Newfoundland and Labrador Hydro - Capital Budget Supplemental Application for the Approval of the Construction of Hydro's Long-Term Supply Plan for Southern Labrador - Order No. P.U. 12(2025) - Request for Reconsideration

---

BOOK OF AUTHORITIES OF NUNATUKAVUT COMMUNITY COUNCIL

August 14, 2025 Comments of Intervenor
NunatuKavut Community Council

INDEX

1.	*R v. George*, 2017 SCC 38
2.	*Nelson (City) v. Mowat*, 2017 SCC 8
3.	*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65

TAB 1

KeyCite treatment
Most Negative Treatment: Distinguished
Most Recent Distinguished: R. v. A. | 2021 CarswellNfld 400, [2021] N.J. No. 320, 177 W.C.B. (2d) 82 | (N.L. Prov. Ct., Dec 10, 2021)

2017 SCC 38, 2017 CSC 38
Supreme Court of Canada

R. v. George

2017 CarswellSask 328, 2017 CarswellSask 329, 2017 SCC 38, 2017 CSC 38, [2017] 1 S.C.R. 1021, [2017] 1 R.C.S. 1021, [2017] S.C.J. No. 100, 138 W.C.B. (2d) 634, 349 C.C.C. (3d) 371, 39 C.R. (7th) 1, 413 D.L.R. (4th) 191

Barbara George (Appellant) and Her Majesty the Queen (Respondent)

Abella, Moldaver, Karakatsanis, Gascon, Côté JJ.

Heard: April 28, 2017
Judgment: July 7, 2017
Docket: 37372

Proceedings: reasons in full to *R. v. George* (2017), 2017 CarswellSask 187, 2017 CarswellSask 186, Abella J., Côté J., Gascon J., Karakatsanis J., Moldaver J. (S.C.C.); reversing *R. v. George* (2016), 2016 SKCA 155, 2016 CarswellSask 754, 344 C.C.C. (3d) 543, Jackson J.A., Richards C.J.S., Whitmore J.A. (Sask. C.A.)

Counsel: Ross Macnab, Thomas Hynes, for Appellant
Erin Bartsch, for Respondent

Subject: Criminal
Related Abridgment Classifications
Criminal law
X Sexual offences, public morals and disorderly conduct
X.17 Sexual interference
X.17.c Specific defences
Headnote
Criminal law --- Offences — Sexual interference — Specific defences — Belief that complainant over fourteen years of age
Accused was 35 years old when she had sex with complainant, who was then 14 — Accused was not aware of complainant's age at that time — Accused was charged with sexual interference and sexual assault — At trial three years later, trial judge described complainant as very mature or worldly, significantly beyond his actual years — Trial judge found that much of complainant's present appearance and conduct supported conclusion reached by accused at that time respecting his age — Trial judge acquitted accused on both of charges — Crown successfully appealed from acquittal — Accused appealed — Appeal allowed — Threshold was not met — Allegations of errors on trial judge's part that have arguable merit relate to two pieces of corroborative evidence — Further, that evidence was surrounded by alternate evidence, including complainant's physical appearance, behaviour and activities, age and appearance of complainant's social group, and circumstances in which accused had observed complainant, all of which supported trial judge's view that reasonable doubt remained in respect of whether Crown had proven that accused failed to meet reasonable steps requirement — There was no reasonable degree of certainty that trial judge's controversial inferences were material to verdict — It followed that, even if these inferences had amounted to legal errors, they would not have justified appellate intervention in any event.

Droit criminel --- Infractions — Contacts sexuels — Moyens de défense spécifiques — Croyance que le plaignant ou que la plaignante a plus de quatorze ans

Accusée était âgée de 35 ans lorsqu'elle a eu une relation sexuelle avec le plaignant, lequel était alors âgé de 14 ans — Accusée ne savait pas l'âge du plaignant au moment des faits — Accusée a été inculpée de contacts sexuels et d'agression sexuelle — Trois ans plus tard, lors du procès, le juge du procès a décrit le plaignant comme étant très mature et ayant remarquablement d'expérience, en cela très en avance sur son âge — Juge du procès a conclu que l'apparence et le comportement actuels du plaignant étayaient la conclusion tirée par l'accusée au moment des faits concernant l'âge de ce dernier — Juge du procès a acquitté l'accusée relativement aux deux chefs d'inculpation — Ministère public a interjeté appel, avec succès, à l'encontre des acquittements — Accusée a formé un pourvoi — Pourvoi accueilli — Seuil applicable n'était pas atteint en l'espèce — Erreurs par ailleurs soutenables qui étaient reprochées au juge du procès se rapportaient à deux éléments de preuve corroborants — De plus, ces éléments de preuve étaient accompagnés d'autres éléments de preuve, notamment l'apparence physique, le comportement et les activités du plaignant, l'âge et l'apparence des membres du groupe social de celui-ci, et les situations dans lesquelles l'accusée avait observé celui-ci, et ces autres éléments de preuve étayaient tous l'opinion du juge du procès selon laquelle il subsistait un doute quant à la question de savoir si le ministère public avait fait la preuve que l'accusée ne s'était pas conformée à l'obligation qui lui incombait de prendre des mesures raisonnables. — Il n'était pas possible de conclure avec un degré raisonnable de certitude que les inférences controversées du juge du procès avaient un caractère substantiel dans son verdict — Il s'ensuivait donc que, même si ces inférences avaient constitué des erreurs de droit, elles ne justifiaient pas l'intervention de la Cour d'appel.

The accused was 35 years old when she had sex with the complainant, who was then 14. The accused was not aware of the complainant's age at that time. The accused was charged with sexual interference and sexual assault. At trial three years later, the trial judge described the complainant as very mature or worldly, significantly beyond his actual years. The trial judge found that much of the complainant's present appearance and conduct supported the conclusion reached by the accused at that time respecting his age.

The trial judge acquitted the accused on both of the charges. The Crown successfully appealed from the acquittal. The accused appealed.

Held: The appeal was allowed and the acquittals were restored.

Per Gascon J. (Abella, Moldaver, Karakatsanis, and Côté JJ. concurring): The threshold was not met in this case. The allegations of errors on the trial judge's part that have arguable merit related to two pieces of corroborative evidence. Further, that evidence was surrounded by alternate evidence, including the complainant's physical appearance, behaviour and activities, the age and appearance of the complainant's social group, and the circumstances in which the accused had observed the complainant, all of which supported the trial judge's view that reasonable doubt remained in respect of whether the Crown had proven that the accused failed to meet the reasonable steps requirement

There was no reasonable degree of certainty that the trial judge's controversial inferences were material to his verdict. It followed that, even if these inferences had amounted to legal errors, they would not have justified appellate intervention in any event.

L'accusée était âgée de 35 ans lorsqu'elle a eu une relation sexuelle avec le plaignant, lequel était alors âgé de 14 ans. L'accusée ne savait pas l'âge du plaignant au moment des faits. L'accusée a été inculpée de contacts sexuels et d'agression sexuelle. Trois ans plus tard, lors du procès, le juge du procès a décrit le plaignant comme étant très mature et ayant remarquablement d'expérience, en cela très en avance sur son âge. Le juge du procès a conclu que l'apparence et le comportement actuels du plaignant étayaient la conclusion tirée par l'accusée au moment des faits concernant l'âge de ce dernier.

Le juge du procès a acquitté l'accusée relativement aux deux chefs d'inculpation. Le ministère public a interjeté appel, avec succès, à l'encontre des acquittements. L'accusée a formé un pourvoi.

Arrêt: Le pourvoi a été accueilli et les acquittements ont été rétablis.

Gascon, J. (Abella, Moldaver, Karakatsanis, Côté, JJ., souscrivant à son opinion) : Le seuil applicable n'était pas atteint en l'espèce. Les erreurs par ailleurs soutenables qui étaient reprochées au juge du procès se rapportaient à deux éléments de preuve corroborants. De plus, ces éléments de preuve étaient accompagnés d'autres éléments de preuve, notamment l'apparence physique, le comportement et les activités du plaignant, l'âge et l'apparence des membres du groupe social de celui-ci, et les situations dans lesquelles l'accusée avait observé celui-ci, et ces autres éléments de preuve étayaient tous l'opinion du juge du procès selon laquelle il subsistait un doute quant à la question de savoir si le ministère public avait fait la preuve que l'accusée ne s'était pas conformée à l'obligation qui lui incombait de prendre des mesures raisonnables.

Il n'était pas possible de conclure avec un degré raisonnable de certitude que les inférences controversées du juge du procès avaient un caractère substantiel dans son verdict. Il s'ensuivait donc que, même si ces inférences avaient constitué des erreurs de droit, elles ne justifiaient pas l'intervention de la Cour d'appel.

Table of Authorities

Cases considered by *Gascon J.*:

R. v. Dragos (2012), 2012 ONCA 538, 2012 CarswellOnt 9931, 111 O.R. (3d) 481, 294 O.A.C. 371, 95 C.R. (6th) 406, 291 C.C.C. (3d) 350 (Ont. C.A.) — referred to

R. v. Duran (2013), 2013 ONCA 343, 2013 CarswellOnt 6798, *(*sub nom. *R. v. D. (R.))* 306 O.A.C. 301, 3 C.R. (7th) 274 (Ont. C.A.) — referred to

R. v. Gashikanyi (2015), 2015 ABCA 1, 2015 CarswellAlta 2, 16 C.R. (7th) 369, 588 A.R. 386, 626 W.A.C. 386 (Alta. C.A.) — referred to

R. v. Graveline (2006), 2006 SCC 16, 2006 CarswellQue 3398, 2006 CarswellQue 3399, 207 C.C.C. (3d) 481, 266 D.L.R. (4th) 42, 38 C.R. (6th) 42, 347 N.R. 268, [2006] 1 S.C.R. 609 (S.C.C.) — referred to

R. v. H. (J.M.) (2011), 2011 SCC 45, 2011 CarswellOnt 9952, 2011 CarswellOnt 9953, 87 C.R. (6th) 213, 421 N.R. 76, [2011] 3 S.C.R. 197, 276 C.C.C. (3d) 197, 283 O.A.C. 379, 342 D.L.R. (4th) 347 (S.C.C.) — considered

R. v. K. (R.A.) (1996), 106 C.C.C. (3d) 93, 175 N.B.R. (2d) 225, 446 A.P.R. 225, 1996 CarswellNB 67 (N.B. C.A.) — referred to

R. v. Mastel (2011), 2011 SKCA 16, 2011 CarswellSask 89, 366 Sask. R. 193, 506 W.A.C. 193, 84 C.R. (6th) 405, 268 C.C.C. (3d) 224 (Sask. C.A.) — referred to

R. v. Morin (1988), 66 C.R. (3d) 1, [1988] 2 S.C.R. 345, 88 N.R. 161, 30 O.A.C. 81, 44 C.C.C. (3d) 193, 1988 CarswellOnt 82, 1988 CarswellOnt 967 (S.C.C.) — considered

R. v. Morrissey (1995), 38 C.R. (4th) 4, 22 O.R. (3d) 514, 97 C.C.C. (3d) 193, 80 O.A.C. 161, 1995 CarswellOnt 18 (Ont. C.A.) — referred to

R. v. O. (J.M.) (1992), 17 C.R. (4th) 350, 102 Nfld. & P.E.I.R. 194, 323 A.P.R. 194, 1992 CarswellNfld 14 (Nfld. C.A.) — considered

R. v. P. (L.T.) (1997), 113 C.C.C. (3d) 42, 86 B.C.A.C. 20, 142 W.A.C. 20, 1997 CarswellBC 892 (B.C. C.A.) — referred to

R. v. Tannas (2015), 2015 SKCA 61, 2015 CarswellSask 328, [2015] 8 W.W.R. 701, 324 C.C.C. (3d) 93, 21 C.R. (7th) 166, 460 Sask. R. 161, 639 W.A.C. 161 (Sask. C.A.) — referred to

Statutes considered:

Criminal Code, R.S.C. 1985, c. C-46

Generally — referred to

s. 150.1(1) [en. R.S.C. 1985, c. 19 (3rd Supp.), s. 1] — referred to

s. 150.1(2.1) [en. 2008, c. 6, s. 13(1)] — referred to

s. 150.1(4) [en. R.S.C. 1985, c. 19 (3rd Supp.), s. 1] — considered

s. 151 — pursuant to

s. 153 — referred to

s. 271 — pursuant to

s. 273.1(2)(c) [en. 1992, c. 38, s. 1] — considered

s. 676(1)(a) — considered

APPEAL by accused from decision reported at *R. v. George* (2016), 2016 SKCA 155, 2016 CarswellSask 754, 344 C.C.C. (3d) 543 (Sask. C.A.), which allowed Crown's appeal from acquittal for sexual interference.

POURVOI formé par l'accusée à l'encontre d'une décision publiée à *R. v. George* (2016), 2016 SKCA 155, 2016 CarswellSask 754, 344 C.C.C. (3d) 543 (Sask. C.A.), ayant accueilli l'appel interjeté par le ministère public à l'encontre d'un acquittement prononcé relativement à un chef d'accusation de contacts sexuels.

Comment

The facts of George are unusual - most cases involving adult women who sexually abuse teenage boys occur in the context of a longer-term relationship, often accompanied by a position of trust or online grooming. Here this appears to have been a single encounter initiated and indeed pressed by the 14-year-old youth. Legally, a fourteen year old does not have the capacity to consent to sexual activity with a 35-year-old adult, but does pass the age threshold for criminal responsibility for sexual assault. If the defence had argued that the sexual activity was not consensual for the accused, a reasonable doubt on this issue might also have resulted in an acquittal.

The Supreme Court of Canada decides the appeal on the narrow question of whether there was any error of law that could form the basis of a Crown appeal. By deciding that none was at issue, the trial judge's acquittal on the basis of mistake of age was restored. It is important to remember that the mistake of age defence has two parts. The defence is not simply resolved by a finding that the accused took all reasonable steps to ascertain the age of the complainant. The precursor to reasonable steps is a reasonable doubt on the question of the accused's knowledge that the complainant was below the age of consent. The accused must give an air of reality to this honest belief; wilful blindness or a failure to turn one's mind to the issue at all is not sufficient. Once this threshold is met, the Crown must disprove the existence of the belief beyond a reasonable doubt. Only if this is unsuccessful should the court be considering the question of whether the Crown has proven that the accused failed to take all reasonable steps to determine the age of the young person.

On the facts as reported it is not clear that the accused in *Georg*e had any particular belief about the age of the youth other than that he was an adolescent and a friend of her son. Only if she honestly believed that he was at least sixteen is there any need to consider the steps she took to ascertain his age. On the facts, it does not appear that the accused took any steps other than to spend some time conversing with the youth before the sexual activity. The purpose of the all reasonable steps requirement is to demand that adults proceed with extreme caution when contemplating sexual activity with someone who they believe may be an adolescent. It is hard to apply such a framework to these highly peculiar facts.

Janine Benedet

Allard School of Law, UBC

***Gascon J.* (Abella, Moldaver, Karakatsanis and Côté concurring):**

1 At the hearing, the Court allowed the appeal and restored Ms. George's acquittals, with reasons to follow. These are those reasons.

I. Overview

2 Sexual crimes are disproportionately committed against vulnerable populations, including youth. The "reasonable steps" requirement in s. 150.1(4) of the *Criminal Code*, R.S.C. 1985, c. C-46 — which requires an accused person who is five or more years older than a complainant who is 14 years of age or more but under the age of 16, to take "all reasonable steps to ascertain the age of the complainant" before sexual contact — seeks to protect young people from such crimes. It does so by placing the responsibility for preventing adult/youth sexual activity where it belongs: with adults. Parliament's allocation of responsibility to adults is crucial for protecting young people from sexual crimes. However, through s. 676(1)(a) of the *Criminal Code*, Parliament limits Crown appeals against acquittals in proceedings by indictment to "question[s] of law alone". As a result, Parliament has accepted that an acquittal at trial on an indictable offence cannot be overturned unless an error of law was made. As the trial judgment below concerned indictable offences and contained no errors of law, Ms. George's acquittals were sustained and her appeal was allowed.

II. Context

3 Ms. George had sex with an adolescent boy, C.D. When the sexual activity took place, Ms. George was 35 years old; C.D. was approximately 14 and a half. The sexual activity was found to be apparently consensual, meaning that both partners willingly participated. In fact, C.D. instigated the sexual encounter, despite Ms. George's genuine protestations. Still, C.D. was incapable of legally consenting because of the combination of his young age and his age disparity with Ms. George.

4 The sexual activity happened after Ms. George's son — who was 17 at the time — hosted a party at their apartment. Ms. George did not foresee sexual activity with C.D. For most of the party, she remained in her bedroom. However, after the party ended, C.D. came to the bedroom. They spoke for several hours about music, custody issues, C.D.'s relationships, and his difficulties meeting mature girlfriends.

5 Ultimately, C.D. initiated sexual contact. He asked Ms. George if it "would be weird" if he kissed her. Almost simultaneously, C.D. leaned forward to kiss Ms. George. She backed away, but C.D. again moved towards her, and she let him complete a brief kiss. C.D. then "immediately" moved on top of Ms. George, removed the blankets which were covering her body, lowered his pants, and moved her underwear to the side. She asked him what he was doing. She also asked him to stop several times. But he ignored these requests and persisted. In the end, Ms. George "simply let him finish". She described the sexual encounter as "weird, awkward, and quick". Despite these facts, there was "no dispute that, although reluctant at first, Ms. George was a willing participant". Further, before the Court, neither party contested Ms. George's consent to the sexual activity.

6 C.D. did not complain to any authorities about his sexual activity with Ms. George; he even proposed that they continue having sex once a week. Rather, the RCMP learned about Ms. George's sexual activity with C.D. by happenstance. Ms. George applied to join the RCMP, and part of the screening process involved a questionnaire which asked if she had "ever engaged in sexual activity with someone who was under the age of 16". At the time of the sexual activity, Ms. George had presumed that C.D. was around 17 because, in the several months she had known C.D., he looked that age, shaved, openly smoked cigarettes, easily bought cigarettes, and was a friend of her son (who was himself 17, typically socialized with older peers, and displayed less emotional maturity than C.D.). But the questionnaire prompted her to inquire as to C.D.'s exact age. When she learned that C.D. had actually been 14 and a half at the time of their sexual activity, she "felt panic". She nevertheless submitted the questionnaire and admitted to the RCMP that she had engaged in sexual activity with a minor. Consequently, she was charged with two *Criminal Code* offences: (1) sexual interference (s. 151); and (2) sexual assault (s. 271).

7 For both offences, the *Criminal Code* barred Ms. George from relying on C.D.'s consent as a defence, because C.D. was younger than 16 (s. 150.1(1)) and Ms. George was more than five years his senior (s. 150.1(2.1)). Accordingly, her only available defence — or, more accurately, her only available means of negating her criminal intent (*mens rea*) to have sex with a minor (H. C. Stewart, *Sexual Offences in Canadian Law* (loose-leaf), at p. 4-24) — was "mistake of age", i.e. Ms. George believing that C.D. was at least 16. However, the *Criminal Code* limits the availability of the mistake of age defence by requiring that "all reasonable steps" be taken to ascertain the complainant's age:

> **150.1** ...
>
> **Mistake of age**
>
> **(4)** It is not a defence to a charge under section 151 or 152, subsection 160(3) or 173(2), or section 271, 272 or 273 that the accused believed that the complainant was 16 years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.

8 At common law, "true crimes" — like those at issue here — would have a purely subjective fault element. However, through statutory intervention, Parliament has imported an objective element into the fault analysis to enhance protections for youth (Stewart, at pp. 4-23 and 4-24). As a result, to convict an accused person who demonstrates an "air of reality" to the mistake of age defence, the Crown must prove, beyond a reasonable doubt, either that the accused person (1) did not honestly believe the complainant was at least 16 (the subjective element); or (2) did not take "all reasonable steps" to ascertain the complainant's

age (the objective element) (Stewart, at p. 4-24; M. Manning, Q.C. and P. Sankoff, *Manning, Mewett & Sankoff: Criminal Law* (5th ed. 2015), at p. 1113 ("*Manning, Mewett & Sankoff*")).

9 Determining what raises a reasonable doubt in respect of the objective element is a highly contextual, fact-specific exercise (*R. v. Duran*, 2013 ONCA 343, 3 C.R. (7th) 274 (Ont. C.A.), at para. 52; *R. v. P. (L.T.)* (1997), 113 C.C.C. (3d) 42 (B.C. C.A.) , at para. 20; *R. v. K. (R.A.)* (1996), 106 C.C.C. (3d) 93 (N.B. C.A.) , at p. 96; Stewart, at p. 4-25; A. Maleszyk, *Crimes Against Children: Prosecution and Defence* (loose-leaf), vol. 1, at p. 11-4). In some cases, it may be reasonable to ask a partner's age. It would be an error, however, to insist that a reasonable person would ask a partner's age in every case (see e.g. *R. v. Tannas*, 2015 SKCA 61, 21 C.R. (7th) 166 (Sask. C.A.), at para. 27; *R. v. Gashikanyi*, 2015 ABCA 1, 588 A.R. 386 (Alta. C.A.) , at para. 17). Conversely, it would be an error to assert that a reasonable person would do no more than ask a partner's age in every case, given the commonly recognized motivation for young people to misrepresent their age (*R. v. Dragos*, 2012 ONCA 538, 111 O.R. (3d) 481 (Ont. C.A.), at paras. 17, 26, 45 and 51; L. Vandervort, "'Too Young to Sell Me Sex?!' *Mens Rea*, Mistake of Fact, Reckless Exploitation, and the Underage Sex Worker" (2012) 58 *Crim. L.Q.*, 355 at pp. 360 and 375; J. Benedet,21 C.R. (7th) 166, at p. 168; Stewart, at p. 4-26.1). Such narrow approaches would contradict the open-ended language of the reasonable steps provision. That said, at least one general rule may be recognized: the more reasonable an accused's perception of the complainant's age, the fewer steps reasonably required of them. This follows inevitably from the phrasing of the provision ("all *reasonable* steps") and reflects the jurisprudence (*R. v. O. (J.M.)* (1992), 17 C.R. (4th) 350 (Nfld. C.A.) at para. 64), and academic commentary (*Manning, Mewett & Sankoff*, at p. 1113).

III. Judicial History

10 At trial, Kovach J. acquitted Ms. George of both offences. He noted that the reasonable steps inquiry is contextual, and he considered various factors, including C.D.'s physical appearance, behaviour and activities, the age and appearance of C.D.'s social group, and the circumstances in which Ms. George had observed C.D. After a detailed review of these factors, Kovach J. ruled that there remained a reasonable doubt about whether the Crown proved that she had failed to take all reasonable steps to determine C.D.'s age.

11 The Court of Appeal's judgment included majority and dissenting opinions. They were divided on two points: (1) whether Kovach J. had made any legal errors, a statutory requirement for Crown appeals from acquittals for indictable offences (*Criminal Code*, s. 676(1)(a); *R. v. H. (J.M.)*, 2011 SCC 45, [2011] 3 S.C.R. 197 (S.C.C.) , at para. 24); and (2) whether those errors were sufficiently material to the verdict, a jurisprudential requirement for such appeals (*R. v. Graveline*, 2006 SCC 16, [2006] 1 S.C.R. 609 (S.C.C.) , at para. 14).

12 Richards C.J.S., writing for the majority, allowed the appeal, quashed the acquittals and ordered a new trial (2016 SKCA 155, 344 C.C.C. (3d) 543 (Sask. C.A.), at paras. 50-51). He held that Kovach J. had erred in law in two ways: (1) by considering evidence from during or after the sexual encounter in assessing the reasonableness of the steps taken by Ms. George before the encounter; and (2) by relying on questionable factual inferences regarding whether C.D. may have looked mature for his age at the time of the sexual activity (paras. 41-46). He also ruled that those legal errors were "central" to Kovach J.'s analysis, thus demonstrating their materiality to the verdict and justifying appellate intervention (paras. 48-49).

13 In contrast, Jackson J.A., dissenting, would have dismissed the appeal and upheld the acquittals (para. 100). In her view, Kovach J. had made no legal errors (para. 89). Specifically, the errors which Richards C.J.S. alleged to be legal related instead to disagreement over factual inferences drawn by the trial judge (paras. 77-80, 85-88 and 92). In the alternative, Jackson J.A. held that the errors which Richard C.J.S. identified, if legal, were insufficiently material to justify appellate intervention because she was not satisfied that the verdict would not "necessarily" have been the same without those errors (paras. 73, 94 and 99). At multiple points in her reasons, Jackson J.A. also felt it necessary to remark that this case lacked the hallmarks of sex crimes involving children, such as grooming and deliberate exploitation of vulnerability (paras. 65-67, 96(d) to (f) and 97).

IV. Issues

14 This case raises two issues: (1) whether the trial judge made any legal errors in his reasonable steps analysis; and (2) if he did, whether those errors were sufficiently material to justify appellate intervention.

V. Analysis

15 A careful review of the trial judge's reasons reveals no legal errors. As a result, the Court of Appeal lacked jurisdiction to interfere with the trial judgment.

16 I note, at the outset, that the trial judge correctly articulated the governing legal principles and cited multiple leading authorities. Of course, simply stating the correct legal test does not exhaust our inquiry and cannot insulate a trial judge from legal errors. But it helpfully orients our remaining analysis to whether the trial judge's application of those principles reveals any legal errors.

17 Whether an error is "legal" generally turns on its character, not its severity (*J.M.H.*, at paras. 24-39). In this case, the majority confused these two concepts; it translated its strong opposition to the trial judge's factual inferences (severity) into supposed legal errors (character). Here, that was an improper approach, and it disregarded the restraint required by Parliament's choice to limit Crown appeals from acquittals in proceedings by indictment to "question[s] of law alone" (*Criminal Code*, s. 676(1)(a)).

18 First of all, it goes without saying that an accused person cannot rely on the impugned sexual activity itself as a reasonable step in ascertaining the complainant's age before the sexual activity. With this in mind, the majority claimed that the trial judge had improperly relied on "C.D.'s level of sexual experience as revealed by the sexual encounter itself" in determining whether Ms. George had taken all reasonable steps before the sexual activity (para. 47). However, this misconstrues the trial judge's reasons when they are read as a whole and in context, as required (*R. v. Morrissey* (1995), 97 C.C.C. (3d) 193 (Ont. C.A.) , at pp. 203-204). The trial judge explained:

> The most compelling activity engaged in by [C.D.] suggestive of a level of maturity beyond his years, was the sexual encounter itself. Not the mere fact of sexual intercourse with a significantly older female partner, but, rather, the obvious level of comfort with which he approached the encounter....
>
> [Emphasis added.]
>
> (Trial Transcript, A.R., at p. 11)

19 Considered in conjunction with the trial judge's unambiguous recognition that all reasonable steps must precede sexual contact, C.D.'s "obvious level of comfort" with how he "approached" the encounter must refer to how C.D. came to Ms. George's bedroom uninvited and spoke with her for several hours about various topics, many reflecting maturity, and others suggestive in nature. All of this information was known to Ms. George before the sexual contact. According to the trial judge, this was one of many factors reasonably informing her perception of C.D.'s age before sexual contact. No legal error arises from this.

20 Admittedly, the trial judge considered other evidence that did not precede the sexual encounter. The majority considered this to be a further legal error. But it is not. As noted, Ms. George's reasonable steps must precede her sexual activity with C.D.; the trial judge expressly recognized this. But it does not follow that the evidence she tenders must also precede her sexual activity with C.D. Such an interpretation conflates the fact to be proven with the evidence that may be used to prove it.

21 When determining the relevance of evidence in this context, both its purpose and its timing must be considered. Evidence demonstrating steps taken after the sexual activity to ascertain a complainant's age — for example, the accused person checking the complainant's photographic identification immediately after the sexual activity — is irrelevant to the reasonable steps inquiry. As a result, considering such evidence would amount to a legal error, as it reveals a "misapprehension of ... legal principle" (*J.M.H.*, at para. 29). However, evidence properly informing the credibility or reliability of any witness, even if that

evidence arose after the sexual activity in question, may be considered by the trial judge. Similarly, evidence demonstrating the reasonableness of the accused person's perception of the complainant's age before sexual contact is relevant to adjudicating the reasonableness of the steps taken by the accused person (*Duran*, at paras. 51-54), even if that evidence happens to arise after the sexual activity or was not known to the accused before the sexual activity (see e.g. *Osborne*, at paras. 22(4) to (5)).

22 For example, consider a photograph of an underage complainant taken a week after impugned sexual activity, in which the complainant looks as old as 21. The adult charged with assaulting the complainant could not have relied on viewing the photograph itself as one of their reasonable steps, because it was taken after the sexual activity occurred. But that is not the purpose for which the photograph would be tendered as evidence. Rather, the photograph would be tendered as evidence for the purpose of proving the complainant's physical appearance around the time of the sexual activity, which could, depending on the circumstances, be relevant to the reasonableness of the accused person's perception of the complainant's age.

23 The evidence arising after the sexual activity considered by the trial judge in this case, to which the majority objected (at para. 34), did not detract from and was consistent with Ms. George's testimony as to how C.D. appeared to her and acted in her presence during the several months they knew each other before the sexual encounter. To that extent, it was admissible for the purpose of assessing her credibility at large, which included her testimony as to how the complainant appeared to her in the months preceding the sexual activity.

24 While one may disagree with the weight the trial judge gave this evidence, no legal error arises from mere disagreements over factual inferences or the weight of evidence (*J.M.H.*, at para. 28). Indeed, many of the majority's comments reveal that its discomfort with this evidence was not because it was irrelevant (which would have illustrated a misconception of principle, a legal issue: *ibid.*, at para. 29), but because its relevance was marginal (a factual issue). The trier of fact is best situated to assign weight to evidence. In any event, if the Crown objects to inferences about a complainant's physical appearance at a younger age, it is permitted to tender direct evidence of that physical appearance (for example, a photograph). The majority's view that the trial judge could not draw such an inference because Ms. George had failed to tender evidence proving that C.D.'s appearance "had not changed" between ages 14 and 17 (para. 46) suggests that the trier of fact is prohibited from drawing factual inferences. To the contrary, factual inferences are a necessary means through which triers of fact consider all of the evidence (direct and indirect) before them.

25 Given the above, the Court of Appeal lacked jurisdiction to review the trial judge's decision. On that basis, the Court allowed the appeal. That said, two final points arising from the dissent merit brief consideration.

26 First, the dissenting judge felt it necessary to comment on how this case lacks the hallmarks of sex crimes against children, including grooming and exploitation of vulnerability (paras. 65-67, 96(d) to (f) and 97). But no such hallmarks are required for the offences at issue. It is a criminal offence to sexually touch a child who is 14 years of age or more but younger than 16 when you are five or more years their senior, even if you honestly believe they are older than 16, unless you have taken "all reasonable steps" to ascertain their age; nothing more is required (Benedet, at p. 167). Indeed, to suggest that exploitation is a requirement for the offence belies (1) the scheme of the *Criminal Code*, which already prohibits sexual exploitation (s. 153) and sexual activity where "consent" is procured through abuse of trust, power or authority (s. 273.1(2)(c)); and (2) Parliament's recognition that adult/youth sexual relationships are inherently exploitative. To the extent that the dissent was suggesting that such ancillary considerations are necessary in proving all sex crimes against children, I reject that proposition. To be clear, overt indicia of exploitation may diminish the credibility of an accused person's purported mistaken belief in the complainant's age, or the reasonableness of the steps taken by that accused person (see e.g. *Dragos*, at para. 52; *R. v. Mastel*, 2011 SKCA 16, 84 C.R. (6th) 405 (Sask. C.A.), at para. 18; J. Benedet, Annotation to *R. v. Mastel* (2015), 84 C.R. (6th) 405 (Sask. C.A.), at p. 406), but they are not required for the offence itself to be made out.

27 Second, the dissent stated that, to overturn an acquittal, an appellate court must be satisfied that the verdict would "not necessarily have been the same" without the trial judge's legal errors (paras. 74 and 99, see also paras. 73 and 94). If the dissent was implying that an appellate court can overturn an acquittal where it is merely possible that the verdict would have changed, that is too low a threshold. This Court has used various phrasings to articulate the threshold of materiality required to justify appellate intervention in a Crown appeal from an acquittal. An "abstract or purely hypothetical possibility" of materiality is

below the threshold (*Graveline*, at para. 14). An error that "would necessarily" have been material is above the threshold (*ibid.*, at paras. 14-15; *R. v. Morin*, [1988] 2 S.C.R. 345 (S.C.C.) , at p. 374 ("*Morin*")). And an error about which there is a "reasonable degree of certainty" of its materiality is at the required threshold (*Graveline* , at paras. 14-15; *Morin* , at p. 374).

28 That threshold is not met here. The allegations of errors on the trial judge's part that have arguable merit relate to two pieces of corroborative evidence. Further, that evidence was surrounded by alternate evidence — including C.D.'s physical appearance, behaviour and activities, the age and appearance of C.D.'s social group, and the circumstances in which Ms. George had observed C.D. — all of which supported the trial judge's view that reasonable doubt remained in respect of whether the Crown had proven that Ms. George failed to meet the reasonable steps requirement. In my view, there was no reasonable degree of certainty that the trial judge's controversial inferences were material to his verdict. It follows that, even if these inferences had amounted to legal errors, they would not have justified appellate intervention in any event.

VI. Conclusion

29 As explained in these reasons, the trial judge's factual inferences did not amount to legal errors conferring appellate jurisdiction in this case. This is why, at the hearing, the Court allowed the appeal, and restored Ms. George's acquittals.

Appeal allowed.

Pourvoi accueilli.

End of Document

TAB 2

KeyCite treatment
Most Negative Treatment: Check subsequent history and related treatments.

2017 SCC 8, 2017 CSC 8
Supreme Court of Canada

Nelson (City) v. Mowatt

2017 CarswellBC 400, 2017 CarswellBC 401, 2017 SCC 8, 2017 CSC 8, [2017] 1 S.C.R. 138, [2017] 1 R.C.S. 138, [2017] 3 W.W.R. 1, [2017] B.C.W.L.D. 1391, [2017] S.C.J. No. 8, 275 A.C.W.S. (3d) 436, 406 D.L.R. (4th) 1, 58 M.P.L.R. (5th) 1, 74 R.P.R. (5th) 1, 93 B.C.L.R. (5th) 36

Corporation of the City of Nelson (Appellant) and Mary Geraldine Mowatt and Earl Wayne Mowatt (Respondents) and Attorney General of British Columbia (Intervener)

McLachlin C.J.C., Moldaver, Karakatsanis, Wagner, Gascon, Côté, Brown JJ.

Heard: October 7, 2016
Judgment: February 17, 2017
Docket: 36999

Proceedings: reversing *Mowatt v. British Columbia (Attorney General)* (2016), (sub nom. *Mowatt v. Nelson (City)*) 663 W.A.C. 101, 384 B.C.A.C. 101, 83 B.C.L.R. (5th) 396, 46 M.P.L.R. (5th) 27, 63 R.P.R. (5th) 8, 2016 BCCA 113, 2016 CarswellBC 611, [2016] 8 W.W.R. 63, 395 D.L.R. (4th) 432, Chiasson J.A., Harris J.A., Saunders J.A. (B.C. C.A.); reversing *Mowatt v. Nelson (City)* (2014), 46 R.P.R. (5th) 217, 25 M.P.L.R. (5th) 79, 2014 CarswellBC 1580, 2014 BCSC 988, Kelleher J. (B.C. S.C.); reversing *Mowatt v. Nelson (City)* (2014), 2014 BCSC 2219, 2014 CarswellBC 3538, Kelleher J. (B.C. S.C.)

Counsel: Ryan D.W. Dalziel, A. Scott McW. Boucher, Daniel R. Bennett, Q.C. for Appellant
K. Michael Stephens, Stephanie McHugh, Ryan J.M. Androsoff for Respondents
Barbara Carmichael, Cory R. Bargen for Intervener

Subject: Civil Practice and Procedure; Property
Related Abridgment Classifications
Civil practice and procedure
VII Limitation of actions
VII.2 Real property
VII.2.a Adverse possession
VII.2.a.ii Possession
VII.2.a.ii.C Continuous
VII.2.a.ii.C.1 Successive occupants
Headnote
Civil practice and procedure --- Limitation of actions — Real property — Adverse possession — Possession — Continuous — Successive occupants
In 1930, disputed area escheated to Crown — Appellants, M family, commenced action seeking declaration that provincial Crown did not own land and could not transfer it to city, and petitioned for declaration of ownership of land in fee simple in possession — M family claimed that C family lived on disputed area starting in 1909 and G family moved into C home and lived there until 1922 — Municipality brought summary trial application seeking dismissal of related action — Trial judge found there was approximate four-year period between last evidence of C arguably living on disputed area and first evidence of G family as residents in area — In second hearing, M family produced further evidence pursuant to s. 11 of Land Title Inquiry Act — Municipality's motion for summary judgment was granted — M family successfully appealed — Municipality appealed — Appeal allowed — Decision of chambers judge was restored — Given chambers judge's finding — untainted by

palpable and overriding error — that M family had not established uninterrupted adverse possession over disputed lot from 1916 through 1920, it was unnecessary to address submissions of municipality and of Attorney General of British Columbia regarding whether M family's claim was defeated for lack of registration — GM held no interest in disputed lot and therefore no interest therein passed to M family.

Procédure civile --- Prescription — Immeubles — Possession adversative — Possession — Continue — Occupants successifs

En 1930, le lot faisant l'objet du litige a échu à la Couronne — Appelants, la famille M, ont entamé une action visant à faire déclarer que la Couronne provinciale n'était pas propriétaire du bien-fonds et ne pouvait pas le transférer à la municipalité et a déposé une requête en vue d'obtenir une déclaration de propriété du bien-fonds en possession de type fief simple — Famille M a fait valoir que la famille C avait commencé à vivre sur le lot contesté dès 1909 et que la famille G avait emménagé dans la résidence de la famille C et y avait vécu jusqu'en 1922 — Municipalité a déposé une requête en procès sommaire visant à obtenir le rejet de l'action en question — Juge de première instance a conclu qu'il y avait une période d'environ quatre ans entre la dernière preuve permettant de croire que la famille C avait vécu sur le lot en litige et la première preuve attestant de la présence de la famille G en tant que résidents sur le lot — Au cours de la deuxième audience, la famille M a déposé d'autres éléments de preuve en vertu de l'art. 11 de la Land Title Inquiry Act — Requête de la municipalité en procès sommaire a été accordée — Famille M a interjeté appel, avec succès — Municipalité a formé un pourvoi — Pourvoi accueilli — Décision du juge siégeant en son cabinet a été rétablie — Compte tenu de la conclusion du juge siégeant en son cabinet, qui n'est viciée par aucune erreur manifeste et dominante, selon laquelle la famille M n'a pas fait la preuve d'une possession adversative ininterrompue du lot en litige de 1916 à 1920, il n'était pas nécessaire de traiter les observations de la municipalité et du procureur général de la Colombie-Britannique quant à la question de savoir si l'absence d'enregistrement faisait obstacle à la revendication de la famille M — GM n'avait aucun droit sur le lot en litige, donc aucun droit n'a pu être cédé à la famille M.

In 1930, the disputed area escheated to the Crown. The M family commenced action seeking declaration that the provincial Crown did not own the land and could not transfer it to the city, and petitioned for a declaration of ownership of land in fee simple in possession. The M family claimed that C family lived on the disputed area starting in 1909 and G family moved into C home and lived there until 1922.

The municipality brought a summary trial application seeking dismissal of the related action. The trial judge found there was an approximate four-year period between the last evidence of C arguably living on the disputed area and the first evidence of G family as residents in the area. In the second hearing, the M family produced further evidence pursuant to s. 11 of the Land Title Inquiry Act. The municipality's motion for summary judgment was granted.

The M family successfully appealed.

The municipality appealed.

Held: The appeal was allowed.

Per Brown J. (McLachlin C.J.C. and Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ. concurring): The decision of the chambers judge was restored. Given the chambers judge's finding — untainted by palpable and overriding error — that the M family had not established uninterrupted adverse possession over the disputed lot from 1916 through 1920, it was unnecessary to address the submissions of the municipality and of the Attorney General of British Columbia regarding whether the M family's claim was defeated for lack of registration. GM held no interest in the disputed lot and therefore no interest therein passed to the M family.

En 1930, le lot faisant l'objet du litige a échu à la Couronne. La famille M a entamé une action visant à faire déclarer que la Couronne provinciale n'était pas propriétaire du bien-fonds et ne pouvait pas le transférer à la municipalité et a déposé une requête en vue d'obtenir une déclaration de propriété du bien-fonds en possession de type fief simple. La famille M a fait valoir que la famille C avait commencé à vivre sur le lot contesté dès 1909 et que la famille G avait emménagé dans la résidence de la famille C et y avait vécu jusqu'en 1922.

La municipalité a déposé une requête en procès sommaire visant à obtenir le rejet de l'action en question. Le juge de première instance a conclu qu'il y avait une période d'environ quatre ans entre la dernière preuve permettant de croire que la famille C avait vécu sur le lot en litige et la première preuve attestant de la présence de la famille G en tant que résidents sur le lot. Au cours de la deuxième audience, la famille M a déposé d'autres éléments de preuve en vertu de l'art. 11 de la Land Title Inquiry Act. La requête de la municipalité en procès sommaire a été accordée.

La famille M a interjeté appel, avec succès.

La municipalité a formé un pourvoi.

Arrêt: Le pourvoi a été accueilli.

Brown, J. (McLachlin, J.C.C., Moldaver, Karakatsanis, Wagner, Gascon, Côté, JJ., souscrivant à son opinion) : La décision du juge siégeant en son cabinet a été rétablie. Compte tenu de la conclusion du juge siégeant en son cabinet, qui n'est viciée par aucune erreur manifeste et dominante, selon laquelle la famille M n'a pas fait la preuve d'une possession adversative ininterrompue du lot en litige de 1916 à 1920, il n'était pas nécessaire de traiter les observations de la municipalité et du procureur général de la Colombie-Britannique quant à la question de savoir si l'absence d'enregistrement faisait obstacle à la revendication de la famille M. GM n'avait aucun droit sur le lot en litige, donc aucun droit n'a pu être cédé à la famille M.

Table of Authorities

Cases considered by *Brown J.*:

Brisebois c. Chamberland (1990), 75 O.R. (2d) 332, 1 O.R. (3d) 417, 42 O.A.C. 26, 77 D.L.R. (4th) 583, 1990 CarswellOnt 1083 (Ont. C.A.) — referred to

British Columbia (Attorney General) v. Canadian Pacific Railway (1906), [1906] A.C. 204, C.R. [1906] A.C. 342 at 373, 1906 CarswellBC 109 (Jud. Com. of Privy Coun.) — referred to

C. (R.) v. McDougall (2008), 2008 SCC 53, 2008 CarswellBC 2041, 2008 CarswellBC 2042, 83 B.C.L.R. (4th) 1, [2008] 11 W.W.R. 414, 60 C.C.L.T. (3d) 1, 61 C.P.C. (6th) 1, (sub nom. *H. (F.) v. McDougall)* 297 D.L.R. (4th) 193, 61 C.R. (6th) 1, (sub nom. *F.H. v. McDougall)* 380 N.R. 82, (sub nom. *F.H. v. McDougall)* 260 B.C.A.C. 74, (sub nom. *F.H. v. McDougall)* 439 W.A.C. 74, (sub nom. *F.H. v. McDougall)* [2008] 3 S.C.R. 41 (S.C.C.) — considered

Canada (Attorney General) v. Fairmont Hotels Inc. (2016), 2016 SCC 56, 2016 CSC 56, 2016 CarswellOnt 19252, 2016 CarswellOnt 19253, 404 D.L.R. (4th) 201, [2017] 1 C.T.C. 149, 58 B.L.R. (5th) 171 (S.C.C.) — referred to

Delgamuukw v. British Columbia (1997), 153 D.L.R. (4th) 193, 220 N.R. 161, 99 B.C.A.C. 161, 162 W.A.C. 161, [1997] 3 S.C.R. 1010, 1997 CarswellBC 2358, 1997 CarswellBC 2359, [1998] 1 C.N.L.R. 14, [1999] 10 W.W.R. 34, 66 B.C.L.R. (3d) 285 (S.C.C.) — referred to

Elliott v. Woodstock Agricultural Society (2008), 2008 ONCA 648, 2008 CarswellOnt 5625, 72 R.P.R. (4th) 1, 241 O.A.C. 251, 92 O.R. (3d) 711, 298 D.L.R. (4th) 577 (Ont. C.A.) — referred to

Fletcher v. Storoschuk (1981), 35 O.R. (2d) 722, 128 D.L.R. (3d) 59, 22 R.P.R. 75, 1981 CarswellOnt 549 (Ont. C.A.) — referred to

Gorman v. Gorman (1998), 1998 CarswellOnt 1366, 36 R.F.L. (4th) 448, 16 R.P.R. (3d) 173, 110 O.A.C. 87 (Ont. C.A.) — referred to

Halifax (City) v. Dominion Atlantic Railway (1946), [1947] S.C.R. 107, 60 C.R.T.C. 211, [1947] 1 D.L.R. 431, 1946 CarswellNS 16 (S.C.C.) — considered

Hamilton v. R. (1917), 54 S.C.R. 331, 35 D.L.R. 226, 1917 CarswellNat 46 (S.C.C.) — referred to

Handley v. Archibald (1899), 30 S.C.R. 130, 1899 CarswellNS 62 (S.C.C.) — referred to

Hodkin v. Bigley (1998), 1998 CarswellOnt 4477, 20 R.P.R. (3d) 9, 49 M.P.L.R. (2d) 260 (Ont. C.A.) — referred to

Housen v. Nikolaisen (2002), 2002 SCC 33, 2002 CarswellSask 178, 2002 CarswellSask 179, 286 N.R. 1, 10 C.C.L.T. (3d) 157, 211 D.L.R. (4th) 577, [2002] 7 W.W.R. 1, 219 Sask. R. 1, 272 W.A.C. 1, 30 M.P.L.R. (3d) 1, [2002] 2 S.C.R. 235, 2002 CSC 33 (S.C.C.) — considered

J. A. Pye (Oxford) Ltd. v. Graham (2002), [2002] UKHL 30, [2003] 1 A.C. 419, [2002] 3 W.L.R. 221, [2002] 3 All E.R. 865, [2003] 1 P. & C.R. 10 (U.K. H.L.) — considered

John Austin & Sons Ltd. v. Smith (1982), 35 O.R. (2d) 272, 132 D.L.R. (3d) 311, 1982 CarswellOnt 1342 (Ont. C.A.) — referred to

Keefer v. Arillotta (1976), 13 O.R. (2d) 680, 72 D.L.R. (3d) 182, 1976 CarswellOnt 853 (Ont. C.A.) — referred to

L. (H.) v. Canada (Attorney General) (2005), 2005 SCC 25, 2005 CarswellSask 268, 2005 CarswellSask 273, 24 Admin. L.R. (4th) 1, 8 C.P.C. (6th) 199, 251 D.L.R. (4th) 604, 333 N.R. 1, [2005] 8 W.W.R. 1, 262 Sask. R. 1, 347 W.A.C. 1, [2005] 1 S.C.R. 401, 29 C.C.L.T. (3d) 1, 2005 CSC 25 (S.C.C.) — referred to

Leigh v. Jack (1879), 5 Ex. D. 264, 128 W.R. 452, 49 Q.B.D. 220 (Eng. C.A.) — considered

Lord Advocate v. Lord Lovat (1880), (1879-80) L.R. 5 App. Cas. 273 (Scotland H.L.) — referred to

Lutz v. Kawa (1980), 15 R.P.R. 40, 13 Alta. L.R. (2d) 8, 112 D.L.R. (3d) 271, 23 A.R. 9, 1980 CarswellAlta 46, 1980 ABCA 112 (Alta. C.A.) — referred to

Mackinnon, Re (2003), 2003 PESCAD 17, 2003 CarswellPEI 67, 11 R.P.R. (4th) 11, 226 Nfld. & P.E.I.R. 293, 673 A.P.R. 293 (P.E.I. C.A.) — referred to

Maher v. Bussey (2006), 2006 NLCA 28, 2006 CarswellNfld 143, 44 R.P.R. (4th) 96, 25 E.T.R. (3d) 7, 256 Nfld. & P.E.I.R. 308, 773 A.P.R. 308, (sub nom. *Bussey v. Maher)* 269 D.L.R. (4th) 353 (N.L. C.A.) — referred to

Masidon Investments Ltd. v. Ham (1984), 45 O.R. (2d) 563, 31 R.P.R. 200, 2 O.A.C. 147, 1984 CarswellOnt 578 (Ont. C.A.) — referred to

Ocean Harvesters Ltd. v. Quinlan Brothers Ltd. (1974), [1975] 1 S.C.R. 684, 5 Nfld. & P.E.I.R. 541, 44 D.L.R. (3d) 687, 1 N.R. 527, 1974 CarswellNfld 3, 1974 CarswellNfld 3F (S.C.C.) — considered

R. v. Lincoln Mining Syndicate Ltd. (N.P.L.) (1959), [1959] S.C.R. 736, 19 D.L.R. (2d) 273, 1959 CarswellBC 154 (S.C.C.) — referred to

R. v. Marshall (2005), 2005 SCC 43, 2005 CarswellNS 317, 2005 CarswellNS 318, 15 C.E.L.R. (3d) 163, [2005] 3 C.N.L.R. 214, (sub nom. *R. v. Bernard)* 198 C.C.C. (3d) 29, (sub nom. *R. v. Bernard)* 255 D.L.R. (4th) 1, 336 N.R. 22, 287 N.B.R. (2d) 206, 750 A.P.R. 206, 235 N.S.R. (2d) 151, 747 A.P.R. 151, [2005] 2 S.C.R. 220, 15 C.C.E.L. (3d) 163, 2005 CSC 43 (S.C.C.) — referred to

Sherren v. Pearson (1887), 14 S.C.R. 581, 1887 CarswellPEI 2 (S.C.C.) — referred to

Spicer v. Bowater Mersey Paper Co. (2004), 2004 NSCA 39, 2004 CarswellNS 99, 237 D.L.R. (4th) 453, 222 N.S.R. (2d) 103, 701 A.P.R. 103, 18 R.P.R. (4th) 30 (N.S. C.A.) — referred to

Tweedie v. R. (1915), 52 S.C.R. 197, 27 D.L.R. 53, 1915 CarswellNat 47 (S.C.C.) — referred to

Wood v. LeBlanc (1904), 34 S.C.R. 627, 1904 CarswellNB 58 (S.C.C.) — referred to

Statutes considered:

Escheats Act, R.S.B.C. 1924, c. 81

s. 3A [en. 1924, c. 18, s. 2] — referred to

Land Act, S.B.C. 1970, c. 17

s. 6 — referred to

Land Title Act, R.S.B.C. 1996, c. 250

s. 20 — referred to

s. 20(1) — referred to

Land Title Inquiry Act, R.S.B.C. 1996, c. 251

Generally — referred to

s. 8(c) — considered

s. 11 — considered

Law and Equity Act, R.S.B.C. 1996, c. 253

s. 2 — referred to

Limitation Act, R.S.B.C. 1996, c. 266

s. 14(5) — referred to

Limitation Act, 1623 (21 Ja. 1), c. 16

Generally — referred to

Limitation of Actions (Realty) Act, R.S.N. 1952, c. 145

Generally — referred to

Limitations Act, S.B.C. 1975, c. 37

Generally — referred to

Real Property Limitation Act, 1833 (3 & 4 Will. 4), c. 27

Generally — referred to

Statute of Limitations, R.S.B.C. 1897, c. 123

Generally — referred to

Statute of Limitations, R.S.B.C. 1924, c. 145

s. 16 — referred to

s. 17 — referred to
Statute of Limitations, R.S.B.C. 1960, c. 370
s. 48 — referred to

APPEAL by municipality from decision reported at *Mowatt v. British Columbia (Attorney General)* (2016), 2016 BCCA 113, 2016 CarswellBC 611, 63 R.P.R. (5th) 8, 46 M.P.L.R. (5th) 27, 395 D.L.R. (4th) 432, 83 B.C.L.R. (5th) 396, [2016] 8 W.W.R. 63, 384 B.C.A.C. 101, 663 W.A.C. 101 (B.C. C.A.), in which M family successfully appealed decision of chambers judge.

POURVOI formé par la municipalité à l'encontre d'une décision publiée à *Mowatt v. British Columbia (Attorney General)* (2016), 2016 BCCA 113, 2016 CarswellBC 611, 63 R.P.R. (5th) 8, 46 M.P.L.R. (5th) 27, 395 D.L.R. (4th) 432, 83 B.C.L.R. (5th) 396, [2016] 8 W.W.R. 63, 384 B.C.A.C. 101, 663 W.A.C. 101 (B.C. C.A.), ayant accueilli l'appel interjeté par la famille M à l'encontre de la décision du juge siégeant en son cabinet.

Brown J. **(McLachlin C.J.C. and Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ. concurring):**

I. Introduction

1 This appeal concerns the law of adverse possession in British Columbia. The respondents, Mary Mowatt and Earl Mowatt, claim title to a parcel of land located at 1114 Beatty Avenue, in Nelson, British Columbia ("disputed lot"). While they took possession of the disputed lot in 1992, their claim rests upon what they say is continuous adverse possession thereof by three families in succession, beginning in the early 20th century. To enforce that claim, the Mowatts brought two proceedings: an action for a declaration that the provincial Crown, which holds registered title, does not own the disputed lot and therefore could not transfer it to the appellant, City of Nelson ("City"); and a petition for judicial investigation under the *Land Title Inquiry Act*, R.S.B.C. 1996, c. 251, into their title to the disputed lot.

2 The chambers judge granted the City's summary trial application to dismiss both proceedings, pointing to what he characterized as an "evidentiary gap" — that is, an interruption in the continuity of adverse possession, running from approximately 1916 to 1920. The Court of Appeal reversed, finding that the chambers judge had erred in his treatment of the evidence of continuous occupation, and concluding that continuous adverse possession of the disputed lot was demonstrated from December 1909 to at least February 1923. In response to the City's submissions, the Court of Appeal also held that lack of registration did not prevent the transfer to the Mowatts of their predecessor's interest in the disputed lot, and that the law of British Columbia does not require the Mowatts to demonstrate that their use of the disputed lot was inconsistent with the intended use of the "true owner".

3 For the reasons that follow, I would allow the appeal. The Court of Appeal correctly held that the inconsistent use requirement forms no part of British Columbia law governing the proof of adverse possession. That said, the Court of Appeal, in my respectful view, erred by substituting its own findings of fact for those properly arrived at by the chambers judge. In light of that conclusion, it is unnecessary for me to address arguments regarding the significance, if any, of the fact that the purported transfer of the disputed lot was not registered in accordance with British Columbia's land titles system.

II. Overview of Facts and Proceedings

A. Background

4 The Mowatts are the registered owners of 1112 Beatty Avenue ("registered lot"), situated immediately to the west of the disputed lot. No visible boundary separates the lots. Indeed, both lots had originally comprised part of a larger single lot, title to which was registered in absolute fee in 1891 by the Nelson City Land and Improvement Company ("land company"). That registration showed the lot as being located in Fairview, which was incorporated into the City of Nelson in April 1921.

5 In 1920, the land company transferred a parcel of land, including what is now the registered lot, to John Annable, who registered his title in indefeasible fee. Annexed to the deed on registration was Reference Plan No. 89281, which purported to dedicate the disputed lot as a road allowance. Unbeknownst to both the land company and Mr. Annable, that dedication was

invalid for lack of compliance with the relevant statutory requirements, leaving the land company as the registered owner of the disputed lot in absolute fee.

6 In 1922, Mr. Annable transferred a portion of his lot to Herbert Thorpe. This transaction created the registered lot.

7 Still operating under the misapprehension that it had validly dedicated the disputed lot as a road allowance, the land company in 1929 notified British Columbia's registrar of companies that it had "disposed of its assets several years ago to [Mr. Annable]". The land company dissolved in 1930, and the disputed lot escheated to the Crown in 1930 or 1931. [1]

8 The Mowatts' claim to ownership of the disputed lot rests substantially upon what they say was its continuous adverse possession by three successive families: the Coopers, the Gouchers, and the Thorpes. There is no dispute that each of these families resided on the disputed lot, although for just how long they did so is contested in the case of the Coopers and the Gouchers. Certain findings by the chambers judge, however, help to establish a general chronology:

(1) From as early as 1909 until January 1916 (when he moved to Australia), George W. Cooper ("George W.") lived in a residence on the disputed lot with his family.

(2) After George W. moved to Australia, his son George R. Cooper ("George R.") remained in the Kootenay region of British Columbia with his wife Carrie and their children. George R. worked at the smelter in Trail, British Columbia from February 1917 until his death in February 1918.

(3) Frank and Mary Goucher lived in the residence on the disputed lot for some period after the Coopers left, and before the Thorpes arrived in 1922. Evidence before the chambers judge (the Fairview voters' list) placed them in Fairview in November 1920, while a record of their son's attendance at school in Fairview as well as their absence from the Nelson voter's list suggested their presence in Fairview in 1919.

(4) In 1922, Herbert Thorpe purchased the registered lot. While building the stone house that currently stands there, he rented the residence on the disputed lot from Mr. Goucher and lived there until the residence burnt down in 1923.

(5) In 1959, Mr. Thorpe transferred the registered lot to his children. His daughter, Gwen Marquis, transferred it to the Mowatts in 1992.

B. Judicial History

(1) Supreme Court of British Columbia — 2014 BCSC 988, 25 M.P.L.R. (5th) 79 (B.C. S.C.) and 2014 BCSC 2219 (B.C. S.C.)

9 Acquisition of title to land in British Columbia by adverse possession was abolished on July 1, 1975 with the coming into force of the *Limitations Act*, S.B.C. 1975, c. 37. Title to land acquired by adverse possession *before* July 1, 1975, however, was preserved and could continue to be claimed, subject to the ability of the holder of registered title to bring a proceeding enforcing his or her rights within the applicable limitation period: *Limitation Act*, R.S.B.C. 1996, c. 266, s. 14(5).

10 Two applicable limitation periods were identified at first instance. [2] The limitation period which all parties were agreed could apply is contained in s. 16 of the *Statute of Limitations*, R.S.B.C. 1924, c. 145, which prescribed that an action to recover land had to be brought within 20 years. This would allow the Mowatts to succeed by showing continuous adverse possession of the disputed lot for 20 years preceding its escheat in 1930 or 1931.

