SCC Court File No. 37748

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

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant
(Respondent)

- and -

ALEXANDER VAVILOV

Respondent
(Appellant)

and

(Continued on next page)

FACTUM OF THE INTERVENER ECOJUSTICE CANADA SOCIETY

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Interveners

AND BETWEEN:

SCC Court File No. 37896

BELL CANADA and BELL MEDIA INC.

Appellants
(Appellants)

- and -

ATTORNEY GENERAL OF CANADA

Respondent
(Respondent)

- and -

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION, ATTORNEY GENERAL OF ONTARIO, THE ATTORNEY GENERAL OF QUEBEC, THE ATTORNEY GENERAL OF BRITISH COLUMBIA, THE ATTORNEY GENERAL FOR SASKATCHEWAN, THE ADVOCACY CENTRE FOR TENANTS ONTARIO, THE

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Interveners

AND BETWEEN:

SCC Court File No. 37897

NATIONAL FOOTBALL LEAGUE, NFL INTERNATIONAL LLC and NFL PRODUCTIONS LLC

Appellants
(Appellants)

- and -

ATTORNEY GENERAL OF CANADA

Respondent
(Respondent)

- and -

ASSOCIATION FOR CANADIAN ADVERTISERS AND ALLIANCE OF

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PART III – STATEMENT OF ARGUMENT

A. The standard of review on questions of law should be correctness

4. A presumption of correctness should apply to questions of law in the context of non-tribunal decisions, such as the one in *Vavilov*. A presumption of deference on questions of law should not apply to Ministers and bureaucrats.[1]

1) A presumption of expertise is inappropriate

5. Context matters a great deal to preserving the rule of law in standard of review.[2] The presumption of deference on questions of law and the related presumption of expertise were developed in the context of narrow and specialized and expert tribunals, and there is no principled basis upon which to apply these presumptions outside that context.[3]

6. Reliance on administrative expertise to accord deference must be based on more than speculation about the expertise of a decision-maker. A judicial review does not include evidence about the reputation of administrators, the influences that bear upon administrators in the real

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[1] *Canada (Fisheries and Oceans) v. David Suzuki Foundation*, 2012 FCA 40 at paras 65-125 [***David Suzuki***]; *Canada (Citizenship and Immigration) v. Kandola*, 2014 FCA 85 at paras 36-45, and at paras 85-87, per Mainville JA (dissenting) [***Kandola***]; *Équiterre v. Canada (Health)*, 2016 FC 554 at paras 45-48 [***Équiterre***].
[2] *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paras 28, 55, 64 [***Dunsmuir***].
[3] *Dunsmuir*, *ibid* at paras 55, 64; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers Association*, 2011 SCC 61 at paras 82-84, 89, per Binnie J. (dissenting on this point) [***Alberta Teachers***]; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paras 75, 77-96, per Rothstein J (dissenting on this point) [***Khosa***]; *David Suzuki*, *supra* note 1 at paras 65-105.

world, whether they have expertise, the scope of any expertise, or whether they listen to their experts.[4] If this Court chooses to apply correctness where matters are "outside" administrative expertise, this Court must address how the parties and the Court can identify that area of expertise, if any, what the scope of presumptions about expertise might be, and how any presumptions can be rebutted without any admissible evidence on expertise. Otherwise, determinations about the scope of expertise will be arbitrary and speculative.

7. A presumption of expertise in statutory interpretation that is not rebuttable using clear methods of statutory interpretation, context, reasons, or admissible evidence is inappropriate.[5] The mere fact that the legislature requires a person or body to administer a statute on a day-to-day basis, without more, provides no basis for inferring that the administrator has expertise *in the interpretation of the statute*.[6] Not all administrators are expressly delegated powers to determine questions of law.[7] The "home statute" must not become a free-standing basis for deference, as it may bear no relationship to actual expertise or legislative intent.[8]

8. A presumption of deference on questions of law for non-tribunals would have no basis in legislative intent.[9] The absence of a specialized tribunal with clear qualifications or "discrete" and policy-oriented functions indicates that the legislature may not intend deference and that expertise

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[4] *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 at paras 81-90, per Côté and Brown JJ (dissenting) [***Capilano***]; Paul Daly, *A Theory of Deference in Administrative Law: Basis, Application and Scope* (Cambridge, UK: Cambridge University Press, 2012) at pp. 82-89; Finn Makela, "Acquired Expertise of Administrative Tribunals and the Standard of Judicial Review: The Case of Grievance Arbitrators and Human Rights Law" (2013) 17 Canadian Lab & Emp LJ 345 at pp. 350-353, 355-357.

