

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

BETWEEN:

GCT CANADA LIMITED PARTNERSHIP

APPELLANT
(Appellant)

and

**INTERNATIONAL LONGSHORE AND WAREHOUSE
UNION SHIP AND DOCK FOREMEN, LOCAL 514**

RESPONDENT
(Respondent)

and

**ATTORNEY GENERAL OF CANADA, WORKERS'
HEALTH AND SAFETY LEGAL CLINIC, MARITIME
EMPLOYERS ASSOCIATION, FETCO INC. (FEDERALLY
REGULATED EMPLOYERS – TRANSPORTATION AND
TELECOMMUNICATIONS), NATIONAL POLICE FEDERATION
and PUBLIC INTEREST LITIGATION INSTITUTE**

INTERVENERS

**FACTUM OF THE INTERVENER
PUBLIC INTEREST LITIGATION INSTITUTE**

(Rules 47, 55 and 56 of the *Rules of the Supreme Court of Canada*)

Lawrence David

Public Interest Litigation Institute
1030 Berri Street – Suite 102
Montréal, Québec, H2L 4C3
Tél : (343) 961-6186

lawrencedavidlegal@gmail.com

Counsel for the Intervener

Public Interest Litigation Institute

ORIGINAL TO: THE REGISTRAR
 Supreme Court of Canada
 301 Wellington Street
 Ottawa, ON K1A 0J1

COPIES TO:

David Penner Lauren McClanaghan Harris & Company LLP 1400-550 Burrard Street Vancouver, British Columbia V6C 2B5 Telephone: (236) 259-1152 Email: dpenner@harrisco.com Counsel for the Appellant	Dahlia Shuhaibar Olthuis Van Ert 66 Lisgar Street Ottawa, Ontario K2P 0C1 Telephone: (613) 501-5350 Email: dshuhaibar@ovcounsel.com Agent of the Appellant
Anthony Glavin Heather Kennedy Koskie Glavin Gordon 1630 - 1177 West Hastings Street Vancouver, British Columbia V6E 2K3 Telephone: (236) 479-5133 FAX: (604) 734-8004 Email: Glavin@koskieglavin.com Counsel for the Respondent	Michael J. Sobkin 331 Somerset Street West Ottawa, Ontario K2P 0J8 Telephone: (613) 282-1712 FAX: (613) 288-2896 Email: msobkin@sympatico.ca Agent of the Respondent
Stéphane Fillion Amélya Fillion Fasken Martineau DuMoulin LLP Suite 3700 – 800 Victoria Square Montréal, Quebec H4Z 1E9 Telephone: (514) 397-4309 FAX: (514) 397-7600 Email: sfillion@fasken.com Counsel for Maritime Employers Association	

Michael Shaffer Sabina Khak Workers' Health and Safety Legal Clinic 2000 - 180 Dundas Street West, Box 4 Toronto, Ontario M5G 1Z8 Telephone: (416) 809-9357 Email: michael.shaffer@work.clcj.ca Counsel for Workers' Health and Safety Legal Clinic	Marie-France Major Supreme Advocacy LLP 340 Gilmour Street Suite 100 Ottawa, Ontario K2P 0R3 Telephone: (613) 695-8855 Ext: 102 FAX: (613) 695-8580 Email: mfmajor@supremeadvocacy.ca Agent of Workers' Health and Safety Legal Clinic
Christopher D. Pigott Rachel Counsell Fasken Martineau DuMoulin LLP 333 Bay St., Suite 2400 Toronto, Ontario M5H 2T6 Telephone: (416) 865-5475 Email: cpigott@fasken.com Counsel for FETCO INC. (Federally Regulated Employers – Transportation and Communications)	Sophie Arseneault Fasken Martineau DuMoulin LLP 55 rue Metcalfe Bureau 1300 Ottawa, Ontario K1P 6L5 Telephone: (613) 696-6904 Email: sarseneault@fasken.com Agent for FETCO INC. (Federally Regulated Employers – Transportation and Communications)
Malini Vijaykumar Adrienne Fanjoy Nelligan O'Brien Payne LLP 300 - 50 O'Connor Street Ottawa, Ontario K1P 6L2 Telephone: (613) 231-8254 Email: Malini.vijaykumar@nelliganlaw.ca Counsel for National Police Federation	
Justine Malone Attorney General of Canada 99 Bank Street, Suite 1100 Ottawa, Ontario K1A 0H8 Telephone: (613) 266-5761 Email: justine.malone@justice.gc.ca Counsel for the Attorney General of Canada	Zoe Oxaal Department of Justice Canada, Civil Litigation Sector 50 O'Connor Street, Suite 500 Ottawa, Ontario K1A 0H8 Telephone: (343) 574-6955 Email: SCCAgentCorrespondentCSC@justice.gc.ca Agent for the Attorney General of Canada

