

11. Remedies

Administrative-law remedies concern what a court may do after identifying an unlawful, procedurally unfair, unreasonable or incorrect administrative decision.

Establishing a reviewable error does not automatically entitle the applicant to a particular remedy. Judicial-review remedies are generally discretionary, and the court must select relief that corrects the legal defect; respects the legislature's decision to entrust the matter to the administrative decision-maker; protects the affected person; avoids unnecessary delay and duplication; considers the interests of third parties and the public.

The principal areas are:

1. Direct and collateral challenges;
2. Permanent judicial-review remedies;
3. Remittal and substitution;
4. Interim injunctions and stays;
5. Discretionary grounds for refusing relief;
6. Monetary remedies through separate proceedings; and
7. Civil liability for abuse of public power.

1. Direct and Collateral Challenges

Direct Attack

A direct attack is a proceeding whose purpose is to have an administrative decision: quashed; declared unlawful; prohibited; reconsidered; varied or reversed through a statutory appeal.

An application for judicial review is the ordinary form of direct attack. For federal decision-makers, section 18 of the Federal Courts Act authorizes relief in the nature of:

- Certiorari;
- Prohibition;
- Mandamus;
- Injunction;
- quo warranto; and
- declaration.

These remedies must generally be sought through an application for judicial review under section 18.1.

A statutory appeal is also a direct challenge, but it is separate from judicial review and is governed by the appeal provision in the enabling legislation.

Collateral Attack

A collateral attack occurs where a party challenges the validity of an administrative order in another proceeding whose principal purpose is not to set aside that order.

For example, a person prosecuted for disobeying an administrative order may argue in the prosecution that the original order was invalid, even though the person never directly challenged it through judicial review or appeal.

The general rule is that a person must obey an administrative or court order until it is lawfully set aside. Collateral attacks are normally discouraged because they undermine finality; orderly administration; certainty; the statutory appeal and review process.

In *Wilson v The Queen*, the Supreme Court held that the accused could not indirectly challenge authorizations in proceedings directed at determining criminal guilt.

Garland v Consumers' Gas confirmed that the rule against collateral attack is ultimately based on legislative intent and the structure of the governing legal scheme.

However, the rule is not absolute. A collateral challenge may be permitted where the legislation, properly interpreted, does not require the issue to be raised exclusively through direct review or where the statutory scheme otherwise permits the legality of the order to be examined.

2. Permanent Judicial-Review Remedies

A. Certiorari, Quashing and Setting Aside

Certiorari is the traditional remedy used to quash an administrative decision that has already been made.

Modern statutes usually describe the remedy as an order:

- declaring the decision invalid or unlawful;
- quashing it;
- setting it aside;
- setting it aside and referring it back for reconsideration.

Section 18.1(3)(b) of the Federal Courts Act expressly authorizes the Federal Court to declare invalid, quash, set aside or refer back an unlawful federal administrative decision. Quashing may be available where the decision-maker breached procedural fairness; acted unreasonably; reached an incorrect answer on a correctness question;

exceeded statutory authority; relied on fraud or perjured evidence; acted contrary to law.

Certiorari is not confined to bodies required to act “judicially.” It may be available whenever a public decision-maker owed and breached a duty of fairness.

Once quashed, the decision has no continuing legal effect.

The court may:

1. Quash and remit the matter for reconsideration;
2. Quash without remittal;
3. Quash and provide directions concerning reconsideration;
4. Exceptionally determine the required result itself.

The court must not ordinarily use remedial directions to dictate matters that the legislature left to the administrative decision-maker.

TIP: Where the decision is unreasonable or incorrect, the usual remedy is quashing; and remittal for reconsideration.

B. Prohibition

Prohibition is a prospective remedy. It prevents an administrative body from:

- Commencing an unlawful proceeding;
- Continuing a proceeding beyond its authority;
- Deciding a matter through a biased panel;
- Exercising a power it does not possess;
- Proceeding in breach of a mandatory legal restriction.

Certiorari generally deals with a decision already made. Prohibition prevents unlawful administrative action before it is completed.

Prohibition is exceptional where the administrative proceeding remains ongoing. Courts generally prefer that administrative processes be completed before judicial intervention unless: the tribunal clearly lacks authority; a reasonable apprehension of bias exists; continuing would cause irreparable prejudice; the defect cannot effectively be corrected later.

