Court File Number: 37748

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant
(Respondent on Appeal)

- and –

ALEXANDER VAVILOV

Respondent
(Appellant on Appeal)

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[Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*]

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TABLE OF CONTENTS

PART I - OVERVIEW	1
PART II - QUESTION IN ISSUE	1
PART III - ARGUMENT	1
A. The interpretation of statutory provisions implementing international human rights must be reviewed on a correctness standard	1
B. Reasonableness review leads to divergent lines of authority, some of which thwart the principles of international human rights and refugee law and risk the lives of refugee claimants and persons in need of protection	3
a. Divergent lines of authority exist on the meaning of state protection in the refugee definition in section 96 of the *IRPA*	3
b. Divergent lines of authority exist on whether persons subjected to gang and gender-based violence are "in need of protection" under section 97 of the *IRPA*	4
c. There were divergent lines of authority on whether conditional sentences were terms of imprisonment under section 36 of the *IRPA*	5
d. There were divergent lines of authority on who could be excluded from refugee protection under section 98 of the *IRPA*	5
C. The rule of law and a full contextual analysis support a correctness standard	6
a. The current approach to selecting the standard of review presumes that a reasonableness standard applies to interpretations of the *IRPA*	6
b. The nature of the question calls for a correctness review	7
c. Parliament has provided several indicators in the *IRPA* that support the correctness review of decision makers' interpretation of provisions that implement human rights law	8
d. Reasonableness is not a substitute for correctness review	9
D. Conclusion	10
PART IV – COSTS	10
PART V – REQUEST FOR ORAL ARGUMENT	10
PART VI – TABLE OF AUTHORITIES	11

PART I – OVERVIEW

1. The Canadian Council for Refugees (CCR) submits that the interpretation of provisions in the *Immigration and Refugee Protection Act (IRPA)*[1] that serve to implement basic human rights conferred in international conventions must be reviewed on the correctness standard. As such, this Court's approach to judicial review, which presumes reasonableness review of such questions, must be reformed. The CCR's members serve many vulnerable clients affected by immigration, refugee and citizenship decisions and seek to ensure that decision makers interpret the *IRPA* in a consistent manner that adheres to the basic human rights guaranteed in international treaties binding on Canada, including the *Refugee Convention*[2] and the *Convention Against Torture* (CAT).[3] The rule of law cannot tolerate inconsistencies in the interpretation of these rights and the statutory provisions that implement them because of the possible severe consequences on the lives and security of refugees, refugee claimants, and other vulnerable migrants. Absent a binding interpretation by a competent international tribunal, national courts must resolve material disagreements on the interpretation of treaty provisions and determine their one true meaning.

PART II – QUESTION IN ISSUE

2. Whether administrative decision makers' interpretation of provisions in the *IRPA* that serve to implement basic human rights conferred in international conventions must be reviewed on a correctness standard?

PART III – ARGUMENT

A. The interpretation of statutory provisions implementing international human rights must be reviewed on a correctness standard

3. Canada is a party to various international agreements that have both direct and indirect impacts on decision making in immigration, refugee and citizenship matters. For example, the definition of refugee in the *Refugee Convention*[4] and the *Protocol Relating to the Status of*

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[1] *Immigration and Refugee Protection Act,* SC 2001, c 27 [*IRPA*].
[2] *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) [*Refugee Convention*].
[3] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) [*CAT*].
[4] *Refugee Convention, supra* note 2.

Refugees[5] is codified in sections 96-98 of the *IRPA*. As well, elements of article 3 of the *CAT*,[6] article 3 of the *Convention on the Rights of the Child,*[7] and articles 7, 9, 12, 13 (among others) of the *International Covenant on Civil and Political Rights*[8] are implemented in the *IRPA*. The *Vienna Convention on the Law of Treaties,* to which Canada is a signatory, states, "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."[9]

4. This Court has repeatedly applied the interpretive presumption that legislation conforms with the state's international obligations. Section 3(2)(b) of the *IRPA* states that the *IRPA* aims to, *inter alia*, "fulfill Canada's international legal obligations with respect to refugees". Section 3(3)(f) directs that the *IRPA* be construed and applied "in a manner that complies with international human rights instruments to which Canada is signatory". These provisions make Parliament's presumed intent to conform to Canada's international obligations explicit.[10]

5. Where basic human rights in international conventions are implemented through domestic legislation, the interpretation of the provisions must be reviewed on a correctness standard. There are two reasons to get an interpretation of the statute right in this context. First, as signatory to the *Vienna Convention on the Law of Treaties,* Canada has an obligation to "perform in good faith" any treaty it is a party to.[11] International treaties that prescribe universal human rights have a single true autonomous and international meaning derivable from sources set out in articles 31 and 32 of the *Vienna Convention on the Law of Treaties.*[12] Courts must step in to determine this meaning. Second, where individuals' fundamental rights to life and security of the person are at risk, the stakes are higher. The interests involved call for more scrutiny on the part of the Court.

