

REASONABLENESS REVIEW AND THE INTERDEPENDENCE OF PROCESS AND SUBSTANCE AFTER *VAVILOV*

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This article examines the shared conceptual foundations and practical features of the law of substantive judicial review set out in Canada (Minister of Citizenship and Immigration) v. Vavilov, and the law of procedural review established in Baker v. Canada (Minister of Citizenship and Immigration). The article begins by exploring conflicting notions of legality: one based in legislative authority that prioritizes correctness and tends to separate process from substance, and the other based in a culture of justification that recognizes the interdependency between process and substance. It concludes that the latter — the “reason oriented” approach — is the theoretical foundation underpinning both the Vavilov and Baker frameworks. Accordingly, it finds that these two frameworks are highly similar in terms of the contextual factors they prescribe, and that they both rely heavily on the relationship between the procedure used to reach a decision and its substantive outcome. The article concludes by suggesting that reasonableness is already the standard of review both applicable and applied to procedural matters.

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INTRODUCTION

Two general frameworks are used to conduct judicial review of administrative action nowadays. On the one hand, when the merits of an administrative decision are challenged, courts follow the approach established by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v. Vavilov*.¹ Apart from some exceptions,² the standard of review applicable to substantive questions is presumptively reasonableness. Reasonableness

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¹ 2019 SCC 65 [*Vavilov*].

² That is where the legislator establishes a different standard of review and where the question belongs to certain established categories: constitutional questions, general questions of law of central importance to the legal system as a whole, and questions regarding the jurisdictional boundaries between two or more administrative bodies (see *ibid* at para 17).



review entails judicial deference with regard to the distinct role of the administrative decision-maker. The reviewing court must set aside its own perspective and examine an administrative decision through a different set of lenses, particularly from the administrative authority's point of view, as set out in the reasons given for the decision. In the Supreme Court's words, "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker."³ Therefore, under the reasonableness standard, the analysis is highly context bound.⁴

On the other hand, when they scrutinize an administrative decision on procedural grounds, courts use the method set out by the Supreme Court in *Baker v. Canada (Minister of Citizenship and Immigration)*.⁵ According to *Baker*, the content of administrative procedural duties "depends on an appreciation of the context of the particular statute and the rights affected."⁶ In a particular case, it is to be determined by using several factors, of which five are particularly relevant: the nature of the decision; the place the decision occupies within the statutory scheme; the impact of the decision on the individual concerned; the legitimate expectations of the person affected with regard to the administrative process in the circumstances; and the procedural choices made by the administrative decision-maker.⁷

Originally, courts did not apply any specific standard when reviewing administrative decisions on procedural grounds; occasionally, they declared that no such standard was applicable.⁸ This is not surprising, as the doctrine of the standard of review first emerged in *C.U.P.E. v. New Brunswick Liquor Corporation*,⁹ a 1979 landmark decision concerned with the substantive review of administrative action. According to the earliest formulation of the doctrine, questions within the jurisdiction of an administrative decision-maker are reviewed under the deferent standard of "patent unreasonableness," while jurisdictional questions are subject to the more rigorous standard of "correctness."¹⁰

However, in the wake of several statements made by Justice Binnie during the 2000s, either in *obiter dicta* or in dissenting and minority reasons,¹¹ the Supreme Court affirmed in 2014, in *Mission Institution v. Khela* that "the standard for determining whether the decision maker complied with the duty of procedural fairness will continue to be 'correctness.'"¹² This conclusion seems to follow from the treatment, at least from the middle of the twentieth century, of natural justice questions as jurisdictional, and as such, not subject to judicial

³ *Ibid* at para 85.

⁴ *Ibid* at para 90.

⁵ 1999 CanLII 699 (SCC) [*Baker*].

⁶ *Ibid* at para 22.

⁷ *Ibid* at paras 21–28.

⁸ See e.g. *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at para 74.

⁹ 1979 CanLII 23 (SCC) [*CUPE*].

¹⁰ *Ibid* at 237; Monica Popescu, "L'arrêt *Vavilov* : à la recherche de l'équilibre perdu entre la primauté du droit et la suprématie législative" (2021) 62:2 C de D 567 at 573–74.

¹¹ Derek McKee, "The Standard of Review for Questions of Procedural Fairness" (2016) 41:2 Queen's LJ 355 at 359–63. Justice Binnie's reasons are found in the following cases: *Ellis-Don Ltd v Ontario (Labour Relations Board)*, 2001 SCC 4 at para 65; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 129 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 82 [*Alberta Teachers' Association*].

¹² 2014 SCC 24 at para 79.

restraint.¹³ In fact, the concept of jurisdiction expands during this period due to a transformation in the rationale behind it. Designed as a means of limiting the review of administrative orders during the second half of the eighteenth and most of the nineteenth centuries, the concept of jurisdiction became a means of facilitating judicial intervention during the twentieth century.¹⁴

More recently, courts have also declared that the reasonableness standard applies to procedural issues¹⁵ or at least some procedural issues, especially when the question arises in the context of the administrative decision-maker interpreting its own statute or legislative provisions that it must interpret and apply in carrying out its activities.¹⁶ As Justice Bich and Justice Stratas explain in two leading cases on the subject, this development is brought about by then recent changes in the law of substantive review:¹⁷ the recognition of a presumption of reasonableness review applicable to discretionary decisions¹⁸ and to decisions interpreting or applying the decision-maker's home statute or statutes closely connected to its functions.¹⁹ Hence, since they are often discretionary,²⁰ or at least when they involve the construction or application of the administrative agent's own statute,²¹ procedural questions should be subject to the same standard of review.

While courts still use two different methods when conducting judicial review on substantive and procedural grounds, and even sometimes use different standards to review procedural fairness issues, the two frameworks are not so different upon closer inspection. Several authors have already revealed the existence of important similarities between them, notably Paul Daly,²² Christopher D. Bredt and Alice Melcov,²³ Mary Liston,²⁴ Derek

¹³ *In re Ontario Labour Relations Board*, 1953 CanLII 10 at 35–38 (SCC); *Board of Health for the Township of Saltfleet v Knapman*, 1956 CanLII 24 (SCC); *Alliance des Professeurs Catholiques de Montréal v Quebec Labour Relations Board*, 1953 CanLII 45 (SCC); *Roberval Express v Transport Drivers Union*, 1982 CanLII 34 (SCC); *Supermarchés Jean Labrecque Inc v Flamand*, 1987 CanLII 19 at para 56 (SCC); *Université du Québec à Trois-Rivières v Larocque*, [1993] 1 SCR 471 [*Larocque*]. See also McKee, *supra* note 11 at 364–66; Kevin Bouchard & Monica Popescu, “La substance et la procédure : l’effritement d’une distinction classique et ses conséquences pour le contrôle judiciaire” (2024) 65:4 C de D 789 at 807.