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PARTS I & II – OVERVIEW & LEGAL ISSUES FOCUSED ON BY INTEVENER

1. A central question raised this appeal is: “How must administrative tribunals apply the principle of vertical *stare decisis* in statutory interpretation?”¹ A related question is how the vertical axis of *stare decisis* shapes and constrains administrative decisionmakers in the exercise of statutory powers and the existence and nature of the circumstances in which these decisionmakers may depart from or otherwise refuse to apply judicial precedents involving statutory interpretation, generally. Owing to the rule of law interests of predictability, consistency and non-arbitrariness vouchsafed by the doctrine of *stare decisis*,² and to the imperative of ensuring that administrative decisionmakers discharge their powers with due respect for the judicial hierarchy, the Public Interest Litigation Institute (“PILI”) submits that this Court’s guidance is urgently required.

2. Fundamentally, judicial precedent is a key legal constraint within which administrative power must be exercised and insisting as such is perfectly reconcilable with deferential review under *Vavilov*. In this light, PILI respectfully submits that:

- A. Like their judicial counterparts, administrative decisionmakers are presumptively – but not absolutely – bound by judicial precedents as a matter of *vertical stare decisis*. However, administrative decisionmakers can only *depart from* – and cannot entirely *overrule* – judicial precedent;
- B. The binding effect of judicial precedent on administrative decisionmakers on questions of statutory interpretation is animated by several contextual factors, including whether the statutory provision is amenable to a single or multiple reasonable interpretations;
- C. Administrative decisionmakers cannot depart from judicial precedent *sub silentio* and must always provide clear, transparent and intelligible justification for departing from, or otherwise failing to apply, judicial precedent.

3. If adopted, PILI’s submissions will enhance predictability, certainty, and stability in the practice of vertical *stare decisis* in Canada generally, and in the administrative sphere, specifically. PILI’s submissions also emphasize that vertical *stare decisis* can serve to reconcile stability and progress in the law while harnessing and reinforcing the distinct role and powers of judicial and administrative decisionmakers in the Canadian institutional hierarchy. This will, in turn, strengthen the rule of law and advance the public interest.

¹ [Appellant’s Factum](#), at paras. 23 and 50-104. See also [Respondent’s Factum](#), at paras. 55, 67-93.

² *R. v. Kirkpatrick*, [2022 SCC 33](#), at paras. 183-184 (per Côté, Rowe & Brown JJ., concurring).

PART III: INTERVENER’S ARGUMENTS

A. Administrative decisionmakers are presumptively – but not absolutely – bound by judicial precedent as a matter of vertical stare decisis

4. Vertical *stare decisis* requires courts to apply the binding precedents of courts higher in the judicial hierarchy. But the binding force of judicial precedent also extends to the administrative state. As components of the executive branch of government, administrative decisionmakers are subject to the rule of law, which includes being bound by judicial precedents as a matter of vertical *stare decisis*. Judicial precedents are indeed one of the legal constraints with which the exercise of administrative power must comply.³ As emphasized by this Court: “An administrative decision will be unreasonable if it fails to justify a departure from binding precedents.”⁴ Nestled within this statement is the affirmation that administrative decisionmakers are – like their judicial counterparts – *presumptively but not absolutely bound* by judicial precedent.