11 Additionally, the Mowatts pointed to s. 48 of the *Statute of Limitations*, R.S.B.C. 1960, c. 370, which barred the Crown from suing for the recovery of land after the expiration of 60 years. Given the abolition of acquiring title by adverse possession on July 1, 1975, this provision, if applicable, would allow the Mowatts to succeed by establishing continuous adverse possession for 60 years before that date. The City and the Crown, however, argued that adverse possession was actually abolished *as against the Crown* on May 1, 1970 by operation of s. 6 of the *Land Act*, S.B.C. 1970, c. 17 (now s. 8 of *Land Act*, R.S.B.C. 1996, c. 245), which precluded the acquisition of an interest in Crown land "by prescription, or by occupation not lawfully

authorized, or by any colour of right". If applicable, this provision would require the Mowatts to establish adverse possession for 60 years prior to May 1, 1970.

12 Ultimately, the chambers judge did not have to decide whether adverse possession was abolished as against the Crown in 1970 or 1975 because, in two sets of reasons, he found that the Mowatts had not demonstrated continuous adverse possession for 20 years preceding 1930 or 1931, or for 60 years preceding 1970 or 1975. In the first set of reasons, he explained that the Mowatts could not overcome what he described as an "evidentiary gap" regarding possession between the last evidence of George W. living on the lot in 1916 and the Gouchers' arrival in Fairview in 1920 (2014 BCSC 988 (B.C. S.C.) ("BCSC #1"), at para. 107). He was also unconvinced that the Gouchers had ever resided on the disputed lot. The second set of reasons (2014 BCSC 2219 (B.C. S.C.) ("BCSC #2")) arose from the conclusion to the first set of reasons, in which the chambers judge — in accordance with s. 11 of the *Land Title Inquiry Act*[3] — granted the Mowatts 30 days to provide further evidence. The Mowatts did so, re-appearing before the chambers judge with further evidence about the relationship of the Coopers and the Gouchers to the disputed lot, which evidence they say bridged any "gap" in the continuity of adverse possession between 1916 and 1920. While this evidence satisfied the chambers judge that the Gouchers had indeed resided on the disputed lot, he remained of the view that continuity of possession was not made out from 1916 to 1920, and he dismissed the Mowatts' action and petition.

(2) Court of Appeal for British Columbia — 2016 BCCA 113, 83 B.C.L.R. (5th) 396 (B.C. C.A.)

13 The Mowatts appealed, arguing that the chambers judge had erred in law by conflating continuous *possession* with continuous *occupation*, and erred in fact by finding a gap in possession between 1916 and 1920 in the absence of any evidence of re-entry by the land company or of abandonment by the Coopers. While contesting these grounds, the City advanced two other bases upon which it also relies at this Court for upholding the decisions of the chambers judge: that the Mowatts could not have acquired an interest in the disputed lot, and therefore lacked standing to advance their claim; and that the adverse possession claim must fail because it did not fulfill the inconsistent use requirement — meaning, that the Mowatts did not prove that the successive adverse possessors' use of the disputed lot was inconsistent with the land company's or the Crown's enjoyment of the land.

14 The Court of Appeal first considered the question of whether Ms. Marquis transferred her possessory interest to the Mowatts. This was framed as an issue of standing because the City did not raise it before the chambers judge. In the Court of Appeal's view, the evidence was sufficient to show that the Mowatts had acquired a possessory interest in the disputed lot from Ms. Marquis, and that no formalities were required for such a transfer. Further, it said that the transfer of an interest in "possessory title" was not subject to s. 20(1) of the *Land Title Act*, R.S.B.C. 1996, c. 250 (which addresses registration of instruments purporting to deal with land). It concluded that s. 20 applies only to land held in indefeasible fee simple, and not to land such as the disputed lot which is held in absolute fee. The Court of Appeal further found on the basis of English and Canadian jurisprudence that the inconsistent use requirement forms no part of the law of British Columbia governing adverse possession.

15 Finally, the Court of Appeal found that the chambers judge made several errors in deciding the Mowatts' claim. Specifically, he erred in appearing to require continuous occupation, whereas sporadic occupation could suffice to ground possession. Further, in finding an "evidentiary gap", the chambers judge "short-changed the application of the standard of proof" by "hold[ing] back from full consideration of the reasonable inferences available on the evidence before the court" (para. 87) relating to the period from 1916 to 1920. In light of the historical nature of the Mowatts' claim, the chambers judge should have applied "a broad elliptical assessment of the available evidence consistent both with established deduction processes used in historical and scientific study, and with the curious-minded view reflected in jurisprudence of claims involving long ago events" (para. 89).

16 The Court of Appeal therefore allowed the appeal, set aside the chambers judge's orders, declared that the possession of the disputed lot had begun no later than December 1909 and continued until at least February 1923 (when the residence on the disputed lot burnt down), and remitted the Mowatts' proceeding under the *Land Title Inquiry Act* back to the Supreme Court of British Columbia for final determination of the proceedings.

III. Analysis

A. Inconsistent Use

17 Adverse possession is a long-standing common law device by which the right of the prior possessor of land, typically the holder of registered title and therefore sometimes referred to as the "true owner", may be displaced by a trespasser whose possession of the land goes unchallenged for a prescribed period of time. From as early as *The Limitation Act, 1623* (Eng.), 21 Jas. 1, c. 16, the prior possessor's right to recover possession was curtailed by limitation periods. This rule allowing for the later possessor acquiring ownership of land after the passage of a certain time was codified in English law by the *Real Property Limitation Act, 1833* (U.K.), 3 & 4 Will. 4, c. 27, which was received into the law of British Columbia on November 19, 1858 by operation of what is now *s. 2* of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. Since then, British Columbia's successive limitation statutes, including the provisions which I have already canvassed and which govern the Mowatts' claim, have effectively reproduced the 1833 English statutory codification of adverse possession. Under those statutes, the limitation period began to run at the point in time at which the true owner's right to recover possession first arose: the date of dispossession or discontinuance of possession (see for example *s. 17* of the *Statute of Limitations* (1924)), as determined by the test for adverse possession.

18 As to that test, the elements of adverse possession, all of which must be present to trigger the running of the limitation period against the "true owner", are explained by Professor Ziff in *Principles of Property Law* (6th ed. 2014), at p. 146. In brief, the act of possession must be "open and notorious, adverse, exclusive, peaceful (not by force), actual (generally), and continuous" (*ibid*. (footnote omitted)). Significantly for this case, the adverse possessor who successfully obtains title need not always be the same person whose adverse possession triggered the running of the limitation period; successive adverse possessors can "tack" on to the original adverse possession, provided that the possession is continuous in the sense that there is always someone for the true owner to sue (*Anger & Honsberger Law of Real Property* (3rd ed. (loose-leaf)), by A.W. La Forest, ed., at §28:50).

19 To these elements of adverse possession the City would add: that the possessor's or possessors' use of the disputed lot must have been inconsistent with the "true owner's" present or future enjoyment of the land. Alternatively put, possession, to be truly adverse, must entail a use of the property that is inconsistent with the true owner's intended use of the land. This "inconsistent use" requirement was stated by Lord Bramwell in *Leigh v. Jack* (1879), 5 Ex. D. 264 (Eng. C.A.), at p. 273:

> I do not think that there was any dispossession of the plaintiff by the acts of the defendant: acts of user are not enough to take the soil out of the plaintiff and her predecessors in title and to vest it in the defendant; in order to defeat a title by dispossessing the former owner, acts must be done which are inconsistent with his enjoyment of the soil for the purposes for which he intended to use it: that is not the case here, where the intention of the plaintiff and her predecessors in title was not either to build upon or to cultivate the land, but to devote it at some future time to public purposes. The plaintiff has not been dispossessed, nor has she discontinued possession, her title has not been taken away, and she is entitled to our judgment.
>
> [Emphasis added.]

20 The inconsistent use requirement appears in the jurisprudence of Ontario (i.e., *Keefer v. Arillotta* (1976), 13 O.R. (2d) 680 (Ont. C.A.); *Fletcher v. Storoschuk* (1981), 35 O.R. (2d) 722 (Ont. C.A.); *John Austin & Sons Ltd. v. Smith* (1982), 35 O.R. (2d) 272 (Ont. C.A.); *Masidon Investments Ltd. v. Ham* (1984), 45 O.R. (2d) 563 (Ont. C.A.); *Gorman v. Gorman* (1998), 110 O.A.C. 87 (Ont. C.A.); *Brisebois c. Chamberland* (1990), 1 O.R. (3d) 417 (Ont. C.A.); *Hodkin v. Bigley* (1998), 20 R.P.R. (3d) 9 (Ont. C.A.); *Elliott v. Woodstock Agricultural Society*, 2008 ONCA 648, 92 O.R. (3d) 711 (Ont. C.A.)) and has also been applied in the appellate jurisprudence of Nova Scotia (*Spicer v. Bowater Mersey Paper Co.*, 2004 NSCA 39, 222 N.S.R. (2d) 103 (N.S. C.A.)) and Prince Edward Island (*Mackinnon, Re*, 2003 PESCAD 17, 226 Nfld. & P.E.I.R. 293 (P.E.I. C.A.)). Its application has, however, been rejected in Alberta (*Lutz v. Kawa*, 1980 ABCA 112, 23 A.R. 9 (Alta. C.A.)) and restricted in Newfoundland and Labrador to consideration as a relevant but not a required factor in determining whether adverse possession has been established (*Maher v. Bussey*, 2006 NLCA 28, 256 Nfld. & P.E.I.R. 308 (N.L. C.A.), at paras. 50-52). Before us, the City argued the merits

of considering the (in)consistency between the putative adverse possessor's intended use and the true owner's intended use of land. I note that counter-arguments have been made to the effect that the inconsistent use requirement is unnecessary and undesirable (M. H. Lubetsky, "Adding Epicycles: The Inconsistent Use Test in Adverse Possession Law" (2009), 47 *Osgoode Hall L.J.* 497, at pp. 523-25). Indeed, it is no longer required in England, having been denounced as "heretical and wrong" by Lord Browne-Wilkinson in *J. A. Pye (Oxford) Ltd. v. Graham*, [2002] UKHL 30, [2003] A.C. 419 (U.K. H.L.), at para. 45.

21 In my view, the question properly before this Court is not whether the inconsistent use requirement is necessary or desirable; we have received no submissions, for example, on whether it should continue to apply to claims based on adverse possession in Ontario. Rather, the question properly before us is whether it forms part of the law of British Columbia and therefore ought to have been applied by the courts below. I am of the opinion that the City cannot demonstrate that it does.

22 As Lord Browne-Wilkinson observed in *J. A. Pye*, the inconsistent use requirement stated in *Leigh* appeared to revive the pre-1833 doctrine of adverse possession, under which "the rights of the paper owner were not taken away save by a 'disseisin' or an ouster and use of the land by the squatter of a kind which was clearly inconsistent with the paper title" (para. 33). That former concept of adverse possession had, however, been abolished in England by the *Real Property Limitation Act, 1833*, under which "the only question was whether the squatter had been in possession in the ordinary sense of the word [for the prescribed period of time]" (para. 35). Consequently, the requirement of showing an inconsistent use, not having formed part of the law of England at the date of its reception in British Columbia, was never necessary to establish dispossession under British Columbia's subsequent limitations statutes, which essentially reproduced the 1833 English legislation.

23 Nor has the inconsistent use requirement been imported into British Columbia by the courts. The Court of Appeal's thorough review of this issue contains no suggestion that British Columbia's courts have adopted the requirement of inconsistent use, and the City does not suggest otherwise. The City does, however, point to two decisions of this Court as "reflecting" the inconsistent use requirement: (*Halifax (City) v. Dominion Atlantic Railway* (1946), [1947] S.C.R. 107 (S.C.C.); and *Ocean Harvesters Ltd. v. Quinlan Brothers Ltd.* (1974), [1975] 1 S.C.R. 684 (S.C.C.)).

24 *Dominion Atlantic* involved a dispute over ownership of lands between the "true owner" and a lessee who had continued to use the land after the lease had expired. In a brief judgment for the Court, Kellock J. cited two alternative tests for possession (pp. 109-10): Lord O'Hagan's statement in *Lord Advocate v. Lord Lovat* (1880), (1879-80) L.R. 5 App. Cas. 273 (Scotland H.L.), at p. 288 that possession must be considered in each case with reference to the peculiar circumstances, and Lord Bramwell's inconsistent use requirement stated in *Leigh*. Neither test, however, was endorsed or applied, since Kellock J.'s decision hinged on the finding that the lessee had not maintained exclusive possession (p. 110), which would defeat an adverse possession claim under either test.

25 In *Ocean Harvesters*, oceanfront land was used by the true owner for receiving fresh fish. He permitted his company (he was president and controlling shareholder) to occupy it during the fishing season each year, and the question arose whether he was barred from asserting title to the land by operation of *The Limitation of Actions (Realty) Act*, R.S.N. 1952, c. 145, after the company had been in possession thereof for more than 21 years. While this Court considered the intended use of the true owner, this was due to the unusual circumstance in which *his* intention was also animating the *later possessor*, which he controlled. That is, in order to determine the company's intention in this case, the Court had to consider the true owner's intention so that it could be imputed to the company. But this is not the same thing as assessing the true owner's intention so that it can be measured against the later possessor's intention for inconsistency. In any event, the adverse possession claim in *Ocean Harvesters*, like that in *Dominion Atlantic*, was dismissed not for a lack of inconsistent use but for want of exclusive possession (*Ocean Harvesters*, p. 691; *Dominion Atlantic*, p. 110).

26 In neither of these decisions, therefore, can this Court be said to have adopted, whether explicitly or by implication, the inconsistent use requirement. It also bears mentioning that this Court has also considered adverse possession claims on several occasions since *Leigh* (i.e., *Sherren v. Pearson* (1887), 14 S.C.R. 581 (S.C.C.); *Handley v. Archibald* (1899), 30 S.C.R. 130 (S.C.C.); *Wood v. LeBlanc* (1904), 34 S.C.R. 627 (S.C.C.); and *Hamilton v. R.* (1917), 54 S.C.R. 331 (S.C.C.)), without ever expressing or applying an inconsistent use requirement.

27 Further, introducing the inconsistent use requirement into the test for adverse possession would revive the pre-1833 necessity of showing a disseisin or an ouster, explicitly removed by statute. While courts have a role in defining what constitutes dispossession under British Columbia's limitations legislation, legislative intent must be respected. The Court of Appeal was correct to hold (at para. 68) that "the [inconsistent use] doctrine does not accord with the legislation in this Province which has continued to accord with the 1833 English limitations legislation". It follows that the inconsistent use requirement forms no part of the law of British Columbia governing adverse possession. Whether the requirement is properly applicable in other provinces remains an open question subject to examination of their respective legislative histories, the wording of their particular limitations statutes, and the treatment of these matters by the courts of those provinces.

B. The Evidence on Continuity of Adverse Possession

28 This leaves the issue of whether the evidence put before the chambers judge by the Mowatts was sufficient to bridge any "evidentiary gap" from 1916 to 1920 that the chambers judge found had interrupted the continuity of adverse possession of the disputed lot. The Mowatts say the chambers judge erred in several respects, and that those errors justified reversal by the Court of Appeal. Specifically, they say the chambers judge (1) erred by confusing continuous possession with continuous occupation; and (2) failed to properly consider material evidence, in keeping with the historical context of the claim.

(1) Continuous Possession vs. Continuous Occupation

29 First of all, the Mowatts say the chambers judge erred in assessing continuous adverse possession by confusing *possession* with *occupation*, requiring them to show continuous occupation when the central question went to continuity of possession. Relatedly, they say that, since property can be possessed without being at all times occupied, the chambers judge's finding of discontinuity of possession from 1916 to 1920 required a preliminary finding that he did not make — specifically, that the disputed lot had been abandoned by the Coopers in 1916.

30 I will first dispose of the argument regarding abandonment. It was unnecessary for the chambers judge to make an explicit finding that the Coopers had abandoned the disputed lot as a precondition to a finding of discontinuity of possession. The burden lay with the Mowatts to demonstrate continuous possession on the balance of probabilities, and not with the City to demonstrate abandonment. Moreover, an end to possession, and abandonment, are simply two sides of the same coin. Where possession ends, abandonment begins. No legal significance, therefore, lies in the absence of an explicit finding of abandonment; it follows from the finding that continuous possession of the disputed lot was not established beyond January 1916, that it was abandoned.

31 As to whether the chambers judge confused possession with occupation, I acknowledge that "possession" does not require continuous occupation. The common law recognizes that a person may possess land in a manner sufficient to support a claim to title while choosing to use it intermittently or sporadically (*R. v. Marshall*, 2005 SCC 43, [2005] 2 S.C.R. 220 (S.C.C.), at para. 54). In short, property can be possessed without being at all times occupied. And, I also acknowledge that the chambers judge's repeated use of the term "occupation" (as opposed to "possession" — see, e.g., BCSC #1, paras. 109 and 112 and BCSC #2, paras. 3, 46 and 52) lends support to the Mowatts' argument that he confused these two distinct concepts.

32 I am not, however, persuaded that this supports upsetting the chambers judge's decisions. While the chambers judge occasionally referred to "possession" and "occupation" seemingly interchangeably, it is apparent that he knew he was to look for continuous possession, not occupation. And, he cited the correct legal test (BCSC #1, paras. 22-23). Further, the distinction between these two concepts was, on the facts of this case, insignificant. The evidence led by the Mowatts respecting the Coopers, Gouchers, and Thorpes generally went to their *occupation* of the disputed lot. No form of possession by any of them short of occupation during the "evidentiary gap" was posited to the chambers judge as being supported by the evidence. In short, the meaning of the two concepts essentially overlapped on the facts of this claim, and I see no error in the chambers judge's application of the test for adverse possession arising from his occasional references to occupation.

(2) Consideration of the Evidence

33 The critical consideration underlying the "evidentiary gap" is the evidence relating to the activities of the Coopers and the Gouchers between 1916 and 1920, inclusive. More particularly, both the parties and the chambers judge were focussed upon the evidence in relation to whether any of the Coopers continued to possess the disputed lot after George W.'s departure in January 1916; and whether and for how long the Gouchers possessed the disputed lot prior to their appearance on the Fairview voters' list in November 1920.

34 As to the Coopers, it will be recalled that George W. moved to Australia in January 1916. His son George R. married Carrie in May 1915, and a daughter, Delores, was born that same month. A son, George S., followed in October 1916. From February 1917 until his death in February 1918 in an industrial accident, George R. worked at a smelter in Trail, British Columbia. It is likely that, by December 1917 at the latest, Carrie and the children had joined him in Trail.

35 The chambers judge acknowledged that, on this evidence, it was possible to conclude that members of George R.'s family continued to possess the disputed lot after January 1916. He declined to make that finding, however, since in his view it was no more likely than the alternative possibility that George R. had left the disputed lot for other premises upon his marriage. The Mowatts and the Court of Appeal say that, in so finding, the chambers judge did not account for the implication of the statement from George S.'s daughter (that is, George R.'s granddaughter) that she "understood" her mother (George S.'s wife) to have "thought" that George S. had been born "at the bottom of Third or Fourth Street", which accords with the location of the disputed lot. [4] The suggestion is, of course, that — since George S. was born nine months after George W.'s departure for Australia — George R. and his family must have continued to possess the disputed lot.

36 The chambers judge *did*, however, account for this statement, referring to it (BCSC #2, at para. 38) and then concluding (BCSC #2, at para. 40) that the evidence, taken together, did not persuade him of continuous possession. In light of the equivocal quality of the statement, and the multiple layers of hearsay contained within it, he was manifestly entitled to so conclude.

37 As to the Gouchers, the Mowatts say that the chambers judge failed to consider the significance of the evidence that the Gouchers' son wrote school examinations in Fairview in December 1919, and of the omission of the Gouchers from the Nelson voters' list in 1919. The chambers judge specifically took note of that evidence as well as of evidence that the Coopers were known to the Gouchers. The difficulty for the chambers judge was, however, that, while this evidence would place the Gouchers in Fairview as early as 1919, it did not demonstrate to his satisfaction that they possessed the disputed lot at that time. In any event, and as the chambers judge observed, even if the Mowatts could satisfy him that the Gouchers had possessed the disputed lot earlier than 1920, other evidence suggested that the Gouchers were recorded as living in Nelson, not Fairview, in 1916. In other words, even allowing for possession by the Gouchers of the disputed lot as early as 1919, that would still have left a discontinuity of possession, albeit a briefer one, that would have been fatal to the Mowatts' claim.

38 I acknowledge that the Court of Appeal's finding of fact that adverse possession of the disputed lot was continuous from December 1909 to at least February 1923 is not unreasonable. It is certainly possible to weigh parts of the evidence differently than the chambers judge did. The possibility of alternative findings based on different ascriptions of weight is, however, not unusual, and presents no basis for overturning the findings of a fact-finder. It is not the role of appellate courts to second-guess the weight to be assigned to the various items of evidence. Absent palpable and overriding error — that is, absent an error that is "plainly seen" and has affected the result — an appellate court may not upset a fact-finder's findings of fact (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 (S.C.C.), at paras. 6 and 10; see also *L. (H.) v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401 (S.C.C.), at para. 55). The standard of palpable and overriding error applies with respect to the underlying facts relied upon by the trial judge to draw an inference, and to the inference-drawing process itself (*Housen*, at para. 23). In my respectful view, the Court of Appeal erred by interfering with a factual finding where its objection, in substance, stemmed from a difference of opinion over the weight to be assigned to the evidence. The chambers judge, having held two hearings, the latter of which occurred as a result of his allowing the Mowatts an opportunity to adduce further evidence, and having carefully canvassed the evidence in two sets of cogent and thorough reasons for judgment, reached findings that were available to him on the evidence. Those findings should not have been disturbed.

39 My conclusion is unaffected by the historical nature of the claim, which the Court of Appeal thought merited an assessment of the evidence that is "broad" and "curious-minded". The City criticizes this aspect of the Court of Appeal's reasons. It says that, in light of the Court of Appeal's statement (at para. 74) that "[h]ow [the standard of proof on a balance of probabilities] may be met depends on the proof that is capable of presentation", the Court of Appeal should be taken as having effectively imported a new standard of proof. This is, the City adds, contrary to this Court's direction in *C. (R.) v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41 (S.C.C.), at para. 40, that there is "only one civil standard of proof at common law and that is proof on a balance of probabilities".

40 I do not take the Court of Appeal to have espoused or applied a standard of proof other than the balance of probabilities. The impugned statements go not to the standard of proof, but to the quality of evidence by which that standard is to be met. This Court said in *McDougall* (at para. 46) that "evidence must always be sufficiently clear, convincing and cogent". Those are relative, not absolute qualities. It follows that the quality of evidence necessary to meet that threshold so as to satisfy a trier of fact of a proposition on a balance of probabilities will depend upon the nature of the claim and of the evidence capable of being adduced (*Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (S.C.C.), at para. 82; *Canada (Attorney General) v. Fairmont Hotels Inc.*, 2016 SCC 56 (S.C.C.), at para. 36). In the context of historical adverse possession claims, the quality of the supporting evidence must merely be "as satisfactory as could reasonably be expected, having regard to all the circumstances" (Anglin J., as he then was, in *Tweedie v. R.* (1915), 52 S.C.R. 197 (S.C.C.), at p. 220; see also Sir Arthur Wilson in *British Columbia (Attorney General) v. Canadian Pacific Railway*, [1906] A.C. 204 (Jud. Com. of Privy Coun.), at pp. 209-10).

41 That said, I respectfully part company from the Court of Appeal in its criticisms of the chambers judge's assessment of the evidence. In my view, the chambers judge, in considering the evidence before him, was carefully attuned to the historical nature of the Mowatts' claim and to its implications for the quality and availability of evidence. Portions of his reasons in this regard merit extensive reproduction here (BCSC #1, paras. 105 and 108), as they demonstrate his sensitivity in this respect:

> I agree with the petitioners that there need not be evidence of possession for every calendar year of the claim period. Thus, if there were cogent evidence that party A took possession in 1912 and transferred possession to party B in 1914, it is a fair and reasonable inference that party A was in possession in 1913. In the words of *Tweedie*, there is "no reason to suppose" that party A abandoned the lands for a period of time.
>
> . . . . .
>
> Putting the petitioners' case at its highest again, even if I find the Cooper and Goucher residences were one and the same and on the Disputed Area, there is no evidence of continuity of the Coopers' adverse possession with the Gouchers. In arriving at my conclusions, I am cognizant of the standard of record-keeping nearly a century ago; however, I am not satisfied that the evidence is "as satisfactory as could reasonably be expected, having regard to all the circumstances": *Tweedie* at 220. The fact that the Gouchers are recorded as living back on Baker Street in Nelson in 1916 is not something I can ignore. Further, according to Ms. Mowatt's Affidavit #1, the 1918 Directory lists neither the Coopers nor the Gouchers. The petitioners have provided no evidence of adverse possession of the Disputed Area for 1917-1919.
>
> [Emphasis added.]

42 Given the chambers judge's finding — untainted by palpable and overriding error — that the Mowatts had not established uninterrupted adverse possession over the disputed lot from 1916 through 1920, it is unnecessary to address the submissions of the City and of the Attorney General of British Columbia regarding whether the Mowatts' claim was defeated for lack of registration. Ms. Marquis held no interest in the disputed lot and therefore no interest therein passed to the Mowatts.

IV. Conclusion and Disposition

43 I would allow the appeal, and restore the decisions of the chambers judge.

44 The chambers judge made no order as to costs, citing the particular circumstances of this dispute, including its long-standing nature, the Mowatts' knowledge of the dispute at the time of purchase, and the "inconsistent and contradictory" positions taken by the City and the Province over the years with respect to the disputed lot (BCSC #2, para. 57). In light of those circumstances,

and of the divided success of the parties on the issues presented by this appeal, I would also direct that each party shall bear its own costs in this Court and in the courts below.

Appeal allowed.

Pourvoi accueilli.

Footnotes

1 Before the chambers judge, the parties were divided as to whether escheat would have occurred immediately upon the land company's dissolution, or one year later. This issue arose from s. 3A of the *Escheats Act*, R.S.B.C. 1924, c. 81 (as amended by *Escheats Act Amendment Act, 1924*, S.B.C. 1924, c. 18, s. 2), which (1) prohibited the Lieutenant-Governor in Council, for a period of one year from the date of the dissolution of a corporation, from dealing with any of that corporation's lands which had escheated to the Crown; and (2) provided that, were the corporation to revive within that year, such lands would automatically vest in the corporation. The Mowatts, relying upon *R. v. Lincoln Mining Syndicate Ltd. (N.P.L.)*, [1959] S.C.R. 736 (S.C.C.), argued that escheat would have occurred only upon the Crown's interest becoming "absolute" (when the one year period for reversal by corporate revival had passed). The provincial Crown, which (while not an appellant before this Court) was a defendant to the action and a respondent to the petition, says the disputed lot escheated in 1930, although vesting would have been delayed for a year. It suffices here to observe, as the chambers judge did (at para. 51), that the disputed lot became Crown land in 1930 or 1931.

2 The applicable limitations provisions remained unchanged from the coming into force of the *Statute of Limitations*, R.S.B.C. 1897, c. 123, until they were repealed by the *Limitations Act* (1975).

3 Section 11 provides: "If the court is not satisfied with the evidence of title produced in the first instance, it must give a reasonable opportunity of producing further evidence, or of removing defects in the evidence produced."

4 While this would otherwise be inadmissible hearsay evidence, s. 8(c) of the *Land Title Inquiry Act* states that the court, in investigating title, may receive and act on "evidence, whether it is or is not receivable or sufficient in point of strict law, ... as long as it satisfies the court of the truth of the facts intended to be made out by it".

TAB 3

KeyCite treatment
Most Negative Treatment: Check subsequent history and related treatments.

2019 SCC 65, 2019 CSC 65
Supreme Court of Canada

Canada (Minister of Citizenship and Immigration) v. Vavilov

2019 CarswellNat 7883, 2019 CarswellNat 7884, 2019 SCC 65, 2019 CSC 65, [2019] 4 S.C.R. 653, [2019] 4 R.C.S. 653, [2019] S.C.J. No. 65, 312 A.C.W.S. (3d) 460, 441 D.L.R. (4th) 1, 59 Admin. L.R. (6th) 1, 69 Imm. L.R. (4th) 1, EYB 2019-335761

Minister of Citizenship and Immigration (Appellant) and Alexander Vavilov (Respondent) and Attorney General of Ontario, Attorney General of Quebec, Attorney General of British Columbia, Attorney General of Saskatchewan, Canadian Council for Refugees, Advocacy Centre for Tenants Ontario - Tenant Duty Counsel Program, Ontario Securities Commission, British Columbia Securities Commission, Alberta Securities Commission, Ecojustice Canada Society, Workplace Safety and Insurance Appeals Tribunal (Ontario), Workers' Compensation Appeals Tribunal (Northwest Territories and Nunavut), Workers' Compensation Appeals Tribunal (Nova Scotia), Appeals Commission for Alberta Workers' Compensation, Workers' Compensation Appeals Tribunal (New Brunswick), British Columbia International Commercial Arbitration Centre Foundation, Council of Canadian Administrative Tribunals, National Academy of Arbitrators, Ontario Labour-Management Arbitrators' Association, Conférence des arbitres du Québec, Canadian Labour Congress, National Association of Pharmacy Regulatory Authorities, Queen's Prison Law Clinic, Advocates for the Rule of Law, Parkdale Community Legal Services, Cambridge Comparative Administrative Law Forum, Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic, Canadian Bar Association, Canadian Association of Refugee Lawyers, Community & Legal Aid Services Programme, Association québécoise des avocats et avocates en droit de l'immigration and First Nations Child & Family Caring Society of Canada (Interveners)

Wagner C.J.C., Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe, Martin JJ.

Heard: December 4-6, 2018
Judgment: December 19, 2019
Docket: 37748

Proceedings: affirming *Vavilov v. Canada (Citizenship and Immigration)* (2017), 2017 CAF 132, 2017 CarswellNat 9490, 2017 CarswellNat 2791, 2017 FCA 132, [2018] 3 F.C.R. 75, 30 Admin. L.R. (6th) 1, [2017] F.C.J. No. 638, 52 Imm. L.R. (4th) 1, David Stratas J.A., Mary J.L. Gleason J.A., Wyman W. Webb J.A. (F.C.A.); reversing *Vavilov v. Canada (Minister of Citizenship and Immigration)* (2015), [2016] F.C.R. 39, 38 Imm. L.R. (4th) 110, 2015 FC 960, 2015 CarswellNat 3740, 2015 CarswellNat 4747, 2015 CF 960, B. Richard Bell J. (F.C.)

Counsel: Marianne Zoric, for Appellant
Hadayt Nazami, Barbara Jackman, Sujith Xavier, for Respondent
Sara Blake, Judie Im, for Intervener, Attorney General of Ontario
Stéphane Rochette, for Intervener, Attorney General of Quebec
J. Gareth Morley, Katie Hamilton, for Intervener, Attorney General of British Columbia
Kyle McCreary, Johnna Van Parys, for Intervener, Attorney General of Saskatchewan
Jamie Liew, for Intervener, Canadian Council for Refugees
Karen Andrews, for Intervener, Advocacy Centre, for Tenants Ontario - Tenant Duty Counsel Program

Matthew Britton, Jennifer M. Lynch, for Interveners, Ontario Securities Commission, British Columbia Securities Commission and Alberta Securities Commission
Laura Bowman, Bronwyn Roe, for Intervener, Ecojustice Canada Society
David Corbett, Michelle Alton, for Interveners, Workplace Safety and Insurance Appeals Tribunal (Ontario), Workers' Compensation Appeals Tribunal (Northwest Territories and Nunavut), Workers' Compensation Appeals Tribunal (Nova Scotia), Appeals Commission, for Alberta Workers' Compensation and Workers' Compensation Appeals Tribunal (New Brunswick)
Gavin R. Cameron (written), Tom Posyniak (written), for Intervener, British Columbia International Commercial Arbitration Centre Foundation
Terrence J. O'Sullivan, Paul Michell, for Intervener, Council of Canadian Administrative Tribunals
Susan L. Stewart (written), Linda R. Rothstein (written), Michael Fenrick (written), Angela E. Rae (written), Anne Marie Heenan (written), for Interveners, National Academy of Arbitrators, Ontario Labour-Management Arbitrators' Association and Conférence des arbitres du Québec
Steven Barrett, for Intervener, Canadian Labour Congress
William W. Shores, Q.C. (written), Kirk N. Lambrecht, Q.C. (written), for Intervener, National Association of Pharmacy Regulatory Authorities
Brendan Van Niejenhuis, Andrea Gonsalves, for Intervener, Queen's Prison Law Clinic
Adam Goldenberg, for Intervener, Advocates for the Rule of Law
Toni Schweitzer, for Intervener, Parkdale Community Legal Services
Paul Warchuk, Francis Lévesque, for Intervener, Cambridge Comparative Administrative Law Forum
James Plotkin, Alyssa Tomkins, for Intervener, Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic
Guy Régimbald, for Intervener, Canadian Bar Association
Audrey Macklin, Anthony Navaneelan, for Intervener, Canadian Association of Refugee Lawyers
David Cote (written), Subodh Bharati (written), for Intervener, Community & Legal Aid Services Programme
Guillaume Cliche-Rivard, Peter Shams, for Intervener, Association québécoise des avocats et avocates en droit de l'immigration
Nicholas McHaffie, for Intervener, First Nations Child & Family Caring Society of Canada
Daniel Jutras, Audrey Boctor, Olga Redko, Edward Béchard Torres — amicus curiae

Subject: Civil Practice and Procedure; Constitutional; Immigration; Public
Related Abridgment Classifications
Administrative law
III Standard of review
III.2 Reasonableness
III.2.c Miscellaneous
Immigration and citizenship
VII Citizenship
VII.2 Citizenship by birth
VII.2.a General principles
Headnote
Administrative law --- Standard of review — Reasonableness — Miscellaneous
Applicant's parents were foreign agents who entered Canada and assumed identities of deceased Canadians — Parents returned to Russia from United States (US), and applicant's passport and US citizenship were revoked — Applicant amended birth certificate to parents' true identities to obtain Certificate of Canadian Citizenship — Registrar cancelled certificate as parents were not lawfully Canadian citizens or permanent residents and were employees/representatives of foreign government under s. 3(2)(a) of Citizenship Act — Applicant's application for judicial review was dismissed on basis that anyone who moved to Canada with goal of establishing life to further foreign intelligence operation was in service of, or employee/representative of, foreign government — Applicant's appeal to Federal Court was dismissed and appeal to Federal Court of Appeal was allowed — Minister of Citizenship and Immigration appealed — Appeal dismissed — New course was established for reviewing merits of administrative determinations — Reasonableness is presumptive standard for review and can be rebutted where legislature intends different standard to apply, or where rule of law requires it — Rationales including specialized expertise may be reasons for legislature to delegate decision-making authority, but very fact that legislature opted to delegate authority was

basis for default position of reasonableness review, and expertise was no longer relevant factor, as it had been using contextual review approach — Where legislature has provided for appeal from administrative decision to court, there is departure from reasonableness standard and court hearing appeal should apply appellate standards of review — Rule of law requires correctness standard for constitutional questions, general questions of law of central importance to legal system as whole, and questions regarding jurisdictional boundaries between administrative bodies — "Matters of true jurisdiction" is not distinct category attracting correctness review — Focus of reasonableness review must be on decision made, including both reasoning process and outcome — Reasonable decision is justified, transparent and intelligible, and is justified in relation to relevant legal and factual constraints.

Immigration and citizenship --- Citizenship — Citizenship by birth — General principles

Applicant's parents were foreign agents who entered Canada and assumed identities of deceased Canadians — Parents returned to Russia from United States (US) and applicant's passport and US citizenship were revoked — Applicant amended birth certificate to parents' true identities to obtain Certificate of Canadian Citizenship — Registrar cancelled certificate as parents were not lawfully Canadian citizens or permanent residents and were employees/representatives of foreign government under s. 3(2)(a) of Citizenship Act — Applicant's application for judicial review was dismissed on basis that anyone who moved to Canada with goal of establishing life to further foreign intelligence operation was in service of, or employee/representative of, foreign government — Applicant's appeal to Federal Court was dismissed and appeal to Federal Court of Appeal was allowed — Minister of Citizenship and Immigration appealed — Appeal dismissed — Standard of review was reasonableness — Registrar's determination was not reasonable in finding that applicant's parents had been other representatives or employees in Canada of foreign government within meaning of s. 3(2)(a) of Act — Registrar failed to justify her interpretation in light of constraints imposed by s. 3 of Act considered as whole, and by other legislation and international treaties that inform purpose of s. 3, by jurisprudence on interpretation of s. 3(2)(a), and by potential consequences of her interpretation — Section 3(2)(a) of Act was not intended to apply to children of foreign government representatives or employees who have not been granted diplomatic privileges and immunities — Officials responsible for files were aware that s. 3(2)(a) of Act was informed by principle that individuals subject to exception were not obliged to law of Canada, and were also aware that interpretation they had adopted was novel one — Registrar's determination failed to provide rationale for expanded interpretation of Act — Registrar's determination had same effect as revocation of citizenship Citizenship Act, R.S.C. 1985, c. C-29, s 3(2)(a).

Droit administratif --- Norme de contrôle — Caractère raisonnable — Divers

Parents du requérant étaient des agents étrangers qui sont entrés au Canada et ont usurpé l'identité de deux Canadiens décédés — Parents sont retournés en Russie à partir des États-Unis et le passeport ainsi que la citoyenneté américaine du requérant ont été révoqués — Requérant a modifié son certificat de naissance et utilisé la véritable identité de ses parents dans le but d'obtenir un certificat de citoyenneté canadienne — Greffière a annulé le certificat au motif que les parents n'étaient pas légalement citoyens canadiens ou résidents permanents, mais étaient des représentants ou employés au service d'un gouvernement étranger pour les besoins de l'art. 3(2)a) de la Loi sur la citoyenneté — Demande du requérant en contrôle judiciaire a été rejetée au motif que quiconque déménage au Canada avec l'objectif explicite de s'établir afin de poursuivre une opération de renseignements étrangère le faisait au service d'un gouvernement étranger ou en tant que représentant ou employé au service d'un tel gouvernement — Appel du requérant à la Cour fédérale a été rejeté et l'appel à la Cour d'appel fédérale a été accueilli — Ministre de la Citoyenneté et de l'Immigration a formé un pourvoi — Pourvoi rejeté — Nouvelle voie a été tracée pour contrôler une décision administrative au fond — Norme de la décision raisonnable est la norme de contrôle présumée et cette présomption peut être réfutée si l'intention du législateur est qu'une autre norme de contrôle s'applique ou dans les cas où la primauté du droit l'exige — Si l'expertise spécialisée et d'autres considérations peuvent justifier qu'une législature prévoit la délégation du pouvoir décisionnel, le simple fait que la législature ait choisi de prévoir une délégation de pouvoir constituait la base d'une approche par défaut justifiant l'application de la norme de la décision raisonnable et l'expertise n'était plus un facteur pertinent, en ce qu'elle avait retenu l'approche consistant à procéder à un contrôle contextuel — Lorsque la législature a prévu que l'appel à l'encontre d'une décision rendue en matière administrative doit être interjeté devant un tribunal en particulier, on s'écarte de la norme de la décision raisonnable et le tribunal saisi de l'appel devrait appliquer les normes de contrôle applicables en appel — Primauté du droit requiert que la norme de la décision correcte s'applique aux questions constitutionnelles, aux questions de droit générales d'importance capitale pour le système juridique dans son ensemble et aux questions liées aux délimitations des compétences respectives d'organismes administratifs — [TRADUCTION] « Véritables questions de compétence » ne constituent pas une catégorie à part justifiant l'application de la norme de la décision correcte —

Contrôle d'une décision en fonction de la norme de la décision raisonnable doit s'intéresser à la décision effectivement rendue par le décideur, notamment au raisonnement suivi et au résultat de la décision — Décision raisonnable est justifiée, intelligible et transparente et est justifiée par rapport aux contraintes juridiques et factuelles.

Immigration et citoyenneté --- Citoyenneté — Citoyenneté à la naissance — Principes généraux

Parents du requérant étaient des agents étrangers qui sont entrés au Canada et ont usurpé l'identité de deux Canadiens décédés — Parents sont retournés en Russie à partir des États-Unis et le passeport ainsi que la citoyenneté américaine du requérant ont été révoqués — Requérant a modifié son certificat de naissance et utilisé la véritable identité de ses parents dans le but d'obtenir un certificat de citoyenneté canadienne — Greffière a annulé le certificat au motif que les parents n'étaient pas légalement citoyens canadiens ou résidents permanents, mais étaient des représentants ou employés au service d'un gouvernement étranger pour les besoins de l'art. 3(2)a) de la Loi sur la citoyenneté — Demande du requérant en contrôle judiciaire a été rejetée au motif que quiconque déménage au Canada avec l'objectif explicite de s'établir afin de poursuivre une opération de renseignements étrangère le faisait au service d'un gouvernement étranger ou en tant que représentant ou employé au service d'un tel gouvernement — Appel du requérant à la Cour fédérale a été rejeté et l'appel à la Cour d'appel fédérale a été accueilli — Ministre de la Citoyenneté et de l'Immigration a formé un pourvoi — Pourvoi rejeté — Norme de contrôle applicable était celle de la décision raisonnable — Décision de la greffière n'était pas raisonnable en ce qu'elle a conclu que les parents du requérant avaient été les représentants ou employés au service au Canada d'un gouvernement étranger au sens de l'art. 3(2) de la Loi — Greffière n'a pas justifié son interprétation à la lumière des contraintes qu'imposent l'art. 3 de la Loi pris dans son ensemble, d'autres lois et traités internationaux qui éclairent l'objet de cette disposition, la jurisprudence relative à l'interprétation de l'art. 3(2)a), et les conséquences possibles de son interprétation — Article 3(2)a) de la Loi n'était pas censé s'appliquer aux enfants de représentants ou d'employés au service d'un gouvernement étranger à qui on n'avait pas accordé de privilèges et d'immunités diplomatiques — Fonctionnaires chargées des dossiers savaient que l'art. 3(2)a) de la Loi reposait sur le principe que les personnes faisant l'objet de l'exception n'étaient pas assujetties aux lois canadiennes et étaient également au fait du caractère inédit de l'interprétation adoptée — Décision de la greffière ne comprenait pas les motifs justifiant une interprétation élargie de la Loi — Décision de la greffière a eu le même effet qu'une révocation de la citoyenneté.

The applicant was born in Canada after his parents entered Canada from Russia and assumed the identities of two deceased Canadians. The parents were issued passports, moved to France and then to the United States, where they obtained American citizenship. The parents were exposed as unregistered agents of a foreign government engaged in the paid collection of intelligence. In 2010, the applicant's parents were returned to Russia via a spy swap and the applicant's passport and American citizenship were revoked. The applicant moved to Russia and was issued a new identity. The applicant subsequently attempted to obtain a Canadian passport after amending his birth certificate to his parents' true identities. The applicant obtained a Certificate of Canadian Citizenship, but the registrar cancelled the certificate on the ground that the applicant's parents were not lawfully Canadian citizens or permanent residents, but were employees or representatives of a foreign government for the purposes of s. 3(2)(a) of the Citizenship Act. The applicant's application for judicial review was dismissed on the basis that anyone who moved to Canada with the explicit goal of establishing life to further foreign intelligence operation, in Canada or another country, was doing so in the service of, or as an employee or representative of, a foreign government.

The applicant's appeal to the Federal Court was dismissed.

The applicant's appeal to the Federal Court of Appeal was allowed. The appellate court found the registrar's decision to revoke the applicant's citizenship was not supportable, defensible or acceptable, so it was unreasonable. The applicant's parents were not "employee[s] in Canada of a foreign government" under s. 3(2)(a) of the Act, which meant that this paragraph did not apply. The purpose of the paragraph was to prohibit the Canadian-born children of employees of foreign governments from obtaining Canadian citizenship. The intent of the amendment of the paragraph was to ensure it applied only to those employees who benefit from diplomatic privileges and immunities from civil and/or criminal law. As such, "employee[s] in Canada of a foreign government" included only those who enjoyed diplomatic privileges and immunities under the Vienna Convention on Diplomatic Relations. The appellate court found the types of privileges accorded to diplomats and their families were not consistent with the obligations of citizenship, which was why they could not acquire citizenship. People subject to Canadian laws have duties and responsibilities to Canada and a person born to such a person becomes a Canadian citizen upon birth. Diplomatic immunity is required to trigger s. 3(2)(a). At no time did the applicant's parents enjoy any immunity.

The appellate court found the registrar's approach was inadequate and unacceptable. There was a failure to consider the context and purpose of the section. The registrar adopted the reasoning of an analyst, which had only a very short paragraph on legislative

history and failed to have any consideration of other parts of s. 3(2). On the facts, s. 3(1)(a) was the governing provision. As a person born in Canada in 1994, the applicant was entitled to citizenship.

The Minister of Citizenship and Immigration appealed.

Held: The appeal was dismissed.

Per Wagner C.J.C., Moldaver, Gascon, Côté, Brown, Rowe, Martin JJ.: A new course was established for reviewing the merits of an administrative determination. Reasonableness is the presumptive standard for review. This standard can be rebutted where the legislature intends a different standard to apply, or where the rule of law requires it.

Rationales including specialized expertise may be reasons for a legislature to delegate decision-making authority, but the very fact that the legislature opted to delegate authority was the basis for a default position of reasonableness review, and expertise was no longer a relevant factor, as it had been using a contextual review approach.

Where the legislature has provided for an appeal from an administrative decision to a court, there is a departure from the reasonableness standard and the court hearing the appeal should apply appellate standards of review.

The rule of law requires a correctness standard for constitutional questions, general questions of law of central importance to the legal system as a whole, and questions regarding the jurisdictional boundaries between administrative bodies. Merely being of wider public concern, or touching on an important issue, is insufficient to meet the test of a general question of law of central importance. "Matters of true jurisdiction" is not a distinct category attracting a correctness review. Other categories might arise in future cases, but new categories of correctness review should not be routinely established.

The focus of a reasonableness review must be on the decision made, including both the reasoning process and the outcome. Reasonableness is a single standard, and contextual elements of a decision do not modulate the standard. Reasons should be read in light of the record and recognize that administrative decision-makers cannot always be expected to deploy the same array of legal techniques that might be expected of a lawyer or judge. A reasonable decision is justified, transparent and intelligible, and is justified in relation to relevant legal and factual constraints. Where no reasons have been provided, the determination will still be examined in the light of relevant constraints, although it is more likely that the analysis will focus on the outcome rather than the reasoning process.

In the case at bar, the standard of review was reasonableness. The registrar's determination was not reasonable in finding that the applicant's parents had been other representatives or employees in Canada of a foreign government within the meaning of s. 3(2)(a) of the Act. The registrar failed to justify her interpretation in the light of the constraints imposed by s. 3 of the Act considered as a whole, by other legislation and international treaties that inform the purpose of s. 3, by the jurisprudence on the interpretation of s. 3(2)(a), and by the potential consequences of her interpretation. Section 3(2)(a) was not intended to apply to children of foreign government representatives or employees who have not been granted diplomatic privileges and immunities. What matters, for the purposes of s. 3(2)(a), is not whether an individual carries out activities in the service of a foreign state while in Canada, but whether, at the relevant time, the individual has been granted diplomatic privileges and immunities. The applicant raised many of these considerations but the registrar failed to address them in her reasons and did not perform more than a cursory review of legislative history.

The officials responsible for the files were aware that s. 3(2)(a) of the Act was informed by the principle that individuals subject to the exception were not obliged to the law of Canada, and they were also aware that the interpretation they had adopted was a novel one. The registrar knew this but failed to provide a rationale for this expanded interpretation. Rules concerning citizenship require a high degree of interpretive consistency. The registrar's determination had the same effect as a revocation of citizenship.

Per Abella, Karakatsanis JJ. (concurring): The majority decision fundamentally reoriented the decades-old relationship between administrative actors and the judiciary, by dramatically expanding the circumstances in which generalist judges will be entitled to substitute their own views for those of specialized decision-makers who apply their mandates on a daily basis. The majority's framework rested on a flawed and incomplete conceptual account of judicial review, one that unjustifiably ignored the specialized expertise of administrative decision-makers. Correctness review was permitted only for questions "of central importance to the legal system and outside the specialized expertise of the adjudicator". Broadening this category from its original characterization unduly expanded the issues available for judicial substitution. The majority's reliance on the "presumption of consistent expression" in relation to the single word "appeal" was misplaced and disregarded long-accepted institutional distinctions between how courts and administrative decision-makers function. If an applicant were to challenge multiple aspects of an administrative determination, some falling within an appeal clause and others not, complexity and barriers

to access to justice could arise. The judgment disregarded precedent and stare decisis and disregarded the high threshold necessary to overturn previous decisions.

A more modest approach was justified. A standard of review framework with a meaningful rule of deference, based on both the legislative choice to delegate decision-making authority to an administrative actor and on the specialized expertise that these decision-makers possess and develop in applying their mandates, was required. Outside of the correctness categories from earlier caselaw, and absent clear and explicit legislative direction on the standard of review, administrative decisions should be reviewed for reasonableness. The category of "true questions of jurisdiction" should be eliminated. The approach to reasonableness should focus on deference. Deference informs the attitude a reviewing court must adopt towards an administrative decision-maker, affects how a court frames the question it must answer, and affects how a reviewing court evaluates challenges to an administrative decision.

In the case at bar, the standard of review was reasonableness. The registrar's reasons failed to respond to the applicant's extensive and compelling submissions about the objectives of s. 3(2)(a) of the Act. The analyst misunderstood arguments on this point. The text of s. 3(2)(c) could be seen as undermining the registrar's interpretation, as the language suggests that s. 3(2)(a) covers only those "employee[s] in Canada of a foreign government" who have diplomatic privileges and immunities.

Le requérant est né au Canada après que ses parents soient arrivés au Canada en provenance de la Russie et aient usurpé l'identité de deux Canadiens décédés. Les parents ont obtenu des passeports, ont déménagé en France puis aux États-Unis, où ils ont obtenu la citoyenneté américaine. Les parents ont été démasqués en tant qu'agents non accrédités d'un gouvernement étranger se livrant à la collecte rémunérée de renseignements. En 2010, les parents du requérant sont retournés en Russie à la suite d'un échange d'espions et le passeport du requérant ainsi que sa citoyenneté américaine ont été révoqués. Le requérant s'est installé en Russie et a obtenu une nouvelle identité. Par la suite, le requérant a tenté d'obtenir un passeport canadien après avoir modifié son certificat de naissance et utilisé la véritable identité de ses parents. Le requérant a obtenu un certificat de citoyenneté canadienne, mais la greffière a annulé le certificat au motif que les parents du requérant n'étaient pas légalement citoyens canadiens ou résidents permanents, mais étaient des représentants ou employés au service d'un gouvernement étranger pour les besoins de l'art. 3(2)a) de la Loi sur la citoyenneté. La demande du requérant en contrôle judiciaire a été rejetée au motif que quiconque déménage au Canada avec l'objectif explicite de s'établir afin de poursuivre une opération de renseignements étrangère, au Canada ou dans un autre pays, le faisait au service d'un gouvernement étranger ou en tant que représentant ou employé au service d'un tel gouvernement.

L'appel du requérant à la Cour fédérale a été rejeté.

L'appel du requérant à la Cour d'appel fédérale a été accueilli. La Cour d'appel a estimé que la décision de la greffière de révoquer la citoyenneté du requérant n'appartenait pas aux décisions acceptables ou justifiables et n'était donc pas raisonnable. Les parents du requérant n'étaient pas « au service au Canada d'un gouvernement étranger » en vertu de l'art. 3(2)a) de la Loi, ce qui signifiait que ce paragraphe ne s'appliquait pas. L'objectif de ce paragraphe était d'interdire que les enfants nés au Canada de parents au service d'un gouvernement étranger n'obtiennent la citoyenneté canadienne. L'intention de la modification à ce paragraphe était de s'assurer qu'il s'appliquât seulement aux employés qui bénéficiaient de privilèges diplomatiques et d'immunités de juridiction civile et/ou pénale. Comme telles, les personnes « au service au Canada d'un gouvernement étranger » comprenaient seulement celles qui jouissaient de privilèges et immunités diplomatiques conférés par la Convention de Vienne sur les relations diplomatiques. La Cour d'appel a conclu que les types de privilèges conférés aux diplomates et à leur famille n'étaient pas compatibles avec les obligations de la citoyenneté, ce qui expliquait pourquoi ils ne pouvaient acquérir la citoyenneté. Les personnes assujetties aux lois canadiennes ont des obligations envers le Canada et une personne née d'une telle personne devient citoyen canadien au moment de sa naissance. L'immunité diplomatique est nécessaire pour l'application de ce paragraphe. Or, les parents du requérant n'ont bénéficié de quelque immunité que ce soit à aucun moment.

La Cour d'appel a conclu que l'approche de la greffière était inadéquate et inacceptable. Le contexte et l'objet de cet article n'ont pas été pris en compte. La greffière a fait sien le raisonnement de l'analyste, dont le rapport ne contenait qu'un très court paragraphe concernant l'origine législative et ne faisait aucun renvoi aux autres alinéas de l'art. 3(2). Sur la base des faits, l'art. 3(1) était la disposition principale. En tant que personne née au Canada en 1994, le requérant se qualifiait pour l'obtention de la citoyenneté.

Le ministre de la Citoyenneté et de l'Immigration a formé un pourvoi.

Arrêt: Le pourvoi a été rejeté.

Wagner, J.C.C., Moldaver, Gascon, Côté, Brown, Rowe, Martin, JJ. : Une nouvelle voie a été tracée pour contrôler une décision administrative au fond. La norme de la décision raisonnable est la norme de contrôle présumée. Cette présomption peut être réfutée si l'intention du législateur est qu'une autre norme de contrôle s'applique ou dans les cas où la primauté du droit l'exige. Si l'expertise spécialisée et d'autres considérations peuvent toutes justifier qu'une législature prévoit la délégation du pouvoir décisionnel, le simple fait que la législature ait choisi de prévoir une délégation de pouvoir constituait la base d'une approche par défaut justifiant l'application de la norme de la décision raisonnable et l'expertise n'était plus un facteur pertinent, en ce qu'elle avait retenu l'approche consistant à procéder à un contrôle contextuel.

Lorsque la législature a prévu que l'appel à l'encontre d'une décision rendue en matière administrative doit être interjeté devant un tribunal en particulier, on s'écarte de la norme de la décision raisonnable et le tribunal saisi de l'appel devrait appliquer les normes de contrôle applicables en appel.

La primauté du droit requiert que la norme de la décision correcte s'applique aux questions constitutionnelles, aux questions de droit générales d'importance capitale pour le système juridique dans son ensemble et aux questions liées aux délimitations des compétences respectives d'organismes administratifs. Il n'est suffisant qu'une question soit simplement d'un plus grand intérêt public ou qu'elle soulève un sujet important pour satisfaire au critère de la question de droit d'importance capitale. Les [TRADUCTION] « véritables questions de compétence » ne constituent pas une catégorie à part justifiant l'application de la norme de la décision correcte. D'autres catégories sont susceptibles d'apparaître dans les décisions qui seront rendues plus tard, mais de nouvelles catégories justifiant l'application de la norme de la décision correcte ne devraient pas être établies avec légèreté.

Le contrôle d'une décision en fonction de la norme de la décision raisonnable doit s'intéresser à la décision effectivement rendue par le décideur, notamment au raisonnement suivi et au résultat de la décision. La norme de la décision raisonnable est une norme unique et les éléments contextuels d'une décision n'altèrent pas cette norme. Les motifs devraient être interprétés eu égard au dossier et reconnaître que l'on ne peut pas toujours s'attendre à ce que les décideurs administratifs déploient toute la gamme de techniques juridiques auxquelles on peut s'attendre de la part d'un avocat ou d'un juge. Une décision raisonnable est justifiée, intelligible et transparente et est justifiée par rapport aux contraintes juridiques et factuelles. Lorsqu'aucun motif n'a été fourni, la décision doit tout de même être examinée à la lumière des contraintes pertinentes, bien qu'il soit davantage probable que l'analyse se concentre sur le résultat plutôt que sur le raisonnement.

Dans le présent dossier, la norme de contrôle applicable était celle de la décision raisonnable. La décision de la greffière n'était pas raisonnable en ce qu'elle a conclu que les parents du requérant avaient été les représentants ou employés au service au Canada d'un gouvernement étranger au sens de l'art. 3(2) de la Loi. La greffière n'a pas justifié son interprétation à la lumière des contraintes qu'imposent l'art. 3 de la Loi pris dans son ensemble, d'autres lois et traités internationaux qui éclairent l'objet de cette disposition, la jurisprudence relative à l'interprétation de l'art. 3(2)a), et les conséquences possibles de son interprétation. L'article 3(2)a) n'était pas censé s'appliquer aux enfants de représentants ou d'employés au service d'un gouvernement étranger à qui on n'avait pas accordé de privilèges et d'immunités diplomatiques. Ce qui importe, pour les besoins de l'art. 3(2)a), n'est pas de savoir si une personne se livre à des activités au service d'un État étranger alors qu'elle se trouve au Canada, mais plutôt si la personne s'était vu accorder, à l'époque pertinente, des privilèges et immunités diplomatiques. Le requérant a soulevé plusieurs de ces considérations, mais la greffière n'en a pas traité dans ses motifs et n'a pas fait davantage que se livrer à un examen superficiel de l'historique législatif.

Les fonctionnaires chargées des dossiers savaient que l'art. 3(2)a) de la Loi reposait sur le principe que les personnes faisant l'objet de l'exception n'étaient pas assujetties aux lois canadiennes et étaient également au fait du caractère inédit de l'interprétation adoptée. La greffière avait connaissance des éléments susmentionnés, mais elle n'a pas motivé cette interprétation élargie. Les règles concernant la citoyenneté commandent une grande uniformité en matière d'interprétation. La décision de la greffière dans la présente affaire a eu le même effet qu'une révocation de la citoyenneté.

