PRIVATIVE CLAUSES: HISTORICAL ANOMALIES THAT THREATEN ACCESS TO JUSTICE

Jason Tree

Introduction

Privative clauses are legislative provisions that purport to protect administrative actions from judicial scrutiny. On their face, privative clauses often appear to be unassailable, featuring language that the decision of an administrator is final and conclusive, and not subject to appeal to, or review by, any court. Such language is likely to convince all but the most persistent layperson that they have no further remedy in the face of an unfavourable decision by an administrator.

This paper will argue that privative clauses are not only legally questionable, but that they threaten access to justice by misleading the layperson (or even the occasional lawyer). When it comes to privative clauses, the law as written is not the law as applied in practice. This poses a serious threat to the rule of law principle.

Privative clauses are nearly ubiquitous throughout Canadian legislation that empowers administrators to make decisions. They can be found in legislation as varied as the *Plant Protection Act*,[1] the *Health of Animals Act*,[2] the *Canada Labour Code*,[3] and the *Royal Canadian Mounted Police Act*,[4] to name but a few.[5] Where power or discretion has been delegated to an administrator, a privative clause often follows.

Legal practitioners and scholars know that privative clauses do not provide much of a shield at all, no matter how clear or strong the language may be. While they may have originally provided the intended effect, over the years these clauses have lost any meaning. The rationale for ignoring the literal words of the legislator has

---

[1] *Plant Protection Act,* SC 1990, c 22.

[2] *Health of Animals Act,* SC 1990, c 21.

[3] *Canada Labour Code*, RSC 1985, c L-2.

[4] *Royal Canadian Mounted Police Act,* RSC 1985, c R-10.

[5] Even recent emergency orders related to the COVID-19 pandemic have included such provisions. See e.g. *Revised Mandatory Order COVID-19*, Ministerial Order issued under s 12 of the *Emergency Measures Act,* RSNB 2011, c 147, 20 January 2022: ". . . their decisions are hereby shielded from judicial review and from civil liability".

ranged from jurisdictional reasons[6] to preserving the rule of law.[7] Regardless of the reason, the effect has been the same: privative clauses have not ousted the modern court's ability to review the actions of a government administrator.

This dissonance between the legislator's words and their legal effect creates a barrier for access to justice. Only those who know to look beyond the words of the statute (or those who can afford legal counsel) are even aware of a judicial remedy to a contested administrative decision.

The late Bora Laskin, writing on the effect of privative clauses in 1952 (although it should be noted that he was an ardent supporter of such clauses), remarked: "It is worth repeating that, if judicial review is desirable, it should be openly conceded and openly established."[8] Yet 70 years later, identical privative clauses continue to be inserted into federal and provincial legislation, obfuscating the true availability of judicial scrutiny.

Privative Clauses No Longer Have Any Practical Legal Effect

Privative clauses have had a varied effect over the years. In Canada's early history, privative clauses appeared to have been generally respected by the courts. In an 1877 Supreme Court of Canada case, the Court faced a strong privative clause, to which then Chief Justice William Richards opined:

I think that the declared intentions of the Legislature ought to be respected, and the parties should be left to assert their rights in some other way than by asking the Court, on an application such as this is, to declare the award invalid and void, when the Legislature has said it shall be binding, final and conclusive on all parties, unless inquired into in the manner prescribed by the Act, and shall not be inquired into by any Court on *certiorari*.[9]

---

[6] See e.g. *Crevier v AG (Québec) et al*, [1981] 2 SCR 220 at 237-38, 127 DLR (3d) 1. "There may be differences of opinion as to what are questions of jurisdiction but, in my lexicon, they rise above and are different from errors of law, whether involving statutory construction or evidentiary matters or other matters. It is now unquestioned that privative clauses may, when properly framed, effectively oust judicial review on questions of law and, indeed, on other issues not touching jurisdiction. However, given that s. 96 is in the *British North America Act* and that it would make a mockery of it to treat it in non-functional formal terms as a mere appointing power, I can think of nothing that is more the hallmark of a superior court than the vesting of power in a provincial statutory tribunal to determine the limits of its jurisdiction without appeal or other review."

