SCC Court File Nos: 37748, 37896 & 37897

IN THE SUPREME COURT OF CANADA
[ON APPEAL FROM THE FEDERAL COURT OF APPEAL]

B E T W E E N:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

APPELLANT
(Respondent)

- and -

ALEXANDER VAVILOV

RESPONDENT
(Appellant)

A N D B E T W E E N:

BELL CANADA and BELL MEDIA INC

APPELLANTS
(Appellants)

- and -

ATTORNEY GENERAL OF CANADA

RESPONDENT
(Respondent)

A N D B E T W E E N:

NATIONAL FOOTBALL LEAGUE, NFL INTERNATIONAL LLC and NFL PRODUCTIONS LLC

APPELLANTS
(Appellants)

- and -

ATTORNEY GENERAL OF CANADA

RESPONDENT
(Respondent)

FACTUM OF THE INTERVENER THE SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC (CIPPIC)

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SCC Court File Nos: 37748

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

APPELLANT
(Respondent on Appeal)

- and -

ALEXANDER VAVILOV

RESPONDENT
(Appellant on Appeal)

- and -

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INTERVENERS

- and -

DANIEL JUTRAS and AUDREY BOCTOR

AMICUS CURIAE

SCC Court File No.:37896

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

BELL CANADA AND BELL MEDIA INC.

APPELLANTS
(Appellants)

- and -

ATTORNEY GENERAL OF CANADA

RESPONDENT
(Respondent)

- and -

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

INTERVENER

- and -

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OUTTV NETWORK INC., STINGRAY DIGITAL GROUP INC., TV5 QUÉBEC CANADA, ZOOMERMEDIA LTD. AND PELMOREX WEATHER NETWORKS (TELEVISION) INC. AND TELUS COMMUNICATIONS INC., ASSOCIATION OF CANADIAN ADVERTISERS AND ALLIANCE OF CANADIAN CINEMA, TELEVISION AND RADIO ARTISTS

INTERVENERS

- and -

AUDREY BOCTOR and DANIEL JUTRAS

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SCC Court File No.:37897

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N:

NATIONAL FOOTBALL LEAGUE, NFL INTERNATIONAL LLC AND NFL PRODUCTIONS LLC

APPELLANTS
(Appellants)

- and -

ATTORNEY GENERAL OF CANADA

RESPONDENT
(Respondent)

- and -

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION
INTERVENER

- and -

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INTERVENERS

- and -

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PART I – OVERVIEW OF POSITION

1. The rule of law is an ideal to which every legal system aspires, and against which it must be judged.[1] Critical to maintaining the rule of law is the notion that administrative decision-makers may only operate within the authority conferred upon them.[2] Superior courts are constitutionally mandated to exercise supervisory review powers to ensure administrative decision-makers act within the contours of their legislatively conferred authority, respectfully following the rules of natural justice.[3]

2. This Court observed, albeit in a different context, that the rule of law can be shallow absent proper enforcement mechanisms.[4] CIPPIC respectfully submits such a shallowing will come to pass should this Court take up its prior inclination to "euthanize" the jurisdictional correctness review category.[5]

3. A long line of this Court's jurisprudence[6] culminating in *Dunsmuir* has consistently affirmed that reviewing courts must assess jurisdictional questions without deference. The rule of law in fact demands that the Court have the last word on whether an administrative body acted within its delegated authority.[7]

4. Voices in this Court have recently championed the cause of maintaining this category,[8] and have noted that deleting it does not mean such issues will suddenly cease to be.[9] Furthermore, and as Rennie JA. eloquently stated just weeks ago: "[jurisdictional questions] *have coursed through our jurisprudence for over half a century, playing an integral role in ensuring the rule of law remains more than mere words. Efforts to categorize jurisdiction may have floundered, but this should not be understood either as a problem with the principle or as a rationale for its elimination.*"[10]

