

Foundations of Canadian Law – Practice Question and Answer

Session: Constraints on Legislative and Administrative Actions

Topic: Judicial Review in a Democratic Society

Recommended time: 60 Minutes

Score: 75 Marks

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Question

Judicial review in Canada is accepted as the process by which courts ensure that each branch of government recognises the limits of its own power and that the decisions of administrative bodies are fair, reasonable and lawful.

But, according to the SCC in *Canada v. Vavilov*,

... The former contextual analysis has proven to be unwieldly and offers limited practical guidance for courts attempting to determine the standard of review. The practical effect is that courts struggle in conducting the analysis, and debates surrounding the appropriate standard and its application continue to overshadow the review on the merits, thereby undermining access to justice. A reconsideration of the Court's approach is therefore necessary in order to bring greater coherence and predictability to this area of law. A revised framework to determine the standard of review where a court reviews the merits of an administrative decision is needed.

Briefly review the former contextual analysis in the historical development of administrative law in Canada as stated in the above judgment, and explain the revised framework provided by the SCC through that case.

Note:

As you should know by now, Foundations as a subject cuts across many other subjects, particularly Canadian Constitutional Law and Canadian Administrative Law. There are many topics which overlap in the three subjects. So, you should be prepared to answer questions about Canadian Administrative Law or Canadian Constitutional Law during your Foundations exam. You should not be surprised about this because these topics are already in your NCA Foundations syllabus.

This sample question simply asks you to trace the history of the development of administrative law in Canada, summarizing the former contextual analysis which the SCC complained of in *Canada v. Vavilov* as unwieldy and of limited practical guidance. You should end your answer by explaining the new approach established by the SCC in *Canada v. Vavilov*.

Please note that the development of Canadian Administrative Law, past to present, is a hot topic and many previous NCA exam questions have dwelt on this.