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Announcements

Victoria University of Wellington Archival Collection Issue 1: Papers on Judicial Review

The Archival Collection is an addition to the Victoria University of Wellington Legal Research Paper Series that has been under consideration for some time. Covid-19 has caused a slow-down in many areas of human activity. For scholarly publishing, the virus has meant that VUW's Legal Research Paper series has space for older work. We have brought forward the distribution of papers written by Victoria University of Wellington staff from earlier years. To maintain momentum, however, the collection will include recent papers where their topic matches the topic of an issue in the Archival Collection. All papers will remain fully searchable on the [VUW pages of SSRN](#).

Table of Contents

Process and Outcome in Judicial Review of Public Authority Compatibility with Human Rights: A Comparative Perspective

[Claudia Geiringer](#), Victoria University of Wellington School of Law

Modulating the Depth of Scrutiny in Judicial Review: Scope, Grounds, Intensity, Context

[Dean R. Knight](#), Victoria University of Wellington - Faculty of Law

Vigilance and Restraint in the Common Law of Judicial Review: Introduction

[Dean R. Knight](#), Victoria University of Wellington - Faculty of Law

Contextual Review: The Instinctive Impulse and Unstructured Normativism in Judicial Review of Administrative Action

[Dean R. Knight](#), Victoria University of Wellington - Faculty of Law

Locating Dunsmuir's Meta-Structure within Anglo Commonwealth Traditions

[Dean R. Knight](#), Victoria University of Wellington - Faculty of Law

[^top](#)

LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES

VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Process and Outcome in Judicial Review of Public Authority Compatibility with Human Rights: A Comparative Perspective" 

This paper was ultimately published as: Hanna Wilberg and Mark Elliott (eds) "The Scope and Intensity of Substantive Review: Traversing Taggart's Rainbow" (Hart Publishing, Oxford, 2015) 329
Victoria University of Wellington Legal Research Paper No. 46/2020

CLAUDIA GEIRINGER, Victoria University of Wellington School of Law
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The preoccupation of this essay is with the difficulties that have confronted judges throughout the Commonwealth in sustaining a purely results-based account of their role in reviewing public authority compatibility with human rights. Ultimately, in each of the jurisdictions to have adopted the so-called Commonwealth model of human rights protection, process-based considerations have insinuated themselves into the judicial supervision of administrative decision-making – albeit in strikingly different ways. This essay examines relevant developments in four jurisdictions – the United Kingdom, the State of Victoria, Canada and New Zealand.

"Modulating the Depth of Scrutiny in Judicial Review: Scope, Grounds, Intensity, Context"

[2016] *New Zealand Law Review* 63

Victoria University of Wellington Legal Research Paper No. 47/2020

DEAN R. KNIGHT, Victoria University of Wellington - Faculty of Law
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This article focuses on the manner by which the courts modulate the depth of scrutiny in judicial review. Building on previous work that demonstrates that (overt and covert) variability is ubiquitous in judicial review, this article frames and explains the key methods employed to modulate the depth of scrutiny in New Zealand. The key methods are located within the broader Anglo-Commonwealth experience and are explicated in terms of four schemata drawn from the changing language and structure of successive editions of de Smith's distinguished textbook: scope of review, grounds of review, intensity of review and contextual review. A set of criteria for evaluating the virtues of the different schemata is then proposed, based on Fuller's principles of legality.

"Vigilance and Restraint in the Common Law of Judicial Review: Introduction"

Dean R Knight, Vigilance and Restraint in the Common Law of Judicial Review (Cambridge University Press, 2018)

Victoria University of Wellington Legal Research Paper No. 48/2020

DEAN R. KNIGHT, Victoria University of Wellington - Faculty of Law
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One of the key features of the system of judicial review is the variation of the depth of scrutiny by the supervising court when examining administrative decisions. The circumstances of different cases lead to different emphases being drawn between the competing notions of judicial vigilance and restraint. But the manner in which this balance is mediated and the depth of scrutiny is modulated differs across time and across jurisdictions. This book examines the methodologies used to vary the depth of scrutiny in English and other Anglo-Commonwealth (Australia, New Zealand and Canada) systems of judicial review over the last 50 years or so.

In this book I identify four schemata which are employed to organise the modulation of the depth of scrutiny:

- (a) scope of review, based on an array of formalistic categories which determine whether judicial intervention is permissible;
- (b) grounds of review, based on a simplified and generalised set of grounds of intervention;
- (c) intensity of review, based on explicit calibration of the depth of scrutiny taking into account a series of constitutional, institutional and functional factors; and
- (d) contextual review, based on an unstructured (and sometimes instinctive) overall judgement about whether to intervene according to the circumstances of the case.

These four schemata – loosely drawn from the language and structure of Professor Stanley de Smith's acclaimed judicial review textbook as it changed over its seven editions – provide structure for the study. For each of the schemata, doctrinal, theoretical and normative dimensions are examined.

"Contextual Review: The Instinctive Impulse and Unstructured Normativism in Judicial Review of Administrative Action"

[2020] *40 Legal Studies* 1 *Victoria University of Wellington Legal Research Paper No. 49/2020*

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Contextual review is a judicial method that rejects doctrinal or categorical methods to guide judicial supervision of administrative action. Judges are invited to assess the circumstances in the round without any doctrinal scaffolding to control the depth of scrutiny; in other words, intervention turns on an instinctive judicial impulse or overall evaluative judgement. This article identifies and explains the various instances where this method is deployed in judicial review in Anglo-Commonwealth administrative law. The efficacy of this style of review is also evaluated, using rule of law standards to frame the analysis. Its increasing popularity is a worrying turn, in part because its reliance on unstructured normativism undermines the rule of law.

"Locating Dunsmuir's Meta-Structure within Anglo Commonwealth Traditions"

DEAN R. KNIGHT, Victoria University of Wellington - Faculty of Law
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This article reflects on the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick* (2008) 1 SCR 190 and locates it within Anglo-Commonwealth traditions. Part of the aim of doing so is to provide a comparative lens to help understand *Dunsmuir* and its implications, as well as opening up some points of connection.

[^top](#)

About this eJournal

Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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