5. But not every precedent is immediately binding on an administrative decisionmaker. A precedent only acts as a constraint on what the decisionmaker can reasonably decide if the precedent applies to “the issue before it” or relates to an issue “similar” to the one to be decided.⁵ This is a threshold question to determine whether vertical *stare decisis* even applies in a given case.⁶ As all aspects of administrative action can be reviewed for legality,⁷ a decision maker’s conclusion that a precedent is or is not binding upon it is judicially reviewable and the conclusion that the decisionmaker is not bound by what is actually a binding precedent can be sufficient to set aside an administrative decision. This can arise if the decisionmaker fails to explain why the precedent is not binding or if the reasons provided for this conclusion are unreasonable. As held in *Pepa*, a decision may also be unreasonable if the decision maker wrongly considered themselves bound by “clearly inapplicable or distinguishable case law” without justifying and explaining their continued currency.”⁸ In conducting judicial review of administrative decision makers’ engagement with vertical *stare decisis*, judicial deference is reconciled with the courts’ role as guardians of the rule of law – which includes and is promoted by adherence to binding precedent.

³ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#), at paras. 112, 131; *Pepa v. Canada (Minister of Citizenship and Immigration)*, [2025 SCC 21](#), at paras. 85, 176-178.

⁴ *Mason v. Canada (Citizenship and Immigration)*, [2023 SCC 21](#), at para. 72.

⁵ *Pepa*, at para. 85; *Canada (Attorney General) v. Bri-Chem Supply*, [2016 FCA 257](#), at para. 41.

⁶ The Honourable Justice Malcolm Rowe and Leanna Katz. “A Practical Guide to *Stare Decisis*” (2020), 41 *Windsor Rev. Legal Soc. Issues* 1.

⁷ *Democracy Watch v. Canada (Attorney General)*, [2026 SCC 28](#), at para. 8.

⁸ *Pepa*, at paras. 66, 68.

6. In the interest of doctrinal coherence, the vertical *stare decisis* effect of binding judicial precedents should be understood to apply equally to courts and to administrative decision makers. For instance, in *Canada v. Craig*, [2012 SCC 43](#), this Court unanimously held that lower courts are prohibited from outright overruling its precedents. If a lower court disagrees with a precedent of this Court, or believes it to be erroneous, it must apply the precedent as a matter of vertical *stare decisis* but is free to criticize it or otherwise highlight issues that this Court may wish to address as a matter of horizontal *stare decisis*.⁹ Just like their judicial counterparts, administrative decisionmakers should not be allowed to outright overrule precedent based on their belief that a precedent was wrongly decided. No matter amount of judicial deference could justify allowing administrative decisionmakers to overrule the precedents of this Honourable Court – or of other courts – but to deny that same power to first instance and intermediate appellate courts.

7. Even before *Craig*, Canadian courts had affirmed that administrative decisionmakers can criticize but not outright overrule binding judicial precedents. For example, in *Superior Propane*, the Federal Court of Appeal held that the Competition Tribunal did not err in law or “fail[] to respect the principle of *stare decisis*” by strongly criticizing one of its previous judgments in the course of ultimately applying it. Even if the criticism was significant, “such criticism does not amount to an error of law unless combined with defiance of the Court’s directions” – and thus of the vertical axis of *stare decisis*.¹⁰ In PILI’s view, this principle is entirely compatible with – and should therefore be affirmed under – the *nouveau régime* instituted in *Vavilov*.

