

FIVE YEARS LATER: DID *VAVILOV* KILL DEFERENCE? FINDINGS FROM THE ONTARIO DIVISIONAL COURT

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In the 2019 decision Canada (Minister of Citizenship and Immigration) v. Vavilov, the Supreme Court of Canada attempted to provide greater clarity on the legal foundations and application of administrative law in Canada. This article presents new empirical data on the impact of Vavilov on decisions of the Ontario Divisional Court and considers what the results mean for practices of democracy, accountability, and the rule of law. The findings in this article reveal that Vavilov has had a significant judicial impact on Ontario Courts' deference toward the decisions of administrative decision-makers, but that the lower standard of review associated with reasonableness creates the potential for arbitrary decisions and the abuse of state power for overtly partisan purposes.

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INTRODUCTION

The Supreme Court of Canada’s continuing struggle for determining the degree of deference to be shown to administrative decision-makers has been much like the myth of Sisyphus, who was charged with rolling a boulder to the top of a mountain, only to have it roll back down every time it neared the top. Nearly every decade and for roughly seven decades starting in 1949, the Supreme Court has had to revisit how lower courts should review the decisions of administrative bodies and the extent to which they should afford them

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deference.¹ Much like Sisyphus and his boulder, however, each approach would seemingly falter and require the Supreme Court to start over. The most recent attempt at this undertaking is the 2019 decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*,² where the Supreme Court attempted to provide greater clarity to the continuously vexing questions facing lower courts: what is the appropriate standard of review for courts on judicial review of the substantive merits of administrative bodies in Canada and how should courts apply the reasonableness standard of review? These long-standing and contentious questions reflect the real challenges that courts face when dealing with the relationship between different branches of government in Canada and highlight the potentially paradoxical tension in democratic states between accountability and the rule of law.³

Legislatures craft policy regimes that involve delegation of authority out of the hands of the political executive and into the more permanent administrative state. These arm's-length bodies, while staffed by the executive, are expected to render decisions in accordance with their expertise and statutory mandates and be free from both political interference and, to some extent, direct political accountability. However, as a result of the imbalance of power between state actors and citizens subject to these decisions, and the need to ensure consistency with statutory regimes, courts have employed their inherent jurisdiction to review those decision-making processes and outcomes through the power of judicial review. This however presents the accountability paradox — too much judicial review undermines the choices of the legislature to delegate this decision-making authority, and too little establishes space for arbitrary decision-making processes and outcomes that may be counter to legislative intention and the law.⁴

In *Vavilov*, the Supreme Court established a default standard of deference to the substantive decisions of administrative agencies through an application of a standard of reasonableness. In other words, if the substance of an administrative body's decision was reasonable, a court should not substitute its own decision in its place. In addition to "clarifying" the *prima facie* standard of review, the Supreme Court also used the opportunity to provide guidance on when a tribunal's decision was reasonable as well as clarifying the exceptions to that reasonableness standard (where courts must apply the more stringent correctness standard). This latter standard would permit courts to substitute their decisions where the court disagreed with the substantive decision of the tribunal.⁵

Alas, despite a more promising framework devised by the majority in *Vavilov*, the concurring opinions of Justices Abella and Karakatsanis, who warned that the majority's analytical approach would be a "eulogy for deference," cast some doubt on what the ruling

¹ For an overview of the historical development of deference in Canadian administrative law, see Paul Daly, "The Struggle for Deference in Canada" in Hanna Wilberg & Mark Elliott, eds, *The Scope and Intensity of Substantive Review: Traversing Taggart's Rainbow* (Oxford: Hart, 2015) 297.

² 2019 SCC 65 [*Vavilov*].

³ Paul G Thomas, "Administrative Law Reform: Legal Versus Political Controls on Administrative Discretion" (1984) 27:1 *Can Pub Administration* 120 at 128; Paul Daly, *A Culture of Justification: Vavilov and the Future of Administrative Law* (Vancouver: UBC Press, 2023).

⁴ Mary Liston, "Governments in Miniature: The Rule of Law in the Administrative State" in Colleen M Flood & Lorne Sossin, eds, *Administrative Law in Context*, 2nd ed (Toronto: Emond Montgomery, 2012) 39.

⁵ *Vavilov*, *supra* note 2 at paras 10–15.

would mean for administrative bodies and their decisions.⁶ The majority's framework also resulted in much commentary to both ascertain the Supreme Court's legal foundations and doctrines as well as its consideration in the practice of administrative law in Canada.⁷ Perhaps to no great surprise, the clarity provided by the Supreme Court has been somewhat fleeting, with several subsequent lower court decisions raising the need for greater clarity on that "clarity," and many others who have shown cautious optimism of the impact of *Vavilov*.⁸

Missing from this conversation, however, has been an empirical assessment of the impact on the various bodies affected by the *Vavilov* decision, namely the administrative agencies that make up part of the permanent administrative state. With the exception of a few works, there have generally been limited attempts to explore the impact of *Vavilov* and, more broadly, the Supreme Court's significant administrative law jurisprudence.⁹ We attempt to fill this lacuna through an empirical investigation of the impact of the Supreme Court's decision and what it means for practices of democracy, accountability, and the rule of law in Canada. Inspired by Justice Abella's bon mot — that the new framework is a "eulogy for deference"¹⁰ — we set out to empirically examine what happens to cases that use a reasonableness standard of review under the *Vavilov* framework in the province of Ontario. We further compare the results to cases employing the same standard under the previous *Dunsmuir v. New Brunswick*¹¹ framework to assess the clarifying impact, if any, of the Supreme Court's decision in *Vavilov*.

Our empirical findings suggest the Supreme Court's Sisyphean boulder may have finally reached the top of the hill. The results indicate statistically significant evidence that deference under the *Vavilov* framework is very much alive and well, at least within the province of Ontario. This legal victory, however, may have come at a cost to the overall democratic health of the province. Given this finding, we nevertheless argue that the impact of *Vavilov* has the potential to tilt the playing field away from aspects or means of accountability and the rule of law, while at the same time increasing the policy capacity of administrative bodies as sites of policy-making authority. In support of this argument, this article is divided into four sections. First, we briefly examine the theoretical literature on judicial impact and administrative

⁶ *Ibid* at para 201. See also Megan Pfiffer, "What's the Problem with Substantive Review" (2024) 69:3 McGill LJ 325 at 356.

⁷ See e.g. Mark Mancini & David Stratas, "Vavilov at 5: Justice David Stratas" (15 November 2024), online (blog): [perma.cc/AM9G-X4KS].

⁸ Leonid Sirota, "It's Nonsense but It Works: The Supreme Court's Latest Administrative Law Decision is Welcome, but it too is Unsound in Principle" (28 September 2023), online (blog): [perma.cc/UEW2-XRUX]; Mark Mancini & James Casey, "Vavilov at 5: James Casey" (15 December 2024), online (blog): [perma.cc/NKX7-LZCP].

