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ADMINISTRATIVE & REGULATORY LAW CASE REVIEW

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Correctness review for engagement, scope, and framework for *Charter* rights: *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22

Facts: Two Ontario public school teachers recorded their private communications about the workplace on a shared, personal, password-protected log that was stored in the cloud. The school's principal was told about the log. In the absence the teachers, he touched the mousepad of one of the teacher's board laptop, observed the log on the screen, read what was visible, scrolled through the document, and took screenshots with his cell phone. The principal's observations formed the basis for written reprimands against the teachers.

The union grieved the discipline, claiming the search violated the teachers' right to privacy at work, without alleging any *Charter* breach. An arbitrator found there was no breach of privacy and dismissed the grievance.

On judicial review, a majority of the Divisional Court upheld the arbitrator's decision as reasonable. The Court of Appeal unanimously allowed the union's appeal and quashed the

arbitrator's decision, concluding that the search was unreasonable under s. 8 of the *Charter*.

Decision (*per* Wagner C.J. and Côté, Rowe, Kasirer and Jamal JJ; Karakatsanis and Martin JJ, concurring): appeal allowed.

School boards are inherently governmental for the purposes of s. 32 of the *Charter*. Thus, Ontario public school teachers enjoy the protections of s. 8 of the *Charter* in the workplace.

Administrative tribunals with the power to decide questions of law have the authority to resolve constitutional questions linked to matters properly before them, unless that jurisdiction has been clearly withdrawn. They must act consistently with the *Charter* and its values when exercising this function. Tribunals should play a primary role in the determination of *Charter* issues falling within their specialized jurisdiction. Where a *Charter* right applies, an administrative decision-maker should perform an analysis that is consistent with the relevant *Charter* provisions.

Correctness review applies to the question of whether the *Charter* applies to school boards under s. 32 of the *Charter*. Correctness review also applies to review the arbitrator's decision. The issue of constitutionality on judicial review — whether a *Charter* right arises, the scope of its protection, and the appropriate framework for analysis — is a "constitutional question" that requires a "final and determinate answer from the courts", within the meaning of *Vavilov*. Constitutional questions are not limited to only issues of federalism and the constitutional delegation of state power to administrative decision-makers.

A right to a reasonable expectation of privacy under s. 8 of the *Charter* is distinct in source and nature from an arbitral right to privacy. The arbitrator's reasons disclosed a fundamental error because she had the wrong right in mind, and failed to apply the *Charter*. This error in law is fatal to her decision. Courts cannot supplant the reasons proffered by the decision-maker and read the reasons as if it applied a *Charter* right when it in fact applied a different right. There is no need to send the matter back for redetermination, as the matter of the teachers' reprimand is now moot.

For the concurring judges, the appropriate standard of review for the arbitrator's decision is reasonableness—not correctness. Individualized decisions involving the application of the *Charter* that are intrinsically linked to a specific factual and statutory context will generally not engage rule of law concerns that motivated the correctness exception for constitutional questions in *Vavilov*. Courts do not possess a monopoly over the adjudication of *Charter*-related issues in the administrative context.

The minority conclude the arbitrator's decision is unreasonable, but not because she failed to expressly state that s. 8 applied. The majority's approach on this issue seizes on form, rather than assessing the arbitrator's decision functionally, with an eye to substance. The reasons demonstrate the arbitrator appreciated the s. 8 privacy framework constrained her decision, and was reviewing

the challenged conduct using that framework as a touchstone.

Commentary: For our readers, the most noteworthy aspect of this decision is the majority's holding that correctness review applies to questions around the engagement, scope and framework for *Charter* rights before decision-makers empowered to consider such questions.

While this statement may be clear enough conceptually, there is an important—and, in many cases, murky—practical distinction to be drawn between this category of "correctness" questions and questions relating to the *application* or *proportionate balancing* of *Charter* rights and values where they are engaged. The latter category is subject to reasonableness review, as the Court recently unanimously affirmed in the *CSFTNO* decision.[1]

Reading *York Region District School Board* together with *Société des casinos du Québec inc* (reviewed elsewhere in this Issue) arguably provides even further room for the scope of correctness review. In *Société*, the Supreme Court held that correctness ought to apply to findings of mixed fact and law "made in connection with a constitutional question". Thus, to the extent there are findings of mixed fact and law connected with the existence or scope of a *Charter* right, or appropriate framework for analyzing that right, correctness review would apply.

