

What Difference Will *Vavilov* Make? Views from Workplace Law and Beyond

Zoom Workshop
October 16, 2020, 1 – 4 pm.

Agenda

The Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* is the most important ruling on judicial review of administrative tribunal decisions in a generation. It stands to affect all aspects of the practice of labour and employment law, and of many other fields as well. This panel will bring together leading administrative lawyers, both academics and practitioners, and from within and outside of the field of labour and employment law, to put this landmark decision into perspective. Speakers will consider both legal context and concrete implications, focusing on the standard of review, the role of expertise in determining the amount of deference that courts will afford administrative tribunals, and the extent to which tribunals must now provide reasons for decisions. Attendees can expect to come away with deeper insight into the implications of *Vavilov* for their field of practice or research. The workshop will be eligible for Continuing Legal Education credit.

1. Reasonableness Review Post-*Vavilov*: An Encomium for Correctness, or Deference as Usual?

Is the *Vavilov* majority's reasonableness framework an encomium for correctness and a eulogy for deference, as the concurring justices claim? Or is it deference as usual?

- Professor Emeritus David Mullan (Queen's)
- Steven Barrett (Goldblatt Partners)
- Mark Contini (Mathews Dinsdale)

2. Expertise and the Standard of Review

What does it mean to say that reasonableness review will be robust but responsive to context? Why did the Supreme Court move away from a contextual approach? Does abandoning a contextual approach including consideration of expertise in determining the standard of review change the degree of deference traditionally afforded to tribunals and arbitrators, in labour and employment law and beyond? Should it? What role will expertise and privative clauses now play? Does the removal of expertise as a reason to defer on questions of law of central importance to the legal system as a whole broaden this exception?

- Prof. Finn Makela, University of Sherbrooke Faculty of Law
- Prof. Sharry Aiken (Queen's Law)
- Lindsay Lawrence (Solicitor, Ontario Labour Relations Board)

3. Review and Reasons

Does *Vavilov* effectively require written reasons? To what extent must written reasons now respond to the various arguments made by the parties? How would this apply to interest arbitrations? To what extent are the factual findings of labour tribunals subject to judicial review on the reasonableness standard? Given the absence of transcripts of oral evidence in most labour proceedings, what impact might this have?

- Prof. Paul Daly, University of Ottawa
- Anne Marie Heenan, (Rae, Christen, Jeffries)
- Linda Rothstein (Paliare Roland)
- Jeffrey Sack (Jeffrey Sack Law)