¹⁴ Philip Murray, “Process, Substance and the History of Error of Law Review” in John Bell et al, eds, *Public Law Adjudication in Common Law Systems: Process and Substance* (Oxford: Hart Publishing, 2016) 87 at 93–101.

¹⁵ *Maritime Broadcasting System Limited v Canadian Media Guild*, 2014 FCA 59 at paras 47–48 [*Maritime Broadcasting*].

¹⁶ *Syndicat des travailleuses et travailleurs de ADF - CSN c Syndicat des employés de Au Dragon forgé inc*, 2013 QCCA 793 at paras 38, 47 [ADF - CSN]. See also *Travailleurs et travailleuses unis de l'alimentation et du commerce, local 503 c Systèmes Techno-pompes inc*, 2017 QCCA 997 at para 21; *Robert c PF Résolu Canada inc*, 2022 QCCA 735 at para 6.

¹⁷ ADF - CSN, *supra* note 16 at paras 46–47; *Maritime Broadcasting*, *supra* note 15 at paras 51–52.

¹⁸ *Dunsmuir*, *supra* note 11 at para 53.

¹⁹ *Ibid* at para 54; *Alberta Teachers' Association*, *supra* note 11 at paras 34–42; *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at paras 21–22.

²⁰ *Maritime Broadcasting*, *supra* note 15 at para 51.

²¹ ADF - CSN, *supra* note 16 at para 47.

²² Paul Daly, “Canada’s Bipolar Administrative Law: Time for Fusion” (2014) 40:1 Queen’s LJ 213.

²³ Christopher D Bredt & Alice Melcov, “Procedural Fairness in Administrative Decision-Making: A Principled Approach to the Standard of Review” (2015) 28:1 Can J Admin L & Prac 1.

²⁴ Mary Liston, “Transubstantiation in Canadian Public Law: Processing Substance and Instantiating Process” in John Bell et al, eds, *Public Law Adjudication in Common Law Systems: Process and Substance* (Oxford: Hart Publishing, 2016) 213.

McKee,²⁵ and Edward Clark.²⁶ However, since *Vavilov*, the legal frameworks for conducting procedural fairness review and substantive reasonableness review have become plainly consonant, both conceptually and practically.²⁷ The aim of this article is to reveal the shared conceptual foundations and practical prescriptions of the law of substantive review set out in *Vavilov* and the law of procedural review established in *Baker*, while drawing attention to the interdependence between procedure and substance that they suppose. We also suggest that reasonableness is already the standard of review both applicable and applied to procedural matters, and that this more accurate understanding of current practice should help to clarify the “jurisprudential muddle”²⁸ surrounding the applicable standard of review for procedural questions.²⁹

In Part I of this article, we will briefly discuss the tension between two mutually exclusive conceptions of legality that run through the law of judicial review, and show why a conception that recognizes the links between procedure and substance is more attuned to the judgments in *Vavilov* and *Baker*. In the Part II, it will be argued that *Vavilov*’s prescriptions concerning the conduct of reasonableness review and *Baker*’s instructions relating to procedural fairness review are essentially different expressions of the same test.

I. LAW AS AUTHORITY AND LAW AS REASON IN *VAVILOV*

Despite its practical success in simplifying the law applicable to judicial review on the merits of an administrative decision, a careful reading of *Vavilov* reveals certain underlying conceptual tensions. The considerable compromises among the Supreme Court justices that were necessary to reach the decision have left some marks on its overall coherence and unity.

The primacy given to legislative choice, both to justify the presumption of reasonableness review and to explain the precedence of legislated standards of judicial review,³⁰ reflects a conception of legality that prioritizes the will of a law-maker.³¹ The effects of this conception are also felt in the rather thin understanding of the rule of law put forward at the stage of the determination of the standard of review to establish when correctness is required. Indeed, this

²⁵ McKee, *supra* note 11.

²⁶ Edward Clark, “Reasonably Unified: The Hidden Convergence of Standards of Review in the Wake of *Baker*” (2018) 31 Can J Admin L & Prac 1.

²⁷ Megan Pfiffer and Mary Liston also note the important continuities between the law of substantive review and of procedural review after *Vavilov* in their contributions to this volume. See Megan Pfiffer, “Process, Substance, and Judicial Review’s (A)Symmetry” (2025) 63:1 Alta L Rev; Mary Liston, “Selecting a Standard of Review: What Does This Entail Post-*Vavilov*?” (2025) 63:1 Alta L Rev. See also Lorne Sossin, “The Impact of *Vavilov*: Reasonableness and Vulnerability” (2021) 100 SCLR 265; Mariana Mota Prado & Ivy Tenge Xu, “Deference as Informed Respect: *Vavilov*’s Implications for Procedural Review of Delegated Legislation” (2025) 75:2 UTLJ 147.

²⁸ The expression comes from Justice Stratas (see *Bergeron v Canada (AG)*, 2015 FCA 160 at para 71).

²⁹ In an *obiter dictum*, Justice Stratas has already suggested that, since the Supreme Court’s decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29, *Vavilov*’s methodology is applicable to an administrator’s procedural decision (see *Innovative Medicines Canada v Canada (Attorney General)*, 2022 FCA 210 at para 33). However, our point is slightly different. Instead of arguing for the *Vavilov* framework to be extended to include judicial review of administrative decisions relating to breaches of natural justice and procedural fairness, we aim to highlight the likeness between *Baker*’s analytical framework and the reasonableness review instructions provided in *Vavilov*. Rather than seeking a change, our intention is to highlight something that is, in a sense, already present and visible to the discerning observer.

³⁰ Whether directly or indirectly through appeals mechanisms (see *Vavilov*, *supra* note 1 at paras 33ff).

³¹ *Ibid* at paras 30, 33, 39.

understanding is narrowly focused on the respect of limits and on consistency, and it is very much an auxiliary to a vision of legality that gives priority to legislative will.