It is perplexing, and somewhat frustrating, that the majority's reasons do not even mention *CSFTNO*, let alone grapple with how to draw the line between the modes of review established in that case, *Société* and *York Region District School Board*. For their part, the minority at least advert to the issue, and in so doing reinforce the often nebulous divide between pure identification of *Charter* rights and their application in a particular factual and statutory context. At least conceptually, however, reading *CSFTNO*, *Société* and *York Region District School Board* side-by-side suggests that administrative decision-makers must both (i) correctly identify whether a *Charter* right is engaged and, if so, how it ought to be assessed (including any questions of mixed fact and law pertaining to these issues); and (ii) conduct a reasonable and proportionate balancing of that right, in accordance with the *Doré* framework.

The majority's application of correctness review reflects scant appreciation for the way the case was framed and argued at first instance. Indeed, the matter was never even framed as a s. 8 breach before the arbitrator. In a sense, this is the natural consequence of applying the stringent standard of correctness review to the underlying questions relating to the identification and engagement of *Charter* rights. Decision-makers would thus be well advised to carefully assess whether a *Charter* right is engaged, even if the issue is not expressly framed in those terms by the parties before them.

[1] *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31. This case was reviewed in Issue No. 38.

Correctness Review for Constitutional Questions of Mixed Fact and Law: *Société des casinos du Québec inc. v. Association des cadres de la Société des casinos du Québec*, 2024 SCC 13

Facts: The Association represents first-level managers at casinos run by the Société. The Association applied to the Administrative Labour Tribunal to be recognized as the union for its members under the *Labour Code*. However, the *Labour Code* excludes "managers" from the statutory regime. The Association sought a ruling that this exclusion of managers violates its members' freedom of association under s. 2(d) of the *Charter*.

The Tribunal ruled that the exclusion unjustifiably infringed the managers' freedom of association. It characterized the claim as one of negative rights and applied the well-established test for infringements of s. 2(d).

The Société sought judicial review before the Quebec Superior Court, which quashed the decision. It found that the Association's claim was, in reality, a positive rights claim and that the Association did not establish a breach of the *Charter* under that framework. On appeal, the Quebec Court of Appeal restored the Tribunal's decision.

The Société appealed to the Supreme Court.

Decision (*per* Karakatsanis, Kasirer, Jamal, and O'Bonsawin JJ.; Wagner C.J., Côté, and Rowe JJ. concurring): appeal allowed. The exclusion of first-level managers from the statutory labour relations regime does not infringe s. 2(d) of the *Charter*. The Tribunal decision was incorrect.

Regardless of whether a claim under s. 2(d) is characterized as a "negative" or "positive" claim, the two-part test for infringement is the same. At the first step of the s. 2(d) framework, the Court must determine whether the activities in which the members of the Association seek to engage fall within the scope of s. 2(d) of the *Charter*, and therefore consider whether the Association can plausibly ground its action in a fundamental *Charter* freedom. The second stage asks whether the impugned legislation substantively interferes with the protected activities.

Writing for a majority of the Court, Jamal J. adopted Côté J.'s concurring reasons on the standard of review and that correctness applies to "the questions of law and mixed fact and law at issue in these appeals" (para. 45).

In her reasons, Côté J. agreed with the parties that the correctness standard applies to the constitutional questions of law in the case. However, she also held that correctness should apply to findings of mixed fact and law "made in connection with a constitutional question" (paras. 93-94). In this case, the mixed question of whether the legislative exclusion substantially interferes with the members' s. 2(d) rights involves "weighing 'the constitutional significance' of the findings of fact made on the basis of the members' situation by reference to freedom of association" (para. 94). This defining of the constitutional standard of substantial interference requires a single determinate answer. Côté J. explained that deference is

only warranted for "findings of pure fact that can be isolated from the constitutional analysis" (para. 97).

Applying the two-part test, the Association succeeded under the first step. Its claim does involve activities protected by s. 2(d), such as the right to make collective representations to an employer. However, the claim fails at the second stage. The purpose of the legislative exclusion was not to interfere with managers' rights but to distinguish between managers and employees in the operational hierarchy. The Association also did not show that the legislation substantially interfered with its members' right to collective bargain, in its effects.