6. This Court has intrusively reviewed decision makers' interpretation of provisions of the *IRPA* that discharge Canada's international human rights obligations, effectively applying a correctness rather than reasonableness standard in cases including *Febles,*[13] *Ezokola,*[14] and *B010.*[15]

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[5] 21 January 1967, 606 UNTS 267 (4 October 1967).
[6] *CAT*, *supra* note 3.
[7] 20 November 1989, 28 ILM 1448 [*CRC*].
[8] 19 December 1966, 999 UNTS 171 [*ICCPR*].
[9] *Vienna Convention on the Law of Treaties,* 23 May 1969, 1155 UNTS 331, art 26 [*Vienna Convention*].
[10] *B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58, [2015] 3 SCR 704 at para 49 [*B010*].
[11] *Vienna Convention, supra* note 9, arts 31-32.
[12] *R v Secretary of State for the Home Department*, *ex parte Adan,* [2001] 1 All ER 593 [*Adan*].
[13] *Febles v Canada (Citizenship and Immigration),* 2014 SCC 68, [2014] 3 SCR 431 [*Febles*].
[14] *Ezokola v Canada (Citizenship and Immigration),* 2013 SCC 40, [2013] 2 SCR 678, [*Ezokola*].
[15] *B010*, *supra* note 10.

B. Reasonableness review leads to divergent lines of authority, some of which thwart the principles of international human rights and refugee law and risk the lives of refugee claimants and persons in need of protection

7. Reasonableness review allows judges of the Federal Court to uphold different interpretations of the *IRPA* applied by decision makers if they fall within a range of possible, acceptable outcomes. In the refugee protection context, this leads to the inconsistent implementation of the *IRPA,* the *Refugee Convention* and the *CAT*, with potentially dire consequences for refugees. The CCR has identified four examples where divergent lines of authority have developed over the interpretation of provisions in the *IRPA.*

a. Divergent lines of authority exist on the meaning of state protection in section 96 of the *IRPA*

8. In *Ward*, this Court described the “refugee scheme” as “surrogate or substitute protection” triggered where a refugee claimant is unwilling or unable to obtain state protection.[16] Since *Ward,* divergent views of how to assess state protection have developed, including the creation of presumptions that do not exist in international law.[17] For example, Canadian courts have increasingly relied on the presumption that a democratic state can provide state protection leading to different thresholds to rebut the presumption in particular countries[18]

9. Second, there is disagreement on whether the threshold for state protection is one of adequate[19] or effective state protection[20] despite guidance in international legal sources that the

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[16] *Canada v Ward (Citizenship and Immigration),* [1993] 2 SCR 689, 1993 CanLII 105 (SCC) at 691and 709, [*Ward*].

[17] See Jamie Chai Yun Liew, “Denying Refugee Protection to LGBTQ and Marginalized Persons: A Retrospective Look at State Protection in Canadian Refugee Law” (2017) 29 Cdn J of Women & the Law 290.

[18] See *Flores Zepeda v Canada (Citizenship and Immigration)*, 2008 FC 491 at paras 17-18, where Justice Tremblay-Lamer looks at two lines of case law for the democracy presumption in Mexico. See also *Hercegi v Canada (Citizenship and Immigration)*, 2012 FC 250; *Varadi v Canada (Citizenship and Immigration)*, 2013 FC 407; Jamie Chai Yun Liew, “Creating Higher Burdens: The Presumption of State Protection in Democratic Countries” (2009) 26:2 Refuge 207.

[19] See for example *Canada v Villafranca (Minister of Employment and Immigration)*, [1992] FCJ 1189 at para 7; *Lakatos v Canada (Citizenship and Immigration)*, 2012 FC 1070 at para 14; *Konya v Canada (Citizenship and Immigration),* 2013 FC 975 at para 34; *Kovaks v Canada (Citizenship and Immigration)*, 2015 FC 337at para 41.