⁹ Andrew Green, "How Important are the Groundbreaking Cases in Administrative Law?" (2023) 73:4 UTLJ 426; Robert Danay, "Quantifying *Dunsmuir*: An Empirical Analysis of the Supreme Court of Canada's Jurisprudence on Standard of Review" (2016) 64:4 UTLJ 555; William Lahey et al, "How has *Dunsmuir* Worked? A Legal-Empirical Analysis of Substantive Review of Administrative Decisions after *Dunsmuir v. New Brunswick*: Findings from the Courts of Nova Scotia, Quebec, Ontario and Alberta" (2017) 30:3 Can J Admin L & Prac 317; Diana Ginn et al, "How has *Dunsmuir* Worked? A Legal-Empirical Analysis of Substantive Review of Administrative Decisions after *Dunsmuir v. New Brunswick*: Findings from the Federal Courts" (2017) 30:1 Can J Admin L & Prac 51; William Lahey & Diana Ginn, "After the Revolution: Being Pragmatic and Functional in Canada's Trial Courts and Courts of Appeal" (2002) 25:2 Dal LJ 259.

¹⁰ *Vavilov*, *supra* note 2 at para 201.

¹¹ 2008 SCC 9 [*Dunsmuir*].

tribunals as sites of decision-making authority and administrative law. Second, we set out the precedent-tracing methodology and variables under consideration and justify the focus on Ontario Court administrative law and judicial review decisions. In the third section, we set out our findings on the outcomes of those decisions. Finally, we discuss the impact of *Vavilov* on administrative tribunals as well as its relevance to the broader judicial impact questions within the administrative law context.

I. ADMINISTRATIVE LAW AND JUDICIAL IMPACT

To some extent, the delivery of government programs remains somewhat invisible, particularly in relation to the administration of those programs that require some element of adjudication by the state and delivery through various administrative agencies. Despite the presence of administrative decision-making bodies being fairly widespread across all levels of government in Canada, the nature, history, evolution, functions, equitability, and accountability of these organizations as well as the political factors shaping the development of these usual arm's-length from government institutions are not well understood.¹² To some extent, this is surprising. The increased complexity of governance and the economy, coupled with technological and societal pressures have increased the need for independent and specialized decision-making within governments and have led to a growing number of delegated decision-making and policy delivery sites within governments.¹³ Despite this proliferation and increasing use of this type of governance structure in Canada over the last few decades, the Canadian experience with administrative agencies remains relatively underexplored from both public administration and administrative law perspectives.¹⁴

A. THE ACCOUNTABILITY OF ADMINISTRATIVE BODIES

The accountability of administrative bodies is a multi-layered and braided process, with courts, administrative tribunals, and administrative law providing just one element of the checks against improper or arbitrary use of power by the state.¹⁵ In this context, administrative tribunals can serve dual purposes. On one hand, they can serve as checks against the exercise of administrative discretion by the public service and, in some cases, the Minister in charge of a particular portfolio, by serving as an appellate body concerned with both the merits and legality of a decision. On the other hand, administrative tribunals may also be the source of initial decision-making. In either context, the potential for administrative mischief or malfeasance exists, and the courts developed a series of common law principles that underlie modern-day administrative law and judicial review as a means of ensuring both

¹² Maya Eichler, "Administrative Tribunals and Equity: Military Sexual Assault Survivors at the Veterans Review and Appeal Board" (2021) 64:2 Can Pub Administration 279; Carey Doberstein, "Trends in the Performance of Arms-Length Agencies in the Government of Canada" (2023) 66:3 Can Pub Administration 319; Lorne Sossin & Steven J Hoffman, "The Elusive Search for Accountability: Evaluating Adjudicative Tribunals" (2010) 28:2 Windsor YB Access Just 343.

¹³ Tom Christensen & Per Lægred, "Regulatory Agencies—The Challenges of Balancing Agency Autonomy and Political Control" (2007) 20:3 Governance: Intl J Pol'y, Administration, Institutions 499.

¹⁴ David Said & Dennis Baker, "Canadian Political Science's Unfortunate Neglect of Administrative Law" in Emmett Macfarlane & Kate Puddister, eds, *Disciplinary Divides: The Study of Law and Politics*, (Toronto: University of Toronto Press) [forthcoming in 2026].

¹⁵ John Bell, "Judicial Review in the Administrative State" in Jurgen de Poorter, Ernst Hirsch Ballin & Saskia Lavrijssen, eds, *Judicial Review of Administrative Discretion in the Administrative State* (Hague: Springer, 2019) 3.

answerability and adherence to law as key components of accountability as well as a check against abuses of power by the state.¹⁶

Judicial review, as opposed to other aspects of judicial scrutiny arising from other public law exercises of authority, such as constitutional or criminal law, is specifically associated with administrative law. Historically, this authority was related particularly to the procedural aspects of administrative decision-making wherein the courts sought to hold various administrative agencies to a common set of procedural safeguards.¹⁷ Over time and through consideration of ostensibly procedural questions associated with jurisdictional concerns, judicial review gradually morphed into a second aspect of scrutiny, namely with the substance of the decisions and ensuring its compliance with the empowering statute and the broader legal and constitutional environment.¹⁸ The results of these two developments are distinct, both analytically and in practice, and result in different questions facing a court on a judicial review application: did the administrative decision-making body employ an appropriate process to reach its decision (procedural review) and is the decision of that body in keeping with the empowering statute and legal considerations (substantive review)? The history of this second element of judicial review, substantive review, is inherently tied to the question of the scope of deference that a court ought to provide to the decision of the administrative body — a more deferential standard of reasonableness or the more stringent and searching standard of correctness. This question has vexed both the Supreme Court in trying to establish clear standards of review and the lower courts in their application of those standards in consideration of how much deference to provide and the administrative law bar more generally.¹⁹ Even members of the Supreme Court have differed over the standard to apply.²⁰

The Supreme Court's seemingly continuous consideration of the scope of deference question culminated in its 2008 decision in *Dunsmuir*, where it again sought to both clarify and simplify its previous "pragmatic and functional" analysis from *Baker v. Canada (Minister of Citizenship and Immigration)* and reduce the standards of review to two: reasonableness and correctness.²¹ Despite the hope and promise of *Dunsmuir*, lower courts and the administrative law bar continued to contest the simplicity and clarity of the new standard of review approach, ultimately resulting in the need for the Supreme Court to once again revisit the issue in the *Vavilov* trilogy.²²

Despite the potential for the standard of review debate to significantly impact the administrative law accountability measures underlying the practices of judicial review in Canada, there remains little scholarship focused on the specific impact on broader policy environments across all levels of government. Rather, considerations of the impact of these

¹⁶ *Ibid.*

¹⁷ Ed Ratushny, "What are Administrative Tribunals? The Pursuit of Uniformity in Diversity" (1987) 30:1 Can Pub Administration 1.