[5] *Capilano*, *ibid* at paras 81-90, per Côté and Brown JJ (dissenting); *Alberta Teachers*, *supra* note 3 at paras 92, 98-100, per Cromwell J.

[6] *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para 129, per Rowe J (dissenting); *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374 at paras 91-95. See also Martin Olszynski, "Of Killer Whales, Sage-Grouse and the Battle Against (Madisonian) Tyrrany. August 21, 2013, Ablawg, online: https://ablawg.ca/wp-content/uploads/2013/08/Blog_MO_Killer-Whale-and-Sage-Grouse_August2013.pdf

[7] Hon. John M. Evans, "Dunsmuir – Reflections of a Recovering Judge" Administrative Law Matters Blog, online: https://www.administrativelawmatters.com/blog/2018/03/01/dunsmuir-reflections-of-a-recovering-judge-hon-john-m-evans/; *Bell Canada v. 7265921 Canada Ltd.*, 2018 FCA 174 at para 192 [***Bell v. 7265921***].

[8] *Khosa*, *supra* note 3 at paras 89-96, per Rothstein J. (dissenting on this point); Daly, *supra* note 4 at pp. 80-82, 133-134.

[9] *Khosa*, *ibid* at paras 74-75, per Rothstein J (dissenting on this point).

may be absent.[10] Expertise must be evident in, and source its legal legitimacy to, legislative intent.[11] Courts must give effect to the legislature's words and should not superimpose on them intentions which are not necessarily present.[12]

9. In environmental law, Ministers and bureaucrats are rarely experts in the policy or legal principles behind environmental statutes. More often, they are hostile to those policies and principles because they are difficult to implement and politically inexpedient.[13] Yet, environmental laws require flexibility to allow administrators to adapt to environmental change. To address this, environmental laws subject administrative decision-makers to mandatory steps, content, presumptions and evidentiary requirements.[14] These are intended to ensure that decision-making is transparent, accountable and based in science, and that decisions advance environmental protection. These are combined with, but serve to constrain, underlying grants of discretion. These mandatory elements bring life to fundamental environmental law principles.[15] There is no bright line between

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[10] *David Suzuki*, *supra* note 1 at paras 87-89, 96-100; *Équiterre*, *supra* note 1 at paras 45-48; *Great Lakes United v. Canada (Minister of the Environment)*, 2009 FC 408 at paras 237-240 [***GLU***]; *Khosa*, *ibid* at para 77, per Rothstein J.

[11] Lorne Sossin, "Redistributing Democracy: An Inquiry into Authority, Discretion and the Possibility of Engagement in the Welfare State" (1994) 26 Ottawa L Rev 1 at pp. 14, 40-42; Daly, *supra* note 4 at pp. 133-134.

[12] *Khosa*, *supra* note 3 at paras 70, 73-74, per Rothstein J. (dissenting on this point).

[13] *Environmental Defence Canada v. Canada (Fisheries and Oceans)*, 2009 FC 878 at paras 2, 31-41 [***Environmental Defence***]; *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2 [***MiningWatch***]; *GLU*, *supra* note 10 at paras 237-240; *David Suzuki*, *supra* note 1 at paras 87-89, 96-100; *Équiterre*, *supra* note 1 at paras 45-48; *Alberta Wilderness Association v. Canada (Environment)*, 2009 FC 710; *Adam v. Canada (Environment)*, 2011 FC 962. See also *Bell v. 7265921*, *supra* note 7 at paras 88-92.

