CORRECTIVE SUCCESS AND JUDICIAL REVIEW: REMITTAL, OUTCOME PERSISTENCE, AND THE JUSTIFICATION–CORRECTION GAP IN CANADIAN ADMINISTRATIVE LAW

A Theoretical and Doctrinal Analysis of Remittal, Outcome Persistence, and Corrective Success

by

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Count: 9000 of 9000 words (Including Footnotes)

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June 12, 2026

ABSTRACT

Canadian administrative law possesses a sophisticated framework for identifying unlawful administrative action and evaluating the adequacy of administrative justification. Considerably less attention, however, has been devoted to the question of whether judicial review remedies successfully correct the unlawfulness that justifies judicial intervention. This paper examines that neglected dimension of judicial review.

The paper focuses on remittal, the presumptive remedy following successful judicial review in Canada. Although remittal is generally understood to provide an appropriate response to unlawful administrative action, the relationship between reconsideration and correction remains under-theorized. Through an examination of remittal doctrine and the phenomenon of outcome persistence—situations in which substantially similar administrative outcomes emerge following judicial review—the paper argues that reconsideration and correction are analytically distinct concepts.

Building on this observation, the paper identifies a justification–correction gap within contemporary administrative law. While courts and scholars have developed increasingly sophisticated tools for evaluating legality, reasonableness, and administrative justification, comparatively little attention has been devoted to evaluating corrective success following judicial intervention.

To address this gap, the paper develops a framework for assessing corrective success by reference to the original error identified by the reviewing court, the range of lawful outcomes available to the decision-maker, the nature of the identified deficiency, and the institutional context in which reconsideration occurs. The paper argues that the success of judicial review should be evaluated not by whether reconsideration produces a different outcome, but by whether the remedial response meaningfully addresses the unlawfulness that justified intervention.

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~ PART I — INTRODUCTION ~

A. Title

Corrective Success and Judicial Review: Remittal, Outcome Persistence, and the Justification–Correction Gap in Canadian Administrative Law

B. Context and Relevance

Judicial review performs a central constitutional function within Canadian public law by ensuring that exercises of administrative authority remain subject to legal constraint and the rule of law.[1] As administrative decision-makers exercise increasingly broad statutory powers, courts are frequently required to determine whether those powers have been exercised lawfully. Contemporary administrative law has consequently devoted substantial attention to the standards governing lawful administrative decision-making, particularly questions of reasonableness, justification, and legality.[2] Yet considerably less attention has been devoted to a related question: how courts should determine whether judicial review has successfully corrected the unlawfulness that justified intervention in the first place.

C. The Corrective Puzzle in Canadian Administrative Law

A court concludes that an administrative decision is unlawful and remits the matter for reconsideration. Following reconsideration, a materially similar outcome may subsequently emerge. Canadian administrative law generally treats such intervention as a successful

[1] *Crevier v Quebec (Attorney General)*, [1981] 2 SCR 220 [*Crevier*]; *Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8 [*Yatar]*.
[2] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*].

exercise of judicial review. Yet the basis upon which corrective success is presumed remains unclear. Reconsideration and correction are not necessarily synonymous. Reconsideration describes a procedural event, whereas correction concerns whether the remedial response meaningfully addresses the legal deficiency identified by the reviewing court.[3]

This distinction becomes significant where judicial intervention is followed by the persistence of a materially similar administrative outcome. Such persistence does not necessarily establish corrective failure. Administrative decision-makers may legitimately reach similar conclusions following lawful reconsideration.[4] Nevertheless, the phenomenon raises an important question. If judicial review identifies unlawfulness and grants a remedy, how should courts determine whether that unlawfulness has been meaningfully corrected? Contemporary administrative law offers no comprehensive framework for answering that question. It is this corrective puzzle that motivates the present study.

D. Existing Scholarship and the Missing Question

Canadian administrative law scholarship has extensively examined legality, reasonableness, deference, administrative legitimacy, and the culture of justification.[5] Scholars such as David Dyzenhaus and Matthew Lewans have explored the constitutional foundations of judicial review and the principles governing the lawful exercise of public authority.[6] More recently, *Canada (Minister of Citizenship and Immigration) v Vavilov* has

[3] *Vavilov*, supra note 2 at paras 81–86, 142.
[4] *Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202 at 228–229 [*Mobil Oil*]; *Strickland v Canada (Attorney General)*, 2015 SCC 37, [2015] 2 SCR 713 [*Strickland*].
[5] David Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency* (Cambridge: Cambridge University Press, 2006); Matthew Lewans, *Administrative Law and Judicial Deference* (Oxford: Hart Publishing, 2016); TRS Allan, *The Sovereignty of Law* (Oxford: Oxford University Press, 2013).
[6] See generally Dyzenhaus, supra note 5.

generated substantial attention concerning justification, reasonableness review, and the role of reasons in administrative decision-making.[7]

A parallel body of scholarship has examined judicial review remedies, including remittal and remedial discretion.[8] Recent contributions have demonstrated that remedies remain an important and comparatively under-examined dimension of Canadian administrative law.[9]

Yet comparatively little attention has been devoted to a distinct question: how courts should determine whether judicial review remedies have successfully corrected the unlawfulness that justified intervention. Existing scholarship explains when courts should intervene, how courts should review administrative action, and what remedies courts may grant. It has devoted considerably less attention to evaluating whether those remedies meaningfully respond to the legal deficiencies identified by reviewing courts.

This omission is particularly striking because modern administrative law increasingly understands legitimacy through justification. The extensive literature surrounding reasonableness review, deference, and the culture of justification has generated sophisticated accounts of how courts identify unlawful administrative action. By contrast, relatively little scholarship has examined how courts should evaluate the success of remedial responses once unlawfulness has been identified. Canadian administrative law therefore possesses a sophisticated theory of justification but lacks a corresponding theory of corrective success.

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[7] *Vavilov*, supra note 2; Paul Daly, "Vavilov and the Culture of Justification in Administrative Law" (2020) 53:2 UBC L Rev 381 [Daly, "Vavilov"]; Mark Mancini, "The Conceptual Gap Between Reasonableness and Administrative Legitimacy After Vavilov" (2021) 34:1 Can J Admin L & Prac 1.

[8] Katie Glover Berger, "Remedies for Unreasonable Administrative Action after Vavilov" (2025) 63:1 Alta L Rev; Cristie Ford, "Remedies in Canadian Administrative Law: A Roadmap to a Parallel Legal Universe" in Colleen M Flood & Lorne Sossin, eds, *Administrative Law in Context*, 3rd ed (Toronto: Emond, 2018).

[9] See generally Katie Sykes, "The Remedy Gap in Administrative Law" (2022) 35 Can J Admin L & Prac 1; Ford, supra note 8; Berger, supra note 8.

The present paper seeks to address that gap by developing a framework through which corrective success may be evaluated following judicial intervention.