¹⁸ Judith A Osborne, "Licensing Without Law: Legalized Gambling in British Columbia" (1992) 35:1 Can Pub Administration 56.

¹⁹ David Mullan, "*Dunsmuir v. New Brunswick*, Standard of Review and Procedural Fairness for Public Servants: Let's Try Again!" (2008) 21:2 Can J Admin L & Prac 117; Lorne Sossin, "The Impact of *Vavilov*: Reasonableness and Vulnerability" (2021) 100 SCLR 265.

²⁰ Paul Daly, "The Autonomy of Administration" (2023) 73 Supplement 2 UTLJ 202.

²¹ 1999 CanLII 699 (SCC) [*Baker*]; Mullan, *supra* note 19.

²² Paul Daly, "Canadian Labour Law after *Vavilov*" (2021) 23:1 CLEJ 103; Green, *supra* note 9.

types of decisions have tended to focus on legal doctrines or on courts themselves.²³ Missing from these considerations is an understanding of the institutional impact that the Supreme Court's changing standard of review has on administrative decision-makers and the broader accountability regime in Canadian governance. The Supreme Court's decision in *Vavilov* represents a new set of rules or norms for policy-making bodies and administrative decision-makers throughout governments. It creates the opportunity for those agencies to understand their own scope of authority and the boundaries of the limits potentially placed on them by the Supreme Court.

B. EVALUATING THE SUPREME COURT'S IMPACT

This limited understanding of the role and functions of administrative bodies and their relationship with the courts is further compounded by the paucity of research on the potentially broad range of impacts of courts on political and policy-making decisions in Canada more generally. This lacuna exists although an understanding of the impact of judicial decisions has become increasingly important as political actors, both from within and outside of government, continue to seek preferred political and policy related outcomes through the courts.²⁴ In this context of an increasingly important role for the courts in democratic systems of governance, judicial impact, at least in terms of public policy related questions, refers to a broad range of factors and outcomes associated with the consequences of a judicial decision.²⁵

Most of this research from a Canadian context, however, has focused primarily on the normative aspects of judicial scrutiny or broader aspects of constitutional law and the *Charter*.²⁶ Much of the research on public policy impact has focused on the direct effects of legalized policy disputes, and the outcomes of judicial decisions themselves. For example, Frederick Morton and Avril Allen set out three separate measures of success in relation to interest group litigation as relating to the outcome of the case, its precedent effect, and a broad policy impact variable — measured as changes to the policy status quo, but without really moving much beyond the initial consideration.²⁷ Missing from the broader debate on judicial scrutiny is a wider consideration of the impact of courts and at a range of levels and beyond a simple consideration of outcomes.²⁸ In this regard, there are a range of potential sites of impact, from both direct (causative or top down) and indirect (constitutive or bottom up)

²³ Green, *supra* note 9.

²⁴ Ran Hirschl, "The Judicialization of Politics" in Gregory A Caldeira, R Daniel Kelemen & Keith E Whittington, eds, *The Oxford Handbook of Law and Politics*, (New York: Oxford University Press, 2008) 119.

²⁵ Theodore L Becker & Malcolm M Feeley, *The Impact of Supreme Court Decisions*, 2nd ed (New York: Oxford University Press, 1973); Thomas M Keck & Logan Strother, "Judicial Impact" in *Oxford Research Encyclopedia of Politics* (Oxford: Oxford University Press, 2016) 1.

²⁶ Dave Snow & Mark S Harding, "From Normative Debates to Comparative Methodology: The Three Waves of Post-*Charter* Supreme Court Scholarship in Canada" (2015) 45:4 *Am Rev Can Studies* 451.

²⁷ Frederick L Morton & Avril Allen, "Feminists and the Courts: Measuring Success in Interest Group Litigation in Canada" (2001) 34:1 *Can J Political Science* 55.

²⁸ Troy Q Riddell, "The Impact of Legal Mobilization and Judicial Decisions: The Case of Official Minority-Language Education Policy in Canada for Francophones Outside Quebec" (2004) 38:3 *Law & Soc'y Rev* 583; Emmett Macfarlane, *Policy Change, Courts, and the Canadian Constitution* (Toronto: University of Toronto Press, 2018).

effects.²⁹ From a causative perspective, the direct impact of judicial decisions can be associated with at least six separate considerations:

1. The outcome of the particular case;
2. The legal test or interpretative effect (otherwise referred to as “the law”);
3. Whether lower courts or administrative tribunals followed the decision (otherwise referred to as “the precedent effect”);
4. Compliance with the judicial decision by affected government and by other governments;
5. Legislative changes that arise and can be directly attributed as a response to the judicial decision; and
6. Acceptance of the decision by the public and a corresponding cultural change.

Indirect or more constitutive effects include:

1. Changes in elite and public opinion and discourses;³⁰
2. Changes in the broader public and government agendas;
3. The symbolic mobilization effect for interest groups and societal-based actors;
4. The greater use of courts and additional litigation to contest policy or political disputes; and
5. The distraction of social movements, interest groups or other policy actors from other avenues of political and policy contestation.

While relatively all-encompassing, Gerald N. Rosenberg’s identification of the potential locations of judicial impact omits broader institutional effects that do not necessarily flow overtly from the choice or actions of political and policy actors in anticipation or response to those judicial decisions.

²⁹ Gerald N. Rosenberg, “Positivism, Interpretivism, and the Study of Law” in Michael McCann, ed, *Law and Social Movements* (New York: Routledge, 2016) 33.

³⁰ Rosenberg suggests that possible sources of opinion changes can be found in and measured through the media, the content of legislative debates and through changes evident in public opinion polling series: Gerald N. Rosenberg, “African-American Rights After Brown. *Journal of Supreme Court History*” (1999) 24:2 *J Supreme Court History* 201. While Rosenberg does not explicitly include a list of potential venues or sites of impact, the above list is extrapolated from the sources of impact he assesses in terms of the impact of Brown and other decisions. For a more detailed consideration of the potential sites or venues of impact, see Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring about Social Change?* (Chicago: University of Chicago Press, 2008).