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[1] Peter Cane and Joanne Conaghan, eds, *The New Oxford Companion to Law*, (New York: Oxford University Press Inc, 2008) *sub verbo* "rule of law".
[2] *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 29, [2008] 1 SCR 190[*Dunsmuir*].
[3] *UES, Local 298 v Bibeault* [1988] 2 SCR 1048 at 1090, [1988] SCJ No 101 (QL) [*Bibeault*]; *Dr Q v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 at para 21, [2003] 1 SCR 226.
[4] *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62 at para 31, [2003] 3 SCR 3.
[5] *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 (CanLII) at paras 34, 88, [2011] 3 SCR 654, Rothstein and Binnie JJ.
[6] *Dunsmuir, supra* note 2 at para 36, citing *Bibeault* at 1086; *Crevier v Attorney General of Quebec* [1981] 2 SCR 220 at 236-37, 1981 CanLII 30 (SCC); *Pushpanathan v Canada (Minister of Citizenship and Immigration)* [1998] 1 SCR 982 at para 28, 1998 CanLII 778 (SCC); *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 SCR 140.
[7] *Dunsmuir*, *supra* note 2 at para 30, citing Thomas Cromwell, "Appellate Review: Policy and Pragmatism", in 2006 *Isaac Pitblado Lectures, Appellate Courts: Policy, Law and Practice*, V-1, at p V-12.
[8] *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 (CanLII) at para 77, [2018] SCJ No 31 (QL), Côté and Rowe JJ [*CHRC*].
[9] *Ibid at* para 110, Brown J.
[10] *Bell Canada v 7265921 Canada Ltd*, 2018 FCA 174 (CanLII) at para 47.

5. The rationale for correctness review on jurisdictional questions has been explained time and time again. CIPPIC offers three submissions emphasizing different facets of that rationale:

(i) The first is historical, and demonstrates that the deferential standard evolved specifically to address aspects of decisions that do not go to the decision-maker's authority, but rather the manner in which that authority was exercised in a given case. Correctness on jurisdictional review was therefore not initially conceived as an exception to the norm of deference. Rather, the deferential standard grew out of the need to review decisions that were plainly made within the decision-maker's authority but were so erroneous that they *amounted* to an "excess of jurisdiction". The transparency requirement enunciated in *Dunsmuir* is what allows the reviewing court to make this assessment.

(ii) The second is about procedural fairness. The legislature is free to curtail procedural fairness rights, to a point. But when it does, it must be clear about it since procedural fairness is fundamental to the justice system's integrity.[11] The most robust procedural fairness is afforded to litigants in courts of law and equity. When the legislature confers jurisdiction on an administrative decision-maker—and in particular on quasi-judicial tribunals—it often extracts subject-matter that would otherwise fall within the ken of the courts. In so doing, it diminishes (in varying degrees depending on the administrative body in question) the degree of procedural fairness the subject would enjoy before a court. It is therefore critical to be certain, not just reasonably certain, that the legislature intended to diminish the procedural safeguards the parties would enjoy in court.

(iii) The third relates directly to the rule of law itself and when it becomes analytically relevant. In judicial review of administrative action, the overriding concern is always whether one that exercises delegated authority is acting therewithin. If not, the decision is illegal and offends the rule of law. Whether deference is due may be viewed as corresponding with *where* in the analysis the rule of law concern arises. Unlike decisions made within a decision-maker's delegated sphere of authority, questions going to that very authority pose a threshold rule of law concern. We have not yet definitively entered

[11] *Re BC Motor Vehicle Act*, [1985] 2 SCR 486 at 506, 24 DLR (4th) 536; *Farhadi v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 381 (QL) at para 29, 144 FTR 76.

into the domain the legislature intended the decision-maker to operate in, and its expertise may or may not be engaged in answering the question. Even if its expertise is relevant, the need for independent assessment outweighs any actual or perceived benefit of a more expert determination.

6. Much of the frustration associated with the jurisdictional review category is the supposed difficulty in defining jurisdictional questions. Even if this were so, that difficulty cannot justify the conclusion that such questions do not exist.

7. While CIPPIC acknowledges there might be "hard cases" in the Dworkinian sense, jurisdictional questions may be simply defined as those going to the scope of a decision-maker's authority. Such questions may be characterised as:

(i) The substantive issues a decision-maker can decide (**subject-matter jurisdiction**);

(ii) The persons with respect to whom the decision may be rendered (**personal jurisdiction**); and

(iii) The nature of the rights the decision-maker may bestow, the obligations it may impose or the sanctions it may issue (**remedial jurisdiction**).