Example: A professional disciplinary tribunal begins proceedings against a lawyer even though the governing statute gives it authority only over licensed members and the lawyer’s licence had already expired. The lawyer may seek prohibition to stop the tribunal from continuing because it appears to be acting beyond its statutory authority. Unlike certiorari, which would quash a decision after it was made, prohibition operates prospectively to prevent the unlawful proceeding from being completed.

Although courts usually require administrative proceedings to finish before intervening, early relief may be justified where the jurisdictional defect is clear and forcing the lawyer to undergo the entire hearing would cause prejudice that could not be adequately corrected afterward.

C. Mandamus

Mandamus compels a public authority to perform a public legal duty that it has unlawfully failed, refused or unreasonably delayed in performing.

Section 18.1(3)(a) of the Federal Courts Act permits the Federal Court to order a federal decision-maker to perform an act that it unlawfully failed or refused to perform or unreasonably delayed in performing.

The principal requirements are:

1. A public legal duty to act;
2. The duty is owed to the applicant;
3. The applicant has a clear right to performance;
4. All required conditions precedent have been satisfied;
5. Performance has been demanded and refused, unless demand would be useless;
6. No adequate alternative remedy exists;
7. The order will have practical value;
8. No discretionary or equitable bar prevents relief;
9. The balance of convenience supports the order.

The modern formulation is associated with *Apotex Inc. v Canada (Attorney General)*. The Supreme Court upheld mandamus where the applicant had a vested right to performance of the statutory duty.

Example: A federal licensing officer is legally required to issue an import permit once an applicant submits all prescribed documents, pays the required fee and satisfies the statutory conditions. The applicant completes every requirement, repeatedly requests a decision and receives no response for several months, while the delay prevents it from carrying on its business. The applicant may seek mandamus compelling the officer to determine the application because the officer owes a public legal duty to act, the duty is owed to the applicant, all conditions precedent have been met, performance has been demanded, and no adequate alternative remedy exists. The court may order the officer to make the decision but ordinarily cannot dictate the result where the statute leaves the ultimate outcome to the officer's discretion.

Discretionary Decisions

Mandamus may compel a decision-maker to exercise discretion but ordinarily cannot compel the discretion to be exercised in a particular way.

For example, the court may order a minister to decide a delayed application but should not normally order the minister to approve it.

A particular result may be ordered where the discretion has been exhausted; only one lawful outcome remains; the statutory duty is mandatory rather than discretionary; remittal would serve no useful purpose.

D. Declaration

A declaration formally states the legal rights or legal position of the parties. A court may declare that:

- A decision is invalid;
- A tribunal lacks authority;
- A procedure breached fairness;
- A regulation is beyond statutory power;
- The Crown breached the duty to consult;
- Legislation is unconstitutional;
- A public official has a legal duty.

A declaration does not itself compel conduct in the way that mandamus or an injunction does. Public authorities are nevertheless expected to comply with authoritative judicial declarations.

Declaratory relief is discretionary. It is generally appropriate where a real legal dispute exists; the issue is not merely hypothetical; the declaration will have practical utility; the court has jurisdiction; no more suitable remedy exists.

Example: A provincial environmental tribunal approves a mining project without consulting an affected First Nation. The First Nation may seek a declaration that the approval process breached the Crown's constitutional duty to consult and that the resulting decision is invalid. The declaration would formally determine the parties' legal position but would not itself compel the government to conduct consultation or prohibit the project; separate relief, such as mandamus, an injunction or certiorari, may be required for that purpose. Declaratory relief would be appropriate because the dispute is real, the declaration would clarify the Crown's obligations and affect the validity of the approval, and the court has jurisdiction to determine the constitutional issue.

E. Injunction

An injunction orders a person or public authority: to perform an act; or to refrain from performing an act. A permanent injunction may be granted after the court finally determines the legality of the conduct.

An injunction may be appropriate where a public authority threatens repeated unlawful conduct; quashing a single decision would not provide effective relief; enforcement of an unlawful measure must be restrained; continuing governmental action would violate constitutional rights.

An injunction against the government must remain consistent with separation of powers; statutory authority; the court's remedial jurisdiction; the need to avoid judicial administration of complex public programmes.