[14] *David Suzuki*, *supra* note 1 at para 109; *Environmental Defence*, *ibid* at paras 2, 31-41 dealing with mandatory steps to legally protect species at risk; *Bow Valley Naturalists Society v. Canada (Minister of Canadian Heritage)*, [2001] 2 FC 461, 2001 CanLII 22029 (FCA) at para 78 [***Bow Valley***]; *MiningWatch*, *ibid* at paras 17-18, 39-42, dealing with mandatory steps in environmental assessments; *Équiterre*, *supra* note 1 at paras 12, 36, 49-51; *Wier v. Canada (Health)*, 2011 FC 1322 at paras 66-76 & 89-92, dealing with mandatory requirements for special reviews of pesticides [***Wier***]; and see *GLU*, *supra* note 10 at paras 237-240.

[15] See e.g. cases on the precautionary principle: *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 at para 31; *Castonguay Blasting Ltd. v. Ontario (Environment)*, 2013 SCC 52 at para 20. See also principle applied in judicial reviews of mandatory statutory steps and requirements in *Wier*, *ibid* at paras 17-20, 47, 100-101; *Morton v. Canada (Fisheries and Oceans)*, 2015 FC 575 at paras 40-48; and *GLU*, *supra* note 10 at paras 237-240.

questions of law and questions of discretion in the environmental law context.[16]

10. Such categories as "nature of the decision" and "polycentric" or "discretionary" decisions are not helpful in determining legislative intent to accord deference on questions of law in environmental law.[17] These categories are more an expression of judicial policy that decisions that may require administrative flexibility or do not concern vulnerable individuals are not as worthy of legal protection. This judicial policy cannot be justified in an era where the administrative state manages life-or-death risks for broad sectors of society, including risks to the sustainability of all life on earth.

11. Environmental laws, because of their potentially expansive impacts, are vulnerable to being characterized as political, polycentric or diffuse questions. Because they deal with broad population-level and planetary-level risks instead of individual rights, they protect interests not traditionally seen as important by the courts. However, environmental protection is no less worthy of protection under the law, and those exposed to environmental risks and harm are no less worthy of equality under the law, than are individuals. If environmental protection was not a democratic priority, or was simply a matter for broad political discretion, there would be no environmental laws. All laws must be understood in relation to the purposes they serve, and the legislature must be respected in its decision to provide frameworks and limitations on discretionary decisions. Jurisprudence emphasizing polycentricity ignores the legislative purposes and limitations behind grants of discretion and makes it increasingly difficult for environmental organizations to propose law reforms that will ensure administrative accountability.

12. Whether a given exercise of discretion fits within legal boundaries will always be a question of statutory interpretation, properly determined by an independent court on a standard of correctness. The courts should not assume that administrators are expert and unbiased in such questions of law.[18]

2) Legislative intent is a question of statutory interpretation, and supports a presumption of correctness

13. There is no principled basis to require exceptional language, unusual circumstances, or to

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[16] *Friends of the West Country Assn. v. Canada (Minister of Fisheries and Oceans)*, [2000] 2 FC 263, 1999 CanLII 9379 (FCA) at paras 9-10; *Prairie Acid Rain Coalition v. Canada (Minister of Fisheries and Oceans)*, 2006 FCA 31 at paras 9-11; *Bow Valley*, *supra* note 14 at para 55.
[17] *Bell v. 7265921*, *supra* note 7 at paras 52-60, per Rennie JA.
[18] *Bell v. 7265921*, *ibid* at paras 94-95.

require that a question is of central importance to find that the legislature intended correctness on questions of law. The legislature is presumed not to depart from the general system of the law without using clear terms.[19] The constitutionalization of judicial review requires that the core competency of the courts in interpreting and applying the law, and the right of the public to access writs of *mandamus* and *certiorari*, be respected absent clear legislative language.[20]

14. In *Agraira*, this Court confirmed that a full standard of review analysis remains part of the accepted method for review of Ministerial decisions.[21] However, this Court provided no principled basis for extending a presumption of expertise to a non-specialized, non-adjudicative decision-maker.[22] The *David Suzuki* case, which concerned a Minister's interpretation of "legal protection" for endangered orcas in the *Species at Risk Act*, illustrates this point. Where a judicial review turns on the proper interpretation of a statute, deference would grant unwarranted policy-making powers to administrators in the face of mandatory environmental law protections.[23]

15. To justify deference, expertise must be objectively present and demonstrated through clear legislative requirements for expertise and through reasons. The majority of the Federal Court of Appeal in *Vavilov* erred in holding that the Registrar's supposed familiarity with the *Citizenship Act* is a sufficient single basis to ground deference, albeit limited deference, on questions of law. The majority's approach would raise the presumption of expertise to a freestanding and irrefutable basis for deference for all administrators on virtually all questions of law. Such an approach is not compatible with the rule of law.