8. Another aspect of this Court’s jurisprudence on vertical *stare decisis* that is consistent with *Vavilov* pertains to the principles stated in *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#). While affirming that lower courts cannot outright overrule the judgments of courts higher in the judicial hierarchy, *Bedford* identifies two exceptions under which lower courts can depart from binding precedent. In particular, precedent may be departed from “if new legal issues are raised as a consequence of significant developments in the law, or if there is a change in the circumstances or evidence that fundamentally shifts the parameters of the debate.”¹¹ These exceptions reconcile respect for the judicial hierarchy, the stability and legal certainty vouchsafed by adhering to

⁹ *Canada v. Craig*, [2012 SCC 43](#), at paras. 18-23.

¹⁰ *Canada (Commissioner of Competition) v. Superior Propane*, [2003 FCA 53](#), at paras. 55-56, 59.

¹¹ *Bedford*, at para. 42. See also *Carter v. Canada (Attorney General)*, [2015 SCC 5](#), at para. 44.

precedent, and the need to ensure “the orderly development of the law in incremental steps.” In this way, “*stare decisis* is not a straitjacket that condemns the law to stasis.”¹²

9. Reflecting this Court’s repeated statements that administrative decision makers are not absolutely bound by – but may indeed depart from – judicial precedent,¹³ PILI suggests that the *Bedford* exceptions to vertical *stare decisis* should be affirmed to apply in the administrative sphere in the same way that they apply in the judicial sphere. This approach has the benefit of clarity and simplicity and is easily reconciled with the need to balance judicial deference on judicial review with the judiciary’s role as guardians of the rule of law. It also advances access to justice in enabling Canadians to challenge precedents at the first occasion rather than raising it as a new issue for the first time on judicial review. A further benefit is that applying the *Bedford* exceptions in the administrative sphere reflects the existing legal reality.

10. For instance, in *B.H. v. Minister of Employment and Social Development*, [2025 SST 1032](#), the Social Security Tribunal of Canada revisited and departed from the Federal Court of Appeal’s precedent in *Lezau v. Canada (Social Development)*, 2008 FCA 99 in determining whether provisions of the *Canada Pension Plan* violated s. 15(1) of the *Canadian Charter of Rights and Freedoms*. The Tribunal applied the second *Bedford* exception to conclude that *Lezau* had been undermined by subsequent legal developments in this Court’s jurisprudence and was not, therefore, binding as a matter of vertical *stare decisis* (see paras. 13-14, 74-112). Note that other Tribunal decisions have also departed from Federal Court of Appeal precedent on the basis of the *Bedford* exceptions and developments in this Court’s s. 15(1) jurisprudence.¹⁴

11. On judicial review, an administrative decisionmaker’s departure from precedent under either or both of the *Bedford* exceptions is generally reviewed for reasonableness.¹⁵

12. However, precedential departure under the *Bedford* exceptions should be reviewed for correctness where the precedent pertains to a question reviewable under this standard. This would, for example, be the case if an administrative decision maker purports to depart from a precedent of this Court as to the interpretation and scope of a right or freedom protected under the *Canadian*

¹² [Carter](#), at para. 44, cited in *R. v. Sullivan*, [2022 SCC 19](#), at para. 66.

¹³ e.g., [Vavilov](#), at paras. 112, 131; [Mason](#), at para. 72; [Pepa](#), at paras. 85, 176-178.

¹⁴ *L.C. v. Canada (Employment Insurance Commission)*, [2022 SST 8](#), at para. 55, affirmed in *Canada (Employment Insurance Commission) v. L.C. et al.*, [2024 SST 24](#), at para. 16, departing from *Miller v. Canada (Attorney General)*, [2002 FCA 370](#).

¹⁵ [Mason](#), at para. 72; [Pepa](#), at paras. 85, 176-178.

Charter of Rights and Freedoms. It is also the case where the decision maker fails to acknowledge let alone apply binding precedent on this type of question.¹⁶ In either case, an administrative decision maker's failure to apply a binding constitutional precedent in answering a constitutional question reviewable for correctness cannot result in deferential review for reasonableness.