Commentary: For the purposes of this newsletter, the most significant aspect of this case concerns the Court's unanimous expansion of the applicability of the correctness standard in constitutional cases. While the discussion of this issue constitutes less than 10 paragraphs of the decision, the implications could be extensive.

In *Vavilov*, the Court stated that "constitutional questions", including "whether a provision of the decision maker's enabling statute violates the *Charter*" are to be reviewed on the correctness standard.[2] As a result, there was little doubt that courts will review *questions of law* concerning the *Charter* for correctness (as distinct from the proportional balancing of *Charter* rights against statutory objectives under the *Doré* framework).

Here, the Court goes a step further. It holds that mixed questions of fact and law also attract the correctness standard when they are connected to a constitutional question. This will be one of the only instances where courts will review a mixed question on the correctness standard. Notably, this represents an even less deferential standard to administrative bodies considering mixed constitutional questions than lower courts answering the same questions. On the appellate standards of review, mixed questions of fact and law are always reviewed on the standard of palpable and overriding error, absent extricable questions of law.

The Court's statements on standard of review raise important questions that will have to be worked out by the courts in future cases. Jamal J., for the majority, clearly and explicitly adopted Côté J.'s holding that the mixed questions in the case attracted the correctness standard. However, it is not entirely clear if he goes as far as her that deference is reserved only for findings of "pure fact". If so, courts on judicial review will now have to delineate between mixed questions of fact and law "made in connection with a constitutional question"—to be reviewed for correctness—and "findings of pure fact that can be isolated from the constitutional analysis", which are still entitled to deference. Where precisely this line lies remains an open question.

[2] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 57.

Irreparable Harm to Regulatory Body's Duty Can Satisfy Test for Stay Pending Judicial Review: *Law Society of Ontario v. A.A.*, 2024 ONSC 2681

Facts: In 2019, AA applied to the Law Society of Ontario for a license to practise law. The Law Society had evidence that AA had sexually abused three children in 2009. Therefore, the Law Society carried out a good character investigation. In July 2023, the Law Society Tribunal ruled that AA is of good character. The Tribunal imposed one condition on AA's license: that he not meet with minor children alone.

The Law Society appealed the Tribunal's decision. The Law Society also sought a stay of the Tribunal's decision pending the appeal. The Appeal Division granted the stay finding that public confidence in the regulation of the profession would be irreparably harmed if the Tribunal's decision that AA is of good character was overturned but AA had been allowed to practise in the interim.

In March 2024, the Appeal Division dismissed the Law Society's appeal and upheld the Tribunal's decision that AA is of good character. The Law Society filed an application for judicial review of the Appeal Division's decision. In the meantime, the Law Society applied for a stay of the Appeal Division's decision pending the determination of the judicial review application.

Decision: application for stay granted (per Davies J).

The Law Society met the three-stage test required for a stay to be granted: 1) there is a serious issue to be determined on its judicial review application (which AA conceded); 2) irreparable harm will occur if the stay is not granted; and 3) the balance of convenience favours the imposition of a stay.

The Law Society was not entitled to any costs because it failed to act expeditiously in seeking a stay of the Appeal Division's decision. Likewise, the Law Society should have at least begun the paperwork to license AA. Neither filing an application for judicial review nor applying for a stay entitled the Law Society to ignore the Appeal Division's decision. However, these delays did not disentitle the Law Society from a stay entirely.

There is a serious issue to be determined

The threshold for finding there is a serious issue to be determined is low. AA was correct to concede that the Law Society's argument raises a serious issue to be determined at judicial review.

Irreparable harm will occur if the stay is not granted

The Law Society is required to protect the public interest when carrying out its functions. The good character requirement is a key component of this duty. It ensures each licensee will adhere to ethical standards. It also ensures the public can be confident in the integrity of the profession.

Without a stay, if its judicial review application is successful, the Law Society will have licensed someone who does not have good character. This is inconsistent with the Law Society's obligation to protect the public interest. The

public interest would be irreparably harmed if a stay is not granted.

The balance of convenience favours the imposition of a stay

A stay will likely have a financial impact on AA and his family. However, since the stay will only last a few months, the balance of convenience favours granting a stay.

Commentary: This judgment is a welcome reminder that merely filing an application for judicial review does not entitle a party to ignore tribunal rulings. Thus, parties seeking judicial review are well served to seek a stay expeditiously and act as though the underlying decision is operative in the interim. If not, they could suffer cost consequences, as the Law Society did here.