E. Research Questions

This paper addresses three related questions. First, what relationship exists between judicial review and the correction of unlawful administrative action? Second, does the prevailing preference for remittal necessarily produce corrective success following a finding of unlawfulness? Third, how should courts evaluate whether judicial review remedies have meaningfully addressed the legal deficiencies identified by reviewing courts?

F. Thesis Statement

This paper argues that Canadian administrative law has developed a sophisticated framework for identifying unlawful administrative action but lacks a corresponding framework for evaluating whether judicial review remedies successfully correct that unlawfulness. The prevailing preference for remittal assumes that reconsideration ordinarily produces correction. Yet reconsideration and correction are analytically distinct concepts. Through an examination of remittal doctrine and the phenomenon of outcome persistence, this paper argues that contemporary administrative law contains a justification–correction gap. To address that gap, it develops a framework for evaluating corrective success following judicial review. Properly understood, corrective success concerns not whether judicial intervention ultimately produces a different outcome, but whether the remedial response meaningfully addresses the legal deficiency identified by the reviewing court.

G. Methodology and Sources

This paper adopts a doctrinal and theoretical methodology.[10] It analyzes leading Supreme Court of Canada jurisprudence concerning judicial review, remittal, and administrative remedies, while engaging with contemporary scholarship on legality, justification, administrative legitimacy, and public law remedies. By integrating doctrinal analysis with administrative law theory, the paper develops a framework for evaluating corrective success following judicial review.

H. Structure of the Thesis

Part II examines the constitutional foundations of judicial review and the emergence of the culture of justification within Canadian administrative law. Part III analyzes the doctrine of remittal and the assumption that reconsideration ordinarily produces correction. Part IV introduces the concept of outcome persistence and examines its implications for corrective success. Part V develops the paper's central theoretical critique by identifying a justification–correction gap within contemporary administrative law. Part VI proposes a framework for evaluating corrective success following judicial review.

[10] See generally Terry Hutchinson, *Researching and Writing in Law*, 5th ed (Toronto: Carswell, 2018).

~ PART II — JUDICIAL REVIEW AND THE IDEA OF CORRECTION

I. Judicial Review, Legality, and the Rule of Law

Judicial review occupies a constitutionally protected position within the Canadian legal order. Its central function is to ensure that exercises of public power remain subject to legal constraint and that administrative decision-makers act within the limits imposed by law. The Supreme Court of Canada has repeatedly affirmed that judicial review forms an essential component of the rule of law by preserving the supervisory jurisdiction of superior courts over administrative action.[11]

At its core, judicial review reflects the principle that public authority must be exercised according to law rather than discretion unconstrained by legal norms. As administrative institutions exercise increasingly broad statutory powers, judicial review provides the mechanism through which courts ensure that delegated authority remains accountable to legal standards.[12] In this respect, judicial review serves both individual and systemic purposes: it protects affected persons from unlawful administrative action while maintaining the broader constitutional commitment to legality.[13]

[11] Crevier, supra note 1 at 236–38; *Yatar,* supra note 1 at paras 31–34.
[12] Dyzenhaus, supra note 5 at 2–12; Lewans, supra note 5 at 1–16.
[13] *Reference re Secession of Quebec*, [1998] 2 SCR 217 at paras 70–72; Allan, supra note 5 at 3–10.

J. The Culture of Justification After *Vavilov*

Modern administrative law increasingly understands legality through the language of justification. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, the Supreme Court of Canada identified justification, transparency, and intelligibility as central features of reasonableness review.[14] Administrative decision-makers must therefore demonstrate that their conclusions are responsive to the statutory, factual, and legal constraints governing the exercise of delegated authority.

This development reflects a broader culture of justification in which the legitimacy of public power depends not merely upon statutory authorization but upon the ability of decision-makers to provide reasons capable of withstanding public and judicial scrutiny.[15] Contemporary administrative law consequently possesses sophisticated tools for evaluating whether exercises of public authority have been adequately justified. What remains less developed, however, is a corresponding framework for evaluating whether judicial review remedies have successfully corrected identified unlawfulness.

K. Correction as an Under-Theorized Objective of Public Law

Contemporary administrative law possesses a sophisticated framework for identifying unlawful exercises of public power. Yet considerably less attention has been devoted to the question of what constitutes a successful response once unlawfulness has been identified. Courts grant remedies, unlawful decisions are quashed, and matters are frequently remitted for reconsideration. The remedial dimension of judicial review is therefore well established.

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[14] *Vavilov*, supra note 2 at paras 81–86, 99–106, 108–110.
[15] Dyzenhaus, supra note 5; Lewans, supra note 12 at 187–215.

What remains less developed is a coherent account of how corrective success should be evaluated.[16]

This omission is significant because the identification of unlawfulness and the correction of unlawfulness are analytically distinct tasks. The former concerns whether public power has been exercised contrary to law. The latter concerns whether the remedial response meaningfully addresses the legal deficiency that justified intervention. Although judicial review necessarily involves both dimensions, administrative law scholarship has focused far more extensively on the first.[17]

The argument advanced in this paper begins from that observation. Correction is not external to judicial review; it is among the purposes judicial review seeks to achieve. Yet contemporary administrative law lacks a developed framework through which corrective success can be evaluated. The following chapter examines the doctrine of remittal and argues that existing remedial practice frequently assumes, rather than demonstrates, that reconsideration produces correction.[18]

L. Objections: Finality, Efficiency, and Expertise

A greater emphasis upon corrective success may attract several objections. It may be argued that such an approach risks undermining finality, increasing litigation, or encouraging greater judicial involvement in administrative decision-making. Others may contend that

[16] *Mobil Oil,* supra note 4; Berger, supra note 8.
[17] Lewans, supra note 12; Dyzenhaus, supra note 5; Daly, "Vavilov" supra note 7.
[18] Berger, supra note 8; Ford, supra note 8.

courts should avoid inquiries into corrective success because such questions intrude upon the expertise and statutory authority of administrative actors.[19]

These concerns merit serious consideration but are not decisive. The argument advanced in this paper does not challenge the legitimacy of remittal, reject administrative expertise, or advocate expanded judicial supervision. Rather, it proceeds from the narrower proposition that judicial review should possess a coherent account of how remedies respond to identified unlawfulness. Evaluating corrective success requires neither the displacement of administrative decision-makers nor the abandonment of deference. It requires only greater attention to the relationship between unlawfulness and remedial response.[20] The following chapter examines remittal doctrine through that lens.

[19] *Vavilov*, supra note 2 at paras 24–31, 81–91; *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at paras 21–23, [2016] 2 SCR 293 [*Edmonton East*]; Paul Daly, *Understanding Administrative Law in the Common Law World* (Oxford: Oxford University Press, 2021) [Daly, *Understanding Administrative Law*].
[20] *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62 at paras 25–29, [2003] 3 SCR 3 [*Doucet-Boudreau*]; Kent Roach, *Constitutional Remedies in Canada*, 2nd ed (Toronto: Canada Law Book) (loose-leaf updated) ch 1.