Abella, Karakatsanis, JJ. (souscrivant à l'opinion des juges majoritaires) : Les juges majoritaires réorientent complètement le rapport qui existait depuis des décennies entre les acteurs administratifs et la magistrature, en élargissant considérablement les circonstances dans lesquelles les juges généralistes pourront substituer leur propre opinion à celle des décideurs spécialisés qui exercent leur mandat au quotidien. Le cadre établi par les juges majoritaires reposait sur une conception du contrôle judiciaire qui était à la fois erronée et incomplète et qui négligeait sans raison valable l'expertise spécialisée des décideurs administratifs. La norme de la décision correcte n'était applicable qu'à l'égard de questions qui sont « d'importance capitale pour le système juridique et qui échappent au domaine d'expertise de l'arbitre ». Étendre cette catégorie par rapport à son acception initiale

avait pour conséquence d'étendre indûment les questions pour lesquelles les cours peuvent substituer leur propre opinion à celle des décideurs administratifs. Le fait que les juges majoritaires invoquent la « présomption d'uniformité d'expression » en se fondant uniquement sur le mot « appel » était malavisé et négligeait les distinctions institutionnelles qui sont reconnues depuis longtemps en ce qui concerne le mode de fonctionnement des cours et des décideurs administratifs. Si un requérant conteste plusieurs aspects de la décision administrative dont certains relèvent d'une disposition créant un droit d'appel et d'autres non, cela pourrait donner lieu à une incitation à la complexité et un obstacle à l'accès à la justice. Les motifs de la majorité ne tiennent pas compte des précédents et de la règle du stare decisis et du critère rigoureux auquel il faut satisfaire pour pouvoir écarter l'une des décisions de la Cour.

Une approche plus modeste était justifiée. Un cadre d'analyse de la norme de contrôle qui repose sur une règle de déférence significative et fondée à la fois sur le choix du législateur de déléguer des pouvoirs décisionnels à des acteurs administratifs et sur l'expertise spécialisée que ces décideurs possèdent et acquièrent au fur et à mesure qu'ils s'acquittent de leur mandat était nécessaire. Exception faite des catégories assujetties à la norme de la décision correcte établies dans une décision précédente, et à défaut de directives claires et explicites du législateur sur la norme de contrôle applicable, c'est la norme de la décision raisonnable qui s'applique au contrôle judiciaire des décisions administratives. La catégorie des « questions touchant véritablement à la compétence » devrait être éliminée. La conception du contrôle judiciaire selon la norme de la décision raisonnable devrait être centrée sur le principe de la déférence. La déférence influence l'attitude que la cour de révision doit adopter à l'égard du décideur administratif, influence la façon dont la cour formule la question à laquelle elle doit répondre et influe sur la façon dont elle évalue la contestation dont fait l'objet la décision administrative.

Dans le présent dossier, la norme de contrôle applicable était celle de la décision raisonnable. Dans ses motifs, la greffière n'a pas répondu aux arguments abondants et convaincants que le requérant a invoqués au sujet des objectifs de l'art. 3(2)a) de la Loi. L'analyste a mal compris les arguments sur ce point. Le libellé de l'art. 3(2)c) pouvait être perçu comme sapant l'interprétation de la greffière, car ce texte laisse croire que l'art. 3(2)a) ne vise que les personnes « au service au Canada d'un gouvernement étranger » qui jouissent de privilèges et immunités diplomatiques.

Table of Authorities

Cases considered by *Wagner C.J.C., Moldaver J., Gascon J., Côté J., Brown J., Rowe J., Martin J.*:

A.T.A. v. Alberta (Information & Privacy Commissioner) (2011), 2011 SCC 61, 2011 CarswellAlta 2068, 2011 CarswellAlta 2069, 339 D.L.R. (4th) 428, 28 Admin. L.R. (5th) 177, 52 Alta. L.R. (5th) 1, [2012] 2 W.W.R. 434, *(*sub nom. *Alberta Teachers' Association v. Information & Privacy Commissioner (Alta.))* 424 N.R. 70, *(*sub nom. *Alberta (Information & Privacy Commissioner) v. Alberta Teachers' Association)* [2011] 3 S.C.R. 654, *(*sub nom. *Alberta Teachers' Association v. Information and Privacy Commissioner)* 519 A.R. 1, *(*sub nom. *Alberta Teachers' Association v. Information and Privacy Commissioner)* 539 W.A.C. 1 (S.C.C.) — considered

Al-Ghamdi v. Canada (Minister of Foreign Affairs & International Trade) (2007), 2007 FC 559, 2007 CarswellNat 1452, 2007 CF 559, 2007 CarswellNat 2819, 64 Imm. L.R. (3d) 67, 315 F.T.R. 1 (Eng.) (F.C.) — considered

Alberta (Information and Privacy Commissioner) v. University of Calgary (2016), 2016 SCC 53, 2016 CSC 53, 2016 CarswellAlta 2247, 2016 CarswellAlta 2248, 9 Admin. L.R. (6th) 177, 403 D.L.R. (4th) 1, [2017] 1 W.W.R. 1, 2017 C.L.L.C. 210-004, [2016] 2 S.C.R. 555 (S.C.C.) — considered

Alliance Pipeline Ltd. v. Smith (2011), 2011 SCC 7, 2011 CarswellNat 202, 2011 CarswellNat 203, 328 D.L.R. (4th) 1, 56 C.E.L.R. (3d) 161, 102 L.C.R. 1, 16 Admin. L.R. (5th) 157, 412 N.R. 66, [2011] 1 S.C.R. 160 (S.C.C.) — referred to

Atlantic Mining NS Corp. (D.D.V. Gold Limited) v. Oakley (2019), 2019 NSCA 14, 2019 CarswellNS 138, 10 L.C.R. (2d) 63, 432 D.L.R. (4th) 323 (N.S. C.A.) — referred to

B010 v. Canada (Minister of Citizenship and Immigration) (2015), 2015 SCC 58, 2015 CSC 58, 2015 CarswellNat 6186, 2015 CarswellNat 6187, 92 Admin. L.R. (5th) 1, 390 D.L.R. (4th) 385, 36 Imm. L.R. (4th) 64, 478 N.R. 57, [2015] 3 S.C.R. 704 (S.C.C.) — referred to

Baker v. Canada (Minister of Citizenship & Immigration) (1999), 174 D.L.R. (4th) 193, 1999 CarswellNat 1124, 1999 CarswellNat 1125, 243 N.R. 22, 1 Imm. L.R. (3d) 1, 14 Admin. L.R. (3d) 173, [1999] 2 S.C.R. 817, 1999 SCC 699 (S.C.C.) — considered

Barreau du Québec c. Québec (Procureure générale) (2017), 2017 SCC 56, 2017 CSC 56, 2017 CarswellQue 9478, 26 Admin. L.R. (6th) 181, *(*sub nom. *Barreau du Québec v. Quebec (Attorney General))* [2017] 2 S.C.R. 488, 420 D.L.R. (4th) 575, 2017 CarswellQue 9479 (S.C.C.) — considered

Barrie Public Utilities v. Canadian Cable Television Assn. (2003), 2003 SCC 28, 2003 CarswellNat 1226, 2003 CarswellNat 1268, 225 D.L.R. (4th) 206, 49 Admin. L.R. (3d) 161, 304 N.R. 1, [2003] 1 S.C.R. 476, 2003 CSC 28, [2003] 2 F.C. i (S.C.C.) — referred to

Bedford v. Canada (Attorney General) (2013), 2013 SCC 72, 2013 CarswellOnt 17681, 2013 CarswellOnt 17682, 303 C.C.C. (3d) 146, 366 D.L.R. (4th) 237, 7 C.R. (7th) 1, 312 O.A.C. 53, 452 N.R. 1, (sub nom. *Canada (Attorney General) v. Bedford)* [2013] 3 S.C.R. 1101, (sub nom. *Canada (Attorney General) v. Bedford)* 297 C.R.R. (2d) 334, 128 O.R. (3d) 385 (note) (S.C.C.) — referred to

Bell Canada v. 7262591 Canada Ltd. (2018), 2018 FCA 174, 2018 CarswellNat 5401, 428 D.L.R. (4th) 311, 2018 CAF 174, 2018 CarswellNat 8998, [2019] 2 F.C.R. 414 (F.C.A.) — referred to

Bell Canada v. Canada (Attorney General) (2019), 2019 SCC 66, 2019 CSC 66, 2019 CarswellNat 7881, 2019 CarswellNat 7882, 60 Admin. L.R. (6th) 1, 441 D.L.R. (4th) 155, 171 C.P.R. (4th) 215, [2019] 4 S.C.R. 845 (S.C.C.) — considered

Bell ExpressVu Ltd. Partnership v. Rex (2002), 2002 SCC 42, 2002 CarswellBC 851, 2002 CarswellBC 852, 100 B.C.L.R. (3d) 1, [2002] 5 W.W.R. 1, 212 D.L.R. (4th) 1, 287 N.R. 248, 18 C.P.R. (4th) 289, 166 B.C.A.C. 1, 271 W.A.C. 1, 93 C.R.R. (2d) 189, [2002] 2 S.C.R. 559, 2002 CSC 42 (S.C.C.) — considered

Benner v. Canada (Secretary of State) (1997), 143 D.L.R. (4th) 577, 208 N.R. 81, [1997] 1 S.C.R. 358, 42 C.R.R. (2d) 1, 125 F.T.R. 240 (note), 37 Imm. L.R. (2d) 195, 1997 CarswellNat 190, 1997 CarswellNat 191, 1997 SCC 376 (S.C.C.) — considered

Bhadauria v. Seneca College of Applied Arts & Technology (1981), [1981] 2 S.C.R. 181, (sub nom. *Seneca College of Applied Arts & Technology v. Bhadauria)* 124 D.L.R. (3d) 193, 37 N.R. 455, 14 B.L.R. 157, 81 C.L.L.C. 14,117, 22 C.P.C. 130, 17 C.C.L.T. 106, 2 C.H.R.R. D/468, 1981 CarswellOnt 117, 1981 CarswellOnt 616 (S.C.C.) — considered

British Columbia (Securities Commission) v. McLean (2013), 2013 SCC 67, 2013 CarswellBC 3618, 2013 CarswellBC 3619, 366 D.L.R. (4th) 30, [2014] 2 W.W.R. 415, (sub nom. *McLean v. British Columbia Securities Commission)* 452 N.R. 340, 53 B.C.L.R. (5th) 1, (sub nom. *McLean v. British Columbia (Securities Commission))* [2013] 3 S.C.R. 895, (sub nom. *McLean v. British Columbia Securities Commission)* 347 B.C.A.C. 1, (sub nom. *McLean v. British Columbia Securities Commission)* 593 W.A.C. 1, 64 Admin. L.R. (5th) 237 (S.C.C.) — considered

British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority (2016), 2016 SCC 25, 2016 CSC 25, 2016 CarswellBC 1709, 2016 CarswellBC 1710, 84 B.C.L.R. (5th) 1, 397 D.L.R. (4th) 581, [2016] 7 W.W.R. 631, D.T.E. 2016T-551, 3 Admin. L.R. (6th) 1, (sub nom. *Fraser Health Authority v. Workers' Compensation Appeal Tribunal (B.C.))* 484 N.R. 150, (sub nom. *Fraser Health Authority v. Workers' Compensation Appeal Tribunal (B.C.))* 388 B.C.A.C. 69, (sub nom. *Fraser Health Authority v. Workers' Compensation Appeal Tribunal (B.C.))* 670 W.A.C. 69, 31 C.C.L.T. (4th) 1, [2016] 1 S.C.R. 587 (S.C.C.) — referred to

British Columbia (Workers' Compensation Board) v. British Columbia (Human Rights Tribunal) (2011), 2011 SCC 52, 2011 CarswellBC 2702, 2011 CarswellBC 2703, 25 Admin. L.R. (5th) 173, 337 D.L.R. (4th) 413, [2011] 12 W.W.R. 1, 23 B.C.L.R. (5th) 1, 421 N.R. 338, 95 C.C.E.L. (3d) 169, (sub nom. *B.C. (W.C.B.) v. Figiola)* 2012 C.L.L.C. 230-001, (sub nom. *British Columbia (Workers' Compensation Board) v. Figliola)* [2011] 3 S.C.R. 422, 311 B.C.A.C. 1, 529 W.A.C. 1, (sub nom. *British Columbia (Workers' Compensation Board) v. Figliola)* 73 C.H.R.R. D/1, 2011 CSC 52 (S.C.C.) — referred to

British Columbia Human Rights Tribunal v. Schrenk (2017), 2017 SCC 62, 2017 CSC 62, 2017 CarswellBC 3506, 2017 CarswellBC 3507, 3 B.C.L.R. (6th) 1, [2018] 1 W.W.R. 1, 27 Admin. L.R. (6th) 1, 2018 C.L.L.C. 230-007, [2017] 2 S.C.R. 795, 419 D.L.R. (4th) 585, 88 C.H.R.R. D/283 (S.C.C.) — referred to

British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd. (1995), 31 Admin. L.R. (2d) 169, 125 D.L.R. (4th) 443, 183 N.R. 184, 1995 CarswellNat 705, 1995 CarswellNat 968, [1995] 2 S.C.R. 739 (S.C.C.) — referred to

Brossard (Ville) c. Québec (Commission des droits de la personne) (1988), 88 C.L.L.C. 17,031, 18 Q.A.C. 164, 53 D.L.R. (4th) 609, 88 N.R. 321, 10 C.H.R.R. D/5515, 1988 CarswellQue 154, 1988 CarswellQue 154F, [1988] 2 S.C.R. 279 (S.C.C.) — referred to

C.U.P.E. v. Ontario (Minister of Labour) (2003), 2003 SCC 29, 2003 CarswellOnt 1770, 2003 CarswellOnt 1803, 2003 C.L.L.C. 220-040, (sub nom. *Canadian Union of Public Employees v. Ontario (Minister of Labour))* 304 N.R. 76, 50 Admin. L.R. (3d) 1, 226 D.L.R. (4th) 193, (sub nom. *Canadian Union of Public Employees v. Ontario (Minister of Labour))*

173 O.A.C. 38, [2003] 1 S.C.R. 539, (sub nom. *Canadian Union of Public Employees v. Ontario (Minister of Labour)*) 66 O.R. (3d) 735 (note), 2003 CSC 29 (S.C.C.) — referred to

C.U.P.E., Local 963 v. New Brunswick Liquor Corp. (1979), 25 N.B.R. (2d) 237, [1979] 2 S.C.R. 227, 51 A.P.R. 237, 26 N.R. 341, 79 C.L.L.C. 14,209, 97 D.L.R. (3d) 417, N.B.L.L.C. 24259, 1979 CarswellNB 17, 1979 CarswellNB 17F (S.C.C.) — referred to

Canada (Attorney General) v. Almon Equipment Ltd. (2010), 2010 FCA 193, 2010 CarswellNat 2406, 2010 CAF 193, 2010 CarswellNat 3629, 405 N.R. 91, 12 Admin. L.R. (5th) 161, [2011] 4 F.C.R. 203 (F.C.A.) — referred to

Canada (Attorney General) v. Igloo Vikski Inc. (2016), 2016 SCC 38, 2016 CSC 38, 2016 CarswellNat 4645, 2016 CarswellNat 4646, 401 D.L.R. (4th) 197, 487 N.R. 318, 21 T.T.R. (2d) 182, [2016] 2 S.C.R. 80 (S.C.C.) — considered

Canada (Attorney General) v. Mowat (2011), 2011 SCC 53, 2011 CarswellNat 4190, 2011 CarswellNat 4191, 93 C.C.E.L. (3d) 1, 337 D.L.R. (4th) 385, 26 Admin. L.R. (5th) 1, D.T.E. 2011T-708, 422 N.R. 248, (sub nom. *C.H.R.C. v. Canada (A.G.)*) 2011 C.L.L.C. 230-043, (sub nom. *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*) [2011] 3 S.C.R. 471, (sub nom. *Canada (Human Rights Comm.) v. Canada (Attorney General)*) 73 C.H.R.R. D/30 (S.C.C.) — referred to

Canada (Director of Investigation & Research) v. Southam Inc. (1997), 144 D.L.R. (4th) 1, 71 C.P.R. (3d) 417, [1997] 1 S.C.R. 748, 209 N.R. 20, 50 Admin. L.R. (2d) 199, 1997 CarswellNat 368, 1997 CarswellNat 369 (S.C.C.) — considered

Canada (Human Rights Commission) v. Canada (Attorney General) (2018), 2018 SCC 31, 2018 CSC 31, 2018 CarswellNat 2839, 36 Admin. L.R. (6th) 1, [2018] 2 S.C.R. 230, 91 C.H.R.R. D/63, [2019] 2 C.N.L.R. 45, 2018 CarswellNat 2838 (S.C.C.) — considered

Canada (Minister of Citizenship & Immigration) v. Tobiass (1997), 1997 CarswellNat 1385, 1997 CarswellNat 1386, 118 C.C.C. (3d) 443, 151 D.L.R. (4th) 119, 10 C.R. (5th) 163, 131 F.T.R. 230 (note), [1997] 3 S.C.R. 391, 40 Imm. L.R. (2d) 23, 14 C.P.C. (4th) 1, 1 Admin. L.R. (3d) 1, 218 N.R. 81 (S.C.C.) — considered

Canada (Minister of Citizenship and Immigration) v. Khosa (2009), 2009 SCC 12, 2009 CarswellNat 434, 2009 CarswellNat 435, 82 Admin. L.R. (4th) 1, 77 Imm. L.R. (3d) 1, 385 N.R. 206, 304 D.L.R. (4th) 1, (sub nom. *Canada (Citizenship & Immigration) v. Khosa)* [2009] 1 S.C.R. 339, 2009 CSC 12 (S.C.C.) — considered

Canada (Minister of Indian Affairs & Northern Development) v. Ranville (1982), [1982] 2 S.C.R. 518, 139 D.L.R. (3d) 1, 44 N.R. 616, [1983] 1 C.N.L.R. 12, [1983] R.D.J. 16, 1982 CarswellNat 486, 1982 CarswellNat 486F (S.C.C.) — referred to

Canada (Minister of Transport, Infrastructure and Communities) v. Farwaha (2014), 2014 FCA 56, 2014 CarswellNat 457, (sub nom. *Farwaha v. Canada (Minister of Transport, Infrastructure and Communities))* 455 N.R. 157, 2014 CAF 56, 2014 CarswellNat 3008, (sub nom. *Farwaha v. Canada (Minister of Transport, Infrastructure and Communities))* 303 C.R.R. (2d) 246, [2015] F.C.R. 1006 (F.C.A.) — considered

Canada Trustco Mortgage Co. v. R. (2005), 2005 SCC 54, 2005 CarswellNat 3212, 2005 CarswellNat 3213, (sub nom. *Canada Trustco Mortgage Co. v. Canada)* 2005 D.T.C. 5523 (Eng.), (sub nom. *Hypothèques Trustco Canada v. Canada)* 2005 D.T.C. 5547 (Fr.), [2005] 5 C.T.C. 215, (sub nom. *Minister of National Revenue v. Canada Trustco Mortgage Co.)* 340 N.R. 1, 259 D.L.R. (4th) 193, [2005] 2 S.C.R. 601 (S.C.C.) — considered

Canadian Artists' Representation / Le Front des artistes canadiens v. National Gallery of Canada (2014), 2014 SCC 42, 2014 CSC 42, 2014 CarswellNat 1904, 2014 CarswellNat 1905, 371 D.L.R. (4th) 383, 68 Admin. L.R. (5th) 1, (sub nom. *National Gallery of Canada v. Canadian Artists' Representation)* 458 N.R. 233, 121 C.P.R. (4th) 1, [2014] 2 S.C.R. 197 (S.C.C.) — referred to

Canadian National Railway v. Canada (Attorney General) (2014), 2014 SCC 40, 2014 CSC 40, 2014 CarswellNat 1625, 2014 CarswellNat 1626, 371 D.L.R. (4th) 219, 67 Admin. L.R. (5th) 220, 458 N.R. 150, [2014] 2 S.C.R. 135 (S.C.C.) — considered

Catalyst Paper Corp. v. North Cowichan (District) (2012), 2012 SCC 2, 2012 CarswellBC 17, 2012 CarswellBC 18, 11 R.P.R. (5th) 1, [2012] 2 W.W.R. 415, 26 B.C.L.R. (5th) 1, 340 D.L.R. (4th) 385, 93 M.P.L.R. (4th) 1, 425 N.R. 22, 316 B.C.A.C. 1, 537 W.A.C. 1, 34 Admin. L.R. (5th) 175, [2012] 1 S.C.R. 5 (S.C.C.) — considered

Chagnon v. Syndicat de la fonction publique et parapublique du Québec (2018), 2018 SCC 39, 2018 CSC 39, 2018 CarswellQue 8572, 2018 CarswellQue 8573, 40 Admin. L.R. (6th) 1, 426 D.L.R. (4th) 585, 2019 C.L.L.C. 220-001, 295 L.A.C. (4th) 223, [2018] 2 S.C.R. 687 (S.C.C.) — considered

Chieu v. Canada (Minister of Citizenship & Immigration) (2002), 2002 SCC 3, 2002 CarswellNat 5, 2002 CarswellNat 6, 18 Imm. L.R. (3d) 93, 208 D.L.R. (4th) 107, 280 N.R. 268, 37 Admin. L.R. (3d) 252, [2002] 1 S.C.R. 84, 2002 CSC 3 (S.C.C.) — referred to

Commission scolaire de Laval c. Syndica de l'enseignement de la région de Laval (2016), 2016 SCC 8, 2016 CSC 8, 2016 CarswellQue 1791, 2016 CarswellQue 1792, D.T.E. 2016T-213, 97 Admin. L.R. (5th) 177, 396 D.L.R. (4th) 1, 263 L.A.C. (4th) 275, 481 N.R. 25, [2016] 1 S.C.R. 29 (S.C.C.) — referred to

Congrégation des Témoins de Jéhovah de St-Jérôme-Lafontaine c. Lafontaine (Municipalité) (2004), 2004 SCC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, 323 N.R. 1, *(*sub nom. *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village))* 241 D.L.R. (4th) 83, 49 M.P.L.R. (3d) 157, 17 Admin. L.R. (4th) 165, *(*sub nom. *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village))* [2004] 2 S.C.R. 650, 121 C.R.R. (2d) 261, 2004 CSC 48 (S.C.C.) — referred to

Construction Labour Relations Assn. (Alberta) v. Driver Iron Inc. (2012), 2012 SCC 65, 2012 CarswellAlta 1955, 2012 CarswellAlta 1956, D.T.E. 2012T-839, 43 Admin. L.R. (5th) 1, 352 D.L.R. (4th) 487, *(*sub nom. *Driver Iron Inc. v. International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local Union No. 720)* 437 N.R. 202, *(*sub nom. *Construction Labour Relations v. Driver Iron Inc.)* 2013 C.L.L.C. 220-003, *(*sub nom. *Driver Iron Inc. v. International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local Union No. 720)* 539 A.R. 17, *(*sub nom. *Driver Iron Inc. v. International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local Union No. 720)* 561 W.A.C. 17, *(*sub nom. *Construction Labour Relations v. Driver Iron Inc.)* [2012] 3 S.C.R. 405, *(*sub nom. *Construction Labour Relations v. Driver Iron Inc.)* 228 C.L.R.B.R. (2d) 24, [2012] Alta. L.R.B.R. 182 (S.C.C.) — considered

Craig v. R. (2012), 2012 SCC 43, 2012 CarswellNat 2737, 2012 CarswellNat 2738, *(*sub nom. *Craig v. Canada)* 347 D.L.R. (4th) 385, [2012] 5 C.T.C. 205, *(*sub nom. *R. v. Craig)* 2012 D.T.C. 5115 (Eng.), *(*sub nom. *R. v. Craig)* 2012 D.T.C. 5116 (Fr.), *(*sub nom. *Minister of National Revenue v. Craig)* 433 N.R. 111, *(*sub nom. *Canada v. Craig)* [2012] 2 S.C.R. 489 (S.C.C.) — referred to

Crevier v. Quebec (Attorney General) (1981), [1981] 2 S.C.R. 220, 127 D.L.R. (3d) 1, 38 N.R. 541, 1981 CarswellQue 109, 1981 CarswellQue 109F (S.C.C.) — referred to

D'Errico v. Canada (Attorney General) (2014), 2014 FCA 95, 2014 CarswellNat 995, 2014 C.E.B. & P.G.R. 8077 (headnote only), 2014 CAF 95, 2014 CarswellNat 2661, 459 N.R. 167 (F.C.A.) — referred to

Delios v. Canada (Attorney General) (2015), 2015 FCA 117, 2015 CarswellNat 1331, *(*sub nom. *Canada (Attorney General) v. Delios)* 472 N.R. 171, 2015 CAF 117, 2015 CarswellNat 4840, 2015 C.L.L.C. 220-045, 100 Admin. L.R. (5th) 301 (F.C.A.) — considered

Delta Air Lines Inc. v. Lukács (2018), 2018 SCC 2, 2018 CSC 2, 2018 CarswellNat 50, 2018 CarswellNat 51, 416 D.L.R. (4th) 579, 28 Admin. L.R. (6th) 177, [2018] 1 S.C.R. 6 (S.C.C.) — considered

Deputy Minister of National Revenue v. Mattel Canada Inc. (2001), 2001 SCC 36, 2001 CarswellNat 1032, 2001 CarswellNat 1033, 29 Admin. L.R. (3d) 56, *(*sub nom. *Deputy M.N.R. v. Mattel Canada Inc.)* 199 D.L.R. (4th) 598, *(*sub nom. *Minister of National Revenue (Customs & Excise) v. Mattel Canada Inc.)* 270 N.R. 153, 12 C.P.R. (4th) 417, *(*sub nom. *Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.)* [2001] 2 S.C.R. 100, 2001 CSC 36 (S.C.C.) — referred to

Domtar Inc. c. Québec (Commission d'appel en matière de lésions professionnelles) (1993), 15 Admin. L.R. (2d) 1, 49 C.C.E.L. 1, 154 N.R. 104, *(*sub nom. *Domtar Inc. v. Québec (Commission d'appel en matière de lésions professionnelles))* [1993] 2 S.C.R. 756, *(*sub nom. *Domtar Inc. v. Québec (Commission d'appel en matière de lésions professionnelles))* 55 Q.A.C. 241, *(*sub nom. *Domtar Inc. v. Québec (Commission d'appel en matière de lésions professionnelles))* 105 D.L.R. (4th) 385, 1993 CarswellQue 145, 1993 CarswellQue 159, [1993] C.A.L.P. 613 (S.C.C.) — considered

Doré c. Québec (Tribunal des professions) (2012), 2012 SCC 12, 2012 CarswellQue 2048, 2012 CarswellQue 2049, *(*sub nom. *Doré v. Barreau du Québec)* 343 D.L.R. (4th) 193, 34 Admin. L.R. (5th) 1, *(*sub nom. *Doré v. Barreau du Québec)* 428 N.R. 146, [2012] 1 S.C.R. 395, *(*sub nom. *Doré v. Barreau du Québec)* 255 C.R.R. (2d) 289 (S.C.C.) — considered

Dunsmuir v. New Brunswick (2008), 2008 SCC 9, 2008 CarswellNB 124, 2008 CarswellNB 125, D.T.E. 2008T-223, 64 C.C.E.L. (3d) 1, 69 Imm. L.R. (3d) 1, 69 Admin. L.R. (4th) 1, 372 N.R. 1, 329 N.B.R. (2d) 1, 844 A.P.R. 1, 2008 CSC 9, 2008 C.L.L.C. 220-020, 291 D.L.R. (4th) 577, 170 L.A.C. (4th) 1, 95 L.C.R. 65, [2008] 1 S.C.R. 190 (S.C.C.) — followed

Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd. (2016), 2016 SCC 47, 2016 CSC 47, 2016 CarswellAlta 2106, 2016 CarswellAlta 2107, 54 M.P.L.R. (5th) 1, 8 Admin. L.R. (6th) 179, 402 D.L.R. (4th) 236, [2016] 12 W.W.R. 215, [2016] 2 S.C.R. 293 (S.C.C.) — considered

Fraser v. Ontario (Attorney General) (2011), 2011 SCC 20, 2011 CarswellOnt 2695, 2011 CarswellOnt 2696, D.T.E. 2011T-294, (sub nom. *A.G. (Ontario) v. Fraser)* 2011 C.L.L.C. 220-029, 331 D.L.R. (4th) 64, 415 N.R. 200, 275 O.A.C. 205, 91 C.C.E.L. (3d) 1, (sub nom. *Ontario (Attorney General) v. Fraser)* [2011] 2 S.C.R. 3, 233 C.R.R. (2d) 237, 108 O.R. (3d) 78 (note) (S.C.C.) — referred to

Gamez Blas v. Canada (Minister of Citizenship and Immigration) (2014), 2014 FC 629, 2014 CarswellNat 2255, 2014 CF 629, 2014 CarswellNat 3052, 26 Imm. L.R. (4th) 92, (sub nom. *Blas v. Canada (Minister of Citizenship and Immigration))* 457 F.T.R. 182 (F.C.) — referred to

Garneau Community League v. Edmonton (City) (2017), 2017 ABCA 374, 2017 CarswellAlta 2409, 60 Alta. L.R. (6th) 1, 68 M.P.L.R. (5th) 8, 26 Admin. L.R. (6th) 304, [2018] 4 W.W.R. 285 (Alta. C.A.) — referred to

Gehl v. Canada (Attorney General) (2017), 2017 ONCA 319, 2017 CarswellOnt 5673, 19 Admin. L.R. (6th) 251, 413 D.L.R. (4th) 1, [2017] 3 C.N.L.R. 103, 382 C.R.R. (2d) 10, 138 O.R. (3d) 52 (Ont. C.A.) — referred to

Green v. Law Society of Manitoba (2017), 2017 SCC 20, 2017 CSC 20, 2017 CarswellMan 136, 2017 CarswellMan 137, [2017] 5 W.W.R. 1, 407 D.L.R. (4th) 573, 18 Admin. L.R. (6th) 107, [2017] 1 S.C.R. 360, 6 C.P.C. (8th) 225 (S.C.C.) — referred to

Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission) (2012), 2012 SCC 10, 2012 CarswellNS 124, 2012 CarswellNS 125, 31 Admin. L.R. (5th) 179, 94 M.P.L.R. (4th) 1, 343 D.L.R. (4th) 385, 428 N.R. 107, 316 N.S.R. (2d) 1, [2012] 1 S.C.R. 364, 74 C.H.R.R. D/7 (S.C.C.) — considered

Hitti c. Canada (Ministre de la Citoyenneté & de l'Immigration) (2007), 2007 CF 294, 2007 CarswellNat 671, 2007 FC 294, (sub nom. *Hitti v. Canada (Minister of Citizenship & Immigration))* 310 F.T.R. 168 (Eng.), 2007 CarswellNat 6638 (F.C.) — considered

Housen v. Nikolaisen (2002), 2002 SCC 33, 2002 CarswellSask 178, 2002 CarswellSask 179, 286 N.R. 1, 10 C.C.L.T. (3d) 157, 211 D.L.R. (4th) 577, [2002] 7 W.W.R. 1, 219 Sask. R. 1, 272 W.A.C. 1, 30 M.P.L.R. (3d) 1, [2002] 2 S.C.R. 235, 2002 CSC 33 (S.C.C.) — considered

I.B.E.W., Local 894 v. Ellis-Don Ltd. (2001), 2001 SCC 4, 2001 CarswellOnt 99, 2001 CarswellOnt 100, (sub nom. *Ellis-Don Ltd. v. Ontario (Labour Relations Board))* 194 D.L.R. (4th) 385, (sub nom. *Ellis-Don Ltd. v. Labour Relations Board (Ont.))* 265 N.R. 2, (sub nom. *Ellis-Don Ltd. v. Ontario Labour Relations Board)* 52 O.R. (3d) 160 (note), (sub nom. *Ellis-Don Ltd. v. Ontario Labour Relations Board)* 2001 C.L.L.C. 220-028, 26 Admin. L.R. (3d) 171, (sub nom. *Ellis-Don Ltd. v. Labour Relations Board)* 140 O.A.C. 201, (sub nom. *Ellis-Don Ltd. v. Ontario (Labour Relations Board))* [2001] 1 S.C.R. 221, [2001] O.L.R.B. Rep. 236, (sub nom. *Ellis-Don Ltd. v. Ontario (Labour Relations Board))* 66 C.L.R.B.R. (2d) 216, 2001 CSC 4 (S.C.C.) — referred to

I.W.A., Local 2-69 v. Consolidated Bathurst Packaging Ltd. (1990), 42 Admin. L.R. 1, 68 D.L.R. (4th) 524, 105 N.R. 161, 38 O.A.C. 321, 90 C.L.L.C. 14,007, [1990] O.L.R.B. Rep. 369, (sub nom. *I.W.A. v. Consolidated-Bathurst Packaging Ltd.)* [1990] 1 S.C.R. 282, 73 O.R. (2d) 676 (note), 1990 CarswellOnt 2515, 1990 CarswellOnt 821 (S.C.C.) — considered

India v. Badesha (2017), 2017 SCC 44, 2017 CSC 44, 2017 CarswellBC 2440, 2017 CarswellBC 2441, 22 Admin. L.R. (6th) 1, 412 D.L.R. (4th) 411, 40 C.R. (7th) 1, (sub nom. *India v. Dadesha)* 388 C.R.R. (2d) 230, [2017] 2 S.C.R. 127 (S.C.C.) — referred to

Irving Pulp & Paper Ltd. v. CEP, Local 30 (2013), 2013 SCC 34, 2013 CarswellNB 275, 2013 CarswellNB 276, 52 Admin. L.R. (5th) 1, 359 D.L.R. (4th) 394, (sub nom. *CEPU, Local 30 v. Irving Pulp & Paper)* 2013 C.L.L.C. 220-037, D.T.E. 2013T-418, (sub nom. *Irving Pulp & Paper Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 30)* 445 N.R. 1, (sub nom. *Irving Pulp & Paper Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 30)* 1048 A.P.R. 1, (sub nom. *Irving Pulp & Paper Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 30)* 404 N.B.R. (2d) 1, 231 L.A.C. (4th) 209, (sub nom. *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper Ltd.)* 285 C.R.R. (2d) 150, (sub nom. *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.)* [2013] 2 S.C.R. 458, (sub nom. *C.E.P.U., Local 30 v. Irving Pulp & Paper, Ltd)* 77 C.H.R.R. D/304 (S.C.C.) — considered

Knight v. Indian Head School Division No. 19 (1990), [1990] 1 S.C.R. 653, 69 D.L.R. (4th) 489, [1990] 3 W.W.R. 289, 30 C.C.E.L. 237, 90 C.L.L.C. 14,010, 43 Admin. L.R. 157, 83 Sask. R. 81, 106 N.R. 17, 1990 CarswellSask 146, 1990 CarswellSask 408, D.T.E. 90T-475 (S.C.C.) — referred to

Komolafe v. Canada (Minister of Citizenship and Immigration) (2013), 2013 FC 431, 2013 CarswellNat 1105, 2013 CF 431, 2013 CarswellNat 1390, 16 Imm. L.R. (4th) 267 (F.C.) — followed

Lee v. Canada (Minister of Citizenship & Immigration) (2008), 2008 FC 614, 2008 CarswellNat 1461, 2008 CF 614, 2008 CarswellNat 3029, 329 F.T.R. 135 (Eng.), 176 C.R.R. (2d) 338, [2009] 1 F.C.R. 204 (F.C.) — considered

Lloyd v. Canada (Attorney General) (2016), 2016 FCA 115, 2016 CarswellNat 1035, 2016 D.T.C. 5051, 2016 CAF 115, 2016 CarswellNat 9921 (F.C.A.) — referred to

M.A.H.C.P. v. Nor-Man Regional Health Authority Inc. (2011), 2011 SCC 59, 2011 CarswellMan 606, 2011 CarswellMan 607, D.T.E. 2011T-803, *(*sub nom. *Manitoba Assn. of Health Care Professionals v. Nor-Man Regional Health Authority Inc.)* 340 D.L.R. (4th) 1, 29 Admin. L.R. (5th) 1, *(*sub nom. *Manitoba Association of Health Care Professionals v. Nor-Man Regional Health Authority Inc.)* 423 N.R. 95, [2012] 2 W.W.R. 619, 96 C.C.E.L. (3d) 1, *(*sub nom. *Nor-Man Regional Health Authority Inc. v. M.A.H.C.P.)* 2012 C.L.L.C. 220-004, *(*sub nom. *Manitoba Assn. of Health Care Professionals v. Nor-Man Regional Health Authority Inc.)* 212 L.A.C. (4th) 93, *(*sub nom. *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals)* [2011] 3 S.C.R. 616, *(*sub nom. *Manitoba Association of Health Care Professionals v. Nor-Man Regional Health Authority Inc.)* 275 Man. R. (2d) 16, *(*sub nom. *Manitoba Association of Health Care Professionals v. Nor-Man Regional Health Authority Inc.)* 538 W.A.C. 16 (S.C.C.) — referred to

Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency (2017), 2017 FCA 45, 2017 CarswellNat 609, 411 D.L.R. (4th) 175, 2017 CAF 45, 2017 CarswellNat 10261 (F.C.A.) — referred to

Martin v. Nova Scotia (Workers' Compensation Board) (2003), 2003 SCC 54, 2003 CarswellNS 360, 2003 CarswellNS 361, 4 Admin. L.R. (4th) 1, 28 C.C.E.L. (3d) 1, *(*sub nom. *Nova Scotia (Workers' Compensation Board) v. Martin)* 231 D.L.R. (4th) 385, 310 N.R. 22, *(*sub nom. *Nova Scotia (Workers' Compensation Board) v. Martin)* [2003] 2 S.C.R. 504, *(*sub nom. *Workers' Compensation Board (N.S.) v. Martin)* 217 N.S.R. (2d) 301, *(*sub nom. *Workers' Compensation Board (N.S.) v. Martin)* 683 A.P.R. 301, 110 C.R.R. (2d) 233, 2003 CSC 54 (S.C.C.) — referred to

McCormick v. Fasken Martineau Dumoulin LLP (2014), 2014 SCC 39, 2014 CSC 39, 2014 CarswellBC 1358, 2014 CarswellBC 1359, 371 D.L.R. (4th) 246, [2014] 7 W.W.R. 209, 67 Admin. L.R. (5th) 177, 57 B.C.L.R. (5th) 1, 2014 C.L.L.C. 230-024, 15 C.C.E.L. (4th) 1, 22 B.L.R. (5th) 1, *(*sub nom. *Fasken Martineau Dumoulin LLP v. Human Rights Tribunal (B.C.))* 458 N.R. 38, [2014] 2 S.C.R. 108, 79 C.H.R.R. D/178 (S.C.C.) — referred to

MiningWatch Canada v. Canada (Minister of Fisheries & Oceans) (2010), 2010 SCC 2, 2010 CarswellNat 55, 2010 CarswellNat 56, 47 C.E.L.R. (3d) 159, 397 N.R. 232, 99 Admin. L.R. (4th) 1, 315 D.L.R. (4th) 434, [2010] 1 S.C.R. 6 (S.C.C.) — referred to

Mobil Oil Canada Ltd. v. Canada-Newfoundland (Offshore Petroleum Board) (1994), 163 N.R. 27, 21 Admin. L.R. (2d) 248, 115 Nfld. & P.E.I.R. 334, 360 A.P.R. 334, [1994] 1 S.C.R. 202, 111 D.L.R. (4th) 1, 1994 CarswellNfld 211, 1994 CarswellNfld 277 (S.C.C.) — referred to

Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services) (2004), 2004 SCC 54, 2004 CarswellOnt 3172, 2004 CarswellOnt 3173, 41 C.C.P.B. 106, 2004 C.E.B. & P.G.R. 8112 (headnote only), 45 B.L.R. (3d) 161, 242 D.L.R. (4th) 193, 324 N.R. 259, 189 O.A.C. 201, 17 Admin. L.R. (4th) 1, [2004] 3 S.C.R. 152, 75 O.R. (3d) 479 (note), 2004 CSC 54, 75 O.R. (3d) 479 (S.C.C.) — referred to

Montréal (Ville) c. Administration portuaire de Montréal (2010), 2010 SCC 14, 2010 CarswellNat 838, 2010 CarswellNat 839, 67 M.P.L.R. (4th) 1, 90 R.P.R. (4th) 1, 99 Admin. L.R. (4th) 167, *(*sub nom. *Montréal (City) v. Montreal Port Authority)* 317 D.L.R. (4th) 193, *(*sub nom. *Montreal (City) v. Canadian Broadcasting Corp.)* 400 N.R. 279, *(*sub nom. *Montréal (City) v. Montreal Port Authority)* [2010] 1 S.C.R. 427 (S.C.C.) — considered

Moore v. British Columbia (Ministry of Education) (2012), 2012 SCC 61, 2012 CarswellBC 3446, 2012 CarswellBC 3447, 351 D.L.R. (4th) 451, [2012] 12 W.W.R. 637, 38 B.C.L.R. (5th) 1, 436 N.R. 152, *(*sub nom. *British Columbia (Ministry of Education) v. Moore)* 328 B.C.A.C. 1, *(*sub nom. *British Columbia (Ministry of Education) v. Moore)* 558 W.A.C. 1, [2012] 3 S.C.R. 360, 75 C.H.R.R. D/369 (S.C.C.) — referred to

Mora Gonzalez v. Canada (Minister of Citizenship and Immigration) (2014), 2014 FC 750, 2014 CarswellNat 2963, 2014 CF 750, 2014 CarswellNat 3800, 27 Imm. L.R. (4th) 151, (sub nom. *Gonzalez v. Canada (Minister of Citizenship and Immigration))* 460 F.T.R. 221 (F.C.) — referred to

Moreau-Bérubé c. Nouveau-Brunswick (2002), 2002 SCC 11, 2002 CarswellNB 46, 2002 CarswellNB 47, (sub nom. *Moreau-Bérubé v. New Brunswick (Judicial Council))* 209 D.L.R. (4th) 1, 36 Admin. L.R. (3d) 1, (sub nom. *Nouveau-Brunswick (Conseil de la magistrature) v. Moreau-Bérubé)* 281 N.R. 201, (sub nom. *Conseil de la magistrature (N.-B.) v. Moreau-Bérubé)* 245 N.B.R. (2d) 201, (sub nom. *Conseil de la magistrature (N.-B.) v. Moreau-Bérubé)* 636 A.P.R. 201, [2002] 1 S.C.R. 249, 2002 CSC 11 (S.C.C.) — referred to

Mouvement laïque québécois v. Saguenay (City) (2015), 2015 SCC 16, 2015 CSC 16, 2015 CarswellQue 2626, 2015 CarswellQue 2627, 382 D.L.R. (4th) 385, 34 M.P.L.R. (5th) 1, 22 C.C.E.L. (4th) 1, 470 N.R. 1, 83 Admin. L.R. (5th) 183, [2015] 2 S.C.R. 3, 332 C.R.R. (2d) 183, 83 C.H.R.R. D/291 (S.C.C.) — considered

N.L.N.U. v. Newfoundland & Labrador (Treasury Board) (2011), 2011 SCC 62, 2011 CarswellNfld 414, 2011 CarswellNfld 415, D.T.E. 2012T-7, 340 D.L.R. (4th) 17, (sub nom. *Nfld. and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board))* 2011 C.L.L.C. 220-008, (sub nom. *Newfoundland & Labrador Nurses' Union v. Newfoundland & Labrador (Treasury Board))* 424 N.R. 220, (sub nom. *Newfoundland & Labrador Nurses' Union v. Newfoundland & Labrador (Treasury Board))* [2011] 3 S.C.R. 708, 213 L.A.C. (4th) 95, (sub nom. *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board))* 986 A.P.R. 340, (sub nom. *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board))* 317 Nfld. & P.E.I.R. 340, 97 C.C.E.L. (3d) 199, 38 Admin. L.R. (5th) 255, 2011 CSC 62 (S.C.C.) — considered

Office of the Children's Lawyer v. Balev (2018), 2018 SCC 16, 2018 CSC 16, 2018 CarswellOnt 6096, 2018 CarswellOnt 6097, 5 R.F.L. (8th) 1, 424 D.L.R. (4th) 391, [2018] 1 S.C.R. 398 (S.C.C.) — referred to

Petro-Canada v. British Columbia (Workers' Compensation Board) (2009), 2009 BCCA 396, 2009 CarswellBC 2416, 98 B.C.L.R. (4th) 1, 276 B.C.A.C. 135, 468 W.A.C. 135 (B.C. C.A.) — considered

Pezim v. British Columbia (Superintendent of Brokers) (1994), 4 C.C.L.S. 117, [1994] 2 S.C.R. 557, 114 D.L.R. (4th) 385, (sub nom. *Pezim v. British Columbia (Securities Commission))* 168 N.R. 321, [1994] 7 W.W.R. 1, 92 B.C.L.R. (2d) 145, (sub nom. *Pezim v. British Columbia (Securities Commission))* 46 B.C.A.C. 1, (sub nom. *Pezim v. British Columbia (Securities Commission))* 75 W.A.C. 1, 22 Admin. L.R. (2d) 1, 14 B.L.R. (2d) 217, 1994 CarswellBC 232, 1994 CarswellBC 1242, [1994] 24 B.C.S.C.W.S. 23 (S.C.C.) — considered

Public Performance of Musical Works, Re (2012), 2012 SCC 35, 2012 CarswellNat 2378, 2012 CarswellNat 2379, 102 C.P.R. (4th) 204, (sub nom. *Shaw Cablesystems G.P. v. Society of Composers, Authors and Music Publishers of Canada)* 347 D.L.R. (4th) 235, 38 Admin. L.R. (5th) 1, (sub nom. *Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada)* 432 N.R. 1, (sub nom. *Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada)* [2012] 2 S.C.R. 283, 2012 CSC 35 (S.C.C.) — referred to

Pushpanathan v. Canada (Minister of Employment & Immigration) (1998), 226 N.R. 201, (sub nom. *Pushpanathan v. Canada (Minister of Citizenship & Immigration))* 160 D.L.R. (4th) 193, (sub nom. *Pushpanathan v. Canada (Minister of Citizenship & Immigration))* [1998] 1 S.C.R. 982, 1998 CarswellNat 830, 1998 CarswellNat 831, 43 Imm. L.R. (2d) 117, 11 Admin. L.R. (3d) 1, 6 B.H.R.C. 387, [1999] I.N.L.R. 36 (S.C.C.) — referred to

Q. v. College of Physicians & Surgeons (British Columbia) (2003), 2003 SCC 19, 2003 CarswellBC 713, 2003 CarswellBC 743, 11 B.C.L.R. (4th) 1, [2003] 5 W.W.R. 1, 223 D.L.R. (4th) 599, 48 Admin. L.R. (3d) 1, (sub nom. *Dr. Q., Re)* 302 N.R. 34, (sub nom. *Dr. Q., Re)* 179 B.C.A.C. 170, (sub nom. *Dr. Q., Re)* 295 W.A.C. 170, (sub nom. *Dr. Q. v. College of Physicians & Surgeons of British Columbia)* [2003] 1 S.C.R. 226, 2003 CSC 19 (S.C.C.) — referred to

Queensland v. Commonwealth (1977), 139 C.L.R. 585, 52 A.L.J.R. 100, 16 A.L.R. 487, [1977] HCA 60 (Australia H.C.) — considered

Québec (Commission des droits de la personne & des droits de la jeunesse) c. Québec (Procureure générale) (2004), 2004 SCC 39, 2004 CarswellQue 1343, 2004 CarswellQue 1344, (sub nom. *Quebec (Morin) v. Quebec (Attorney General))* 2004 C.L.L.C. 230-023, (sub nom. *Québec (Commission des droits de la personne & des droits de la jeunesse) v. Quebec (Attorney General))* 240 D.L.R. (4th) 577, (sub nom. *Commission des droits de la personne & des droits de la jeunesse (Que.) v. Quebec (Attorney General))* 321 N.R. 290, 128 L.A.C. (4th) 1, 15 Admin. L.R. (4th) 1, [2004] 2 S.C.R. 185,

(sub nom. *Québec (Procureur général) c. Québec (Commission des drotis de la personne & des drotis de la jeunesse)*) 49 C.H.R.R. D/413, 2004 CSC 39, D.T.E. 2004T-617 (S.C.C.) — considered

Québec (Procureur général) c. Carrières Ste-Thérèse ltée (1985), 13 Admin. L.R. 144, (sub nom. *Quebec v. Carrières Ste-Thérèse Ltée)* 59 N.R. 391, (sub nom. *Attorney General of Québec v. Carrières Ste-Thérèse Ltée)* 20 C.C.C. (3d) 408, (sub nom. *Attorney General of Québec v. Carrières Ste-Thérèse Ltée)* 20 D.L.R. (4th) 602, [1985] 1 S.C.R. 831, 1985 CarswellQue 85, 1985 CarswellQue 109 (S.C.C.) — referred to

Québec (Procureure générale) c. Guérin (2017), 2017 SCC 42, 2017 CSC 42, 2017 CarswellQue 5861, 2017 CarswellQue 5862, 20 Admin. L.R. (6th) 1, 412 D.L.R. (4th) 103, [2017] 2 S.C.R. 3 (S.C.C.) — considered

Québec (Procureure générale) c. Montréal (Ville) (2016), 2016 QCCA 2108, 2016 CarswellQue 12302, 17 Admin. L.R. (6th) 328 (C.A. Que.) — referred to

R. v. Appulonappa (2015), 2015 SCC 59, 2015 CarswellBC 3427, 2015 CarswellBC 3428, 390 D.L.R. (4th) 425, 35 Imm. L.R. (4th) 171, 24 C.R. (7th) 385, 478 N.R. 3, 379 B.C.A.C. 3, 654 W.A.C. 3, [2015] 3 S.C.R. 754, 332 C.C.C. (3d) 1, 345 C.R.R. (2d) 74, 2015 CSC 59 (S.C.C.) — considered

R. v. B. (K.G.) (1993), 19 C.R. (4th) 1, [1993] 1 S.C.R. 740, 61 O.A.C. 1, 148 N.R. 241, 79 C.C.C. (3d) 257, 1993 CarswellOnt 76, 1993 CarswellOnt 975 (S.C.C.) — referred to

R. v. Bernard (1988), 67 C.R. (3d) 113, 32 O.A.C. 161, [1988] 2 S.C.R. 833, 90 N.R. 321, 45 C.C.C. (3d) 1, 38 C.R.R. 82, 1988 CarswellOnt 93, 1988 CarswellOnt 971 (S.C.C.) — considered

R. v. Campbell (1997), 11 C.P.C. (4th) 1, (sub nom. *Reference re Public Sector Pay Reduction Act (P.E.I.), s. 10)* 150 D.L.R. (4th) 577, 118 C.C.C. (3d) 193, (sub nom. *Provincial Court Judges Assn. (Manitoba) v. Manitoba (Minister of Justice))* 46 C.R.R. (2d) 1, (sub nom. *Reference re Remuneration of Judges of the Provincial Court (P.E.I.))* 206 A.R. 1, (sub nom. *Reference re Remuneration of Judges of the Provincial Court (P.E.I.))* 156 W.A.C. 1, (sub nom. *Reference re Remuneration of Judges of the Provincial Court (P.E.I.))* 156 Nfld. & P.E.I.R. 1, (sub nom. *Reference re Remuneration of Judges of the Provincial Court (P.E.I.))* 483 A.P.R. 1, 217 N.R. 1, (sub nom. *Reference re Remuneration of Judges of the Provincial Court (P.E.I.))* 121 Man. R. (2d) 1, 49 Admin. L.R. (2d) 1, (sub nom. *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island)* [1997] 3 S.C.R. 3, [1997] 10 W.W.R. 417, 1997 CarswellNat 3038, 1997 CarswellNat 3039 (S.C.C.) — referred to

R. v. Hape (2007), 2007 SCC 26, 2007 CarswellOnt 3563, 2007 CarswellOnt 3564, 220 C.C.C. (3d) 161, 47 C.R. (6th) 96, 280 D.L.R. (4th) 385, 363 N.R. 1, 227 O.A.C. 191, 160 C.R.R. (2d) 1, [2007] 2 S.C.R. 292 (S.C.C.) — considered

R. v. Henry (2005), 2005 SCC 76, 2005 CarswellBC 2972, 2005 CarswellBC 2973, 33 C.R. (6th) 215, 202 C.C.C. (3d) 449, 260 D.L.R. (4th) 411, 49 B.C.L.R. (4th) 1, 219 B.C.A.C. 1, 361 W.A.C. 1, 376 A.R. 1, 360 W.A.C. 1, 136 C.R.R. (2d) 121, [2006] 4 W.W.R. 605, (sub nom. *R. c. Henry)* [2005] 3 S.C.R. 609, 342 N.R. 259 (S.C.C.) — referred to

R. v. Owen (2003), 2003 SCC 33, 2003 CarswellOnt 2081, 2003 CarswellOnt 2082, 174 C.C.C. (3d) 1, 225 D.L.R. (4th) 427, 304 N.R. 254, 11 C.R. (6th) 226, [2003] 1 S.C.R. 779, 67 O.R. (3d) 96 (note) (S.C.C.) — referred to

R. v. Robinson (1996), [1996] 4 W.W.R. 609, 46 C.R. (4th) 1, 105 C.C.C. (3d) 97, 194 N.R. 181, 133 D.L.R. (4th) 42, 34 C.R.R. (2d) 205, [1996] 1 S.C.R. 683, 72 B.C.A.C. 161, 119 W.A.C. 161, 1996 CarswellBC 999, 1996 CarswellBC 999F (S.C.C.) — referred to

R. v. Sheppard (2002), 2002 SCC 26, 2002 CarswellNfld 74, 2002 CarswellNfld 75, 162 C.C.C. (3d) 298, 210 D.L.R. (4th) 608, 50 C.R. (5th) 68, 284 N.R. 342, 211 Nfld. & P.E.I.R. 50, 633 A.P.R. 50, [2002] 1 S.C.R. 869 (S.C.C.) — referred to

Regina Police Assn. v. Regina (City) Police Commissioners (2000), 2000 SCC 14, 2000 CarswellSask 90, 2000 CarswellSask 91, (sub nom. *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners)* 183 D.L.R. (4th) 14, [2000] 4 W.W.R. 149, (sub nom. *Regina Police Assn. Inc. v. Board of Police Commissioners of Regina)* 251 N.R. 16, (sub nom. *Board of Police Commissioners of the City of Regina v. Regina Police Assn.)* 2000 C.L.L.C. 220-027, 50 C.C.E.L. (2d) 1, (sub nom. *Regina Police Assn. Inc. v. Board of Police Commissioners of Regina)* 189 Sask. R. 23, (sub nom. *Regina Police Assn. Inc. v. Board of Police Commissioners of Regina)* 216 W.A.C. 23, (sub nom. *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners)* [2000] 1 S.C.R. 360, 2000 CSC 14 (S.C.C.) — considered

Reid v. Ontario (Criminal Injuries Compensation Board) (2015), 2015 ONSC 6578, 2015 CarswellOnt 16144 (Ont. Div. Ct.) — referred to

Renaud c. Québec (Commission des affaires sociales) (1999), 1999 CarswellQue 3676, 1999 CarswellQue 3677, (sub nom. *Renaud v. Société de l'assurance automobile du Québec)* 249 N.R. 389, [1999] 3 S.C.R. 855, (sub nom. *Renaud v. Québec (Commission des affaires sociales))* 184 D.L.R. (4th) 441 (S.C.C.) — referred to

Rizzo & Rizzo Shoes Ltd., Re (1998), 1998 CarswellOnt 1, 1998 CarswellOnt 2, 154 D.L.R. (4th) 193, 36 O.R. (3d) 418 (headnote only), (sub nom. *Rizzo & Rizzo Shoes Ltd. (Bankrupt), Re)* 221 N.R. 241, (sub nom. *Adrien v. Ontario Ministry of Labour)* 98 C.L.L.C. 210-006, 50 C.B.R. (3d) 163, (sub nom. *Rizzo & Rizzo Shoes Ltd. (Bankrupt), Re)* 106 O.A.C. 1, [1998] 1 S.C.R. 27, 33 C.C.E.L. (2d) 173 (S.C.C.) — considered

Roncarelli c. Duplessis (1959), [1959] S.C.R. 121, 16 D.L.R. (2d) 689, 1959 CarswellQue 37 (S.C.C.) — considered

Ryan v. Law Society (New Brunswick) (2003), 2003 SCC 20, 2003 CarswellNB 145, 2003 CarswellNB 146, 223 D.L.R. (4th) 577, 48 Admin. L.R. (3d) 33, 302 N.R. 1, 31 C.P.C. (5th) 1, 257 N.B.R. (2d) 207, 674 A.P.R. 207, (sub nom. *Law Society of New Brunswick v. Ryan)* [2003] 1 S.C.R. 247, 2003 CSC 20 (S.C.C.) — considered

Sangmo v. Canada (Minister of Citizenship and Immigration) (2016), 2016 FC 17, 2016 CarswellNat 20, 2016 CF 17, 2016 CarswellNat 1914 (F.C.) — referred to

Scierie Thomas-Louis Tremblay inc. c. J.R. Normand inc. (2005), 2005 SCC 46, 2005 CarswellQue 5110, 2005 CarswellQue 5111, (sub nom. *GreCon Dimter Inc. v. J.R. Normand Inc.)* 255 D.L.R. (4th) 257, (sub nom. *GreCon Dimter Inc. v. Normand (J.R.) Inc.)* 336 N.R. 347, (sub nom. *GreCon Dimter Inc. v. J.R. Normand Inc.)* [2005] 2 S.C.R. 401, 2005 CSC 46 (S.C.C.) — referred to

Shoppers Drug Mart Inc. v. Ontario (Minister of Health and Long-Term Care) (2013), 2013 SCC 64, 2013 CarswellOnt 15719, 2013 CarswellOnt 15720, 58 Admin. L.R. (5th) 173, 366 D.L.R. (4th) 62, 451 N.R. 80, 312 O.A.C. 169, [2013] 3 S.C.R. 810, 130 O.R. (3d) 240 (note) (S.C.C.) — referred to

Suresh v. Canada (Minister of Citizenship & Immigration) (2002), 2002 SCC 1, 2002 CarswellNat 7, 2002 CarswellNat 8, 18 Imm. L.R. (3d) 1, 208 D.L.R. (4th) 1, 281 N.R. 1, 90 C.R.R. (2d) 1, 37 Admin. L.R. (3d) 159, [2002] 1 S.C.R. 3, 2002 CSC 1 (S.C.C.) — considered