13. Overall, like their judicial counterparts, administrative decisionmakers are presumptively – but not absolutely – bound by judicial precedent. The only exception concerns final court judgments regarding the legality of administrative action. If a court concludes that administrative action is unlawful, only statutory amendments can displace that conclusion,¹⁷ subject to any constitutional constraints. Absent statutory amendments, an administrative decision maker whose decision has been quashed by a court and returned for reconsideration must follow the directions of the reviewing court.¹⁸ This reconciles the presumptive of posture of judicial deference to administrative decision makers and the judicial role to uphold and enforce the rule of law.

B. The binding effect of judicial precedent on administrative decisionmakers on questions of statutory interpretation is animated by several contextual factors

14. As with all other types of judicial precedents, administrative decisionmakers are presumptively – but not absolutely – bound by precedents concerning questions of statutory interpretation. Administrative decisionmakers may, therefore, depart from such precedents pursuant to the principles discussed in *Craig* and to the exceptions to vertical *stare decisis* stated in *Bedford*. An administrator may also depart from precedents on statutory interpretation if it reasonably “explain[s] why the court’s interpretation does not work in the administrative context.”¹⁹ However, the binding effect of judicial precedent on administrative decisionmakers on questions of statutory interpretation is animated by several contextual factors. Chief among them is whether the statutory provision is amenable to a single or multiple reasonable interpretations. Another is whether the decision maker is subject to judicial review or to a statutory appeal.

15. Based on factors including statutory language, statutory purpose, the subject-matter of particular provisions, and the statutory context, questions of statutory interpretation may be situated on a spectrum. At one end of the spectrum are provisions for which there is only “a single

¹⁶ *York Region District School Board v. Elementary Teachers’ Federation of Ontario*, [2024 SCC 22](#), at paras. 63, 68-70, 85, 94-95.

¹⁷ *Régie des rentes du Québec v. Canada Bread Company*, [2013 SCC 46](#), at paras. 46-47, 50.

¹⁸ *Canada Bread*, at para. 46-47; *Superior Propane*, at para. 54; *Corlac Inc. v. Weatherford Canada Ltd.*, [2012 FCA 261](#), at para. 18.

¹⁹ *Vavilov*, at para. 112; *Pepa*, at para. 176.

reasonable interpretation.”²⁰ At the other end, “where the legislature chooses to use broad, open-ended or highly qualitative language... it clearly contemplates that the decision-maker is to have greater flexibility in interpreting the meaning of such language” such that a provision may be amenable to multiple possible reasonable interpretations.²¹ As highlighted in *Vavilov*, other statutory “language will fall in the middle of this spectrum” while still allowing for more than a single reasonable interpretation.²² The wider the statutory language, the wider the deference, as “[n]arrower and more precise language imposes a greater constraint on the decision maker...”²³

16. In this light, the principle that “the doctrine of *stare decisis* requires an administrative tribunal to follow a Court’s interpretation of the law”²⁴ should be contextualized within the spectrum of statutory language and the number of possible reasonable interpretations it can support. On judicial review, if it is contended that the decision maker has departed from or otherwise failed to apply binding precedent on a question of statutory interpretation, a key question will be whether the interpretation affirmed in the precedent was identified as the only reasonable interpretation or as one of multiple possible reasonable interpretations.

(a) Statutory Provisions With Only A Single Reasonable Interpretation

17. The vertical *stare decisis* effect of judicial precedent on administrative decision makers will be at its apex if the precedent identified a statutory provision as allowing for a single possible reasonable interpretation. This can arise when (i) the precedent upholds a decision maker’s interpretation for this reason, or (ii) when the precedent set aside an administrator’s interpretation based on its incompatibility with the only possible reasonable interpretation available using the modern approach to statutory interpretation.²⁵ In either case, a subsequent administrator will be required to apply the governing interpretation as a matter of vertical *stare decisis*. Consistent with *Craig*, it will not be open to the subsequent administrator to refuse to apply the precedent even if it believes that the precedent is wrongly decided. The administrator will, however, be authorized to depart from the precedent if either or both of the *Bedford* exceptions to vertical *stare decisis* apply. Departure will be permissible under the first exception if, for example, statutory

²⁰ *McLean v. British Columbia (Securities Commission)*, [2013 SCC 67](#), at para. 38; *Vavilov*, at para. 124; *Mason*, at paras. 71, 121-122; *Pepa*, at paras. 121, 123.