~ PART III — REMITTAL AND THE PRESUMPTION OF CORRECTION ~

M. Remittal as the Default Remedy

Remittal occupies a central position within Canadian administrative law remedies. Where a reviewing court determines that an administrative decision is unlawful, the ordinary response is not to substitute a judicial outcome but to return the matter to the original decision-maker for reconsideration. Canadian courts have consistently treated remittal as the presumptive remedial response following successful judicial review.[21]

This preference reflects the limited role of courts within the administrative state. Judicial review is principally concerned with the legality of administrative action rather than the merits of the underlying decision. Consequently, where unlawfulness is identified, courts will ordinarily set aside the impugned decision and permit the administrative decision-maker to reconsider the matter in accordance with the legal guidance provided by the reviewing court.[22]

Remittal therefore functions as the remedial mechanism through which legality is restored while preserving the decision-maker's authority to exercise its delegated statutory mandate. Its dominance within Canadian administrative law is largely uncontested. More significant for present purposes, however, is the assumption that underlies the remedy itself. Remittal is generally treated as an adequate response to unlawfulness. The nature and implications of that assumption require closer examination.

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[21] *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir]*; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 [*Khosa]*; *Vavilov*, supra note 2.
[22] *Mobil Oil,* supra note 4; *Strickland, supra note 4* at para 42.

N. Institutional Rationales for Remittal

i. Administrative Expertise

A principal justification for remittal is respect for administrative expertise. Administrative decision-makers are frequently entrusted with specialized statutory responsibilities and possess institutional knowledge that courts may lack. Remittal acknowledges that, while courts are responsible for determining legality, administrative bodies are ordinarily better positioned to make decisions falling within their delegated mandates.[23]

ii. Separation of Functions

Remittal also reflects the separation of functions that characterizes the modern administrative state. Legislatures confer decision-making authority upon administrative actors rather than courts. Judicial review therefore operates as a supervisory mechanism designed to ensure legality without displacing the decision-maker's primary responsibility for resolving the matter.[24] Remittal preserves this institutional allocation of authority by permitting the administrative body to reconsider the issue in accordance with the court's guidance.

iii. Democratic Legitimacy

A further rationale concerns democratic legitimacy. Administrative decision-makers derive their authority from statutory delegations enacted by democratically elected legislatures. Remittal respects those legislative choices by returning matters to the institutions selected by

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[23] Lewans, supra note 12 at 15–18; Daly, *Understanding Administrative Law*, supra note 19, at ch 2.
[24] *Vavilov*, supra note 2 at paras 141–142; *Edmonton East*, supra note 19.

Parliament or the legislature to exercise the relevant powers.25 The remedy therefore serves important constitutional and institutional values. The difficulty addressed in this paper is not that remittal lacks justification, but that its corrective implications are often assumed rather than examined.

O. Alternative Remedial Responses

i. Mandamus

Although remittal is the ordinary response to unlawful administrative action, Canadian courts possess alternative remedial tools. One such remedy is mandamus, which compels a public authority to perform a legal duty where the relevant requirements are satisfied. Because mandamus directly directs administrative action, it remains an exceptional remedy and is granted only in limited circumstances.[26]

ii. Declaratory Relief

Courts may also grant declaratory relief. Unlike mandamus, a declaration does not compel a particular outcome but formally identifies the legal rights and obligations of the parties. Declarations may therefore clarify the legal framework governing future decision-making while leaving implementation to the administrative decision-maker.[27]

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[25] Dyzenhaus, supra note 5 at 10–12; *Secession Reference*, supra note 13.
[26] *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (CA) at 766–69.
[27] *Canada (Prime Minister) v Khadr*, 2010 SCC 3 at paras 46–47, [2010] 1 SCR 44; *Doucet-Boudreau*, supra note 20.

iii. Substitution

In rare cases, courts may substitute their own decision rather than remit the matter for reconsideration. Such intervention is generally reserved for exceptional circumstances, particularly where only one lawful outcome is available or where remittal would serve no practical purpose.[28] The existence of these alternative remedies demonstrates that remittal is not inevitable. Rather, it represents a remedial choice grounded in particular institutional considerations. Understanding that choice is necessary to appreciate the assumptions embedded within it.

P. The Presumption Embedded Within Remittal

The institutional rationales supporting remittal are substantial. Administrative expertise, legislative delegation, and the separation of functions all provide compelling reasons for returning matters to administrative decision-makers following successful judicial review. Yet these rationales do not fully explain why remittal is generally treated as a satisfactory response to unlawfulness. Embedded within the remedy is a further assumption: that reconsideration will ordinarily provide an adequate corrective response to the legal deficiency identified by the reviewing court.

This assumption is rarely articulated expressly. Courts typically focus on whether remittal is institutionally appropriate rather than whether it successfully achieves corrective success in relation to the unlawfulness identified by the reviewing court. Once a matter is returned for reconsideration, administrative law generally proceeds on the basis that the identified unlawfulness can be addressed through a renewed exercise of administrative decision-making.

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[28] *Mobil Oil,* supra note 4; *Vavilov*, supra note 2 at paras 141–142.

The remedial inquiry therefore tends to conclude at the point of remittal rather than at the point of correction.

The distinction is significant. Reconsideration and correction are not synonymous concepts. Reconsideration describes a procedural event: the return of a matter to the original decision-maker for further determination. Correction concerns a different question: whether the remedial response meaningfully addresses the legal deficiency that justified judicial intervention. Although reconsideration may produce correction, it does not necessarily do so.

This observation should not be understood as a criticism of remittal itself. In many cases, reconsideration may represent the most appropriate and effective response to unlawfulness. The difficulty is conceptual rather than institutional. Contemporary administrative law lacks a coherent framework through which to evaluate whether remittal has successfully corrected the unlawfulness identified by the reviewing court. The following chapter examines this problem through the phenomenon of outcome persistence.[29]

This is where the corrective significance of remittal becomes contestable. The recurrence of the same or materially similar outcome following judicial intervention does not necessarily establish that remittal has failed. It may reflect lawful reconsideration, a constrained statutory framework, or facts that continue to support the original result. Yet such recurrence does reveal something important: Canadian administrative law lacks a developed framework for determining whether reconsideration has in fact corrected the unlawfulness identified by the reviewing court. The difficulty is therefore not that outcome persistence proves corrective failure. Rather, it exposes a deeper doctrinal uncertainty: Canadian administrative law possesses no coherent framework for determining when the corrective objectives of judicial

[29] *Vavilov*, supra note 2 at paras 141–142; *Mobil Oil,* supra note 4.

review have actually been achieved. Without such a framework, the relationship between remittal and correction remains largely assumed rather than demonstrated.