Example: A municipality repeatedly enforces an invalid bylaw to close a lawful homeless shelter, even after the court has determined that the bylaw exceeds the municipality's statutory authority. Because quashing one closure order would not prevent further enforcement, the shelter operator may seek a permanent injunction restraining the municipality from relying on the unlawful bylaw. The injunction would provide effective continuing relief, but it should be framed narrowly so that it prevents unlawful enforcement without requiring the court to supervise the municipality's broader housing programme or interfere with powers lawfully granted by legislation.

F. Habeas Corpus

Habeas corpus protects liberty by requiring the state to justify a person's detention.

The applicant must generally establish:

1. A deprivation of liberty; and
2. A legitimate ground for questioning the legality of the detention.

The burden then shifts to the detaining authority to establish that the detention is lawful. Habeas corpus may be relevant to imprisonment; administrative segregation; immigration detention; transfer to a more restrictive form of custody; other substantial deprivations of residual liberty.

It is ordinarily brought before a provincial superior court, subject to specialized statutory and jurisdictional rules.

Example: A prisoner is transferred from a minimum-security institution to a maximum-security facility and placed under significantly more restrictive conditions without being told the evidence relied upon or given a meaningful opportunity to respond. The prisoner may apply to the provincial superior court for habeas corpus by

establishing a substantial deprivation of residual liberty and raising a legitimate concern that the transfer was procedurally unfair or unauthorized. The burden then shifts to the correctional authority to justify the legality of the transfer. If the detention is unlawful, the court may order the prisoner returned to the less restrictive form of custody.

G. Quo Warranto

Quo warranto is a rare remedy used to challenge the authority by which a person occupies or exercises a public office. The court may examine whether:

- The office legally exists;
- The person satisfies statutory qualifications;
- The appointment was lawful;
- The person continues to possess legal authority to act.

Example: A municipal councillor continues to exercise office even though the governing statute required the councillor to resign after accepting a disqualifying government contract. An affected resident may seek quo warranto to require the councillor to demonstrate the legal authority by which the office is still occupied. The court would examine whether the office legally exists, whether the councillor satisfies the statutory qualifications, whether the appointment or election was valid and whether the disqualification has terminated the councillor's authority to act. If no lawful authority exists, the court may declare that the councillor is not entitled to hold or exercise the public office.

3. Remittal, Reconsideration and Substitution

General Rule: Quash and Remit

Where a decision is unreasonable or procedurally unfair, the normal remedy is:

1. Quashing the decision; and
2. Returning the matter to the administrative decision-maker for reconsideration.

Remittal respects the legislature's choice to entrust the matter to the administrative body rather than the court. On reconsideration, the decision-maker may reach the same outcome through lawful and adequately justified reasoning; or a different outcome.

The reviewing judgment will bind the decision-maker on the legal errors identified by the court.

Vavilov states that remittal will ordinarily be appropriate, but it is not automatic. The court should consider:

- Legislative allocation of authority;
- Delay;
- Fairness to the parties;
- Urgency;
- Cost;
- Access to justice;
- Efficient use of public resources;
- Whether the decision-maker already had a genuine opportunity to decide the issue;
- Whether a particular result is inevitable.

The court may decline to remit where another reconsideration would create an endless cycle of judicial review and redetermination or would serve no useful purpose.

Quashing Without Remittal

Quashing without remittal may be appropriate where:

- The original proceeding should never have been commenced;
- The administrative body has no authority to continue;
- The impugned authorization has expired;
- The applicant already possesses the legal status claimed;
- No further administrative decision is required.

In *Vavilov*, the Court did not remit because the statutory and factual constraints made the conclusion inevitable: Mr. Vavilov was a Canadian citizen.

Substitution or Directed Outcome

A court may exceptionally substitute its own result or direct a particular outcome where:

- Only one lawful outcome is possible;
- The relevant facts are undisputed;
- The administrative body already fully considered the issue;
- Repeated remittals have failed;
- Serious delay or urgency requires final resolution;
- Remittal would be unfair or useless.

Substitution remains exceptional because the reviewing court must not casually take over the role assigned by legislation to the administrative decision-maker.

4. Interim, Interlocutory and Stay Relief

Interim Order

An interim order is temporary relief usually granted for a short period until:

- A fuller motion can be heard;
- Additional evidence is filed;
- An interlocutory application is determined.