B. Even where reasonableness applies, questions of law generally have a single reasonable interpretation

16. Even under a reasonableness standard, this Court has used statutory interpretation as the starting point for defining whether deference is owed on a question of law by determining if there

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[19] *Heritage Capital Corp v Equitable Trust Co*, 2016 SCC 19 at paras 29-30; *Kandola*, *supra* note 1 at para 86, per Mainville JA (dissenting).
[20] *Crevier v Attorney General of Quebec*, [1981] 2 SCR 220 at pp. 234-35; *Dunsmuir*, *supra* note 2 at paras 27-32.
[21] *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48, confirming this approach in the absence of precedent [***Agraira***].
[22] See *David Suzuki*, *supra* note 1 at paras 87-89, 96-100; *Kandola*, *supra* note 1 at paras 85-87, *Équiterre*, *supra* note 1 at paras 45-48**.**
[23] *David Suzuki*, *supra* note 1 at paras 7-9, 106-109.

is more than one reasonable interpretation.[24] In *McLean*, this Court expanded this approach to suggest that "on occasion" there will be more than one reasonable interpretation of a statute.[25]

17. However, this Court held in *Bell ExpressVu* that it is a legal error to start this analysis by presuming statutory ambiguity.[26] Such a presumption would offend the legislature's fundamental policy-making role in a democratic society. The objective of all statutory interpretation, whether judicial or administrative, should be to carry out legislative policy with clarity. Reasonableness review must not begin by presuming that the legislature delegated its policy-making functions to un-elected administrators, or that the legislature made no policy decisions to guide the exercise of administrative discretion. Such a presumption denies Canadians basic democratic rights to influence policy through the democratic process.

18. Expertise which might lead to multiple, conflicting results cannot claim any practical advantage over judicial interpretation. If two experts can reach contradictory conclusions on a question of statutory interpretation, then "expertise" cannot mean expertise in legislative intent. Absent such expertise, the chosen interpretation has no apparent legitimacy, compared to the impartial and independent interpretation of a Court.[27]

19. This dilemma is resolved if this Court acknowledges that there is normally only one *reasonable* interpretation of a statute.[28] The question under reasonableness review then becomes how to leverage the unique expertise of administrators in statutory interpretation, such as expertise in the purpose of the statute or the meaning of technical terms, where that exists, to enhance the application of common law rules for statutory interpretation. The concept of multiple reasonable and therefore equally valid interpretations is unnecessary in order to show appropriate deference to administrative decision-makers. The question is not who should decide between multiple reasonable interpretations,[29] but

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[24] *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 at paras 32-34 [***CHRC 2011***]; *Agraira*, *supra* note 21 at paras 64-88; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67 at paras 37-70 [***McLean***]; *Dunsmuir*, *supra* note 2 at paras 72-76; *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33 at paras 13-18, 28 [***Trinity Western***].
[25] *McLean*, *ibid* at para 32; *CHRC 2011*, *ibid* at paras 32-34.
[26] *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at paras 25, 30, 38.
[27] *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29 at para 88, per Côté and Brown JJ.
[28] *Bell v. 7265921*, *supra* note 7 at paras 194-197.
[29] *McLean*, *supra* note 24 at para 32.

which interpretation best implements the policy that the legislature intended.