~ PART IV — OUTCOME PERSISTENCE AND THE LIMITS OF CORRECTIVE DOCTRINE ~

Q. Outcome Persistence and the Problem of Corrective Success

The corrective significance of judicial review becomes most difficult to assess when an administrative decision-maker, following successful judicial review and remittal, reaches the same or a materially similar outcome as that originally set aside by the reviewing court. This paper describes that phenomenon as *outcome persistence*. Outcome persistence occurs where judicial intervention is followed by reconsideration, yet the resulting decision substantially reproduces the outcome that previously gave rise to legal challenge.[30]

The concept is descriptive rather than evaluative. Outcome persistence does not necessarily establish that the subsequent decision is unlawful, nor does it imply institutional resistance, bad faith, or disregard of judicial guidance. Administrative decision-makers may legitimately reach similar conclusions after correcting deficiencies identified by a reviewing court. Similar outcomes may reflect a constrained statutory framework, a stable factual record, or a limited range of legally permissible results.

The significance of outcome persistence lies elsewhere. It exposes a question that existing administrative law doctrine does not adequately answer: how should courts determine whether the remedial process has successfully corrected the unlawfulness that justified judicial intervention? Outcome persistence directs attention away from the initial finding of

[30] The term "outcome persistence" is used in this paper as a conceptual category rather than a recognized doctrinal classification within Canadian administrative law. For discussion of remittal following judicial review, see *Vavilov*, supra note 2 at paras 141–42; *Mobil Oil,* supra note 4.

unlawfulness and toward the corrective consequences of judicial review. In doing so, it reveals a dimension of remedial doctrine that has received comparatively little sustained examination within Canadian administrative law scholarship.[31]

R. Outcome Persistence Within the Structure of Remittal

Outcome persistence arises most naturally within the remedial framework of remittal. Where a court sets aside an administrative decision and returns the matter for reconsideration, responsibility for resolving the dispute remains with the administrative decision-maker. The court identifies unlawfulness but ordinarily does not determine the substantive result that must follow.[32]

This allocation of responsibility reflects a foundational feature of Canadian administrative law. Reviewing courts supervise legality rather than exercise delegated statutory authority. Accordingly, a court may identify deficiencies in reasoning, procedural fairness, statutory interpretation, or legal justification without foreclosing the possibility that the same substantive outcome could lawfully be reached following reconsideration.[33] Nothing within the doctrine of remittal therefore requires that a different result emerge.

The possibility of a materially similar outcome is therefore inherent in a remedial framework that prioritizes administrative expertise, institutional competence, and legislative delegation.[34] Yet that same institutional logic creates a conceptual difficulty. If judicial review may legitimately be followed by the same outcome, the persistence of that outcome cannot by

[31] *Vavilov*, supra note 2 at paras 81–106; Daly*, Understanding Administrative Law*, supra note 19, ch 2.
[32] *Vavilov*, supra note 2 at paras 141–42; *Mobil Oil*, supra note 4.
[33] *Vavilov*, supra note 2 at paras 13–14, 141–42; *Khosa*, supra note 21 at paras 59–61.
[34] Lewans, supra note 12 at 15–18; Daly, *Understanding Administrative Law,* supra note 19, ch 2.

itself establish whether the legal deficiency identified by the reviewing court has been corrected.

The significance of outcome persistence therefore lies not in the outcome itself, but in what it reveals about the relationship between reconsideration and correction. Reconsideration is a procedural event; correction is a substantive achievement. While correction ordinarily requires reconsideration, reconsideration does not necessarily establish correction. The central question is therefore not whether reconsideration occurred, but whether it successfully addressed the unlawfulness that justified judicial intervention in the first place.

S. Why Similar Outcomes Do Not Necessarily Indicate Corrective Failure

The recurrence of a materially similar outcome following judicial review should not be equated with corrective failure. A reviewing court may set aside a decision because of deficiencies in reasoning, procedural fairness, legal analysis, or responsiveness to statutory constraints. Those deficiencies may subsequently be corrected without requiring a different substantive result.[35]

In some cases, a different outcome may itself be difficult to justify. Where the factual record strongly favours a particular conclusion, or where the statutory framework significantly constrains the range of lawful outcomes, reconsideration may legitimately reproduce the original result. In such circumstances, outcome persistence reflects the continued operation of lawful administrative decision-making rather than resistance to judicial review.[36]

[35] *Vavilov*, supra note 2 at paras 95–106.
[36] *Vavilov*, supra note 2 at paras 124–25, 141–42; *Khosa*, supra note 21 at paras 59–61.

A materially similar outcome may therefore coexist with successful correction just as a different outcome may coexist with inadequate engagement with the court's reasons.

For this reason, outcome persistence cannot operate as a conclusive indicator of corrective failure. At most, it functions as an evidentiary signal that the relationship between reconsideration and correction requires closer examination.

T. Outcome Persistence as a Corrective Concern

Although outcome persistence does not establish corrective failure, it may nevertheless raise legitimate corrective concerns. The concern is not that the same result reappears. Rather, it is that the persistence of the result may create uncertainty regarding whether the unlawfulness identified by the reviewing court has been meaningfully addressed.

This difficulty arises because existing doctrine provides limited criteria for evaluating corrective success following remittal. Where a materially similar outcome follows judicial intervention, courts may be able to determine that reconsideration occurred. They are often less well equipped to determine whether reconsideration successfully fulfilled the corrective purpose of the remedy.

The concern becomes particularly acute where substantially similar outcomes are accompanied by reasoning that reproduces analytical deficiencies previously identified by the reviewing court. Similar concerns may arise where reconsideration remains anchored in interpretive commitments that are difficult to reconcile with the court's legal analysis, or where institutional practices encourage continuity despite judicial intervention. In such circumstances, outcome persistence may raise legitimate questions regarding corrective success even where the subsequent decision is not obviously unlawful.

The significance of outcome persistence therefore lies not in what it proves, but in what it makes difficult to know. Once a materially similar outcome re-emerges following judicial intervention, courts lack a developed framework for determining whether the unlawfulness identified in the original proceeding has been genuinely corrected or merely reformulated.[37]

Outcome persistence therefore exposes an epistemic as well as remedial challenge. It reveals a gap between the identification of legal error and the evaluation of corrective success.

U. The Limits of Existing Corrective Doctrine

Outcome persistence exposes a broader limitation within Canadian administrative law. Existing doctrine provides sophisticated tools for identifying legal error, but comparatively underdeveloped tools for evaluating whether that error has been corrected following remittal.

Following *Vavilov*, courts possess detailed frameworks for assessing legality, reasonableness, justification, transparency, intelligibility, statutory interpretation, and responsiveness to legal constraints. Administrative law has devoted substantial attention to the question of when a decision should be set aside. Far less attention has been devoted to the question of how courts should evaluate whether the remedial process has successfully addressed the unlawfulness that justified intervention in the first place.[38]

The limitation is not merely practical but conceptual. Existing doctrine asks whether the original decision was lawful and whether remittal is institutionally appropriate. It does not ordinarily ask whether the remedial response successfully achieved correction. As a result, reconsideration is often treated as evidence of correction.