Interlocutory Injunction

An interlocutory injunction remains in effect until the judicial-review application or related proceeding is finally determined. It may preserve the existing position; prevent implementation of the challenged decision; compel temporary action in an appropriate case.

Stay of the Administrative Decision

A stay suspends the operation or enforcement of an administrative decision while judicial review or an appeal is pending.

No Automatic Stay

Filing an application for judicial review does not automatically stay the administrative decision or proceeding. The applicant must:

- Obtain a stay from the administrative decision-maker where it has that authority; or
- Apply to the court for interim relief.

Section 18.2 of the Federal Courts Act authorizes the Federal Court to make appropriate interim orders pending determination of judicial review.

An order of certiorari also does not create an automatic stay merely because it has been requested.

RJR: MacDonald Test

The usual test for a stay or interlocutory injunction requires:

1. Serious Issue

The application must raise a serious issue that is neither frivolous nor vexatious.

A stronger merits test may apply where the requested order is mandatory or would effectively determine the final proceeding.

2. Irreparable Harm

The applicant must show harm that cannot adequately be repaired if relief is refused.

“Irreparable” refers to the nature of the harm, not merely its size.

Examples include loss of liberty; destruction of property or natural resources; permanent loss of status; serious unrecoverable reputational harm; removal from Canada before the case is decided; harm for which damages cannot realistically compensate.

3. Balance of Convenience

The court compares the harm resulting from granting or refusing the stay. It considers harm to the applicant; harm to the respondent; effects on third parties; statutory objectives; public safety; effective administration; the public interest.

The public interest carries particular importance where the court is asked to restrain legislation or governmental action undertaken to protect the public.

5. Discretion to Refuse Judicial-Review Relief

Judicial review is constitutionally important, but its remedies remain discretionary. A court may refuse relief even after finding a reviewable error. Relevant grounds include:

1. Adequate alternative remedy;
2. Prematurity;
3. Mootness;
4. Delay;
5. Misconduct;
6. Waiver or acquiescence;
7. Absence of substantial prejudice;
8. Effects on third parties and the public interest.

A. Adequate Alternative Remedy

The applicant is normally expected to use an adequate:

- Reconsideration procedure;
- Internal appeal;
- Administrative appeal;
- Statutory appeal;
- Grievance or arbitration process;
- Specialized complaint mechanism.

The existence of another process does not automatically bar judicial review.

Under *Strickland v. Canada (Attorney General)*, the court considers the following:

- The nature of the alleged error;
- Powers of the alternative decision-maker;
- Remedies available there;
- Procedural fairness of that forum;
- Expertise;
- Cost;
- Delay;
- Convenience;
- Whether the alternative can address the applicant's actual complaint;
- Statutory purposes and policy.

The ultimate questions are: Is the alternative genuinely adequate, and is judicial review appropriate in the circumstances?

Yatar v. TD Insurance Meloche Monnex: A limited statutory appeal does not automatically make judicial review “rare” or “exceptional.” In *Yatar v TD Insurance*, the statute permitted an appeal only on questions of law. Judicial review remained available for questions of fact and mixed fact and law not covered by the appeal. A court must consider whether an adequate alternative exists rather than simply inferring that a limited appeal excludes judicial review.

B. Prematurity

Courts generally avoid interfering before the administrative process is complete. An application may be premature where no final decision has been made; an investigation remains underway; the tribunal has not ruled on the issue; an internal review remains available; the alleged defect may be corrected within the process.

Early intervention may nevertheless be justified where the tribunal plainly lacks authority; continuing would cause irreparable harm; a biased panel is about to decide the matter; the issue cannot effectively be remedied after completion.

Example: A police officer seeks judicial review immediately after a professional discipline investigation begins, alleging that the investigator misunderstood the evidence. The application may be dismissed as premature because no charges have been decided, the disciplinary tribunal has not yet ruled on the issue, and any error may still be corrected through the hearing or internal review process. Early court intervention would be justified only if, for example, the tribunal clearly lacked jurisdiction, the assigned panel was demonstrably biased, or continuing the process would cause irreparable harm that could not be remedied after a final decision.

C. Mootness

A proceeding is moot where there is no longer a live controversy that will affect the parties' rights.

For example, the challenged decision has expired; the applicant has already received the requested benefit; the administrative order has been replaced; the dispute was resolved by later events.