In the Canadian context, the potential for institutional impact has only been somewhat examined at the executive level in the post-*Charter* era.³¹ This role has received some attention, albeit in relation to government agendas and the facilitative impact that the court may provide in enabling (or constraining) those options.³² Other considerations of institutional impact at the executive level have focused on compliance with the *Charter* at the bureaucratic level and the enhanced role of the Department of Justice.³³ While these influences can be constitutive in their impact on the discourse and agendas of governments, there is also an underlying institutional shift in the role and importance of these actors on both the political and permanent aspects of the executive that has only been minimally explored. Similarly, while attention has been paid to the different mandates and decision-making emphasis of courts versus the public service, there is less consideration of how decisions from courts alter the functioning of the permanent public service from an institutional or rules of the game perspective.³⁴

II. MEASURING THE IMPACT OF *VAVILOV*

Previous research on the judicial impact of administrative law has predominately been conducted by legal scholars, with a primary focus on the doctrinal aspects of decisions.³⁵ While these arguments have produced insightful findings, some have faced significant methodological challenges which has limited their generalizability.³⁶ Case selection seems to be the greatest challenge due to the inherently complex nature of the administrative state. The multiplicity and complexity of administrative bodies and the vast number of decisions that are reviewed by courts makes the focus of research in this space naturally complicated. Despite these challenges, it is nevertheless possible, especially when utilizing methodologies more often employed in political science, to gain greater insight and clarity on these kinds of impact questions.³⁷

To examine judicial impact, we employed a precedent-tracing approach that explored all of the judicial review decisions of the Ontario Divisional Court from 2008 to 2024. This approach, used by others, begins with an initial decision by the courts, usually the final appellate court, on an issue as the beginning point in a series of subsequent decisions that rely

³¹ See e.g. James B Kelly & Michael Murphy, “Shaping the Constitutional Dialogue on Federalism: Canada’s Supreme Court as Meta-Political Actor” (2005) 35:2 *Publius* 217; Miriam Smith, “The Impact of the *Charter*: Untangling the Effects of Institutional Change” (2007) 36 *Intl J Can Studies* 17; Robert Schertzer, “Collaborative Federalism and the Role of the Supreme Court of Canada” in Emmett Macfarlane, ed, *Policy Change, Courts, and the Canadian Constitution* (Toronto: University of Toronto Press, 2018) 103.

³² Kate Glover Berger, “The Impact of Constitutional References on Institutional Reform” in Emmett Macfarlane ed, *Policy Change, Courts, and the Canadian Constitution* (Toronto: University of Toronto Press, 2018) 125.

³³ James B Kelly, “Bureaucratic Activism and the Charter of Rights and Freedoms: The Department of Justice and its Entry into the Centre of Government” (1999) 42:4 *Can Pub Administration* 476.

³⁴ FL Morton & Leslie A Pal, “The Impact of the Charter of Rights on Public Administration” (1985) 28:2 *Can Pub Administration* 221.

³⁵ Green, *supra* note 9.

³⁶ Daly, *supra* note 3.

³⁷ David Said, “Navigating Entangled Terrain: The Supreme Court’s Impact and the Dismissal Powers of Human Rights Tribunals” (2023) 66:3 *Can Pub Administration* 409. See also Andrew D Martin & Morgan LW Hazelton, “What Political Science Can Contribute to the Study of Law” (2012) 8:2 *Rev L Econs* 511.

on that initial case. The content of the subsequent decisions is then examined to determine the scope of the causal and constitutive range and impact of that initial decision.³⁸

Vavilov was used as it is the leading Canadian administrative law decision on the standard of review of substantive aspects of administrative tribunal decisions. *Dunsmuir* was also used for comparison. The decisions of the Ontario Divisional Court — a specialized branch of the Superior Court of Justice that is specifically empowered to hear statutory appeals and applications for judicial review from administrative tribunals — were used because they offered a unique opportunity to examine the accountability of administrative impacts across a range of policy spaces and multiple administrative actors.

In contrast to the work conducted by Andrew Green at the federal level, our assessment of the judicial decisions of the Ontario Divisional Court allowed us to broaden our policy range and therefore include decisions of a broader range of institutional actors.³⁹ The cases examined for this study were gathered using the publicly accessible legal research search engine, Canadian Legal Information Institute (CanLII). We captured the entire population of Ontario Divisional Court cases citing *Dunsmuir* between 2008 and 2018, and *Vavilov* between 2020 and 2024 and, in contrast to the use of sampling techniques, thereby increased the generalizability and applicability of our findings across a broader range of policy spheres. More importantly, it helped us avoid case selection concerns. The search of the cases citing *Vavilov* covered the period from 1 January 2020 to 31 December 2024 and allowed for some degree of case maturity.⁴⁰ We further replicated the search strategy to compare cases citing *Dunsmuir*.

Based on these parameters, our initial search of cases citing *Dunsmuir* and *Vavilov* yielded 483 and 625 cases respectively, for a total of 1,108 cases. We further narrowed our search by individually vetting cases on the basis of relevance, specifically in relation to cases dealing only with judicial review applications or statutory appeals.⁴¹ Following this initial trenching of cases, we applied two additional criteria. First, relevant cases for further investigation had to exclusively involve applications seeking judicial review of the decisions of administrative decision-makers. Judicial review is one of several ways in which courts can hold administrative decision-makers accountable. Unlike statutory appeals where courts are legislatively and expressly intended to examine administrative decisions, judicial review is both more extraordinary and not automatic, while also potentially running somewhat counter to legislative design and intention. This is not to say that all statutory appeals will result in

³⁸ *Ibid.* See also Andrew Banfield & Greg Flynn, “Activism or Democracy? Judicial Review of Prerogative Powers and Executive Action” (2015) 68:1 Parliamentary Affairs 135 at 143; Greg Flynn & Tanya Kuzman, “Meaningful Participation? The Judicialization of Electoral Reform in Canada Post-Figueroa v. Canada” (2013) 7:1 Can Political Science Rev at 37; Frank B Cross et al, “Citations in the US Supreme Court: An Empirical Study of their Use and Significance” (2010) 2010:2 U Ill L Rev 489.

³⁹ Green, *supra* note 9.

⁴⁰ See the discussion of case maturity in Lori Hausegger, Danielle McNabb & Troy Riddell, “The Provincial Courts of Appeal and Section 24(2) of the Charter” in Kate Puddister & Emmett Macfarlane, eds, *Constitutional Crossroads: Reflections on Charter Rights, Reconciliation, and Change* (Vancouver: UBC Press, 2022) 311.

⁴¹ Some decisions returned by our search citing *Vavilov* and *Dunsmuir* were not considered relevant since they dealt with other, unrelated legal matters, such as dealing with motions for leave to appeal, stays of proceedings, or appeals arising out of non-administrative law contexts, such as family or criminal law matters.

positive outcomes for the appellant whereas judicial review will not. Rather, the distinction points out that they are fundamentally different and separate routes that could lead to judicial decisions involving a second look at administrative outcomes and may be based on different legislative intentions.

From a more practical standpoint, the difference between judicial review applications and statutory appeals can be easily confused when examining the role of courts as institutions of accountability. For our purposes, statutory appeals were excluded because *Vavilov* instructs reviewing courts that the type of judicial scrutiny on appeals requires the inherently less deferential correctness standard of review, not as a matter of court discretion, but rather of one of legislative imperative. Since we are interested in exploring the relationship between the deferential elements of the Supreme Court's directives and the policy capacity and accountability of administrative tribunals, we only included cases involving judicial review applications. Based on the precedent established in *Vavilov*, reviewing courts should apply a reasonableness standard in reviewing the substance of an administrative bodies' decision, unless one of the exceptions outlined by the Supreme Court applies. The reasonableness standard therefore signals that reviewing courts, regardless of whether they agree with the decision of administrative actors, should defer to their outcomes so long as their reasons for decision met the conditions for that standard as established by the Supreme Court.