[20] See for example *EYMV v Canada (Citizenship and Immigration)*, 2011 FC 1364 at para 16, 209 ACWS (3d) 648; *Balogh v Canada(Citizenship and Immigration)*, 2014 FC 771 at paras 13, 58–63; *Buri v Canada (Citizenship and Immigration)*, 2014 FC 45 at para 62; *Stark v Canada (Citizenship and Immigration)*, 2013 FC 829 at paras 10–14; *Majoros v Canada (Citizenship and Immigration)*, 2013 FC 421 at para 12; *Hercegi v Canada (Citizenship and Immigration)*, 2012 FC 250 at para 5; *Beri v Canada (Citizenship and Immigration)*, 2013 FC 854 at paras 35–37; *Orgona v Canada (Citizenship and Immigration)*, 2012 FC 1438 at para 11; *Jaroslav v Canada (Citizenship and Immigration),* 2011 FC 634 at para 75; *EB v Canada (Citizenship and Immigration)*, 2011 FC 111 at para 9; *Kovacs*

test is one of effectiveness.[21] Even so, this disagreement was not resolved by the Federal Court of Appeal in *Mudrak* because it found the standard of proof was settled law and did not answer the certified question.[22] The Court did not acknowledge the disagreement as to which legal test should be used (adequate or effective state protection) and attributed apparent differences in the jurisprudence to decisions falling within a range of reasonable outcomes. Consequently, decisions continue to diverge in this important area.[23]

10. Finally, some decision makers require refugee claimants to actively seek state protection, including from non-state entities,[24] before asking for protection[25] despite the opposing views of international experts and other jurisdictions.[26] Their decisions have been upheld as reasonable.

b. Divergent lines of authority exist on whether persons subjected to gang and gender-based violence are "in need of protection" under section 97 of the *IRPA*

11. Section 97 of *IRPA* provides complementary protection by implementing Canada's obligations under the *CAT*. Two lines of authority have developed surrounding the notion of "generalized risk" found in the statutory wording "would subject them personally" and risk "not faced generally" of section 97.[27] In one line of authority, the Federal Court has upheld as reasonable decisions denying protection where the gang or gender-based violence is seen as widespread, random or akin to a general crime even where there is evidence the claimant was personally

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v Canada (Citizenship and Immigration), 2010 FC 1003 at paras 63–66; *Csurgo v Canada (Citizenship and Immigration)*, 2014 FC 1182 at para 26.

[21] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UN Doc HCR/IP/4/Eng/Rev1 (1992) [UNHCR Handbook]; UNHCR, *Guidelines on International Protection no 9: Claims to Refugee Status Based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees*, UN Doc HCR/GIP/12/09 (2012) at para 36.

[22] *Mudrak v Canada (Citizenship and Immigration),* 2016 FCA 178, 485 NR 186 at para 36.

[23] *Benko v Canada(Citizenship and Immigration),* 2017 FC 1032 at para 29 versus *Farkas v Canada,* 2018 FC 658 at para 29

[24] For example, *Mares v Canada (Citizenship and Immigration)*, 2013 FC 297 at para 15; *Brodrick v Canada (Citizenship and Immigration)*, 2015 FC 491 at para 7 where the RPD found seeking help at women's shelters was a form of seeking state protection. See also *Flores Zepeda, supra* note 18 at para 21-23, where Justice Tremblay-Lamer looks at the conflicting lines of jurisprudence.

[25] See: *Osazuwa v Canada*, *(Citizenship and Immigration)* 2016 FC 155 at para 36; *Glasgow v Canada (Citizenship and Immigration)*, 2014 FC 1229 at para 39; *Tar v Canada (Citizenship and Immigration)*, 2014 FC 767 at para 51.

[26] James Hathaway & Michelle Foster, *The Law of Refugee Status,* 2nd ed. (Cambridge University Press, 2014) at 291-92; EU Directive 2011/95 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted, [2011] OJ L337/9 at para 27.