Syndicat national des employés de la commission scolaire régionale de l'Outaouais v. U.E.S., local 298 (1988), 35 Admin. L.R. 153, 95 N.R. 161, 89 C.L.L.C. 14,045, 24 Q.A.C. 244, (sub nom. *Union des employés de service, local 298 v. Bibeault)* [1988] 2 S.C.R. 1048, 1988 CarswellQue 125, 1988 CarswellQue 148 (S.C.C.) — referred to

Taman v. Canada (Attorney General) (2017), 2017 FCA 1, 2017 CarswellNat 8, 11 Admin. L.R. (6th) 1, 406 D.L.R. (4th) 134, 37 C.C.E.L. (4th) 5, 2017 CAF 1, 2017 CarswellNat 1487, [2017] 3 F.C.R. 520 (F.C.A.) — referred to

Tervita Corp. v. Canada (Commissioner of Competition) (2015), 2015 SCC 3, 2015 CSC 3, 2015 CarswellNat 32, 2015 CarswellNat 33, 380 D.L.R. (4th) 381, 79 Admin. L.R. (5th) 1, 467 N.R. 97, [2015] 1 S.C.R. 161 (S.C.C.) — referred to

Toronto (City) v. C.U.P.E., Local 79 (2003), 2003 SCC 63, 2003 CarswellOnt 4328, 2003 CarswellOnt 4329, 2003 C.L.L.C. 220-071, 232 D.L.R. (4th) 385, 311 N.R. 201, 120 L.A.C. (4th) 225, 179 O.A.C. 291, 17 C.R. (6th) 276, [2003] 3 S.C.R. 77, 9 Admin. L.R. (4th) 161, 31 C.C.E.L. (3d) 216 (S.C.C.) — considered

Westcoast Energy Inc. v. Canada (National Energy Board) (1998), 156 D.L.R. (4th) 456, 1998 CarswellNat 266, 1998 CarswellNat 267, 223 N.R. 241, [1998] 1 S.C.R. 322, 3 Admin. L.R. (3d) 163 (S.C.C.) — referred to

Wilson v. Atomic Energy of Canada Ltd. (2016), 2016 SCC 29, 2016 CSC 29, 2016 CarswellNat 2998, 2016 CarswellNat 2999, D.T.E. 2016T-547, 2 Admin. L.R. (6th) 181, 32 C.C.E.L. (4th) 1, 399 D.L.R. (4th) 193, (sub nom. *Atomic Energy of Canada Ltd. v. Wilson)* 485 N.R. 99, 2016 C.L.L.C. 210-040, [2016] 1 S.C.R. 770 (S.C.C.) — considered

Wright v. Nova Scotia (Human Rights Commission) (2017), 2017 NSSC 11, 2017 CarswellNS 11, 85 C.H.R.R. D/48, 23 Admin. L.R. (6th) 110 (N.S. S.C.) — referred to

Cases considered by *Abella J., Karakatsanis J.*:

A.T.A. v. Alberta (Information & Privacy Commissioner) (2011), 2011 SCC 61, 2011 CarswellAlta 2068, 2011 CarswellAlta 2069, 339 D.L.R. (4th) 428, 28 Admin. L.R. (5th) 177, 52 Alta. L.R. (5th) 1, [2012] 2 W.W.R. 434, (sub nom. *Alberta Teachers' Association v. Information & Privacy Commissioner (Alta.))* 424 N.R. 70, (sub nom. *Alberta (Information & Privacy Commissioner) v. Alberta Teachers' Association)* [2011] 3 S.C.R. 654, (sub nom. *Alberta Teachers' Association v. Information and Privacy Commissioner)* 519 A.R. 1, (sub nom. *Alberta Teachers' Association v. Information and Privacy Commissioner)* 539 W.A.C. 1 (S.C.C.) — considered

ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission) (2015), 2015 SCC 45, 2015 CSC 45, 2015 CarswellAlta 1745, 2015 CarswellAlta 1746, 21 C.C.P.B. (2nd) 1, 388 D.L.R. (4th) 515, 475 N.R. 83, 20 Alta. L.R. (6th) 292, 602 A.R. 1, 647 W.A.C. 1, [2015] 3 S.C.R. 219 (S.C.C.) — considered

Agraira v. Canada (Minister of Public Safety and Emergency Preparedness) (2013), 2013 SCC 36, 2013 CarswellNat 1983, 2013 CarswellNat 1984, 52 Admin. L.R. (5th) 183, 360 D.L.R. (4th) 411, 16 Imm. L.R. (4th) 173, 446 N.R. 65, [2013] 2 S.C.R. 559 (S.C.C.) — considered

Al-Ghamdi v. Canada (Minister of Foreign Affairs & International Trade) (2007), 2007 FC 559, 2007 CarswellNat 1452, 2007 CF 559, 2007 CarswellNat 2819, 64 Imm. L.R. (3d) 67, 315 F.T.R. 1 (Eng.) (F.C.) — considered

Alliance Pipeline Ltd. v. Smith (2011), 2011 SCC 7, 2011 CarswellNat 202, 2011 CarswellNat 203, 328 D.L.R. (4th) 1, 56 C.E.L.R. (3d) 161, 102 L.C.R. 1, 16 Admin. L.R. (5th) 157, 412 N.R. 66, [2011] 1 S.C.R. 160 (S.C.C.) — considered

Anisminic Ltd. v. Foreign Compensation Commission (1968), [1969] 1 All E.R. 208, [1969] 2 A.C. 147, [1969] 2 W.L.R. 163 (U.K. H.L.) — considered

Auer v. Robbins (1997), 519 U.S. 452 (U.S. Sup. Ct.) — considered

Baker v. Campbell (1983), 153 C.L.R. 52, 57 A.L.J.R. 749, 49 A.L.R. 385, 14 A.T.R. 713, 83 A.T.C. 4606 (Australia H.C.) — considered

Baker v. Canada (Minister of Citizenship & Immigration) (1999), 174 D.L.R. (4th) 193, 1999 CarswellNat 1124, 1999 CarswellNat 1125, 243 N.R. 22, 1 Imm. L.R. (3d) 1, 14 Admin. L.R. (3d) 173, [1999] 2 S.C.R. 817, 1999 SCC 699 (S.C.C.) — considered

Bedford v. Canada (Attorney General) (2013), 2013 SCC 72, 2013 CarswellOnt 17681, 2013 CarswellOnt 17682, 303 C.C.C. (3d) 146, 366 D.L.R. (4th) 237, 7 C.R. (7th) 1, 312 O.A.C. 53, 452 N.R. 1, (sub nom. *Canada (Attorney General) v. Bedford)* [2013] 3 S.C.R. 1101, (sub nom. *Canada (Attorney General) v. Bedford)* 297 C.R.R. (2d) 334, 128 O.R. (3d) 385 (note) (S.C.C.) — considered

Bell Canada v. Canada (Attorney General) (2019), 2019 SCC 66, 2019 CSC 66, 2019 CarswellNat 7881, 2019 CarswellNat 7882, 60 Admin. L.R. (6th) 1, 441 D.L.R. (4th) 155, 171 C.P.R. (4th) 215, [2019] 4 S.C.R. 845 (S.C.C.) — considered

Bell Canada v. Canadian Radio-Television & Telecommunications Commission (1989), 38 Admin. L.R. 1, [1989] 1 S.C.R. 1722, 60 D.L.R. (4th) 682, 97 N.R. 15, 1989 CarswellNat 586, 1989 CarswellNat 697 (S.C.C.) — referred to

Bell Canada v. Canadian Radio-Television & Telecommunications Commission (2009), 2009 SCC 40, 2009 CarswellNat 2717, 2009 CarswellNat 2718, 92 Admin. L.R. (4th) 157, (sub nom. *Consumers Association of Canada v. Canadian Radio-Television and Telecommunications Commission)* 392 N.R. 323, 310 D.L.R. (4th) 608, (sub nom. *Bell Canada v. Bell Aliant Regional Communications)* [2009] 2 S.C.R. 764 (S.C.C.) — considered

Bell v. Ontario (Human Rights Commission) (1971), [1971] S.C.R. 756, 18 D.L.R. (3d) 1, 1971 CarswellOnt 156, 1971 CarswellOnt 156F (S.C.C.) — considered

Bilski v. Kappos (2010), 561 U.S. 59 (U.S. Sup. Ct.) — referred to

Blencoe v. British Columbia (Human Rights Commission) (2000), 2000 SCC 44, 2000 CarswellBC 1860, 2000 CarswellBC 1861, 3 C.C.E.L. (3d) 165, 81 B.C.L.R. (3d) 1, 190 D.L.R. (4th) 513, [2000] 10 W.W.R. 567, 23 Admin. L.R. (3d) 175, 2000 C.L.L.C. 230-040, 260 N.R. 1, (sub nom. *British Columbia (Human Rights Commission) v. Blencoe)* 77 C.R.R. (2d) 189, 141 B.C.A.C. 161, 231 W.A.C. 161, [2000] 2 S.C.R. 307, (sub nom. *British Columbia (Human Rights Commission) v. Blencoe)* 38 C.H.R.R. D/153, 2000 CSC 44 (S.C.C.) — considered

Bowles v. Seminole Rock & Sand Co. (1945), 325 U.S. 410 (U.S. Sup. Ct.) — considered

British Columbia (Securities Commission) v. McLean (2013), 2013 SCC 67, 2013 CarswellBC 3618, 2013 CarswellBC 3619, 366 D.L.R. (4th) 30, [2014] 2 W.W.R. 415, (sub nom. *McLean v. British Columbia Securities Commission)* 452 N.R. 340, 53 B.C.L.R. (5th) 1, (sub nom. *McLean v. British Columbia (Securities Commission))* [2013] 3 S.C.R. 895, (sub nom. *McLean v. British Columbia Securities Commission)* 347 B.C.A.C. 1, (sub nom. *McLean v. British Columbia Securities Commission)* 593 W.A.C. 1, 64 Admin. L.R. (5th) 237 (S.C.C.) — considered

Brossard (Ville) c. Québec (Commission des droits de la personne) (1988), 88 C.L.L.C. 17,031, 18 Q.A.C. 164, 53 D.L.R. (4th) 609, 88 N.R. 321, 10 C.H.R.R. D/5515, 1988 CarswellQue 154, 1988 CarswellQue 154F, [1988] 2 S.C.R. 279 (S.C.C.) — considered

C.J.A., Local 579 v. Bradco Construction Ltd. (1993), 12 Admin. L.R. (2d) 165, [1993] 2 S.C.R. 316, 106 Nfld. & P.E.I.R. 140, 334 A.P.R. 140, 93 C.L.L.C. 14,033, 153 N.R. 81, 102 D.L.R. (4th) 402, 1993 CarswellNfld 114, 1993 CarswellNfld 132 (S.C.C.) — considered

C.U.P.E., Local 963 v. New Brunswick Liquor Corp. (1979), 25 N.B.R. (2d) 237, [1979] 2 S.C.R. 227, 51 A.P.R. 237, 26 N.R. 341, 79 C.L.L.C. 14,209, 97 D.L.R. (3d) 417, N.B.L.L.C. 24259, 1979 CarswellNB 17, 1979 CarswellNB 17F (S.C.C.) — considered

Canada (Attorney General) v. Igloo Vikski Inc. (2016), 2016 SCC 38, 2016 CSC 38, 2016 CarswellNat 4645, 2016 CarswellNat 4646, 401 D.L.R. (4th) 197, 487 N.R. 318, 21 T.T.R. (2d) 182, [2016] 2 S.C.R. 80 (S.C.C.) — considered

Canada (Attorney General) v. Mowat (2011), 2011 SCC 53, 2011 CarswellNat 4190, 2011 CarswellNat 4191, 93 C.C.E.L. (3d) 1, 337 D.L.R. (4th) 385, 26 Admin. L.R. (5th) 1, D.T.E. 2011T-708, 422 N.R. 248, (sub nom. *C.H.R.C. v. Canada (A.G.)*) 2011 C.L.L.C. 230-043, (sub nom. *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*) [2011] 3 S.C.R. 471, (sub nom. *Canada (Human Rights Comm.) v. Canada (Attorney General)*) 73 C.H.R.R. D/30 (S.C.C.) — considered

Canada (Attorney General) v. P.S.A.C. (1991), 91 C.L.L.C. 14,017, 80 D.L.R. (4th) 520, (sub nom. *Canada (Procureur général) v. A.F.P.C.)* 123 N.R. 161, 48 Admin. L.R. 161, [1991] 1 S.C.R. 614, 1991 CarswellNat 753, 1991 CarswellNat 828 (S.C.C.) — considered

Canada (Director of Investigation & Research) v. Southam Inc. (1997), 144 D.L.R. (4th) 1, 71 C.P.R. (3d) 417, [1997] 1 S.C.R. 748, 209 N.R. 20, 50 Admin. L.R. (2d) 199, 1997 CarswellNat 368, 1997 CarswellNat 369 (S.C.C.) — considered

Canada (Minister of Citizenship and Immigration) v. Khosa (2009), 2009 SCC 12, 2009 CarswellNat 434, 2009 CarswellNat 435, 82 Admin. L.R. (4th) 1, 77 Imm. L.R. (3d) 1, 385 N.R. 206, 304 D.L.R. (4th) 1, (sub nom. *Canada (Citizenship & Immigration) v. Khosa)* [2009] 1 S.C.R. 339, 2009 CSC 12 (S.C.C.) — considered

Canada (Minister of Indian Affairs & Northern Development) v. Ranville (1982), [1982] 2 S.C.R. 518, 139 D.L.R. (3d) 1, 44 N.R. 616, [1983] 1 C.N.L.R. 12, [1983] R.D.J. 16, 1982 CarswellNat 486, 1982 CarswellNat 486F (S.C.C.) — considered

Cartaway Resources Corp., Re (2004), 2004 SCC 26, 2004 CarswellBC 844, 2004 CarswellBC 845, 238 D.L.R. (4th) 193, 319 N.R. 1, 28 B.C.L.R. (4th) 1, [2004] 8 W.W.R. 62, 195 B.C.A.C. 161, 319 W.A.C. 161, 14 Admin. L.R. (4th) 190, [2004] 1 S.C.R. 672, 2004 CSC 26 (S.C.C.) — referred to

Catalyst Paper Corp. v. North Cowichan (District) (2012), 2012 SCC 2, 2012 CarswellBC 17, 2012 CarswellBC 18, 11 R.P.R. (5th) 1, [2012] 2 W.W.R. 415, 26 B.C.L.R. (5th) 1, 340 D.L.R. (4th) 385, 93 M.P.L.R. (4th) 1, 425 N.R. 22, 316 B.C.A.C. 1, 537 W.A.C. 1, 34 Admin. L.R. (5th) 175, [2012] 1 S.C.R. 5 (S.C.C.) — referred to

Celgene Corp. v. Canada (Attorney General) (2011), 2011 SCC 1, 2011 CarswellNat 34, 2011 CarswellNat 35, 89 C.P.R. (4th) 1, 14 Admin. L.R. (5th) 1, 327 D.L.R. (4th) 513, 410 N.R. 127, [2011] 1 S.C.R. 3 (S.C.C.) — referred to

Chieu v. Canada (Minister of Citizenship & Immigration) (2002), 2002 SCC 3, 2002 CarswellNat 5, 2002 CarswellNat 6, 18 Imm. L.R. (3d) 93, 208 D.L.R. (4th) 107, 280 N.R. 268, 37 Admin. L.R. (3d) 252, [2002] 1 S.C.R. 84, 2002 CSC 3 (S.C.C.) — referred to

Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission) (2001), 2001 SCC 37, 2001 CarswellOnt 1959, 2001 CarswellOnt 1960, 24 O.S.C.B. 3641, 29 Admin. L.R. (3d) 1, 199 D.L.R. (4th) 577, (sub nom. *Asbestos Corp., Société nationale de l'Amiante & Quebec (Province), Re)* 269 N.R. 311, 14 B.L.R. (3d) 1, 146 O.A.C. 201, [2001] 2 S.C.R. 132, 2001 CSC 37 (S.C.C.) — referred to

Construction Labour Relations Assn. (Alberta) v. Driver Iron Inc. (2012), 2012 SCC 65, 2012 CarswellAlta 1955, 2012 CarswellAlta 1956, D.T.E. 2012T-839, 43 Admin. L.R. (5th) 1, 352 D.L.R. (4th) 487, (sub nom. *Driver Iron Inc. v. International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local Union No. 720)* 437 N.R. 202, (sub nom. *Construction Labour Relations v. Driver Iron Inc.)* 2013 C.L.L.C. 220-003, (sub nom. *Driver Iron Inc. v. International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local Union No. 720)* 539 A.R. 17, (sub nom. *Driver Iron Inc. v. International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local Union No. 720)* 561 W.A.C. 17, (sub nom. *Construction Labour Relations v. Driver Iron Inc.)* [2012] 3 S.C.R. 405, (sub nom. *Construction Labour Relations v. Driver Iron Inc.)* 228 C.L.R.B.R. (2d) 24, [2012] Alta. L.R.B.R. 182 (S.C.C.) — referred to

Craig v. R. (2012), 2012 SCC 43, 2012 CarswellNat 2737, 2012 CarswellNat 2738, (sub nom. *Craig v. Canada)* 347 D.L.R. (4th) 385, [2012] 5 C.T.C. 205, (sub nom. *R. v. Craig)* 2012 D.T.C. 5115 (Eng.), (sub nom. *R. v. Craig)* 2012 D.T.C. 5116

(Fr.), (sub nom. *Minister of National Revenue v. Craig*) 433 N.R. 111, (sub nom. *Canada v. Craig*) [2012] 2 S.C.R. 489 (S.C.C.) — considered

Crevier v. Quebec (Attorney General) (1981), [1981] 2 S.C.R. 220, 127 D.L.R. (3d) 1, 38 N.R. 541, 1981 CarswellQue 109, 1981 CarswellQue 109F (S.C.C.) — considered

Delta Air Lines Inc. v. Lukács (2018), 2018 SCC 2, 2018 CSC 2, 2018 CarswellNat 50, 2018 CarswellNat 51, 416 D.L.R. (4th) 579, 28 Admin. L.R. (6th) 177, [2018] 1 S.C.R. 6 (S.C.C.) — referred to

Deputy Minister of National Revenue v. Mattel Canada Inc. (2001), 2001 SCC 36, 2001 CarswellNat 1032, 2001 CarswellNat 1033, 29 Admin. L.R. (3d) 56, (sub nom. *Deputy M.N.R. v. Mattel Canada Inc.)* 199 D.L.R. (4th) 598, (sub nom. *Minister of National Revenue (Customs & Excise) v. Mattel Canada Inc.)* 270 N.R. 153, 12 C.P.R. (4th) 417, (sub nom. *Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.)* [2001] 2 S.C.R. 100, 2001 CSC 36 (S.C.C.) — referred to

Domtar Inc. c. Québec (Commission d'appel en matière de lésions professionnelles) (1993), 15 Admin. L.R. (2d) 1, 49 C.C.E.L. 1, 154 N.R. 104, (sub nom. *Domtar Inc. v. Québec (Commission d'appel en matière de lésions professionnelles))* [1993] 2 S.C.R. 756, (sub nom. *Domtar Inc. v. Québec (Commission d'appel en matière de lésions professionnelles))* 55 Q.A.C. 241, (sub nom. *Domtar Inc. v. Québec (Commission d'appel en matière de lésions professionnelles))* 105 D.L.R. (4th) 385, 1993 CarswellQue 145, 1993 CarswellQue 159, [1993] C.A.L.P. 613 (S.C.C.) — considered

Doré c. Québec (Tribunal des professions) (2012), 2012 SCC 12, 2012 CarswellQue 2048, 2012 CarswellQue 2049, (sub nom. *Doré v. Barreau du Québec)* 343 D.L.R. (4th) 193, 34 Admin. L.R. (5th) 1, (sub nom. *Doré v. Barreau du Québec)* 428 N.R. 146, [2012] 1 S.C.R. 395, (sub nom. *Doré v. Barreau du Québec)* 255 C.R.R. (2d) 289 (S.C.C.) — considered

Dunsmuir v. New Brunswick (2008), 2008 SCC 9, 2008 CarswellNB 124, 2008 CarswellNB 125, D.T.E. 2008T-223, 64 C.C.E.L. (3d) 1, 69 Imm. L.R. (3d) 1, 69 Admin. L.R. (4th) 1, 372 N.R. 1, 329 N.B.R. (2d) 1, 844 A.P.R. 1, 2008 CSC 9, 2008 C.L.L.C. 220-020, 291 D.L.R. (4th) 577, 170 L.A.C. (4th) 1, 95 L.C.R. 65, [2008] 1 S.C.R. 190 (S.C.C.) — considered

Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd. (2016), 2016 SCC 47, 2016 CSC 47, 2016 CarswellAlta 2106, 2016 CarswellAlta 2107, 54 M.P.L.R. (5th) 1, 8 Admin. L.R. (6th) 179, 402 D.L.R. (4th) 236, [2016] 12 W.W.R. 215, [2016] 2 S.C.R. 293 (S.C.C.) — considered

Fitzleet Estates Ltd. v. Cherry (Inspector of Taxes) (1977), 51 T.C. 708 (U.K. H.L.) — considered

Florida Dept. of Health and Rehabilitative Services v. Florida Nursing Home Assoc. (1981), 450 U.S. 147 (U.S. Sup. Ct.) — referred to

Fraser v. Ontario (Attorney General) (2011), 2011 SCC 20, 2011 CarswellOnt 2695, 2011 CarswellOnt 2696, D.T.E. 2011T-294, (sub nom. *A.G. (Ontario) v. Fraser)* 2011 C.L.L.C. 220-029, 331 D.L.R. (4th) 64, 415 N.R. 200, 275 O.A.C. 205, 91 C.C.E.L. (3d) 1, (sub nom. *Ontario (Attorney General) v. Fraser)* [2011] 2 S.C.R. 3, 233 C.R.R. (2d) 237, 108 O.R. (3d) 78 (note) (S.C.C.) — considered

Friedmann Equity Developments Inc. v. Final Note Ltd. (2000), 2000 SCC 34, 2000 CarswellOnt 2458, 2000 CarswellOnt 2459, 48 O.R. (3d) 800 (headnote only), 188 D.L.R. (4th) 269, 34 R.P.R. (3d) 159, 255 N.R. 80, [2000] 1 S.C.R. 842, 7 B.L.R. (3d) 153, 134 O.A.C. 280, 2000 CSC 34, 48 O.R. (3d) 800 (S.C.C.) — referred to

Greco v. Holy See (State of the Vatican City) (June 17, 1999), Doc. 99-CV-8413 (Ont. S.C.J.) — referred to

Halifax (Regional Municipality) v. Canada (Public Works & Government Services) (2012), 2012 SCC 29, 2012 CarswellNat 1826, 2012 CarswellNat 1827, 97 M.P.L.R. (4th) 1, 345 D.L.R. (4th) 577, 17 R.P.R. (5th) 1, 36 Admin. L.R. (5th) 1, 431 N.R. 10, [2012] 2 S.C.R. 108 (S.C.C.) — considered

Halliburton Co. v. Erica P. John Fund, Inc. (2014), 573 U.S. 258 (U.S. Sup. Ct.) — referred to

Harvard College v. Canada (Commissioner of Patents) (2002), 2002 SCC 76, 2002 CarswellNat 3434, 2002 CarswellNat 3435, 219 D.L.R. (4th) 577, 21 C.P.R. (4th) 417, 296 N.R. 1, [2002] 4 S.C.R. 45, 235 F.T.R. 214 (note), 2002 CSC 76 (S.C.C.) — referred to

Housen v. Nikolaisen (2002), 2002 SCC 33, 2002 CarswellSask 178, 2002 CarswellSask 179, 286 N.R. 1, 10 C.C.L.T. (3d) 157, 211 D.L.R. (4th) 577, [2002] 7 W.W.R. 1, 219 Sask. R. 1, 272 W.A.C. 1, 30 M.P.L.R. (3d) 1, [2002] 2 S.C.R. 235, 2002 CSC 33 (S.C.C.) — considered

Hryniak v. Mauldin (2014), 2014 CarswellOnt 640, 2014 CarswellOnt 641, 37 R.P.R. (5th) 1, 46 C.P.C. (7th) 217, 27 C.L.R. (4th) 1, 2014 CSC 7, 453 N.R. 51, 12 C.C.E.L. (4th) 1, 314 O.A.C. 1, 95 E.T.R. (3d) 1, 21 B.L.R. (5th) 248, [2014] 1 S.C.R. 87, 2014 SCC 7, 366 D.L.R. (4th) 641 (S.C.C.) — referred to

Irving Pulp & Paper Ltd. v. CEP, Local 30 (2013), 2013 SCC 34, 2013 CarswellNB 275, 2013 CarswellNB 276, 52 Admin. L.R. (5th) 1, 359 D.L.R. (4th) 394, (sub nom. *CEPU, Local 30 v. Irving Pulp & Paper)* 2013 C.L.L.C. 220-037, D.T.E. 2013T-418, (sub nom. *Irving Pulp & Paper Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 30)* 445 N.R. 1, (sub nom. *Irving Pulp & Paper Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 30)* 1048 A.P.R. 1, (sub nom. *Irving Pulp & Paper Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 30)* 404 N.B.R. (2d) 1, 231 L.A.C. (4th) 209, (sub nom. *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper Ltd.)* 285 C.R.R. (2d) 150, (sub nom. *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.)* [2013] 2 S.C.R. 458, (sub nom. *C.E.P.U., Local 30 v. Irving Pulp & Paper, Ltd)* 77 C.H.R.R. D/304 (S.C.C.) — considered

Kerry (Canada) Inc. v. Ontario (Superintendent of Financial Services) (2009), 2009 SCC 39, 2009 CarswellOnt 4494, 2009 CarswellOnt 4495, 76 C.C.P.B. 1, 49 E.T.R. (3d) 159, 76 C.C.E.L. (3d) 55, (sub nom. *Nolan v. Ontario (Superintendent of Financial Services))* 391 N.R. 234, 92 Admin. L.R. (4th) 203, (sub nom. *DCA Employees Pension Committee v. Ontario (Superintendent of Financial Services))* 309 D.L.R. (4th) 513, (sub nom. *Nolan v. Ontario (Superintendent of Financial Services))* 253 O.A.C. 256, (sub nom. *Nolan v. Kerry (Canada) Inc.)* [2009] 2 S.C.R. 678, (sub nom. *Kerry (Canada) Inc. v. DCA Employees Pension Committee)* 102 O.R. (3d) 319, 103 O.R. (3d) 319 (note) (S.C.C.) — referred to

Khela v. Mission Institution (2014), 2014 SCC 24, 2014 CarswellBC 778, 2014 CarswellBC 779, 368 D.L.R. (4th) 630, 64 Admin. L.R. (5th) 171, 9 C.R. (7th) 1, 455 N.R. 279, 307 C.C.C. (3d) 427, 2014 CSC 24, (sub nom. *Khela v. Mission Institution (Warden))* 599 W.A.C. 91, (sub nom. *Mission Institution v. Khela)* [2014] 1 S.C.R. 502, (sub nom. *Mission Institution v. Khela)* 306 C.R.R. (2d) 66, (sub nom. *Khela v. Mission Institution (Warden))* 351 B.C.A.C. 91 (S.C.C.) — referred to

Kimble v. Marvel Entertainment, LLC (2015), 135 S.Ct. 2401, 576 U.S. 446 (U.S. Sup. Ct.) — considered

Kisor v. Wilkie (2019), 139 S.Ct. 2400 (U.S. Sup. Ct.) — considered

Knauer v. Ministry of Justice (2016), [2016] 4 All E.R. 897, [2016] UKSC 9 (U.K. S.C.) — referred to

Knick v. Township of Scott, Pennsylvania (2019), 139 S.Ct. 2162 (U.S. Sup. Ct.) — considered

L. (H.) v. Canada (Attorney General) (2005), 2005 SCC 25, 2005 CarswellSask 268, 2005 CarswellSask 273, 24 Admin. L.R. (4th) 1, 8 C.P.C. (6th) 199, 251 D.L.R. (4th) 604, 333 N.R. 1, [2005] 8 W.W.R. 1, 262 Sask. R. 1, 347 W.A.C. 1, [2005] 1 S.C.R. 401, 29 C.C.L.T. (3d) 1, 2005 CSC 25 (S.C.C.) — considered

M.A.H.C.P. v. Nor-Man Regional Health Authority Inc. (2011), 2011 SCC 59, 2011 CarswellMan 606, 2011 CarswellMan 607, D.T.E. 2011T-803, (sub nom. *Manitoba Assn. of Health Care Professionals v. Nor-Man Regional Health Authority Inc.)* 340 D.L.R. (4th) 1, 29 Admin. L.R. (5th) 1, (sub nom. *Manitoba Association of Health Care Professionals v. Nor-Man Regional Health Authority Inc.)* 423 N.R. 95, [2012] 2 W.W.R. 619, 96 C.C.E.L. (3d) 1, (sub nom. *Nor-Man Regional Health Authority Inc. v. M.A.H.C.P.)* 2012 C.L.L.C. 220-004, (sub nom. *Manitoba Assn. of Health Care Professionals v. Nor-Man Regional Health Authority Inc.)* 212 L.A.C. (4th) 93, (sub nom. *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals)* [2011] 3 S.C.R. 616, (sub nom. *Manitoba Association of Health Care Professionals v. Nor-Man Regional Health Authority Inc.)* 275 Man. R. (2d) 16, (sub nom. *Manitoba Association of Health Care Professionals v. Nor-Man Regional Health Authority Inc.)* 538 W.A.C. 16 (S.C.C.) — referred to

May v. Ferndale Institution (2005), 2005 SCC 82, 2005 CarswellBC 3037, 2005 CarswellBC 3038, 343 N.R. 69, 34 C.R. (6th) 228, 261 D.L.R. (4th) 541, 204 C.C.C. (3d) 1, 49 B.C.L.R. (4th) 199, 136 C.R.R. (2d) 146, [2006] 5 W.W.R. 65, 38 Admin. L.R. (4th) 1, [2005] 3 S.C.R. 809, 220 B.C.A.C. 1, 362 W.A.C. 1 (S.C.C.) — referred to

Medovarski v. Canada (Minister of Citizenship & Immigration) (2005), 2005 SCC 51, 2005 CarswellNat 2943, 2005 CarswellNat 2944, 258 D.L.R. (4th) 193, 339 N.R. 1, [2005] 2 S.C.R. 539, 135 C.R.R. (2d) 1, 50 Imm. L.R. (3d) 1 (S.C.C.) — referred to

Metropolitan Life Insurance Co. v. I.U.O.E., Local 796 (1970), [1970] S.C.R. 425, 11 D.L.R. (3d) 336, 70 C.L.L.C. 14,008, 1970 CarswellOnt 191, 1970 CarswellOnt 191F (S.C.C.) — considered

Michigan v. Bay Mills Indian Community (2014), 572 U.S. 782 (U.S. Sup. Ct.) — considered

Mills v. Ontario (Workplace Safety & Insurance Appeals Tribunal) (2008), 2008 ONCA 436, 2008 CarswellOnt 3184, 237 O.A.C. 71 (Ont. C.A.) — referred to

Mouvement laïque québécois v. Saguenay (City) (2015), 2015 SCC 16, 2015 CSC 16, 2015 CarswellQue 2626, 2015 CarswellQue 2627, 382 D.L.R. (4th) 385, 34 M.P.L.R. (5th) 1, 22 C.C.E.L. (4th) 1, 470 N.R. 1, 83 Admin. L.R. (5th) 183, [2015] 2 S.C.R. 3, 332 C.R.R. (2d) 183, 83 C.H.R.R. D/291 (S.C.C.) — considered

N.L.N.U. v. Newfoundland & Labrador (Treasury Board) (2011), 2011 SCC 62, 2011 CarswellNfld 414, 2011 CarswellNfld 415, D.T.E. 2012T-7, 340 D.L.R. (4th) 17, (sub nom. *Nfld. and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board))* 2011 C.L.L.C. 220-008, (sub nom. *Newfoundland & Labrador Nurses' Union v. Newfoundland & Labrador (Treasury Board))* 424 N.R. 220, (sub nom. *Newfoundland & Labrador Nurses' Union v. Newfoundland & Labrador (Treasury Board))* [2011] 3 S.C.R. 708, 213 L.A.C. (4th) 95, (sub nom. *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board))* 986 A.P.R. 340, (sub nom. *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board))* 317 Nfld. & P.E.I.R. 340, 97 C.C.E.L. (3d) 199, 38 Admin. L.R. (5th) 255, 2011 CSC 62 (S.C.C.) — considered

National Corn Growers Assn. v. Canada (Canadian Import Tribunal) (1990), 45 Admin. L.R. 161, (sub nom. *American Farm Bureau Federation v. Canadian Import Tribunal)* 3 T.C.T. 5303, 114 N.R. 81, 74 D.L.R. (4th) 449, [1990] 2 S.C.R. 1324, 4 T.T.R. 267, 1990 CarswellNat 611, 1990 CarswellNat 741 (S.C.C.) — considered

Northern Telecom Ltd. v. Communications Workers of Canada (1979), [1980] 1 S.C.R. 115, 28 N.R. 107, 98 D.L.R. (3d) 1, 79 C.L.L.C. 14,211, 1979 CarswellNat 639F, 1979 CarswellNat 639 (S.C.C.) — referred to

Parry Sound (District) Welfare Administration Board v. O.P.S.E.U., Local 324 (2003), 2003 SCC 42, 2003 CarswellOnt 3500, 2003 CarswellOnt 3501, 2003 C.L.L.C. 220-062, (sub nom. *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324)* 230 D.L.R. (4th) 257, (sub nom. *Social Services Administration Board (Parry Sound) v. Ontario Public Service Employees Union, Local 324)* 308 N.R. 271, (sub nom. *Social Services Administration Board (Parry Sound District) v. Ontario Public Service Employees Union, Local 324)* 177 O.A.C. 235, 7 Admin. L.R. (4th) 177, (sub nom. *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324)* [2003] 2 S.C.R. 157, 31 C.C.E.L. (3d) 1, 47 C.H.R.R. D/182, 67 O.R. (3d) 256 (S.C.C.) — considered

Payne v. Tennessee (1991), 501 U.S. 808, 111 S.Ct. 2597, 115 L.Ed.2d 720, 59 U.S.L.W. 4814 (U.S. Tenn. S.C.) — considered

Pezim v. British Columbia (Superintendent of Brokers) (1994), 4 C.C.L.S. 117, [1994] 2 S.C.R. 557, 114 D.L.R. (4th) 385, (sub nom. *Pezim v. British Columbia (Securities Commission))* 168 N.R. 321, [1994] 7 W.W.R. 1, 92 B.C.L.R. (2d) 145, (sub nom. *Pezim v. British Columbia (Securities Commission))* 46 B.C.A.C. 1, (sub nom. *Pezim v. British Columbia (Securities Commission))* 75 W.A.C. 1, 22 Admin. L.R. (2d) 1, 14 B.L.R. (2d) 217, 1994 CarswellBC 232, 1994 CarswellBC 1242, [1994] 24 B.C.S.C.W.S. 23 (S.C.C.) — considered

Planned Parenthood of Southeastern Pennsylvania v. Casey (1992), 505 U.S. 833, 60 U.S.L.W. 4795, 120 L.Ed.2d 674, 112 S.Ct. 2791 (U.S. Sup. Ct.) — considered

Plourde c. Québec (Commission des relations du travail) (2009), 2009 SCC 54, 2009 CarswellQue 11884, 2009 CarswellQue 11885, D.T.E. 2009T-846, (sub nom. *Plourde v. Wal-Mart Canada Corp.)* 2010 C.L.L.C. 220-002, (sub nom. *Plourde v. Wal-Mart Canada Corp.)* 396 N.R. 1, 80 C.C.E.L. (3d) 58, (sub nom. *Plourde v. Compagnie Wal-Mart du Canada Inc.)* 313 D.L.R. (4th) 539, (sub nom. *Plourde v. Wal-Mart Canada Corp.)* 200 C.R.R. (2d) 92, (sub nom. *Plourde v. Wal-Mart Canada Corp.)* [2009] 3 S.C.R. 465 (S.C.C.) — considered

Proprio Direct inc. c. Pigeon (2008), 2008 SCC 32, 2008 CarswellQue 4419, 2008 CarswellQue 4420, 70 Admin. L.R. (4th) 157, 68 R.P.R. (4th) 1, (sub nom. *Proprio Direct Inc. v. Association des courtiers & agents immobiliers du Québec)* 375 N.R. 1, (sub nom. *Assoc. des Courtiers et Agents Immobiliers du Québec v. Proprio Direct Inc.)* 293 D.L.R. (4th) 578, (sub nom. *Association des Courtiers & Agents Immobiliers du Québec v. Proprio Direct Inc.)* [2008] 2 S.C.R. 195 (S.C.C.) — referred to

Pushpanathan v. Canada (Minister of Employment & Immigration) (1998), 226 N.R. 201, (sub nom. *Pushpanathan v. Canada (Minister of Citizenship & Immigration))* 160 D.L.R. (4th) 193, (sub nom. *Pushpanathan v. Canada (Minister of Citizenship & Immigration))* [1998] 1 S.C.R. 982, 1998 CarswellNat 830, 1998 CarswellNat 831, 43 Imm. L.R. (2d) 117, 11 Admin. L.R. (3d) 1, 6 B.H.R.C. 387, [1999] I.N.L.R. 36 (S.C.C.) — considered

Q. v. College of Physicians & Surgeons (British Columbia) (2003), 2003 SCC 19, 2003 CarswellBC 713, 2003 CarswellBC 743, 11 B.C.L.R. (4th) 1, [2003] 5 W.W.R. 1, 223 D.L.R. (4th) 599, 48 Admin. L.R. (3d) 1, (sub nom. *Dr. Q., Re)* 302

N.R. 34, (sub nom. *Dr. Q., Re)* 179 B.C.A.C. 170, (sub nom. *Dr. Q., Re)* 295 W.A.C. 170, (sub nom. *Dr. Q. v. College of Physicians & Surgeons of British Columbia)* [2003] 1 S.C.R. 226, 2003 CSC 19 (S.C.C.) — referred to

R. v. Bernard (1988), 67 C.R. (3d) 113, 32 O.A.C. 161, [1988] 2 S.C.R. 833, 90 N.R. 321, 45 C.C.C. (3d) 1, 38 C.R.R. 82, 1988 CarswellOnt 93, 1988 CarswellOnt 971 (S.C.C.) — considered

R. v. Binus (1967), [1967] S.C.R. 594, [1968] 1 C.C.C. 227, 2 C.R.N.S. 118, 1967 CarswellOnt 14 (S.C.C.) — referred to

R. v. Bonadie (1996), 109 C.C.C. (3d) 356, 1996 CarswellOnt 2994 (Ont. Prov. Div.) — referred to

R. v. Conway (2010), 2010 SCC 22, 2010 CarswellOnt 3847, 2010 CarswellOnt 3848, 1 Admin. L.R. (5th) 163, 255 C.C.C. (3d) 506, 320 D.L.R. (4th) 25, 75 C.R. (6th) 201, 402 N.R. 255, 263 O.A.C. 61, [2010] 1 S.C.R. 765, 211 C.R.R. (2d) 326, 103 O.R. (3d) 320 (note) (S.C.C.) — referred to

R. v. Henry (2005), 2005 SCC 76, 2005 CarswellBC 2972, 2005 CarswellBC 2973, 33 C.R. (6th) 215, 202 C.C.C. (3d) 449, 260 D.L.R. (4th) 411, 49 B.C.L.R. (4th) 1, 219 B.C.A.C. 1, 361 W.A.C. 1, 376 A.R. 1, 360 W.A.C. 1, 136 C.R.R. (2d) 121, [2006] 4 W.W.R. 605, (sub nom. *R. c. Henry)* [2005] 3 S.C.R. 609, 342 N.R. 259 (S.C.C.) — considered

R. v. Jordan (2016), 2016 SCC 27, 2016 CSC 27, 2016 CarswellBC 1864, 2016 CarswellBC 1865, 335 C.C.C. (3d) 403, 398 D.L.R. (4th) 381, 29 C.R. (7th) 235, 484 N.R. 202, 388 B.C.A.C. 111, 670 W.A.C. 111, 358 C.R.R. (2d) 97, [2016] 1 S.C.R. 631 (S.C.C.) — considered

R. v. Kang-Brown (2008), 2008 SCC 18, 2008 CarswellAlta 523, 2008 CarswellAlta 524, 87 Alta. L.R. (4th) 1, 55 C.R. (6th) 240, [2008] 6 W.W.R. 17, 432 A.R. 1, 230 C.C.C. (3d) 289, 293 D.L.R. (4th) 99, 373 N.R. 67, [2008] 1 S.C.R. 456, 424 W.A.C. 1 (S.C.C.) — referred to

R. v. Salituro (1991), 9 C.R. (4th) 324, 8 C.R.R. (2d) 173, 50 O.A.C. 125, [1991] 3 S.C.R. 654, 131 N.R. 161, 68 C.C.C. (3d) 289, 1991 CarswellOnt 124, 1991 CarswellOnt 1031 (S.C.C.) — referred to

R. v. Taylor (Jack) (2016), [2016] 4 All E.R. 617, [2016] UKSC 5 (U.K. S.C.) — referred to

Rasanen v. Rosemount Instruments Ltd. (1994), 1 C.C.E.L. (2d) 161, 94 C.L.L.C. 14,024, 17 O.R. (3d) 267, 112 D.L.R. (4th) 683, 68 O.A.C. 284, 1994 CarswellOnt 960 (Ont. C.A.) — considered

Rascal Trucking Ltd. v. Nishi (2013), 2013 SCC 33, 2013 CarswellBC 1716, 2013 CarswellBC 1717, 359 D.L.R. (4th) 575, 45 B.C.L.R. (5th) 1, [2013] 8 W.W.R. 419, 88 E.T.R. (3d) 1, 445 N.R. 293, 336 B.C.A.C. 50, 574 W.A.C. 50, 16 B.L.R. (5th) 1, (sub nom. *Nishi v. Rascal Trucking Ltd.)* [2013] 2 S.C.R. 438 (S.C.C.) — referred to

Ryan v. Law Society (New Brunswick) (2003), 2003 SCC 20, 2003 CarswellNB 145, 2003 CarswellNB 146, 223 D.L.R. (4th) 577, 48 Admin. L.R. (3d) 33, 302 N.R. 1, 31 C.P.C. (5th) 1, 257 N.B.R. (2d) 207, 674 A.P.R. 207, (sub nom. *Law Society of New Brunswick v. Ryan)* [2003] 1 S.C.R. 247, 2003 CSC 20 (S.C.C.) — considered

S.E.I.U., Local 333 v. Nipawin District Staff Nurses Assn. (1973), [1974] 1 W.W.R. 653, 41 D.L.R. (3d) 6, (sub nom. *U.I.E.S., local 333 c. Nipawin District Staff Nurses Assn.)* [1975] 1 S.C.R. 382, 73 C.L.L.C. 14,193, 1973 CarswellSask 120, 1973 CarswellSask 145 (S.C.C.) — referred to

South Africa (Republic) v. Grootboom (2000), [2000] ZACC 19 (South Africa Constitutional Ct.) — considered

Suresh v. Canada (Minister of Citizenship & Immigration) (2002), 2002 SCC 1, 2002 CarswellNat 7, 2002 CarswellNat 8, 18 Imm. L.R. (3d) 1, 208 D.L.R. (4th) 1, 281 N.R. 1, 90 C.R.R. (2d) 1, 37 Admin. L.R. (3d) 159, [2002] 1 S.C.R. 3, 2002 CSC 1 (S.C.C.) — referred to

Syndicat national des employés de la commission scolaire régionale de l'Outaouais v. U.E.S., local 298 (1988), 35 Admin. L.R. 153, 95 N.R. 161, 89 C.L.L.C. 14,045, 24 Q.A.C. 244, (sub nom. *Union des employés de service, local 298 v. Bibeault)* [1988] 2 S.C.R. 1048, 1988 CarswellQue 125, 1988 CarswellQue 148 (S.C.C.) — considered

Toronto (City) v. C.U.P.E., Local 79 (2003), 2003 SCC 63, 2003 CarswellOnt 4328, 2003 CarswellOnt 4329, 2003 C.L.L.C. 220-071, 232 D.L.R. (4th) 385, 311 N.R. 201, 120 L.A.C. (4th) 225, 179 O.A.C. 291, 17 C.R. (6th) 276, [2003] 3 S.C.R. 77, 9 Admin. L.R. (4th) 161, 31 C.C.E.L. (3d) 216 (S.C.C.) — referred to

U.A.W., Local 720 v. Volvo Canada Ltd. (1979), [1980] 1 S.C.R. 178, 27 N.R. 502, 33 N.S.R. (2d) 22, 57 A.P.R. 22, 99 D.L.R. (3d) 193, 79 C.L.L.C. 14,210, 1979 CarswellNS 109F, 1979 CarswellNS 109 (S.C.C.) — referred to

VIA Rail Canada Inc. v. Canadian Transportation Agency (2007), 2007 SCC 15, 2007 CarswellNat 608, 2007 CarswellNat 609, 360 N.R. 1, 279 D.L.R. (4th) 1, 59 Admin. L.R. (4th) 1, (sub nom. *Council of Canadians with Disabilities v. VIA Rail Canada Inc.)* [2007] 1 S.C.R. 650, (sub nom. *Council of Canadians with Disabilities v. Via Rail Canada Inc.)* 59 C.H.R.R. D/276 (S.C.C.) — referred to

Willers v. Joyce (2016), [2017] 2 All E.R. 383, [2016] UKSC 44 (U.K. S.C.) — referred to

Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development) (2018), 2018 SCC 4, 2018 CSC 4, 2018 CarswellNat 158, 2018 CarswellNat 159, 417 D.L.R. (4th) 239, 32 Admin. L.R. (6th) 1, [2018] 1 S.C.R. 83, [2018] 4 C.N.L.R. 225 (S.C.C.) — referred to

Wilson v. Atomic Energy of Canada Ltd. (2016), 2016 SCC 29, 2016 CSC 29, 2016 CarswellNat 2998, 2016 CarswellNat 2999, D.T.E. 2016T-547, 2 Admin. L.R. (6th) 181, 32 C.C.E.L. (4th) 1, 399 D.L.R. (4th) 193, (sub nom. *Atomic Energy of Canada Ltd. v. Wilson)* 485 N.R. 99, 2016 C.L.L.C. 210-040, [2016] 1 S.C.R. 770 (S.C.C.) — referred to

Cases considered by *Wagner C.J.C., Moldaver J., Gascon J., Côté J., Brown J., Rowe J., Martin J.*:

City of Arlington v. Federal Communications Commission (2013), 569 U.S. 290, 133 S.Ct. 1863 (U.S. Sup. Ct.) — considered

Groia v. Law Society of Upper Canada (2018), 2018 SCC 27, 2018 CSC 27, 2018 CarswellOnt 8700, 2018 CarswellOnt 8701, 34 Admin. L.R. (6th) 183, 46 C.R. (7th) 227, 424 D.L.R. (4th) 443, [2018] 1 S.C.R. 772, 154 O.R. (3d) 399 (note) (S.C.C.) — referred to

Law Society of British Columbia v. Trinity Western University (2018), 2018 SCC 32, 2018 CSC 32, 2018 CarswellBC 1510, 2018 CarswellBC 1511, 35 Admin. L.R. (6th) 1, 10 B.C.L.R. (6th) 217, [2018] 8 W.W.R. 1, 423 D.L.R. (4th) 197, 412 C.R.R. (2d) 157, [2018] 2 S.C.R. 293, 91 C.H.R.R. D/255 (S.C.C.) — considered

Nova Scotia (Attorney General) v. S&D Smith Central Supplies Limited (2019), 2019 NSCA 22, 2019 CarswellNS 190, 14 L.C.R. (2d) 281 (N.S. C.A.) — referred to

Nova Tube Inc./Nova Steel Inc. v. Conares Metal Supply Ltd. (2019), 2019 FCA 52, 2019 CarswellNat 840, 2019 CAF 52, 2019 CarswellNat 14755 (F.C.A.) — considered

Sharif v. Canada (Attorney General) (2018), 2018 FCA 205, 2018 CarswellNat 6965, 50 C.R. (7th) 1, 2018 CAF 205, 2018 CarswellNat 12363 (F.C.A.) — referred to

West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal) (2018), 2018 SCC 22, 2018 CSC 22, 2018 CarswellBC 1234, 2018 CarswellBC 1235, [2018] 6 W.W.R. 211, 33 Admin. L.R. (6th) 209, 9 B.C.L.R. (6th) 1, 421 D.L.R. (4th) 191, 2018 C.L.L.C. 210-040, [2018] 1 S.C.R. 635 (S.C.C.) — referred to

Cases considered by *Abella J., Karakatsanis J.*:

Canada (Human Rights Commission) v. Canada (Attorney General) (2018), 2018 SCC 31, 2018 CSC 31, 2018 CarswellNat 2839, 36 Admin. L.R. (6th) 1, [2018] 2 S.C.R. 230, 91 C.H.R.R. D/63, [2019] 2 C.N.L.R. 45, 2018 CarswellNat 2838 (S.C.C.) — referred to

Law Society of British Columbia v. Trinity Western University (2018), 2018 SCC 32, 2018 CSC 32, 2018 CarswellBC 1510, 2018 CarswellBC 1511, 35 Admin. L.R. (6th) 1, 10 B.C.L.R. (6th) 217, [2018] 8 W.W.R. 1, 423 D.L.R. (4th) 197, 412 C.R.R. (2d) 157, [2018] 2 S.C.R. 293, 91 C.H.R.R. D/255 (S.C.C.) — referred to

Mason v. Canada (Citizenship and Immigration) (2019), 2019 FC 1251, 2019 CarswellNat 5134, 2019 CF 1251, 2019 CarswellNat 6081, 71 Imm. L.R. (4th) 292, [2020] 2 F.C.R. 3 (F.C.) — referred to

Cases considered by *Wagner C.J.C., Moldaver J., Gascon J., Côté J., Brown J., Martin J.*:

R. v. W. (D.) (1991), 3 C.R. (4th) 302, 63 C.C.C. (3d) 397, 122 N.R. 277, 46 O.A.C. 352, [1991] 1 S.C.R. 742, 1991 CarswellOnt 80, 1991 CarswellOnt 1015 (S.C.C.)

Statutes considered by *Wagner C.J.C., Moldaver J., Gascon J., Côté J., Brown J., Rowe J., Martin J.*:

Administrative Tribunals Act, S.B.C. 2004, c. 45

s. 58 — referred to

s. 59 — referred to

s. 59(1) — referred to

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Generally — referred to

s. 1 — referred to

s. 15 — referred to

Canadian Citizenship Act, R.S.C. 1970, c. C-19
s. 5(3)(b) — considered
Citizenship Act, R.S.C. 1985, c. C-29
Generally — referred to

s. 3 — considered

s. 3(1) — considered

s. 3(1)(a) — considered

s. 3(1)(b) — referred to

s. 3(2) — considered

s. 3(2)(a) — considered

s. 3(2)(c) — considered

s. 10 — referred to

s. 22.1 [en. 2014, c. 22, s. 20] — referred to

s. 22.1(1) [en. 2014, c. 22, s. 20] — considered

ss. 22.1-22.4 [en. 2014, c. 22, s. 20] — referred to
Constitution Act, 1867, (U.K.), 30 & 31 Vict., c. 3, reprinted R.S.C. 1985, App. II, No. 5
s. 96 — considered
Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, reprinted R.S.C. 1985, App. II, No. 44
Generally — referred to

s. 35 — referred to
Federal Courts Act, R.S.C. 1985, c. F-7
ss. 18-18.2 — referred to

s. 18.4 [en. 1990, c. 8, s. 5] — referred to

s. 27 — referred to

s. 28 — referred to
Foreign Missions and International Organizations Act, S.C. 1991, c. 41
Generally — referred to

s. 3 — referred to

s. 3(1) — referred to

s. 4 — referred to

Sched. II — referred to

Sched. II, Article 1 — referred to

Sched. II, Article 41 — referred to

Sched. II, Article 43 — referred to

Sched. II, Article 49 — referred to

Sched. II, Article 53 — referred to
Human Rights Code, R.S.B.C. 1996, c. 210
s. 32 — referred to
Immigration and Refugee Protection Act, S.C. 2001, c. 27
Generally — referred to

ss. 35-37 — referred to
Interpretation Act, R.S.C. 1985, c. I-21
Generally — referred to

s. 35(1) "diplomatic or consular officer" — considered
Municipal Government Act, R.S.A. 2000, c. M-26
s. 470 — referred to

s. 470(1) — referred to
Statutes considered by *Abella J., Karakatsanis J.*:
Administrative Tribunals Act, S.B.C. 2004, c. 45
Generally — referred to
Canadian Citizenship Act, R.S.C. 1970, c. C-19
s. 5(3)(b)(i) — considered

s. 5(3)(b)(ii) — considered
Citizenship Act, R.S.C. 1985, c. C-29
Generally — referred to

s. 3(1)(a) — considered

s. 3(2) — considered

s. 3(2)(a) — considered

s. 3(2)(c) — considered
Customs Tariff, S.C. 1997, c. 36
Generally — referred to
Foreign Missions and International Organizations Act, S.C. 1991, c. 41
Generally — referred to
Interpretation Act, R.S.C. 1985, c. I-21
s. 35(1) "diplomatic or consular officer" — considered
Ontario Human Rights Code, 1961-62, S.O. 1961-62, c. 93
s. 3 — considered
Securities Act, R.S.B.C. 1996, c. 418
s. 159 — referred to
Treaties considered by *Wagner C.J.C., Moldaver J., Gascon J., Côté J., Brown J., Rowe J., Martin J.*:
Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning Acquisition of Nationality, 500 U.N.T.S. 223
Article II — considered
Vienna Convention on Consular Relations, 1963, C.T.S. 1974/25; 596 U.N.T.S. 261
Generally — referred to

Vienna Convention on Diplomatic Relations, 1961, C.T.S. 1966/29; 500 U.N.T.S. 95
Generally — referred to
Treaties considered by *Abella J., Karakatsanis J.*:
Vienna Convention on Consular Relations, 1963, C.T.S. 1974/25; 596 U.N.T.S. 261
Generally — referred to
Vienna Convention on Diplomatic Relations, 1961, C.T.S. 1966/29; 500 U.N.T.S. 95
Generally — referred to
Regulations considered by *Wagner C.J.C., Moldaver J., Gascon J., Côté J., Brown J., Rowe J., Martin J.*:
Citizenship Act, R.S.C. 1985, c. C-29
Citizenship Regulations, SOR/93-246

s. 26 — referred to

s. 26(3) — considered
Words and phrases considered:

diplomatic or consular officer or other representative or employee in Canada of a foreign government

Our review of the Registrar's decision leads us to conclude that it was unreasonable for her to find that the phrase "diplomatic or consular officer or other representative or employee in Canada of a foreign government" in s. 3(2)(a) of *Citizenship Act*, R.S.C. , 1985, c. C-29] applies to individuals who have not been granted diplomatic privileges and immunities in Canada.
Termes et locutions cités:

agent diplomatique ou consulaire, représentant à un autre titre ou au service au Canada d'un gouvernement étranger

Notre examen de la décision de la greffière mène à la conclusion qu'il était déraisonnable de sa part de décider que les mots « agent diplomatique ou consulaire, représentant à un autre titre ou au service au Canada d'un gouvernement étranger » [que l'on retrouve à l'art. 3(2)a) de la *Loi sur la citoyenneté*, L.R.C. 1985, c. C-29] visent les individus à qui on n'a pas accordé de privilèges et d'immunités diplomatiques au Canada.

APPEAL by Minister of Citizenship and Immigration from judgment reported at *Vavilov v. Canada (Citizenship and Immigration)* (2017), 2017 FCA 132, 2017 CarswellNat 2791, [2017] F.C.J. No. 638, 52 Imm. L.R. (4th) 1, 30 Admin. L.R. (6th) 1, 2017 CAF 132, 2017 CarswellNat 9490, [2018] 3 F.C.R. 75 (F.C.A.), granting application for judicial review of determination regarding citizenship.

POURVOI formé par le ministre de la Citoyenneté et de l'Immigration à l'encontre d'un jugement publié à *Vavilov v. Canada (Citizenship and Immigration)* (2017), 2017 FCA 132, 2017 CarswellNat 2791, [2017] F.C.J. No. 638, 52 Imm. L.R. (4th) 1, 30 Admin. L.R. (6th) 1, 2017 CAF 132, 2017 CarswellNat 9490, [2018] 3 F.C.R. 75 (F.C.A.), ayant accordé une demande en contrôle judiciaire d'une décision rendue en matière de citoyenneté.

***Wagner C.J.C., Moldaver, Gascon, Côté, Brown, Rowe, Martin JJ.*:**

1 This appeal and its companion cases (see *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66 (S.C.C.)), provide this Court with an opportunity to re-examine its approach to judicial review of administrative decisions.

2 In these reasons, we will address two key aspects of the current administrative law jurisprudence which require reconsideration and clarification. First, we will chart a new course forward for determining the standard of review that applies when a court reviews the merits of an administrative decision. Second, we will provide additional guidance for reviewing courts to follow when conducting reasonableness review. The revised framework will continue to be guided by the principles underlying judicial review that this Court articulated in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 (S.C.C.) : that judicial review functions to maintain the rule of law while giving effect to legislative intent. We will also affirm the need to develop and strengthen a culture of justification in administrative decision making.

3 We will then address the merits of the case at bar, which relates to an application for judicial review of a decision by the Canadian Registrar of Citizenship concerning Alexander Vavilov, who was born in Canada and whose parents were later revealed to be Russian spies. The Registrar found on the basis of an interpretation of s. 3(2)(a) of the *Citizenship Act*, R.S.C. 1985, c. C-29, that Mr. Vavilov was not a Canadian citizen and cancelled his certificate of citizenship under s. 26(3) of the *Citizenship Regulations*, SOR/93-246. In our view, the standard of review to be applied to the Registrar's decision is reasonableness, and the Registrar's decision was unreasonable. We would therefore uphold the Federal Court of Appeal's decision to quash it, and would dismiss the Minister of Citizenship and Immigration's appeal.