As seen in Table 1 below, 63 percent of all relevant cases citing *Dunsmuir* and *Vavilov* during the relevant timeframes are based on applications for judicial review, leaving us with a population data sets of 265 and 343 decisions respectively, for a total of 608 judicial review cases. This finding is consistent with other studies. It suggests that legislatures may be in part, if not equally, responsible for driving the judicialization of administrative decisions by providing statutory rights of appeal (at least within the 37 percent of the cases shown in our study) and runs counter to the judicial activism narrative often applied to the broader judicial scrutiny exercise in democratic states.⁴²

The second filter we applied was whether the judicial decision dealt with substantive elements of the administrative decision rather than procedural. We only included cases that were substantive in nature. Finally, we focused our attention only on cases that applied a reasonableness standard of review, owing mainly to the fact that this was the variable of interest for our study. After all considerations for relevancy were taken into account, we were left with a total of 563 cases, which made up 93 percent of the total number of cases citing *Vavilov* or *Dunsmuir* from 2008 to 2025 by the Ontario Divisional Court. Curiously, we found a relatively even divide between the *Dunsmuir*-era and *Vavilov*-era despite the fact that *Dunsmuir* was the prevailing law for double the length of time as *Vavilov*. This might suggest that any continuing concerns following *Dunsmuir* had less to do with the use of the appropriate standard of review and more with its actual application, and may have been the cause for the clarifying litigation in *Vavilov*.

⁴² See e.g. Ran Hirschl, "The Judicialization of Mega-Politics and the Rise of Political Courts" (2008) 11 Annual Rev Political Science 93.

TABLE 1:
SUMMARY OF DATA SET

	<i>Dunsmuir</i> (2008 - 2018)	<i>Vavilov</i> at 5 (2020-2025)	Total
Applications			
Judicial Review	63% (265)	63% (343)	63% (608)
Statutory Appeals	37% (157)	37% (201)	37% (358)
Total (N)	422	544	966
Judicial Review Decisions			
Standard of Review			
Correctness	5% (13)	5% (17)	5% (30)
Reasonableness	93% (246)	92% (317)	93% (563)
Multiple	2% (6)	2% (6)	2% (12)
Unspecified	0	1% (3)	< 1% (3)
Total (N)	265	343	608
Judicial Review Outcome			
Dismissed	70% (188)	80% (275)	76% (463)
Granted	30% (77)	20% (68)	24% (145)
Total (N)	265	343	608

To further explore this potential, and in keeping with the existing research, we coded for two main variables: outcome and standard of review.⁴³ However, in contrast to the earlier work, we applied the outcomes variable to both the overall population of cases as well as the reasonable standard of review subset. A dichotomous variable was created for outcomes where they were coded as either “dismissed” or “granted.” In addition to the standard of review and the outcome of judicial decisions we further accounted for other variables that helped provide a more comprehensive understanding of the relationship between judicial review and the role of administrative decision-makers. Prior research indicates that at least three other factors might impact the outcome on judicial review: type of agency (regulatory versus executive), the policy area in which the agency was based (economic versus social), and the nature of the issue facing the court.⁴⁴

A. AGENCY TYPE

In terms of the type of agency variable, we initially distinguished administrative decision-making bodies based on the degree of independence of the administrative actor making the decision from the more political or partisan aspects of the state. The “structural heretical” nature of administrative decision-making bodies has made the creation of an objectively

⁴³ See e.g. Green, *supra* note 9.

⁴⁴ Martha Anne Humphries & Donald R Songer, “Law and Politics in Judicial Oversight of Federal Administrative Agencies” (1999) 61:1 J Politics 207.

agreeable typology of administrative decision-makers nearly impossible.⁴⁵ For this reason, we did not create categories based on the nature of what administrative actors do, nor on whether their decisions were advisory, administrative, adjudicatory, or regulatory.

Instead, we categorized administrative decision-makers based on their relationship to the more partisan aspects of government. Rather than a dichotomous approach that has proven problematic, we created a spectrum of actors based on their proximity to the more political or partisan elements of government. At one end of the spectrum, we would designate the administrative agency as government in the more partisan or political sense. For instance, judicial review applications made against an order of a minister or municipality clearly fell within the more political aspects of governmental designation. In other words, ministerial decisions by various ministers and cabinets at the provincial level or by various municipalities were designated as more governmental actors.

At the other end of the spectrum, there exist administrative decision-makers who are focused on more private aspects of administrative decision-making and are quite distant from the day-to-day thrust of partisan politics. Grievance and arbitration decisions made up a substantial portion of the cases included here due to the inherently individual and private nature of the decisions in play. The actors involved in those types of decisions (which are ministerially approved independent arbitrators) were labelled as “labour arbitrators.” A second category of administrative decision-makers that would share the more individualized and private types of non-partisan and non-political decisions includes decisions related to the regulation of public professions such as physicians, teachers, and lawyers. These administrative decision-makers were coded within the public professions regulator category.

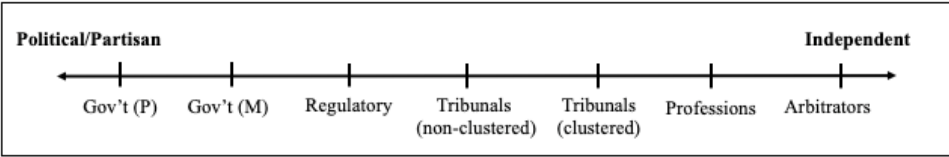
In between these two poles, we created three other categories based on degree of independence as well as a fourth category for administrative decision-makers that do not easily fall into the other categories. Despite their arm’s-length autonomy, we situated a “regulatory/advisory authority” category closer to government than other actors. While ostensibly independent from government, these agencies are more prone to political direction, either through the appointment process or the potential use of policy directives or decision-making guidelines from the political aspects of the government. This grouping of administrative decision-makers included agencies designed to regulate certain industries or play a more noticeable regulatory role. The remaining two categories of administrative decision-makers consisted of the various tribunals that make up a large part of the administrative decision-making state in the province. These tribunals were situated further toward the independent side of the spectrum due to their quasi-judicial nature and were further differentiated based on whether they were part of the tribunal cluster known as “Tribunals Ontario” under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*.⁴⁶ Tribunals such as the Human Rights Tribunal were included in this label. Others, such as the Workplace Safety and Insurance Appeals Tribunal, that did not fall under the *Act* were categorized under the “tribunal” label. We map the different categories of these

⁴⁵ *Ibid.* See also JE Hodgetts, *The Canadian Public Service: A Physiology of Government 1867–1970* (Toronto: University of Toronto Press, 1973).