[27] *IRPA, supra* note 1, s 97; Jamie Chai Yun Liew, "Taking It Personally: Delimiting Gender Based Refugee Claims Using the Complementary Protection Provision in Canada" (2014) 26 Cdn J of Women & the Law 300 [Liew 2014].

targeted and a member of a subgroup with heightened risk compared to others in the country.[28] The second line interprets the statutory wording as extending protection to those personally targeted.[29] The divergence is aptly summarized in the Federal Court case of *Correa*.[30]

12. Further, a line of decisions that erroneously conflate the legal analysis required by section 97 with that of section 96 and vice versa has been accepted as reasonable.[31]

c. There were divergent lines of authority on whether conditional sentences were terms of imprisonment under section 36 of the *IRPA*

13. Permanent residents and foreign nationals may be found inadmissible on grounds of serious criminality under section 36(1)(a) of the *IRPA.* If caught under that section 36(1)(a), refugees may be ineligible to make a refugee claim. The provision was applied broadly to some, denying them access to a refugee hearing. Others similarly situated were granted access. Before this Court settled the issue, there was disagreement as to whether section 36(1)(a) included conditional sentences in "terms of imprisonment" to trigger inadmissibility.[32] In *Tran,* this Court held, "under either standard of review, the assumed interpretation of s. 36(1)(a) by the Minister's delegate cannot stand."[33] While not adopting a standard, it effectively conducted a correctness review.

d. There were divergent lines of authority on who could be excluded from refugee protection under section 98 of the *IRPA*

14. The *Refugee Convention* and *IRPA* exclude refugee claimants from protection where there are "serious reasons to consider" the claimant has committed a serious crime.[34] However, some decision makers interpreted section 98 in a manner that was inconsistent with international law.[35] In *Ezokola*, this Court clarified the interpretation of the exclusion provision of section 98 of the

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[28] *Prophète v Canada (Citizenship and Immigration),* 2008 FC 331, 70 Imm LR (3d) 128 at para 23; *Cius v Canada (Citizenship and Immigration),* 2008 FC 1, 164 ACWS (3d) 142 at para 25, 27; *Paz Guiffara v Canada (Citizenship and Immigration)*, 2011 FC 182 at paras 30-32; *Servellon Melendez v Canada (Citizenship and Immigration),* 2014 FC 700 at para 42.

[29] See *Galeas v Canada (Citizenship and Immigration),* 2015 FC 667 at para 48 versus *Mehmood v Canada,* 2016 FC 1392 at para 9.

[30] *Correa v Canada (Citizenship and Immigration),* 2014 FC 252, 23 Imm LR (4th) 193 at paras 40-45.

[31] Liew 2014, supra note 27.

[32] See for example, *Shehzad v Canada,* 2016 FC 80 which discusses diverging lines of authorities but finds the administrative decision maker's decision reasonable (conditional sentences are considered terms of imprisonment).

[33] *Tran v Canada,* 2017 SCC 50, [2017] 2 SCR 289 at para 23.

[34] *Refugee Convention, supra* note 2, art 1F; UNHCR, Background Note on the Application of the Exclusion Clauses, HCR/GIP/03/05 (4 September 2003) at para 4.

[35] *Ezokola, supra* note 14 at paras 20, 22, 52-60.

IRPA and the implementation of article 1F(a) of the *Refugee Convention.*[36] The decision put an end to the problematic practice of excluding persons deemed complicit by inference or even membership in an organization.[37] Once again, while not expressly selecting a standard of review, this Court effectively applied a correctness standard, stating, "The task for this Court is to determine what test for complicity will be applied by the art. 1F(a) decision maker."[38]

C. The rule of law and a full contextual analysis support a correctness standard

a. The current approach to selecting the standard of review presumes that a reasonableness standard applies to interpretations of the *IRPA*

15. The *IRPA* empowers members of the Immigration and Refugee Board (IRB) at the Refugee Protection Division (RPD) and the Refugee Appeal Division (RAD), as well as immigration officials to make decisions including pre-removal risk assessments (PRRA).[39] RAD and RPD members and PRRA officers interpret provisions of the *IRPA,* their enabling statute, including those that serve to discharge Canada's international obligations under the *Refugee Convention*, the *CAT* and other treaties. Under the Court's current approach, a decision maker's interpretation of its enabling statute is presumed to be reviewable on a reasonableness standard.[40]

16. This presumption of reasonableness review may be rebutted, and the correctness standard applied, where the question under review falls within one of four correctness categories or, in exceptional cases, where a determinative factor shows a clear legislative intent for correctness review.[41] Arguably, the interpretation of provisions in the *IRPA* does not fall within any of the correctness categories: (1) a constitutional question; (2) a question involving an issue of competing jurisdiction between tribunals; (3) a true question of jurisdiction; and (4) questions of general law of central importance to the legal system and outside the expertise of the decision maker.[42] The Court has repeatedly rejected a liberal application of the fourth correctness category.[43] In

