Manitoba Update

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Western Chapter

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STANDARD OF REVIEW revisited

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65

A Recalibration of the 'Reasonableness Standard'

Vavilov: A New Framework for Judicial Review

- As the majority explained, the decision involves:
- “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***”
- the purpose of the decision is to provide "future doctrinal stability" over a turbulent area of Canadian law.

Statutory appeals

Fundamental Change in the Law

- ***Vavilov:*** proceeding by way of statutory appeals means:

  (a) Questions of Law: Reviewed on Correctness Standard

  (b) Questions of mixed fact and law: Reviewed on a standard of “palpable and overriding error”

Why the Change for Statutory Appeals?

- the presumption of reasonableness review is no longer premised upon notions of “relative expertise”.
- It is now based on respect for the legislature’s institutional design choice,
- Some meaning must be given to meaning to the Legislature’s decision to provide for an express statutory right of appeal.

Presumption of *reasonableness* in judicial review

- In applications for *judicial review* of administrative decisions, courts must presumptively apply the reasonableness standard of review.

What Makes a Decision “Reasonable”?

- reviewing court should not disregard the flawed basis for a decision and “substitute its own justification for the outcome”
- Instead, the Court must examine the *reasons provided* to ensure that they are “***internally coherent”*** and that they reveal a “***rational chain of analysis***”.

Unreasonable Decisions cannot be “Repaired”

“the reviewing court should not attempt to ascertain the "range" of possible conclusions that *would have been open to the decision maker*”

Nor is it to disregard the flawed basis for a decision and substitute its own justification for the outcome”

Must Discern Meaning

The administrative decision maker "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.

Statutory Scheme: Front and Centre

The Court underscored the importance of the "**governing statutory scheme**" which is likely to be "the most salient aspect of the legal context relevant to a particular decision."

Property Assessment and Taxation: Fairness of Process and Result

Courts have consistently held that EQUITY and FAIRNESS define the statutory scheme of municipal assessment and taxation statutes

Fair Process and Fair Treatment of the Taxpayer is Fundamental

"the overriding principle *The Municipal Assessment Act* (of Manitoba) is that a ratepayer must be dealt with fairly."

- ***Furgale et al. v. Municipal Board (Man.)*** 1999 CanLII 4500 (MB CA)

Fair Process …

"While the taxation scheme enables municipalities to raise their necessary tax revenue, fairness of process and result is fundamental to the scheme."

Manitoba (Provincial Municipal Assessor) v. Seagram Co., 2003 MBCA 128

Equity under *The Municipal Assessment Act*

Presumption of validity of assessment

18 Notwithstanding any other provision of this ***Act***, an assessment is presumed to be properly made and the assessed value to be fixed at a fair and just amount **where the assessed value bears a fair and just relation to the assessed values of other assessable property**.

Vavilov and the Principle of Fairness

*"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."*

An Assessor is "an administrative decision maker".

Board of Revision: Previous Decisions are Not Admissible

Does this policy mesh with ***Vavilov's*** requirement that "like cases be treated alike?

The Board of Revision …

"… there are times when agents or assessors include Board of Revision Orders in their briefs and refer to these Orders when making their presentations. **Panel Chairs have been informing the parties that the Board will not rely on its past decisions when determining the appropriate assessment**. Nevertheless, the Orders continue to appear and arguments continue to be made about them as though precedents had been set. …"

Board’s explanation …

“…We wish to not be influenced by the past Orders because they are not precedent setting and the panel has no way to explore the facts, arguments, or deliberation behind those Orders …”.

“ …**A <u>Panel should not be looking at anything other than the current market evidence brought forward by each party</u>**.”

VAVILOV TAKEAWAYS …

(1) "Reasonableness" will*, in most cases, be the default "standard of review", unless* there is a statutory right of appeal

(2) Meaningful and Rational Reasons are Essential – Courts are no longer expected to fill in the gaps

(3) Respect for the "statutory scheme" is paramount.

Q&A

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THANK YOU

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