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[37] Compare *Vavilov*, supra note 2 at paras 141–42 with *Mobil Oil*, supra note 4.
[38] *Vavilov*, supra note 2 at paras 81–106.

Outcome persistence exposes this gap. Where a materially similar outcome follows judicial review, courts require a framework capable of distinguishing legitimate reconsideration from unsuccessful correction. Existing doctrine provides no comprehensive account of how that distinction should be made.

The result is a significant asymmetry within Canadian administrative law. The law has developed an advanced theory of justification but only a rudimentary theory of correction. Courts possess sophisticated tools for determining why a decision is unlawful. They possess far less developed tools for determining whether that unlawfulness has subsequently been corrected through the remedial process.[39]

This asymmetry has important implications. If judicial review is understood as a corrective institution, then the effectiveness of its remedies cannot be evaluated solely by reference to the identification of legal error. A coherent account of judicial review requires a corresponding account of corrective success. Yet contemporary doctrine largely presumes correction rather than explaining how correction should be assessed.

The next Part argues that this presumption constitutes an unrecognized weakness within contemporary remedial doctrine. Canadian administrative law assumes corrective success following remittal while lacking a coherent framework through which corrective success may actually be evaluated.

[39] Dyzenhaus, supra note 5 at 10–12; Lewans, supra note 12 at 15–18; Daly, *Understanding Administrative Law*, supra note 19, ch 2.

~ PART V — THE JUSTIFICATION–CORRECTION GAP ~

V. Justification and Correction as Distinct Concepts

Justification and correction perform different functions within the framework of judicial review. Justification concerns the legality and rationality of administrative action. It asks whether a decision-maker has provided reasons that are responsive to the statutory, factual, and legal constraints governing the exercise of delegated authority. Contemporary administrative law has devoted significant attention to this inquiry, particularly following the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*.[40]

Correction addresses a different question. Rather than asking whether an administrative decision has been adequately justified, correction asks whether the remedial response to unlawfulness has meaningfully addressed the legal deficiency that justified judicial intervention. The former inquiry focuses upon the validity of the original decision. The latter focuses upon the consequences of judicial review once unlawfulness has been identified.

The distinction is not merely semantic. A decision may be inadequately justified and therefore unlawful, yet the remedial response may nevertheless succeed in correcting the underlying deficiency. Conversely, a court may identify unlawfulness and order reconsideration, yet uncertainty may remain regarding whether the subsequent process has meaningfully addressed the defect identified by the reviewing court. Justification and correction are therefore connected concepts, but they are not identical.

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[40] *Vavilov*, supra note 2; Daly, *Understanding Administrative Law,* supra note 19, ch 2.

Recognizing this distinction provides a useful lens through which to examine contemporary administrative law. While the law possesses increasingly sophisticated tools for evaluating justification, it has devoted considerably less attention to the independent question of correction. The significance of that imbalance becomes apparent when one examines the central place justification occupies within modern judicial review doctrine.

W. The Dominance of Justification in Contemporary Administrative Law

Contemporary Canadian administrative law places justification at the centre of judicial review. The Supreme Court of Canada's decision in *Vavilov* reoriented reasonableness review around the principles of justification, transparency, and intelligibility, emphasizing the obligation of administrative decision-makers to demonstrate that their conclusions are responsive to the legal and factual constraints governing the exercise of delegated authority.[41] The legitimacy of administrative action is therefore assessed not merely by reference to outcomes, but by reference to the quality of the reasoning supporting those outcomes.

The prominence of justification extends beyond doctrine. Administrative law scholarship has devoted substantial attention to the relationship between legality, reason-giving, and public justification. The culture of justification literature views the exercise of public power as legitimate only where decision-makers can provide reasons capable of withstanding public and judicial scrutiny.[42] Debates concerning deference, reasonableness, institutional competence, and democratic legitimacy have likewise been framed through the lens of justification.

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[41] *Vavilov*, supra note 2 at paras 81–106, 99–102; Lewans, supra note 12 at 15–18.
[42] Dyzenhaus, supra note 5 at 9–12; David Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy" in Michael Taggart, ed, *The Province of Administrative Law* (Oxford: Hart Publishing, 1997) 279; Daly, *"*Vavilov*"* supra note 7.

As a result, contemporary administrative law possesses a sophisticated vocabulary for evaluating the legality of administrative action. Courts routinely assess whether reasons are coherent, responsive, transparent, and justified in light of the relevant legal framework. The law therefore provides detailed guidance regarding when intervention is warranted and how unlawfulness should be identified.

This emphasis upon justification has undoubtedly strengthened the analytical foundations of judicial review. Yet it has also contributed to an imbalance. While the law has developed increasingly refined tools for evaluating the justification of administrative decisions, it has devoted comparatively little attention to evaluating the success of the remedial response that follows judicial intervention.

X. The Missing Theory of Correction

In contrast to the extensive attention devoted to justification, contemporary administrative law lacks a comparably developed account of correction. Courts possess established standards for identifying unlawfulness and evaluating the adequacy of administrative reasons.[43] Yet once a decision has been set aside and a remedy granted, the law provides limited guidance regarding how corrective success should be assessed.

This absence is particularly evident in remittal. Judicial review often proceeds on the assumption that reconsideration constitutes an adequate response to unlawfulness.[44] The focus remains on the original decision and the reasons justifying intervention, rather than on whether

[43] *Vavilov*, supra note 2 at paras 81–106; Lewans, supra note 5 at 15–18; Daly, *Understanding Administrative Law,* supra note 19, ch 2.
[44] Mobil Oil, supra note 4; *Vavilov*, supra note 2 at paras 141–42; *Khosa*, supra note 21 at paras 59–61.

the remedial response has meaningfully addressed the deficiency identified by the reviewing court.

The result is a structural asymmetry. Administrative law provides detailed criteria for identifying unlawfulness and evaluating justification, yet comparatively few criteria for determining whether judicial intervention has successfully achieved corrective success. Outcome persistence exposes this difficulty. Without a framework capable of distinguishing legitimate reconsideration from corrective failure, administrative law risks treating reconsideration and correction as interchangeable concepts.

Y. Why the Gap Matters

The absence of a theory of correction has practical as well as conceptual consequences. Where a court identifies unlawfulness and orders reconsideration, the law provides limited guidance regarding how corrective success should be evaluated.[45] As a result, administrative law may successfully explain why intervention was justified while remaining largely silent on whether the remedial response achieved its intended purpose.

This difficulty becomes particularly apparent in cases of outcome persistence. Similar outcomes following judicial review do not necessarily indicate corrective failure. However, neither do they necessarily demonstrate corrective success. Without a framework capable of evaluating the relationship between judicial intervention and subsequent decision-making, courts and scholars lack a principled basis for distinguishing between the two.