Under *Borowski v. Canada (Attorney General)*, a court may nevertheless decide a moot issue after considering:

1. Whether an adequate adversarial context remains;
2. Whether resolving the issue justifies using judicial resources;
3. Whether deciding it would respect the court's proper adjudicative role.

Issues that are recurring but evasive of review may sometimes justify determination despite mootness.

Example: A university student seeks judicial review of a one-semester suspension, but the suspension expires and the student returns to classes before the hearing. The application may be moot because no live order continues to affect the student's rights. However, the court may still decide the issue if the same disciplinary procedure is likely to recur, short suspensions will usually expire before judicial review can be completed, both parties continue to present opposing arguments, and resolving the issue would provide useful legal guidance without drawing the court into an abstract policy debate.

D. Delay

Where legislation prescribes a limitation period, the applicant must: apply within time; or obtain an extension where legally available.

For federal judicial review, section 18.1(2) generally prescribes 30 days after communication of the decision, subject to an extension by the court.

Even without a fixed limitation period, unreasonable delay may justify refusal where it:

- Prejudices the respondent;
- Affects third-party rights;
- Makes effective reconsideration impossible;
- Demonstrates acquiescence;
- Undermines orderly administration.

E. Misconduct and Clean Hands

A court may refuse equitable or discretionary relief where the applicant acted improperly in relation to the subject matter of the application. Relevant conduct may include fraud; concealment; deliberate statutory evasion; falsifying evidence; misleading the tribunal or court; manipulating the process.

In *Homex Realty and Development Co. Ltd. v. Wyoming (Village)*, [1980], the applicant's conduct affected the Court's remedial discretion even though procedural fairness concerns existed. Misconduct is not an automatic bar. The court should consider its connection to the remedy; seriousness; prejudice; public interest; whether refusing relief would allow an unlawful governmental decision to continue.

Example: A developer seeks judicial review of a municipality's rezoning decision on the basis that it was denied a fair hearing. However, the developer had concealed its ownership of neighbouring properties, submitted misleading information to the planning authority and structured transactions to evade applicable zoning restrictions. The court may find that procedural fairness was breached but nevertheless refuse discretionary relief because the misconduct was serious and directly connected to the subject matter of the application. Consistent with *Homex Realty*, misconduct is not an automatic bar: the court must also consider the prejudice caused, the public interest and whether refusing relief would improperly allow an unlawful governmental decision to remain in force.

F. Waiver and Acquiescence

A person may waive a procedural objection by knowing of the defect; having an opportunity to object; proceeding without timely objection; clearly accepting the procedure. For example, a party who knows of a possible bias issue but deliberately waits for the result before objecting may be found to have waived the concern.

Merely complying with an administrative order does not automatically waive the right to judicial review.

There must generally be knowledge of the relevant facts; and conduct demonstrating intentional abandonment or acceptance.

G. No Substantial Wrong

A minor technical defect may not justify quashing where:

- The applicant received a fair process;
- No substantial wrong or miscarriage of justice occurred;
- The error did not affect the outcome or participation rights.

Section 18.1(5) of the Federal Courts Act expressly allows relief to be refused where the only defect is one of form or technical irregularity and no substantial wrong occurred.

This principle must be used cautiously. A denial of fundamental procedural fairness, particularly bias or denial of a meaningful hearing, cannot ordinarily be dismissed merely because the court believes the same result was likely.

Example: A federal licensing board gives an applicant 29 days' notice of a hearing instead of the 30 days required by its procedural rules, but the applicant receives full disclosure, attends with counsel, presents evidence and suffers no prejudice. The court may refuse to quash the decision under section 18.1(5) of the Federal Courts Act because the defect was merely technical and caused no substantial wrong or miscarriage of justice. The result would be different if the applicant had received no meaningful notice, was prevented from responding, or the matter was decided by a biased panel, because fundamental procedural unfairness cannot ordinarily be excused on the assumption that the outcome would have been the same.

H. Third Parties and Public Interest

A court may tailor or refuse relief where quashing would disproportionately harm:

- Innocent third parties;
- Persons who reasonably relied on the decision;
- Public safety;
- Environmental protection;
- Continuity of essential programmes;
- The administration of justice.