At the same time, the rich developments on the importance of justification, transparency, and intelligibility in the performance of reasonableness review point towards another conception of legality, more substantial and reason oriented.³² Openness to the more rational aspirations of the rule of law is nowhere more clearly manifested than in the insistence on reasoned decision-making as “the lynchpin of institutional legitimacy”³³ and in the call for the development and strengthening of a culture of justification. We thus find in *Vavilov* seemingly contradictory elements that can pull its interpretation in different directions.

The repercussions of this tension are particularly noticeable in the contrasting and sometimes even oxymoronic expressions used to describe reasonableness review.³⁴ On one side, it is “a *robust* form of review,”³⁵ in which the omission of justification of an “essential element”³⁶ can be fatal for a decision. On the other, reasonableness review is depicted as being “sensitive and respectful,”³⁷ and only “sufficiently serious shortcomings”³⁸ — those that are “more than merely superficial or peripheral”³⁹ and not a “minor misstep”⁴⁰ — can lead to the overturning of a decision. It is also said that reasons must not be subjected to “a standard of perfection”⁴¹ and that reasonableness review is not “a line-by-line treasure hunt for error.”⁴²

The underlying conceptual tension in *Vavilov* echoes that between the constitutional principles of parliamentary sovereignty and of the rule of law, a tension which permeates English legal history. It reflects a fundamental and probably insoluble jurisprudential dilemma that can be described as follows: is law the product of will and authority, the imposition by government of a created order, or is it the product of shared practice and common reason, something that is discovered through rational discussion and inquiry?⁴³ This dilemma is visible in the common law tradition at least since the polemic led by Thomas Hobbes in the name of the sovereign’s will against the artificial reason of the common law defended by the likes of Edward Coke⁴⁴ and it leads to a distinction between two general conceptions of legality: one centered on authority and correctness, which tends to separate

³² *Ibid* at paras 73ff.

³³ *Ibid* at para 74.

³⁴ See Popescu, *supra* note 10 at 596–97.

³⁵ *Vavilov*, *supra* note 1 at paras 12–13 [emphasis added].

³⁶ *Ibid* at para 98.

³⁷ *Ibid* at para 12.

³⁸ *Ibid* at para 100.

³⁹ *Ibid*.

⁴⁰ *Ibid*.

⁴¹ *Ibid* at para 91.

⁴² *Ibid* at para 102, citing *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para 54, citing *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14 [Newfoundland Nurses].

⁴³ See Lon L Fuller, “Reason and Fiat in Case Law” (1946) 59 Harv L Rev 376 at 376–81.

⁴⁴ Thomas Hobbes, *A Dialogue Between a Philosopher and a Student of the Common Laws of England*, ed by Joseph Cropsey (Chicago: University of Chicago Press, 1971) [Hobbes, *A Dialogue*]; Edward Coke, *The Selected Writings and Speeches of Sir Edward Coke*, ed by Steve Sheppard (Indianapolis: Liberty Fund, 2003).

process and substance in law (Part I.A), and another, more contextual and reason oriented, which recognizes the links that unite procedure and substance (Part I.B).

A. AUTHORITY AND THE SEPARATION OF PROCESS AND SUBSTANCE

For Hobbes, who witnessed the English civil war and its underlying religious conflicts, law is always the product of a subjective decision, the result of the will of the sovereign who creates or posits the order necessary for peace. It is not something to be discussed, but something to be obeyed. Authority, imposition of will, and not truth, makes law (*authoritas non veritas facit legem*⁴⁵). In such an understanding, all organs of government — judges included — are radically subordinated to the will of the lawgiver.

The positivistic vision of law initiated by Hobbes goes hand in hand with a formalist understanding of legality in which law is primarily seen as an instrument, distinct from morality or politics. Law is then depicted as a sort of conveyor belt, charged with the top-down transmission of decisions made in a sphere exterior and superior to the law itself. Such a conception of legality tends to separate abstractly the process and the substance of the law, law being only concerned with the means that enable the realization of a substance decided authoritatively elsewhere, in a sphere — moral or political — to which the law and its organs remain subordinate.

In this vision, administrative organs use their delegated authority to give effect to the choices of the legislature, and judicial review ensures that they respect the legislative will in doing so. This conception of legality can be associated with correctness review, which reflects the superiority of the legislator on questions of substance, and of judges on procedural questions. It is essentially concerned with the question of who should decide, and making sure that the will of the sovereign is carried out “correctly.”

Traces of this conception of legality are visible in *Vavilov* at the stage of the determination of the standard of review, with the primacy given to legislated standards, but they are also noticeable in aspects surrounding the performance of reasonableness review, notably when the court explains (as is reaffirmed later in *Mason v. Canada (Citizenship and Immigration)*⁴⁶) that there are cases where a single legal interpretation is acceptable.⁴⁷ Remnants of a formalist account of legality are also discernible in the fact that, despite repudiating jurisdictional questions, the Supreme Court still resorts to the spatial metaphor underlying jurisdiction, using expressions such as “clear line[s],” “limits,” “scope,” and “contours.”⁴⁸

B. REASON AND THE TIES BETWEEN PROCESS AND SUBSTANCE

The classical common law understanding of the rule of law as the rule of an artificial reason is diametrically opposed to the formalist vision initiated by Hobbes. For the classical common lawyers, law is rooted both in common custom and in common reason; it is what we would call today “intersubjective,” the product of the experience and wisdom

⁴⁵ Thomas Hobbes, *Leviathan, sive De Materia, Forma, & Potestate Civitatis Ecclesiasticæ et Civilis* (Amsterdam: Johannes Blaeu, 1670) at 133. See also Hobbes, *A Dialogue*, *supra* note 44 at 62–63.

⁴⁶ 2023 SCC 21 at paras 11, 71.

⁴⁷ Popescu, *supra* note 10 at 598–603.

⁴⁸ See notably *Vavilov*, *supra* note 1 at paras 67–68, 90, 109, 110.

accumulated over time in the law through the work of countless prudent men.⁴⁹ Because of that, the artificial reason of the common law is incommensurably superior to the will or reason of the sovereign, and it fundamentally constitutes and conditions its power. As Bracton explains, since “law makes the king,”⁵⁰ legality is antinomic with an exercise of power founded exclusively on will (“there is no *rex* where will rules rather than *lex*”⁵¹).