I. Need for Clarification and Simplification of the Law of Judicial Review

4 Over the past decades, the law relating to judicial review of administrative decisions in Canada has been characterized by continuously evolving jurisprudence and vigorous academic debate. This area of the law concerns matters which are fundamental to our legal and constitutional order, and seeks to navigate the proper relationship between administrative decision makers, the courts and individuals in our society. In parallel with the law, the role of administrative decision making in Canada has also evolved. Today, the administration of countless public bodies and regulatory regimes has been entrusted to statutory delegates with decision-making power. The number, diversity and importance of the matters that come before such delegates has made administrative decision making one of the principal manifestations of state power in the lives of Canadians.

5 Given the ubiquity and practical importance of administrative decision making, it is essential that administrative decision makers, those subject to their decisions and courts tasked with reviewing those decisions have clear guidance on how judicial review is to be performed.

6 In granting leave to appeal in the case at bar and in its companion cases, this Court's leave to appeal judgment made clear that it viewed these appeals as an opportunity to consider the law applicable to the judicial review of administrative decisions as addressed in *Dunsmuir* and subsequent cases. In light of the importance of this issue, the Court appointed two *amici curiae*, invited the parties to devote a substantial portion of their submissions to the standard of review issue, and granted leave to 27 interveners, comprising 4 attorneys general and numerous organizations representing the breadth of the Canadian administrative law landscape. We have, as a result, received a wealth of helpful submissions on this issue. Despite this Court's review of the subject in *Dunsmuir* , some aspects of the law remain challenging. In particular, the submissions presented to the Court have highlighted two aspects of the current framework which need clarification.

7 The first aspect is the analysis for determining the standard of review. It has become clear that *Dunsmuir* 's promise of simplicity and predictability in this respect has not been fully realized. In *Dunsmuir* , a majority of the Court merged the standards of "patent unreasonableness" and "reasonableness *simpliciter*" into a single "reasonableness" standard, thus reducing the number of standards of review from three to two: paras. 34-50. It also sought to simplify the analysis for determining the applicable standard of review: paras. 51-64. Since *Dunsmuir* , the jurisprudence has evolved to recognize that reasonableness will be the applicable standard for most categories of questions on judicial review, including, presumptively, when a decision maker interprets its enabling statute: see, e.g., *A.T.A. v. Alberta (Information & Privacy Commissioner)*, 2011 SCC 61, [2011] 3 S.C.R. 654 (S.C.C.) ; *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3 (S.C.C.) , at para. 46; *Canadian National Railway v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135 (S.C.C.) , at para. 55; *Canadian Artists' Representation / Le Front des artistes canadiens v. National Gallery of Canada*, 2014 SCC 42, [2014] 2 S.C.R. 197 (S.C.C.) , at para. 13; *Alliance Pipeline Ltd. v. Smith*, 2011 SCC 7, [2011] 1 S.C.R. 160 (S.C.C.) , at paras. 26 and 28; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 (S.C.C.) , at para. 25; *Dunsmuir* , at para. 54. The Court has indicated that this presumption may be rebutted by showing the issue on review falls within a category of questions attracting correctness review: see *British Columbia (Securities Commission) v. McLean*, 2013 SCC 67, [2013] 3 S.C.R. 895 (S.C.C.) , at para. 22. It may also be rebutted by showing that the context indicates that the legislature intended the standard of review to be correctness: *McLean* , at para. 22; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293 (S.C.C.) , at para. 32; *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, [2018] 2 S.C.R. 230 (S.C.C.) ("*CHRC*"), at paras. 45-46. However, uncertainty about when the contextual analysis remains appropriate and debate surrounding the scope of the correctness categories have sometimes caused confusion and made

the analysis unwieldy: see, e.g., P. Daly, "Struggling Towards Coherence in Canadian Administrative Law? Recent Cases on Standard of Review and Reasonableness" (2016), 62 *McGill L.J.* 527.

8 In addition, this analysis has in some respects departed from the theoretical foundations underpinning judicial review. While the application of the reasonableness standard is grounded, in part, in the necessity of avoiding "undue interference" in the face of the legislature's intention to leave certain questions with administrative bodies rather than with the courts (see *Dunsmuir* , at para. 27), that standard has come to be routinely applied even where the legislature has provided for a different institutional structure through a statutory appeal mechanism.

9 The uncertainty that has followed *Dunsmuir* has been highlighted by judicial and academic criticism, litigants who have come before this Court, and organizations that represent Canadians who interact with administrative decision makers. These are not light critiques or theoretical challenges. They go to the core of the coherence of our administrative law jurisprudence and to the practical implications of this lack of coherence. This Court, too, has taken note. In *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770(S.C.C.) , at para. 19, Abella J. expressed the need to "simplify the standard of review labyrinth we currently find ourselves in" and offered suggestions with a view to beginning a necessary conversation on the way forward. It is in this context that the Court decided to grant leave to hear this case and the companion cases jointly.

10 This process has led us to conclude that a reconsideration of this Court's approach is necessary in order to bring greater coherence and predictability to this area of law. We have therefore adopted a revised framework for determining the standard of review where a court reviews the merits of an administrative decision. The analysis begins with a presumption that reasonableness is the applicable standard in all cases. Reviewing courts should derogate from this presumption only where required by a clear indication of legislative intent or by the rule of law.

11 The second aspect is the need for better guidance from this Court on the proper application of the reasonableness standard. The Court has heard concerns that reasonableness review is sometimes perceived as advancing a two-tiered justice system in which those subject to administrative decisions are entitled only to an outcome somewhere between "good enough" and "not quite wrong". These concerns have been echoed by some members of the legal profession, civil society organizations and legal clinics. The Court has an obligation to take these perspectives seriously and to ensure that the framework it adopts accommodates all types of administrative decision making, in areas that range from immigration, prison administration and social security entitlements to labour relations, securities regulation and energy policy.

12 These concerns regarding the application of the reasonableness standard speak to the need for this Court to more clearly articulate what that standard entails and how it should be applied in practice. Reasonableness review is methodologically distinct from correctness review. It is informed by the need to respect the legislature's choice to delegate decision-making authority to the administrative decision maker rather than to the reviewing court. In order to fulfill *Dunsmuir* 's promise to protect "the legality, the reasonableness and the fairness of the administrative process and its outcomes", reasonableness review must entail a sensitive and respectful, but robust, evaluation of administrative decisions: para. 28.

13 Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

14 On the one hand, courts must recognize the legitimacy and authority of administrative decision makers within their proper spheres and adopt an appropriate posture of respect. On the other hand, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be "justified to citizens in terms of rationality and fairness": the Rt. Hon. B. McLachlin, "The Roles of Administrative Tribunals and Courts in Maintaining the Rule of Law" (1998), 12 *C.J.A.L.P.* 171, at p. 174 (emphasis deleted); see also M. Cohen-Eliya and I. Porat, "Proportionality and Justification" (2014), 64 *U.T.L.J.* 458, at pp. 467-70.

15 In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.

II. Determining the Applicable Standard of Review

16 In the following sections, we set out a revised framework for determining the standard of review a court should apply when the merits of an administrative decision are challenged. It starts with a presumption that reasonableness is the applicable standard whenever a court reviews administrative decisions.

17 The presumption of reasonableness review can be rebutted in two types of situations. The first is where the legislature has indicated that it intends a different standard or set of standards to apply. This will be the case where the legislature explicitly prescribes the applicable standard of review. It will also be the case where the legislature has provided a statutory appeal mechanism from an administrative decision to a court, thereby signalling the legislature's intent that appellate standards apply when a court reviews the decision. The second situation in which the presumption of reasonableness review will be rebutted is where the rule of law requires that the standard of correctness be applied. This will be the case for certain categories of questions, namely constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies. The general rule of reasonableness review, when coupled with these limited exceptions, offers a comprehensive approach to determining the applicable standard of review. As a result, it is no longer necessary for courts to engage in a "contextual inquiry" (*CHRC*, at paras. 45-47, see also *Dunsmuir* , at paras. 62-64; *McLean* , at para. 22) in order to identify the appropriate standard.

18 Before setting out the framework for determining the standard of review in greater detail, we wish to acknowledge that these reasons depart from the Court's existing jurisprudence on standard of review in certain respects. Any reconsideration such as this can be justified only by compelling circumstances, and we do not take this decision lightly. A decision to adjust course will always require the Court to carefully weigh the impact on legal certainty and predictability against the costs of continuing to follow a flawed approach: see *Bedford v. Canada (Attorney General)*, 2013 SCC 72, [2013] 3 S.C.R. 1101(S.C.C.) , at para. 47; *Craig v. R.*, 2012 SCC 43, [2012] 2 S.C.R. 489(S.C.C.) , at paras. 24-27; *Fraser v. Ontario (Attorney General)*, 2011 SCC 20, [2011] 2 S.C.R. 3 (S.C.C.) , at paras. 56-57 and 129-31, 139; *R. v. Henry*, 2005 SCC 76, [2005] 3 S.C.R. 609 (S.C.C.) , at paras. 43-44; *R. v. Bernard*, [1988] 2 S.C.R. 833 (S.C.C.) , at pp. 849-50.

19 On this point, we recall the observation of Gibbs J. in *Queensland v. Commonwealth* 1977 139 C.L.R. 585(Australia H.C.), which this Court endorsed in *Craig* , at para. 26:

> No Justice is entitled to ignore the decisions and reasoning of his predecessors, and to arrive at his own judgment as though the pages of the law reports were blank, or as though the authority of a decision did not survive beyond the rising of the Court. A Justice, unlike a legislator, cannot introduce a programme of reform which sets at nought decisions formerly made and principles formerly established. It is only after the most careful and respectful consideration of the earlier decision, and after giving due weight to all the circumstances, that a Justice may give effect to his own opinions in preference to an earlier decision of the Court.

20 Nonetheless, this Court has in the past revisited precedents that were determined to be unsound in principle, that had proven to be unworkable and unnecessarily complex to apply, or that had attracted significant and valid judicial, academic and other criticism: *Craig* , at paras. 28-30; *Henry* , at paras. 45-47; *Fraser* , at para. 135 (per Rothstein J., concurring in the result); *Bernard* , at pp. 858-59. Although adhering to the established jurisprudence will generally promote certainty and predictability, in some instances doing so will create or perpetuate uncertainty in the law: *Canada (Minister of Indian Affairs & Northern Development) v. Ranville*, [1982] 2 S.C.R. 518(S.C.C.) , at p. 528; *Bernard* , at p. 858; *R. v. B. (K.G.)*, [1993] 1 S.C.R. 740(S.C.C.) , at p. 778.

In such circumstances, "following the prior decision because of *stare decisis* would be contrary to the underlying value behind that doctrine, namely, clarity and certainty in the law": *Bernard* , at p. 858. These considerations apply here.

21 Certain aspects of the current framework are unclear and unduly complex. The practical effect of this lack of clarity is that courts sometimes struggle in conducting the standard of review analysis, and costly debates surrounding the appropriate standard and its application continue to overshadow the review on the merits in many cases, thereby undermining access to justice. The words of Binnie J. in his concurring reasons in *Dunsmuir* , at para. 133, are still apt:

> [J]udicial review is burdened with undue cost and delay. Litigants understandably hesitate to go to court to seek redress for a perceived administrative injustice if their lawyers cannot predict with confidence even what standard of review will be applied .... If litigants do take the plunge, they may find the court's attention focussed not on their complaints, or the government's response, but on lengthy and arcane discussions of something they are told is [the choice of standard analysis] .... A victory before the reviewing court may be overturned on appeal because the wrong "standard of review" was selected. A small business denied a licence or a professional person who wants to challenge disciplinary action should be able to seek judicial review without betting the store or the house on the outcome ....

Regrettably, we find ourselves in a similar position following *Dunsmuir* . As Karakatsanis J. observed in *Edmonton East*, at para. 35, "[t]he contextual approach can generate uncertainty and endless litigation concerning the standard of review." While counsel and courts attempt to work through the complexities of determining the standard of review and its proper application, litigants "still find the merits waiting in the wings for their chance to be seen and reviewed": *Wilson* , at para. 25, per Abella J.

22 As noted in *CHRC*, this Court "has for years attempted to simplify the standard of review analysis in order to 'get the parties away from arguing about the tests and back to arguing about the substantive merits of their case'": para. 27, quoting *Alberta Teachers*, at para. 36, citing *Dunsmuir* , at para. 145, per Binnie J. The principled changes set out below seek to promote the values underlying *stare decisis* and to make the law on the standard of review more certain, coherent and workable going forward.

A. Presumption That Reasonableness Is the Applicable Standard

23 Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions other than a review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.

24 Parliament and the provincial legislatures are constitutionally empowered to create administrative bodies and to endow them with broad statutory powers: *Dunsmuir* , at para. 27. Where a legislature has created an administrative decision maker for the specific purpose of administering a statutory scheme, it must be presumed that the legislature also intended that decision maker to be able to fulfill its mandate and interpret the law as applicable to all issues that come before it. Where a legislature has not explicitly prescribed that a court is to have a role in reviewing the decisions of that decision maker, it can safely be assumed that the legislature intended the administrative decision maker to function with a minimum of judicial interference. However, because judicial review is protected by s. 96 of the *Constitution Act, 1867*, legislatures cannot shield administrative decision making from curial scrutiny entirely: *Dunsmuir* , at para. 31; *Crevier v. Quebec (Attorney General)*, [1981] 2 S.C.R. 220(S.C.C.) , at pp. 236-37; *Syndicat national des employés de la commission scolaire régionale de l'Outaouais v. U.E.S., local 298*, [1988] 2 S.C.R. 1048(S.C.C.) , at p. 1090. Nevertheless, respect for these institutional design choices made by the legislature requires a reviewing court to adopt a posture of restraint on review.

25 For years, this Court's jurisprudence has moved toward a recognition that the reasonableness standard should be the starting point for a court's review of an administrative decision. Indeed, a presumption of reasonableness review is already a well-established feature of the standard of review analysis in cases in which administrative decision makers interpret their home statutes: see *Alberta Teachers*, at para. 30; *Saguenay*, at para. 46; *Edmonton East*, at para. 22. In our view, it is now appropriate to

hold that whenever a court reviews an administrative decision, it should start with the presumption that the applicable standard of review for all aspects of that decision will be reasonableness. While this presumption applies to the administrative decision maker's interpretation of its enabling statute, the presumption also applies more broadly to other aspects of its decision.

26 Before turning to an explanation of how the presumption of reasonableness review may be rebutted, we believe it is desirable to clarify one aspect of the conceptual basis for this presumption. Since *C.U.P.E., Local 963 v. New Brunswick Liquor Corp.*, [1979] 2 S.C.R. 227(S.C.C.) , the central rationale for applying a deferential standard of review in administrative law has been a respect for the legislature's institutional design choice to delegate certain matters to non-judicial decision makers through statute: *C.U.P.E.* , at pp. 235-36. However, this Court has subsequently identified a number of other justifications for applying the reasonableness standard, some of which have taken on influential roles in the standard of review analysis at various times.

27 In particular, the Court has described one rationale for applying the reasonableness standard as being the relative expertise of administrative decision makers with respect to the questions before them: see, e.g., *C.U.P.E.* , at p. 236; *Pushpanathan v. Canada (Minister of Employment & Immigration)*, [1998] 1 S.C.R. 982(S.C.C.) , at paras. 32-35; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (S.C.C.) , at pp. 591-92; *Canada (Director of Investigation & Research) v. Southam Inc.*, [1997] 1 S.C.R. 748(S.C.C.) , at paras. 50-53; *Dunsmuir* , at para. 49, quoting D. J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004), 17 *C.J.A.L.P.* 59, at p. 93; see also *Dunsmuir* , at para. 68. However, this Court's jurisprudence has sometimes been deeply divided on the question of what expertise entails in the administrative context, how it should be assessed and how it should inform the standard of review analysis: see, e.g., *Khosa* , at paras. 23-25, per Binnie J. for the majority, compared to paras. 93-96, per Rothstein J., concurring in the result; *Edmonton East*, at para. 33, per Karakatsanis J. for the majority, compared to paras. 81-86, per Côté and Brown JJ., dissenting. In the era of what was known as the "pragmatic and functional" approach, which was first set out in *Bibeault* , a decision maker's expertise relative to that of the reviewing court was one of the key contextual factors said to indicate legislative intent with respect to the standard of review, but the decision maker was not presumed to have relative expertise. Instead, whether a decision maker had greater expertise than the reviewing court was assessed in relation to the specific question at issue and on the basis of a contextual analysis that could incorporate factors such as the qualification of an administrative body's members, their experience in a particular area and their involvement in policy making: see, e.g., *Pezim* , at pp. 591-92; *Southam*, at paras. 50-53; *Q. v. College of Physicians & Surgeons (British Columbia)*, 2003 SCC 19, [2003] 1 S.C.R. 226(S.C.C.) , at paras. 28-29; *Deputy Minister of National Revenue v. Mattel Canada Inc.*, 2001 SCC 36, [2001] 2 S.C.R. 100 (S.C.C.) , at paras. 28-32; *Moreau-Bérubé c. Nouveau-Brunswick*, 2002 SCC 11, [2002] 1 S.C.R. 249 (S.C.C.) , at para. 50.

28 Unfortunately, this contextual analysis proved to be unwieldly and offered limited practical guidance for courts attempting to assess an administrative decision maker's relative expertise. More recently, the dominant approach in this Court has been to accept that expertise simply inheres in an administrative body by virtue of the specialized function designated for it by the legislature: *Edmonton East*, at para. 33. However, if administrative decision makers are understood to possess specialized expertise on all questions that come before them, the concept of expertise ceases to assist a reviewing court in attempting to distinguish questions for which applying the reasonableness standard is appropriate from those for which it is not.

29 Of course, the fact that the specialized role of administrative decision makers lends itself to the development of expertise and institutional experience is not the only reason that a legislature may choose to delegate decision-making authority. Over the years, the Court has pointed to a number of other compelling rationales for the legislature to delegate the administration of a statutory scheme to a particular administrative decision maker. These rationales have included the decision maker's proximity and responsiveness to stakeholders, ability to render decisions promptly, flexibly and efficiently, and ability to provide simplified and streamlined proceedings intended to promote access to justice.

30 While specialized expertise and these other rationales may all be reasons for a legislature to delegate decision-making authority, a reviewing court need not evaluate which of these rationales apply in the case of a particular decision maker in order to determine the standard of review. Instead, in our view, it is the *very fact* that the legislature has chosen to delegate authority which justifies a default position of reasonableness review. The Court has in fact recognized this basis for applying the reasonableness standard to administrative decisions in the past. In *Khosa* , for example, the majority understood *Dunsmuir* to stand for the proposition that "with or without a privative clause, a measure of deference has come to be accepted as appropriate

where a particular decision had been allocated to an administrative decision-maker rather than to the courts": para. 25. More recently, in *Edmonton East*, Karakatsanis J. explained that a presumption of reasonableness review "respects the principle of legislative supremacy and the choice made to delegate decision making to a tribunal, rather than the courts": para. 22. And in *CHRC*, Gascon J. explained that "the fact that the legislature has allocated authority to a decision maker other than the courts is itself an indication that the legislature intended deferential review": para. 50. In other words, respect for this institutional design choice and the democratic principle, as well as the need for courts to avoid "undue interference" with the administrative decision maker's discharge of its functions, is what justifies the presumptive application of the reasonableness standard: *Dunsmuir* , at para. 27.

31 We wish to emphasize that because these reasons adopt a presumption of reasonableness as the starting point, expertise is no longer relevant to a determination of the standard of review as it was in the contextual analysis. However, we are not doing away with the role of expertise in administrative decision making. This consideration is simply folded into the new starting point and, as explained below, expertise remains a relevant consideration in conducting reasonableness review.

32 That being said, our starting position that the applicable standard of review is reasonableness is not incompatible with the rule of law. However, because this approach is grounded in respect for legislative choice, it also requires courts to give effect to clear legislative direction that a different standard was intended. Similarly, a reviewing court must be prepared to derogate from the presumption of reasonableness review where respect for the rule of law requires a singular, determinate and final answer to the question before it. Each of these situations will be discussed in turn below.

B. Derogation From the Presumption of Reasonableness Review on the Basis of Legislative Intent

33 This Court has described respect for legislative intent as the "polar star" of judicial review: *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539 (S.C.C.) , at para. 149. This description remains apt. The presumption of reasonableness review discussed above is intended to give effect to the legislature's choice to leave certain matters with administrative decision makers rather than the courts. It follows that this presumption will be rebutted where a legislature has indicated that a different standard should apply. The legislature can do so in two ways. First, it may explicitly prescribe through statute what standard courts should apply when reviewing decisions of a particular administrative decision maker. Second, it may direct that derogation from the presumption of reasonableness review is appropriate by providing for a statutory appeal mechanism from an administrative decision maker to a court, thereby signalling the application of appellate standards.

(1) Legislated Standards of Review

34 Any framework rooted in legislative intent must, to the extent possible, respect clear statutory language that prescribes the applicable standard of review. This Court has consistently affirmed that legislated standards of review should be given effect: see, e.g., *R. v. Owen*, 2003 SCC 33, [2003] 1 S.C.R. 779 (S.C.C.) , at paras. 31-32; *Khosa* , at paras. 18-19; *British Columbia (Workers' Compensation Board) v. British Columbia (Human Rights Tribunal)*, 2011 SCC 52, [2011] 3 S.C.R. 422 (S.C.C.) , at para. 20; *Moore v. British Columbia (Ministry of Education)*, 2012 SCC 61, [2012] 3 S.C.R. 360 (S.C.C.) , at para. 55; *McCormick v. Fasken Martineau Dumoulin LLP*, 2014 SCC 39, [2014] 2 S.C.R. 108 (S.C.C.) , at para. 16; *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, 2016 SCC 25, [2016] 1 S.C.R. 587 (S.C.C.) , at paras. 8 and 29; *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, [2017] 2 S.C.R. 795 (S.C.C.) , at para. 28.

35 It follows that where a legislature has indicated that courts are to apply the standard of correctness in reviewing certain questions, that standard must be applied. In British Columbia, the legislature has established the applicable standard of review for many tribunals by reference to the *Administrative Tribunals Act*, S.B.C. 2004, c. 45: see ss. 58 and 59. For example, it has provided that the standard of review applicable to decisions on questions of statutory interpretation by the B.C. Human Rights Tribunal is to be correctness: *ibid.*, s. 59(1); *Human Rights Code*, R.S.B.C. 1996, c. 210, s. 32. We continue to be of the view that where the legislature has indicated the applicable standard of review, courts are bound to respect that designation, within the limits imposed by the rule of law.

(2) Statutory Appeal Mechanisms

36 We have reaffirmed that, to the extent possible, the standard of review analysis requires courts to give effect to the legislature's institutional design choices to delegate authority through statute. In our view, this principled position also requires courts to give effect to the legislature's intent, signalled by the presence of a statutory appeal mechanism from an administrative decision to a court, that the court is to perform an appellate function with respect to that decision. Just as a legislature may, within constitutional limits, insulate administrative decisions from judicial interference, it may also choose to establish a regime "which does not exclude the courts but rather makes them part of the enforcement machinery": *Bhadauria v. Seneca College of Applied Arts & Technology*, [1981] 2 S.C.R. 181 (S.C.C.) , at p. 195. Where a legislature has provided that parties may appeal from an administrative decision to a court, either as of right or with leave, it has subjected the administrative regime to appellate oversight and indicated that it expects the court to scrutinize such administrative decisions on an appellate basis. This expressed intention necessarily rebuts the blanket presumption of reasonableness review, which is premised on giving effect to a legislature's decision to leave certain issues with a body other than a court. This intention should be given effect. As noted by the intervener Attorney General of Quebec in its factum, [TRANSLATION] "[t]he requirement of deference must not sterilize such an appeal mechanism to the point that it changes the nature of the decision-making process the legislature intended to put in place": para. 2.

37 It should therefore be recognized that, where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision. This means that the applicable standard is to be determined with reference to the nature of the question and to this Court's jurisprudence on appellate standards of review. Where, for example, a court is hearing an appeal from an administrative decision, it would, in considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision maker's authority, apply the standard of correctness in accordance with *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235(S.C.C.) , at para. 8. Where the scope of the statutory appeal includes questions of fact, the appellate standard of review for those questions is palpable and overriding error (as it is for questions of mixed fact and law where the legal principle is not readily extricable): see *Housen* , at paras. 10, 19 and 26-37. Of course, should a legislature intend that a different standard of review apply in a statutory appeal, it is always free to make that intention known by prescribing the applicable standard through statute.

38 We acknowledge that giving effect to statutory appeal mechanisms in this way departs from the Court's recent jurisprudence. However, after careful consideration, we are of the view that this shift is necessary in order to bring coherence and conceptual balance to the standard of review analysis and is justified by a weighing of the values of certainty and correctness: *Craig* , at para. 27. Our conclusion is based on the following considerations.

39 First, there has been significant judicial and academic criticism of this Court's recent approach to statutory appeal rights: see, e.g., Y.-M. Morissette, "What is a 'reasonable decision'?" (2018), 31 *C.J.A.L.P.* 225, at p. 244; the Hon. J.T. Robertson, *Administrative Deference: The Canadian Doctrine that Continues to Disappoint* (April 18, 2018) (online), at p. 8; the Hon. D. Stratas, "The Canadian Law of Judicial Review: A Plea for Doctrinal Coherence and Consistency" (2016), 42 *Queen's L.J.* 27, at p. 33; Daly, at pp. 541-42; *Québec (Procureure générale) c. Montréal (Ville)* 2016 QCCA 2108 17 Admin. L.R. (6th) 328(C.A. Que.), at paras. 36-46; *Bell Canada v. 7262591 Canada Ltd.*, 2018 FCA 174, 428 D.L.R. (4th) 311(F.C.A.), at paras. 190-92, per Nadon J.A., concurring, and at 66 and 69-72, per Rennie J.A., dissenting; *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374, 60 Alta. L.R. (6th) 1(Alta. C.A.), at paras. 91 and 93-95, per Slatter J.A., concurring; *Nova Scotia (Attorney General) v. S&D Smith Central Supplies Limited*, 2019 NSCA 22(N.S. C.A.) , at paras. 250, 255-64 and 274-302, per Beveridge J.A., dissenting; *Atlantic Mining NS Corp. (D.D.V. Gold Limited) v. Oakley*, 2019 NSCA 14(N.S. C.A.) , at paras. 9-14. These critiques seize on the inconsistency inherent in a standard of review framework based on legislative intent that otherwise declines to give meaning to an express statutory right of appeal. This criticism observes that legislative choice is not one-dimensional; rather, it pulls in two directions. While a legislative choice to delegate to an administrative decision maker grounds a presumption of reasonableness on the one hand, a legislative choice to enact a statutory right of appeal signals an intention to ascribe an appellate role to reviewing courts on the other hand.

40 This Court has in the past held that the existence of significant and valid judicial, academic and other criticism of its jurisprudence may justify reconsideration of a precedent: *Craig* , at para. 29; *R. v. Robinson*, [1996] 1 S.C.R. 683 (S.C.C.) , at paras. 35-41. This consideration applies in the instant case. In particular, the suggestion that the recent treatment of statutory rights of appeal represents a departure from the conceptual basis underpinning the standard of review framework is itself a compelling reason to re-examine the current approach: *Khosa* , at para. 87, per Rothstein J., concurring in the result.

41 Second, there is no satisfactory justification for the recent trend in this Court's jurisprudence to give no effect to statutory rights of appeal in the standard of review analysis absent exceptional wording: see *Tervita Corp. v. Canada (Commissioner of Competition)*, 2015 SCC 3, [2015] 1 S.C.R. 161 (S.C.C.) , at paras. 35-39. Indeed, this approach is itself a departure from earlier jurisprudence: the Hon. J. T. Robertson, "Judicial Deference to Administrative Tribunals: A Guide to 60 Years of Supreme Court Jurisprudence" (2014), 66 *S.C.L.R.* (2d) 1, at pp. 91-93. Under the former "pragmatic and functional" approach to determining the applicable standard of review, the existence of a privative clause or a statutory right of appeal was one of four contextual factors that a court would consider in order to determine the standard that the legislature intended to apply to a particular decision. Although a statutory appeal clause was not determinative, it was understood to be a key factor indicating that the legislature intended that a less deferential standard of review be applied: see, e.g., *Pezim* , at pp. 589-92; *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.*, [1995] 2 S.C.R. 739(S.C.C.) , at paras. 28-31; *Southam*, at paras. 30-32, 46 and 54-55; *Pushpanathan* , at paras. 30-31; *Dr. Q* , at para. 27; *Mattel*, at paras. 26-27; *Ryan v. Law Society (New Brunswick)*, 2003 SCC 20, [2003] 1 S.C.R. 247 (S.C.C.) , at paras. 21 and 27-29; *Barrie Public Utilities v. Canadian Cable Television Assn.*, 2003 SCC 28, [2003] 1 S.C.R. 476 (S.C.C.) , at para. 11; *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54, [2004] 3 S.C.R. 152 (S.C.C.) , at para. 7.

42 The Court did indeed sometimes find that, even in a statutory appeal, a deferential standard of review was warranted for the legal findings of a decision maker that lay at the heart of the decision maker's expertise: see, e.g., *Pezim* . In other instances, however, the Court concluded that the existence of a statutory appeal mechanism and the fact that the decision maker did not have greater expertise than a court on the issue being considered indicated that correctness was the appropriate standard, including on matters involving the interpretation of the administrative decision maker's home statute: see, e.g., *Mattel*, at paras. 26-33; *Barrie Public Utilities* , at paras. 9-19; *Monsanto* , at paras. 6-16.

43 Yet as, in *Dunsmuir* , *Alberta Teachers*, *Edmonton East* and subsequent cases, the standard of review analysis was simplified and shifted from a contextual analysis to an approach more focused on categories, statutory appeal mechanisms ceased to play a role in the analysis. Although this simplification of the standard of review analysis may have been a laudable change, it did not justify ceasing to give *any* effect to statutory appeal mechanisms. *Dunsmuir* itself provides little guidance on the rationale for this change. The majority in *Dunsmuir* was silent on the role of a statutory right of appeal in determining the standard of review, and did not refer to the prior treatment of statutory rights of appeal under the pragmatic and functional approach.

44 More generally, there is no convincing reason to presume that legislatures mean something entirely different when they use the word "appeal" in an administrative law statute than they do in, for example, a criminal or commercial law context. Accepting that the word "appeal" refers to the same type of procedure in all these contexts also accords with the presumption of consistent expression, according to which the legislature is presumed to use language such that the same words have the same meaning both within a statute and across statutes: R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at p. 217. Accepting that the legislature intends an appellate standard of review to be applied when it uses the word "appeal" also helps to explain why many statutes provide for *both* appeal and judicial review mechanisms in different contexts, thereby indicating two roles for reviewing courts: see, e.g., *Federal Courts Act*, R.S.C. 1985, c. F-7, ss. 27 and 28. This offers further support for giving effect to statutory rights of appeal. Our colleagues' suggestion that our position in this regard "hinges" on what they call a "textualist argument" (at para. 246) is inaccurate.

45 That there is no principled rationale for ignoring statutory appeal mechanisms becomes obvious when the broader context of those mechanisms is considered. The existence of a limited right of appeal, such as a right of appeal on questions of law or a right of appeal with leave of a court, does not preclude a court from considering other aspects of a decision in a judicial review proceeding. However, if the same standards of review applied regardless of whether a question was covered by the

appeal provision, and regardless of whether an individual subject to an administrative decision was granted leave to appeal or applied for judicial review, the appeal provision would be completely redundant — contrary to the well-established principle that the legislature does not speak in vain: *Québec (Procureur général) c. Carrières Ste-Thérèse ltée*, [1985] 1 S.C.R. 831 (S.C.C.) , at p. 838.

46 Finally, and most crucially, the appeals now before the Court have allowed for a comprehensive and considered examination of the standard of review analysis with the goal of remedying the conceptual and practical difficulties that have made this area of the law challenging for litigants and courts alike. To achieve this goal, the revised framework must, for at least two reasons, give effect to statutory appeal mechanisms. The first reason is conceptual. In the past, this Court has looked past an appeal clause primarily when the decision maker possessed greater relative expertise — what it called the "specialization of duties" principle in *Pezim* , at p. 591. But, as discussed above, the presumption of reasonableness review is no longer premised upon notions of relative expertise. Instead, it is now based on respect for the legislature's institutional design choice, according to which the authority to make a decision is vested in an administrative decision maker rather than in a court. It would be inconsistent with this conceptual basis for the presumption of reasonableness review to disregard clear indications that the legislature has intentionally chosen a more involved role for the courts. Just as recognizing a presumption of reasonableness review on all questions respects a legislature's choice to leave some matters first and foremost to an administrative decision maker, departing from that blanket presumption in the context of a statutory appeal respects the legislature's choice of a more involved role for the courts in supervising administrative decision making.

47 The second reason is that, building on developments in the case law over the past several years, this decision conclusively closes the door on the application of a contextual analysis to determine the applicable standard, and in doing so streamlines and simplifies the standard of review framework. With the elimination of the contextual approach to selecting the standard of review, the need for statutory rights of appeal to play a role becomes clearer. Eliminating the contextual approach means that statutory rights of appeal must now either play no role in administrative law or be accepted as directing a departure from the default position of reasonableness review. The latter must prevail.

48 Our colleagues agree that the time has come to put the contextual approach espoused in *Dunsmuir* to rest and adopt a presumption of reasonableness review. We part company on the extent to which the departure from the contextual approach requires corresponding modifications to other aspects of the standard of review jurisprudence. We consider that the elimination of the contextual approach represents an incremental yet important adjustment to Canada's judicial review roots. While it is true that this Court has, in the past several years of jurisprudential development, warned that the contextual approach should be applied "sparingly" (*CHRC*, at para. 46), it is incorrect to suggest that our jurisprudence was such that the elimination of the contextual analysis was "all but complete": reasons of Abella and Karakatsanis JJ., at para. 277; see, in this regard, *CHRC*, at paras. 44-54; *Saguenay*, at para. 46; *Tervita* , at para. 35; *McLean* , at para. 22; *Edmonton East*, at para. 32; *Public Performance of Musical Works, Re*, 2012 SCC 35, [2012] 2 S.C.R. 283(S.C.C.) , at para. 15. The contextual analysis was one part of the broader standard of review framework set out in *Dunsmuir* . A departure from this aspect of the *Dunsmuir* framework requires a principled rebalancing of the framework as a whole in order to maintain the equilibrium between the roles of administrative decision makers and reviewing courts that is fundamental to administrative law.

49 In our view, with the starting position of this presumption of reasonableness review, and in the absence of a searching contextual analysis, legislative intent can only be given effect in this framework if statutory appeal mechanisms, as clear signals of legislative intent with respect to the applicable standard of review, are given effect through the application of appellate standards by reviewing courts. Conversely, 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.

50 We wish, at this juncture, to make three points regarding how the presence of a statutory appeal mechanism should inform the choice of standard analysis. First, we note that statutory regimes that provide for parties to appeal to a court from an administrative decision may allow them to do so in all cases (that is, as of right) or only with leave of the court. While the existence of a leave requirement will affect whether a court will hear an appeal from a particular decision, it does not affect the standard to be applied if leave is given and the appeal is heard.

51 Second, we note that not all legislative provisions that contemplate a court reviewing an administrative decision actually provide a right of appeal. Some provisions simply recognize that all administrative decisions are subject to judicial review and address procedural or other similar aspects of judicial review in a particular context. Since these provisions do not give courts an appellate function, they do not authorize the application of appellate standards. Some examples of such provisions are ss. 18 to 18.2, 18.4 and 28 of the *Federal Courts Act*, which confer jurisdiction on the Federal Court and the Federal Court of Appeal to hear and determine applications for judicial review of decisions of federal bodies and grant remedies, and also address procedural aspects of such applications: see *Khosa* , at para. 34. Another example is the current version of s. 470 of Alberta's *Municipal Government Act*, R.S.A. 2000, c. M-26, which does not provide for an appeal to a court, but addresses procedural considerations and consequences that apply "[w]here a decision of an assessment review board is the subject of an application for judicial review": s. 470(1).

52 Third, we would note that statutory appeal rights are often circumscribed, as their scope might be limited with reference to the types of questions on which a party may appeal (where, for example, appeals are limited to questions of law) or the types of decisions that may be appealed (where, for example, not every decision of an administrative decision maker may be appealed to a court), or to the party or parties that may bring an appeal. However, the existence of a circumscribed right of appeal in a statutory scheme does not on its own preclude applications for judicial review of decisions, or of aspects of decisions, to which the appeal mechanism does not apply, or by individuals who have no right of appeal. But any such application for judicial review is distinct from an appeal, and the presumption of reasonableness review that applies on judicial review cannot then be rebutted by reference to the statutory appeal mechanism.

C. The Applicable Standard Is Correctness Where Required by the Rule of Law

53 In our view, respect for the rule of law requires courts to apply the standard of correctness for certain types of legal questions: constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies. The application of the correctness standard for such questions respects the unique role of the judiciary in interpreting the Constitution and ensures that courts are able to provide the last word on questions for which the rule of law requires consistency and for which a final and determinate answer is necessary: *Dunsmuir* , at para. 58.

54 When applying the correctness standard, the reviewing court may choose either to uphold the administrative decision maker's determination or to substitute its own view: *Dunsmuir* , at para. 50. While it should take the administrative decision maker's reasoning into account — and indeed, it may find that reasoning persuasive and adopt it — the reviewing court is ultimately empowered to come to its own conclusions on the question.

(1) Constitutional Questions

55 Questions regarding the division of powers between Parliament and the provinces, the relationship between the legislature and the other branches of the state, the scope of Aboriginal and treaty rights under s. 35 of the *Constitution Act, 1982*, and other constitutional matters require a final and determinate answer from the courts. Therefore, the standard of correctness must continue to be applied in reviewing such questions: *Dunsmuir* , para. 58; *Westcoast Energy Inc. v. Canada (National Energy Board)*, [1998] 1 S.C.R. 322 (S.C.C.) .

56 The Constitution — both written and unwritten — dictates the limits of all state action. Legislatures and administrative decision makers are bound by the Constitution and must comply with it. A legislature cannot alter the scope of its own constitutional powers through statute. Nor can it alter the constitutional limits of executive power by delegating authority to an administrative body. In other words, although a legislature may choose what powers it delegates to an administrative body, it cannot delegate powers that it does not constitutionally have. The constitutional authority to act must have determinate, defined and consistent limits, which necessitates the application of the correctness standard.

57 Although the *amici* questioned the approach to the standard of review set out in *Doré c. Québec (Tribunal des professions)*, 2012 SCC 12, [2012] 1 S.C.R. 395 (S.C.C.) , a reconsideration of that approach is not germane to the issues in this appeal.

However, it is important to draw a distinction between cases in which it is alleged that the effect of the administrative decision being reviewed is to unjustifiably limit rights under the *Canadian Charter of Rights and Freedoms* (as was the case in *Doré*) and those in which the issue on review is whether a provision of the decision maker's enabling statute violates the *Charter* (see, e.g., *Martin v. Nova Scotia (Workers' Compensation Board)*, 2003 SCC 54, [2003] 2 S.C.R. 504 (S.C.C.) , at para. 65). Our jurisprudence holds that an administrative decision maker's interpretation of the latter issue should be reviewed for correctness, and that jurisprudence is not displaced by these reasons.

(2) General Questions of Law of Central Importance to the Legal System as a Whole

58 In *Dunsmuir* , a majority of the Court held that, in addition to constitutional questions, general questions of law which are "both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise" will require the application of the correctness standard: para. 60, citing *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77 (S.C.C.) , at para. 62, per LeBel J., concurring. We remain of the view that the rule of law requires courts to have the final word with regard to general questions of law that are "of central importance to the legal system as a whole". However, a return to first principles reveals that it is not necessary to evaluate the decision maker's specialized expertise in order to determine whether the correctness standard must be applied in cases involving such questions. As indicated above (at para. 31) of the reasons, the consideration of expertise is folded into the new starting point adopted in these reasons, namely the presumption of reasonableness review.

59 As the majority of the Court recognized in *Dunsmuir* , the key underlying rationale for this category of questions is the reality that certain general questions of law "require uniform and consistent answers" as a result of "their impact on the administration of justice as a whole": *Dunsmuir* , para. 60. In these cases, correctness review is necessary to resolve general questions of law that are of "fundamental importance and broad applicability", with significant legal consequences for the justice system as a whole or for other institutions of government: see *Toronto (City)* , at para. 70; *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53, [2016] 2 S.C.R. 555 (S.C.C.) , at para. 20; *Canadian National Railway* , at para. 60; *Chagnon v. Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39, [2018] 2 S.C.R. 687 (S.C.C.) , at para. 17; *Saguenay*, at para. 51; *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471 (S.C.C.) ("*Mowat*"), at para. 22; *Commission scolaire de Laval c. Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8, [2016] 1 S.C.R. 29 (S.C.C.) , at para. 38. For example, the question in *University of Calgary* could not be resolved by applying the reasonableness standard, because the decision would have had legal implications for a wide variety of other statutes and because the uniform protection of solicitor-client privilege — at issue in that case — is necessary for the proper functioning of the justice system: *University of Calgary* , at paras. 19-26. As this shows, the resolution of general questions of law "of central importance to the legal system as a whole" has implications beyond the decision at hand, hence the need for "uniform and consistent answers".

60 This Court's jurisprudence continues to provide important guidance regarding what constitutes a general question of law of central importance to the legal system as a whole. For example, the following general questions of law have been held to be of central importance to the legal system as a whole: when an administrative proceeding will be barred by the doctrines of *res judicata* and abuse of process (*Toronto (City)* , at para. 15); the scope of the state's duty of religious neutrality (*Saguenay*, at para. 49); the appropriateness of limits on solicitor-client privilege (*University of Calgary* , at para. 20); and the scope of parliamentary privilege (*Chagnon* , at para. 17). We caution, however, that this jurisprudence must be read carefully, given that expertise is no longer a consideration in identifying such questions: see, e.g., *CHRC*, at para. 43.

61 We would stress that the mere fact that a dispute is "of wider public concern" is not sufficient for a question to fall into this category — nor is the fact that the question, when framed in a general or abstract sense, touches on an important issue: see, e.g., *Irving Pulp & Paper Ltd. v. CEP, Local 30*, 2013 SCC 34, [2013] 2 S.C.R. 458 (S.C.C.) , at para. 66; *McLean* , at para. 28; *Barreau du Québec c. Québec (Procureure générale)*, 2017 SCC 56, [2017] 2 S.C.R. 488 (S.C.C.) , at para. 18. The case law reveals many examples of questions this Court has concluded are *not* general questions of law of central importance to the legal system as a whole. These include whether a certain tribunal can grant a particular type of compensation (*Mowat*, at para. 25); when estoppel may be applied as an arbitral remedy (*M.A.H.C.P. v. Nor-Man Regional Health Authority Inc.*, 2011 SCC 59, [2011] 3 S.C.R. 616 (S.C.C.) , at paras. 37-38); the interpretation of a statutory provision prescribing timelines for an

investigation (*Alberta Teachers*, at para. 32); the scope of a management rights clause in a collective agreement (*Irving Pulp & Paper*, at paras. 7, 15-16 and 66, per Rothstein and Moldaver JJ., dissenting but not on this point); whether a limitation period had been triggered under securities legislation (*McLean* , at paras. 28-31); whether a party to a confidential contract could bring a complaint under a particular regulatory regime (*Canadian National Railway* , at para. 60); and the scope of an exception allowing non-advocates to represent a minister in certain proceedings (*Barreau du Québec* , at paras. 17-18). As these comments and examples indicate, this does not mean that simply because expertise no longer plays a role in the selection of the standard of review, questions of central importance are now transformed into a broad catch-all category for correctness review.

62 In short, general questions of law of central importance to the legal system as a whole require a single determinate answer. In cases involving such questions, the rule of law requires courts to provide a greater degree of legal certainty than reasonableness review allows.

(3) Questions Regarding the Jurisdictional Boundaries Between Two or More Administrative Bodies

63 Finally, the rule of law requires that the correctness standard be applied in order to resolve questions regarding the jurisdictional boundaries between two or more administrative bodies: *Dunsmuir* , para. 61. One such question arose in *Regina Police Assn. v. Regina (City) Police Commissioners*, 2000 SCC 14, [2000] 1 S.C.R. 360 (S.C.C.) , in which the issue was the jurisdiction of a labour arbitrator to consider matters of police discipline and dismissal that were otherwise subject to a comprehensive legislative regime. Similarly, in *Québec (Commission des droits de la personne & des droits de la jeunesse) c. Québec (Procureure générale)*, 2004 SCC 39, [2004] 2 S.C.R. 185 (S.C.C.) , the Court considered a jurisdictional dispute between a labour arbitrator and the Quebec Human Rights Tribunal.

64 Administrative decisions are rarely contested on this basis. Where they are, however, the rule of law requires courts to intervene where one administrative body has interpreted the scope of its authority in a manner that is incompatible with the jurisdiction of another. The rationale for this category of questions is simple: the rule of law cannot tolerate conflicting orders and proceedings where they result in a true operational conflict between two administrative bodies, pulling a party in two different and incompatible directions: see *British Columbia Telephone Co.* , at para. 80, per McLachlin J. (as she then was), concurring. Members of the public must know where to turn in order to resolve a dispute. As with general questions of law of central importance to the legal system as a whole, the application of the correctness standard in these cases safeguards predictability, finality and certainty in the law of administrative decision making.

D. A Note Regarding Jurisdictional Questions

65 We would cease to recognize jurisdictional questions as a distinct category attracting correctness review. The majority in *Dunsmuir* held that it was "without question" (para. 50) that the correctness standard must be applied in reviewing jurisdictional questions (also referred to as true questions of jurisdiction or *vires*). True questions of jurisdiction were said to arise "where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter": see *Dunsmuir* , at para. 59; *Québec (Procureure générale) c. Guérin*, 2017 SCC 42, [2017] 2 S.C.R. 3 (S.C.C.) , at para. 32. Since *Dunsmuir* , however, majorities of this Court have questioned the necessity of this category, struggled to articulate its scope and "expressed serious reservations about whether such questions can be distinguished as a separate category of questions of law": *McLean* , at para. 25, referring to *Alberta Teachers*, at para. 34; *Edmonton East*, at para. 26; *Guérin* , at paras. 32-36; *CHRC*, at paras. 31-41.

66 As Gascon J. noted in *CHRC*, the concept of "jurisdiction" in the administrative law context is inherently "slippery": para. 38. This is because, in theory, any challenge to an administrative decision can be characterized as "jurisdictional" in the sense that it calls into question whether the decision maker had the authority to act as it did: see *CHRC*, at para. 38; *Alberta Teachers*, at para. 34; see similarly *City of Arlington v. Federal Communications Commission* 569 U.S. 290(U.S. Sup. Ct. 2013), at p. 299. Although this Court's jurisprudence contemplates that only a much narrower class of "truly" jurisdictional questions requires correctness review, it has observed that there are no "clear markers" to distinguish such questions from other questions related to the interpretation of an administrative decision maker's enabling statute: see *CHRC*, at para. 38. Despite differing views on whether it is possible to demarcate a class of "truly" jurisdictional questions, there is general agreement that "it is

often difficult to distinguish between exercises of delegated power that raise truly jurisdictional questions from those entailing an unremarkable application of an enabling statute": *CHRC*, at para. 111, per Brown J., concurring. This tension is perhaps clearest in cases where the legislature has delegated broad authority to an administrative decision maker that allows the latter to make regulations in pursuit of the objects of its enabling statute: see, e.g., *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360(S.C.C.) ; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, [2018] 1 S.C.R. 635 (S.C.C.) .

67 In *CHRC*, the majority, while noting this inherent difficulty — and the negative impact on litigants of the resulting uncertainty in the law — nonetheless left the question of whether the category of true questions of jurisdiction remains necessary to be determined in a later case. After hearing submissions on this issue and having an adequate opportunity for reflection on this point, we are now in a position to conclude that it is not necessary to maintain this category of correctness review. The arguments that support maintaining this category — in particular the concern that a delegated decision maker should not be free to determine the scope of its own authority — can be addressed adequately by applying the framework for conducting reasonableness review that we describe below. Reasonableness review is both robust and responsive to context. A proper application of the reasonableness standard will enable courts to fulfill their constitutional duty to ensure that administrative bodies have acted within the scope of their lawful authority without having to conduct a preliminary assessment regarding whether a particular interpretation raises a "truly" or "narrowly" jurisdictional issue and without having to apply the correctness standard.

68 Reasonableness review does not give administrative decision makers free rein in interpreting their enabling statutes, and therefore does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority. Even where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the number of *reasonable* interpretations open to the decision maker — perhaps limiting it one. Conversely, where the legislature has afforded a decision maker broad powers in general terms — and has provided no right of appeal to a court — the legislature's intention that the decision maker have greater leeway in interpreting its enabling statute should be given effect. Without seeking to import the U.S. jurisprudence on this issue wholesale, we find that the following comments of the Supreme Court of the United States in *Arlington*, at p. 307, are apt:

> The fox-in-the-henhouse syndrome is to be avoided not by establishing an arbitrary and undefinable category of agency decision-making that is accorded no deference, but by taking seriously, and applying rigorously, in all cases, statutory limits on agencies' authority. Where [the legislature] has established a clear line, the agency cannot go beyond it; and where [the legislature] has established an ambiguous line, the agency can go no further than the ambiguity will fairly allow. But in rigorously applying the latter rule, a court need not pause to puzzle over whether the interpretive question presented is "jurisdictional" ....

E. Other Circumstances Requiring a Derogation from the Presumption of Reasonableness Review

69 In these reasons, we have identified five situations in which a derogation from the presumption of reasonableness review is warranted either on the basis of legislative intent (i.e., legislated standards of review and statutory appeal mechanisms) or because correctness review is required by the rule of law (i.e., constitutional questions, general questions of law of central importance to the legal system as a whole, and questions regarding jurisdictional boundaries between administrative bodies). This framework is the product of careful consideration undertaken following extensive submissions and based on a thorough review of the relevant jurisprudence. We are of the view, at this time, that these reasons address all of the situations in which a reviewing court should derogate from the presumption of reasonableness review. As previously indicated, courts should no longer engage in a contextual inquiry to determine the standard of review or to rebut the presumption of reasonableness review. Letting go of this contextual approach will, we hope, "get the parties away from arguing about the tests and back to arguing about the substantive merits of their case": *Alberta Teachers*, at para. 36, quoting *Dunsmuir* , at para. 145, per Binnie J., concurring.

70 However, we would not definitively foreclose the possibility that another category could be recognized as requiring a derogation from the presumption of reasonableness review in a future case. But our reluctance to pronounce that the list of

exceptions to the application of a reasonableness standard is closed should not be understood as inviting the routine establishment of new categories requiring correctness review. Rather, it is a recognition that it would be unrealistic to declare that we have contemplated every possible set of circumstances in which legislative intent or the rule of law will require a derogation from the presumption of reasonableness review. That being said, the recognition of any new basis for correctness review would be exceptional and would need to be consistent with the framework and the overarching principles set out in these reasons. In other words, any new category warranting a derogation from the presumption of reasonableness review on the basis of legislative intent would require a signal of legislative intent as strong and compelling as those identified in these reasons (i.e., a legislated standard of review or a statutory appeal mechanism). Similarly, the recognition of a new category of questions requiring correctness review that is based on the rule of law would be justified only where failure to apply correctness review would undermine the rule of law and jeopardize the proper functioning of the justice system in a manner analogous to the three situations described in these reasons.

71 The *amici curiae* suggest that, in addition to the three categories of legal questions identified above, the Court should recognize an additional category of legal questions that would require correctness review on the basis of the rule of law: legal questions regarding which there is persistent discord or internal disagreement within an administrative body leading to legal incoherence. They argue that correctness review is necessary in such situations because the rule of law breaks down where legal inconsistency becomes the norm and the law's meaning comes to depend on the identity of the decision maker. The *amici curiae* submit that, where competing reasonable legal interpretations linger over time at the administrative level — such that a statute comes to mean, simultaneously, both "yes" and "no" — the courts must step in to provide a determinative answer to the question without according deference to the administrative decision maker: factum of the *amici curiae*, at para. 91.

72 We are not persuaded that the Court should recognize a distinct correctness category for legal questions on which there is persistent discord within an administrative body. In *Domtar Inc. c. Québec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 S.C.R. 756(S.C.C.) , this Court held that "a lack of unanimity [within a tribunal] is the price to pay for the decision-making freedom and independence given to the members of these tribunals": p. 800; see also *I.B.E.W., Local 894 v. Ellis-Don Ltd.*, 2001 SCC 4, [2001] 1 S.C.R. 221 (S.C.C.) , at para. 28. That said, we agree that the hypothetical scenario suggested by the *amici curiae* — in which the law's meaning depends on the identity of the individual decision maker, thereby leading to legal incoherence — is antithetical to the rule of law. In our view, however, the more robust form of reasonableness review set out below, which accounts for the value of consistency and the threat of arbitrariness, is capable, in tandem with internal administrative processes to promote consistency and with legislative oversight (see *Domtar* , at p. 801), of guarding against threats to the rule of law. Moreover, the precise point at which internal discord on a point of law would be so serious, persistent and unresolvable that the resulting situation would amount to "legal incoherence" and require a court to step in is not obvious. Given these practical difficulties, this Court's binding jurisprudence and the hypothetical nature of the problem, we decline to recognize such a category in this appeal.

III. Performing Reasonableness Review

73 This Court's administrative law jurisprudence has historically focused on the analytical framework used to determine the applicable standard of review, while providing relatively little guidance on how to conduct reasonableness review in practice.

74 In this section of our reasons, we endeavour to provide that guidance. The approach we set out is one that focuses on justification, offers methodological consistency and reinforces the principle "that reasoned decision-making is the lynchpin of institutional legitimacy": *amici curiae* factum, at para. 12.

75 We pause to note that our colleagues' approach to reasonableness review is not fundamentally dissimilar to ours. Our colleagues emphasize that reviewing courts should respect administrative decision makers and their specialized expertise, should not ask how they themselves would have resolved an issue and should focus on whether the applicant has demonstrated that the decision is unreasonable: paras. 288, 289 and 291. We agree. As we have stated above, at para. 13, reasonableness review finds its starting point in judicial restraint and respects the distinct role of administrative decision makers. Moreover, as explained below, reasonableness review considers all relevant circumstances in order to determine whether the applicant has met their onus.

A. Procedural Fairness and Substantive Review

76 Before turning to a discussion of the proposed approach to reasonableness review, we pause to acknowledge that the requirements of the duty of procedural fairness in a given case — and in particular whether that duty requires a decision maker to give reasons for its decision — will impact how a court conducts reasonableness review.

77 It is well established that, as a matter of procedural fairness, reasons are not required for all administrative decisions. The duty of procedural fairness in administrative law is "eminently variable", inherently flexible and context-specific: *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653 (S.C.C.) , at p. 682; *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817(S.C.C.) , at paras. 22-23; *Moreau-Bérubé* , at paras. 74-75; *Dunsmuir* , at para. 79. Where a particular administrative decision-making context gives rise to a duty of procedural fairness, the specific procedural requirements that the duty imposes are determined with reference to all of the circumstances: *Baker* , at para. 21. In *Baker* , this Court set out a non-exhaustive list of factors that inform the content of the duty of procedural fairness in a particular case, one aspect of which is whether written reasons are required. Those factors include: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the administrative decision maker itself: *Baker* , at paras. 23-27; see also *Congrégation des Témoins de Jéhovah de St-Jérôme-Lafontaine c. Lafontaine (Municipalité)*, 2004 SCC 48, [2004] 2 S.C.R. 650 (S.C.C.) , at para. 5. Cases in which written reasons tend to be required include those in which the decision-making process gives the parties participatory rights, an adverse decision would have a significant impact on an individual or there is a right of appeal: *Baker* , at para. 43; D. J. M. Brown and the Hon. J. M. Evans, with the assistance of D. Fairlie, *Judicial Review of Administrative Action in Canada* (loose-leaf), vol. 3, at p. 12-54.

78 In the case at bar and in its companion cases, reasons for the administrative decisions at issue were both required and provided. Our discussion of the proper approach to reasonableness review will therefore focus on the circumstances in which reasons for an administrative decision are required and available to the reviewing court.

79 Notwithstanding the important differences between the administrative context and the judicial context, reasons generally serve many of the same purposes in the former as in the latter: *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869(S.C.C.) , at paras. 15 and 22-23. Reasons explain how and why a decision was made. They help to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner. Reasons shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power: *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine* , at paras. 12-13. As L'Heureux-Dubé J. noted in *Baker* , "[t]hose affected may be more likely to feel they were treated fairly and appropriately if reasons are given": para. 39, citing S.A. de Smith, J. Jowell and Lord Woolf, *Judicial Review of Administrative Action* (5th ed. 1995), at pp. 459-60. And as Jocelyn Stacey and the Hon. Alice Woolley persuasively write, "public decisions gain their democratic and legal authority through a process of public justification" which includes reasons "that justify [the] decisions [of public decision makers] in light of the constitutional, statutory and common law context in which they operate": "Can Pragmatism Function in Administrative Law?" (2016), 74 *S.C.L.R.* (2d) 211, at p. 220.

80 The process of drafting reasons also necessarily encourages administrative decision makers to more carefully examine their own thinking and to better articulate their analysis in the process: *Baker* , at para. 39. This is what Justice Sharpe describes — albeit in the judicial context — as the "discipline of reasons": *Good Judgment*: *Making Judicial Decisions* (2018), at p. 134; see also *Sheppard* , at para. 23.

81 Reasons facilitate meaningful judicial review by shedding light on the rationale for a decision: *Baker* , at para. 39. In *N.L.N.U. v. Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708(S.C.C.) , the Court reaffirmed that "the purpose of reasons, when they are required, is to demonstrate 'justification, transparency and intelligibility'": para. 1, quoting *Dunsmuir* , at para. 47; see also *Suresh v. Canada (Minister of Citizenship & Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3(S.C.C.) , at para. 126. The starting point for our analysis is therefore that where reasons are required, they are the primary mechanism by which administrative decision makers show that their decisions are reasonable — both to the affected

parties and to the reviewing courts. It follows that the provision of reasons for an administrative decision may have implications for its legitimacy, including in terms both of whether it is procedurally fair and of whether it is substantively reasonable.

B. Reasonableness Review Is Concerned With the Decision-making Process and Its Outcomes

82 Reasonableness review aims to give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law: see *Dunsmuir* , at paras. 27-28 and 48; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5 (S.C.C.) , at para. 10; *R. v. Campbell*, [1997] 3 S.C.R. 3 (S.C.C.) , at para. 10.