[45] Mobil Oil, supra note 4; *Vavilov*, supra note 2 at paras 141–42; Dyzenhaus, supra note 5 at 10–12; Lewans, supra note 5 at 15–18; Daly, *"*Vavilov*"* supra note 7.

The justification–correction gap therefore matters because it affects how the success of judicial review itself is understood. If judicial review seeks not only to identify unlawfulness but also to respond to it, then a meaningful account of correction becomes essential.

Z. From Corrective Failure to Corrective Success

The preceding discussion has argued that contemporary administrative law possesses a sophisticated account of justification but a comparatively underdeveloped account of correction. The result is a gap between the identification of unlawfulness and the evaluation of remedial success. While outcome persistence helps expose that gap, it does not by itself provide a framework for resolving it.

The challenge therefore shifts from identifying corrective failure to defining corrective success. If correction constitutes an independent objective of judicial review, administrative law requires criteria through which the success of remedial responses can be evaluated. The development of such criteria does not require the rejection of remittal, deference, or administrative expertise. Rather, it requires a more explicit account of how judicial review achieves its corrective function.

The next Part proposes a framework for evaluating corrective success within Canadian administrative law.

~ PART VI — TOWARD A THEORY OF CORRECTIVE SUCCESS ~

AA. Why Corrective Success Requires a Framework

The preceding Parts have argued that contemporary administrative law possesses a sophisticated account of justification but a comparatively underdeveloped account of correction. While courts routinely evaluate whether administrative decisions are lawful, reasonable, and adequately justified, they possess fewer tools for evaluating whether judicial intervention has successfully achieved its corrective purpose.

This difficulty becomes particularly apparent in cases of outcome persistence. Similar outcomes following judicial review may reflect either successful correction or continuing deficiencies in the decision-making process. Existing doctrine provides limited guidance regarding how such situations should be distinguished. As a result, the assessment of corrective success often remains implicit rather than explicit.

If correction constitutes an independent objective of judicial review, a framework is required through which corrective success can be evaluated. Such a framework need not displace remittal, undermine administrative expertise, or require courts to supervise reconsideration indefinitely. Rather, it provides a structured means of assessing whether the remedial response has meaningfully addressed the legal deficiency identified by the reviewing court. The following sections propose several factors that may assist in that assessment. These factors are selected because they correspond to the principal variables that determine whether a remedial response meaningfully addresses the unlawfulness identified by a reviewing court.

BB. The Centrality of the Original Error

Any assessment of corrective success must begin with the legal deficiency identified by the reviewing court.[46] Correction cannot be evaluated in the abstract. Rather, it must be measured against the specific error that justified judicial intervention in the first place.

This requirement follows from the nature of judicial review itself. Courts do not intervene because a decision produces an undesirable outcome. They intervene because the decision is affected by a legal defect, whether that defect relates to reasoning, procedural fairness, statutory interpretation, jurisdiction, or another aspect of legality. Consequently, the relevant question is not whether reconsideration produces a different result, but whether it meaningfully addresses the deficiency identified by the reviewing court.

The significance of outcome persistence therefore depends upon the nature of the original error. A materially similar outcome may be entirely compatible with corrective success where the identified deficiency has been remedied. Conversely, a different outcome does not necessarily establish corrective success if the underlying legal defect remains unaddressed. The focus must therefore remain on the relationship between the judicial finding of unlawfulness and the subsequent remedial response.

The first principle of corrective success is accordingly straightforward: the adequacy of correction must be evaluated by reference to the original error that required correction.

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[46] *Vavilov*, supra note 2 at paras 81–106.

CC. Degree of Constraint on Lawful Outcomes

The significance of outcome persistence also depends upon the degree to which the statutory and factual context constrains the range of lawful outcomes available to the decision-maker. Not all exercises of administrative discretion permit the same scope for variation. In some cases, the governing legal framework may effectively limit the decision-maker to a narrow range of permissible conclusions. In others, multiple outcomes may be equally consistent with the requirements of legality.[47]

This distinction is important because the persistence of an outcome carries different implications depending upon the extent of the decision-maker's available discretion. Where the range of lawful outcomes is highly constrained, a materially similar result following judicial review may provide little reason for concern. The persistence of the outcome may simply reflect the continued operation of the statutory scheme and the factual record.

By contrast, where the decision-maker enjoys broad discretion and multiple lawful outcomes are realistically available, repeated reliance upon substantially similar conclusions may warrant closer scrutiny. Outcome persistence in such circumstances does not establish corrective failure, but it may raise questions regarding whether reconsideration has genuinely engaged with the concerns identified by the reviewing court.

The second principle of corrective success therefore recognizes that outcome persistence cannot be assessed in isolation. Its significance depends in part upon the range of lawful outcomes available within the relevant legal and factual context.

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[47] *Vavilov*, supra note 2 at paras 83, 88–90, 93; Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at paras 14–16, [2011] 3 SCR 708.

DD. Nature of the Deficiency Identified

Corrective success also depends upon the nature of the legal deficiency identified by the reviewing court. Different forms of unlawfulness require different forms of correction.[48] A framework for evaluating corrective success must therefore distinguish between the various defects that may justify judicial intervention.

For example, a failure to provide adequate reasons may be corrected through a more transparent and responsive explanation of the decision. A breach of procedural fairness may require a new process that affords affected parties a meaningful opportunity to participate. [49]Errors of statutory interpretation may require the decision-maker to reconsider the legal framework governing the exercise of its authority. In each case, the nature of the corrective response should correspond to the nature of the original deficiency.

This distinction has important implications for outcome persistence. A materially similar outcome may be compatible with corrective success where the identified defect concerns procedure, reasoning, or explanation rather than substance. Conversely, persistence may be more troubling where the decision-maker continues to rely upon the same legal interpretation or analytical approach that the reviewing court found deficient.

The third principle of corrective success is therefore that correction must be evaluated considering the specific type of unlawfulness identified by the reviewing court. Different deficiencies require different forms of remedial response, and corrective success cannot be assessed without regard to that distinction.

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[48] *Vavilov*, supra note 2 at paras 99–106, 122–128.
[49] Baker v Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817 at paras 21–28.

EE. Institutional Context

Corrective success cannot be assessed entirely in the abstract. The significance of a remedial response depends in part upon the institutional context in which reconsideration occurs. Different administrative decision-makers operate under different statutory mandates, procedural structures, and degrees of expertise. [50]These institutional features influence not only how reconsideration is conducted, but also what forms of correction are realistically available following judicial intervention. Accordingly, the same pattern of outcome persistence may carry different implications depending upon the institutional setting in which the remedial process unfolds.

This does not mean that corrective success should vary according to the identity of the decision-maker. The relevant inquiry remains whether the remedial response has meaningfully addressed the legal deficiency identified by the reviewing court. Institutional context instead provides the background against which that inquiry must be conducted. A tribunal exercising broad discretionary authority may require a different form of corrective engagement than a decision-maker operating within a tightly constrained statutory framework because the range of lawful responses available to each may differ significantly.