[7] See e.g. *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 52 [*Dunsmuir*]: "The rule of law requires that the constitutional role of superior courts be preserved and, as indicated above, neither Parliament nor any legislature can completely remove the courts' power to review the actions and decisions of administrative bodies. This power is constitutionally protected."

[8] Bora Laskin, "Certiorari to Labour Boards: The Apparent Futility of Privative Clauses" (1952) 30:10 Can Bar Rev 986.

[9] *Kelly v Sulivan*, [1877] 1 SCR 3 [*Kelly*].

Similarly, the British Columbia Court of Appeal considered the application of a privative clause in the face of a *habeas corpus* application on an immigration matter in 1914. If one can look past the overtly racist comments on the merits of the case (which is admittedly difficult), one can observe a similar conclusion on the complete barrier to judicial intervention that a privative clause achieved:

> In my opinion *The Immigration Act* and the orders-in-council referred to constitute full and justifiable warrant for the detention of the appellant by the immigration authorities, and for his deportation, the deportation order being good and sufficient in law even were the decision of the Board of Inquiry reviewable, and no grounds are made out for the appellant's discharge. But in so holding I am not to be understood as holding that there is any power of review or the right to invoke *habeas corpus* proceedings to effect the discharge of the appellant, as my opinion is that s. 23 is an absolute inhibition up on the court, and there is no jurisdiction in the court to grant a writ of *habeas corpus* and thereupon discharge the appellant from custody.[10]

Yet as the 20th century progressed, the approach of the courts began to shift. Courts first gently probed jurisdictional questions that might affect the outcome of an administrator's decision but tried to avoid the merits of the decision. For instance, in 1938 the Alberta Court of Queen's Bench (relying on an earlier Privy Council decision[11]) carved out space to examine an administrative decision as follows:

> The question involved here is not as to the merits but is a collateral matter upon which the jurisdiction of the tribunal depends and there is nothing in the Act which gives finality to a decision of the Board on such a matter.
>
> In the result, I am of opinion that the finding of the Board, with reference to the debt due to the applicant, is open to review upon *certiorari*.[12]

This gentle probing quickly developed into a much more robust examination of administrator's decisions, often couched in broad jurisdictional language. For instance, an Ontario court framed modern-day elements of procedural fairness as jurisdictional questions in a 1945 decision:

> Every person has an inherent right to an opportunity of being heard before he is condemned, by any tribunal. Over one hundred years ago Lord Denman C.J. in *Innes v. Wylie et al.* (1844), l Car. & Kir. 257, 174 E.R. 800, in discussing the maxim *audi alteram parte*m, said:
>
> > "No proceedings in the nature of a judicial proceeding can be valid unless the party charged is told that he is so charged, is called on to

[10] *Munshi Singh (Re)*, [1914] 20 BCR 243 (BC CA), 29 WLR 45.

[11] *Colonial Bank of Australasia v Willan*, [1874] LR 5 PC 417.

[12] *Hudson's Bay Company (Re) (No. 2*), [1938] 3 DLR 791 (AB QB), [1938] 2 WWR 412.

> answer the charge, and is warned of the consequences of refusing to do so."
>
> That principle extends to every case in which substantive rights are affected or put in jeopardy in a judicial proceeding, and is not limited to judicial proceedings in criminal matters.
>
> . . .
>
> The result of the English decisions to which I have referred is that the giving of notice and an opportunity to be heard in a judicial proceeding affecting substantive rights, even where notice is not specifically required by statute, is a condition precedent to any tribunal exercising jurisdiction which it would otherwise have.[13]

By the early 1950s, courts had recognized their collective encroachment on the privative clause, as demonstrated by this apt observation by the Ontario Superior Court of Justice:

> That language [a privative clause] appears to give recognition to the force of no-*certiorari* clauses except where it can be shown that the inferior tribunal was manifestly without jurisdiction or has been the victim of fraud. However, upon a closer study of that judgment, and upon looking into the other authorities which have since been decided upon the subject, it becomes apparent that the phase "want of jurisdiction" is extremely flexible and has been extended to include imperfections which ordinarily might not be regarded as pertaining to jurisdiction at all.