8. Each of these relate directly to the scope of authority the legislature conferred on the decision-maker. The Court should thus expand the jurisdictional correctness category to capture these three facets. Limiting it to assessing the decision-maker's authority to inquire (i.e. subject-matter jurisdiction) arbitrarily shields two of three aspects of the decision-maker's delegated authority from non-deferential scrutiny.[12]

PART II – QUESTION IN ISSUE

9. CIPPIC takes no position on the statutory provisions at issue in these appeals. Rather, it has taken up the invitation to add its perspective to those before the Court on the framework applicable to judicial review of administrative action in Canada.

10. In light of the various positions taken on this multi-faceted inquiry, CIPPIC focusses its submissions on one of the questions before the Court in the *Bell Canada v Canada (Attorney General)* appeal, namely the standard of review applicable to jurisdictional questions.

[12] *Dunsmuir*, *supra* note 2 at para 59.

11. CIPPIC respectfully submits that jurisdiction is not an illusory concept, and questions going to the extent of an administrative decision-maker's authority must be reviewed without deference.

PART III – ARGUMENT

12. The rule of law demands that an independent judiciary decide for itself whether a decision-maker exercised the authority actually conferred upon it. Such inquiries are *a fortiori* binary: either the decision is within the decision-maker's authority or it is illegal. As this Court stated in *Bibeault*: "*a tribunal cannot by a misinterpretation of an enactment assume a power not given to it by the legislator*."[13]

13. *Dunsmuir* recognizes that the courts bear a constitutional duty to maintain the rule of law by assuring public authority is always legally exercised.[14] The failure to do so compromises the rule of law.[15] *Dunsmuir* also validates the notion that deference is often required to honour the democratic principle, instantiated as a legislative intention to achieve adjudicative efficiency and expert determination.[16] Bearing these two conclusions in mind, the Court acknowledged tension may subsist between the fundamental democratic principle and the rule of law. It directed the lower courts to remain mindful of the necessary balance between upholding the rule of law and respect for legally delegated authority.[17]

14. *Dunsmuir* achieves this balance by permitting correctness review only when: 1) the question fits within one of the defined correctness categories; or 2) a contextual analysis leads the reviewing court to the conclusion that the legislature intended reviewing courts to assess without deference.

15. The framework espoused in *Dunsmuir* implicitly recognizes that administrative decision-makers often wield the awesome might of the state in ways profoundly affecting those coming before them. It mandates deference and respectful attention when decision-makers operate within their domain of expertise, but prescribes greater scrutiny when they do not, or when the issue before them is of a special

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[13] *Bibeault*, *supra* note 3 at 1086, cited in *Dunsmuir*, *supra* note 2 at para 36.
[14] *Dunsmuir*, *supra* note 2 at para 28; *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at para 13; *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62 at para 24, [2010] 3 SCR 585.
[15] *Dunsmuir*, *supra* note 2 at para 29.
[16] Guy Régimbald, *Canadian Administrative Law*, 2nd ed (Toronto: Lexis Nexis, 2015) at 2-3 [*Régimbald*].
[17] *Dunsmuir*, *supra* note 2 at para 27.

sort requiring legal precision.[18]

16. In that connection, assuring administrative decision-makers do not exceed their bounds is a special sort of question justifying a departure from the deference ordinarily due. Efficiency and deemed expertise, though important, must take a backseat to certainty when the rule of law is in play. If the reviewing court defers, it is possible for a "misinterpretation" to persist, not only in the case at issue, but in the law generally through the reviewing court's imprimatur.[19]

17. It is also possible that two instances of the same decision-maker render conflicting decisions, both of them "reasonable", as to its jurisdiction. This in itself leads to a rule of law concern since the decision-maker cannot simultaneously have and not have jurisdiction. A definitive statement by the reviewing Court remedies this problem. The court can only help in this way by stating what the law *is*, not whether the decision-maker's conclusion is reasonable.

18. Perhaps most importantly, deference is inappropriate since, in practice, no administrative tribunal can be completely independent of the executive.[20] That lack of independence is most palpable in the case of political actors, such as ministers or the governor-in-counsel. But even quasi-judicial tribunals are part of the executive branch and thus necessarily not fully independent from it.[21]

19. This lack of independence is no flaw, but rather a feature since Parliament is within its rights, subject to the Constitution, to advance policy through executive (i.e. administrative) organs.[22] However, this means those organs lack the independence required to check that executive action, a quality superior courts possess in spades. Indeed, non-deferential review on jurisdictional questions honours the Montesquieuvian separation of powers by imposing a sober judicial check on administrative/executive action.