The fourth principle of corrective success is therefore that correction must be evaluated contextually rather than abstractly. The significance of outcome persistence cannot be separated from the institutional environment in which reconsideration occurs, because that environment shapes both the range of available responses and the manner in which identified deficiencies may be corrected.

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[50] *Edmonton East*, supra note 19; *CUPE v New Brunswick Liquor Corp*, [1979] 2 SCR 227.

FF. Assessing Corrective Success

The preceding principles do not constitute a mechanical test. Rather, they provide a structured framework through which courts and scholars may evaluate whether judicial intervention has successfully corrected the legal deficiency that justified review. Taken together, the preceding factors suggest that corrective success cannot be determined by reference to outcome alone. Rather, corrective success is best understood as the relationship between the legal deficiency identified by a reviewing court and the adequacy of the remedial response that follows. The relevant inquiry is not whether reconsideration produces a different result, but whether it meaningfully addresses the unlawfulness that justified judicial intervention.

Corrective success does not lend itself to a rigid doctrinal test. Correction rarely admits of precise measurement, and different administrative contexts may require different evaluative emphases. Nevertheless, the framework provides a structured inquiry capable of distinguishing corrective success from corrective failure without collapsing either concept into outcome change alone.

Corrective success should therefore be understood as a contextual inquiry informed by the original error, the range of lawful outcomes, the nature of the identified deficiency, and the institutional setting in which reconsideration occurs. These considerations do not eliminate uncertainty, but they provide a principled basis for distinguishing corrective success from corrective failure. Properly understood, the success of judicial review does not depend upon whether a decision changes. It depends upon whether the unlawfulness that justified intervention has genuinely been corrected.

This approach reorients the focus of judicial review away from outcome comparison and toward corrective engagement. The central question is not whether the decision-maker reaches a new result, but whether it has genuinely confronted and remedied the legal deficiency identified by the reviewing court. Outcome persistence may therefore be evidence of either corrective success or corrective failure, depending upon the circumstances. What matters is not the persistence of the outcome but the adequacy of the corrective response.

GG. The Value of a Corrective Framework

The framework proposed in this Part does not seek to transform judicial review into a form of continuing judicial supervision. Nor does it require courts to abandon remittal, administrative expertise, or deference. Its purpose is more modest. It provides a structured method for evaluating whether the remedial response meaningfully addresses the legal deficiency identified by the reviewing court.

The principal advantage of such a framework is that it avoids treating outcome change as the sole indicator of corrective success. A different outcome may sometimes suggest that correction has occurred, but it does not necessarily establish that the original legal deficiency has been addressed. Equally, the persistence of a materially similar outcome does not necessarily demonstrate corrective failure. By directing attention to the original error, the range of lawful outcomes, the nature of the identified deficiency, and the institutional context of reconsideration, the framework permits a more precise evaluation of the relationship between judicial intervention and corrective achievement.

The framework also provides a means of reconciling two commitments that frequently appear in tension within administrative law. On the one hand, contemporary doctrine

emphasizes administrative autonomy, expertise, and legislative delegation. On the other hand, judicial review seeks to ensure that exercises of public power remain lawful and accountable. Evaluating corrective success through a contextual framework allows both commitments to be respected. Administrative decision-makers remain responsible for reconsideration, while courts retain a principled basis for understanding whether the corrective objectives of judicial review have been fulfilled.

The framework therefore contributes to administrative law not by altering existing remedial doctrine, but by providing a clearer account of what remedial doctrine seeks to achieve. It transforms correction from an assumed consequence of judicial intervention into an evaluative concept capable of principled analysis.

More fundamentally, the framework helps bridge the justification–correction gap identified throughout this paper. Contemporary administrative law devotes substantial attention to explaining why intervention is justified, yet comparatively little attention to evaluating whether intervention has successfully achieved its remedial purpose. By supplying criteria through which corrective success may be assessed, the framework links the identification of unlawfulness to the evaluation of remedial achievement. In doing so, it provides a conceptual account of correction that parallels administrative law's existing account of justification while remaining consistent with the institutional commitments that underpin contemporary judicial review.

The framework is necessarily preliminary. Its purpose is not to provide a definitive account of corrective success, but to establish correction as a distinct subject of administrative law analysis. Once correction is recognized as analytically separate from justification, further doctrinal development becomes possible.

~ PART VII — IMPLICATIONS FOR CANADIAN ADMINISTRATIVE LAW ~

HH. Reconsidering the Corrective Function of Judicial Review

Canadian administrative law has traditionally understood judicial review primarily as a mechanism for identifying and responding to unlawful exercises of public power. The jurisprudence and scholarship have consequently focused upon legality, justification, and the circumstances in which judicial intervention is warranted. [51]This emphasis has strengthened the analytical foundations of judicial review and reinforced the rule of law.

The argument advanced in this paper suggests that a complementary inquiry deserves greater attention. Judicial review is concerned not only with identifying unlawfulness, but also with ensuring that unlawfulness is meaningfully addressed through an appropriate remedial response. Correction should therefore be understood as an independent dimension of judicial review rather than merely an assumed consequence of intervention.

Recognizing the corrective function of judicial review does not require a departure from existing doctrine. Rather, it encourages greater attention to the relationship between judicial findings of unlawfulness and the remedial processes that follow. In this respect, a focus on corrective success complements, rather than displaces, the law's existing concern with justification, legality, and administrative legitimacy.

[51] *Vavilov*, supra note 2 at paras 81–106.

II. Reconsidering the Role of Remittal

The argument advanced in this paper should not be understood as a critique of remittal itself. Remittal remains an important and often necessary feature of Canadian administrative law.[52] It reflects respect for administrative expertise, legislative delegation, and the institutional limits of judicial review.[53] In many cases, returning a matter to the original decision-maker will remain the most appropriate response to unlawfulness.

The contribution of this paper is instead to question the assumption that remittal necessarily achieves corrective success. Reconsideration and correction are related concepts, but they are not identical. The fact that a matter has been returned for reconsideration does not, by itself, establish that the legal deficiency identified by the reviewing court has been meaningfully addressed.

Nor does the argument advanced in this paper imply that courts should routinely substitute their own decisions or adopt more intrusive forms of remedial supervision. Such approaches would raise separate concerns regarding institutional competence, democratic legitimacy, and the proper limits of judicial review. The objective is not to replace remittal, but to develop a more precise account of how its success should be evaluated.

A greater focus on corrective success therefore does not undermine the legitimacy of remittal. Rather, it encourages a more precise understanding of what remittal is intended to accomplish. Properly understood, the question is not whether remittal should remain the default remedy, but whether the success of remittal should continue to be presumed rather than evaluated.

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[52] *Vavilov*, supra note 2 at paras 139–142.
[53] Canada Post Corp v Canadian Union of Postal Workers, 2019 SCC 67 at paras 46–48.