The public interest does not excuse unlawful government action automatically. It affects whether relief should be granted; the form of relief; whether a declaration should be suspended; whether remittal or prospective relief is preferable.

“Balance of convenience” is principally part of the test for interim relief. For permanent remedies, similar concerns appear through the court’s broader remedial discretion. Yatar confirms that public interest, disproportionate effects and third-party interests may be considered when deciding whether to grant judicial-review relief.

6. Monetary Remedies

Judicial Review Does Not Ordinarily Award Damages

The principal purpose of judicial review is to supervise the legality of public decision-making. Ordinary judicial-review relief includes:

- Quashing;
- Prohibition;
- Mandamus;
- Declaration;
- Injunction;
- Remittal.

Damages are not ordinarily available merely because an administrative decision was:

- Unreasonable;
- Procedurally unfair;
- Quashed;
- Made without authority.

A claimant seeking compensation normally must commence a separate civil action based on a recognized cause of action.

The 2026 syllabus expressly distinguishes judicial-review remedies from civil remedies that may overlap factually but are governed by their own substantive and procedural rules.

Restitution

Money unlawfully collected by a public authority may sometimes be recoverable through restitution. Potential claims include money paid under an unlawful demand; recovery of an unconstitutional tax; unjust enrichment; repayment of benefits improperly retained.

The claimant must establish the applicable restitutionary cause of action and address statutory authority; juristic reason; limitation periods; statutory immunity; change of position or other defences.

The distinction between mistake of fact and mistake of law is no longer an absolute bar to restitution.

Example: A municipality demands a \$75,000 “infrastructure fee” from a developer as a condition of issuing a building permit, but a court later finds that the governing statute did not authorize the charge. The developer may seek restitution of the amount paid by establishing that the municipality was enriched, the developer suffered a corresponding deprivation and no valid juristic reason justified retaining the money. The municipality may still rely on limitation periods, statutory immunity, change of position or another recognized defence. Recovery is not automatically barred merely because the developer paid under a mistaken understanding of the law rather than a mistake of fact.

Negligence

A public authority may be liable in negligence where the claimant establishes:

1. A duty of care;
2. Breach of the standard of care;
3. Factual and legal causation;
4. Compensable damage.

A breach of a statutory duty or procedural fairness does not automatically create a private-law duty of care.

The court must separately consider:

- Proximity;
- Foreseeability;
- Residual policy considerations;
- Statutory scheme;
- Whether the conduct was policy or operational;
- Statutory immunities.

7. Misfeasance in Public Office

Misfeasance in public office is an intentional tort directed at deliberate abuse of public power. It is not established merely because a public officer made an error; acted negligently; reached an unreasonable decision; misunderstood the statute; failed to provide procedural fairness.

Under *Odhavji Estate v Woodhouse*, the plaintiff must establish:

1. Deliberate and unlawful conduct in the exercise of public functions;
2. Awareness by the public officer that the conduct was unlawful;
3. Awareness that the conduct was likely to harm the plaintiff;
4. Causation;
5. Compensable damage.

The tort may arise from:

- Deliberately exercising power for an improper purpose;
- Intentionally exceeding legal authority;
- Deliberately refusing to perform a legal duty;
- Targeted malice;
- Knowing disregard of official obligations.

Negligence or an “ought to have known” allegation is insufficient because subjective knowledge or deliberate recklessness is required.

Two Routes

Targeted Malice: The officer deliberately uses public power for the specific purpose of harming the plaintiff.

Knowing Unlawfulness: The officer deliberately acts unlawfully while knowing both that the conduct is unlawful; and harm to the plaintiff is likely. The tort does not protect public officers acting dishonestly or in bad faith, but it also does not impose damages liability for every administrative mistake.

8. Charter Damages

Section 24(1) of the Charter permits a court of competent jurisdiction to award a remedy that is appropriate and just.

Under *Vancouver (City) v Ward*, Charter damages involve four stages:

1. Establish a Charter breach;
2. Determine whether damages would serve compensation, vindication or deterrence;
3. Consider countervailing factors making damages inappropriate or unjust;
4. Determine the appropriate amount.

Countervailing factors may include alternative remedies; duplication; good governance concerns; statutory or common-law immunities; whether damages would improperly interfere with legitimate government functions.

Charter damages are distinct from ordinary tort damages and are ordinarily claimed through an action rather than simply added to a judicial-review application.