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[36] *Ezokola, ibid*.
[37] With regards to article 1F(a), see *Ramirez v Canada (MEI),* [1992] 2 FC 306, 135OR (3d) 390; *Liqokeli v Canada (Citizenship and Immigration),* 2009 FC 530 at para 28; *Sidna v Canada (Citizenship and Immigration),* 2007 FC 1046 at para 28.
[38] See also *Febles, supra* note 13 where this Court also used a correctness standard.
[39] See *IRPA, supra* note 1, ss 4 (Enabling Authority); 151-153(Immigration and Refugee Board); 112(1) (PRRA).
[40] *Najafi v Canada (Citizenship and Immigration),* 2014 FCA 262, [2015] 4 FCR 162 at para 56; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Assoc,* 2011 SCC 61, [2011] 3 SCR 654 at para 39.
[41] *Canadian Human Rights Commission v Canada (Attorney General)*, 2018 SCC 31, [2018] ACS no 31 at paras 27-28 [*CHRC*].
[42] *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654, at paras 33-34; *CHRC*, *supra note 41*, at para 43.
[43] *CHRC*, *ibid*.

particular, the interpretation of provisions in the *IRPA* could be characterized as a question specific to and with no precedential value outside the *IRPA*. This Court has held that such questions are not questions of general law of central importance to the legal system.[44]

17. Applying this Court's approach, the Federal Court of Appeal determined in *Majebi* that the RAD's interpretation of section 98 of the *IRPA*, which incorporates article 1E of the *Refugee Convention*, was subject to reasonableness review. The presumption of reasonableness review was not displaced because the question fell within none of the correctness categories and nothing in the legislative context revealed Parliament's intent not to protect the RAD's jurisdiction.[45]

b. The nature of the question calls for correctness review

18. National courts are responsible for supplying a consistent interpretation of human rights conferred by international treaties because international treaty obligations can only have "one true meaning".[46] Accordingly, it defies logic to review statutory provisions that implement such rights, such as IRPA provisions that govern refugee protection, on a reasonableness standard – a standard animated by the principle that some questions of interpretation do not lend themselves to one specific result.[47] Doing so could lead and has led to divergent interpretations. In *Febles*, the Federal Court of Appeal reviewed a decision interpreting article 1F(b) of the *Refugee Convention*, a provision that "should be interpreted as uniformly as possible" on a correctness standard because it was "more likely than reasonableness review to achieve this goal."[48]

19. Reasonableness review tolerates divergent interpretations of legal rules, which threaten the integrity of the rule of law.[49] Under the rule of law, the meaning of the law should not differ depending on the decision maker's identity.[50] Given the impact of protection decisions on claimants' life and security of the person, such divergences are arbitrary, antithetical to the rule of law and must be immediately resolved through correctness review. This is especially true in the

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[44] *Canadian National Railway Co v Canada*, 2014 SCC 40, [2014] 2 SCR 135 at para 60 [*CNR*].
[45] *Majebi v Canada* 2014 FCA 262*,* 2016 FCA 274 at para 5 [*Majebi*].
[46] *Adan*, *supra* note 12 at 604; see also Geoff Gilbert, "Running Scared Since 9/11: Refugees, UNHCR and the Purposive Approach to Treaty Interpretation" in James C Simeon, ed, *Critical Issues in International Refugee Law: Strategies Toward Interpretive Harmony* (New York: Cambridge University Press, 2010) at 93; *Vienna Convention, supra* note 9.
[47] *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47; *Febles, supra* note 13.
[48] *Hernandez Febles v Canada (Citizenship and Immigration)*, 2012 FCA 324, [2014] 2 FCR 224 at para 24.
[49] *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 90, Rothstein J.
[50] *Wilson v Atomic Energy of Canada Ltd*, 2016 SCC 29, [2016] 1 SCR 770 at paras 81-87, Côté and Brown JJ [*Wilson*].

refugee context and thus, the interests at stake in protection decisions warrant correctness review.[51] In the refugee context, decision makers should not be afforded the luxury of "working inconsistencies pure" over time and, in so doing, place protection claimants' lives at risk.[52]

c. Parliament has provided several indicators in the *IRPA* that support the correctness review of decision makers' interpretation of provisions that implement international human rights law