C. A deferential approach should consider a decision-maker's reasons, but not submit to them

20. A better way to apply deference on questions of law is to use an approach that truly pays "respectful attention to" reasons.[30] Under reasonableness review, transparent and intelligible reasons on statutory interpretation, particularly by a specialized administrator regarding the purpose of the statute or the technical nuances of its terms, are relevant and may even be persuasive, but are not binding.[31] Courts need not be agnostic on the meaning of public law statutes to be deferential. This approach balances the expertise of the courts in statutory interpretation against the administrator's potentially superior policy or technical expertise. The question is not which body is "better" or which should give way, but how to accommodate the strengths of both.

21. Expertise in legislative intent or questions of policy should not be presumed; it should be demonstrated through legislation and reasons.[32] Where decision-makers employ their expertise to interpret a statute, they will be able to justify the preferred interpretation through transparent and intelligible reasons.[33] Courts should give weight to such reasons, where they are cogently articulated.[34] This is what paying "respectful attention" to reasons through deference should mean.[35] Such an approach respects the calls for justification, transparency and intelligibility in *Dunsmuir* and the requirement that courts pay "respectful attention" to reasons actually provided.[36] Reasons allow the courts to leverage administrative expertise to select the best interpretation and to ensure clarity and consistency in public law, regardless of how a statute comes before the court.[37]

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[30] David Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy" in Taggart, Michael. *The Province of Administrative Law*. Oxford: Hart Publishing, 1997 at p. 286; also see approach in *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, 2012 SCC 29 at paras 43, 47; *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 SCR 748 at para 62 [***Southam***].
[31] *Will-Kare Paving & Contracting Ltd. v. Canada*, 2000 SCC 36 at para 66, per Binnie J. (dissenting), cited in *CHRC 2011*, *supra* note 24 at paras 53-56.
[32] *Southam*, *supra* note 30 at para 62.
[33] Denis James Galligan, *Discretionary powers: a legal study of official discretion* (Oxford: Clarendon Press, 1986) at pp. 6-7.
[34] *Southam*, *supra* note 30 at para 62.
[35] Dyzenhaus, *supra* note 30.
[36] *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2 at paras 23-29.
[37] *Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35 at para 15; *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*,

22. The balance between administrative decision-making and rule of law can only be maintained while judges engage in their own statutory interpretation different from that of an administrator. Judicial statutory interpretation ensures independence and impartiality and attentiveness to legislative intent which, as the Attorney General for Ontario acknowledges, may be absent from administrative decision-making. Further, it ensures consistency in the interpretation of public law statutes which may come before the court in multiple ways, not limited to judicial review.[38]

1) Where no reasons are given, it is proper for the Court to engage in statutory interpretation on its own

23. Unless the administrator gives clear reasons justifying its selected statutory interpretation, there is no reason to defer on questions of law.[39] In such cases, the court is at liberty to engage in its own statutory interpretation. It is difficult to conceive of what other approach the court could take, and this better reflects what this Court has actually done.[40] The majority of the Federal Court of Appeal in *Vavilov* was correct to take this approach.[41]

24. Access to justice is not served by the wholesale rejection of judicial statutory interpretation advanced by the Attorneys General of Canada and Saskatchewan.[42] Administrators do not always provide space for public policy debate.[43] In many cases, meaningful access to justice, including ensuring equality before the law, necessitates access to a court to resolve, fully, finally and fairly, legal disputes between Canadians and the administrators that control various aspects of their lives. Judicial statutory interpretation is the only available recourse where administrators and Ministers attempt to amend statutes by policy instead of through the legislative process.[44]

2017 FCA 45 at para 44; *Ewert v. Canada*, 2018 SCC 30 at paras 52-53; *Bell v. 7265921*, *supra* note 7 at paras 98 and 178.

[38] *Ibid*.

[39] *Bell v. 7265921*, *supra* note 7 at para 96, per Rennie JA.

[40] *Agraira*, *supra* note 21 at paras 56, 65-88; *McLean*, *supra* note 24 at paras 42-71; *Trinity Western*, *supra* note 24 at paras 13-18, 28.

[41] *Vavilov v. Canada (Citizenship and Immigration)*, 2017 FCA 132 at paras 72-74, 79.

[42] Factum of the Attorney General (*Vavilov*) at p. 19, para 50.

[43] Sossin, *supra* note 11 at pp. 45-46.

[44] *Environmental Defence*, *supra* note 13 at paras 2, 31.