It is shortly after this that Laskin wrote: “With few exceptions in Anglo-Canadian experience, the courts have found it expedient to exercise the same supervisory role over these administrative agencies as they would in the absence of any privative clause.”[14]

By the late 20th century, privative clauses had morphed into something else altogether. Instead of ousting judicial scrutiny, privative clauses affected the deference that courts imputed to a particular administrator. The more deference that was owed, the lower the standard of review applied by the courts to the decision in question. This was a somewhat novel application of privative clauses, which had otherwise been treated as an obstacle to reason around by the earlier courts. It could be argued that the difficulty in finding a satisfactory doctrinal approach led—or at least contributed—to the advancement of this approach.

---

[13] *Re Brown and Brock and the Rentals Administrator*, [1945] 3 DLR 324 (ON CA), [1945] OR 554.

[14] Laskin, *supra* note 8.

However, the Supreme Court of Canada's decision in *Dunsmuir*[15] firmly entrenched the role of the privative clause for a brief period in Canadian law. The court remarked that "a privative clause is evidence of Parliament or a legislature's intent that an administrative decision maker be given greater deference and that interference by reviewing courts be minimized."[16] Under *Dunsmuir*, privative clauses guided the courts towards a reasonableness standard of review.

This historical curiosity came to an end just 11 years later with the *Vavilov* case.[17] By adopting a reasonableness review as a starting proposition, there is no longer a need to be searching for legislative hints as to the appropriate standard of review. In essence, nearly all administrative actions (but for a short list of exceptions identified by the court) are now treated as if they were subject to a privative clause under the *Dunsmuir* framework.

The majority in *Vavilov* summed up its approach by noting that "…in such a framework that is based on a presumption of reasonableness review, contextual factors that courts once looked to as signalling deferential review, such as privative clauses, serve no independent or additional function in identifying the standard of review."[18] Therefore, what remains of the purpose of the privative clause?

The dissent did not ignore this question, observing that "the majority's claim that legislatures 'd[o] not speak in vain' is irreconcilable with its treatment of privative clauses, which play no role in its standard of review framework."[19] The dissent seems to struggle with the same issues that have plagued all courts trying to reconcile the clear and unambiguous words of the legislator with the refusal of the courts to surrender their supervisory role.

However, the dissent may have missed an opportunity to extricate themselves from the conundrum by observing that the *Dunsmuir* court (and lower courts in the preceding years) essentially invited legislators to insert a privative clause in order to shield their administrators with a reasonableness standard of review. A privative clause became, in essence, a magical incantation to bring about a desired level of deference. With the *Vavilov* court setting reasonableness as the *de facto* standard of review, these magical incantations are no longer necessary. They simply appear to have become legal surplusage.

Of course, such an approach raises its own concerns. This is not the first-time legislatures enacted court-derived language. Pre-*Dunsmuir*, there were three levels of deference considered by the courts: correctness, reasonableness simpliciter, and patent

---

[15] *Dunsmuir*, *supra* note 7.

[16] *Ibid* at para 52.

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

[18] *Ibid* at para 45.

[19] *Ibid* at para 248.

unreasonableness.[20] In that era, legislators sometimes inserted this language into statutes to expressly inform the courts of the level of intended deference in a particular statute, presumably in an attempt to avoid the courts making that determination themselves. Although *Dunsmuir* merged reasonableness simpliciter with patent unreasonableness into a single common law reasonableness standard in 2008, some statutes continue to use the "patent unreasonableness" standard.[21] Should such terminology also be considered legal surplusage?

Of course, the interpretative presumption against surplusage and the Supreme Court of Canada's "modern" approach to statutory interpretation[22] do not favour complete ignorance of the legislator's words. Indeed, the current approach of ignoring privative clauses is not consistent with Driedger's maxim, "[t]oday there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[23]

Alternatively, and more appealing from a doctrinal perspective, the Supreme Court of Canada could have applied modern constitutional interpretive principles to strike out privative clauses. Interpreting section 96 of the Canadian *Constitution*[24] along with the rule of law principle[25] in the manner set out in *Toronto (City)*[26] could suggest that privative clauses on their face offend the rule of law by expressly ousting the supervisory role of the superior courts over the executive branch. This argument is also in line with Fuller's view of the rule of law; specifically, that there should be congruence between what written statutes declare and how officials enforce those statutes.[27] The current practice of saying one thing in statute and doing another in practice would not conform to Fuller's view of the rule of law.