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[18] These are: 1) constitutional questions; 2) jurisdictional questions; 3) general law questions of central importance to the legal system and outside the decision-maker's expertise; and 4) determinations going to the jurisdictional lines of two administrative bodies (*Dunsmuir*, *supra* note 2 at paras 58-62).

[19] Although administrative decisions do not attract *stare decisis* (see *Domtar Inc c Quebec (Commission d'appel en matière de lésions professionnelles)* [1993] 2 SCR 756 at 798-799, 1993 CanLII 106 (SCC), judicial decisions reviewing them do.

[20] *2747-3174 Québec Inc v Quebec (Régie des permis d'alcool)*, [1996] 3 SCR 919, [1996] SCJ No 112 (QL), para 108.

[21] *Ocean Port Hotel Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52 at para 24, [2001] 2 SCR 781 [*Ocean Port Hotel*].

[22] *Mikisew Cree First Nation v Canada (Governor General in Council)*, 2018 SCC 40 at para 111, [2018] SCJ No40 (QL).

20. Without overruling *Dunsmuir*, this Court's subsequent jurisprudence appears to have indirectly defined jurisdictional correctness review out of existence. This occurred by the combined operation of two propositions: 1) the jurisdictional category is so vanishingly narrow it may not even exist;[23] and 2) presumptive reasonableness when the tribunal interprets its enabling legislation.[24]

21. Provisions conferring subject-matter jurisdiction are *a fortiori* contained in a tribunal's enabling legislation since the contours of any delegated authority are limited by law.[25] Jurisdictional limitations are also often found in enabling legislation. When the court examines one of these provisions, presumptive reasonableness must give way.[26]

22. CIPPIC proposes to further justify reviewing jurisdictional questions without deference in three ways: **(i)** highlighting the historical evolution of deference in judicial review of administrative action as growing out around jurisdictional questions; **(ii)** emphasizing the need for certainty in concluding a legislative intention to oust the courts' jurisdiction thereby curtailing a litigant's procedural fairness rights; and **(iii)** observing that in the case of jurisdictional questions, the rule of law concern emerges at the beginning of the "decision chain".[27]

(i) Deferential review was designed as a standard for non-jurisdictional questions

23. To apply reasonableness on questions pertaining to a decision-maker's authority disregards the impetus for creating a deferential standard in the first place.

24. The patent unreasonableness standard was specifically developed to apply to decisions that, though rendered within the decision-maker's scope, could not be reasonably justified in light of the facts and law.[28] The underlying presumption is that legislators do not intend unreasonable results.[29] Beetz J. set out

[23] *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654 [*Alberta Teachers*].
[24] *Alberta Teachers*; *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47, [2016] 2 SCR 293.
[25] *Régimbald*, *supra* note 16 at 1.
[26] *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 22, [2013] 3 SCR 895 [*McLean*].
[27] By decision chain we mean the various stages of a decision-making process that may or may not arise in a given case. Broadly speaking, these are: identifying the issue, assessing jurisdiction, adjudicating the issue and issuing an outcome (right, obligation or sanction).
[28] *Dunsmuir*, *supra* note 2 at para 131; *Bibeault*, supra note 3 at para 113, citing *Canadian Union of Public Employees, local 963 v New Brunswick Liquor Corp*, [1979] 2 SCR 227, 1979 CanLII 23 (SCC).

the distinction between intra-jurisdictional errors and those pertaining to jurisdiction in *Bibeault*:

> It is, I think, possible to summarize in two propositions the circumstances in which an administrative tribunal will exceed its jurisdiction because of error:
>
> 1. if the question of law at issue is within the tribunal's jurisdiction, it will only exceed its jurisdiction if it errs in a patently unreasonable manner; a tribunal which is competent to answer a question may make errors in so doing without being subject to judicial review;
>
> 2. if however the question at issue concerns a legislative provision limiting the tribunal's powers, a mere error will cause it to lose jurisdiction and subject the tribunal to judicial review.[30]

