

## BREAKING CASE LAW

*Canada (Minister of  
Citizenship and  
Immigration) v. Vavilov*

Suite 2250  
10104 – 103 Avenue  
Edmonton, Alberta  
T5J 0H8

Tel 780.448.9275  
Fax 780.423.0163  
shoresjardine.com



## This Issue

The Supreme Court of Canada  
Redefines the Nature and  
Scope of Judicial Oversight of  
Administrative Action

### *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65 (CanLII)

On December 19, 2019, in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII) <http://canlii.ca/t/j46kb>, the Supreme Court of Canada redefined the nature and scope of judicial oversight of administrative action. The *Vavilov* decision, and its companion *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66 (CanLII) <http://canlii.ca/t/j46k8>, are a continuation of the Court's work in developing an overarching or unifying theory for review of the substantive decisions of all manner of statutory and prerogative decision makers.

Where the Legislature has defined a statutory right of appeal from an administrative decision, the standard of review applicable will now be that defined in *Housen v. Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 SCR 235, <http://canlii.ca/t/511t>. Here, the appellate court uses two standards of review. Correctness is the standard of review which applies to questions of law. Palpable and overriding error is the standard of review which applies to findings of fact, findings of mixed fact and law, and inferences drawn from the facts.

The standard of review applicable whenever a court reviews administrative decisions in cases of judicial review (rather than statutory appeal) will be presumed to be reasonableness for all issues unless: (1) the Legislature explicitly prescribes the applicable standard of review to be applied; or (2) the presumption of reasonableness review is rebutted because the rule of law requires that the standard of correctness be applied. The rule of law requires that a correctness standard of review apply to certain categories of issues: constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies. Courts may, in time, define additional categories.

Many details remain to be worked out as the Court's redefinition of standard of review in administrative law is applied in future cases of statutory appeal and judicial review. Administrative decision makers, and those who are affected by decisions of administrative decision makers, will want to seek legal advice on how the Court's decisions in *Vavilov* and *Bell* may affect them.

Shores Jardine LLP has made administrative law its core focus, and represented the National Association of Pharmacy Regulatory Authorities / Association nationale des organismes de réglementation de la pharmacie ("NAPRA") in the *Vavilov* and *Bell* cases.