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ARTICLES

**Artificial Administration: Administrative Law, Administrative Justice and
Accountability in the Age of Machines** – *Paul Daly*

This article analyses the use of technology in public administration, with a focus on Canadian bodies and jurisprudence. I assess these issues by reference to three distinct analytical frameworks: administrative law, administrative justice and accountability. My goal is to lay out the necessary conditions for the use of technology in public administration to be lawful, acceptable and subject to appropriate accountability mechanisms. These frameworks are useful because they specify, first, the legal baseline for the use of technology in public administration (administrative law), second, the situations in which resort to technology would be inappropriate even if lawful strictly speaking (administrative justice) and, third, the mechanisms through which any breaches of the principles of administrative law or administrative justice can be addressed (accountability). 95

Judicial Review of COVID-19 Legislation – How Have the Courts Performed? –
John Mark Keyes

This article considers judicial responses to challenges to legislation enacted to address the COVID-19 pandemic, how these responses were affected by emergency conditions and the implications for judicial review generally. It begins by outlining the types of legislation enacted and then considers in general terms the hurdles to judicial review arising in many of the challenges to the legislation. These hurdles account for the failure of most challenges. The article looks next at the principal grounds advanced for challenging COVID-19 legislation in terms of particular matters (emergency declarations, travel and quarantine, gatherings and business, vaccination, and suspension of government operations) and the

bases for challenge (constitutional limits on law-making authority, administrative law limits on delegated authority, fundamental human rights and rights of Indigenous peoples). This survey aims to add to commentary on emergency legislation by focusing on representative cases from Canada, the United Kingdom, New Zealand and Australia. 115

Life after FYBR – The Expectations of the Australian Community in Migration Character Cases – *Dr Jason Donnelly*

A great deal of the rules concerning character cases decided under the *Migration Act* 1958 (Cth) (the Act) are dictated by policy principles reflected in ministerial directions. These policy documents are made with the statutory backing of s 499(2A), which mandates that administrative decision-makers must have regard to the various considerations reflected in the relevant ministerial direction. This article explores an aspect of Direction 90 dealing with the primary consideration of the expectations of the Australian community. After considering the relevant jurisprudence in the area, the article concludes that a delegate of the Minister or the Administrative Appeals Tribunal can have regard to expectations of the Australian community independent of Direction 90 (now Direction 99) under Pt 9 of the *Migration Act*. 139