⁴⁶ SO 2009, c 33, Sch 5 [The Act].

actions based on the extent or degree of independence that the agency has from the political side of government⁴⁷ on a spectrum as follows:

FIGURE 1:
INDEPENDENCE SPECTRUM OF ADMINISTRATIVE AGENCIES



Given the more indeterminate nature of the “other” category, we chose not to assign it a place on the spectrum of independence. Decisions made at the more political end of the spectrum can be based on more discretionary aspects of the policy issues in question and thereby raise concerns about the potential for decisions to be made on arbitrary or less or non-policy salient considerations. As such, we hypothesize that greater levels of judicial deference on the substantive decision-making authority of these administrative decision-makers creates greater space for improper decision-making and lower levels of accountability overall.

To further simplify the analysis, we collapsed some of our categories to assess whether the administrative decision-maker type had influenced the outcomes of cases employing the reasonableness standard of review. Our typology ultimately resulted in four categories: (1) government, (2) regulatory authorities, (3) adjudicative tribunals and (4) statutory decisions. The government category included decisions by the executive branch in Ontario and local governments such as municipalities. Regulatory authorities included the decisions of those responsible for regulating specific industries such as alcohol and gaming. Despite the higher theoretical independence or distance from the more partisan government decision-makers, we also folded in the decisions of public professional arbitrators into this category to reflect their treatment in the existing literature and ensure some degree of comparability of results.⁴⁸ Administrative decision-makers that were captured under the adjudicative tribunals label were those who were given statutory mandates to make quasi-legal decisions. For instance, the decisions of the Workplace Insurance and Appeal Tribunal and the Human Rights Tribunal of Ontario were coded as decisions of adjudicative tribunals. Finally, the statutory decision-makers label was used to capture decisions of labour arbitrators responsible for deciding employment-related matters and collective bargaining arguments.

B. POLICY SPHERE

Policy sphere has been considered a relevant variable in relation to a consideration of whether courts exercised legal versus political decision-making in reviewing the decisions of administrative agencies.⁴⁹ While there are several potential factors that could be applied to

⁴⁷ Reginald S Sheehan, “Federal Agencies and the Supreme Court: An Analysis of Litigation Outcomes, 1953-1988” (1992) 20:4 Am Politics Q 478.

⁴⁸ See e.g. Michael J Trebilcock, *Paradoxes of Professional Regulation: In Search of Regulatory Principles* (Toronto: University of Toronto Press, 2022).

⁴⁹ Donald W Crowley, “Judicial Review of Administrative Agencies: Does the Type of Agency Matter?” in Kermit L Hall, ed, *Judicial Review and Judicial Power in the Supreme Court* (New York: Routledge, 2013) 69.

this variable in relation to potential for improper state decision-making (such as salience, provision of benefits, public or government support, government ideological disposition), we simply sought to determine whether there was a difference in judicial scrutiny levels between different policy spheres at this stage. In this context, there is more space for courts to pursue their individual policy preferences in social policy areas through lower rates of deference and less in the more established and older forms of regulation associated with economic policy spheres.⁵⁰ While we are less engaged with the legal versus activist models of judicial decision-making questions, we find the potential for the checking of arbitrary state action to be highly relevant. Accordingly, we created codes for policy issue areas which fell into one of three categories: Economic/Labour, Social, and Civil Rights and Justice. Matters dealing with labour arbitrations, but also more general economic policies such as decisions dealing with operating businesses licenses were coded under the economic/labour category. The social policy category was perhaps the broadest of all three, encompassing matters ranging from education to environmental and healthcare regulation. Cases in the civil rights and justice category included matters dealing more specifically with the administration of justice and equality rights decisions. We also folded the decisions of public professional regulatory bodies, dealing with the conduct of physicians, nurses, and teachers for example, into this category, owing mainly to the fact that penalty decisions can often be viewed as dealing with matters pertaining to justice.

III. RESULTS

A. OVERALL JUDICIAL REVIEW OUTCOMES

The consideration of the outcomes of the judicial scrutiny of administrative decision-making following both *Dunsmuir* and *Vavilov* and on all types of standards of review reflect a reasonably high degree of deference. Overall, the courts intervened by overturning administrative decisions in 145 out of 608 applications, resulting in a deference rate of 76 percent over the 17-year period beginning with the Supreme Court's decision in *Dunsmuir*. This compares to a deference rate of 66 percent pre-*Dunsmuir* and following the functional and pragmatic test set out in *Baker v. Canada*.⁵¹ Overall, we can see that the combined effect of the Supreme Court's decisions in *Dunsmuir* and *Vavilov* is to further insulate administrative decision-making from judicial scrutiny through a clarification of the standard of review. This is also reflected in our finding that under both decisions, courts identified the standard of review as reasonableness at almost the exact same level in the 92 to 93 percent range.

These findings, however, mask what appears to be incremental gains in deference to administrative decision-making that followed the *Baker*-era and likely led to the need for greater clarity in both *Dunsmuir* and *Vavilov*. When the outcomes of *Dunsmuir* and *Vavilov* are disaggregated, we see that *Dunsmuir* only moved the needle a little bit towards the more deferential end of the spectrum of judicial scrutiny, with a deference rate of 70 percent over the ten-year *Dunsmuir* era. The incremental effect is more clearly seen when *Dunsmuir* is broken down into five-year periods of review, with the first period (2008 to 2013) having a

⁵⁰ *Ibid.*

⁵¹ Lahey et al, *supra* note 9 at 321.

deference rate of 69 percent and the second period (2013 to 2018) a deference rate of 72 percent.

What becomes clear post-*Vavilov* is that the Ontario Divisional Court is seemingly fulfilling the intended effects over the 17-year post-*Dunsmuir* era and the promise of *Vavilov* — that judicial review courts should be and have been more deferential to the decisions rendered by administrative agencies on behalf of the government. As illustrated in Table 2, the suggestion of rampant judicial intervention in executive and administrative decision-making process that makes up the root, if not the whole plant, of the judicial activism argument does not hold up to scrutiny on a pure outcomes basis. In fact, the opposite appears to be the case, with 82 percent of all judicial review decisions being dismissed by the Divisional Court during the first five years post-*Vavilov*. This result is in line with or higher than findings in the pre-*Vavilov* period.⁵² In fact, according to our dataset, when compared to the *Dunsmuir*-era, the Divisional Court became more deferential by granting less judicial review applications by ten percent.

To account for the maturation of decisions effect of *Dunsmuir*, we also compared the judicial review outcomes in reasonableness decisions of the first five years in both eras and also found a slightly greater variation with the Divisional Court granting even fewer judicial review applications post-*Vavilov* as compared to post-*Dunsmuir* by 13 percent. Both of these findings, as illustrated in Figure 2, suggest that the Divisional Court showed a higher degree of deference under the *Vavilov* framework with 95 percent confidence intervals. This finding, however, should not be taken to mean that the Divisional Court was not deferential prior to *Vavilov*. Instead, the interpretation of this finding should be taken to mean that the Divisional Court in Ontario became even more deferential, not less.