This conception of legality was actualized in the last century by the efforts of Lon Fuller, who criticized the formalist tendencies of the legal positivism of his day and proposed instead an interactional understanding of law.⁵² In Fuller’s vision, the rule of law is not a “one-way projection of authority,”⁵³ it is built instead on the mutual expectations that settle with time in the practices and reasons that are shared between the governed and between the governed and their government. In this conception, legality is seen less as the imposition of a created order by an external authority, and more as contributing to the expression and development of the existing order between members of society and between them and their government, an order that enables them to mutually coordinate and adjust their behavior. Fuller’s conception recognizes that law needs to be understood in its context of application by individuals, whose interpretation will, in turn, dynamically influence law. It supposes a certain idea of the dignity of human beings, as responsible, self-directing agents, that need to be able to understand rules in order to apply and respect them.⁵⁴ In this picture of the rule of law, the government’s role is seemingly more modest: to maintain a sound and stable framework for the citizens’ interactions with each other and with their government.⁵⁵

In Fuller’s understanding, legality is distinguished from arbitrary or voluntary rule by its form, that is by the fact that it possesses an internal morality, which encompasses aspirations such as generality, publicity, clarity, and congruence between official action and declared rule.⁵⁶ Although it comprises procedural aspects, the form of law is not strictly procedural because it converts political objectives into public standards that citizens can understand, and that constitute and condition at the same time the exercise of governmental power. For Fuller, law’s form is closely tied to publicity; it encourages accountability, and even, to some extent, participation. This is particularly noticeable in the judicial process, where public standards tend to become “claims of right”⁵⁷ in a collaborative process in which the parties are assured an opportunity to present proofs and reasoned arguments, and that leads to an explained and justified decision.⁵⁸

⁴⁹ See Coke, *supra* note 44, vol 2 at 701; *ibid*, vol 1 at 478–81. See also Matthew Hale, *On the Law of Nature, Reason, and Common Law: Selected Jurisprudential Writings*, ed by Gerald J Postema (Oxford: Oxford University Press, 2017) at 187ff; Gerald J Postema, “Classical Common Law Jurisprudence (Part I)” (2002) 2:2 OUCJ 155.

⁵⁰ George E Woodbine, ed, *Bracton on the Laws and Customs of England*, translated by Samuel E Thorne, vol 2 (Cambridge: Harvard University Press, 1968) at 33 [footnote omitted].

⁵¹ *Ibid*.

⁵² See below notes 53–63 and accompanying text.

⁵³ Lon L Fuller, *The Morality of Law*, 2nd ed (New Haven: Yale University Press, 1969) at 192.

⁵⁴ *Ibid* at 162.

⁵⁵ *Ibid* at 210.

⁵⁶ *Ibid* at 33–94.

⁵⁷ Lon L Fuller, “The Forms and Limits of Adjudication” (1978) 92:2 Harv L Rev 353 at 368–70.

⁵⁸ See Lon L Fuller, *Anatomy of the Law* (New York: Frederick A Praeger, 1968) at 88–112, particularly at 91, 101. See also David Dyzenhaus, “Liberty and Legal Form” in Lisa M Austin & Dennis Klimchuk, eds, *Private Law and the Rule of Law* (Oxford: Oxford University Press, 2014) 106 at 107–09.

The form of law is not intrinsically linked to a specific moral substance, but because it enables the interplay of purposive orientations between citizens and governments, it does contribute to the expression and clarification of the ends that they pursue.⁵⁹ Fuller goes as far as to say that legality, insofar as it encourages publicity and justification of governmental action, can foster legitimacy and even better government: “[W]hen men are compelled to explain and justify their decisions, the effect will generally be to pull those decisions toward goodness, by whatever standards of ultimate goodness there are.”⁶⁰

In this vision of legality, process and substance are never abstractly separated. The process of law depends on the dynamic relationships between citizens, governmental institutions, and the objectives they pursue, while at the same time contributing to develop and shape them. As Fuller explains:

We should not conceive of an institution as a kind of conduit directing human energies toward some single destination. Nor can the figure be rescued by imagining a multipurpose pipeline discharging its diverse contents through different outlets. Instead we have to see an institution as an active thing, projecting itself into a field of interacting forces, reshaping those forces in diverse ways and in varying degrees. A social institution makes of human life itself something that it would not otherwise have been.⁶¹

In other words, legality as a form of institutional morality builds on the expectations and assumptions shared between citizens and their government, as it simultaneously influences and moulds these expectations and assumptions, working in dynamic circles of retroaction.⁶² Indeed, the form of law helps to define the objectives pursued through publicity and justification, while at the same time clarifying the means necessary for their attainment, which can take various forms. Such an understanding enables a critical outlook on the idea of government as a mere instrument and as a pure execution of functions (or powers), imposing the realization of political objectives decided outside the law on a passive human material. The rule of law is inseparable from an institutional morality or rationality that is defined through its interactions with shared rationalities in different contexts and is irreducible to the will of a specific authority.

⁵⁹ See Lon L Fuller, “Positivism and Fidelity to Law – A Reply to Professor Hart” (1958) 71:4 Harv L Rev 630 at 668.

⁶⁰ *Ibid* at 636. This argument is not as naïve as it may seem. The form of law can play a significant role in the public’s ability to resist potential arbitrary actions of governments. In his study of the South African apartheid era, David Dyzenhaus, developing an argument inspired notably by Fuller, explains that legality enabled members of society, lawyers, and judges to mobilize the law to help undermine the apartheid regime from within and to fight its injustices. In the South African context, it was through largely procedural principles, and through the aspiration to equality in the treatment of citizens before the law, that litigants were able to develop legal arguments to limit state arbitrariness. The procedural or formal dimension of law enables a certain discussion of what makes law reasonable and it is, in this sense, connected to substance. The underlying idea is that a good process tends to lead to more reasonable decisions (see David Dyzenhaus, *Hard Cases in Wicked Legal Systems: Pathologies of Legality*, 2nd ed (Oxford: Oxford University Press, 2010) at 229–35, 251, 252, 259).

⁶¹ See Lon Fuller, “Means and Ends” in Kenneth I Winston, ed, *The Principles of Social Order: Selected Essays of Lon L Fuller* (Durham: Duke University Press, 1981) 47 at 54–55.