20. Parliament has provided in section 74(d) of the *IRPA* an exceptional appeal on questions certified as serious and of general importance.[53] This is an objective indicator that Parliament intended the Federal Court of Appeal and the Supreme Court to review the interpretation of statutory provisions implementing international human rights law for correctness.[54]

21. Parliament requires that only a minimum of 10 percent of RAD members be lawyers or notaries of at least five years standing and prescribes no similar requirement for RPD members or PRRA officers.[55] By expressly providing that each refugee claim need not be heard and decided by an experienced lawyer, Parliament has signaled that it is not relying on these decision makers, at an institutional level, to expertly and definitively interpret the scope of basic human rights conferred in international conventions and implemented by the *IRPA*.[56] It did so fully cognizant of this Court's finding, in *Pushpanathan*, that such a provision supports correctness review.

22. The reasonableness standard relies on the presumption that tribunals have expertise in interpreting their enabling statute, which addresses the perceived risk that courts may be over willing "to see a question as a court rather than a tribunal question" leading to "excessive and wrongheaded intervention."[57] This does not mean that "court questions" do not exist. By entrusting protection decisions to decision makers who need not, for the most part, be experienced lawyers and by providing an exceptional appeal on serious questions of general importance to the Federal

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[51] *Smith v Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 SCR 160 at para 38; *Wilson*, *ibid* at para 17.

[52] Paul Daly, "The Principle of Stare decisis in Canadian Administrative Law" (2015) 49 RJTUM 757 at para 35.

[53] *IRPA*, *supra* note 1, s 74(d).

[54] Daly, *supra* note 52, at para 38. *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982 at para 43 [*Pushpanathan*]; David Mullan, "Recent Developments in Administrative Law – 2015-16" in Continuing Legal Education Society of British Columbia, Administrative Law Conference 2016 Course Materials, at 2.1.4; *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 SCR 293 at para 78, Côté and Brown JJ [*Edmonton East*].

[55] *IRPA*, *supra* note 1, s 153(4).

[56] *Pushpanathan*, *supra* note 54, at para 57.

[57] David Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004) 17 CJALP 59 at 74.

Court of Appeal, Parliament has signaled that the meaning of statutory provisions that implement international human rights is a "court question." The presumption of expertise is rebutted.

d. Reasonableness is not a substitute for correctness review

23. The CCR disagrees with the Federal Court[58] and Federal Court of Appeal[59] that nothing turns on the standard of review because a textual, contextual and purposive approach to the *IRPA*'s interpretation may yield a single reasonable interpretation. The examples of divergent jurisprudence, outlined above, show that statutory provisions may yield several "reasonable" meanings some of which are contrary to the international protections they seek to implement.

24. The *Vavilov* dissent demonstrates that conducting reasonableness rather than correctness review can significantly change the outcome.[60] The Court of Appeal determined that section 3(2)(a) of the *Citizenship Act*[61] was enacted to implement the *Vienna Convention on Diplomatic Relations*[62] into Canadian law and should be interpreted in accordance with that treaty and with the customary international law principle of *jus soli*. Looking at the text, context and purpose of section 3(2)(a), it concluded that "employee[s] in Canada of a foreign government" included only those who enjoy diplomatic privileges and immunities under the *Vienna Convention*. In dissent, Justice Gleason held that the purpose of section 3(2)(a) and the context did not "clearly necessitate" adopting the majority's narrow interpretation rather than the Registrar of Citizenship's broad interpretation: the Registrar could reasonably adopt either interpretation.[63]

25. As discussed above, in the refugee protection context, the reasonableness review of decision makers' interpretations of provisions that implement basic international human rights has led to a result identical to that in *Vavilov*. The scope of universal international protections against refoulement cannot depend on whether a refugee claimant has the good fortune of having her claim decided by an adjudicator who subscribes to a generous view of the provision that implements these provisions rather than a narrower, yet equally "reasonable" interpretation.

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[58] *Majebi*, *supra* note 45 at para 22.
[59] *B010 v Canada (Minister of Citizenship and Immigration)*, 2013 FCA 87, 2014 FCR 326 at para 72 [*B010 FCA*].
[60] *Vavilov v Canada (Minister of Citizenship and Immigration),* 2017 FCA 132.
[61] *Citizenship Act,* RSC, 1985, c C-29.
[62] *Vienna Convention on Diplomatic Relations,* 18 April 1961, 500 UNTS 95 (entered into force 24 April 1964).
[63] *Vavilov, supra* note 60 at para 96.