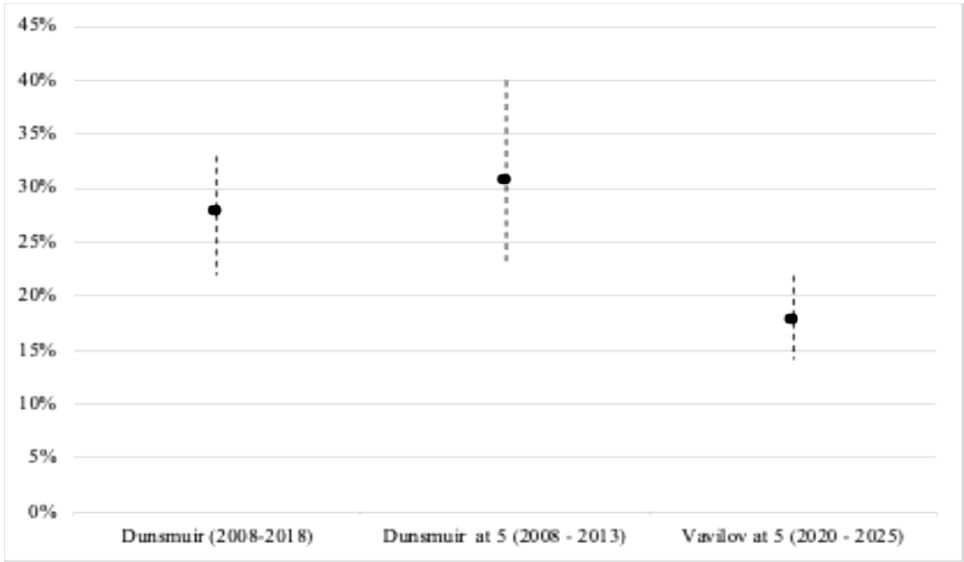
TABLE 2:
REASONABLENESS OUTCOMES TRENDS FOLLOWING *DUNSMUIR* AND
VAVILOV

Overall Outcomes	<i>Dunsmuir</i> (2008 - 2018)	<i>Vavilov</i> at 5 (2020-2024)	Grant Rate Difference
Dismissed	0.72	0.82	0.100
Granted*	0.28	0.18	-0.100*
Total (N)	246	317	563
First 5 Years	<i>Dunsmuir</i> at 5	<i>Vavilov</i> at 5	Grant Rate Difference
Dismissed	0.69	0.82	0.130
Granted*	0.31	0.18	-0.130
Total (N)	117	317	434

* Statistically significant with a 95 percent confidence interval.

⁵² See the sources in note 9, above.

FIGURE 2:
PERCENTAGE OF GRANTED JUDICIAL REVIEW CASES 2008–2025 WITH A 95 PERCENT CONFIDENCE INTERVAL



This finding exceeds that of prior findings in the pre-*Vavilov* period and is consistent with the limited examination post-*Vavilov* at the federal level.⁵³ While this trend towards increased deference to administrative decision-makers remains fairly robust, we find a greater willingness by courts to intervene when we limited our examination to the reasonableness subset of decisions. In the 76 percent of all judicial review cases in the *Vavilov* era where the Ontario Divisional Court applied the reasonableness standard, it dismissed the cases and found the administrative bodies’ substantive decisions as reasonable at a relatively high rate. While this fairly high outcome once again suggests that the Divisional Court is following the precedential intention established in both decisions, it also points to the possibility that there may be concerns with arbitrary uses of delegated decision-making that justifies the Divisional Court interfering in one out of every four judicial review applications or an improper intrusion by the Divisional Court into the reserved decision-making space for these agencies. To investigate this possibility, we sought to determine if there was a relationship between these outcomes and two of the factors that may raise apprehensions around arbitrariness and accountability: the nature of the decision-maker, and the policy sphere.

B. REASONABLENESS REVIEW BY AGENCY TYPE

Based on the data provided in Table 3, we found that the type of administrative decision-maker provided some usefulness as predictor in explaining when courts will defer (or not) using the reasonableness standard of review. Specifically, the data below shows that the Divisional Court showed higher degrees of deference to adjudicative tribunals in the *Vavilov* era compared to the *Dunsmuir* era. Although the Divisional Court generally showed a high

⁵³ Danay, *supra* note 9; Ginn et al, *supra* note 9; Green, *supra* note 9.

degree of deference overall to administrative decision-makers, some appear to be treated more deferentially than others. There appears to be a clear distinction between administrative decision-makers that fall on the more political or partisan side of the spectrum and those located on the more independent side. The decisions of administrative decision-makers in government, both provincial and municipal, and regulatory agencies, were overturned to a greater extent than those at the more independent end of the spectrum. This suggests that courts are less willing to provide deference to the types of decisions that may be prone to arbitrariness, reliance on less or non-policy relevant factors and greater use of political considerations.

TABLE 3:
JUDICIAL REVIEW OUTCOMES BY ADMINISTRATIVE AGENCY TYPE

	<i>Dunsmuir</i> (2008-2018)		<i>Vavilov</i> at 5 (2020-2024)		
Administrative Decision Maker	Dismissed	Granted	Dismissed	Granted	Grant Rate Difference
Government	0.87	0.13	0.72	0.28	0.152
Regulatory Authority	0.73	0.27	0.86	0.14	-0.131
Adjudicative Tribunal*	0.74	0.26	0.87	0.13	-0.13*
Statutory Decision Maker	0.64	0.36	0.76	0.24	-0.121

* Statistically significant with a 95% confidence interval.

Overall, the Divisional Court seemed to show more deference, compared to the *Dunsmuir* era, in all categories except for the ones including government decisions, where the Divisional Court granted 15 percent more judicial review applications under *Vavilov*. This might account for concerns during the *Dunsmuir* era where government-related administrative decision-makers appear to have been subject to less scrutiny overall and concerns with the accountability function of judicial review. The decline in deference for these types of decision-makers in the post-*Vavilov* period indicates some degree of sensitivity to these concerns. In contrast, the increased levels of deference shown to the other administrative agency types could be because of the legal imperatives flowing from *Vavilov*, an increased professionalization of those types of agencies, or some other factor, for which additional research will be required to discern.

C. REASONABLENESS REVIEW BY POLICY SPHERE

The primary focus of the policy sphere variable is to consider whether courts show a greater degree of defence in those policy spaces where there is a greater degree of discretion on the part of administrative decision-makers and therefore more space for misfeasance or malfeasance. Our findings show that the post-*Vavilov* period may show a greater degree of sensitivity to these concerns. As set out in Table 4, the *Dunsmuir* era demonstrated little difference between deference rates across the three broad policy spheres.