25. Applying reasonableness to jurisdictional questions, in addition to impermissibly hamstringing the reviewing court in its supervisory role, is out of touch with the underlying ethos animating the need for deferential review, which is not assuring decision-makers act within their delegated authority *stricto sensu*.[31]

(ii) The need to be certain the legislature intended to curtail procedural fairness rights requires non-deferential review

26. Although the legislature is free to curtail procedural fairness rights,[32] it is incumbent on reviewing courts to make sure it intended to do so.[33]

27. Procedural fairness is "eminently variable" and context-specific.[34] But in no context is it as robust and as before superior courts. In addition to the common law procedural fairness parties enjoy before courts, they also benefit from a detailed, comprehensive and often party-driven (i.e. procedural choices, such as summary judgement) procedural toolkit foreign to most administrative bodies.

28. In the case of quasi-judicial tribunals, the subject-matter they adjudicate would often fall within the courts' purview, but for the tribunal's enabling legislation.[35]

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[29] *Dunsmuir*, *supra* note 2 at para 131.
[30] *Bibeault*, *supra* note 3 at para 116.
[31] *Ibid* at para 110.
[32] See *Ocean Port Hotel, supra* note 20.
[33] *Dunsmuir*, *supra* note 2 at para 129, Binnie J: ("*Nobody should have his or her rights, interests or privileges adversely dealt with by an unjust process. Nor is such an unjust intent to be attributed easily to legislators*.").
[34] *Ibid* at para 79, citing *Knight v Indian Head School Division No 19* [1990] 1 SCR 653 at 682, 1990 CanLII 138 (SCC); *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 at para 19, 174 DLR (4th) 193; *Moreau‑Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at paras 74-75, [2002] 1 SCR 249.
[35] For example: The Canadian International Trade Tribunal decides procurement complaints with respect to federal

29. The legislature is, of course, free to confer on a tribunal exclusive jurisdiction over matters not reserved for section 96 courts. However, when it does, it also generally diminishes procedural rights. Legislative intent must accordingly be independently verified. The Court must do so since independence does not inhere in administrative bodies, who "*lack constitutional distinction from the executive*".[36]

30. As noted, when the Court verifies whether a given matter falls within an administrative body's authority, according deference at least partially defeats the purpose of having independent judicial review. That independence is indirectly compromised by submission to the decision-maker's "greater wisdom", which, legal fictions aside, may or may not be the case depending on the point in issue. The fact is that courts are better equipped than many administrative decision-makers to interpret statutes. This is especially true in the case of those without legal training or access to the courts' array of resources.

(iii) Jurisdictional questions pose threshold rule of law concerns

31. A decision may offend the rule of law regardless of whether it falls within the decision-maker's sphere of authority. However, where in the decision chain the rule of law concern arises informs the rationale for when deference is appropriate.

32. When jurisdiction is not in issue, there is no *immediate* rule of law concern since the decision-maker is operating within the bounds of its authority.[37] By delegating to a decision-maker, the legislature signals the latter is better placed to decide, especially when statutory interpretation techniques might yield more than one reasonable result.[38] Accordingly, as long as the tribunal selects a reasonable one, the court's rule of law concerns are assuaged: the body entrusted with interpreting the law arrived at a plausible conclusion.

33. While the reviewing court may or may not possess subject-matter expertise in the particular

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government tendering that would otherwise fall within the Court's inherent jurisdiction over contractual matters. The same could be said of various labour and industrial relations tribunals or the competition tribunal.

[36] *Ocean Port Hotel*, *supra* note 20 at para 24.

[37] This statement is of course subject to the "merits" *Dunsmuir* correctness categories: constitutional questions and question outside the decision-maker's expertise and of central importance to the legal system.

[38] *McLean*, *supra* note 25 at para 32.

legislative regime, it is a practiced hand at interpreting statutes, employing the only method for doing so approved by this Court.[39] Accordingly, they are more than "good enough" at reading laws in general to detect an obvious error by an expert on a particular law.[40] After all, the very statutory interpretation principles all decision-makers use are developed and honed by the courts.