83 It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to *review*, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem. The Federal Court of Appeal noted in *Delios v. Canada (Attorney General)*, 2015 FCA 117, 472 N.R. 171 (F.C.A.) , that, "as reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did": at para. 28; see also *Ryan* , at paras. 50-51. Instead, the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable.

84 As explained above, where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion: see *Dunsmuir* , at para. 48, quoting D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286.

85 Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a whole is reasonable. As we will explain in greater detail below, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision.

86 Attention to the decision maker's reasons is part of how courts demonstrate respect for the decision-making process: see *Dunsmuir* , at paras. 47-49. In *Dunsmuir* , this Court explicitly stated that the court conducting a reasonableness review is concerned with "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes": para. 47. Reasonableness, according to *Dunsmuir* , "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as well as "with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *ibid.* In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

87 This Court's jurisprudence since *Dunsmuir* should not be understood as having shifted the focus of reasonableness review away from a concern with the reasoning process and toward a nearly exclusive focus on the *outcome* of the administrative decision under review. Indeed, that a court conducting a reasonableness review properly considers both the outcome of the decision and the reasoning process that led to that outcome was recently reaffirmed in *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6 (S.C.C.) , at para. 12. In that case, although the outcome of the decision at issue may not have been unreasonable in the circumstances, the decision was set aside because the outcome had been arrived at on the basis of an unreasonable chain of analysis. This approach is consistent with the direction in *Dunsmuir* that judicial review is concerned

with *both* outcome *and* process. To accept otherwise would undermine, rather than demonstrate respect toward, the institutional role of the administrative decision maker.

C. Reasonableness Is a Single Standard That Accounts for Context

88 In any attempt to develop a coherent and unified approach to judicial review, the sheer variety of decisions and decision makers that such an approach must account for poses an inescapable challenge. The administrative decision makers whose decisions may be subject to judicial review include specialized tribunals exercising adjudicative functions, independent regulatory bodies, ministers, front-line decision makers, and more. Their decisions vary in complexity and importance, ranging from the routine to the life-altering. These include matters of "high policy" on the one hand and "pure law" on the other. Such decisions will sometimes involve complex technical considerations. At other times, common sense and ordinary logic will suffice.

89 Despite this diversity, reasonableness remains a single standard, and elements of a decision's context do not modulate the standard or the degree of scrutiny by the reviewing court. Instead, the particular context of a decision constrains what will be reasonable for an administrative decision maker to decide in a given case. This is what it means to say that "[r]easonableness is a single standard that takes its colour from the context": *Khosa* , at para. 59; *Catalyst* , at para. 18; *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] 1 S.C.R. 364 (S.C.C.), at para. 44; *Wilson* , at para. 22, per Abella J.; *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38, [2016] 2 S.C.R. 80 (S.C.C.) , at para. 57, per Côté J., dissenting but not on this point; *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, [2018] 2 S.C.R. 293 (S.C.C.), at para. 53.

90 The approach to reasonableness review that we articulate in these reasons accounts for the diversity of administrative decision making by recognizing that what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review. These contextual constraints dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt. The fact that the contextual constraints operating on an administrative decision maker may vary from one decision to another does not pose a problem for the reasonableness standard, because each decision must be both justified by the administrative body and evaluated by reviewing courts in relation to its own particular context.

D. Formal Reasons for a Decision Should Be Read in Light of the Record and With Due Sensitivity to the Administrative Setting in Which They Were Given

91 A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside: *Newfoundland Nurses*, at para. 16. The review of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings.

92 Administrative decision makers cannot always be expected to deploy the same array of legal techniques that might be expected of a lawyer or judge — nor will it always be necessary or even useful for them to do so. Instead, the concepts and language employed by administrative decision makers will often be highly specific to their fields of experience and expertise, and this may impact both the form and content of their reasons. These differences are not necessarily a sign of an unreasonable decision — indeed, they may be indicative of a decision maker's strength within its particular and specialized domain. "Administrative justice" will not always look like "judicial justice", and reviewing courts must remain acutely aware of that fact.

93 An administrative decision maker may demonstrate through its reasons that a given decision was made by bringing that institutional expertise and experience to bear: see *Dunsmuir* , at para. 49. In conducting reasonableness review, judges should be attentive to the application by decision makers of specialized knowledge, as demonstrated by their reasons. Respectful attention to a decision maker's demonstrated expertise may reveal to a reviewing court that an outcome that might be puzzling or

counterintuitive on its face nevertheless accords with the purposes and practical realities of the relevant administrative regime and represents a reasonable approach given the consequences and the operational impact of the decision. This demonstrated experience and expertise may also explain why a given issue is treated in less detail.

94 The reviewing court must also read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered. For example, the reviewing court might consider the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker's work, and past decisions of the relevant administrative body. This may explain an aspect of the decision maker's reasoning process that is not apparent from the reasons themselves, or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency. Opposing parties may have made concessions that had obviated the need for the decision maker to adjudicate on a particular issue; the decision maker may have followed a well-established line of administrative case law that no party had challenged during the proceedings; or an individual decision maker may have adopted an interpretation set out in a public interpretive policy of the administrative body of which he or she is a member.

95 That being said, reviewing courts must keep in mind the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it. It would therefore be unacceptable for an administrative decision maker to provide an affected party formal reasons that fail to justify its decision, but nevertheless expect that its decision would be upheld on the basis of internal records that were not available to that party.

96 Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome: *Delta Air Lines* , at paras. 26-28. To allow a reviewing court to do so would be to allow an administrative decision maker to abdicate its responsibility to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion. This would also amount to adopting an approach to reasonableness review focused solely on the outcome of a decision, to the exclusion of the rationale for that decision. To the extent that cases such as *Newfoundland Nurses* and *Alberta Teachers* have been taken as suggesting otherwise, such a view is mistaken.

97 Indeed, *Newfoundland Nurses* is far from holding that a decision maker's grounds or rationale for a decision is irrelevant. It instead tells us that close attention must be paid to a decision maker's written reasons and that they must be read holistically and contextually, for the very purpose of understanding the basis on which a decision was made. We agree with the observations of Rennie J. in *Komolafe v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 431, 16 Imm. L.R. (4th) 267 (F.C.), at para. 11:

> *Newfoundland Nurses* is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue. It is ironic that *Newfoundland Nurses*, a case which at its core is about deference and standard of review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to supply the reasons that might have been given and make findings of fact that were not made. This is to turn the jurisprudence on its head. *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn ....

98 As for *Alberta Teachers*, it concerned a very specific and exceptional circumstance in which the reviewing court had exercised its discretion to consider a question of statutory interpretation on judicial review, even though that question had not been raised before the administrative decision maker and, as a result, no reasons had been given on that issue: paras. 22-26. Furthermore, it was agreed that the ultimate decision maker — the Information and Privacy Commissioner's delegate — had applied a well-established interpretation of the statutory provision in question and that, had she been asked for reasons to justify her interpretation, she would have adopted reasons the Commissioner had given in past decisions. In other words, the reasons of the Commissioner that this Court relied on to find that the administrative decision was reasonable were not merely reasons

that *could* have been offered, in an abstract sense, but reasons that *would* have been offered had the issue been raised before the decision maker. Far from suggesting in *Alberta Teachers* that reasonableness review is concerned primarily with outcome, as opposed to rationale, this Court rejected the position that a reviewing court is entitled to "reformulate a tribunal's decision in a way that casts aside an unreasonable chain of analysis in favour of the court's own rationale for the result": para. 54, quoting *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396, 276 B.C.A.C. 135 (B.C. C.A.) , at paras. 53 and 56. In *Alberta Teachers*, this Court also reaffirmed the importance of giving proper reasons and reiterated that "deference under the reasonableness standard is best given effect when administrative decision makers provide intelligible and transparent justification for their decisions, and when courts ground their review of the decision in the reasons provided": para. 54. Where a decision maker's rationale for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record, the decision will generally fail to meet the requisite standard of justification, transparency and intelligibility.

E. A Reasonable Decision Is One That Is Both Based on an Internally Coherent Reasoning and Justified in Light of the Legal and Factual Constraints That Bear on the Decision

99 A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Dunsmuir* , at paras. 47 and 74; *Catalyst* , at para. 13.

100 The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

101 What makes a decision unreasonable? We find it conceptually useful here to consider two types of fundamental flaws. The first is a failure of rationality internal to the reasoning process. The second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it. There is however, no need for reviewing courts to categorize failures of reasonableness as belonging to one type or the other. Rather, we use these descriptions simply as a convenient way to discuss the types of issues that may show a decision to be unreasonable.

(1) A Reasonable Decision Is Based on an Internally Coherent Reasoning

102 To be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a "line-by-line treasure hunt for error": *Irving Pulp & Paper*, at para. 54, citing *Newfoundland Nurses*, at para. 14. However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived": *Ryan* , at para. 55; *Southam*, at para. 56. Reasons that "simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion" will rarely assist a reviewing court in understanding the rationale underlying a decision and "are no substitute for statements of fact, analysis, inference and judgment": R. A. Macdonald and D. Lametti, "Reasons for Decision in Administrative Law" (1990), 3 *C.J.A.L.P.* 123, at p. 139; see also *Mora Gonzalez v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 750, 27 Imm. L.R. (4th) 151(F.C.), at paras. 57-59.

103 While, as we indicated earlier (at paras. 89-96), formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis: see *Wright v. Nova Scotia (Human Rights Commission)* 2017 NSSC 11 23 Admin. L.R. (6th) 110(N.S. S.C.); *Southam*, at para. 56. A decision

will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken (see *Sangmo v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 17 (F.C.), at para. 21) or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point (see *Gamez Blas v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 629, 26 Imm. L.R. (4th) 92 (F.C.), at paras. 54-66; *Reid v. Ontario (Criminal Injuries Compensation Board)*, 2015 ONSC 6578 (Ont. Div. Ct.) ; *Lloyd v. Canada (Attorney General)*, 2016 FCA 115, 2016 D.T.C. 5051 (F.C.A.) ; *Taman v. Canada (Attorney General)*, 2017 FCA 1, [2017] 3 F.C.R. 520 (F.C.A.) , at para. 47).

104 Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".

(2) A Reasonable Decision Is Justified in Light of the Legal and Factual Constraints That Bear on the Decision

105 In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir* , at para. 47; *Catalyst* , at para. 13; *Nor-Man Regional Health Authority* , at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.

106 It is unnecessary to catalogue all of the legal or factual considerations that could constrain an administrative decision maker in a particular case. However, in the sections that follow, we discuss a number of elements that will generally be relevant in evaluating whether a given decision is reasonable, namely the governing statutory scheme; other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the submissions of the parties; the past practices and decisions of the administrative body; and the potential impact of the decision on the individual to whom it applies. These elements are not a checklist for conducting reasonableness review, and they may vary in significance depending on the context. They are offered merely to highlight some elements of the surrounding context that can cause a reviewing court to lose confidence in the outcome reached.

107 A reviewing court may find that a decision is unreasonable when examined against these contextual considerations. These elements necessarily interact with one another: for example, a reasonable penalty for professional misconduct in a given case must be justified *both* with respect to the types of penalties prescribed by the relevant legislation and with respect to the nature of the underlying misconduct.

(a) Governing Statutory Scheme

108 Because administrative decision makers receive their powers by statute, the governing statutory scheme is likely to be the most salient aspect of the legal context relevant to a particular decision. That administrative decision makers play a role, along with courts, in elaborating the precise content of the administrative schemes they administer should not be taken to mean that administrative decision makers are permitted to disregard or rewrite the law as enacted by Parliament and the provincial legislatures. Thus, for example, while an administrative body may have considerable discretion in making a particular decision, that decision must ultimately comply "with the rationale and purview of the statutory scheme under which it is adopted": *Catalyst* , at paras. 15 and 25-28; see also *Green* , at para. 44. As Rand J. noted in *Roncarelli c. Duplessis*, [1959] S.C.R. 121 (S.C.C.) , at p. 140, "there is no such thing as absolute and untrammelled 'discretion'", and any exercise of discretion must accord with the purposes for which it was given: see also *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine* , at para. 7; *Montréal (Ville) c. Administration portuaire de Montréal*, 2010 SCC 14, [2010] 1 S.C.R. 427(S.C.C.) , at paras. 32-33; *Nor-Man Regional Health Authority* , at para. 6. Likewise, a decision must comport with any more specific constraints imposed by the governing legislative scheme, such as the statutory definitions, principles or formulas that prescribe the exercise of a discretion: see *Montréal (City)* , at paras. 33 and 40-41; *Canada (Attorney General) v. Almon Equipment Ltd.*, 2010 FCA 193, [2011] 4 F.C.R. 203 (F.C.A.) , at paras. 38-40. The statutory scheme also informs the acceptable approaches to decision making: for example, where a decision maker is given wide discretion, it would be unreasonable for it to fetter that discretion: see *Delta Air Lines* , at para. 18.

109 As stated above, a proper application of the reasonableness standard is capable of allaying the concern that an administrative decision maker might interpret the scope of its own authority beyond what the legislature intended. As a result, there is no need to maintain a category of "truly" jurisdictional questions that are subject to correctness review. Although a decision maker's interpretation of its statutory grant of authority is generally entitled to deference, the decision maker must nonetheless properly justify that interpretation. Reasonableness review does not allow administrative decision makers to arrogate powers to themselves that they were never intended to have, and an administrative body cannot exercise authority which was not delegated to it. Contrary to our colleagues' concern (at para. 285), this does not reintroduce the concept of "jurisdictional error" into judicial review, but merely identifies one of the obvious and necessary constraints imposed on administrative decision makers.

110 Whether an interpretation is justified will depend on the context, including the language chosen by the legislature in describing the limits and contours of the decision maker's authority. If a legislature wishes to precisely circumscribe an administrative decision maker's power in some respect, it can do so by using precise and narrow language and delineating the power in detail, thereby tightly constraining the decision maker's ability to interpret the provision. Conversely, where the legislature chooses to use broad, open-ended or highly qualitative language — for example, "in the public interest" — it clearly contemplates that the decision maker is to have greater flexibility in interpreting the meaning of such language. Other language will fall in the middle of this spectrum. All of this is to say that certain questions relating to the scope of a decision maker's authority may support more than one interpretation, while other questions may support only one, depending upon the text by which the statutory grant of authority is made. What matters is whether, in the eyes of the reviewing court, the decision maker has properly justified its interpretation of the statute in light of the surrounding context. It will, of course, be impossible for an administrative decision maker to justify a decision that strays beyond the limits set by the statutory language it is interpreting.

(b) Other Statutory or Common Law

111 It is evident that both statutory and common law will impose constraints on how and what an administrative decision maker can lawfully decide: see *Dunsmuir* , at paras. 47 and 74. For example, an administrative decision maker interpreting the scope of its regulation-making authority in order to exercise that authority cannot adopt an interpretation that is inconsistent with applicable common law principles regarding the nature of statutory powers: see *Shoppers Drug Mart Inc. v. Ontario (Minister of Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810 (S.C.C.) , at paras. 45-48. Neither can a body instructed by legislation to determine what tax rate is applicable in accordance with an existing tax system ignore that system and base its determination on a "fictitious" system it has arbitrarily created: *Montréal (City)* , at para. 40. Where a relationship is governed by private law, it would be unreasonable for a decision maker to ignore that law in adjudicating parties' rights within that relationship: *Dunsmuir* , at para. 74. Similarly, where the governing statute specifies a standard that is well known in law and in the jurisprudence, a reasonable decision will generally be one that is consistent with the established understanding of that standard: see, e.g., the discussion of "reasonable grounds to suspect" in *Canada (Minister of Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, [2015] 2 F.C.R. 1006 (F.C.A.) , at paras. 93-98.

112 Any precedents on the issue before the administrative decision maker or on a similar issue will act as a constraint on what the decision maker can reasonably decide. An administrative body's decision may be unreasonable on the basis that the body failed to explain or justify a departure from a binding precedent in which the same provision had been interpreted. Where, for example, there is a relevant case in which a court considered a statutory provision, it would be unreasonable for an administrative decision maker to interpret or apply the provision without regard to that precedent. The decision maker would have to be able to explain why a different interpretation is preferable by, for example, explaining why the court's interpretation does not work in the administrative context: M. Biddulph, "Rethinking the Ramification of Reasonableness Review: *Stare Decisis* and Reasonableness Review on Questions of Law" (2018), 56 *Alta. L.R.* 119, at p. 146. There may be circumstances in which it is quite simply unreasonable for an administrative decision maker to fail to apply or interpret a statutory provision in accordance with a binding precedent. For instance, where an immigration tribunal is required to determine whether an applicant's act would constitute a criminal offence under Canadian law (see, e.g., *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, ss. 35-37), it would clearly not be reasonable for the tribunal to adopt an interpretation of a criminal law provision that is inconsistent with how Canadian criminal courts have interpreted it.

113 That being said, administrative decision makers will not necessarily be required to apply equitable and common law principles in the same manner as courts in order for their decisions to be reasonable. For example, it may be reasonable for a decision maker to adapt a common law or equitable doctrine to its administrative context: see *Nor-Man Regional Health Authority* , at paras. 5-6, 44-45, 52, 54 and 60. Conversely, a decision maker that rigidly applies a common law doctrine without adapting it to the relevant administrative context may be acting unreasonably: see *Delta Air Lines* , at paras. 16-17 and 30. In short, whether an administrative decision maker has acted reasonably in adapting a legal or equitable doctrine involves a highly context-specific determination.

114 We would also note that in some administrative decision making contexts, international law will operate as an important constraint on an administrative decision maker. It is well established that legislation is presumed to operate in conformity with Canada's international obligations, and the legislature is "presumed to comply with ... the values and principles of customary and conventional international law": *R. v. Hape*, 2007 SCC 26, [2007] 2 S.C.R. 292(S.C.C.) , at para. 53; *R. v. Appulonappa*, 2015 SCC 59, [2015] 3 S.C.R. 754 (S.C.C.) , at para. 40. Since *Baker* , it has also been clear that international treaties and conventions, even where they have not been implemented domestically by statute, can help to inform whether a decision was a reasonable exercise of administrative power: *Baker* , at paras. 69-71.

(c) Principles of Statutory Interpretation

115 Matters of statutory interpretation are not treated uniquely and, as with other questions of law, may be evaluated on a reasonableness standard. Although the general approach to reasonableness review described above applies in such cases, we recognize that it is necessary to provide additional guidance to reviewing courts on this point. This is because reviewing courts are accustomed to resolving questions of statutory interpretation in a context in which the issue is before them at first instance or on appeal, and where they are expected to perform their own independent analysis and come to their own conclusions.

116 Reasonableness review functions differently. Where reasonableness is the applicable standard on a question of statutory interpretation, the reviewing court does not undertake a *de novo* analysis of the question or "ask itself what the correct decision would have been": *Ryan* , at para. 50. Instead, just as it does when applying the reasonableness standard in reviewing questions of fact, discretion or policy, the court must examine the administrative decision as a whole, including the reasons provided by the decision maker and the outcome that was reached.

117 A court interpreting a statutory provision does so by applying the "modern principle" of statutory interpretation, that is, that the words of a statute must 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": *Rizzo & Rizzo Shoes Ltd., Re*, [1998] 1 S.C.R. 27 (S.C.C.) , at para. 21, and *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559 (S.C.C.) , at para. 26, both quoting E. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87. Parliament and the provincial legislatures have also provided guidance by way of statutory rules that explicitly govern the interpretation of statutes and regulations: see, e.g., *Interpretation Act*, R.S.C. 1985, c. I-21.

118 This Court has adopted the "modern principle" as the proper approach to statutory interpretation, because legislative intent can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context: Sullivan, at pp. 7-8. Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker. An approach to reasonableness review that respects legislative intent must therefore assume that those who interpret the law — whether courts or administrative decision makers — will do so in a manner consistent with this principle of interpretation.

119 Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. The specialized expertise and experience of administrative decision makers may

sometimes lead them to rely, in interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise.

120 But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are "precise and unequivocal", their ordinary meaning will usually play a more significant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. R.*, 2005 SCC 54, [2005] 2 S.C.R. 601(S.C.C.) , at para. 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements.

121 The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome.

122 It can happen that an administrative decision maker, in interpreting a statutory provision, fails entirely to consider a pertinent aspect of its text, context or purpose. Where such an omission is a minor aspect of the interpretive context, it is not likely to undermine the decision as a whole. It is well established that decision makers are not required "to explicitly address all possible shades of meaning" of a given provision: *Construction Labour Relations Assn. (Alberta) v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405 (S.C.C.) , at para. 3. Just like judges, administrative decision makers may find it unnecessary to dwell on each and every signal of statutory intent in their reasons. In many cases, it may be necessary to touch upon only the most salient aspects of the text, context or purpose. If, however, it is clear that the administrative decision maker may well, had it considered a key element of a statutory provision's text, context or purpose, have arrived at a different result, its failure to consider that element would be indefensible, and unreasonable in the circumstances. Like other aspects of reasonableness review, omissions are not stand-alone grounds for judicial intervention: the key question is whether the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker.

123 There may be other cases in which the administrative decision maker has not explicitly considered the meaning of a relevant provision in its reasons, but the reviewing court is able to discern the interpretation adopted by the decision maker from the record and determine whether that interpretation is reasonable.

124 Finally, even though the task of a court conducting a reasonableness review is *not* to perform a *de novo* analysis or to determine the "correct" interpretation of a disputed provision, it may sometimes become clear in the course of reviewing a decision that the interplay of text, context and purpose leaves room for a single reasonable interpretation of the statutory provision, or aspect of the statutory provision, that is at issue: *Dunsmuir* , at paras. 72-76. One case in which this conclusion was reached was *Nova Tube Inc./Nova Steel Inc. v. Conares Metal Supply Ltd.*, 2019 FCA 52 (F.C.A.) ., in which Laskin J.A., after analyzing the reasoning of the administrative decision maker (at paras. 26-61), held that the decision maker's interpretation had been unreasonable, and, furthermore, that the factors he had considered in his analysis weighed so overwhelmingly in favour of the opposite interpretation that that was the only reasonable interpretation of the provision: para. 61. As discussed below, it would serve no useful purpose in such a case to remit the interpretative question to the original decision maker. Even so, a court should generally pause before definitively pronouncing upon the interpretation of a provision entrusted to an administrative decision maker.

(d) Evidence Before the Decision Maker

125 It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker":*CHRC*, at para. 55; see also *Khosa* , at para. 64; *Dr. Q* , at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous

position of the first instance decision maker, apply equally in the context of judicial review: see *Housen* , at paras. 15-18; *Dr. Q* , at para. 38; *Dunsmuir* , at para. 53.

126 That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir* , para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker* , for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.

(e) Submissions of the Parties

127 The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker* , at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually *listened* to the parties.

128 Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker* , at para. 39.

(f) Past Practices and Past Decisions

129 Administrative decision makers are not bound by their previous decisions in the same sense that courts are bound by *stare decisis*. As this Court noted in *Domtar* , "a lack of unanimity is the price to pay for the decision-making freedom and independence" given to administrative decision makers, and the mere fact that some conflict exists among an administrative body's decisions does not threaten the rule of law: p. 800. Nevertheless, administrative decision makers and reviewing courts alike must be concerned with the general consistency of administrative decisions. Those affected by administrative decisions are entitled to expect that like cases will generally be treated alike and that outcomes will not depend merely on the identity of the individual decision maker — expectations that do not evaporate simply because the parties are not before a judge.

130 Fortunately, administrative bodies generally have a range of resources at their disposal to address these types of concerns. Access to past reasons and summaries of past reasons enables multiple individual decision makers within a single organization (such as administrative tribunal members) to learn from each other's work, and contributes to a harmonized decision-making culture. Institutions also routinely rely on standards, policy directives and internal legal opinions to encourage greater uniformity and guide the work of frontline decision makers. This Court has also held that plenary meetings of a tribunal's members can be an effective tool to "foster coherence" and "avoid ... conflicting results": *I.W.A., Local 2-69 v. Consolidated Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282 (S.C.C.) , at pp. 324-28. Where disagreement arises within an administrative body about how to appropriately resolve a given issue, that institution may also develop strategies to address that divergence internally and on its own initiative. Of course, consistency can also be encouraged through less formal methods, such as the development of training materials, checklists and templates for the purpose of streamlining and strengthening institutional best practices, provided that these methods do not operate to fetter decision making.

131 Whether a particular decision is consistent with the administrative body's past decisions is also a constraint that the reviewing court should consider when determining whether an administrative decision is reasonable. Where a decision maker *does* depart from longstanding practices or established internal authority, it bears the justificatory burden of explaining that departure in its reasons. If the decision maker does not satisfy this burden, the decision will be unreasonable. In this sense, the legitimate expectations of the parties help to determine both whether reasons are required and what those reasons must explain: *Baker* , at para. 26. We repeat that this does not mean administrative decision makers are bound by internal precedent in the same manner as courts. Rather, it means that a decision that departs from longstanding practices or established internal decisions will be reasonable if that departure is justified, thereby reducing the risk of arbitrariness, which would undermine public confidence in administrative decision makers and in the justice system as a whole.

132 As discussed above, it has been argued that correctness review would be required where there is "persistent discord" on questions on law in an administrative body's decisions. While we are not of the view that such a correctness category is required, we would note that reviewing courts have a role to play in managing the risk of persistently discordant or contradictory legal interpretations within an administrative body's decisions. When evidence of internal disagreement on legal issues has been put before a reviewing court, the court may find it appropriate to telegraph the existence of an issue in its reasons and encourage the use of internal administrative structures to resolve the disagreement. And if internal disagreement continues, it may become increasingly difficult for the administrative body to justify decisions that serve only to preserve the discord.

(g) Impact of the Decision on the Affected Individual

133 It is well established that individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm: *Baker* , at para. 25. However, this principle also has implications for how a court conducts reasonableness review. Central to the necessity of adequate justification is the perspective of the individual or party over whom authority is being exercised. Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.

134 Moreover, concerns regarding arbitrariness will generally be more acute in cases where the consequences of the decision for the affected party are particularly severe or harsh, and a failure to grapple with such consequences may well be unreasonable. For example, this Court has held that the Immigration Appeal Division should, when exercising its equitable jurisdiction to stay a removal order under the *Immigration and Refugee Protection Act*, consider the potential foreign hardship a deported person would face: *Chieu v. Canada (Minister of Citizenship & Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84(S.C.C.) .

135 Many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law.

F. Review in the Absence of Reasons

136 Where the duty of procedural fairness or the legislative scheme mandates that reasons be given to the affected party but none have been given, this failure will generally require the decision to be set aside and the matter remitted to the decision maker: see, e.g., *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine* , at para. 35. Also, where reasons are provided but they fail to provide a transparent and intelligible justification as explained above, the decision will be unreasonable. In many cases, however, neither the duty of procedural fairness nor the statutory scheme will require that formal reasons be given at all: *Baker* , at para. 43.

137 Admittedly, applying an approach to judicial review that prioritizes the decision maker's justification for its decisions can be challenging in cases in which formal reasons have not been provided. This will often occur where the decision-making process does not easily lend itself to producing a single set of reasons, for example, where a municipality passes a bylaw or

a law society renders a decision by holding a vote: see, e.g., *Catalyst* ; *Green* ; *Trinity Western University* . However, even in such circumstances, the reasoning process that underlies the decision will not usually be opaque. It is important to recall that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision: *Baker* , at para. 44. For example, as McLachlin C.J. noted in *Catalyst* , "[t]he reasons for a municipal bylaw are traditionally deduced from the debate, deliberations, and the statements of policy that give rise to the bylaw": para. 29. In that case, not only were "the reasons [in the sense of rationale] for the bylaw ... clear to everyone", they had also been laid out in a five-year plan: para. 33. Conversely, even without reasons, it is possible for the record and the context to reveal that a decision was made on the basis of an improper motive or for another impermissible reason, as, for example, in *Roncarelli* .

138 There will nonetheless be situations in which no reasons have been provided and neither the record nor the larger context sheds light on the basis for the decision. In such a case, the reviewing court must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable. But it is perhaps inevitable that without reasons, the analysis will then focus on the outcome rather than on the decision maker's reasoning process. This does not mean that reasonableness review is less robust in such circumstances, only that it takes a different shape.

G. A Note on Remedial Discretion

139 Where a court reviews an administrative decision, the question of the appropriate remedy is multi-faceted. It engages considerations that include the reviewing court's common law or statutory jurisdiction and the great diversity of elements that may influence a court's decision to exercise its discretion in respect of available remedies. While we do not aim to comprehensively address here the issue of remedies on judicial review, we do wish to briefly address the question of whether a court that quashes an unreasonable decision should exercise its discretion to remit the matter to the decision maker for reconsideration with the benefit of the court's reasons.

140 Where the reasonableness standard is applied in conducting a judicial review, the choice of remedy must be guided by the rationale for applying that standard to begin with, including the recognition by the reviewing court that the legislature has entrusted the matter to the administrative decision maker, and not to the court, to decide: see *Delta Air Lines* , at para. 31. However, the question of remedy must also be guided by concerns related to the proper administration of the justice system, the need to ensure access to justice and "the goal of expedient and cost-efficient decision making, which often motivates the creation of specialized administrative tribunals in the first place": *Alberta Teachers*, at para. 55.

141 Giving effect to these principles in the remedial context means that where a decision reviewed by applying the reasonableness standard cannot be upheld, it will most often be appropriate to remit the matter to the decision maker to have it reconsider the decision, this time with the benefit of the court's reasons. In reconsidering its decision, the decision maker may arrive at the same, or a different, outcome: see *Delta Air Lines* , at paras. 30-31.

142 However, while courts should, as a general rule, respect the legislature's intention to entrust the matter to the administrative decision maker, there are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature could have intended: *D'Errico v. Canada (Attorney General)*, 2014 FCA 95 (F.C.A.) , at paras. 18-19. An intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations. Declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose: see *Mobil Oil Canada Ltd. v. Canada-Newfoundland (Offshore Petroleum Board)*, [1994] 1 S.C.R. 202 (S.C.C.) , at pp. 228-30; *Renaud c. Québec (Commission des affaires sociales)*, [1999] 3 S.C.R. 855(S.C.C.) ; *Groia v. Law Society of Upper Canada*, 2018 SCC 27, [2018] 1 S.C.R. 772 (S.C.C.) , at para. 161; *Sharif v. Canada (Attorney General)*, 2018 FCA 205, 50 C.R. (7th) 1 (F.C.A.), at paras. 53-54; *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, 2017 FCA 45, 411 D.L.R. (4th) 175 (F.C.A.), at paras. 51-56 and 84; *Gehl v. Canada (Attorney General)*, 2017 ONCA 319 (Ont. C.A.) , at paras. 54 and 88. Elements like concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question, costs to the parties, and the efficient use of public resources may

also influence the exercise of a court's discretion to remit a matter, just as they may influence the exercise of its discretion to quash a decision that is flawed: see *MiningWatch Canada v. Canada (Minister of Fisheries & Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6 (S.C.C.) , at paras. 45-51; *Alberta Teachers*, at para. 55.

IV. Role of Prior Jurisprudence

143 Given that this appeal and its companion cases involve a recalibration of the governing approach to the choice of standard of review analysis and a clarification of the proper application of the reasonableness standard, it will be necessary to briefly address how the existing administrative law jurisprudence should be treated going forward. These reasons set out a holistic revision of the framework for determining the applicable standard of review. A court seeking to determine what standard is appropriate in a case before it should look to these reasons first in order to determine how this general framework applies to that case. Doing so may require the court to resolve subsidiary questions on which past precedents will often continue to provide helpful guidance. Indeed, much of the Court's jurisprudence, such as cases concerning general questions of law of central importance to the legal system as a whole or those relating to jurisdictional boundaries between two or more administrative bodies, will continue to apply essentially without modification. On other issues, certain cases — including those on the effect of statutory appeal mechanisms, "true" questions of jurisdiction or the former contextual analysis — will necessarily have less precedential force. As for cases that dictated how to conduct reasonableness review, they will often continue to provide insight, but should be used carefully to ensure that their application is aligned in principle with these reasons.

144 This approach strives for future doctrinal stability under the new framework while clarifying the continued relevance of the existing jurisprudence. Where a reviewing court is not certain how these reasons relate to the case before it, it may find it prudent to request submissions from the parties on both the appropriate standard and the application of that standard.

145 Before turning to Mr. Vavilov's case, we pause to note that our colleagues mischaracterize the framework developed in these reasons as being an "encomium" for correctness, and a turn away from the Court's deferential approach to the point of being a "eulogy" for deference (at paras. 199 and 201). With respect, this is a gross exaggeration. Assertions that these reasons adopt a formalistic, court-centric view of administrative law (at paras. 229 and 240), enable an unconstrained expansion of correctness review (at para. 253) or function as a sort of checklist for "line-by-line" reasonableness review (at para. 284), are counter to the clear wording we use and do not take into consideration the delicate balance that we have accounted for in setting out this framework.

V. Mr. Vavilov's Application for Judicial Review

146 The case at bar involves an application for judicial review of a decision made by the Canadian Registrar of Citizenship on August 15, 2014. The Registrar's decision concerned Mr. Vavilov, who was born in Canada and whose parents were later revealed to be undercover Russian spies. The Registrar determined that Mr. Vavilov was not a Canadian citizen on the basis of an interpretation of s. 3(2)(a) of the *Citizenship Act* and cancelled his certificate of citizenship under s. 26(3) of the *Citizenship Regulations*. We conclude that the standard of review applicable to the Registrar's decision is reasonableness, and that the Registrar's decision was unreasonable. We would uphold the decision of the Federal Court of Appeal to quash the Registrar's decision and would not remit the matter to the Registrar for redetermination.

A. Facts

147 Mr. Vavilov was born in Toronto as Alexander Foley on [date omitted]. At the time of his birth, his parents were posing as Canadians under the assumed names of Tracey Lee Ann Foley and Donald Howard Heathfield. In reality, they were Elena Vavilova and Andrey Bezrukov, two foreign nationals working on a long-term assignment for the Russian foreign intelligence service, the SVR. Their false Canadian identities had been assumed prior to the birth of Mr. Vavilov and of his older brother, Timothy, for purposes of a "deep cover" espionage network under the direction of the SVR. The United States Department of Justice refers to it as the "illegals" program.

148 Ms. Vavilova and Mr. Bezrukov were deployed to Canada to establish false personal histories as Western citizens. They worked, ran a business, pursued higher education and, as noted, had two children here. After their second son was born,

the family moved to France, and later to the United States. In the United States, Mr. Bezrukov obtained a Masters of Public Administration at Harvard University and worked as a consultant, all while working to collect information on a variety of sensitive national security issues for the SVR. The nature of the undercover work of Ms. Vavilova and Mr. Bezrukov meant that there was no point at which either of them had any publicly acknowledged affiliation with the Russian state, held any official diplomatic or consular status, or had been granted any diplomatic privilege or immunity.

149 Until he was about 16 years old, Mr. Vavilov did not know that his parents were not who they claimed to be. He believed that he was a Canadian citizen by birth, lived and identified as a Canadian, held a Canadian passport, learned both official languages and was proud of his heritage. His parents' true identities became known to him on June 27, 2010, when they were arrested in the United States and charged (along with several other individuals) with conspiracy to act as unregistered agents of a foreign government. On July 8, 2010, they pled guilty, admitted their status as Russian citizens acting on behalf of the Russian state, and were returned to Russia in a "spy swap" the following day. Mr. Vavilov has described the revelation as a traumatic event characterized by disbelief and a crisis of identity.

150 Just prior to his parents' deportation, Mr. Vavilov left the United States with his brother on a trip that had been planned before their parents' arrest, going first to Paris, and then to Russia on a tourist visa. In October 2010, Mr. Vavilov unsuccessfully attempted to renew his Canadian passport through the Canadian Embassy in Moscow. Although he submitted to DNA testing and changed his surname from Foley to Vavilov at the behest of passport authorities, his second attempt to obtain a Canadian passport in December 2011 was also unsuccessful. He was then informed that despite his Canadian birth certificate, he would also need to obtain and provide a certificate of Canadian citizenship before he would be issued a passport. Mr. Vavilov applied for that certificate in October 2012, and it was issued to him on January 15, 2013. At that point, he made another passport application through the Canadian Embassy in Buenos Aires, Argentina, and, after a delay, applied for mandamus, a process that was settled out of court in June 2013. The Minister of Citizenship and Immigration undertook to issue a new travel document to Mr. Vavilov by July 19, 2013.

151 However, Mr. Vavilov never received a passport. Instead, he received a "procedural fairness letter" from the Canadian Registrar of Citizenship dated July 18, 2013 in which the Registrar stated that Mr. Vavilov had not been entitled to a certificate of citizenship, that his certificate of citizenship had been issued in error and that, pursuant to s. 3(2)(a) of the *Citizenship Act*, he was not a citizen of Canada. Mr. Vavilov was invited to make submissions in response, and he did so. On August 15, 2014, the Registrar formally cancelled Mr. Vavilov's Canadian citizenship certificate pursuant to s. 26(3) of the *Citizenship Regulations*.

B. Procedural History

(1) Registrar's Decision

152 In a brief letter sent to Mr. Vavilov on August 15, 2014, the Registrar informed him that she was cancelling his certificate of citizenship pursuant to s. 26(3) of the *Citizenship Regulations* on the basis that he was not entitled to it. The Registrar summarized her position as follows:

> a) Although Mr. Vavilov was born in Toronto, neither of his parents was a citizen of Canada, and neither of them had been lawfully admitted to Canada for permanent residence at the time of his birth.
>
> b) In 2010, Mr. Vavilov's parents were convicted of "conspiracy to act in the United States as a foreign agent of a foreign government", and recognized as unofficial agents working as "illegals" for the SVR.
>
> c) As a result, the Registrar believed that, at the time of Mr. Vavilov's birth, his parents were "employees or representatives of a foreign government".
>
> d) Accordingly, pursuant to s. 3(2)(a) of the *Citizenship Act*, Mr. Vavilov had never been a Canadian citizen and had not been entitled to receive the certificate of Canadian citizenship that had been issued to him in 2013. Section 3(2)(a) provides that s. 3(1)(a) of the *Citizenship Act* (which grants citizenship by birth to persons born in Canada after February 14, 1977) does not apply to an individual if, at the time of the individual's birth, neither of their parents was a citizen or lawfully

> admitted to Canada for permanent residence and either parent was "a diplomatic or consular officer or other representative or employee in Canada of a foreign government."

153 For these reasons, the Registrar cancelled the certificate and indicated that Mr. Vavilov would no longer be recognized as a Canadian citizen. The Registrar's letter did not offer any analysis or interpretation of s. 3(2)(a) of the *Citizenship Act*. However, it appears that in coming to her decision, the Registrar relied on a 12-page report prepared by a junior analyst, which included an interpretation of this key statutory provision.

154 In that report, the analyst provided a timeline of the procedural history of Mr. Vavilov's file, a summary of the investigation into and charges against his parents in the United States, and background information on the SVR's "illegals" program. The analyst also discussed several provisions of the *Citizenship Act*, including s. 3(2)(a), and it is this aspect of her report that is most relevant to Mr. Vavilov's application for judicial review. The analyst's ultimate conclusion was that the certificate of citizenship issued to Mr. Vavilov in January 2013 was issued in error, as his parents had been "working as employees or representatives of a foreign government (the Russian Federation) during the time they resided in Canada, including at the time of Mr. Vavilov's birth", and that "[a]s such, Mr. Vavilov was not entitled to receive a citizenship certificate pursuant to paragraph 3(2)(a) of the *Citizenship Act*": A.R., Vol. I, at p. 3. The report was dated June 24, 2014.

155 In discussing the relevant legislation, the analyst cited s. 3(1)(a) of the *Citizenship Act*, which establishes the general rule that persons born in Canada after February 14, 1977 are Canadian citizens. The analyst also referred to an exception to that general rule set out in s. 3(2) of the *Citizenship Act*, which reads as follows:

> (2) Paragraph (1)(a) does not apply to a person if, at the time of his birth, neither of his parents was a citizen or lawfully admitted to Canada for permanent residence and either of his parents was
>
> (a) a diplomatic or consular officer or other representative or employee in Canada of a foreign government;
>
> (b) an employee in the service of a person referred to in paragraph (a); or
>
> (c) an officer or employee in Canada of a specialized agency of the United Nations or an officer or employee in Canada of any other international organization to whom there are granted, by or under any Act of Parliament, diplomatic privileges and immunities certified by the Minister of Foreign Affairs to be equivalent to those granted to a person or persons referred to in paragraph (a).

156 The analyst noted that s. 3(2)(a) refers both to diplomatic and consular officers and to *other* representatives or employees of a foreign government. She acknowledged that the term "diplomatic or consular officer" is defined in s. 35(1) of the *Interpretation Act* and that the definition lists a large number of posts within a foreign mission or consulate. However, the analyst observed that no statutory definition exists for the phrase "other representative or employee in Canada of a foreign government."

157 The analyst compared the wording of s. 3(2)(a) with that of a similar provision in predecessor legislation. That provision, s. 5(3)(b) of the *Canadian Citizenship Act*, R.S.C. 1970, c. C-19, excluded from citizenship children whose "responsible parent" at the time of birth was:

> (i) a foreign diplomatic or consular officer or a representative of a foreign government accredited to Her Majesty,
>
> (ii) an employee of a foreign government attached to or in the service of a foreign diplomatic mission or consulate in Canada, or
>
> (iii) an employee in the service of a person referred to in subparagraph (i).

158 The analyst reasoned that because s. 3(2)(a) "makes reference to 'representatives or employees of a foreign government,' but does not link the representatives or employees to 'attached to or in the service of a foreign diplomatic mission or consulate in Canada' (as did the earlier version of the provision), it is reasonable to maintain that this provision intends to encompass individuals not included in the definition of 'diplomatic and consular staff'": A.R., vol. I, at p. 7.

159 Although the analyst acknowledged that "Ms. Vavilova and Mr. Bezrukov, were employed in Canada by a foreign government without the benefits or protections (i.e.: immunity) that accompany diplomatic, consular, or official status positions", she concluded that they were nonetheless "unofficial employees or representatives" of Russia at the time of Mr. Vavilov's birth: A.R., vol. I, at p. 13. The exception in s. 3(2)(a) of the *Citizenship Act*, as she interpreted it, therefore applied to Mr. Vavilov. As a result, the analyst recommended that the Canadian Registrar of Citizenship "recall" Mr. Vavilov's certificate on the basis that he was not, and had never been, entitled to citizenship.

(2) Federal Court (Bell J.), 2015 FC 960, [2016] F.C.R. 39 (F.C.)

160 Mr. Vavilov sought and was granted leave to bring an application for judicial review of the Registrar's decision in the Federal Court pursuant to s. 22.1 of the *Citizenship Act*. His application was dismissed.

161 The Federal Court rejected Mr. Vavilov's argument that the Registrar had breached her duty of procedural fairness by failing to disclose the documentation that had prompted the procedural fairness letter. In the Federal Court's view, the Registrar had provided Mr. Vavilov sufficient information to allow him to meaningfully respond, and had thereby satisfied the requirements of procedural fairness in the circumstances.

162 The Federal Court also rejected Mr. Vavilov's challenge to the Registrar's interpretation of s. 3(2)(a) of the *Citizenship Act*. Applying the correctness standard, the Federal Court agreed with the Registrar that undercover foreign operatives living in Canada fall within the meaning of the phrase "diplomatic or consular officer or other representative or employee in Canada of a foreign government" in s. 3(2)(a). In the Federal Court's view, to interpret s. 3(2)(a) in any other way would render the phrase "other representative or employee in Canada of a foreign government" meaningless and would lead to the "absurd result" that "children of a foreign diplomat, registered at an embassy, who conducts spy operations, cannot claim Canadian citizenship by birth in Canada but children of those who enter unlawfully for the very same purpose, become Canadian citizens by birth": para. 25.

163 Finally, the Federal Court was satisfied, given the evidence, that the Registrar's conclusion that Mr. Vavilov's parents had at the time of his birth been in Canada as part of an undercover operation for the Russian government was reasonable.

(3) Federal Court of Appeal (Stratas J.A. with Webb J.A. Concurring; Gleason J.A. Dissenting), 2017 FCA 132, [2018] 3 F.C.R. 75 (F.C.A.)

164 A majority of the Federal Court of Appeal allowed Mr. Vavilov's appeal from the Federal Court's judgment and quashed the Registrar's decision.

165 The Court of Appeal unanimously rejected Mr. Vavilov's argument that he had been denied procedural fairness by the Registrar. In the Court of Appeal's view, the Registrar had provided Mr. Vavilov sufficient information in the procedural fairness letter to enable him to know the case to meet. Even if Mr. Vavilov had been entitled to more information at the time of that letter, the court indicated that his procedural fairness challenge would nevertheless have failed because he had subsequently obtained that additional information through his own efforts and was able to make meaningful submissions.

166 The Court of Appeal was also unanimously of the view that the appropriate standard of review for the Registrar's interpretation and application of s. 3(2)(a) of the *Citizenship Act* was reasonableness. It split, however, on the application of that standard to the Registrar's decision.

167 The majority of the Court of Appeal concluded that the analyst's interpretation of s. 3(2)(a), which the Registrar had adopted, was unreasonable and that the Registrar's decision should be quashed. The analysis relied on by the Registrar on the statutory interpretation issue was confined to a consideration of the text of s. 3(2)(a) and an abbreviated review of its legislative history, which totally disregarded its purpose or context. In the majority's view, such a "cursory and incomplete approach to statutory interpretation" in a case such as this was indefensible: para. 44. Moreover, when the provision's purpose and its context were taken into account, the only reasonable conclusion was that the phrase "employee in Canada of a foreign government" in s.

3(2)(a) was meant to apply only to individuals who have been granted diplomatic privileges and immunities under international law. Because it was common ground that neither of Mr. Vavilov's parents had been granted such privileges or immunities, s. 3(2)(a) did not apply to him. The cancellation of his citizenship certificate on the basis of s. 3(2)(a) therefore could not stand, and Mr. Vavilov was entitled to Canadian citizenship under the *Citizenship Act*.

168 The dissenting judge disagreed, finding that the Registrar's interpretation of s. 3(2)(a) was reasonable. According to the dissenting judge, the text of that provision admits of at least two rational interpretations: one that includes all employees of a foreign government and one that is restricted to those who have been granted diplomatic privileges and immunities. In the dissenting judge's view, the former interpretation is not foreclosed by the context or the purpose of the provision. It was thus open to the Registrar to conclude that Mr. Vavilov's parents fell within the scope of s. 3(2)(a). The dissenting judge would have upheld the Registrar's decision.

C. Analysis

(1) Standard of Review

169 Applying the standard of review analysis set out above leads to the conclusion that the standard to be applied in reviewing the merits of the Registrar's decision is reasonableness.

170 When a court reviews the merits of an administrative decision, reasonableness is presumed to be the applicable standard of review, and there is no basis for departing from that presumption in this case. The Registrar's decision has come before the courts by way of judicial review, not by way of a statutory appeal. On this point, we note that ss. 22.1 through 22.4 of the *Citizenship Act* lay down rules that govern applications for judicial review of decisions made under that Act, one of which, in s. 22.1(1), is that such an application may be made only with leave of the Federal Court. However, none of these provisions allow for a party to bring an appeal from a decision under the *Citizenship Act*. Given this fact, and given that Parliament has not prescribed the standard to be applied on judicial review of the decision at issue, there is no indication that the legislature intended a standard of review other than reasonableness to apply. The Registrar's decision does not give rise to any constitutional questions, general questions of law of central importance to the legal system as a whole or questions regarding the jurisdictional boundaries between two or more administrative bodies. As a result, the standard to be applied in reviewing the decision is reasonableness.

(2) Review for Reasonableness

171 The principal issue before this Court is whether it was reasonable for the Registrar to find that Mr. Vavilov's parents had been "other representative[s] or employee[s] in Canada of a foreign government" within the meaning of s. 3(2)(a) of the *Citizenship Act*.

172 In our view, it was not. The Registrar failed to justify her interpretation of s. 3(2)(a) of the *Citizenship Act* in light of the constraints imposed by the text of s. 3 of the *Citizenship Act* considered as a whole, by other legislation and international treaties that inform the purpose of s. 3, by the jurisprudence on the interpretation of s. 3(2)(a), and by the potential consequences of her interpretation. Each of these elements — viewed individually and cumulatively — strongly supports the conclusion that s. 3(2)(a) was not intended to apply to children of foreign government representatives or employees who have not been granted diplomatic privileges and immunities. Though Mr. Vavilov raised many of these considerations in his submissions in response to the procedural fairness letter (A.R., vol. IV, at pp. 448-52), the Registrar failed to address those submissions in her reasons and did not, to justify her interpretation of s. 3(2)(a), do more than conduct a cursory review of the legislative history and conclude that her interpretation was not explicitly precluded by the text of s. 3(2)(a).

173 Our review of the Registrar's decision leads us to conclude that it was unreasonable for her to find that the phrase "diplomatic or consular officer or other representative or employee in Canada of a foreign government" applies to individuals who have not been granted diplomatic privileges and immunities in Canada. It is undisputed that Mr. Vavilov's parents had not been granted such privileges and immunities. No purpose would therefore be served by remitting this matter to the Registrar.

(a) Section 3(2) of the Citizenship Act

174 The analyst justified her conclusion that Mr. Vavilov is not a citizen of Canada by reasoning that his parents were "other representative[s] or employee[s] in Canada of a foreign government" within the meaning of s. 3(2)(a) of the *Citizenship Act*. Section 3(2)(a) provides that children of "a diplomatic or consular officer or other representative or employee in Canada of a foreign government" are exempt from the general rule in s. 3(1)(a) that individuals born in Canada after February 14, 1977 acquire Canadian citizenship by birth. The analyst observed that although the term "diplomatic or consular officer" is defined in the *Interpretation Act* and does not apply to individuals like Mr. Vavilov's parents, the phrase "other representative or employee in Canada of a foreign government" is not so defined, and may apply to them.

175 The analyst's attempt to give the words "other representative or employee in Canada of a foreign government" a meaning distinct from that of "diplomatic or consular officer" is sensible. It is generally consistent with the principle of statutory interpretation that Parliament intends each word in a statute to have meaning: Sullivan, at p. 211. We accept that if the phrase "other representative or employee in Canada of a foreign government" were considered in isolation, it could apply to a spy working in the service of a foreign government in Canada. However, the analyst failed to address the immediate statutory context of s. 3(2)(a), including the closely related text in s. 3(2)(c):

> (2) Paragraph (1)(a) does not apply to a person if, at the time of his birth, neither of his parents was a citizen or lawfully admitted to Canada for permanent residence and either of his parents was
>
> (a) a diplomatic or consular officer or other representative or employee in Canada of a foreign government;
>
> (b) an employee in the service of a person referred to in paragraph (a); or
>
> (c) an officer or employee in Canada of a specialized agency of the United Nations or an officer or employee in Canada of any other international organization to whom there are granted, by or under any Act of Parliament, diplomatic privileges and immunities certified by the Minister of Foreign Affairs to be equivalent to those granted to a person or persons referred to in paragraph (a).

176 As the majority of the Court of Appeal noted (at paras. 61-62), the wording of s. 3(2)(c) provides clear support for the conclusion that *all* of the persons contemplated by s. 3(2)(a) — including those who are "employee[s] in Canada of a foreign government" — must have been granted diplomatic privileges and immunities in some form. If, as the Registrar concluded, s. 3(2)(a) includes persons who do not benefit from these privileges or immunities, it is difficult to understand how effect could be given to the explicit equivalency requirement articulated in s. 3(2)(c). However, the analyst did not account for this tension in the immediate statutory context of s. 3(2)(a).

(b) The Foreign Missions and International Organizations Act and the Treaties It Implements

177 Before the Registrar, Mr. Vavilov argued that s. 3(2) of the *Citizenship Act* must be read in conjunction with both the *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41 ("*FMIOA*"), and the *Vienna Convention on Diplomatic Relations*, Can. T.S. 1966 No. 29 ("*VCDR*"). The *VCDR* and the *Vienna Convention on Consular Relations*, Can. T.S. 1974 No. 25, are the two leading treaties that extend diplomatic and/or consular privileges and immunities to employees and representatives of foreign governments in diplomatic missions and consular posts. Parliament has implemented the relevant provisions of both conventions by means of s. 3(1) of the *FMIOA*.

178 To begin, we note that Canada affords citizenship in accordance both with the principle of *jus soli*, the acquisition of citizenship through birth regardless of the parents' nationality, and with that of *jus sanguinis*, the acquisition of citizenship by descent, that is through a parent: *Citizenship Act*, s. 3(1)(a) and (b); see I. Brownlie, *Principles of Public International Law* (5th ed. 1998), at pp. 391-93. These two principles operate as a backdrop to s. 3 of the *Citizenship Act* as a whole. It is undisputed that s. 3(2)(a) operates as an exception to these general rules. However, Mr. Vavilov took a narrower view of that exception than did the Registrar. In his submissions to the Registrar, he argued that Parliament intended s. 3(2) of the *Citizenship*

Act to simply mirror the *FMIOA* and the *VCDR*, as well as Article II of the *Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning Acquisition of Nationality*, 500 U.N.T.S. 223, which provides that "[m]embers of the mission not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State". Mr. Vavilov made the following submission to the Registrar:

> The purpose in excluding diplomats and their families, including newborn children, from acquiring citizenship in the receiving state relates to the immunities which extend to this group of people. Diplomats and their family members are immune from criminal prosecution and civil liability in the receiving state. As such, they cannot acquire citizenship in the receiving state and also benefit from these immunities. A citizen has duties and responsibilities to its country. Immunity is inconsistent with this principle and so does not apply to citizens. See Article 37 of the *Convention*.
>
> Section 3(2) legislates into Canadian domestic law the above principles and should be narrowly interpreted with these purposes in mind. The term "employee in Canada of a foreign government" must be interpreted to mean an employee of a diplomatic mission, or connected to it, who benefits from the immunities of the *Convention*. Any other interpretation would lead to absurd results. There is no purpose served in excluding any child born of a person not having a connection to a diplomatic mission in Canada while sojourning here from the principle of *Jus soli*.
>
> (A.R., vol. IV, at pp. 449-50)

179 In *Al-Ghamdi v. Canada (Minister of Foreign Affairs & International Trade)*, 2007 FC 559, 64 Imm. L.R. (3d) 67 (F.C.), a case which was referred to in the analyst's report and which we will discuss in greater detail below, the Federal Court, at para. 53, quoted a passage by Professor Brownlie on this point:

> Of particular interest are the special rules relating to the jus soli, appearing as exceptions to that principle, the effect of the exceptions being to remove the cases where its application is clearly unjustifiable. A rule which has very considerable authority stipulated that children born to persons having diplomatic immunity shall not be nationals by birth of the state to which the diplomatic agent concerned is accredited. Thirteen governments stated the exception in the preliminaries of the Hague Codification Conference. In a comment on the relevant article of the Harvard draft on diplomatic privileges and immunities it is stated: 'This article is believed to be declaratory of an established rule of international law'. The rule receives ample support from legislation of states and expert opinion. The Convention on Certain Questions relating to the Conflict of Nationality Laws of 1930 provides in Article 12: 'Rules of law which confer nationality by reasons of birth on the territory of a State shall not apply automatically to children born to persons enjoying diplomatic immunities in the country where the birth occurs.'
>
> In 1961 the United Nations Conference on Diplomatic Intercourse and Immunities adopted an Optional Protocol concerning Acquisition of Nationality, which provided in Article II: 'Members of the mission not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State'. Some states extend the rule to the children of consuls, and there is some support for this from expert opinion. [Emphasis deleted.]
>
> (Brownlie, at pp. 392-93).

180 Mr. Vavilov included relevant excerpts from the parliamentary debate that had preceded the enactment of the *Citizenship Act* in support of his argument that the very purpose of s. 3(2) of the *Citizenship Act* was to align Canada's citizenship rules with these principles of international law. These excerpts describe s. 3(2) as "conform[ing] to international custom" and as having been drafted with the intention of "exclud[ing] children born in Canada to diplomats from becoming Canadian citizens": Hon. J. Hugh Faulkner, Secretary of State of Canada, House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Broadcasting, Films and Assistance to the Arts, respecting Bill C-20, An Act respecting citizenship*, No. 34, 1st Sess., 30th Parl., February 24, 1976, at 34:23. The record of that debate also reveals that Parliament took care to avoid the danger that because of how some provisions were written, "a number of other people would be affected such as those working for large

foreign corporations": *ibid* Although the analyst discussed the textual difference between s. 3(2) and a similar provision in the former *Canadian Citizenship Act*, she did not grapple with these other elements of the legislative history, despite the fact that they cast considerable doubt on her conclusions, indicating that s. 3(2) was not intended to affect the status of individuals whose parents have not been granted diplomatic privileges and immunities.

181 In attempting to distinguish the meaning of the phrase "other representative or employee in Canada of a foreign government" from that of the term "diplomatic or consular officer", the analyst also appeared to overlook the possibility that some individuals who fall into the former category might be granted privileges or immunities despite not being considered "diplomatic or consular officer[s]" under the *Interpretation Act*. Yet, as the majority of the Federal Court of Appeal pointed out, such individuals do in fact exist: paras. 53-55, citing *FMIOA*, at ss. 3 and 4 and Sched. II, Articles 1, 41, 43, 49, and 53. In light of Mr. Vavilov's submissions regarding the purpose of s. 3(2), the failure to consider this possibility is a noticeable omission.

182 It is well established that domestic legislation is presumed to comply with Canada's international obligations, and that it must be interpreted in a manner that reflects the principles of customary and conventional international law: *Appulonappa* , at para. 40; see also *Pushpanathan* , at para. 51; *Baker* , at para. 70; *Scierie Thomas-Louis Tremblay inc. c. J.R. Normand inc.*, 2005 SCC 46, [2005] 2 S.C.R. 401 (S.C.C.) , at para. 39; *Hape* , at paras. 53-54; *B010 v. Canada (Minister of Citizenship and Immigration)*, 2015 SCC 58, [2015] 3 S.C.R. 704 (S.C.C.) , at para. 48; *India v. Badesha*, 2017 SCC 44, [2017] 2 S.C.R. 127 (S.C.C.) , at para. 38; *Office of the Children's Lawyer v. Balev*, 2018 SCC 16, [2018] 1 S.C.R. 398 (S.C.C.) , at paras. 31-32. Yet the analyst did not refer to the relevant international law, did not inquire into Parliament's purpose in enacting s. 3(2) and did not respond to Mr. Vavilov's submissions on this issue. Nor did she advance any alternate explanation for why Parliament would craft such a provision in the first place. In the face of compelling submissions that the underlying rationale of s. 3(2) was to implement a narrow exception to a general rule in a manner that was consistent with established principles of international law, the analyst and the Registrar chose a different interpretation without offering any reasoned explanation for doing so.

