THE SUPREME COURT OF CANADA SET TO RECONSIDER JUDICIAL REVIEW

Posted on May 18, 2018

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The Supreme Court of Canada recently signaled that it intends to revisit standard of review. [1] The Supreme Court's decision will have important implications on parties who find themselves appealing a tribunal or administrative decision.

In a rare move, the Supreme Court provided reasons when granting leave to hear the appeal in Minister of Citizenship and *Immigration v. Vavilov*. The Supreme Court said that it would hear the appeal with two others. It then commented:

> The Court is of the view that these appeals provide an opportunity to consider the nature and scope of judicial review of administrative action, as addressed in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9, and subsequent cases.

The Supreme Court's reference to Dunsmuir[2] *is* a reference to a 2008 decision in which the Supreme Court sought to simplify the approach to reviewing administrative decisions. In *Dunsmuir*, the Supreme Court dictated that there be two standards of review – reasonableness and correctness. However, since that time, judges, practitioners and academics have noted that this more simplified approach has led to inconsistencies and confusion.[3] McMillan's administrative law practitioners are following this case closely and will report back on the Supreme Court's final decision and its implications for our clients.

by Jon Wypych and Adam Chisholm

[1] *Minister of Citizenship and Immigration* v. Vavilov, 2017 FCA 132, leave to appeal to S.C.C. granted, 37748 (May 10, 2018).
[2] 2008 SCC 9
[3] See eg. "The Canadian Law of Judicial Review: A Plea for Doctrinal Coherence and Consistency" (2016), 42 Queen's L.J. 27.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against

making any decisions based on this material alone. Rather, specific legal advice should be obtained.