34. In contrast with decisions on issues uncontroversially within the decision-maker's authority, an immediate rule of law concern *does* arise when jurisdiction is questioned since authority to act is not yet established. As section 96 courts are constitutionally mandated to safeguard the rule of law by overseeing administrative action, it follows that they ought to apply heightened scrutiny to the question of whether the legislature intended to allocate a given authority or power to a given decision-maker.

35. CIPPIC does not advocate a return to the preliminary/collateral question doctrine, and certainly does not advocate early court intervention at the outset of an administrative action to adjudicate jurisdictional points.[41] Judicial review takes place after the decision (including those aspects pertaining to jurisdiction) is rendered.[42] However, the rationale underlying that doctrine informs why questions going to the decision-maker's authority should not receive deference. That rationale was carried forward through *Bibeault* and then *Dunsmuir*. It is no less true or useful today.

Jurisdiction defined

36. CIPPIC submits that while determining whether an issue is jurisdictional in nature might on occasion pose difficulties, the concept of jurisdiction is not illusory.

37. A jurisdictional question is one going to the scope of a decision-maker's authority. There are, for the most part, three species of jurisdictional issues, namely those pertaining to:

(1) what matters the decision-maker may decide (subject-matter jurisdiction);

(2) with respect to whom the decision may be made (personal jurisdiction);[43] and

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[39] See *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC).

[40] Judges are in fact deemed expert on domestic law such that expert legal evidence is inadmissible: *Canada (Board of Internal Economy) v Canada (Attorney General)*, 2017 FCA 43, para 18.

[41] See *Régimbald*, supra note 16 at 205-206.

[42] *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10 (CanLII), [2012] 1 SCR 364.

[43] See *Bisaillon v Concordia University*, 2006 SCC 19 (CanLII), [2006] 1 SCR 666; *The Commissioner of Competition v*

(3) whether the decision-maker may grant a certain right, impose a certain obligation or issue a certain sanction (remedial jurisdiction).[44]

38. CIPPIC acknowledges that this Court in *Dunsmuir* maintained the "narrow" sense of jurisdiction: whether or not the tribunal had the authority to make the inquiry.[45] This describes subject-matter jurisdiction. With respect, so limiting the jurisdictional category is arbitrary since subject-matter jurisdiction is not inherently more important than personal or remedial jurisdiction.

39. For example, a tribunal that imposes an obligation or sanction against a person the legislature did not give it dominion over has offended the fundamental principle that people are free to do as they please absent a law to the contrary.[46] In posing an act in respect of someone not subject to the authority of the office, the decision-maker acts illegally. That illegality is neither inherently greater nor worse than when the decision-maker exceeds its subject-matter jurisdiction.

40. In light of the foregoing, CIPPIC urges this Court to define jurisdictional questions as proposed above, and to reinvigorate the rule that such questions must be reviewed without deference. In doing so, it will deepen, not shallow, the rule of law in Canada.

PART IV & V – SUBMISSIONS CONCERNING COSTS AND ORDERS SOUGHT

41. CIPPIC takes no position on the outcome of these appeals.

42. CIPPIC seeks costs no costs in these appeals and asks that costs not be awarded against it.

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*HarperCollins Publishers LLC and HarperCollins Canada Limite*d, 2017 CACT 14 (CanLII).

[44] See *Canada (Attorney General) v O'Leary*, 2008 FC 212 (CanLII), 324 FTR 36; *French v Newfoundland (Eastern Regional Appeal Board)*, 2017 CanLII 16847 (NL SC).

[45] *Dunsmuir, supra* note 2 at para 59.

[46] *R v Mann*, 2004 SCC 52 (CanLII) at para 15, [2004] 3 SCR 59; *Bhindi v British Columbia Projectionists, Local 348*, [1986] BCJ No 486 at para 45, 29 DLR (4th) 47.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of October, 2018.