(c) Jurisprudence Interpreting Section 3(2) of the Citizenship Act

183 Although the analyst cited three Federal Court decisions on s. 3(2)(a) of the *Citizenship Act* in a footnote, she dismissed them as being irrelevant on the basis that they related only to "individuals whose parents maintained diplomatic status in Canada at the time of their birth". But this distinction, while true, does not explain why the *reasoning* employed in those decisions, which directly concerned the scope, the meaning and the legislative purpose of s. 3(2)(a), was inapplicable in Mr. Vavilov's case. Had the analyst considered just the three cases cited in her report — *Al-Ghamdi* ; *Lee v. Canada (Minister of Citizenship & Immigration)*, 2008 FC 614, [2009] 1 F.C.R. 204 (F.C.); and *Hitti c. Canada (Ministre de la Citoyenneté & de l'Immigration)*, 2007 FC 294, 310 F.T.R. 168 (Eng.) (F.C.) — it would have been evident to her that she needed to grapple with and justify her interpretation in light of the persuasive and comprehensive legal reasoning that supports the position that s. 3(2)(a) was intended to apply only to those individuals whose parents have been granted diplomatic privileges and immunities.

184 In *Al-Ghamdi* , the Federal Court considered the constitutionality of paras. (a) and (c) of s. 3(2) of the *Citizenship Act* in reviewing a decision in which Passport Canada had refused to issue a passport to a child of a Saudi Arabian diplomat. In its reasons, the court came to a number of conclusions regarding the purpose and scope of s. 3(2), including, at para. 5, that:

> The only individuals covered in paragraphs 3(2)(a) and (c) of the *Citizenship Act* are children of individuals with diplomatic status. These are individuals who enter Canada under special circumstances and without undergoing any of the normal procedures. Most importantly, while in Canada, they are granted all of the immunities and privileges of diplomats ....

185 The court went on to extensively document the link between the exception to the rule of citizenship by birth set out in s. 3(2) of the *Citizenship Act* and the rules of international law, the *FMIOA* and the *VCDR*: *Al-Ghamdi* , at paras. 52 et. seq. It noted that there is an established rule of international law that children born to parents who enjoy diplomatic immunities are not entitled to automatic citizenship by birth, and that their status in this respect is an exception to the principle of *jus soli*: *Al-Ghamdi* , at para. 53, quoting Brownlie, at pp. 391-93. In finding that the exceptions under s. 3(2) to citizenship on the basis of *jus soli* do not infringe the rights of children of diplomats under s. 15 of the *Charter*, the court emphasized that *all* children to whom s. 3(2) applies are entitled to an "extraordinary array of privileges under the *Foreign Missions and International Organizations*

Act": *Al-Ghamdi* , at para. 62. Citing the *VCDR*, it added that "[i]t is precisely because of the vast array of privileges accorded to diplomats and their families, which are by their very nature inconsistent with the obligations of citizenship, that a person who enjoys diplomatic status cannot acquire citizenship": para. 63. In its analysis under s. 1 of the *Charter*, the court found that the choice to deny citizenship to individuals provided for in s. 3(2) is "tightly connected" to a pressing government objective of ensuring "that no citizen is immune from the obligations of citizenship", such as the obligations to pay taxes and comply with the criminal law: *Al-Ghamdi* , at paras. 74-75. In the case at bar, the analyst failed entirely to engage with the arguments endorsed by the Federal Court in *Al-Ghamdi* despite the court's key finding that s. 3(2)(a) applies only to "children born of foreign diplomats or an equivalent", a conclusion upon which the very constitutionality of the provision turned: *Al-Ghamdi* , at paras. 3, 9, 27, 28, 56 and 59.

186 In *Lee* , another case cited by the analyst, the Federal Court confirmed the finding in *Al-Ghamdi* that "[t]he only individuals covered in paragraphs 3(2)(a) and (c) of the *Citizenship Act* are children of individuals with diplomatic status": *Lee* , at para. 77. The court found in *Lee* that the "functional duties of the applicant's father" were not relevant to whether or not the applicant was excluded from citizenship pursuant to s. 3(2)(a) of the *Citizenship Act*: para. 58. Rather, what mattered was only that at the time of the applicant's birth, his father had been a registered consular official and had held a diplomatic passport and the title of Vice-Consul: paras. 44, 58, 61 and 63.

187 *Hitti* , the third case cited in the analyst's report, concerned a decision to confiscate two citizenship certificates on the basis that, under s. 3(2) of the *Citizenship Act*, their holders had never been entitled to them. In that case, the applicants' father, a Lebanese citizen, had been employed as an information officer of the League of Arab States in Ottawa. Although the League did not have diplomatic standing at that time, Canada had agreed as a matter of courtesy to extend diplomatic status to officials of the League's information centre, treating them as "attachés" of their home countries' embassies: *Hitti* , at paras. 6 and 9; see also *Interpretation Act*, s. 35(1). Mr. Hitti argued he did not, in practice, fulfill diplomatic tasks or act as a representative of Lebanon, but there was nonetheless a record of his being an accredited diplomat, enjoying the benefits of that status and being covered by the *VCDR* when his children were born: paras. 5 and 8. The Federal Court rejected a submission that Mr. Hitti would have had to perform duties in the service of Lebanon in order for his children to fall within the meaning of s. 3(2)(a), and concluded that "what Mr. Hitti did when he was in the country is not relevant": para. 32.

188 What can be seen from both *Lee* and *Hitti* is that what matters, for the purposes of s. 3(2)(a), is not whether an individual carries out activities in the service of a foreign state while in Canada, but whether, at the relevant time, the individual has been granted diplomatic privileges and immunities. Thus, in addition to the Federal Court's decision in *Al-Ghamdi* , the analyst was faced with two cases in which the application of s. 3(2) had turned on the existence of diplomatic status rather than on the "functional duties" or activities of the child's parents. In these circumstances, it was a significant omission for her to ignore the Federal Court's reasoning when determining whether the espionage activities of Ms. Vavilova and Mr. Bezrukov were sufficient to ground the application of s. 3(2)(a).

(d) Possible Consequences of the Registrar's Interpretation

189 When asked why the children of individuals referred to in s. 3(2)(a) would be excluded from acquiring citizenship by birth, another analyst involved in Mr. Vavilov's file (who had also been involved in Mr. Vavilov's brother's file) responded as follows:

> Well, usually the way we use section 3(2)(a) is for — you're right, for diplomats and that they don't — because they are not — they are not obliged ... to the law of Canada and everything, so that's why their children do not obtain citizenship if they were born in Canada while the person was in Canada under that status. But then there is also this other part of the Act that says other representatives or employees of a foreign government in Canada, that may open the door for other person than diplomats and that's how we interpreted in this specific case 3(2)(a) but there is no jurisprudence on that.
>
> (R.R. transcript, at pp. 87-88)

190 In other words, the officials responsible for these files were aware that s. 3(2)(a) was informed by the principle that individuals subject to the exception are "not obliged ... to the law of Canada". They were also aware that the interpretation

they had adopted in the case of the Vavilov brothers was a novel one. Although the Registrar knew this, she failed to provide a rationale for this expanded interpretation.

191 Additionally, there is no evidence that the Registrar considered the potential consequences of expanding her interpretation of s. 3(2)(a) to include individuals who have not been granted diplomatic privileges and immunities. Citizenship has been described as "the right to have rights": U.S. Supreme Court Chief Justice Earl Warren, as quoted in A. Brouwer, *Statelessness in Canadian Context: A Discussion Paper* (July 2003) (online), at p. 2. The importance of citizenship was recognized in *Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358 (S.C.C.) , in which Iacobucci J., writing for this Court, stated: "I cannot imagine an interest more fundamental to full membership in Canadian society than Canadian citizenship": para. 68. This was reiterated in *Canada (Minister of Citizenship & Immigration) v. Tobiass*, [1997] 3 S.C.R. 391 (S.C.C.) , in which this Court unanimously held that "[f]or some, such as those who might become stateless if deprived of their citizenship, it may be valued as highly as liberty": para. 108.

192 It perhaps goes without saying that rules concerning citizenship require a high degree of interpretive consistency in order to shield against a perception of arbitrariness and to ensure conformity with Canada's international obligations. We can therefore only assume that the Registrar intended that this new interpretation of s. 3(2)(a) would apply to any other individual whose parent is employed by or represents a foreign government at the time of the individual's birth in Canada but has not been granted diplomatic privileges and immunities. The Registrar's interpretation would not, after all, limit the application of s. 3(2)(a) to the children of spies — its logic would be equally applicable to a number of other scenarios, including that of a child of a non-citizen worker employed by an embassy as a gardener or cook, or of a child of a business traveller who represents a foreign government-owned corporation. Mr. Vavilov had raised the fact that provisions such as s. 3(2)(a) must be given a narrow interpretation because they deny or potentially take away rights — that of citizenship under s. 3(1) in this case — which otherwise benefit from a liberal and broad interpretation: *Brossard (Ville) c. Québec (Commission des droits de la personne)*, [1988] 2 S.C.R. 279 (S.C.C.) , at p. 307. Yet there is no indication that the Registrar considered the potential harsh consequences of her interpretation for such a large class of individuals, which included Mr. Vavilov, or the question whether, in light of those possible consequences, Parliament would have intended s. 3(2)(a) to apply in this manner.

193 Moreover, we would note that despite following a different legal process, the Registrar's decision in this case had the same effect as a revocation of citizenship — a process which has been described by scholars as "a kind of 'political death'" — depriving Mr. Vavilov of his right to vote and the right to enter and remain in Canada: see A. Macklin, "Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien" (2014), 40 *Queen's L.J.* 1, at pp. 7-8. While we question whether the Registrar was empowered to unilaterally alter Canada's position with respect to Mr. Vavilov's citizenship and recognize that the relationship between the cancellation of a citizenship certificate under s. 26 of the *Citizenship Regulations* and the revocation of an individual's citizenship (as set out in s. 10 of the *Citizenship Act*) is not clear, we leave this issue for another day because it was neither raised nor argued by the parties.

D. Conclusion

194 Multiple legal and factual constraints may bear on a given administrative decision, and these constraints may interact with one another. In some cases, a failure to justify the decision against any one relevant constraint may be sufficient to cause the reviewing court to lose confidence in the reasonableness of the decision. Section 3 of the *Citizenship Act* considered as a whole, other legislation and international treaties that inform the purpose of s. 3, the jurisprudence cited in the analyst's report, and the potential consequences of the Registrar's decision point overwhelmingly to the conclusion that Parliament did not intend s. 3(2)(a) to apply to children of individuals who have not been granted diplomatic privileges and immunities. The Registrar's failure to justify her decision with respect to these constraints renders her interpretation unreasonable, and we would therefore uphold the Federal Court of Appeal's decision to quash the Registrar's decision.

195 As noted above, we would exercise our discretion not to remit the matter to the Registrar for redetermination. Crucial to our decision is the fact that Mr. Vavilov explicitly raised all of these issues before the Registrar and that the Registrar had an opportunity to consider them but failed to do so. She offered no justification for the interpretation she adopted except for a superficial reading of the provision in question and a comment on part of its legislative history. On the other hand, there

is overwhelming support — including in the parliamentary debate, established principles of international law, an established line of jurisprudence and the text of the provision itself — for the conclusion that Parliament did not intend s. 3(2)(a) of the *Citizenship Act* to apply to children of individuals who have not been granted diplomatic privileges and immunities. That being said, we would stress that it is not our intention to offer a definitive interpretation of s. 3(2)(a) in all respects, nor to foreclose the possibility that multiple reasonable interpretations of other aspects might be available to administrative decision makers. In short, we do not suggest that there is necessarily "one reasonable interpretation" of the provision as a whole. But we agree with the majority of the Court of Appeal that it was *not* reasonable for the Registrar to interpret s. 3(2)(a) as applying to children of individuals who have not been granted diplomatic privileges and immunities at the time of the children's birth.

196 Given that it is undisputed that Ms. Vavilova and Mr. Bezrukov, as undercover spies, were granted no such privileges, it would serve no purpose to remit the matter in this case to the Registrar. Given that Mr. Vavilov is a person who was born in Canada after February 14, 1977, his status is governed only by the general rule set out in s. 3(1)(a) of the *Citizenship Act*. He is a Canadian citizen.

E. Disposition

197 The appeal is dismissed with costs throughout to Mr. Vavilov.

***Abella, Karakatsanis JJ.*:**

198 Forty years ago, in *C.U.P.E., Local 963 v. New Brunswick Liquor Corp.*, [1979] 2 S.C.R. 227(S.C.C.) , this Court embarked on a course to recognize the unique and valuable role of administrative decision-makers within the Canadian legal order. Breaking away from the court-centric theories of years past, the Court encouraged judges to show deference when specialized administrative decision-makers provided reasonable answers to legal questions within their mandates. Building on this more mature understanding of administrative law, subsequent decisions of this Court sought to operationalize deference and explain its relationship to core democratic principles. These appeals offered a platform to clarify and refine our administrative law jurisprudence, while remaining faithful to the deferential path it has travelled for four decades.

199 Regrettably, the majority shows our precedents no such fidelity. Presented with an opportunity to steady the ship, the majority instead dramatically reverses course — away from this generation's deferential approach and back towards a prior generation's more intrusive one. Rather than confirming a meaningful presumption of deference for administrative decision-makers, as our common law has increasingly done for decades, the majority's reasons strip away deference from hundreds of administrative actors subject to statutory rights of appeal; rather than following the consistent path of this Court's jurisprudence in understanding legislative intent as being the intention to leave legal questions within their mandate to specialized decision-makers with expertise, the majority removes expertise from the equation entirely and reformulates legislative intent as an overriding intention to provide — or not provide — appeal routes; and rather than clarifying the role of reasons and how to review them, the majority revives the kind of search for errors that dominated the pre-*C.U.P.E.* era. In other words, instead of *reforming* this generation's evolutionary approach to administrative law, the majority *reverses* it, taking it back to the formalistic judge-centred approach this Court has spent decades dismantling.

200 We support the majority's decision to eliminate the vexing contextual factors analysis from the standard of review framework and to abolish the shibboleth category of "true questions of jurisdiction". These improvements, accompanied by a meaningful presumption of deference for administrative decision-makers, would have simplified our judicial review framework and addressed many of the criticisms levied against our jurisprudence since *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190(S.C.C.) .

201 But the majority goes much further and fundamentally reorients the decades-old relationship between administrative actors and the judiciary, by dramatically expanding the circumstances in which generalist judges will be entitled to substitute their own views for those of specialized decision-makers who apply their mandates on a daily basis. In so doing, the majority advocates a profoundly different philosophy of administrative law than the one which has guided our Court's jurisprudence for the last four decades. The majority's reasons are an encomium for correctness and a eulogy for deference.

The Evolution of Canadian Administrative Law

202 The modern Canadian state "could not function without the many and varied administrative tribunals that people the legal landscape" (The Rt. Hon. Beverley McLachlin, *Administrative Tribunals and the Courts: An Evolutionary Relationship*, May 27, 2013 (online)). Parliament and the provincial legislatures have entrusted a broad array of complex social and economic challenges to administrative actors, including regulation of labour relations, welfare programs, food and drug safety, agriculture, property assessments, liquor service and production, infrastructure, the financial markets, foreign investment, professional discipline, insurance, broadcasting, transportation and environmental protection, among many others. Without these administrative decision-makers, "government would be paralyzed, and so would the courts" (Guy Régimbald, *Canadian Administrative Law* (2nd ed. 2015), at p. 3).

203 In exercising their mandates, administrative decision-makers often resolve claims and disputes within their areas of specialization (Gus Van Harten et al., *Administrative Law: Cases, Text, and Materials* (7th ed. 2015), at p. 13). These claims and disputes vary greatly in scope and subject-matter. Corporate merger requests, professional discipline complaints by dissatisfied clients, requests for property reassessments and applications for welfare benefits, among many other matters, all fall within the purview of the administrative justice system.

204 The administrative decision-makers tasked to resolve these issues come from many different walks of life (Van Harten et al., at p. 15). Some have legal backgrounds, some do not. The diverse pool of decision-makers in the administrative system responds to the diversity of issues that it must resolve. To address this broad range of issues, administrative dispute-resolution processes are generally "[d]esigned to be less cumbersome, less expensive, less formal and less delayed" than their judicial counterparts — but "no less effectiv[e] or credibl[e]" (*Rasanen v. Rosemount Instruments Ltd.* (1994), 17 O.R. (3d) 267 (Ont. C.A.), at p. 279). In the field of labour relations, for example, Parliament explicitly rejected a court-based system to resolve workplace disputes in favour of a Labour Board, staffed with representatives from management and labour alongside an independent member (Bora Laskin, "Collective Bargaining in Ontario: A New Legislative Approach" (1943), 21 *Can. Bar Rev.* 684; John A. Willes, *The Ontario Labour Court: 1943-1944* (1979); Katherine Munro, "A 'Unique Experiment': The Ontario Labour Court, 1943-1944" (2014), 74 *Labour/Le Travail* 199). Other administrative processes — license renewals, zoning permit issuances and tax reassessments, for example — bear even less resemblance to the traditional judicial model.

205 Courts, through judicial review, monitor the boundaries of administrative decision making. Questions about the standards of judicial review have been an enduring feature of Canadian administrative law. The debate, in recent times, has revolved around "reasonableness" and "correctness", and determining when each standard applies. On the one hand, "reasonableness" review expects courts to defer to decisions by specialized decision-makers that "are defensible in respect of the facts and law"; on the other, "correctness" review allows courts to substitute their own opinions for those of the initial decision-maker (*Dunsmuir* , at paras. 47-50). This standard of review debate has profound implications for the extent to which reviewing courts may substitute their views for those of administrative decision-makers. At its core, it is a debate over two distinct philosophies of administrative law.

206 The story of modern Canadian administrative law is the story of a shift away from the court-centric philosophy which denied administrative bodies the authority to interpret or shape the law. This approach found forceful expression in the work of Albert Venn Dicey. For Dicey, the rule of law meant the rule of courts. Dicey developed his philosophy at the end of the 19th century to encourage the House of Lords to restrain the government from implementing ameliorative social and welfare reforms administered by new regulatory agencies. Famously, Dicey asserted that administrative law was anathema to the English legal system (Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (10th ed. 1959), at pp. 334-35). Because, in his view, only the judiciary had the authority to interpret law, there was no reason for a court to defer to legal interpretations proffered by administrative bodies, since their decisions did not constitute "law" (Kevin M. Stack, "Overcoming Dicey in Administrative Law" (2018), 68 *U.T.L.J.* 293, at p. 294).

207 The canonical example of Dicey's approach at work is the House of Lords' decision in *Anisminic Ltd. v. Foreign Compensation Commission* (1968), [1969] 2 A.C. 147(U.K. H.L.) , the judicial progenitor of "jurisdictional error". *Anisminic*

entrenched non-deferential judicial review by endorsing a lengthy checklist of "jurisdictional errors" capable of undermining administrative decisions. Lord Reid noted that there were two scenarios in which an administrative decision-maker would lose jurisdiction. The first was narrow and asked whether the legislature had empowered the administrative decision-maker to "enter on the inquiry in question" (p. 171). The second was wider:

> [T]here are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. *It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive*. [Emphasis added; p. 171.]

208 The broad "jurisdictional error" approach in *Anisminic* initially found favour with this Court in cases like *Metropolitan Life Insurance Co. v. I.U.O.E., Local 796*, [1970] S.C.R. 425(S.C.C.) , and *Bell v. Ontario (Human Rights Commission)*, [1971] S.C.R. 756 (S.C.C.) . These cases "took the position that a definition of jurisdictional error should include any question pertaining to the interpretation of a statute made by an administrative tribunal", and in each case, "th[e] Court substituted what was, in its opinion, the correct interpretation of the enabling provision of the tribunal's statute for that of the tribunal" (*Canada (Attorney General) v. P.S.A.C.*, [1991] 1 S.C.R. 614 (S.C.C.) , at p. 650, per Cory J., dissenting, but not on this point). In *Metropolitan Life* , for example, this Court quashed a labour board's decision to certify a union, concluding that the Board had "ask[ed] itself the wrong question" and "decided a question which was not remitted to it" (p. 435). In *Bell* , this Court held that a human rights commission had strayed beyond its jurisdiction by deciding to investigate a complaint of racial discrimination filed against a landlord. The Court held that the Commission had incorrectly interpreted the term "self-contained dwelling uni[t]" found in s. 3 of the *Ontario Human Rights Code*, *1961-62*, S.O. 1961-62, c. 93, and by so doing, had lost jurisdiction to inquire into the complaint of discrimination (pp. 767 and 775).

209 As these cases illustrate, the *Anisminic* approach proved easy to manipulate, allowing courts to characterize any question as "jurisdictional" and thereby give themselves latitude to substitute their own view of the appropriate answer without regard for the original decision-maker's decision or reasoning. The *Anisminic* era and the "jurisdictional error" approach were and continue to be subject to significant judicial and academic criticism (*Public Service Alliance* at p. 650; *National Corn Growers Assn. v. Canada (Canadian Import Tribunal)*, [1990] 2 S.C.R. 1324(S.C.C.) , at p. 1335, per Wilson J., concurring; Beverley McLachlin, P.C., "'Administrative Law is Not for Sissies': Finding a Path Through the Thicket" (2016), 29 *C.J.A.L.P.* 127, at pp. 129-30; Jocelyn Stacey and Alice Woolley, "Can Pragmatism Function in Administrative Law?" (2016), 74 *S.C.L.R.* (2d) 211, at pp. 215-16; R.A. MacDonald, "Absence of Jurisdiction: A Perspective" (1983), 43 *R. du B.* 307).

210 In 1979, the Court signaled a turn to a more deferential approach to judicial review with its watershed decision in *C.U.P.E.* There, the Court challenged the "jurisdictional error" model and planted the seeds of a home-grown approach to administrative law in Canada. In a frequently-cited passage, Dickson J., writing for a unanimous Court, cautioned that courts "should not be alert to brand as jurisdictional, and therefore subject to broader curial review, that which may be doubtfully so" (p. 233; cited in nearly 20 decisions of this Court, including *Dunsmuir* , at para. 35; *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339(S.C.C.) , at para. 45; *A.T.A. v. Alberta (Information & Privacy Commissioner)*, [2011] 3 S.C.R. 654(S.C.C.) , at para. 33; *Canada (Human Rights Commission) v. Canada (Attorney General)*, [2018] 2 S.C.R. 230(S.C.C.) , at para. 31). The Court instead endorsed an approach that respected the legislature's decision to assign legal policy issues in some areas to specialized, non-judicial decision-makers. The Court recognized that legislative language could "bristl[e] with ambiguities" and that the interpretive choices made by administrative tribunals deserved respect from courts, particularly when, as in *C.U.P.E.* , the decision was protected by a privative clause (pp. 230 and 234-36).

211 By championing "curial deference" to administrative bodies, *C.U.P.E.* embraced "a more sophisticated understanding of the role of administrative tribunals in the modern Canadian state" (*National Corn Growers* , at p. 1336, per Wilson J., concurring;

Domtar Inc. c. Québec (Commission d'appel en matière de lésions professionnelles), [1993] 2 S.C.R. 756 (S.C.C.) , at p. 800). As one scholar has observed:

> ... legislatures and courts in ... Canada have come to settle on the idea that the functional capacities of administrative agencies — their expertise, investment in understanding the practical circumstances at issue, openness to participation, and level of responsiveness to political change — justify not only their law-making powers but also judicial deference to their interpretations and decisions. *Law-making and legal interpretation are shared enterprises in the administrative state*. [Emphasis added.]
>
> (Stack, at p. 310)

212 In explaining why courts must sometimes defer to administrative actors, *C.U.P.E.* embraced two related foundational justifications for Canada's approach to administrative law — one based on the legislature's express choice to have an administrative body decide the issues arising from its mandate; and one animated by the recognition that an administrative justice system could offer institutional advantages in relation to proximity, efficiency, and specialized expertise (David Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy" in Michael Taggart, ed., *The Province of Administrative Law* (1997), 279 at p. 304).

213 A new institutional relationship between the courts and administrative actors was thus being forged, based on "an understanding of the role of expertise in the modern administrative state" which "acknowledge[d] that judges are not always in the best position to interpret the law" (The Hon. Frank Iacobucci, "Articulating a Rational Standard of Review Doctrine: A Tribute to John Willis" (2002), 27 *Queen's L.J.* 859, at p. 866).

214 In subsequent decades, the Court attempted to reconcile the deference urged by *C.U.P.E.* with the lingering concept of "jurisdictional error". In *Syndicat national des employés de la commission scolaire régionale de l'Outaouais v. U.E.S., local 298*, [1988] 2 S.C.R. 1048(S.C.C.) , the Court introduced the "pragmatic and functional" approach for deciding when a matter was within the jurisdiction of an administrative body. Instead of describing jurisdiction as a preliminary or collateral matter, the *Bibeault* test directed reviewing courts to consider the wording of the enactment conferring jurisdiction on the administrative body, the purpose of the statute creating the tribunal, the reason for the tribunal's existence, the area of expertise of its members, and the nature of the question the tribunal had to decide — all to determine whether the legislator "intend[ed] the question to be within the jurisdiction conferred on the tribunal" (p. 1087; see also p. 1088). If so, the tribunal's decision could only be set aside if it was "patently unreasonable" (p. 1086).

215 Although still rooted in a formalistic search for jurisdictional errors, the pragmatic and functional approach recognized that legislatures had assigned courts and administrative decision-makers distinct roles, and that the specialization and expertise of administrative decision-makers deserved deference. In her concurring reasons in *National Corn Growers* , Wilson J. noted that part of the process of moving away from Dicey's framework and towards a more sophisticated understanding of the role of administrative tribunals:

> ... has involved a growing recognition on the part of courts that they may simply not be as well equipped as administrative tribunals or agencies to deal with issues which Parliament has chosen to regulate through bodies exercising delegated power, e.g., labour relations, telecommunications, financial markets and international economic relations. Careful management of these sectors often requires the use of experts who have accumulated years of experience and a specialized understanding of the activities they supervise. [p. 1336]

216 By the mid-1990s, the Court had accepted that specialization and the legislative intent to leave issues to administrative decision-makers were inextricable and essential factors in the standard of review analysis. It stressed that "the expertise of the tribunal is of the utmost importance in determining the intention of the legislator with respect to the degree of deference to be shown to a tribunal's decision ... [e]ven where the tribunal's enabling statute provides explicitly for appellate review" (*C.J.A., Local 579 v. Bradco Construction Ltd.*, [1993] 2 S.C.R. 316(S.C.C.) , at p. 335). Of the factors relevant to setting the standard of

review, expertise was held to be "the most important" (*Canada (Director of Investigation & Research) v. Southam Inc.*, [1997] 1 S.C.R. 748(S.C.C.) , at para. 50).

217 Consistent with these judgments, this Court invoked the specialized expertise of a securities commission to explain why its decisions were entitled to deference on judicial review even when there was a statutory right of appeal. Writing for a unanimous Court, Iacobucci J. explained that "the concept of the specialization of duties requires that deference be shown to decisions of specialized tribunals on matters which fall squarely within the tribunal's expertise" (*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (S.C.C.) , at p. 591; see also *Bell Canada v. Canadian Radio-Television & Telecommunications Commission*, [1989] 1 S.C.R. 1722(S.C.C.) , at pp. 1745-46). Critically, the Court's willingness to show deference demonstrated that specialization outweighed a statutory appeal as the most significant indicator of legislative intent.

218 In *Pushpanathan v. Canada (Minister of Employment & Immigration)*, [1998] 1 S.C.R. 982(S.C.C.) , the Court reformulated the pragmatic and functional approach, engaging four slightly different factors from those in *Bibeault* , namely: (1) whether there was a privative clause, or conversely, a right of appeal; (2) the expertise of the decision-maker on the matter in question relative to the reviewing court; (3) the purpose of the statute as a whole, and of the provision in particular; and (4) the nature of the problem, i.e., whether it was a question of law, fact, or mixed law and fact (paras. 29-37). Instead of using these factors to answer whether a question was jurisdictional, *Pushpanathan* deployed them to discern how much deference the legislature intended an administrative decision to receive on judicial review. *Pushpanathan* confirmed three standards of review: patent unreasonableness, reasonableness *simpliciter*, and correctness (para. 27; see also *Southam*, at paras. 55-56).

219 Significantly, *Pushpanathan* did not disturb the finding reaffirmed in *Southam* that specialized expertise was the most important factor in determining whether a deferential standard applied. Specialized expertise thus remained integral to the calibration of legislative intent, even in the face of statutory rights of appeal (see *Ryan v. Law Society (New Brunswick)*, [2003] 1 S.C.R. 247 (S.C.C.) , at paras. 21 and 29-34; *Cartaway Resources Corp., Re*, [2004] 1 S.C.R. 672 (S.C.C.) , at para. 45; *VIA Rail Canada Inc. v. Canadian Transportation Agency*, [2007] 1 S.C.R. 650 (S.C.C.) , at paras. 88-92 and 100).

220 Next came *Dunsmuir* , which sought to simplify the pragmatic and functional analysis while maintaining respect for the specialized expertise of administrative decision-makers. The Court merged the three standards of review into two: reasonableness and correctness. *Dunsmuir* also wove together the deferential threads running through the Court's administrative law jurisprudence, setting out a presumption of deferential review for certain categories of questions, including those where the decision-maker had expertise or was interpreting its "home" statute (paras. 53-54, per Bastarache and LeBel JJ., and para. 124, per Binnie J., concurring). Certain categories of issues remained subject to correctness review, including constitutional questions regarding the division of powers, true questions of jurisdiction, questions of law that were both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise, and questions about jurisdictional lines between tribunals (paras. 58-61). Where the standard of review had not been satisfactorily determined in the jurisprudence, four contextual factors — the presence or absence of a privative clause, the purpose of the tribunal, the nature of the question at issue and the expertise of the tribunal — remained relevant to the standard of review analysis (para. 64).

221 Notably, *Dunsmuir* did not mention statutory rights of appeal as one of the contextual factors, and left undisturbed their marginal role in the standard of review analysis. Instead, the Court explicitly affirmed the links between deference, the specialized expertise of administrative decision-makers and legislative intent. Justices LeBel and Bastarache held that "deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system" (para. 49). They noted that "in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime" (para. 49, citing David J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004), 17 *C.J.A.L.P.* 59, at p. 93).

222 Post-*Dunsmuir* , this Court continued to stress that specialized expertise is the basis for making administrative decision-makers, rather than the courts, the appropriate forum to decide issues falling within their mandates (see *Khosa* , at para. 25; *R. v. Conway*, [2010] 1 S.C.R. 765(S.C.C.) , at para. 53; *British Columbia (Securities Commission) v. McLean*, [2013] 3 S.C.R.

895 (S.C.C.) , at paras. 30-33). Drawing on the concept of specialized expertise, the Court's post-*Dunsmuir* cases expressly confirmed a presumption of reasonableness review for an administrative decision-maker's interpretation of its home or closely-related statutes (see *Alberta Teachers' Association* , at paras. 39-41). As Gascon J. explained in *Mouvement laïque québécois v. Saguenay (City)*, [2015] 2 S.C.R. 3 (S.C.C.) , at para. 46:

> Deference is in order where the Tribunal acts within its specialized area of expertise ... (*Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, [2013] 1 S.C.R. 467, at paras. 166-68; *Mowat*, at para. 24). In *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at paras. 30, 34 and 39, the Court noted that, on judicial review of a decision of a specialized administrative tribunal interpreting and applying its enabling statute, it should be presumed that the standard of review is reasonableness (*Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135, at para. 55; *Canadian Artists' Representation v. National Gallery of Canada*, 2014 SCC 42, [2014] 2 S.C.R. 197("*NGC*"), at para. 13; *Khosa*, at para. 25; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160, at paras. 26 and 28; *Dunsmuir*, at para. 54).

223 And in *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, [2016] 2 S.C.R. 293 (S.C.C.) , the majority recognized:

> The presumption of reasonableness is grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing. Expertise arises from the specialization of functions of administrative tribunals like the Board which have a habitual familiarity with the legislative scheme they administer .... [E]xpertise is something that inheres in a tribunal itself as an institution: "... at an institutional level, adjudicators ... can be presumed to hold relative expertise in the interpretation of the legislation that gives them their mandate, as well as related legislation that they might often encounter in the course of their functions". [Citation omitted; para. 33.]

224 The presumption of deference, therefore, operationalized the Court's longstanding jurisprudential acceptance of the "specialized expertise" principle in a workable manner, continuing the deferential path Dickson J. first laid out in *C.U.P.E.*

225 As for statutory rights of appeal, they continued to be seen as either an irrelevant factor in the standard of review analysis or one that yielded to specialized expertise. So firmly entrenched was this principle that in cases like *Bell Canada v. Canadian Radio-Television & Telecommunications Commission*, [2009] 2 S.C.R. 764 (S.C.C.) , *Alliance Pipeline Ltd. v. Smith*, [2011] 1 S.C.R. 160 (S.C.C.) , *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*, [2015] 3 S.C.R. 219 (S.C.C.) , and *Canada (Attorney General) v. Igloo Vikski Inc.*, [2016] 2 S.C.R. 80 (S.C.C.) , the Court applied the reasonableness standard without even *referring* to the presence of an appeal clause. When appeal clauses *were* discussed, the Court consistently confirmed that they did not oust the application of judicial review principles.

226 In *Khosa* , Binnie J. explicitly endorsed *Pezim* and rejected "the idea that in the absence of express statutory language ... a reviewing court is 'to apply a correctness standard as it does in the regular appellate context'" (para. 26). This reasoning was followed in *Canada (Human Rights Commission) v. Canada (Attorney General)*, [2011] 3 S.C.R. 471 (S.C.C.) ("*Mowat*"), where the Court confirmed that "care should be taken not to conflate" judicial and appellate review (para. 30; see also para. 31). In *McLean* , decided two years after *Mowat*, the majority cited *Pezim* and other cases for the proposition that "general administrative law principles still apply" on a statutory appeal (see para. 21, fn. 2). Similarly, in *Mouvement laïque* , Gascon J. affirmed that

> [w]here a court reviews a decision of a specialized administrative tribunal, the standard of review must be determined on the basis of administrative law principles. This is true regardless of whether the review is conducted in the context of an application for judicial review or of a statutory appeal .... [para. 38]

227 In *Edmonton East*, the Court considered — and again rejected — the argument that statutory appeals should form a new category of correctness review. As the majority noted, "recognizing issues arising on statutory appeals as a new category to which the correctness standard applies — as the Court of Appeal did in this case — would go against strong jurisprudence

from this Court" (para. 28). Even the dissenting judges in *Edmonton East*, although of the view that the wording of the relevant statutory appeal clause and legislative scheme pointed to the correctness standard, nonetheless unequivocally stated that "a statutory right of appeal is not a new 'category' of correctness review" (para. 70).

228 By the time these appeals were heard, contextual factors had practically disappeared from the standard of review analysis, replaced by a presumption of deference subject only to the correctness exceptions set out in *Dunsmuir* — which explicitly did *not* include statutory rights of appeal. In other words, the Court was well on its way to realizing *Dunsmuir* 's promise of a simplified analysis. Justice Gascon recognized as much last year in *Canadian Human Rights Commission*:

> *This contextual approach should be applied sparingly*. As held by the majority of this Court in *Alberta Teachers*, it is inappropriate to "retreat to the application of a full standard of review analysis where it can be determined summarily" .... After all, the "contextual approach can generate uncertainty and endless litigation concerning the standard of review" (*Capilano* [*Edmonton East*], at para. 35). The presumption of reasonableness review and the identified categories will generally be sufficient to determine the applicable standard. In the exceptional cases where such a contextual analysis may be justified to rebut the presumption, it need not be a long and detailed one (*Capilano* [*Edmonton East*], at para. 34). Where it has been done or referred to in the past, the analysis has been limited to determinative factors that showed a clear legislative intent justifying the rebuttal of the presumption (see, e.g., *Rogers*, at para. 15; *Tervita*, at paras. 35-36; see also, *Saguenay*, at paras. 50-51). [Emphasis added; para. 46.]

229 In sum, for four decades, our standard of review jurisprudence has been clear and unwavering about the foundational role of specialized expertise and the limited role of statutory rights of appeal. Where confusion persists, it concerns the relevance of the contextual factors in *Dunsmuir* , the meaning of "true questions of jurisdiction" and how best to conduct reasonableness review. That was the backdrop against which these appeals were heard and argued. But rather than ushering in a simplified next act, these appeals have been used to rewrite the whole script, reassigning to the courts the starring role Dicey ordained a century ago.

The Majority's Reasons

230 The majority's framework rests on a flawed and incomplete conceptual account of judicial review, one that unjustifiably ignores the specialized expertise of administrative decision-makers. Although the majority uses language endorsing a "presumption of reasonableness review", this presumption now rests on a totally new understanding of legislative intent and the rule of law. By prohibiting any consideration of well-established foundations for deference, such as "expertise ... institutional experience ... proximity and responsiveness to stakeholders ... prompt[ness], flexib[ility], and efficien[cy]; and ... access to justice", the majority reads out the foundations of the modern understanding of legislative intent in administrative law.

231 In particular, such an approach ignores the possibility that specialization and other advantages are embedded into the legislative choice to delegate particular subject matters to administrative decision-makers. Giving proper effect to the legislature's choice to "delegate authority" to an administrative decision-maker requires understanding the *advantages* that the decision-maker may enjoy in exercising its mandate (*Dunsmuir* , at para. 49). As Iacobucci J. observed in *Southam*:

> Presumably if Parliament entrusts a certain matter to a tribunal and not (initially at least) to the courts, *it is because the tribunal enjoys some advantage that judges do not*. For that reason alone, review of the decision of a tribunal should often be on a standard more deferential than correctness. [Emphasis added; para. 55.]

232 Chief among those advantages are the institutional expertise and specialization inherent to administering a particular mandate on a daily basis. Those appointed to administrative tribunals are often chosen precisely because their backgrounds and experience align with their mandate (Van Harten et al., at p. 15; Régimbald, at p. 463). Some administrative schemes explicitly require a degree of expertise from new members as a condition of appointment (*Edmonton East*, at para. 33; *Q. v. College of Physicians & Surgeons (British Columbia)*, [2003] 1 S.C.R. 226 (S.C.C.) , at para. 29; Régimbald, at p. 462). As institutions, administrative bodies also benefit from specialization as they develop "habitual familiarity with the legislative scheme they administer" (*Edmonton East*, at para. 33) and "grappl[e] with issues on a repeated basis" (*Parry Sound (District)*

Welfare Administration Board v. O.P.S.E.U., Local 324, [2003] 2 S.C.R. 157(S.C.C.) , at para. 53). Specialization and expertise are further enhanced by continuing education and through meetings of the membership of an administrative body to discuss policies and best practices (Finn Makela, "Acquired Expertise of Administrative Tribunals and the Standard of Judicial Review: The Case of Grievance Arbitrators and Human Rights Law" (2013), 17 *C.L.E.L.J.* 345, at p. 349). In addition, the blended membership of some tribunals fosters special institutional competence in resolving "polycentric" disputes (*Pushpanathan* , at para. 36; *Dr. Q* at paras. 29-30; *Pezim* , at pp. 591-92 and 596).

233 All this equips administrative decision-makers to tackle questions of law arising from their mandates. In interpreting their enabling statutes, for example, administrative actors may have a particularly astute appreciation for the on-the-ground consequences of particular legal interpretations; of statutory context; of the purposes that a provision or legislative scheme are meant to serve; and of specialized terminology used in their administrative setting. Coupled with this Court's acknowledgment that legislative provisions often admit of multiple reasonable interpretations, the advantages stemming from specialization and expertise provide a robust foundation for deference to administrative decision-makers on legal questions within their mandate (*C.U.P.E.* , at p. 236; *McLean* , at para. 37). As Professor H.W. Arthurs said:

> There is no reason to believe that a judge who reads a particular regulatory statute once in his life, perhaps in worst-case circumstances, can read it with greater fidelity to legislative purpose than an administrator who is sworn to uphold that purpose, who strives to do so daily, and is well-aware of the effect upon the purpose of the various alternate interpretations. There is no reason to believe that a legally-trained judge is better qualified to determine the existence or sufficiency or appropriateness of evidence on a given point than a trained economist or engineer, an arbitrator selected by the parties, or simply an experienced tribunal member who decides such cases day in and day out. There is no reason to believe that a judge whose entire professional life has been spent dealing with disputes one by one should possess an aptitude for issues which arise often because an administrative system dealing with cases in volume has been designed to strike an appropriate balance between efficiency and effective rights of participation.
>
> ("Protection against Judicial Review" (1983), 43 *R. du B.* 277, at p. 289)

234 Judges of this Court have endorsed both this passage and the broader proposition that specialization and expertise justify the deference owed to administrative decision-makers (*National Corn Growers* , at p. 1343, per Wilson J., concurring). As early as *C.U.P.E.* , Dickson J. fused expertise and legislative intent by explaining that an administrative body's specialized expertise can be essential to achieving the purposes of a statutory scheme:

> The Act calls for a delicate balance between the need to maintain public services, and the need to maintain collective bargaining. Considerable sensitivity and unique expertise on the part of Board members is all the more required if the twin purposes of the legislation are to be met. [p. 236]

235 Over time, specialized expertise would become the core rationale for deferring to administrative decision-makers (*Bradco Construction* at p. 335; *Southam*, at para. 50; Audrey Macklin, "Standard of Review: Back to the Future?", in Colleen M. Flood and Lorne Sossin, eds., *Administrative Law in Context* (3rd ed. 2018), 381 at pp. 397-98). Post-*Dunsmuir* , the Court has been steadfast in confirming the central role of specialization and expertise, affirming their connection to legislative intent, and recognizing that they give administrative decision-makers the "interpretative upper hand" on questions of law (*McLean* , at para. 40; see also *Conway* , at para. 53; *Mowat*, at para. 30; *N.L.N.U. v. Newfoundland & Labrador (Treasury Board)*, [2011] 3 S.C.R. 708(S.C.C.) , at para. 13; *Doré c. Québec (Tribunal des professions)*, [2012] 1 S.C.R. 395 (S.C.C.) , at para. 35; *Mouvement laïque* , at para. 46; *Khosa* , at para. 25; *Edmonton East*, at para. 33).

236 Although the majority's approach extolls respect for the legislature's "institutional design choices", it accords no weight to the institutional advantages of specialization and expertise that administrative decision-makers possess in resolving questions of law. In so doing, the majority disregards the historically accepted reason *why* the legislature intended to delegate authority to an administrative actor.

237 Nor are we persuaded by the majority's claim that "if administrative decision makers are understood to possess specialized expertise on all questions that come before them, the concept of expertise ceases to assist a reviewing court in attempting to distinguish questions for which applying the reasonableness standard is appropriate from those for which it is not". Here, the majority sets up a false choice: expertise must either be assessed on a case-by-case basis or play no role at all in a theory of judicial review.

238 We disagree. While not every decision-maker necessarily has expertise on every issue raised in an administrative proceeding, reviewing courts do not engage in an individualized, case-by-case assessment of specialization and expertise. The theory of deference is based not only on the legislative choice to delegate decisions, but also on institutional expertise and on "the reality that ... those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime" (*Khosa* , at para. 25; see also *M.A.H.C.P. v. Nor-Man Regional Health Authority Inc.*, [2011] 3 S.C.R. 616 (S.C.C.) , at para. 53; *Edmonton East*, at para. 33).

239 The exclusion of expertise, specialization and other institutional advantages from the majority's standard of review framework is not merely a theoretical concern. The removal of the current "conceptual basis" for deference opens the gates to expanded correctness review. The majority's "presumption" of deference will yield all too easily to justifications for a correctness-oriented framework.

240 In the majority's framework, deference gives way whenever the "rule of law" demands it. The majority's approach to the rule of law, however, flows from a court-centric conception of the rule of law rooted in Dicey's 19th century philosophy.

241 The rule of law is not the rule of courts. A pluralist conception of the rule of law recognizes that courts are not the exclusive guardians of law, and that others in the justice arena have shared responsibility for its development, including administrative decision-makers. *Dunsmuir* embraced this more inclusive view of the rule of law by acknowledging that the "court-centric conception of the rule of law" had to be "reined in by acknowledging that the courts do not have a monopoly on deciding all questions of law" (para. 30). As discussed in *Dunsmuir* , the rule of law is understood as meaning that administrative decision-makers make legal determinations within their mandate, and not that only judges decide questions of law with an unrestricted license to substitute their opinions for those of administrative actors through correctness review (see McLachlin, *Administrative Tribunals and the Courts: An Evolutionary Relationship*; The Hon. Thomas A. Cromwell, "What I Think I've Learned About Administrative Law" (2017), 30 *C.J.A.L.P.* 307, at p. 308; *Wilson v. Atomic Energy of Canada Ltd.*, [2016] 1 S.C.R. 770(S.C.C.) , at para. 31, per Abella J.).

242 Moreover, central to any definition of the rule of law is access to a fair and efficient dispute resolution process, capable of dispensing timely justice (*Hryniak v. Mauldin*, [2014] 1 S.C.R. 87 (S.C.C.) , at para. 1). This is an important objective for all litigants, from the sophisticated consumers of administrative justice, to, most significantly, the particularly vulnerable ones (Angus Grant and Lorne Sossin, "Fairness in Context: Achieving Fairness Through Access to Administrative Justice", in Colleen M. Flood and Lorne Sossin, eds., *Administrative Law in Context* (3rd ed. 2018), 341, at p. 342). For this reason, access to justice is at the heart of the legislative choice to establish a robust system of administrative law (Grant and Sossin, at pp. 342 and 369-70; Van Harten, et al., at p. 17; Régimbald, at pp. 2-3; McLachlin, *Administrative Tribunals and the Courts: An Evolutionary Relationship*). As Morissette J.A. has observed:

> ... the aims of administrative law ... generally gravitate towards promoting access to justice. The means contemplated are costless or inexpensive, simple and expeditious procedures, expertise of the decision-makers, coherence of reasons, consistency of results and finality of decisions.
>
> (Yves-Marie Morissette, "What is a 'reasonable decision'?" (2018), 31 *C.J.A.L.P.* 225, at p. 236)

243 These goals are compromised when a narrow conception of the "rule of law" is invoked to impose judicial hegemony over administrative decision-makers. Doing so perverts the purpose of establishing a parallel system of administrative justice, and adds unnecessary expense and complexity for the public.

244 The majority even calls for a reformulation of the "questions of central importance" category from *Dunsmuir* and permits courts to substitute their opinions for administrative decision-makers on "questions of central importance to the legal system as a whole", even if those questions fall squarely within the mandate and expertise of the administrative decision-maker. As noted in *Canadian Human Rights Commission*, correctness review was permitted only for questions "of central importance to the legal system *and* outside the specialized expertise of the adjudicator" (para. 28 (emphasis in original)). Broadening this category from its original characterization unduly expands the issues available for judicial substitution. Issues of discrimination, labour rights, and economic regulation of the securities markets (among many others) theoretically raise questions of vital importance for Canada and its legal system. But by ignoring administrative decision-makers' expertise on these matters, this category will inevitably provide more "room ... for both mistakes and manipulation" (Andrew Green, "Can There Be Too Much Context in Administrative Law? Setting the Standard of Review in Canadian Administrative Law" (2014), 47 *U.B.C. L. Rev.* 443, at p. 483). We would leave *Dunsmuir* 's description of this category undisturbed. [1]

245 We also disagree with the majority's reformulation of "legislative intent" to include, for the first time, an invitation for courts to apply correctness review to legal questions whenever an administrative scheme includes a right of appeal. We do not see how appeal rights represent a "different institutional structure" that requires a more searching form of review. The mere fact that a statute contemplates a reviewing role for a court says nothing about the *degree of deference* required in the review process. Rights of appeal reflect different choices by different legislatures to permit review for different reasons, on issues of fact, law, mixed fact and law, and discretion, among others. Providing parties with a right of appeal can serve several purposes entirely unrelated to the standard of review, including outlining: where the appeal will take place (sometimes, at a different reviewing court than in the routes provided for judicial review); who is eligible to take part; when materials must be filed; how materials must be presented; the reviewing court's powers on appeal; any leave requirements; and the grounds on which the parties may appeal (among other things). By providing this type of structure and guidance, statutory appeal provisions may allow legislatures to promote efficiency and access to justice, in a way that exclusive reliance on the judicial review procedure would not have.

246 In reality, the majority's position on statutory appeal rights, although couched in language about "giv[ing] effect to the legislature's institutional design choices", hinges almost entirely on a textualist argument: the presence of the word "appeal" indicates a legislative intent that courts apply the same standards of review found in civil appellate jurisprudence.

247 The majority's reliance on the "presumption of consistent expression" in relation to the single word "appeal" is misplaced and disregards long-accepted institutional distinctions between how courts and administrative decision-makers function. The language in each setting is different; the mandates are different; the policy bases are different. The idea that *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235(S.C.C.) , must be inflexibly applied to every right of "appeal" within a statute — with no regard for the broader purposes of the statutory scheme or the practical implications of greater judicial involvement within it — is entirely unsupported by our jurisprudence.

248 In addition, 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. If, as the majority claims, Parliament's decision to provide appeal routes must influence the standard of review analysis, there is no principled reason why Parliament's decision via privative clauses to *prohibit* appeals should not be given comparable effect. [2]

249 In any event, legislatures in this country have known for at least 25 years since *Pezim* that this Court has not treated statutory rights of appeal as a determinative reflection of legislative intent regarding the standard of review (*Pezim* , at p. 590). Against this reality, the continued use by legislatures of the term "appeal" cannot be imbued with the intent that the majority retroactively ascribes to it; doing so is inconsistent with the principle that legislatures are presumed to enact legislation in compliance with existing common law rules (Ruth Sullivan, *Statutory Interpretation* (3rd ed. 2016), at p. 315).

250 Those legislatures, moreover, understood from our jurisprudence that this Court was committed to respecting *standards* of review that were statutorily prescribed, as British Columbia alone has done. [3] We agree with the Attorney General of Canada's position in the companion appeals of *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66(S.C.C.) , that, absent exceptional

circumstances, the existence of a statutory right of appeal does not displace the presumption that the standard of reasonableness applies.[4] The majority, however, has inexplicably chosen the template proposed by the *amici*,[5] recommending a sweeping overhaul of our approach to legislative intent and to the determination of the standard of review.

251 The result reached by the majority means that hundreds of administrative decision-makers subject to different kinds of statutory rights of appeal — some in highly specialized fields, such as broadcasting, securities regulation and international trade — will now be subject to an irrebuttable presumption of correctness review. This has the potential to cause a stampede of litigation. Reviewing courts will have license to freely revisit legal questions on matters squarely within the expertise of administrative decision-makers, even if they are of no broader consequence outside of their administrative regimes. Even if specialized decision-makers provide reasonable interpretations of highly technical statutes with which they work daily, even if they provide internally consistent interpretations responsive to the parties' submissions and consistent with the text, context and purpose of the governing scheme, the administrative body's past practices and decisions, the common law, prior judicial rulings and international law, those interpretations can still be set aside by a reviewing court that simply takes a different view of the relevant statute. This risks undermining the integrity of administrative proceedings whenever there is a statutory right of appeal, rendering them little more than rehearsals for a judicial appeal — the inverse of the legislative intent to establish a specialized regime and entrust certain legal and policy questions to non-judicial actors.

252 Ironically, the majority's approach will be a roadblock to its promise of simplicity. Elevating appeal clauses to indicators of correctness review creates a two-tier system of administrative law: one tier that defers to the expertise of administrative decision-makers where there is no appeal clause; and another tier where such clauses permit judges to substitute their own views of the legal issues at the core of those decision-makers' mandates. Within the second tier, the application of appellate law principles will inevitably create confusion by encouraging segmentation in judicial review (*Mouvement laïque* , at para. 173, per Abella J., concurring in part; see also Paul Daly, "Struggling Towards Coherence in Canadian Administrative Law? Recent Cases on Standard of Review and Reasonableness" (2016), 62 *McGill L.J.* 527, at pp. 542-43; The Hon. Joseph T. Robertson, "Identifying the Review Standard: Administrative Deference in a Nutshell" (2017), 68 *U.N.B.L.J.* 145, at p. 162). Courts will be left with the task of identifying palpable and overriding errors for factual questions, extricating legal issues from questions of mixed fact and law, reviewing questions of law *de novo*, and potentially having to apply judicial review and appellate standards interchangeably if an applicant challenges in one proceeding multiple aspects of an administrative decision, some falling within an appeal clause and others not. It is an invitation to complexity and a barrier to access to justice.

253 The majority's reasons "roll back the *Dunsmuir* clock to an era where some courts asserted a level of skill and knowledge in administrative matters which further experience showed they did not possess" (*Khosa* , at para. 26). The reasons elevate statutory rights of appeal to a determinative factor based on a formalistic approach that ignores the legislature's intention to leave certain legal and policy questions to specialized administrative decision-makers. This unravelling of Canada's carefully developed, deferential approach to administrative law returns us to the "black letter law" approach found in *Anisminic* and cases like *Metropolitan Life* whereby specialized decision-makers were subject to the pre-eminent determinations of a judge. Rather than building on *Dunsmuir* , which recognized that specialization is fundamentally intertwined with the legislative choice to delegate particular subject matters to administrative decision-makers, the majority's reasons banish expertise from the standard of review analysis entirely, opening the door to a host of new correctness categories which remain open to further expansion. The majority's approach not only erodes the presumption of deference; it erodes confidence in the existence — and desirability — of the "shared enterprises in the administrative state" of "[l]aw-making and legal interpretation" between courts and administrative decision-makers (Stack, at p. 310).

254 But the aspect of the majority's decision with the greatest potential to undermine both the integrity of this Court's decisions, and public confidence in the stability of the law, is its disregard for precedent and *stare decisis*.

255 *Stare decisis* places significant limits on this Court's ability to overturn its precedents. Justice Rothstein described some of these limits in *Craig v. R.*, [2012] 2 S.C.R. 489(S.C.C.) , the case about horizontal *stare decisis* on which the majority relies:

> The question of whether this Court should overrule one of its own prior decisions was addressed recently in *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 S.C.R. 3. At paragraph 56, Chief Justice McLachlin and LeBel J.,

> in joint majority reasons, noted that overturning a precedent of this Court is a step not to be lightly undertaken. *This is especially so when the precedent represents the considered views of firm majorities* (para. 57).
>
> Nonetheless, this Court has overruled its own decisions on a number of occasions. (See *R. v. Chaulk*, [1990] 3 S.C.R. 1303, at p. 1353, *per* Lamer C.J., for the majority; *R. v. B. (K.G.)*, [1993] 1 S.C.R. 740; *R. v. Robinson*, [1996] 1 S.C.R. 683.) *However, the Court must be satisfied based on compelling reasons that the precedent was wrongly decided and should be overruled ....*
>
> Courts must proceed with caution when deciding to overrule a prior decision. In *Queensland v. Commonwealth* (1977), 139 C.L.R. 585(H.C.A.), at p. 599, Justice Gibbs articulated the required approach succinctly:
>
> > No Justice is entitled to ignore the decisions and reasoning of his predecessors, and to arrive at his own judgment as though the pages of the law reports were blank, or as though the authority of a decision did not survive beyond the rising of the Court. A Justice, unlike a legislator, cannot introduce a programme of reform which sets at nought decisions formerly made and principles formerly established. It is only after the most careful and respectful consideration of the earlier decision, and after giving due weight to all the circumstances, that a Justice may give effect to his own opinions in preference to an earlier decision of the Court. [Emphasis added; paras. 24-26.]

256 Apex courts in several jurisdictions outside Canada have similarly stressed the need for caution and compelling justification before departing from precedent. The United States Supreme Court refrains from overruling its past decisions absent a "special justification", which must be over and above the belief that a prior case was wrongly decided (*Kimble v. Marvel Entertainment, LLC* 135 S.Ct. 2401(U.S. Sup. Ct. 2015), at p. 2409; see also *Halliburton Co. v. Erica P. John Fund, Inc.* 573 U.S. 258(U.S. Sup. Ct. 2014), at p. 266; *Kisor v. Wilkie* 139 S.Ct. 2400(U.S. Sup. Ct. 2019), at pp. 2418 and 2422; Bryan A. Garner et al., *The Law of Judicial Precedent* (2016), at pp. 35-36).

257 Similarly, the House of Lords "require[d] much more than doubts as to the correctness of [a past decision] to justify departing from it" (*Fitzleet Estates Ltd. v. Cherry (Inspector of Taxes)* (1977), 51 T.C. 708(U.K. H.L.) , at p. 718), an approach that the United Kingdom Supreme Court continues to endorse (*R. v. Taylor (Jack)*, [2016] UKSC 5, [2016] 4 All E.R. 617(U.K. S.C.), at para. 19; *Willers v. Joyce*, [2016] UKSC 44, [2017] 2 All E.R. 383(U.K. S.C.), at para. 7; *Knauer v. Ministry of Justice*, [2016] UKSC 9, [2016] 4 All E.R. 897(U.K. S.C.), at paras. 22-23).

258 New Zealand's Supreme Court views "caution, often considerable caution" as the "touchstone" of its approach to horizontal *stare decisis*, and has emphasized that it will not depart from precedent "merely because, if the matter were being decided afresh, the Court might take a different view" (*Couch v. Attorney-General (No. 2)* [2010] NZSC 27, [2010] 3 N.Z.L.R. 149, at paras. 105, per Tipping J., and 209, per McGrath J.).

259 Restraint and respect for precedent also guide the High Court of Australia and South Africa's Constitutional Court when applying *stare decisis* (*Lee v. New South Wales Crime Commission* [2013] HCA 39, 302 A.L.R. 363, at paras. 62-66 and 70; *South Africa (Republic) v. Grootboom*[2010] ZACC 19 , 2011 (4) S.A. 42, at pp. 55-56; *Buffalo City Metropolitan Municipality v. Asla Construction Ltd.* [2019] ZACC 15, 2019 (4) S.A. 331, at para. 65).