D. CONCLUSION

26. The principle of the rule of law, Canada's international legal obligations, and respect for legislative intent require the correctness review of decision makers' interpretation of provisions in the *IRPA* that implement basic human rights conferred in international conventions. To the extent that it directs reviewing courts to conduct reasonableness review of such questions, the Court's current approach to the selection of the standard of review must change. Any approach to judicial review must be context-sensitive: the more drastic a decision's impact on individuals and the more the statute is tied to international human rights principles, the more reviewing courts must be vigilant and ensure that the decision maker "has complied with basic and fundamental substantive and procedural standards of decision-making".[64] For refugee protection decisions, which engage protection claimants' life and security of person, nothing short of correctness review will do.

PART IV – COSTS

27. The CCR does not seek or expect to pay costs.

PART V – REQUEST FOR ORAL ARGUMENT

28. The Intervener requests permission of this Honourable Court to present oral argument.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29th of October, 2018 BY:

JAMIE LIEW
GERALD HECKMAN
JEAN LASH

CANADIAN COUNCIL FOR REFUGEES

[64] Hon Justice David Stratas, "Looking Past Dunsmuir: Beginning Afresh" (8 March 2018), online (blog) Double Aspect <https://doubleaspect.blog/2018/03/08/ looking-past-dunsmuir-beginning-afresh/>.

PART VI – TABLE OF AUTHORITIES

	CANADIAN CASES	PARA.
1.	*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654 http://canlii.ca/t/fpb49	**33-34, 39**
2.	*B010 v Canada (Citizenship and Immigration),* 2015 SCC 58, 390 DLR (4th) 385 http://canlii.ca/t/gm8wn	**72**
3.	*B010 v Canada (Minister of Citizenship and Immigration)*, 2013 FCA 87, 2014 FCR 326 http://canlii.ca/t/gvqs3	**72**
4.	*Balogh v Canada*, 2014 FC 771 http://canlii.ca/t/g8fvq	**13, 58-63**
5.	*Benko v Canada (Citizenship and Immigration),* 2017 FC 1032 http://canlii.ca/t/hnqxc	**29**
6.	*Brodrick v Canada (Citizenship and Immigration)*, 2015 FC 491 http://canlii.ca/t/ghbmj	**7**
7.	*Buri v Canada*, (Citizenship and Immigration) 2014 FC 45, 22 Imm LR (4th) 115 http://canlii.ca/t/g2n6d	**62**
8.	*Canada (Minister of Citizenship and Immigration) v Farah,* 2005 FC 1300 http://canlii.ca/t/1lnvp	
9.	*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, 304 DLR (4th) 1 http://canlii.ca/t/22mvz	**90**
10	*Canada v Villafranca (Minister of Employment and Immigration*, [1992] FCJ 118, 150 NR 232; 99 DLR (4th) 334 http://canlii.ca/t/gbr0b	**7**
11	*Canada v Ward,* [1993] 2 SCR 689, 1993 CanLII 105 (SCC) http://canlii.ca/t/1fs1h	**Page 691**

12	*Canadian Human Rights Commission v Canada (Attorney General)*, 2018 SCC 31, [2018] ACS no 31 http://canlii.ca/t/hshvb	**27-28, 43, 44**
13	*Canadian Human Rights Commission v Canada (Attorney General)*, 2018 SCC 31, [2018] ACS no 31 http://canlii.ca/t/hshvb	**27-28, 43, 44**
14.	*Canadian National Railway Co v Canada (AG)*, 2014 SCC 40, [2014] 2 S.C.R. 135 CNR http://canlii.ca/t/g6z0w	**60**
15.	*Cius v. Canada (Citizenship and Immigration),* 2008 FC 1, 164 ACWS (3d) 142 http://canlii.ca/t/1vdjb	**25, 27**
16.	*Correa v Canada (Citizenship and Immigration),* 2014 FC 252, 23 Imm LR (4th) 193 http://canlii.ca/t/g670d	**40-45**
17.	*Csurgo v Canada (Citizenship and Immigration)*, 2014 FC 1182 http://canlii.ca/t/gfnxx	**26**
18.	*Dunsmuir v New Brunswick,* 2008 SCC 9, [2018] 1 S.C.R. 190 http://canlii.ca/t/1vxsm	**29, 32, 40, 47**
19.	*EB v Canada (Citizenship and Immigration)*, 2011 FC 111 http://canlii.ca/t/2flrr	**9**
20.	*Edmonton (City) v Edmonton East (Capilano) Shopping Centre Ltd,* 2016 SCC 47, [2016] 2 SCR 293 http://canlii.ca/t/gvjqr	**78**
21.	*EYMV Meza Varela (Citizenship and Immigration) v Canada*, 2011 FC 1364, 209 ACWS (3d) 648 http://canlii.ca/t/fp53b	**16**
22.	*Ezokola v. Canada (Citizenship and Immigration)*, 2013 SCC 40, [2013] 2 SCR 678 http://canlii.ca/t/fzq5z	**6, 27,0, 22, 52-60**
23.	*Farkas v Canada (Public Safety and Emergency Preparedness),* 2018 FC 658 http://canlii.ca/t/ht0fz	**29**

