A. Allard School of Law, University of British Columbia

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**2:30 – 3:00 PM      THIRTY-MINUTE “LUNCH” BREAK**

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**3:00 – 4:15 PM      LONG (OR SHORT) ARM OF THE LAW**

What kinds of decisions are subject to judicial review, and who is allowed to challenge them. Should they be? What impact does the Charter have, and what impact should it have? This panel will address issues of private vs public disputes, the justiciability of Charter-impacting decisions, immunity, the standing to challenge decisions and the justiciability of political decisions.

- Speakers*
- Ms. Alyssa Tomkins, Partner, Caza Saikaly, Ottawa
  - Professor Nicolas Lambert, Faculty of Law, Université de Moncton
  - The Honourable Justice Lorne Sossin, Superior Court of Justice (Ontario)

**4:15 – 5:15 PM      TOWARDS A UNIFIED THEORY OF ADMINISTRATIVE LAW. IS IT POSSIBLE? IS IT DESIRABLE?**

What are the underlying principles that do or should influence our approach to the judicial review of administrative action and decision-making? Is there one principle that should predominate? All of today's panels asked us to ponder “What is the goal of judicial review in Canada,” and “How do we best go about obtaining that goal in a principled fashion?” Arguably Canada does not have a unified theory of administrative law that drives and animates all of the different facets that make up Canadian administrative law.

- Speakers*
- The Honourable Justice Yves-Marie Morissette, Court of Appeal of Quebec (TBC)
  - Mr. Michael Gottheil, Chief of the Commission and Tribunals, Alberta Human Rights Commission
  - Mr. Peter Engelmann, Goldblatt Partners, LLP

**5:15 – 5:20 PM      CLOSING REMARKS**

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