But perhaps both the most interesting and unsatisfactory aspect of this decision is the analysis of irreparable harm. In her analysis of the balance of convenience, Davies J summarises her irreparable harm ruling as being that both the Law Society's duty to regulate in the public interest and the public interest itself would be irreparably harmed (para. 20).

Both these harms pose questions. First, it is unclear how a duty can be harmed. A public body can fail to carry out a duty or be prevented from doing so. But how can a duty itself suffer harmed? There will be wide ranging consequences if courts conflate a public body being prevented from carrying out a duty with irreparable harm to that duty. This conflation would mean that a public body can demonstrate harm would be suffered without a stay by merely posing the argument that a judicial decision prevents the public body carrying out its duties.

This decision indicates that it regulatory bodies may face little difficulty in obtaining stays pending their judicial review applications. After all, they can virtually always claim harm to their public duty in being unable to fulfill their mandate if an unreasonable decision goes into effect.

Second, Davies J mentions two different public interests connected to the good character requirement without analysing the potential harm to each separately (para. 16). First, Davies J links the good character requirement to public confidence in the integrity of lawyers. Arguably, it is uncontroversial that public confidence in lawyers would be undermined if a practising lawyer was found to be of bad character in a judicial review. However, Davies J does not explain why this harm would be irreparable, particularly given that AA would only be practising for a few months. Perhaps the unstated answer is that when harm is done to reputation which, at least theoretically, can always be rebuilt, *irreparable* harm is too high a bar to apply.

Additionally, Davies J connects the good character requirement to ensuring that licensees adhere to high ethical standards. Clearly this protects the public interest by protecting the public from unethical lawyers. While the Law Society's mandate includes protecting the public interest, the public itself is not a party in this dispute. This raises the question of whether the irreparable harm test can be met if harm would be suffered by other third parties, not simply the party bringing the application. Furthermore, even if AA is found

to have bad character there is no guarantee that he would act unethically prior to having his license revoked. Is risk of irreparable harm sufficient to meet the test? Davies J does not address these questions. As a result, this decision leaves as much unanswered as it decides.

Doré Analysis Applies to Tweets Containing Misinformation: *Gill v. Health Professions Appeal and Review Board*, 2024 ONSC 2588

Facts: G is a practising physician. During the height of the COVID-19 pandemic, the College of Physicians and Surgeons received a number of complaints about G's statements about the pandemic on her Twitter account. G's Twitter account clearly identified her as a physician.

The Inquiries, Complaints and Reports Committee of the College (the "ICRC") investigated the complaints. At the same time, the Registrar conducted an investigation into G's social media conduct more generally, and reported the results to the ICRC.

The ICRC dismissed five of the complaints on the basis that the complaints were not specific enough or that the impugned tweets were not "verifiably false". For many of the tweets, the ICRC was unable to conclude that G's statements were incorrect and therefore could not conclude that she was deliberately attempting to misinform the public. With respect to the two remaining complaints, and the Registrar's investigation, the ICRC took issue with three out of the approximately 100 social media posts it examined. The tweets in issue claimed that there was absolutely no medical or scientific reasons for lockdowns, that vaccines were unnecessary, and that contact tracing, testing, and isolation were ineffective and "counterproductive". The ICRC accepted that there are many ways that people could legitimately disagree with or question government policies in relation to the pandemic. However, G's tweets provided no evidence for her false claims and could lead to harms if members of the public followed her advice.

As a result, the ICRC ordered G to appear to be cautioned about her social media usage. G appealed all decisions to the Health Professions Appeal Board (the "HPARB"). The HPARB upheld the ICRC decisions.

G then sought judicial review of the decisions ordering her to be cautioned, as well as the decisions dismissing the complaints.

Decision (*per* Sachs, Myers and Shore JJ.): applications dismissed. The HPARB decisions were reasonable.

Judicial review is unavailable for the decisions to dismiss the complaints against G. G had sought to challenge these decisions on the basis that the reasons referred to the caution in the parallel complaints. Judicial review is an extraordinary remedy in respect of a decision—not the reasons for that decision. Applicants cannot seek judicial review just because they disagree with the language of the reasons, but agree with the result.