[*original signed by*]

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PART VI – TABLE OF AUTHORITIES

Authority ***Reference***

	Cases	paragraph
1	*2747-3174 Québec Inc v Quebec (Régie des permis d'alcool)*, [1996] 3 SCR 919, [1996] SCJ No 112, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1452/index.do	18
2	*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7979/index.do	2, 20
3	*ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 SCR 140, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17/index.do	3
4	*Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817, 174 DLR (4th) 193, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1717/index.do	27
5	*Bell Canada v 7265921 Canada Ltd*, 2018 FCA 174, https://www.canlii.org/en/ca/fca/doc/2018/2018fca174/2018fca174.html	4
6	*Bhindi v British Columbia Projectionists, Local 348*, [1986] BCJ No 486, 29 DLR (4th) 47 (BCCA), https://www.canlii.org/en/bc/bcca/doc/1986/1986canlii1100/1986canlii1100.html	39
7	*Bisaillon v Concordia University*, 2006 SCC 19, [2006] 1 SCR 666, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2/index.do	37
8	*Canada (Attorney General) v O'Leary*, 2008 FC 212, 324 FTR 36, https://www.canlii.org/en/ca/fct/doc/2008/2008fc212/2008fc212.html	37
9	*Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62, [2010] 3 SCR 585, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7906/index.do	13
10	*Canada (Board of Internal Economy) v Canada (Attorney General)*, 2017 FCA 43, https://www.canlii.org/en/ca/fca/doc/2017/2017fca43/2017fca43.html	33
11	*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31, [2018] SCJ No 31, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17134/index.do	4
12	*Canadian Union of Public Employees, local 963 v New Brunswick Liquor Corp*, [1979] 2 SCR 227, 1979 CanLII 23, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2648/index.do	24
13	*The Commissioner of Competition v HarperCollins Publishers LLC and HarperCollins Canada Limite*d, 2017 CACT 14, https://www.canlii.org/en/ca/cact/doc/2017/2017cact14/2017cact14.html	37
14	*Crevier v Attorney General of Quebec* [1981] 2 SCR 220, 1981 CanLII 30 (SCC), https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2525/index.do	3

15	*Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 SCR 3, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2096/index.do	2
16	*Domtar Inc c Quebec (Commission d'appel en matière de lésions professionnelles)* [1993] 2 SCR 756, 1993 CanLII 106 (SCC), https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1024/index.do	16
17	*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2408/index.do	1, 3, 8, 12, 13, 15, 24, 26, 27, 32, 38
18	*Dr Q v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 SCR 226m https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2050/index.do	1
19	*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47, [2016] 2 SCR 293, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16213/index.do	20
20	*Farhadi v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 315, 144 FTR 76, https://www.canlii.org/en/ca/fct/doc/1998/1998canlii9056/1998canlii9056.html	5
21	*French v Newfoundland (Eastern Regional Appeal Board)*, 2017 CanLII 16847 (NL SC), https://www.canlii.org/en/nl/nlsctd/doc/2017/2017canlii16847/2017canlii16847.html	37
22	*Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] 1 SCR 364, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7996/index.do	35
23	*Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17101/index.do	13
24	*Knight v Indian Head School Division No 19* [1990] 1 SCR 653, 1990 CanLII 138 (SCC), https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/586/index.do	27
25	*McLean v British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 SCR 895, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13370/index.do	21, 32
26	*Mikisew Cree First Nation v Canada (Governor General in Council)*, 2018 SCC 40, [2018] SCJ No 40, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17288/index.do	19
27	*Moreau‑Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 SCR 249, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1948/index.do	27
28	*Ocean Port Hotel Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, [2001] 2 SCR 781, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1891/index.do	18, 26, 29
29	*Pushpanathan v Canada (Minister of Citizenship and Immigration)* [1998] 1 SCR 982, 1998 CanLII 778 (SCC), https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1627/index.do	3
30	*R v Mann*, 2004 SCC 52, [2004] 3 SCR 59, https://scc-csc.lexum.com/scc-csc/scc-	39

	csc/en/item/2167/index.do	
31	*Re BC Motor Vehicle Act*, [1985] 2 SCR 486, 24 DLR (4th) 536, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/100/index.do	5
32	*Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC), https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1581/index.do	33
33	*UES, Local 298 v Bibeault* [1988] 2 SCR 1048, [1988] SCJ No 101, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/397/index.do	1, 3, 12, 24, 25
	Secondary Sources	
34	Peter Cane and Joanne Conaghan, eds, *The New Oxford Companion to Law*, (New York: Oxford University Press Inc, 2008) *sub verbo* "rule of law"	1
35	Guy Régimbald, *Canadian Administrative Law*, 2nd ed (Toronto: Lexis Nexis, 2015)	13, 21, 35