⁶² See Lon Fuller, “The Needs of American Legal Philosophy” in Kenneth I Winston, ed, *The Principles of Social Order: Selected Essays of Lon L. Fuller* (Durham: Duke University Press, 1981) 249 at 257–59 [Fuller, “Needs”]. For an original elaboration of Fuller’s ideas, see RA MacDonald, “Judicial Review and Procedural Fairness in Administrative Law: I” (1980) 25:4 McGill LJ 520; RA MacDonald, “Judicial Review and Procedural Fairness in Administrative Law: II” (1980) 26:1 McGill LJ 1.

Fuller's vision of legality recognizes that procedure and substance work in a "kind of tandem fashion,"⁶³ that they mutually and dynamically condition each other. Substance is defined through instituted processes that enable its realization in specific contexts. At the same time, procedure is instrumental in the explanation and the clarification of the objectives pursued by communities. "Procedure" and "substance" may well designate different aspects of law, but they cannot be completely defined in the abstract or separately from each other.

This vision of legality and of the relationship between process and substance has significantly influenced David Dyzenhaus, whose ideas of law as a culture of justification and of deference as respect have been, at least since *Baker* and even more so since *Vavilov*, an integral part of Canadian jurisprudence on judicial review.⁶⁴ While *Vavilov* may seem to oscillate between the two general conceptions of legality outlined, it also develops more than ever before the reason-oriented understanding of the rule of law, particularly through the detailed methodology provided for the performance of reasonableness review and through the promotion of the idea of law as a culture of justification.⁶⁵ This evolution of Canadian jurisprudence calls, as it is more than hinted at in the decision,⁶⁶ for a reconsideration of the distinction between judicial review of the merits of an administrative decision and judicial review of the procedure followed. Indeed, there is nowadays a striking harmony between the law governing substantial and procedural review. We will now turn to the concrete aspects of the analytical frameworks for reviewing procedural and substantive issues, respectively, in order to highlight their convergence.

II. REASONABLENESS REVIEW IN *VAVILOV* AND IN *BAKER*

For the first time since its birth in *CUPE*, the deferential standard of review based on reasonableness receives in *Vavilov* a more detailed definition, in the form of practical and methodological guidance relating to its performance. *Vavilov* reaffirms *Dunsmuir*'s definition, according to which reasonableness is concerned "with the existence of justification, transparency and intelligibility within the decision-making process" and "with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."⁶⁷ According to *Dunsmuir*, reasonableness review entails judicial deference understood as *respect for* "the decision-making process of adjudicative bodies," "for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies

⁶³ Fuller, "Needs", *supra* note 62 at 257.

⁶⁴ *Baker*, *supra* note 5 at para 65. See also David Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy" in Michael Taggart, ed, *The Province of Administrative Law* (Oxford: Hart Publishing, 1997) 279; David Dyzenhaus, "Dignity in Administrative Law: Judicial Deference in a Culture of Justification" (2012) 17:1 Rev Const Stud 87; David Dyzenhaus & Evan Fox-Decent, "Rethinking the Process/Substance Distinction: *Baker v. Canada*" (2001) 51:3 UTLJ 193.

⁶⁵ *Vavilov*, *supra* note 1 at paras 2, 14, 84.

⁶⁶ *Vavilov* starts by acknowledging, in its very first paragraphs on reasonableness review, that the evaluation of reasonableness of the substance of administrative decisions is intimately linked to requirements of procedural fairness, and it develops considerably this idea throughout the judgment (see *ibid* at paras 76ff).

⁶⁷ *Dunsmuir*, *supra* note 11 at para 47.

within the Canadian constitutional system.”⁶⁸ Hence, *Dunsmuir*’s definition of reasonableness is in part about *how* and *why*, but still more about *whom*: the courts, the legislature, or the administrative delegates. Thus, the more formalist conception of legality, which is associated with correctness review,⁶⁹ still plays a significant role within *Dunsmuir*’s analytical framework.

In *Vavilov*, however, reasonableness review receives a slightly different definition, even more closely in line with the more contextual and reason-oriented conception of legality described above. While like in *Dunsmuir*’s approach courts must adopt a deferential posture of respect and administrative decision-makers must justify their decisions, “reviewing courts must keep in mind the principle that the exercise of public power must be justified, intelligible and transparent, *not in the abstract, but to the individuals subject to it*.”⁷⁰ Administrative decision-makers must “demonstrate that their exercise of delegated public power can be ‘justified to citizens in terms of rationality and fairness,’”⁷¹ that is in terms of both substance and procedure. They also must consider the consequences of their decisions for the affected parties, and when these consequences are particularly harsh, to provide reasons which demonstrate that they have considered these issues and explain why a decision is justified despite its negative impact.⁷² Lorne Sossin qualifies this approach, which focuses on the accountability of public actors to the people affected by their decisions and to the public in general, as “truly holistic” and notes that its adoption by the Supreme Court in *Vavilov* represents a “meaningful shift in Canadian public law.”⁷³ Sossin explains:

The logic of including the impact on the party and the context of the decision-maker in the analytic framework for procedural fairness is that the accountability of executive action under administrative law in a constitutional democracy is best understood as holistic. This exercise cannot be completed just by considering statutes and classifying types of decisions. The people involved, and how a decision may affect their lives, introduces a vital variable into the judicial review framework.⁷⁴

By insisting that the reasonableness of a decision depends on both the decision-making process and its outcome, and by introducing into the analysis the perspectives of the individuals affected by the administrative decision as well as the public in general, *Vavilov* definitively crosses the line that still separated substantive reasonableness review and procedural review. In fact, the conception of legality at work in *Vavilov* echoes the one embraced twenty years earlier in *Baker* and which established that reasons must be provided when an administrative decision has important implications for the individuals concerned.⁷⁵ The Supreme Court thus moves away from a unidimensional and narrow conception of legality focused solely on the law and the will of the authorities, to a multidimensional and broader perspective that takes into account the interaction between law and its institutional and social practical context.⁷⁶ As explicitly stated in the introductory paragraphs in *Vavilov*, “the law relating to judicial review of administrative decisions ... seeks to navigate the proper

⁶⁸ *Ibid* at paras 48–49.

⁶⁹ On this topic see Part I.A, above.