260 The virtues of horizontal *stare decisis* are widely recognized. The doctrine "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process" (*Kimble* , at p. 2409, citing *Payne v. Tennessee* 501 U.S. 808(U.S. Tenn. S.C. 1991), at p. 827). This Court has stressed the importance of *stare decisis* for "[c]ertainty in the law" (*Bedford v. Canada (Attorney General)*, [2013] 3 S.C.R. 1101(S.C.C.) , at para. 38; *R. v. Bernard*, [1988] 2 S.C.R. 833(S.C.C.) , at p. 849; *Canada (Minister of Indian Affairs & Northern Development) v. Ranville*, [1982] 2 S.C.R. 518(S.C.C.) , at p. 527). Other courts have described *stare decisis* as a "foundation stone of the rule of law" (*Michigan v. Bay Mills Indian Community* 572 U.S. 782(U.S. Sup. Ct. 2014), at p. 798; *Kimble* , at p. 2409; *Kisor* , at p. 2422; see also *Camps Bay* , at pp. 55-56; Jeremy Waldron, "Stare Decisis and the Rule of Law: A Layered Approach" (2012), 111 *Mich. L. Rev.* 1, at p. 28; Lewis F. Powell, Jr., "Stare Decisis and Judicial Restraint" (1990), 47 *Wash. & Lee L. Rev.* 281, at p. 288).

261 Respect for precedent also safeguards this Court's institutional legitimacy. The precedential value of a judgment of this Court does not "expire with the tenure of the particular panel of judges that decided it" (*Plourde c. Québec (Commission des relations du travail)*, [2009] 3 S.C.R. 465(S.C.C.) , at para. 13). American cases have stressed similar themes:

> There is ... a point beyond which frequent overruling would overtax the country's belief in the Court's good faith. Despite the variety of reasons that may inform and justify a decision to overrule, we cannot forget that such a decision is usually perceived (and perceived correctly) as, at the least, a statement that a prior decision was wrong. There is a limit to the amount of error that can plausibly be imputed to prior Courts. If that limit should be exceeded, disturbance of prior rulings would be taken as evidence that justifiable reexamination of principle had given way to drives for particular results in the short term. The legitimacy of the Court would fade with the frequency of its vacillation.
>
> (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833(U.S. Sup. Ct. 1992), at p. 866; see also *Florida Dept. of Health and Rehabilitative Services v. Florida Nursing Home Assoc.*, 450 U.S. 147(U.S. Sup. Ct. 1981), at p. 153, per Stevens J., concurring.)

262 Several scholars have made this point as well (see e.g., Michael J. Gerhardt, *The Power of Precedent* (2008), at p. 18; Garner et al., at p. 391). Aharon Barak has warned that

> overruling precedent damages the public's conception of the judicial role, and undermines the respect in which the public holds the courts and its faith in them. Precedent should not resemble a ticket valid only for the day of purchase.
>
> ("Overruling Precedent" (1986), 21 *Is.L.R.* 269, at p. 275)

263 The majority's reasons, in our view, disregard the high threshold required to overturn one of this Court's decisions. The justification for the majority abandoning this Court's long-standing view of how statutory appeal clauses impact the standard of review analysis is that this Court's approach was "unsound in principle" and criticized by judges and academics. The majority also suggests that the Court's decisions set up an "unworkable and unnecessarily complex" system of judicial review. Abandoning them, the majority argues, would promote the values underlying *stare decisis*, namely "clarity and certainty in the law". In doing so, the majority discards several of this Court's bedrock administrative law principles.

264 The majority leaves unaddressed the most significant rejection of this Court's jurisprudence in its reasons — its decision to change the entire "conceptual basis" for judicial review by excluding specialization, expertise and other institutional advantages from the analysis. The lack of any justification for this foundational shift — repeatedly invoked by the majority to sanitize further overturning of precedent — undercuts the majority's stated respect for *stare decisis* principles.

265 The majority explains its decision to overrule the Court's prior decisions about appeal clauses by asserting that these precedents had "no satisfactory justification". It does not point, however, to any arguments different from those heard and rejected by other panels of this Court over the decades whose decisions are being discarded. Instead, the majority substitutes its own preferred approach to interpreting statutory rights of appeal — an approach rejected by several prior panels of this Court in a line of decisions stretching back three decades. The rejection of such an approach was explicitly reaffirmed *no fewer than four times in the past ten years* (*Khosa* , at para. 26; *Mowat*, at paras. 30-31; *Mouvement laïque* , at para. 38; *Edmonton East*, at paras. 27-31; see also *McLean* , at para. 21).

266 Overruling these judgments flouts *stare decisis* principles, which prohibit courts from overturning past decisions which "simply represen[t] a preferred choice with which the current Bench does not agree" (*Couch*, at para. 105; see also *Knauer* , at para. 22; *Casey* , at p. 864). "[T]he entire idea of *stare decisis* is that judges do not get to reverse a decision just because they never liked it in the first instance" (*Knick v. Township of Scott, Pennsylvania* 139 S.Ct. 2162(U.S. Sup. Ct. 2019), at p. 2190, per Kagan J., dissenting). As the United States Supreme Court noted in *Kimble* :

> ... an argument that we got something wrong — even a good argument to that effect — cannot by itself justify scrapping settled precedent. Or otherwise said, it is not alone sufficient that we would decide a case differently now than we did then.

> To reverse course, we require as well what we have termed a "special justification" — over and above the belief "that the precedent was wrongly decided." [Citation omitted; p. 2409.]

267 But it is the unprecedented wholesale rejection of an entire body of jurisprudence that is particularly unsettling. The affected cases are too numerous to list in full here. It includes many decisions conducting deferential review even in the face of a statutory right of appeal (*Pezim* ; *Southam*; *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132(S.C.C.) ; *Dr. Q* ; *Ryan* ; *Cartaway*; *VIA Rail*; *Proprio Direct inc. c. Pigeon*, [2008] 2 S.C.R. 195(S.C.C.) ; *Kerry (Canada) Inc. v. Ontario (Superintendent of Financial Services)*, [2009] 2 S.C.R. 678(S.C.C.) ; *McLean* ; *Bell Canada (2009)*; *ATCO Gas* ; *Mouvement laïque* ; *Igloo Vikski*; *Edmonton East*) and bedrock judgments affirming the relevance of administrative expertise to the standard of review analysis and to "home statute" deference (*C.U.P.E.* ; *National Corn Growers* ; *Domtar Inc.* ; *Bradco Construction*; *Southam*; *Pushpanathan* ; *Alberta Teachers' Association* ; *Canadian Human Rights Commission*, among many others).

268 Most of those decisions were decided unanimously or by strong majorities. At no point, however, does the majority acknowledge this Court's strong reluctance to overturn precedents that "represen[t] the considered views of firm majorities" (*Craig* , at para. 24; *Fraser v. Ontario (Attorney General)*, [2011] 2 S.C.R. 3(S.C.C.) , at para. 57; see also *Rascal Trucking Ltd. v. Nishi*, [2013] 2 S.C.R. 438(S.C.C.) , at paras. 23-24), or to overrule decisions of a "recent vintage" (*Fraser* , at para. 57; see also *Nishi* , at para. 23). The decisions the majority *does* rely on, by contrast, involved overturning usually only one precedent and almost always an older one: *Craig* overruled a 34-year-old precedent; *R. v. Henry*, [2005] 3 S.C.R. 609(S.C.C.) , overruled a 19-year-old precedent (and another 15-year-old precedent, in part); and the dissenting judges in *Bernard* would have overruled a 10-year-old precedent.

269 The majority's decision to overturn precedent also has the potential to disturb settled interpretations of many statutes that contain a right of appeal. Under the majority's approach, every existing interpretation of such statutes by an administrative body that has been affirmed under a reasonableness standard of review will be open to fresh challenge. In *McLean* , for example, this Court acknowledged that a limitations period in British Columbia's *Securities Act* [6] had two reasonable interpretations, but deferred to the one the Commission preferred based on deferential review. We see no reason why an individual in the same situation as Ms. McLean could not now revisit our Court's decision through the statutory right of appeal in the *Securities Act*, and insist that a new reviewing court offer *its* definitive view of the relevant limitations period now that appeal clauses are interpreted to permit judicial substitution rather than deference.

270 The majority does not address the chaos that such legal uncertainty will generate for those who rely on settled interpretations of administrative statutes to structure their affairs, despite the fact that protecting these reliance interests is a well-recognized and especially powerful reason for respecting precedent (Garner et al., at pp. 404-11; Neil Duxbury, *The Nature and Authority of Precedent* (2008), at pp. 118-19; *Kimble* , at pp. 2410-11). By changing the entire status quo, the majority's approach will undermine legal certainty — "the foundational principle upon which the common law relies" (*Bedford* , at para. 38; see also Cromwell, at p. 315).

271 Moreover, if this Court had for over 30 years significantly misconstrued the purpose of statutory appeal routes by failing to recognize what *this* majority has ultimately discerned — that in enacting such routes, legislatures were unequivocally directing courts to review *de novo* every question of law that an administrative body addresses, regardless of that body's expertise — legislatures across Canada were free to clarify this interpretation and endorse the majority's favoured approach through legislative amendment. Given the possibility — and continued absence — of legislative correction, the case for overturning our past decisions is even less compelling (*R. v. Binus*, [1967] S.C.R. 594(S.C.C.) , at p. 601; see also *Kimble* , at p. 2409; *Kisor* , at pp. 2422-23; *Bilski v. Kappos* 561 U.S. 59(U.S. Sup. Ct. 2010), at pp. 601-2).

272 Each of these rationales for adhering to precedent — consistent affirmation, reliance interests and the possibility of legislative correction — was recently endorsed by the United States Supreme Court in *Kisor* . There, the Court invoked *stare decisis* to uphold two administrative law precedents which urged deference to administrative agencies when they interpreted ambiguous provisions in their regulations (*Bowles v. Seminole Rock & Sand Co.* 325 U.S. 410(U.S. Sup. Ct. 1945); *Auer v. Robbins* 519 U.S. 452(U.S. Sup. Ct. 1997)). Writing for the majority on the issue of *stare decisis*, Justice Kagan explained

at length why the doctrine barred the Court from overturning *Auer* or *Seminole Rock*. To begin, Justice Kagan reiterated the importance of *stare decisis* and the need for special justification to overcome its demands. She then explained that *stare decisis* carried even greater force than usual when applied to two decisions that had been affirmed by a "long line of precedents" going back 75 years or more and cited by lower courts thousands of times (p. 2422). She noted that overturning the challenged precedents would cast doubt on many settled statutory interpretations and invite relitigation of cases (p. 2422). Finally, Justice Kagan reasoned that Congress remained free to overturn the cases if the Court had misconstrued legislative intent:

> ... even if we are wrong about *Auer*, "Congress remains free to alter what we have done." In a constitutional case, only we can correct our error. But that is not so here. Our deference decisions are "balls tossed into Congress's court, for acceptance or not as that branch elects." And so far, at least, Congress has chosen acceptance. It could amend the APA or any specific statute to require the sort of *de novo* review of regulatory interpretations that Kisor favors. Instead, for approaching a century, it has let our deference regime work side-by-side with both the APA and the many statutes delegating rulemaking power to agencies. It has done so even after we made clear that our deference decisions reflect a presumption about congressional intent. And it has done so even after Members of this Court began to raise questions about the doctrine. Given that history — and Congress's continuing ability to take up Kisor's arguments — we would need a particularly "special justification" to now reverse *Auer*. [Citations omitted; pp. 2422-23]

273 In the face of these compelling reasons for adhering to precedent, many of which have found resonance in this Court's jurisprudence, the majority's reliance on "judicial and academic criticism" falls far short of overcoming the demands of *stare decisis*. It is hard to see why the *obiter* views of the handful of Canadian judges referred to by the majority should be determinative or even persuasive. The majority omits the views of any academics or judges who *have* voiced support for a strong presumption of deference without identifying our approach to statutory rights of appeal as cause for concern (Dyzenhaus, "Dignity in Administrative Law: Judicial Deference in a Culture of Justification", at p. 109; Green, at pp. 489-90; Matthew Lewans, *Administrative Law and Judicial Deference* (2016); Jonathan M. Coady, "The Time Has Come: Standard of Review in Canadian Administrative Law" (2017), 68 *U.N.B.L.J.* 87; The Hon. John M. Evans, "Standards of Review in Administrative Law" (2013), 26 *C.J.A.L.P.* 67, at p. 79; The Hon. John M. Evans, "Triumph of Reasonableness: But How Much Does It Really Matter?" (2014), 27 *C.J.A.L.P.* 101; Jerry V. DeMarco, "Seeking Simplicity in Canada's Complex World of Judicial Review" (2019), 32 *C.J.A.L.P.* 67).

274 A selective assortment of criticism is not evidence of generalized criticism or unworkability. This Court frequently tackles contentious, high-profile cases that engender strong and persisting divisions of opinion. The public looks to us to definitively resolve those cases, regardless of the composition of the Court. As Hayne J. noted in *Lee*:

> To regard the judgments of this Court as open to reconsideration whenever a new argument is found more attractive than the principle expressed in a standing decision is to overlook the function which a final court of appeal must perform in defining the law. In difficult areas of the law, differences of legal opinion are inevitable; before a final court of appeal, the choice between competing legal solutions oftentimes turns on the emphasis or weight given by each of the judges to one factor against a countervailing factor ... *In such cases, the decision itself determines which solution is, for the purposes of the current law, correct*. It is not to the point to argue in the next case that, leaving the particular decision out of account, another solution is better supported by legal theory. *Such an approach would diminish the authority and finality of the judgments of this Court*. As the function of defining the law is vested in the Court rather than in the justices who compose it, a decision of the Court will be followed in subsequent cases by the Court, however composed, subject to the exceptional power which resides in the Court to permit reconsideration.
>
> Accordingly, as one commentator has put the point: "the previous decision is to be treated as the primary premise from which other arguments follow, and not just as one potential premise among an aggregate of competing premises". [Emphasis in original; footnote omitted.]
>
> (paras. 65-66, citing *Baker v. Campbell*, [1983] HCA 39, (1983), 153 C.L.R. 52(Australia H.C.), at pp. 102-3)

275 This Court, in fact, has been clear that "criticism of a judgment is not sufficient to justify overruling it" (*Fraser* , at para. 86). Differences of legal and public opinion are a natural by-product of contentious cases like *R. v. Jordan*, [2016] 1 S.C.R. 631(S.C.C.) , or even *Housen* , which, as this Court acknowledged, was initially applied by appeal courts with "varying degrees of enthusiasm" (*L. (H.) v. Canada (Attorney General)*, [2005] 1 S.C.R. 401(S.C.C.) , at para. 76; see also Paul M. Perell, "The Standard of Appellate Review and The Ironies of Housen v. Nikolaisen" (2004), 28 *Adv. Q.* 40, at p. 53; Mike Madden, "Conquering the Common Law Hydra: A Probably Correct and Reasonable Overview of Current Standards of Appellate and Judicial Review" (2010), 36 *Adv. Q.* 269, at pp. 278-79 and 293; Paul J. Pape and John J. Adair, "Unreasonable review: The losing party and the palpable and overriding error standard" (2008), 27 *Adv. J.* 6, at p. 8; Geoff R. Hall, "Two Unsettled Questions in the Law of Contractual Interpretation: A Call to the Supreme Court of Canada" (2011), 50 *Can. Bus. L.J.* 434, at p. 436).

276 To justify circumventing this Court's jurisprudence, the majority claims that the precedents being overturned *themselves* departed from the approach to statutory rights of appeal under the pragmatic and functional test. That, with respect, is wrong. Ever since *Bell Canada (1989)* and in several subsequent decisions outlined earlier in these reasons, statutory rights of appeal have played little or no role in the standard of review analysis. Moreover, in pre-*Dunsmuir* cases, statutory rights of appeal were still seen as only one factor among others — and *not* as unequivocal indicators of correctness review (see, for example, *Deputy Minister of National Revenue v. Mattel Canada Inc.*, [2001] 2 S.C.R. 100(S.C.C.) , at paras. 27-33; *Chieu v. Canada (Minister of Citizenship & Immigration)*, [2002] 1 S.C.R. 84(S.C.C.) , at paras. 23-24; *Harvard College v. Canada (Commissioner of Patents)*, [2002] 4 S.C.R. 45(S.C.C.) , at paras. 149-51). Our pre- and post-*Dunsmuir* cases on statutory rights of appeal shared in common an unwavering commitment to determining the standard of review in administrative proceedings using administrative law principles, even when appeal rights were involved.

277 For the majority, the elimination of the contextual factors appears to have justified the reconstruction of the whole judicial review framework. Yet the elimination of the contextual analysis was all but complete in our post-*Dunsmuir* jurisprudence, and does not support the foundational changes to judicial review in the majority's decision. Neither that development, nor the majority's assertion that our precedents have proven "unclear and unduly complex", justifies the conclusion that *all* of our administrative law precedents — even those unconnected to the practical difficulties in applying *Dunsmuir* — are suddenly fair game.

278 This Court is overturning a long line of well-established and recently-affirmed precedents in a whole area of law, including several unanimous or strong majority judgments. There is no principled justification for such a dramatic departure from this Court's existing jurisprudence.

Going Forward

279 In our view, a more modest approach to modifying our past decisions, one that goes no further than necessary to clarify the law and its application, is justified. "[W]hen a court does choose to overrule its own precedents, it should do so carefully, with moderation, and with due regard for all the important considerations that undergird the doctrine" (Garner et al., at pp. 41-42). Such an approach to changing precedent preserves the integrity of the judicial process and, at a more conceptual level, of the law itself as a social construct. Michael J. Gerhardt summarized this approach eloquently:

> Judicial modesty is .... a disposition to respect precedents (as embodying the opinions of others), to learn from their and others' experiences, and to decide cases incrementally to minimize conflicts with either earlier opinions of the Court or other constitutional actors. [p. 7]

280 Judicial modesty promotes the responsible development of the common law. Lord Tom Bingham described that process in his seminal work, *The Rule of Law* (2010):

> ... it is one thing to move the law a little further along a line on which it is already moving, or to adapt it to accord with modern views and practices; it is quite another to seek to recast the law in a radically innovative or adventurous way, because that is to make it uncertain and unpredictable, features which are the antithesis of the rule of law. [pp. 45-46]

(See also Robert J. Sharpe, *Good Judgment: Making Judicial Decisions* (2018), at p. 93; Beverley McLachlin, "The Role of the Supreme Court of Canada in Shaping the Common Law", in Paul Daly, ed., *Apex Courts and the Common Law* (2019), 25, at p. 35; *R. v. Salituro*, [1991] 3 S.C.R. 654(S.C.C.), at p. 670; *Friedmann Equity Developments Inc. v. Final Note Ltd.*, [2000] 1 S.C.R. 842(S.C.C.), at para. 42; *R. v. Brown*, [2008] 1 S.C.R. 456(S.C.C.), at paras. 14-16, per Lebel J., and 73-74, per Binnie J., concurring.)

281 Lord Bingham's comments highlight that a nuanced balance must be struck between maintaining the stability of the common law and ensuring that the law is flexible and responsive enough to adapt to new circumstances and shifts in societal norms. *Stare decisis* plays a critical role in maintaining that balance and upholding the rule of law. When *stare decisis* is respected, precedent acts as a stabilizing force: providing certainty as to what the law is, consistency that allows those subject to the law to order their affairs accordingly, and continuity that protects reliance on those legal consequences. *Stare decisis* is at the heart of the iterative development of the common law, fostering progressive, incremental and responsible change.

282 So what do we suggest? We support a standard of review framework with a meaningful rule of deference, based on *both* the legislative choice to delegate decision-making authority to an administrative actor *and* on the specialized expertise that these decision-makers possess and develop in applying their mandates. Outside of the three remaining correctness categories from *Dunsmuir* — and absent clear and explicit legislative direction on the *standard* of review — administrative decisions should be reviewed for reasonableness. Like the majority, we support eliminating the category of "true questions of jurisdiction" and foreclosing the use of the contextual factors identified in *Dunsmuir* . These developments introduce incremental changes to our judicial review framework, while respecting its underlying principles and placing the ball in the legislatures' court to modify the standards of review if they wish.

283 To the extent that concerns were expressed about the quality of administrative decision making by some interveners who represented particularly vulnerable groups, we agree that they must be taken seriously. But the solution does not lie in authorizing more incursions into the administrative system by generalist judges who lack the expertise necessary to implement these sensitive mandates. Any perceived shortcomings in administrative decision making are not solved by permitting *de novo* review of every legal decision by a court and, as a result, adding to the delay and cost of obtaining a final decision. The solution lies instead in ensuring the proper qualifications and training of administrative decision-makers. Like courts, administrative actors are fully capable of, and responsible for, improving the quality of their own decision-making processes, thereby strengthening access to justice in the administrative justice system.

284 We also acknowledge that this Court should offer additional direction on conducting reasonableness review. [7] We fear, however, that the majority's multi-factored, open-ended list of "constraints" on administrative decision making will encourage reviewing courts to dissect administrative reasons in a "line-by-line treasure hunt for error" (*Irving Pulp & Paper Ltd. v. CEP, Local 30*, [2013] 2 S.C.R. 458(S.C.C.) , at para. 54). These "constraints" may function in practice as a wide-ranging catalogue of hypothetical errors to justify quashing an administrative decision — a checklist with unsettling similarities to the series of "jurisdictional errors" spelled out in *Anisminic* itself.

285 Structuring reasonableness review in this fashion effectively imposes on administrative decision-makers a higher standard of justification than that applied to trial judges. Such an approach undercuts deference and revives a long-abandoned posture of suspicion towards administrative decision making. We are also concerned by the majority's warning that administrative decision-makers cannot "arrogate powers to themselves that they were never intended to have", an unhelpful truism that risks reintroducing the tortured concept of "jurisdictional error" by another name.

286 We would advocate a continued approach to reasonableness review which focuses on the concept of *deference* and what it requires of reviewing courts. Curial deference, after all, is *the* hallmark of reasonableness review, setting it apart from the substitution of opinion permitted under the correctness standard. The choice of a particular standard of review — whether described as "correctness", "reasonableness" or in other terms — is fundamentally about "whether or not a reviewing court should defer" [8] to an administrative decision (see *Dunsmuir* , at para. 141, per Binnie J., concurring; Régimbald, at pp. 539-40). If courts, therefore, are to properly conduct "reasonableness" review, they must properly understand what deference means.

287 In our view, deference imposes three requirements on courts conducting reasonableness review. It informs the attitude a reviewing court must adopt towards an administrative decision-maker; it affects how a court frames the question it must answer on judicial review; and it affects how a reviewing court evaluates challenges to an administrative decision.

288 First and foremost, deference is an "attitude of the court" conducting reasonableness review (*Dunsmuir* , at para. 48). Deference mandates respect for the legislative choice to entrust a decision to administrative actors rather than to the courts, and for the important role that administrative decision-makers play in upholding and applying the rule of law (*Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 S.C.R. 77(S.C.C.) , at para. 131, per LeBel J., concurring). Deference also requires respect for administrative decision-makers, their specialized expertise and the institutional setting in which they operate (*Dunsmuir* , at paras. 48-49). Reviewing courts must pay "respectful attention" to the reasons offered for an administrative decision, make a genuine effort to understand why the decision was made, and give the decision a fair and generous construction in light of the entire record (*Newfoundland Nurses*, at paras. 11-14 and 17).

289 Second, deference affects how a court frames the question it must answer when conducting judicial review. A reviewing court does not ask how it would have resolved an issue, but rather, whether the answer provided by the administrative decision-maker has been shown to be unreasonable (*Khosa* , at paras. 59 and 61-62; *Dunsmuir* , at para. 47). Framing the inquiry in this way ensures that the administrative decision under review is the focus of the analysis.

290 This Court has often endorsed this approach to conducting reasonableness review. In *Ryan* , for example, Iacobucci J. explained:

> ... When deciding whether an administrative action was unreasonable, a court should not at any point ask itself what the correct decision would have been .... The standard of reasonableness does not imply that a decision-maker is merely afforded a "margin of error" around what the court believes is the correct result.
>
> ... Unlike a review for correctness, there will often be no single right answer to the questions that are under review against the standard of reasonableness .... Even if there could be, notionally, a single best answer, it is not the court's role to seek this out when deciding if the decision was unreasonable. [paras. 50-51]
>
> (See also *U.A.W., Local 720 v. Volvo Canada Ltd.* (1979), [1980] 1 S.C.R. 178(S.C.C.), at p. 214; *Toronto (City)*, at paras. 94-95, per LeBel J., concurring; *VIA Rail*, at para. 101; *Mason v. Canada (Citizenship and Immigration)*, 2019 FC 1251(F.C.), at para. 22, per Grammond J.; Régimbald, at p. 539; Sharpe, at pp. 204 and 208; Paul Daly, "The Signal and the Noise in Administrative Law" (2017), 68 *U.N.B.L.J.* 68, at p. 85; Evans, "Triumph of Reasonableness: But How Much Does It Really Matter?", at p. 107.)

291 Third, deferential review impacts how a reviewing court evaluates challenges to an administrative decision. Deference requires the applicant seeking judicial review to bear the onus of showing that the decision was unreasonable (*Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, [2018] 1 S.C.R. 83(S.C.C.) , at para. 108; *Khela v. Mission Institution*, [2014] 1 S.C.R. 502(S.C.C.) , at para. 64; *May v. Ferndale Institution*, [2005] 3 S.C.R. 809(S.C.C.) , at para. 71; *Ryan* , at para. 48; *Southam*, at para. 61; *Northern Telecom Ltd. v. Communications Workers of Canada* (1979), [1980] 1 S.C.R. 115(S.C.C.) , at p. 130). Focusing on whether the applicant has demonstrated that the decision is unreasonable reinforces the central role that administrative decisions play in a properly deferential review process, and confirms that the decision-maker does not have to persuade the court that its decision is reasonable.

292 Assessing whether a decision is reasonable also requires a qualitative assessment. Reasonableness is a concept that pervades the law but is difficult to define with precision (*Dunsmuir* , at para. 46). It requires, by its very nature, a fact-specific inquiry that involves a certain understanding of common experience. Reasonableness cannot be reduced to a formula or a checklist of factors, many of which will not be relevant to a particular decision. Ultimately, whether an administrative decision is reasonable will depend on the context (*Catalyst Paper Corp. v. North Cowichan (District)*, [2012] 1 S.C.R. 5(S.C.C.) , at para. 18). Administrative law covers an infinite variety of decisions and decision-making contexts, as LeBel J. colourfully explained

in *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307 (S.C.C.) , at para. 158 (dissenting in part, but not on this point):

> ... not all administrative bodies are the same. Indeed, this is an understatement. At first glance, labour boards, police commissions, and milk control boards may seem to have about as much in common as assembly lines, cops, and cows! Administrative bodies do, of course, have some common features, but the diversity of their powers, mandate and structure is such that to apply particular standards from one context to another might well be entirely inappropriate ....

293 Deference, in our view, requires approaching each administrative decision on its own terms and in its own context. But we emphasize that the inherently contextual nature of reasonableness review does not mean that the degree of scrutiny applied by a reviewing court varies (*Alberta Teachers' Association* , at para. 47; *Wilson* , at para. 18). It merely means that when assessing a challenge to an administrative decision, a reviewing court must be attentive to all relevant circumstances, including the reasons offered to support the decision, the record, the statutory scheme and the particular issues raised by the applicant, among other factors (see, for example, *Suresh v. Canada (Minister of Citizenship & Immigration)*, [2002] 1 S.C.R. 3 (S.C.C.) , at para. 40; *Newfoundland Nurses*, at para. 18; Van Harten et al., at p. 794). Without this context, it is impossible to determine what constitutes a sufficiently compelling justification to quash a decision under reasonableness review. Context may make a challenge to an administrative decision more or less persuasive — but it does not alter the deferential posture of the reviewing court (*Suresh* , at para. 40).

294 Deference, however, does not require reviewing courts to shirk their obligation to review the decision. So long as they maintain a respectful attitude, frame the judicial review inquiry properly and demand compelling justification for quashing a decision, reviewing courts are entitled to meaningfully probe an administrative decision. A thorough evaluation by a reviewing court is not "disguised correctness review", as some have used the phrase. Deference, after all, stems from respect, not inattention to detail. [295] Bearing this in mind, we offer the following suggestions for conducting reasonableness review. We begin with situations where reasons are required. [9]

296 The administrative decision is the focal point of the review exercise. Where reasons are provided, they serve as the natural starting point to determine whether the decision-maker acted reasonably (*Williams Lake* , at para. 36). By beginning with the reasons offered for the decision, read in light of the surrounding context and the grounds raised to challenge the decision, reviewing courts provide meaningful oversight while respecting the legitimacy of specialized administrative decision making.

297 Reviewing courts should approach the reasons with respect for the specialized decision-makers, the significant role they have been assigned and the institutional context chosen by the legislator. Reasons should be approached generously, on their own terms. Reviewing courts should be hesitant to second-guess operational implications, practical challenges and on-the-ground knowledge used to justify an administrative decision. Reviewing courts must also remain alert to specialized concepts or language used in an administrative decision that may be unfamiliar to a generalist judge (*Newfoundland Nurses*, at para. 13; *Igloo Vikski*, at paras. 17 and 30). When confronted with unfamiliar language or modes of reasoning, judges should acknowledge that such differences are an inevitable, intentional and invaluable by-product of the legislative choice to assign a matter to the administrative system. They may lend considerable force to an administrative decision and, by the same token, render an applicant's challenge to that decision less compelling. Reviewing courts scrutinizing an administrative body's decision under the reasonableness framework should therefore keep in mind that the administrative body holds the "interpretative upper hand" (*McLean* , at para. 40).

298 Throughout the review process, a court conducting deferential review must view claims of administrative error in context and with caution, cognizant of the need to avoid substituting its opinion for that of those empowered and better equipped to answer the questions at issue. Because judicial substitution is incompatible with deference, reviewing courts must carefully evaluate the challenges raised by an applicant to ensure they go to the *reasonableness* of the administrative decision.

299 Unsurprisingly, applicants rarely present challenges to an administrative decision as explicit invitations for courts to substitute their opinions for those of administrative actors. Courts, therefore, must carefully probe challenges to administrative decisions to assess whether they amount, in substance, to a mere difference of opinion with how the administrative decision-

maker weighed or prioritized the various factors relevant to the decision-making process. Allegations of error may, on deeper examination, simply reflect a legitimate difference in approach by an administrative decision-maker. By rooting out and rejecting such challenges, courts respect the valuable and distinct perspective that administrative bodies bring to answering legal questions, flowing from the considerable expertise and field sensitivity they develop by administering their mandate and working within the intricacies of their statutory context on a daily basis. The understanding and insights of administrative actors enhance the decision-making process and may be more conducive to reaching a result "that promotes effective public policy and administration ... than the limited knowledge, detachment, and modes of reasoning typically associated with courts of law" (*National Corn Growers* , at pp. 1336-37 (emphasis deleted), per Wilson J., concurring, citing J. M. Evans et al., *Administrative Law: Cases, Text, and Materials* (3rd ed. 1989), at p. 414).

300 When resolving challenges to an administrative decision, courts must also consider the *materiality* of any alleged errors in the decision-maker's reasoning. Under reasonableness review, an error is not necessarily sufficient to justify quashing a decision. Inevitably, the weight of an error will depend on the extent to which it affects the decision. An error that is peripheral to the administrative decision-maker's reasoning process, or overcome by more compelling points advanced in support of the result, does not provide fertile ground for judicial review. Ultimately, the role of the reviewing court is to examine the decision as a whole to determine whether it is reasonable (*Dunsmuir* , at para. 47; *Khosa* , at para. 59). Considering the materiality of any impugned errors is a natural part of this exercise, and of reading administrative reasons "together with the outcome" (*Newfoundland Nurses*, at para. 14).

301 Review of the decision as a whole is especially vital when an applicant alleges that an administrative decision contains material omissions. Significantly, and as this Court has frequently emphasized, administrative decision-makers are not required to consider and comment upon every issue raised by the parties in their reasons (*Construction Labour Relations Assn. (Alberta) v. Driver Iron Inc.*, [2012] 3 S.C.R. 405 (S.C.C.) , at para. 3; *Newfoundland Nurses*, at para. 16, citing *S.E.I.U., Local 333 v. Nipawin District Staff Nurses Assn.* (1973), [1975] 1 S.C.R. 382 (S.C.C.) , at p. 391). Further, a reviewing court is not restricted to the four corners of the written reasons delivered by the decision-maker and should, if faced with a gap in the reasons, look to the record to see if it sheds light on the decision (*Williams Lake* , at para. 37; *Delta Air Lines Inc. v. Lukács*, [2018] 1 S.C.R. 6(S.C.C.) , at para. 23; *Newfoundland Nurses*, at para. 15; *Alberta Teachers' Association* , at paras. 53 and 56).

302 The use of the record and other context to supplement a decision-maker's reasons has been the subject of some academic discussion (see, for example, Mullan, at pp. 69-74). We support a flexible approach to supplementing reasons, which is consistent with the flexible approach used to determine whether administrative reasons must be provided to begin with and sensitive to the "day-to-day realities of administrative agencies" (*Baker* , at para. 44), which may not be conducive to the production of "archival" reasons associated with court judgments (para. 40, citing Roderick A. Macdonald and David Lametti, "Reasons for Decision in Administrative Law" (1990), 3 *C.J.A.L.P.* 123).

303 Some materials that may help bridge gaps in a reviewing court's understanding of an administrative decision include: the record of any formal proceedings as well as the materials before the decision-maker, past decisions of the administrative body, and policies or guidelines developed to guide the type of decision under review (see Matthew Lewans, "Renovating Judicial Review" (2017), 68 *U.N.B.L.J.* 109, at pp. 137-38). Reviewing these materials may assist a court in understanding, "by inference", why an administrative decision-maker reached a particular outcome (*Baker* , at para. 44; see also *Williams Lake* , at para. 37; *Mills v. Ontario (Workplace Safety & Insurance Appeals Tribunal)*, 2008 ONCA 436, 237 O.A.C. 71(Ont. C.A.) , at paras. 38-39). It may reveal further confirmatory context for a line of reasoning employed by the decision-maker — by showing, for example, that the decision-maker's understanding of the purpose of its statutory mandate finds support in the provision's legislative history (*Celgene Corp. v. Canada (Attorney General)*, [2011] 1 S.C.R. 3(S.C.C.) , at paras. 25-29). Reviewing the record can also yield responses to the specific challenges raised by an applicant on judicial review, responses that are "consistent with the process of reasoning" applied by the administrative decision-maker (*Igloo Vikski*, at para. 45). In these ways, reviewing courts may legitimately supplement written reasons without "supplant[ing] the analysis of the administrative body" (*Lukács* , at para. 24).

304 The "adequacy" of reasons, in other words, is not "a stand-alone basis for quashing a decision" (*Newfoundland Nurses*, at para. 14). As this Court has repeatedly confirmed, reasons must instead "be read together with the outcome and serve the purpose

of showing whether the result falls within a range of possible outcomes" (*Newfoundland Nurses*, at para. 14; *Halifax (Regional Municipality) v. Canada (Public Works & Government Services)*, [2012] 2 S.C.R. 108 (S.C.C.) , at para. 44; *Agraira v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2013] 2 S.C.R. 559 (S.C.C.) , at para. 52; *Williams Lake* , at para. 141, per Rowe J., dissenting, but not on this point). This approach puts substance over form in situations where the basis for a decision by a specialized administrative actor is evident on the record, but not clearly expressed in written reasons. Quashing decisions in such circumstances defeats the purpose of deference and thwarts access to justice by wasting administrative and judicial resources.

305 In our view, therefore, if an applicant claims that an administrative decision-maker failed to address a relevant factor in reaching a decision, the reviewing court must consider the submissions and record before the decision-maker, and the materiality of any such omission to the decision rendered. An administrative decision-maker's failure, for example, to refer to a particular statutory provision or the full factual record before it does not automatically entitle a reviewing court to conduct a *de novo* assessment of the decision under review. The inquiry must remain focussed on whether the applicant has satisfied the burden of showing that the omission renders the decision reached unreasonable.

306 We acknowledge that respecting the line between reasonableness and correctness review has posed a particular challenge for judges when reviewing interpretation by administrative decision-makers of their statutory mandates. Judges routinely interpret statutes and have developed a template for how to scrutinize words in that context. But the same deferential approach we have outlined above must apply with equal force to statutory interpretation cases. When reviewing an administrative decision involving statutory interpretation, a court should not assess the decision by determining what, in its own view, would be a reasonable interpretation. Such an approach "imperils deference" (Paul Daly, "Unreasonable Interpretations of Law" (2014), 66 *S.C.L.R.* (2d) 233, at p. 250).

307 We agree with Justice Evans that "once [a] court embarks on its own interpretation of the statute to determine the reasonableness of the tribunal's decision, there seems often to be little room for deference" (Evans, "Triumph of Reasonableness: But How Much Does It Really Matter?", at p. 109; see also *Mason* , at para. 34; Dyzenhaus, "Dignity in Administrative Law: Judicial Deference in a Culture of Justification", at p. 108; Daly, "Unreasonable Interpretations of Law", at pp. 254-55). We add that a *de novo* interpretation of a statute, conducted as a prelude to "deferential" review, necessarily omits a vital piece of the interpretive puzzle: the perspective of the front-line, specialized administrative body that routinely applies the statutory scheme in question (Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", at p. 304; Paul Daly, "Deference on Questions of Law" (2011), 74 *Mod. L. Rev.* 694). By placing that perspective at the heart of the judicial review inquiry, courts display respect for administrative specialization and expertise, and for the legislative choice to delegate certain questions to non-judicial bodies.

308 Conversely, by imposing their own interpretation of a statutory provision, courts *undermine* legislative intent to confide a mandate to the decision-maker. Applying a statute will almost always require some interpretation, making the interpretive mandate of administrative decision-makers inherent to their legislative mandate. The decision-maker who applies the statute has primary responsibility for interpreting the provisions in order to carry out their mandate effectively.

309 Administrative decision-makers performing statutory interpretation should therefore be permitted to be guided by their expertise and knowledge of the practical realities of their administrative regime. In many cases, the "ordinary meaning" of a word or term makes no sense in a specialized context. And in some settings, law and policy are so inextricably at play that they give the words of a statute a meaning unique to a particular specialized context (*National Corn Growers* , at p. 1336, per Wilson J., concurring; *Domtar Inc.* , at p. 800). Further, not only are statutory provisions sometimes capable of bearing more than one reasonable interpretation, they are sometimes drafted in general terms or with "purposeful ambiguity" in order to permit adaptation to future, unknown circumstances (see Felix Frankfurter, "Some Reflections on the Reading of Statutes" (1947), 47 *Colum. L. Rev.* 527, at p. 528). These considerations make it all the more compelling that reviewing courts avoid imposing judicial norms on administrative decision-makers or maintaining a dogmatic insistence on formalism. Where a decision-maker can explain its decision adequately, that decision should be upheld (Daly, "Unreasonable Interpretations of Law", at pp. 233-34, 250 and 254-55).

310 Justice Brown's reasons in *Igloo Vikski* provide a useful illustration of a properly deferential approach to statutory interpretation. That case involved an interpretation of the *Customs Tariff*, S.C. 1997, c. 36, as it applies to hockey goaltender gloves. The Canada Border Services Agency had classified the gloves as "[g]loves, mittens [or] mitts". Igloo Vikski argued they should have been classified as sporting equipment. The Canadian International Trade Tribunal ("CITT") confirmed the initial classification. The Federal Court of Appeal reversed the decision.

311 Acknowledging that the "specific expertise" of the CITT gave it the upper hand over a reviewing court with respect to certain questions of law, Justice Brown determined that the standard of review was reasonableness. Writing for seven other members of the Court, he carefully reviewed the reasons of the CITT and how it had engaged with Igloo Vikski's arguments before turning to the errors alleged by Igloo Vikski and the Federal Court of Appeal. Conceding that the CITT reasons lacked "perfect clarity", Justice Brown nevertheless concluded that the Tribunal's interpretation was reasonable. While he agreed with Igloo Vikski that an alternate interpretation to that given by the CITT was available, the inclusive language of the applicable statute was broad enough to accommodate the CITT's reasonable interpretation. By beginning with the reasons offered for the interpretation and turning to the challenges mounted against it in light of the surrounding context, *Igloo Vikski* provides an excellent example of respectful and properly deferential judicial review.

312 We conclude our discussion of reasonableness review by addressing cases where reasons are neither required nor available for judicial review. In these circumstances, a reviewing court should remain focussed on whether the decision has been shown to be unreasonable. The reasonableness of the decision may be justified by past decisions of the administrative body (see *Edmonton East*, at paras. 38 and 44-46; *Alberta Teachers' Association* , at paras. 56-64). In other circumstances, reviewing courts may have to assess the reasonableness of the outcome in light of the procedural context surrounding the decision (see *Law Society of British Columbia v. Trinity Western University*, [2018] 2 S.C.R. 293(S.C.C.) , at paras. 51-56; *Edmonton East*, at paras. 48-60; *Catalyst Paper Corp.* , at paras. 32-36). In all cases, the question remains whether the challenging party has demonstrated that a decision is unreasonable.

313 In sum, reasonableness review is based on deference to administrative decision-makers and to the legislative intention to confide in them a mandate. Deference must inform the attitude of a reviewing court and the nature of its analysis: the court does not ask how it would have resolved the issue before the administrative decision-maker but instead evaluates whether the decision-maker acted reasonably. The reviewing court starts with the reasons offered for the administrative decision, read in light of the surrounding context and based on the grounds advanced to challenge the reasonableness of the decision. The reviewing court must remain focussed on the reasonableness of the decision viewed as a whole, in light of the record, and with attention to the materiality of any alleged errors to the decision-maker's reasoning process. By properly conducting reasonableness review, judges provide careful and meaningful oversight of the administrative justice system while respecting its legitimacy and the perspectives of its front-line, specialized decision-makers.

Application to Mr. Vavilov

314 Alexander Vavilov challenges the Registrar of Citizenship's decision to cancel his citizenship certificate. The Registrar concluded that Mr. Vavilov was not a Canadian citizen, and therefore not entitled to a certificate of Canadian citizenship because, although he was born in Canada, his parents were "other representative[s] or employee[s] in Canada of a foreign government" within the meaning of s. 3(2)(a) of the *Citizenship Act*, R.S.C. 1985, c. C-29.

315 The first issue is the applicable standard of review. We agree with the majority that reasonableness applies.

316 The second issue is whether the Registrar was reasonable in concluding that the exception to Canadian citizenship in s. 3(2)(a) applies not only to parents who enjoy diplomatic privileges and immunities, but also to intelligence agents of a foreign government. The onus is therefore on Mr. Vavilov to satisfy the reviewing court that the decision was unreasonable. In our view, he has met that onus.

317 Mr. Vavilov was born in Canada in 1994. His Russian parents, Elena Vavilova and Andrey Bezrukov, entered Canada at some point prior to his birth, assumed the identities of two deceased Canadians and fraudulently obtained Canadian passports.

After leaving Canada to live in France, Mr. Vavilov and his family moved to the United States. While in the United States, Mr. Vavilov's parents became American citizens under their assumed Canadian identities. Mr. Vavilov and his older brother also obtained American citizenship.

318 In June 2010, agents of the United States Federal Bureau of Investigation arrested Mr. Vavilov's parents and charged them with conspiracy to act as unregistered agents of a foreign government and to commit money laundering. Mr. Vavilov's parents pleaded guilty to the conspiracy charges in July 2010 and were returned to Russia in a spy swap. Around the same time, Mr. Vavilov and his brother travelled to Russia. The American government subsequently revoked Mr. Vavilov's passport and citizenship. In December 2010, he was issued a Russian passport and birth certificate.

319 From 2010 to 2013, Mr. Vavilov repeatedly sought a Canadian passport. In December 2011, he obtained an amended Ontario birth certificate, showing his parents' true names and places of birth. Using this birth certificate, Mr. Vavilov applied for and received a certificate of Canadian citizenship in January 2013. Relying on these certificates, Mr. Vavilov applied for an extension of his Canadian passport in early 2013. On July 18, 2013, the Registrar wrote to Mr. Vavilov, informing him that there was reason to believe the citizenship certificate had been erroneously issued and asking him for additional information.

320 On April 22, 2014, Mr. Vavilov provided extensive written submissions to the Registrar. He argued that the narrow exception set out in s. 3(2) of the Act does not apply to him. Because he was born in Canada, he is entitled to Canadian citizenship. Mr. Vavilov also argued that the Registrar had failed to respect the requirements of procedural fairness.

321 The Registrar wrote to Mr. Vavilov on August 15, 2014, cancelling his certificate of Canadian citizenship. In her view, because Mr. Vavilov met the two statutory restrictions in s. 3(2) of the Act, he was not a Canadian citizen. First, when Mr. Vavilov was born in Canada, neither of his parents were Canadian citizens or lawfully admitted to Canada for permanent residence. Second, as unofficial agents working for Russia's Foreign Intelligence Service, Mr. Vavilov's parents were "other representative[s] or employee[s] in Canada of a foreign government" within the meaning of s. 3(2)(a).

322 The Federal Court ((2015), [2016] F.C.R. 39(F.C.)) dismissed Mr. Vavilov's application for judicial review. It found that the Registrar had satisfied the requirements of procedural fairness and, applying a correctness standard, determined that the Registrar's interpretation of s. 3(2)(a) was correct. The Federal Court then reviewed the application of s. 3(2)(a) on a reasonableness standard and concluded that the Registrar had reasonably determined that Mr. Vavilov's parents were working in Canada as undercover agents of the Russian government at the time of his birth.

323 The Federal Court of Appeal (2017[2018] 3 F.C.R. 75(F.C.A.)) allowed the appeal and quashed the Registrar's decision to cancel Mr. Vavilov's citizenship certificate. Writing for the majority, Stratas J.A. agreed that the requirements of procedural fairness were met but held that the Registrar's interpretation of s. 3(2)(a) was unreasonable. In his view, only those who enjoy diplomatic privileges and immunities fall within the exception to citizenship found in s. 3(2)(a). Justice Stratas reached this conclusion after considering the context and purpose of the provision, its legislative history and international law principles related to citizenship and diplomatic privileges and immunities.

324 As a general rule, administrative decisions are to be judicially reviewed for reasonableness. None of the correctness exceptions apply to the Registrar's interpretation of the Act in this case. As such, the standard of review is reasonableness.

325 The following provisions of the *Citizenship Act* are relevant to this appeal:

> **Persons who are citizens**
>
> **3 (1)** Subject to this Act, a person is a citizen if
>
> (a) the person was born in Canada after February 14, 1977;
>
> . . . . .
>
> **Not applicable to children of foreign diplomats, etc.**

> **(2)** Paragraph (1)(a) does not apply to a person if, at the time of his birth, neither of his parents was a citizen or lawfully admitted to Canada for permanent residence and either of his parents was
>
> (a) a diplomatic or consular officer or other representative or employee in Canada of a foreign government;
>
> (b) an employee in the service of a person referred to in paragraph (a); or
>
> (c) an officer or employee in Canada of a specialized agency of the United Nations or an officer or employee in Canada of any other international organization to whom there are granted, by or under any Act of Parliament, diplomatic privileges and immunities certified by the Minister of Foreign Affairs to be equivalent to those granted to a person or persons referred to in paragraph (a).

The general rule embodied in s. 3(1)(a) of the Act is that persons born in Canada are Canadian citizens. Section 3(2) sets out an exception to this rule. As such, if s. 3(2) applies to Mr. Vavilov, he was never a Canadian citizen.

326 The specific issue in this case is whether the Registrar's interpretation of the statutory exception to citizenship was reasonable. Reasonableness review entails deference to the decision-maker, and we begin our analysis by examining the reasons offered by the Registrar in light of the context and the grounds argued.

327 In this case, the Registrar's letter to Mr. Vavilov summarized the key points underlying her decision. In concluding that Mr. Vavilov was not entitled to Canadian citizenship, the Registrar adopted the recommendations of an analyst employed by Citizenship and Immigration Canada. As such, the analyst's report properly forms part of the reasons supporting the Registrar's decision.

328 The analyst's report sought to answer the question of whether Mr. Vavilov was erroneously issued a certificate of Canadian citizenship. The report identifies the key question in this case as being whether either of Mr. Vavilov's parents was a "representative" or "employee" of a foreign government within the meaning of s. 3(2)(a). Much of the report relates to matters not disputed in this appeal, including the legal status of Mr. Vavilov's parents in Canada and their employment as Russian intelligence agents.

329 The analyst began her analysis with the text of s. 3(2)(a). In concluding that the provision operates to deny Mr. Vavilov Canadian citizenship, she set out two textual arguments. First, she compared the current version of s. 3(2)(a) to an earlier iteration of the exception found in s. 5(3) of the *Canadian Citizenship Act*, R.S.C. 1970, c. C-19:

> **Not applicable to children of foreign diplomats, etc.**
>
> (3) Subsection (1) does not apply to a person if, at the time of that person's birth, his responsible parent
>
> (a) is an alien who has not been lawfully admitted to Canada for permanent residence; and
>
> (b) is
>
> (i) a foreign diplomatic or consular officer or a representative of a foreign government accredited to Her Majesty,
>
> (ii) an employee of a foreign government attached to or in the service of a foreign diplomatic mission or consulate in Canada, or
>
> (iii) an employee in the service of a person referred to in subparagraph (i).

330 The analyst stated that the removal of references to official accreditation or a diplomatic mission indicate that the previous exception was narrower than s. 3(2)(a). She then pointed out that the definition of "diplomatic or consular officer" in s. 35(1) of the *Interpretation Act*, R.S.C. 1985, c. I-21, clearly associates these individuals with diplomatic positions. Because the current version of s. 3(2)(a) does not link "other representative or employee in Canada of a foreign government" to a diplomatic

mission, the analyst determined "it is reasonable to maintain that this provision intends to encompass individuals not included in the definition of 'diplomatic and consular staff.'" Finally, the analyst stated that the phrase "other representative or employee in Canada of a foreign government" has not been previously interpreted by a court.

331 Beyond the analyst's report, there is little in the record to supplement the Registrar's reasons. There is no evidence about whether the Registrar has previously applied this provision to individuals like Mr. Vavilov, whose parents did not enjoy diplomatic privileges and immunities. Neither does there appear to be any internal policy, guideline or legal opinion to guide the Registrar in making these types of decisions.

332 In challenging the Registrar's decision, Mr. Vavilov bears the onus of demonstrating why it is not reasonable. Before this Court, Mr. Vavilov submitted that the analyst focussed solely on the text of the exception to citizenship. In his view, had the broader objectives of s. 3(2)(a) been considered, the analyst would have concluded that "other representative" or "employee" only applies to individuals who benefit from diplomatic privileges and immunities.

333 In his submissions before the Registrar, Mr. Vavilov offered three reasons why the text of s. 3(2) must be read against the backdrop of Canadian and international law relating to the roles and functions of diplomats.

334 First, Mr. Vavilov explained that s. 3(2)(a) should be read in conjunction with the *Foreign Missions and International Organizations Act*, S.C. 1991, c. 41 ("*FMIOA*"). This statute incorporates into Canadian law aspects of the *Vienna Convention on Diplomatic Relations*, Can. T.S. (1983), 1966 No. 29 (Australia H.C.) , Sched. I to the *FMIOA*, and the *Vienna Convention on Consular Relations*, Can. T.S. 1974 No. 25, Sched. II to the *FMIOA*, which deal with diplomatic privileges and immunities. He submitted that s. 3(2) denies citizenship to children of diplomats because diplomatic privileges and immunities, including immunity from criminal prosecution and civil liability, are inconsistent with the duties and responsibilities of a citizen. Because Mr. Vavilov's parents did not enjoy such privileges and immunities, there would be no purpose in excluding their children born in Canada from becoming Canadian citizens.

335 Second, Mr. Vavilov provided the Registrar with Hansard committee meeting minutes such as the comments of the Honourable J. Hugh Faulkner, Secretary of State, when introducing the amendments to s. 3(2), who explained that the provision had been redrafted to narrow the exception to citizenship.

336 Third, Mr. Vavilov cited case law, arguing that: (i) the exception to citizenship should be narrowly construed because it takes away substantive rights (*Brossard (Ville) c. Québec (Commission des droits de la personne)*, [1988] 2 S.C.R. 279 (S.C.C.) , at p. 307); (ii) s. 3(2)(a) must be interpreted functionally and purposively (*Medovarski v. Canada (Minister of Citizenship & Immigration)*, [2005] 2 S.C.R. 539(S.C.C.) , at para. 8); and (iii) because Mr. Vavilov's parents were not immune from criminal or civil proceedings, they fall outside the scope of s. 3(2) (*Greco v. Holy See (State of the Vatican City)*, [1999] O.J. No. 2467 (Ont. S.C.J.) ; *R. v. Bonadie* (1996), 109 C.C.C. (3d) 356 (Ont. Prov. Div.) ; *Al-Ghamdi v. Canada (Minister of Foreign Affairs & International Trade)* 2007 64 Imm. L.R. (3d) 67(F.C.)).

337 The Federal Court's decision in *Al-Ghamdi* , a case which challenged the constitutionality of s. 3(2)(a), was particularly relevant. In that case, Shore J. wrote that s. 3(2)(a) only applies to the "children of individuals with diplomatic status" (paras. 5 and 65). Justice Shore also stated that "[i]t is precisely because of the vast array of privileges accorded to diplomats and their families, which are by their very nature inconsistent with the obligations of citizenship, that a person who enjoys diplomatic status cannot acquire citizenship" (para. 63).

338 The Registrar's reasons failed to respond to Mr. Vavilov's extensive and compelling submissions about the objectives of s. 3(2)(a). It appears that the analyst misunderstood Mr. Vavilov's arguments on this point. In discussing the scope of s. 3(2), she wrote, "[c]ounsel argues that CIC [Citizenship and Immigration Canada] cannot invoke subsection 3(2) because CIC has not requested or obtained verification with the Foreign Affairs Protocol to prove that [Mr. Vavilov's parents] held diplomatic or consular status with the Russian Federation while they resided in Canada." It thus appears that the analyst did not recognize that Mr. Vavilov's argument was more fundamental in nature — namely, that the objectives of s. 3(2) require the terms "other representative" and "employee" to be read narrowly. During discovery, in fact, the analyst acknowledged that her research did

not reveal a policy purpose behind s. 3(2)(a) or why the phrase "other representative or employee" was included in the Act. It also appears that the analyst did not understand the potential relevance of the *Al-Ghamdi* decision, since her report stated that "[t]he jurisprudence that does exist only relates to individuals whose parents maintained diplomatic status in Canada at the time of their birth."

339 The Registrar, in the end, interpreted s. 3(2)(a) broadly, based on the analyst's purely textual assessment of the provision, including a comparison with the text of the previous version. This reading of "other representative or employee" was only reasonable if the text is read in isolation from its objective. Nothing in the history of this provision indicates that Parliament intended to widen its scope. Rather, as Mr. Vavilov points out, the modifications made to s. 3(2) in 1976 appear to mirror those embodied in the *Vienna Convention on Diplomatic Relations* and the *Vienna Convention on Consular Relations*, which were incorporated into Canadian law in 1977. The judicial treatment of this provision, in particular the statements in *Al-Ghamdi* about the narrow scope of s. 3(2)(a) and the inconsistency between diplomatic privileges and immunities and citizenship, also points to the need for a narrow interpretation of the exception to citizenship.

340 In addition, as noted by the majority of the Federal Court of Appeal, the text of s. 3(2)(c) can be seen as undermining the Registrar's interpretation. That provision denies citizenship to children born to individuals who enjoy "diplomatic privileges and immunities certified by the Minister of Foreign Affairs to be equivalent to those granted to a person or persons referred to in paragraph (a)". As Stratas J.A. noted, this language suggests that s. 3(2)(a) covers *only* those "employee[s] in Canada of a foreign government" who have diplomatic privileges and immunities.

341 By ignoring the objectives of the provision, the Registrar rendered an unreasonable decision. In particular, the arguments supporting a reading of s. 3(2) that is restricted to those who have diplomatic privileges and immunities, likely would have changed the outcome in this case.

342 Mr. Vavilov has satisfied us that the Registrar's decision is unreasonable. As a result, the Court of Appeal properly quashed the Registrar's decision to cancel Mr. Vavilov's citizenship certificate, and he is thus entitled to a certificate of Canadian citizenship.

343 We would therefore dismiss the appeal with costs to Mr. Vavilov throughout.

Appeal dismissed.

Pourvoi rejeté.

Footnotes

1 Other than one of the two *amici*, no one asked us to modify this category.

2 The "constitutional concerns" cited by the majority are no answer to this dilemma — nothing in *Crevier v. Quebec (Attorney General)*, [1981] 2 S.C.R. 220(S.C.C.) , prevents privative clauses from influencing the *standard* of review, as they did for years under the pragmatic and functional approach and in *C.U.P.E.* (David Dyzenhaus, "Dignity in Administrative Law: Judicial Deference in a Culture of Justification" (2012), 17 *Rev. Const. Stud.* 87, at p. 103; David Mullan, "Unresolved Issues on Standard of Review in Canadian Judicial Review of Administrative Action — The Top Fifteen!" (2013), 42 *Adv. Q.* 1, at p. 21).

3 See *Administrative Tribunals Act*, S.B.C. 2004, c. 45. Quebec's recent attempt to introduce such legislation is another example of a legislature which understood that it was free to set standards of review, and that the mere articulation of a right of appeal did not dictate what those standards would be: see Bill 32, *An Act mainly to promote the efficiency of penal justice and to establish the terms governing the intervention of the Court of Québec with respect to applications for appeal*, 1st Sess., 42nd Leg., 2019.

4 The notion that legislative intent finds determinative expression in statutory rights of appeal found no support in the submissions of four of the five attorneys general who appeared before us.

5 Even the *amici* did not go so far as to say that *all* appeal clauses were indicative of a legislative intent for courts to substitute their views on questions of law.

6 R.S.B.C. 1996, c. 418, s. 159

7 Consistent with requests from some commentators and some of the interveners at these hearings, including the Canadian Bar Association and the Council of Canadian Administrative Tribunals (see also Mullan, at pp. 76-78).

8 Factum of the intervener the Canadian Association of Refugee Lawyers, at para. 5; factum of the intervener the Council of Canadian Administrative Tribunals, at paras. 24-26.

9 Under the duty of procedural fairness outlined in *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817(S.C.C.) , at para. 43.