2) Variable standards of review on questions of process, fact and mixed fact and law within reasonableness ensure alignment with legislative intent

25. There is no one-size-fits-all for reasonableness.[45] Statutes vary widely in the type of discretion they afford. They may entail mandatory procedural or substantive steps, evidentiary requirements or presumptions to ensure the integrity and transparency of the reasoning process. A decision that does not follow the process or recipe set out in the statute cannot be reasonable.[46] Decisions must also be grounded in the facts before the administrator; a decision will be unreasonable if the evidence before the administrator does not support the conclusions drawn, and the reasons do not explain how the facts relate to those conclusions.[47]

26. The judicial application of normative considerations underpinning the *purpose* of the grant of the statutory power or discretion is crucial to even the most deferential review on the broadest policy questions.[48] Legislative intent is the standard against which the court should assess the reasonableness of the outcome. There is always a context within which a statute is supposed to operate.[49] In applying reasonableness, the court must not lose sight of the fundamental objectives of the legislature or the larger context in which discretion is granted. Doing so risks effective elimination of judicial review, and with it control of the executive by the legislature for a wide range of important administrative decisions that impact the lives of Canadians. The courts must hold administrators accountable to important normative and constitutional principles such as equality before the law, rule of law and legislative supremacy on matters of substantive public policy.

27. This Court ought to be focused on the potential impact on the interests *the legislature* sought to advance or protect within reasonableness review, including collective interests. These interests will be informed by social and statutory context and by applicable international law principles. It is entirely appropriate to consider the individual or collective interests protected by the statute in

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[45] *Dunsmuir*, *supra* note 2 at paras 47, 48, 72, 74.
[46] *Canada (Attorney General) v Almon Equipment Limited*, 2010 FCA 193 at paras 62-63; *Canada v Kabul Farms*, 2016 FCA 143 at paras 11-12, 19.
[47] *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority, et al.*, 2016 SCC 25 at paras 78-79, per Côté J (dissenting); *Mission Institution v. Khela*, 2014 SCC 24 at para 74.
[48] *Roncarelli v. Duplessis*, [1959] SCR 121 at p. 140 [***Roncarelli***]; *Galligan*, *supra* note 33 at pp. 4-5, 30-31, 76.
[49] *Roncarelli*, *ibid* at p. 140.

defining the margin of appreciation, as the majority of the Federal Court of Appeal did in *Vavilov*.

28. In *Bell Canada*, the Federal Court of Appeal erred in failing to consider this broader normative context in applying reasonableness. The Court held that the *Broadcasting Act* has "numerous disparate objectives" and refrained from applying these objectives. Such an approach fails to address the normative context of the law or the reasons why the legislature granted broad discretion. Reasonableness on broad discretionary questions must be more than a search for abstract rationalism that is somehow related to the administrator's statutory mandate. Such an approach would overturn the prohibition on unfettered discretion in *Roncarelli*.

29. An approach to reasonableness which tends to find that a statute is purposeless, polycentric, political, or serves many contradictory objectives is an affront to legislative policy-making and affords boundless discretion.[50] A strong purposive approach to both process and outcome is necessary to maintain the separation of powers and ensure the possibility of meaningful judicial review.

30. Acknowledging the legitimacy of a variable approach within reasonableness is necessary for fundamental administrative accountability and to reflect the diversity of administrative decision-making, decision-makers and legislative intent with respect to how those administrators should conduct themselves.[51]

PART V – ORDER SOUGHT

31. Ecojustice respectfully requests an Order:

a. permitting Ecojustice to make oral submissions at the hearing of this Appeal, not exceeding 5 minutes, or such other duration as the Court may order;
b. that costs shall not be awarded to or against Ecojustice; and
c. granting such further orders as this Honourable Court may deem appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED
DATED at the City of Ottawa, Ontario, this 23rd day of October, 2018.

agent/au

Laura Bowman and Bronwyn Roe
Counsel for the Intervener

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[50] *Roncarelli, ibid* at p. 140.
[51] *Dunsmuir*, *supra* note 2 at paras 135-142, 149, per Binnie J.

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