⁷⁰ *Vavilov*, *supra* note 1 at para 95 [emphasis added]. See also on this point Sossin, *supra* note 27; Pfiffer, *supra* note 27.

⁷¹ *Vavilov*, *supra* note 1 at para 14.

⁷² *Ibid* at paras 133–35.

⁷³ Sossin, *supra* note 27 at 271–72.

⁷⁴ *Ibid* at 272.

⁷⁵ *Baker*, *supra* note 5 at para 43.

⁷⁶ On this evolution, see a more detailed analysis in Bouchard & Popescu, *supra* note 13 at 806–17.

relationship between administrative decision makers, the courts and individuals in our society.”⁷⁷

As a result of their conceptual affinities, the legal framework for conducting procedural fairness review set out in *Baker* and the one for performing reasonableness review established in *Vavilov* prescribe very similar analyses in practice. The two approaches share the same contextual nature and command the use of the same relevant criteria (Part II.A). Moreover, they both rely on the close interdependence between process and substance (Part II.B).

A. THE CONTEXTUAL NATURE OF THE TWO ANALYTICAL FRAMEWORKS

According to *Baker*, procedural fairness is an “eminently variable” concept, whose “content is to be decided in the specific context of each case,” and by taking to account “[a]ll of the circumstances,”⁷⁸ while following *Vavilov*, “the particular context of a decision constrains what will be reasonable for an administrative decision maker to decide in a given case.”⁷⁹

Both *Vavilov*’s substantive reasonableness review and *Baker*’s procedural fairness review analyses are highly contextual and involve the evaluation of several criteria. *Baker* sets out a non-exhaustive list of five “factors” applicable to determine the content of the duty of procedural fairness in a given case: the nature of the decision being made, the statutory scheme, the importance of the decision to the individual affected, the legitimate expectations of the person challenging the decision, and the choices of procedure made by the administrative body.⁸⁰ At the same time, *Vavilov* discusses seven “elements” or “contextual considerations,” which, without constituting a “checklist,” are recognized as relevant for conducting reasonableness review: the governing statutory scheme, other statutory or common law, the principles of statutory interpretation, the evidence before the decision-maker, the submissions of the parties, the past practices and decisions of the administrative body, and the potential impact of the decision on the affected individual.⁸¹ Without being identical, *Baker*’s “factors” and *Vavilov*’s “contextual considerations” are astonishingly alike.

In 2003, in *C.U.P.E. v. Ontario (Minister of Labour)* — also referred to as the *Retired Judges Case* — Justice Binnie had already noted that some of the factors that are looked at in determining the requirements of procedural fairness were also looked at in assessing the substance of the discretionary decision.⁸² Among these factors were the nature of the decision, the statutory scheme, and the expertise of the decision-maker. Notably, he observed that the existence of a privative clause and the importance of the decision to the individuals affected were not among these overlapping factors. Since *Vavilov*, the existence of a privative clause is no longer relevant for either analysis,⁸³ while the importance of the decision to the

⁷⁷ *Vavilov*, *supra* note 1 at para 4.

⁷⁸ *Baker*, *supra* note 5 at para 21.

⁷⁹ *Vavilov*, *supra* note 1 at para 89.

⁸⁰ *Baker*, *supra* note 5 at paras 23–28.

⁸¹ *Vavilov*, *supra* note 1 at paras 106–07.

⁸² 2003 SCC 29 at para 103 [*Retired Judges Case*].

⁸³ *Vavilov*, *supra* note 1 at para 49.

individuals affected has become relevant for both.⁸⁴ By the same token, the substantive reasonableness review analysis became plainly consonant with the procedural review analysis established in *Baker*.

The nature of the decision being made, the first *Baker* factor, implies that the more a decision resembles a judicial decision, as opposed to a purely administrative one, the greater the procedural protections required.⁸⁵ This consideration is equally important within the reasonableness review framework. The Supreme Court acknowledges the “sheer variety” both in “complexity and importance” of administrative decisions, which “include matters of ‘high policy’ on the one hand and ‘pure law’ on the other,” and insists that *Vavilov*’s “approach to reasonableness ... accounts for [this] diversity ... by recognizing that what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review.”⁸⁶

Obviously, the nature of the statutory scheme, the second factor established in *Baker*, plays a central role in both frameworks. The position of a decision within the statutory scheme helps determine the content of the duty of fairness incumbent on the administrative body. For instance, when a decision is determinative and final, the procedural requirements are more stringent.⁸⁷ In the same way, the elements of the legal context, that is the governing statutory scheme, the applicable statutory or common law, and the principles of statutory interpretation, inform the application of the reasonableness standard. An administrative decision must comply with the purposes for which the statutory scheme was adopted and with any specific constraints imposed by the governing legislative scheme and other statutory or common law provision.⁸⁸

As already mentioned, the third *Baker* factor is, after *Vavilov*, equally significant to both procedural and substantive reasonableness review. When the decision under review involves the potential for significant impact on the individual concerned, the decision-maker must both comply with more rigorous procedural requirements⁸⁹ and provide reasons that explain why, despite its harsh consequences, the decision best reflects the legislature’s intent. Otherwise, its decision may be considered unfair or unreasonable, respectively.⁹⁰

The fourth *Baker* factor concerns the legitimate expectations of the person challenging the decision. Thus, if the individual affected by a decision assumes legitimately that a certain procedure will be followed, the duty of fairness will require that the administrative body follows this procedure. And if the person concerned has a legitimate expectation with respect to the result that will be reached, “fairness may require more extensive procedural rights than would otherwise be accorded.”⁹¹ At the same time, although administrative decision-makers “are not bound by their previous decisions in the same sense that courts are bound by *stare decisis*,” the individuals affected by their decisions “are entitled to expect that like cases will generally be treated alike and that outcomes will not depend merely on the identity of the

⁸⁴ *Ibid* at paras 133–35.

⁸⁵ *Baker*, *supra* note 5 at para 23.

⁸⁶ *Vavilov*, *supra* note 1 at paras 88, 90.

⁸⁷ *Baker*, *supra* note 5 at para 24.

⁸⁸ *Vavilov*, *supra* note 1 at paras 108ff.

⁸⁹ *Baker*, *supra* note 5 at para 25.

⁹⁰ *Vavilov*, *supra* note 1 at paras 133–35.