The HPARB decisions reasonably balanced G's *Charter* rights and values in accordance with *Doré*.[3]

The HPARB decisions noted G's *Charter* submissions, but did not explicitly address them. Nevertheless, the HPARB quoted, endorsed, and adopted the portions of the ICRC decisions that sought to balance G's free speech rights. As a result, the Court must focus on the ICRC reasoning to determine if HPARB decisions engaged in the proper *Doré* analysis.

While freedom of expression, particularly in relation to political speech, is of great importance, the impact on G's expressive rights is minimal. The decisions resulted in a caution, which is educational and remedial; it is not a finding of professional misconduct.

The ICRC recognized the important value of political speech, highlighting legitimate areas where doctors might question or disagree with government policies in relation to the pandemic. The ICRC was not trying to prevent members of the College from criticizing the government. However, it sought to prevent them from using misinformation to do so. The ICRC's issues with G's tweets was not that they were critical of government policy, but that they used incorrect information to do so. In this regard, it is important to consider the context of the complaints that the ICRC dismissed because they were based on tweets that were not "verifiably false".

Finally, the ICRC had a reasonable concern that members of the public would give significant weight to a doctor's opinion, ignore public health directives, and thereby put the public at risk.

Drawing the line at tweets that contained misinformation properly balanced G's right to free speech against her professional responsibilities and was minimally intrusive.

Commentary: *Gill* is another example of the Ontario Divisional Court upholding the decision of a professional regulatory body to proceed against a member in respect of their comments on social media, outside of their professional practice. Alongside *Peterson v. College of Psychologists of Ontario*,[4] the Court has accepted that these bodies have a legitimate interest in what their members are saying on their personal social media accounts. In particular, where members identify themselves as professionals on their social media accounts, their professional regulatory bodies may have a basis to take action in response to concerns about the public harm that flows from such statements. However, in assessing these cases, decision-makers must be alive to the proportionate balance between its duty to protect the public interest and the member's right to freedom of expression.

In this case, the Court found that the *Doré* analysis was reasonable because of the ICRC's focus on whether G's COVID-related tweets were "verifiably false". It recognized that people have an important right to criticize and question the government, but that using misinformation to do so can cause real harm to the public. In the context of s. 2(b) of the

[3] *Doré v. Barreau du Quebec*, 2012 SCC 12.

[4] 2023 ONSC 4685.

Charter, it is worth recognizing that freedom of expression includes statements that are "wrong". People have a right to say things that are incorrect. However, when it comes to an administrative body balancing those rights against its statutory objective to protect the public, the falsity of the statements can significantly tip the balance.

While this logic makes sense, particularly in the context of regulated health professionals, the result of this approach is to require the professional body to delve into the often thorny issue of whether particular statements are "true" or not. This is an approach that the courts generally avoid in the broader case law that has developed under s. 2(b) of the *Charter*. In this administrative case, the court was perhaps comforted by the fact that the ICRC consisted of physicians with a level of expertise to assess the veracity of the medical claims; that it dismissed complaints related to many other tweets that might have also been harmful to the public, but were not clearly and verifiably false; and that ultimately the impact on G's expression was limited, given the fact that the result was a remedial caution and not any kind of professional misconduct finding. The latter consideration played an important role in *Peterson* as well.

Still, *Gill* should not be taken to stand for the proposition that action can be taken against regulated professionals solely in respect of "verifiably false" statements. Certain statements may cause harm to the public, even if the regulator cannot definitively assess their accuracy. In such cases, *Doré* still provides guidance to administrative decision makers to determine whether the objective of protecting the public outweighs the restrictions on free speech. Ultimately, each case will depend on its particular facts and context.

Finally, the court seemed to take a fairly generous approach to the sufficiency of the reasons of the administrative body conducting the requisite *Doré* analysis. In this case, despite the fact that G clearly raised the *Charter* issues, the HPARB did not directly engage with them. In many cases, that would be enough to render the decision unreasonable. Nevertheless, the Court accepted that it was sufficient that the HPARB adopted and endorsed the *Doré* balancing of the ICRC. The Court then focused its analysis on the ICRC's reasons. Thus, for administrative regimes with internal appeal mechanisms, it may be sufficient for the first level reviewer to properly consider and balance the *Charter* rights in issue—and for the further internal appeal level to simply adopt and rely upon that analysis.