24.	*Febles v. Canada (Citizenship and Immigration),* 2014 SCC 68, [2014] SCC 68 http://canlii.ca/t/gf3qk	**24**
25.	*Flores Zepeda v Canada (Citizenship and Immigration)*, 2008 FC 491, 167 ACWS (3d) 144 http://canlii.ca/t/1wmvr	**17-18, 21-23**
26.	*Galeas v Canada (Citizenship and Immigration),* 2015 FC 667 http://canlii.ca/t/gjblc	**48**
27.	*Glasgow v Canada (Citizenship and Immigration)*, 2014 FC 1229 http://canlii.ca/t/gfrqq	**39**
28.	*Hernandez Febles v Canada (Citizenship and Immigration)*, 2012 FCA 324, [2014] 2 FCR 224 http://canlii.ca/t/fvcm4	**24**
29.	*Hercegi v Canada*, 2012 FC 250 http://canlii.ca/t/fqc0f	**5**
30.	*Jaroslav v Canada (Citizenship and Immigration)*, 2011 FC 634 http://canlii.ca/t/flwcr	**75**
31.	*Konya v. Canada (Citizenship and Immigration),* 2013 FC 975 http://canlii.ca/t/g0q12	**34**
32.	*Kovacs v Canada (Citizenship and Immigration)*, 2010 FC 1003 http://canlii.ca/t/2dw8d	**41, 63-66**
33.	*Lakatos v Canada(Citizenship and Immigration)*, 2012 FC 1070 http://canlii.ca/t/fsrzd	**14**
34.	*Liqokeli v Canada (Citizenship and Immigration),* 2009 FC 530 http://canlii.ca/t/23nrk	**28**
35.	*Majebi v Canada,* 2016 FCA 274 http://canlii.ca/t/gvqs3	**5, 22**
36.	*Majoros (Citizenship and Immigration) v Canada*, 2013 FC 421 http://canlii.ca/t/fxf29	**12**
37.	*Mares v Canada (Citizenship and Immigration)*, 2013 FC 297 http://canlii.ca/t/fwq3t	**15**

38.	*Mehmood v Canada (Citizenship and Immigration),* 2016 FC 1392 http://canlii.ca/t/h4jj4	**9**
39.	*Mudrak v. Canada,* 2016 FCA 178, 485 NR 186 http://canlii.ca/t/gs4t5	**36**
40.	*Najafi v Canada (Citizenship and Immigration),* 2014 FCA 262, [2015] 4 FCR 162 http://canlii.ca/t/gfggh	**56**
41.	*Orgona v Canada (Citizenship and Immigration)*, 2012 FC 1438 http://canlii.ca/t/fv5dg	**11**
42.	*Osazuwa v Canada (Citizenship and Immigration)*, 2016 FC 155 http://canlii.ca/t/gn8jd	**36**
43.	*Paz Guiffara v Canada (Citizenship and Immigration)*, 2011 FC 182 http://canlii.ca/t/2ftcx	**30-32**
44.	*Prophète v Canada (Citizenship and Immigration),* 2008 FC 331, 70 Imm LR (3d) 128 http://canlii.ca/t/1w3f8	**23**
45.	*Pushpanathan v Canada (MCI)*, [1998] 1 SCR 982, 160 DLR (4th) 193 http://canlii.ca/t/1fqs6	**43, 57**
46.	*Ramirez v Canada,(Minister of Employment and Immigration)* [1992] 2 FC 306, 135 OR (3d) 390 http://canlii.ca/t/g9kb3	**28**
47.	*Servellon Melendez v Canada (Citizenship and Immigration),* 2014 FC 700 http://canlii.ca/t/g82bg	**42**
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