⁹¹ *Baker*, *supra* note 5 at para 26.

individual decision maker.”⁹² An administrative decision will be unreasonable if a decision-maker departs “from longstanding practices or established internal authority” without rightly and sufficiently explaining that departure in its reasons.⁹³

Finally, according to the fifth *Baker* factor, the procedural choices made by the administrative body and its institutional constraints must be given significant weight when determining the content of the duty of procedural fairness. The institutional particularities of the decision-maker are also an important factor to consider when conducting reasonableness review. In fact, courts should be sensitive to the fact that administrative decision-makers often use concepts and language that are “highly specific to their fields of experience and expertise,” and therefore avoid applying a “judicial justice” standard when scrutinising administrative decisions.⁹⁴ Judicial “respectful attention” is owed to the demonstrated experience and expertise of a decision-maker, which can explain why “an outcome that might be puzzling or counterintuitive on its face nevertheless accords with the purposes and practical realities of the relevant administrative regime and represents a reasonable approach given the consequences and the operational impact of the decision.”⁹⁵ Similarly, while the decision-makers are compelled to respond to the parties’ submissions, reviewing courts cannot expect them to provide overly detailed reasons that address every element, no matter how minor its role in reaching the final conclusion. Such a requirement “would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice.”⁹⁶

While all five *Baker* factors are now integrated into the reasonableness review analysis, the difference that appears to persist between the two analyses is mostly attributable to the fact that *Vavilov*’s analytical framework is more elaborate than that of *Baker*. In addition to listing several factors that are relevant to the analysis, *Vavilov* provides further guidance on its performance, that is, on the way these elements are to be considered. An administrative decision must be founded on an internally coherent reasoning and be justified in light of the relevant legal and factual constraints, which are to be determined by reference, but not exclusively, to the seven “contextual considerations” that we have already recalled. In a sense, whereas *Baker* merely sets out the ingredients of the recipe and gives limited details on how to make it, *Vavilov* provides further instructions and guidance for its preparation. These instructions reveal plainly the interdependence between process and substance in judicial review.

B. INTERDEPENDENCE BETWEEN PROCESS AND SUBSTANCE

In the *Retired Judges Case*, Justice Binnie also stated that “procedural fairness goes to the manner in which [the decision-maker made] his decision” and substantive review is “applied to the end product of his deliberations.”⁹⁷ Despite the apparent clarity of the distinction between process and substance, it is now plain that procedural fairness requirements depend

⁹² *Vavilov*, *supra* note 1 at para 129.

⁹³ *Ibid* at para 131.

⁹⁴ *Ibid* at para 92.

⁹⁵ *Ibid* at para 93.

⁹⁶ *Ibid* at para 128.

⁹⁷ *Supra* note 82 at para 102 [emphasis added].

on the material consequences of the decision and that reasonableness review is concerned with both process and outcomes.

Recognition of the links between process and substance is present implicitly and explicitly within *Baker*'s framework for conducting procedural review. In *Baker*, the Supreme Court emphasises that the very purpose of procedural guarantees is "to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker."⁹⁸ The potential impact of administrative decisions on the individuals affected constitutes a significant element of the relevant social context and, as a result, an essential element affecting the content of the duty of procedural fairness. When an administrative decision has a "profound importance" to those affected and is "critical to their future," the duty of procedural fairness will require the provision of reasons explaining the result.⁹⁹ Furthermore, the process of writing reasons can lead to better substantive decisions and ensure that those affected conclude that they have been treated fairly and appropriately.¹⁰⁰ In a similar way, it would be generally unfair for administrative decision-makers to depart from substantive promises or from legitimate expectations concerning the outcome of the decision without conferring significant procedural rights.¹⁰¹

This same concern for the interdependence between process and substance is also manifest in *Vavilov*'s instructions for conducting substantive review. The principle that reasonableness depends on both the outcome and the reasons for the decision, first established in *Dunsmuir*, is strongly reaffirmed in *Vavilov*, after certain post-*Dunsmuir* case law seemed to downplay it.¹⁰² According to *Vavilov*, "it is not enough for the outcome of a decision to be *justifiable*," "the decision must also be *justified*," as "an otherwise reasonable outcome ... cannot stand if it was reached on an improper basis."¹⁰³ Since the analysis cannot be conducted based on the outcome alone, the review of an administrative decision on the merits focuses on the "decision-making process"¹⁰⁴ as outlined in the decision-maker's reasons. Drafting reasons has a beneficial impact on the final outcome of the decision-making process, as it alerts the decision-makers to any flaws and errors in their reasoning.¹⁰⁵

Reasons reveal the rationale for a decision and constitute "the primary mechanism" by which the decision is shown to be reasonable.¹⁰⁶ By examining the reasons, a reviewing court must seek to understand "the reasoning *process* followed by the decision maker to arrive at its conclusion."¹⁰⁷ The review must focus on the thought process actually pursued by the decision-maker, that is, in the context of the proceedings in question. The evidence before the decision-maker, the parties' submissions, as well as the administrative body's policies,

⁹⁸ *Baker*, *supra* note 5 at para 22.

⁹⁹ *Ibid* at para 43.

¹⁰⁰ *Ibid* at para 39.

¹⁰¹ *Ibid* at para 26.

¹⁰² *Newfoundland Nurses*, *supra* note 42 at paras 14, 22; *Alberta Teachers' Association*, *supra* note 11 at paras 51–63; *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at paras 36–40.

¹⁰³ *Vavilov*, *supra* note 1 at para 86 [emphasis in original].

¹⁰⁴ *Ibid* at para 86.

¹⁰⁵ *Ibid* at para 128.

¹⁰⁶ *Ibid* at para 81.