Leave to Appeal Determined Before Concurrent Judicial Review: *Casa Loma Residents Association v. 555 Davenport Holdings Ltd.*, 2024 ONSC 2297

Facts: The City of Toronto approved the development of a residential building across the street from Casa Loma in Toronto. The Casa Loma Residents Association ("CLRA") appealed to the Ontario Land Tribunal ("Tribunal") to challenge this approval. The CLRA opposed the development on the basis that the eight-story building would block sight lines from Casa Loma.

The Tribunal summarily dismissed the proceeding on the basis that it did not raise a

valid land use planning issue and had no reasonable prospect of success, as the sight lines that the CLRA hoped to preserve were not protected by any bylaw.

The CLRA sought to challenge the Tribunal's decision. Section 24 of the *Ontario Land Tribunal Act*, *2021*,[5] [*OTLA*] states that a decision of the Tribunal can be appealed to the Divisional Court with leave of that court and only on a question of law. Accordingly, the CLRA filed a motion for leave. The CLRA simultaneously filed a judicial review application on a question of mixed fact and law. The errors raised in the appeal and judicial review were framed differently, but they arose from the same issue dealt with by the Tribunal.

The parties proceeded to a case conference before Justice Myers of the Ontario Superior Court for a determination on the issue of scheduling. Specifically, the issue was whether the Court ought to join the motion for leave to appeal under s. 24 of the *OTLA* with the judicial review hearing and do everything all at once, or whether the motion for leave ought to be heard first. The CLRA's position was that a combined hearing would be most efficient. The Respondent submitted that the leave to appeal motion should proceed first and at the same time as the judicial review.

Decision: The motion for leave ought to be heard and decided first. If leave is granted, then the appeal and judicial review should be conducted together (per Myers J.).

The Supreme Court of Canada's decision in *Yatar v TD Insurance Meloche Monnex*[6] allows for concurrent appeal and judicial review proceedings arising out of the same administrative decision.

In most cases where both a statutory appeal and judicial review lie from the same decision, those proceedings will be heard together. But this case was different because of the requirement in s. 24 of the *OTLA* for leave to appeal on questions of law. This requirement reflects a legislative intent to give the Tribunal the final word on fact-based policy issues. It also reflects the intent to weed out appeals that should not be heard (for example, because the case does not raise an issue of public importance).

To give effect to the legislative intent, the motion for leave to appeal should be decided first, and separately from the judicial review. If leave is granted, the judicial review and appeal should proceed together.

Justice Myers left open the question of whether the CLRA's appeal will preclude judicial review or not on the basis that the two engage the same issue, but framed differently. The Supreme Court's decision in *Yatar* is still new and there is not much jurisprudence on the relationship between appeals and judicial reviews on the same tribunal decision. It may be that if a judicial review replicates the same issues raised in an appeal, one can preclude the other. This, Justice Myers said, is something the Divisional Court panel may need to grapple with given the issues raised by the CLRA, if leave is granted.

[5] SO 2021, c 4, Sch 6.

[6] 2024 SCC 8.

Commentary: Although this is a decision about scheduling, it is one that lawyers should familiarize themselves with. The holding is simple: where an applicant wishes to challenge a tribunal's decision by way of both judicial review and statutory appeal, but leave to appeal is required, the motion for leave should proceed first. That motion proceeds before a single judge of the Divisional Court. If leave is granted, the appeal and judicial review can be heard together, before a three-judge panel of the same Court. If leave is denied, then the judicial review proceeding will be much simplified.

The question of whether a statutory right of appeal prevents an individual from seeking judicial review on questions that cannot be dealt with by way of appeal was resolved by the Supreme Court of Canada earlier this year in *Yatar* (discussed in the March 2024 issue of the Stockwoods newsletter: here). The Court held that the legislative decision to provide for a right of appeal on questions of law does not eliminate judicial review of issues outside the scope of the statutory appeal.

Where counsel seek to challenge a tribunal decision subject to a limited statutory right of appeal or are granted leave to appeal, they are well advised to bring it simultaneously with a judicial review application where they seek to challenge the decision on multiple grounds. As Justice Myers noted in his decision, this will ensure that the court can address all of the arguments, some of which may overlap. It also protects against inconsistent holdings and remedies. But where leave to appeal is required, that motion must proceed first.

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THE NEWSLETTER

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