The argument against privative clauses strengthens as the size of the Canadian administrative state grows. Topics that once fell within the primary jurisdictions of courts are slowly moving to specialized administrative tribunals. For instance, most residential tenancy disputes, once a matter for the courts, are now heard in specialized residential tenancy boards. Moreover, even in cases where concurrent jurisdiction exists, the remedies available in tribunals have sometimes surpassed those generally available in courts.

---

[20] *Dunsmuir*, *supra* note 7 at 34.

[21] See e.g. *Health Facilities Act*, RSA 2000, c H-2.7, s 23(2): "A decision of the Minister may be challenged on judicial review for jurisdictional error or patent unreasonableness…"

[22] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 154 DLR (4th) 193.

[23] Elmer A Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87.

[24] *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3 s 96, reprinted in RSC 1985, Appendix II, No 5.

[25] *Reference re Secession of Quebec*, [1998] 2 SCR 217, 161 DLR (4th) 385.

[26] *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34.

[27] Lon L Fuller, *The Morality of Law*, rev ed (New Haven, UK: Yale University Press, 1969).

Consider for instance that the Ontario Human Rights Tribunal has no cap on damages[28] and can award damages for injuries to dignity, feelings, and self-respect.[29] Additionally, the tribunal can order parties to the proceeding to do "anything" to promote compliance with the Act.[30] These are very broad powers and surpass those of the courts in many instances.[31] Many other government administrators have broad powers, including powers to detain[32] or deprive parties of their livelihoods.[33]

Judicial Review is a Necessary Power of the Judicial Branch

The powers delegated to administrators can often exceed those available through court proceedings, and negative outcomes can rival—or even surpass in some cases—the criminal law.[34] Powers such as these must be subject to judicial oversight.

If the power of government to create specialized tribunals to adjudicate certain disputes included the power to shield them from judicial oversight, then the judicial branch would become subservient to the executive and legislative branches. Such an approach, and by extension privative clauses, are not consistent with a rule of law state.[35]

The common law has adapted case-by-case to the growth of the administrative state by imposing restrictions on the exercise of administrators. Administrators do not have untrammelled discretion to make unreasonable decisions or to make them for an improper purpose.[36] Everyone whose rights, interests, or privileges are affected by an administrative decision are owed a sliding scale of

[28] *Human Rights Code*, RSO 1990, c H.19, s 45.2.

[29] *Ibid* at s 45.2(1).

[30] *Ibid* at ss 45.2(1)–45.2(2).

[31] For instance, courts have not generally held that they may award damages for injuries to dignity, feelings, and self-respect. Moreover, most "self-help" remedies, such as small claims court have relatively low caps on damages. In Ontario, the cap on small claims damages is $35,000: *Courts of Justice Act*, RSO 1990, c C.43, s 23(1)(a); *Small Claims Court Jurisdiction and Appeal Limit*, O Reg 626/00, s 1(1).

[32] For example, in the immigration context: *Immigration and Refugee Protection Act*, SC 2001, c 27, s 54.

[33] Such as the regulation of professionals: see e.g. *Law Society Act*, RSO 1990, c L.8, s 49.26; *Ontario College of Teachers Act, 1996*, SO 1996, c 12, s 30(4).

[34] See e.g. the low cap of $5,000 for fines for summary conviction offences: *Criminal Code*, RSC 1985, c C-46, s 787(1).

[35] This is a point also made by Liston in explaining that privative clauses pose a challenge to the rule of law: Mary Liston, *Governments in Miniature: The Rule of Law in the Administrative State* in Lorne Sossin & Colleen M Flood eds, *Administrative Law in Context*, 2nd ed (Toronto: Emond Montgomery, 2013) at 39.

[36] *Roncarelli v Duplessis*, [1959] SCR 121, 16 DLR (2d) 689.

procedural fairness rights.[37] Administrators must be not only free from bias, but also the appearance of bias.[38]

These common law rules, made despite the presence of privative clauses, are essential to maintaining the proper balance between the branches of government.