¹⁰⁷ *Ibid* at para 84 [emphasis added].

guidelines, and past decisions may explain aspects of the reasoning process that are not apparent from the reasons themselves.¹⁰⁸

The *line* of reasoning deployed must be “both rational and logical.”¹⁰⁹ A decision will be unreasonable if the reasons show that it was “based on an irrational chain of analysis,” if “the conclusion reached cannot follow from the analysis undertaken” or if, read in light of the record, the reasons provided fail to demonstrate the decision-maker’s reasoning “on a critical point.”¹¹⁰ Logical fallacies, such as circular reasoning or unfounded generalizations, affect the internal rationality of a decision and thus its validity.¹¹¹ Hence, a reasonable reasoning *process* is a “logical” path; it is “chain of analysis” that is built from the evidence and the submissions of the parties and leads to a logical and coherent conclusion.¹¹²

Because it places the reasons, and more importantly, the reasoning *process* of the decision-maker, at the center of the analysis of reasonableness, *Vavilov* shows that the evaluation of the reasonableness of the merits of a decision is intimately linked to requirements of procedural fairness. The court indeed recognizes an “inherent bond” between the two.¹¹³ Reliance by a decision-maker on irrelevant facts or on evidence that was not before it, misapprehension of the evidentiary record and failure to consider relevant evidence that was before it will jeopardize the reasonableness of an administrative decision.¹¹⁴ Similarly, an administrative decision will be unreasonable if the reasons provided to explain it fail to account for the key issues and central arguments raised by the parties.¹¹⁵ The substantive requirement of responsiveness of reasons is inextricably linked to the procedural requirement that parties be heard and given the opportunity to present their case fully. Reasons are the mechanism for both assessing the substantive reasonableness of a decision and demonstrating that the parties were actually listened to.

In sum, the process and the substance of an administrative decision are so intimately connected that it is impossible to assess its conformity with procedural fairness requirements without considering its substantive repercussions; it is also impossible to examine an administrative decision on its merits while ignoring its procedural aspects. Neither procedural fairness nor substantive reasonableness stands by itself.

Recognizing the intimate links that tie the analyses of substantive reasonableness review and of procedural review yields concrete implications for the law of judicial review. As Justice Stratas rightly observed, there are only two standards of review and therefore only two possible paths for a reviewing court: “a non-deferential one called correctness and a deferential one called reasonableness.”¹¹⁶ We know at least since *Vavilov* that what distinguishes correctness from reasonableness review is methodology. While the former grants reviewing courts the authority to interpret and implement legislative will, the latter

¹⁰⁸ *Ibid* at para 94.

¹⁰⁹ *Ibid* at para 102.

¹¹⁰ *Ibid* at para 103.

¹¹¹ *Ibid* at para 104.

¹¹² *Ibid* at paras 102–03.

¹¹³ *Ibid* at para 127.

¹¹⁴ *Ibid* at paras 125–26.

¹¹⁵ *Ibid* at paras 127–28.

¹¹⁶ *Maritime Broadcasting*, *supra* note 15 at para 60.

requires them to demonstrate respect for the distinct institutional role of administrative decision-makers, as long as their exercise of delegated public power is justified in the eyes of the individuals affected and the public in general. As we have shown above, the *Baker* test is no different from the analytical framework provided in *Vavilov* for performing substantive reasonableness review. It is therefore incongruent to claim that correctness or no standard of review is applicable when judicial review of an administrative decision is conducted on procedural grounds.¹¹⁷ In other words, it becomes plain that what *Baker* prescribes is the reasonableness standard of review as defined in *Vavilov*.

This is a sensible outcome, given that, although conceptually intelligible and useful, as they “continue to serve functional and descriptive purposes in practice,”¹¹⁸ the distinction between procedure and substance is often difficult to operationalize. Should insufficient, as opposed to absent, reasons be treated as a substantive or as a procedural question?¹¹⁹ Does the decision-maker’s reliance on irrelevant stereotypes leads to an unreasonable or unfair decision, in violation of the duty of impartiality?¹²⁰ Does the failure to consider relevant evidence indicate a procedural or substantive issue?¹²¹ What about the failure by the decision-maker “to meaningfully grapple with key issues or central arguments raised by the parties?”¹²² As these questions point out, procedure and substance are not in reality separate entities, but rather interact with and depend on each other.

III. CONCLUSION

Even before *Vavilov*, several scholars had observed the significant parallels between the law of substantive and procedural review. Since *Vavilov* however, the close kinship between these two analytical frameworks has become evident.

From a conceptual standpoint, *Vavilov* rejoins *Baker* in coming closer than ever before to a reason-oriented understanding of the rule of law, that can be associated with reasonableness review, rather than to one centred on the will and authority of government officials, that can be linked to correctness review. By giving weight to the point of view of the individuals affected by an administrative decision and to what is justifiable to the public in general — and no longer solely to the legislative will and the position of administrative decision-makers — *Vavilov* embraces, like *Baker* did 20 years earlier, the idea that law is less the product of the will of a lawgiver than the expression of a particular form of practical rationality. This rationality is manifested in institutional practices, that is, through interactive processes between citizens and between citizens and their government, processes enabled by the law and which aspire at a justified exercise of governmental power. This wider understanding of legality supposes that process and substance intermingle; they are closely interrelated and mutually affect each other.

From a practical perspective, the analyses prescribed in *Vavilov* for conducting substantive reasonableness review and in *Baker* for performing procedural review are essentially equivalent. As we have shown above, they are both highly contextual and require

¹¹⁷ Even before *Vavilov*, this has been well noted by Edward Clark (see Clark, *supra* note 26 at 28–29).

¹¹⁸ Liston, *supra* note 24 at 240.

¹¹⁹ *Newfoundland Nurses*, *supra* note 42 at para 22; *Vavilov*, *supra* note 1 at paras 76ff.

¹²⁰ *Vavilov*, *supra* note 1 at para 126.

¹²¹ *Larocque*, *supra* note 13 at 488–93; *Vavilov*, *supra* note 1 at paras 106, 125–26.

¹²² *Vavilov*, *supra* note 1 at para 128.

the use of the same relevant criteria and instructions for weighing them. Among other things, *Vavilov*'s reasonableness review borrowed criteria from procedural review, notably the importance of the decision for the individual affected or its legitimate expectations. Furthermore, both recognize that process and substance are inherently interdependent and cannot be formalistically separated.

In light of the striking harmony between *Baker*'s framework and *Vavilov*'s reasonableness review analysis, claiming that correctness or no standard of review applies when a court reviews an administrative decision on procedural grounds is dissonant and fails to account properly for actual judicial practice in procedural review.

This article does not argue that procedural review should be conducted within the analytical framework set out for substantial review or vice versa. Rather, it points out the shared theoretical foundations and similar practical features of the two frameworks, as well as the inescapable interdependence between procedure and substance that they imply. To affirm that reasonableness is the standard of review applicable when courts review administrative action on procedural grounds is not to call for a change but simply to acknowledge the true nature of existing practice.