TABLE 4:
JUDICIAL REVIEW OUTCOMES BY COLLAPSED POLICY SPHERE

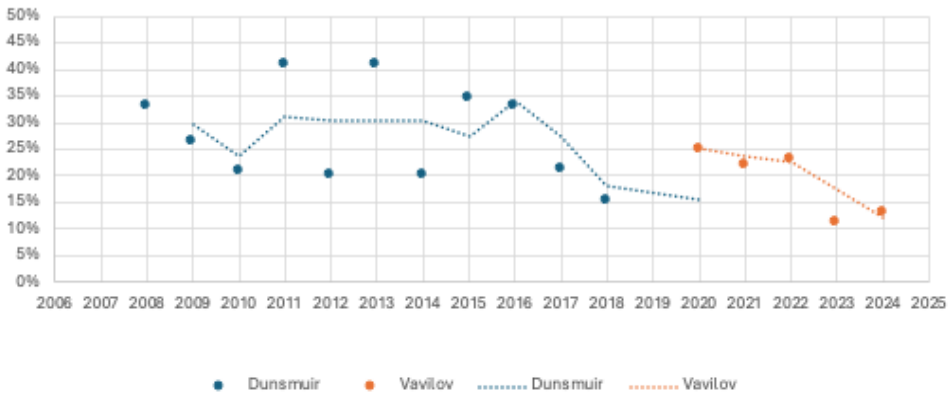
	<i>Dunsmuir</i> (2008-2018)		<i>Vavilov</i> at 5 (2020-2024)		
Policy Sphere	Dismissed	Granted	Dismissed	Granted	Grant Rate Difference
Economic/Labor	0.72	0.28	0.78	0.22	-0.059
Social	0.76	0.24	0.74	0.26	0.022
Civil Rights and Justice*	0.71	0.29	0.89	0.11	-0.180*

In contrast, whether due to doctrinal clarity, the increased professionalization of some administrative decision-makers, changes in legislation, or some other factor, there is a significant difference between the deference rates afforded to administrative decision-making in civil rights and justice policy decisions as compared to economic/labour and social policy decisions. While we cannot account for these differences in the current research, we note that economic and social issues both fall within the middle of the range of dismissals of the judicial review applications, contrary to existing explanations. While there is some disparity between the two categories, this finding would not be in keeping with a more judicial activist-based argument, which would require a wider disparity. Rather, this finding suggests that factors other than personal political or policy preferences of the courts are a stronger explanatory factor for these outcomes.

D. THE OVERALL GENERAL TREND

The overall general and downward trend under the *Vavilov* framework, as illustrated in Figure 3, is the courts are seemingly becoming more deferential to administrative decision-makers, both incrementally and on an absolute basis. Of particular interest in the post-*Dunsmuir* era is that deference started at a higher rate under the *Vavilov* framework as compared to the *Dunsmuir* era. The moving average of granted judicial review outcomes within the *Dunsmuir* era seemed more unstable with much greater outliers. By contrast, granted judicial review decisions citing *Vavilov* seem to be more sharply and steadily declining. Only time will tell, however, whether the trend will hold.

FIGURE 3:
MOVING AVERAGE OF JUDICIAL REVIEW GRANT RATES



IV. CONCLUSION

It has been five years since *Vavilov*, and our findings suggest that deference is very much alive and well, at least within the Ontario Divisional Court. Our empirical analysis of the post-*Vavilov* trilogy on the success of judicial review applications and the corresponding factors associated with the same result in two key findings. First, if the intention of the Supreme Court was to provide clarity on the appropriate standard of review for courts reviewing the substantive decisions of administrative tribunals, the initial results from the Ontario Divisional Court appear to confirm its success on that front. Nearly four out of every five administrative agency decisions challenged on judicial review were upheld and more than 90 percent of the judicial review cases that fell within our search parameters adopted the reasonableness standard, with a corresponding high degree of those decisions also being confirmed as reasonable. However, as with previous attempts at clarity provided by the courts in decisions such as *Baker* and *Dunsmuir*, time will only tell if this continues to be the case or whether the Supreme Court will be called on again to provide guidance to the continuously vexing question. The fact that the Supreme Court recently addressed the scope of reviewing courts in *Yatar v. TD Insurance* suggests that such clarity, as in the past, might also remain fleeting.⁵⁴ However, the impact of the Supreme Court's decision at the level of the lower courts appears, at least initially, to be quite robust and in keeping with expectations of a legal model of judicial decision-making.

The second finding relates to the potential institutional impact that the *Vavilov* decision might have, particularly in relation to the effect on administrative decision-making bodies. Our efforts at discerning the potential impact present a complicated picture that, on one hand, provides reassurances that delegated decision-making is in keeping with legislative intentions and that legal-based decision-making models rooted in the rule of law as a fundamental aspect of democratic states is secure. On the other hand, we also find sufficient space for political and partisan-based administrative decision-makers to rely on discretionary or factual

⁵⁴ *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8 at paras 41–76.

considerations in the context of lower or reduced standards of review, which is potentially problematic. Perhaps the government misfeasance or malfeasance evident in the post-*Dunsmuir* era has been corrected as our findings indicate. If so, it also suggests that continued and greater scrutiny of these types of decisions is both warranted and potentially undermined by the more deferential standard established by *Vavilov*. The lower standard of review associated with reasonableness creates the space for decisions to be based on factors other than the specific and relevant policy considerations and legislative intentions and thereby leads to the potential for arbitrary decisions and the abuse of state power for overtly partisan or political purposes. As with the judicial impact of *Vavilov* on the lower courts, the administrative impact will also require additional time and scrutiny before that impact on the administrative state is more fully understood.

Two additional explanations come to mind that our findings were not able to address, but that reflect a broader engagement with judicial impact, particularly on elites and legislatures. Perhaps individual members of administrative and quasi-judicial tribunals (elite impact) are enjoying more deference because they have heeded the lessons of the *Vavilov* instructions and are simply giving better reasons for their decisions (that is, clear and intelligible justifications of how they interpret and apply their enabling statute). An alternative explanation may rest with matters of legislative impact — that is, that legislatures have changed the legal constraints that bear upon the decision-maker.

The reality is that quantitative inquiry can only tell us so much. Future research should take additional steps with a qualitative assessment to investigate the explanatory factors that might better explain the findings presented in this article. Logically, the next step should be to investigate whether administrative decision-making bodies have improved in justifying their decisions through their reasons.⁵⁵ Future works should further look into this by exhibiting changes in the practice of writing reasons by various administrative authorities. Future work should also more carefully examine the reasoning of judges reviewing administrative decisions to examine this. Inquiry of this kind will provide an even more in-depth understanding of the impact and significance of *Vavilov*.

Regardless, further empirical inquiry (the kind that political scientists are familiar with) and the judicial impact approach discussed in this article will further assist in determining when, if at all, the Supreme Court will need to start over and roll the standard of review boulder up the mountain again.

⁵⁵ See Paul Daly, “Legal Certainty, Legal Coherence and Judicial Politics” (15 January 2022), online (blog): [perma.cc/TNX6-PTJU].