Privative Clauses Obstruct Access to Justice

These basic underpinnings of administrative law are known to every law student but remain out of reach to the layperson. Although some modern statutes attempt to codify aspects of these common law principles,[39] the vast majority of administrative decisions float along an ocean of common law, with only the legally trained being able to fish out the applicable principles.[40]

Greater access to judicial review serves to strengthen governmental institutions because it ensures that the rule of law is respected by administrators, which in turn leads to a fairer application of the law. Swift judicial intervention in cases of administrative overreach helps ensure fair and impartial justice for not only the applicant, but for future parties appearing before the administrator. In short, judicial oversight is needed to ensure administrators follow the rules.

Unfortunately, the continued existence of privative clauses inevitably deters the layperson from even seeking legal advice, since a plain reading of a law seems to exempt an administrator's decision from any judicial oversight. In this era, where greater access to justice is demanded by the highest levels,[41] privative clauses must be repealed. It is not much to ask that the law be intelligible and consistent. This means that the legal meaning of words must reasonably resemble their everyday meaning. Furthermore, legislation must reflect the actual operation of the law in practice. These are essential components of Fuller's rule of law.[42]

---

[37] *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 174 DLR (4th) 193.

[38] *Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369, 68 DLR (3d) 716.

[39] See e.g *Statutory Powers Procedure Act*, RSO 1990, c S 22.

[40] There is also the problem discussed earlier of legislatures that try to mimic the common law in statutes. The common law is by definition subject to change, yet statutes may not be amended for years on end, leading to incongruence between fairness rules in statute and at common law.

[41] See e.g. The Right Honourable Richard Wagner, P.C., Chief Justice of Canada, "Access to Justice: A Societal Imperative" (Remarks delivered at the 7th Annual Pro Bono Conference, Vancouver, 4 October 2018), online: <https://www.scc-csc.ca/judges-juges/spe-dis/rw-2018-10-04-eng.aspx> [perma.cc/K8UJ-8HJ5] ("A third barrier to access to justice is lack of access to legal information. How many problems could be avoided if the public had a higher level of legal knowledge, or at the very least quick and affordable access to basic advice?).

[42] Fuller, *supra* note 27.

Beyond the repeal of these problematic clauses, when creating administrative agencies, governments should plainly set out the basic administrative law principles that apply to administrator decisions and clearly explain the process to seek judicial review.[43] Administrators too should not shy away from explaining how the law applies to their specific field of expertise. Transparency can only serve to increase public confidence in our government.

For their part, courts should strive to simplify judicial review proceedings. These proceedings remain arcane and access is mostly limited to the legal profession. Creating a "small claims court" version of judicial review could be one option. Such an approach would allow self-represented litigants to seek judicial review in a simplified fashion. Moreover, judicial review for many cases would be best achieved through the more inquisitorial approach taken in less formal venues. Although this paper is not canvassing these alternatives in detail, there are undoubtedly other options which could further the important goals of increasing access to judicial oversight.

Judicial Review is Not a Novel Approach

While Canadian courts have debated the degree of deference owed on judicial review and even occasionally questioned whether they had such a power, it is informative to examine how other legal systems handle the same issue. An interesting, albeit unusual, comparator is Mexico.

Mexico shares an analogous history to Canada: Mexico enjoyed a rich history of advanced Indigenous nations, with complex legal systems and traditions, before being colonized by a European power.[44] Spanish forces eliminated Indigenous governance and replaced it with a European model.[45] Instead of a common law legal system, Spain naturally imposed a civil law system, mirroring its domestic legal system.[46] Over the years, the Mexican legal system has been seemingly influenced by Indigenous remnants of the past as well as by its proximity and interconnectivity with a common law neighbour to the North.[47] How then, does Mexico rein in errant administrators?

While Mexico does suffer from high levels of corruption and challenges in maintaining the rule of law,[48] it nonetheless has a robust and modern legal system. The

[43] This information is best left out of statutes, for the reasons previously discussed, and instead explained to parties through guides, websites, or other educational material.