JJ. Future Directions for Administrative Law Remedies

The framework proposed in this paper is intended as a starting point rather than a final account of corrective success. Future scholarship may further develop the relationship between judicial review, remedial design, and correction, particularly through empirical examination of post-remittal decision-making. Greater attention might also be devoted to the extent to which different forms of unlawfulness require different remedial responses.

More broadly, the concept of corrective success invites renewed consideration of the objectives underlying administrative law remedies. While contemporary doctrine provides sophisticated tools for identifying unlawfulness and evaluating justification, further work remains necessary to understand how judicial review achieves its corrective function in practice.

The continued development of administrative law remedies should therefore focus not only on when intervention is justified, but also on how the success of that intervention ought to be evaluated.

~ PART VIII — CONCLUSION ~

KK. Restating the Core Claim

This paper has argued that Canadian administrative law possesses a sophisticated framework for identifying unlawful administrative action but lacks a corresponding framework for evaluating whether judicial review remedies successfully correct that unlawfulness. While contemporary doctrine devotes considerable attention to legality, reasonableness, and justification, it provides comparatively little guidance regarding the assessment of corrective success following judicial intervention.

The analysis demonstrated that the prevailing preference for remittal contains an implicit assumption that reconsideration ordinarily produces correction. Through the concept of outcome persistence, however, the paper showed that reconsideration and correction are analytically distinct concepts. A materially similar outcome following judicial review may be entirely compatible with corrective success, yet neither does it necessarily establish that correction has occurred.

The paper further argued that contemporary administrative law contains a justification–correction gap. Although courts and scholars have developed increasingly sophisticated tools for evaluating administrative justification, considerably less attention has been devoted to the independent question of correction. To address that gap, the paper proposed a framework for evaluating corrective success by reference to the original error identified by the reviewing court, the range of lawful outcomes available to the decision-maker, the nature of the identified deficiency, and the institutional context in which reconsideration occurs.

LL. Corrective Success and the Future of Administrative Legality

The argument advanced in this paper does not challenge the legitimacy of remittal, administrative expertise, or the contemporary culture of justification. Rather, it advances the more modest claim that correction deserves greater attention as an independent dimension of judicial review.

Recognizing corrective success as a distinct analytical concern has implications beyond the specific doctrine of remittal. It encourages a more complete understanding of the relationship between judicial intervention and administrative decision-making, while providing a framework through which the success of remedial responses may be evaluated. In this respect, the concept of corrective success complements the law's existing concern with legality and justification rather than displacing it.

As Canadian administrative law continues to refine its understanding of justification, legality, and institutional legitimacy, greater attention should be devoted to the question of correction. Judicial review ultimately derives its significance not merely from its ability to identify unlawfulness, but from its capacity to ensure that unlawfulness is meaningfully addressed. A theory of corrective success therefore represents not a departure from the rule of law, but continuation of its underlying commitment to lawful and accountable public administration.[54]

[54] Joseph Raz, *The Authority of Law: Essays on Law and Morality*, 2nd ed (Oxford: Oxford University Press, 2009) at 210–29; Lon L Fuller, *The Morality of Law*, rev ed (New Haven: Yale University Press, 1969) at 33–94; Jeremy Waldron, *The Rule of Law and the Measure of Property* (Cambridge: Cambridge University Press, 2012) at 3–24.

BIBLIOGRAPHY

SCHEDULE "A" — LEGISLATION

1. *Courts of Justice Act*, RSO 1990, c C.43.
2. *Federal Courts Act*, RSC 1985, c F-7.
3. *Judicial Review Procedure Act*, RSO 1990, c J.1.

SCHEDULE "B" — CANADIAN CASE LAW

1. *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (CA).

2. *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

3. *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339.

4. *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

5. *Canada (Prime Minister) v Khadr*, 2010 SCC 3, [2010] 1 SCR 44.

6. *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67.

7. *Crevier v Quebec (Attorney General)*, [1981] 2 SCR 220.

8. *CUPE v New Brunswick Liquor Corp*, [1979] 2 SCR 227.

9. *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 SCR 3.

10. *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

11. *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47, [2016] 2 SCR 293.

12. *Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202.

13. *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708.

14. *Reference re Secession of Quebec*, [1998] 2 SCR 217.

15. *Strickland v Canada (Attorney General)*, 2015 SCC 37, [2015] 2 SCR 713.

16. *Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8.

SCHEDULE "C" — BOOKS

1. Allan, TRS, *The Sovereignty of Law* (Oxford: Oxford University Press, 2013).
2. Daly, Paul, *Understanding Administrative Law in the Common Law World* (Oxford: Oxford University Press, 2021).
3. Dyzenhaus, David, *The Constitution of Law: Legality in a Time of Emergency* (Cambridge: Cambridge University Press, 2006).
4. Fuller, Lon L, *The Morality of Law*, rev ed (New Haven: Yale University Press, 1969).
5. Hutchinson, Terry, *Researching and Writing in Law*, 5th ed (Toronto: Carswell, 2018).
6. Lewans, Matthew, *Administrative Law and Judicial Deference: A Historical, Comparative and Normative Analysis* (Oxford: Hart Publishing, 2016).
7. Mullan, David J, *Administrative Law* (Toronto: Irwin Law, latest ed).
8. Raz, Joseph, *The Authority of Law: Essays on Law and Morality*, 2nd ed (Oxford: Oxford University Press, 2009).
9. Roach, Kent, *Constitutional Remedies in Canada*, 2nd ed (Toronto: Canada Law Book) (loose-leaf updated).
10. Sossin, Lorne & Colleen M Flood, eds, *Administrative Law in Context*, 3rd ed (Toronto: Emond, 2018).

11. Waldron, Jeremy, *The Rule of Law and the Measure of Property* (Cambridge: Cambridge University Press, 2012).

SCHEDULE "D" — JOURNAL ARTICLES AND BOOK CHAPTER

1. Berger, Katie Glover, "Remedies for Unreasonable Administrative Action after *Vavilov*" (2025) 63:1 *Alta L Rev*.
2. Daly, Paul, "Vavilov and the Culture of Justification in Administrative Law" (2020) 53:2 *UBC L Rev* 381.
3. Dyzenhaus, David, "The Politics of Deference: Judicial Review and Democracy" in Michael Taggart, ed, *The Province of Administrative Law* (Oxford: Hart Publishing, 1997) 279.
4. Ford, Cristie, "Remedies in Canadian Administrative Law: A Roadmap to a Parallel Legal Universe" in Colleen M Flood & Lorne Sossin, eds, *Administrative Law in Context*, 3rd ed (Toronto: Emond, 2018).
5. Mancini, Mark, "The Conceptual Gap Between Reasonableness and Administrative Legitimacy After *Vavilov*" (2021) 34:1 *Can J Admin L & Prac* 1.
6. Sykes, Katie, "The Remedy Gap in Administrative Law" (2022) 35 *Can J Admin L & Prac* 1.

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