[44] Juan Miralles, *Hernán Cortés Inventor de México*, (Planeta, 2020).

[45] *Ibid.*

[46] Francisco A Avalos, *The Mexican Legal System: A Comprehensive Research Guide*, (William S Hein & Company, 2013)

[47] By virtue of the adoption of mechanisms such as the *amparo* and *jurisprudencia.*

[48] United Nations Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders on his mission to Mexico*, 12 February 2018 at 6-7, 18 ("The low level of independence of the judiciary, corruption among public officials and the exploitation of the justice system by companies

concept of judicial supervision of the executive is not new to Mexico. In the mid-19th century, the Mexican state of Yucatán was in the midst of a secessionist movement.[49] Tired of centralized control from the government in Mexico City, the 1841 state Constitution provided the judicial branch the power to review government decisions in an effort to protect the rights of state citizens from federal overreach.[50] This mechanism was named the *amparo*, and quickly became popular. By 1847, it was included in the national *Acta de Reformas*, and by 1857, this right was inserted into the national Constitution.[51] Various subsidiary laws, such as the *Ley de Amparo*, of 1869, codified the details of this right.[52]

Notably, the Supreme Court of Mexico provides interpretation to the *amparo*'s application and maintains a common law-like ability to establish binding precedent, or *jurisprudencia*.[53] This precedent is even compiled by the Mexican Supreme Court into easily consulted volumes.[54] The effect of a codified and easily accessed mechanism of judicial review allows Mexicans to challenge government actions that are unlawful. The success of this system is evidenced by its export to most Latin American countries and its use as a foundation[55] for certain protections in the United Nations *Universal Declaration of Human Rights*.[56] The *amparo* even goes beyond the powers of judicial review that we see in our common law system and permits pre-emptive reviews of actions not yet taken by government (essentially a form of injunction).[57]

---

and other parties, who make criminal complaints against human rights defenders, all contribute to the criminalization of human rights work"; "Meanwhile, success in the fight against impunity will depend on overcoming the challenges of corruption, organized crime and continued militarization of public security").

[49] Eduardo Ferrer MacGregor & Luis Fernando Rentería Barragán, *El Amparo Directo en México: Origen, Evolución y Desafíos* (Universidad Nacional Autónoma de México, 2021).

[50] *Constitución Politica de Yucatán de 1841*, online, pdf: <http://www.internet2.scjn.gob.mx/red/marco/PDF/B.%201835-1846/d)%20CP%20Yucatán%20(31%20marzo%201841).pdf> [perma.cc/VMA9-QKVV].

[51] *Constitución Federal de Los Estados-Unidos Méxicanos*, 1857, online, pdf: <http://www.diputados.gob.mx/biblioteca/bibdig/const_mex/const_1857.pdf> [perma.cc/H78Q-MVWW].

[52] For a detailed examination of the history and practice of the *amparo*, see MacGregor et al, *supra* note 49.

[53] The power for Mexican courts to create binding precedent is provided for in the Mexican constitution: *Constitución Política de los Estados-Unidos Méxicanos*, 1917, arts 94,107.

[54] Suprema Corte de la Nación, *Jurisprudencia histórica*, online, pdf: <https://sjf2.scjn.gob.mx/documentos-interes> [perma.cc/769H-4NCX].

[55] Pedro Pablo Camargo, *The Right to Judicial Protection: "Amparo'" and Other Latin American Remedies for the Protection of Human Rights*, (1971) 3:2 Lawyer Americas 191.

[56] *Universal Declaration of Human Rights*, 10 December 1948, A/RES/217 (III), art 8.

[57] Camargo, *supra* note 55.

The purpose of highlighting Mexico's experience is to demonstrate that Canada need not be afraid of expanded awareness or access to judicial review. Judicial supervision of the executive and promotion of the rule of law is essential and common to a modern state. There is no need to be hiding powers of judicial review behind a cloak of privative clauses.

Conclusion

The continued existence of privative clauses in Canadian legislation is a significant barrier for access to justice. The role of courts in maintaining the rule of law transcends legal traditions and should be understood as a constitutional imperative. Privative clauses should be repealed, and all branches of government should move to ensure simplified access to, and awareness of, judicial oversight.