²¹ *Vavilov*, at para. 10; *McLean*, at para. 31.

²² *Vavilov*, at para. 10; *Mason*, at para. 67.

²³ *Mason*, at para. 67; *Bell Canada v. Canada (Attorney General)*, [2019 SCC 66](#), at para 91

²⁴ *Tan v. Canada (Attorney General)*, [2018 FCA 186](#), at para. 22; *Corlac*, at para. 18.

²⁵ Examples of (ii) include *Pepa*, at paras. 129-131.

amendments subsequent to the precedent operate to displace it,²⁶ if the precedent is later overruled, or in the face of other “significant changes in the law” having the same effect.²⁷ Otherwise, where a statutory provision has been held to allow for a single reasonable interpretation, the administrator must apply it or their decision will be unlawful.

18. A judicial precedent that identifies a single possible reasonable interpretation of a statutory provision in upholding or setting aside an administrative decision imposes a further constraint on subsequent departure by administrative decision makers. In particular, because such precedents will have identified that interpretation in the course of reviewing an administrative decision, it will generally not be possible for a subsequent administrator to depart from it by “explaining why the court’s interpretation does not work in the administrative context.”²⁸ As a general proposition, only significant changes in the law within the meaning of the first *Bedford* exception to vertical *stare decisis* will authorize departure.

19. Subsequent factual or evidentiary changes within the meaning of the second *Bedford* exception will generally not authorize departure from precedents affirming a single possible reasonable interpretation. This flows from the nature of statutory precedents and of statutory interpretation itself. Indeed, statutory interpretation is based on legislative intent at the time of enactment and does not allow for shifting purposes foreign to that intent.²⁹ As well, the wording of a statute cannot be altered by subsequent factual changes. The dynamic interpretation of a statute according to “new sociological or technological circumstances”³⁰ may, however, alter the calculus, as may statutory provisions that incorporate common law rules or doctrines.³¹

(b) Provisions With Multiple Possible Reasonable Interpretations

20. The vertical *stare decisis* effect of judicial precedent on administrative decision makers will be presumptive but attenuated if the precedent concerns the interpretation of a statutory provision open to multiple possible reasonable interpretations. This reflects a fundamental axiom: “under reasonableness review, [courts] defer to *any* reasonable interpretation adopted by an administrative decision maker, *even if* other reasonable interpretations may exist.”³² (emphasis in original)

²⁶ *Régie des rentes du Québec v. Canada Bread Company*, [2013 SCC 46](#), at paras. 46-47, 50.

²⁷ *Bedford*, at para. 42. See also *Carter v. Canada (Attorney General)*, [2015 SCC 5](#), at para. 44.

²⁸ *Vavilov*, at para. 112; *Pepa*, at para. 176.

²⁹ e.g., *Taylor v. Newfoundland and Labrador*, [2026 SCC 6](#), at para. 92.

³⁰ *Telus Communications Inc. v. Federation of Canadian Municipalities*, [2025 SCC 15](#), at para. 33.

³¹ e.g., *R. v. D.L.W.*, [2016 SCC 22](#), at para. 14.

³² *McLean*, para. 40, cited in *Bell Canada v. Canada (Attorney General)*, [2019 SCC 66](#), at para 91.

21. This principle directly impacts vertical *stare decisis* in respect of judicial precedent. A typical judicial review involving a question of statutory interpretation may involve the court concluding that the administrator's interpretation is unreasonable under the modern principles of statutory interpretation even if the provision is open to multiple possible reasonable interpretations. In this situation, the decision is set aside and may³³ or may not³⁴ be returned for reconsideration.

22. If the decision is returned for reconsideration, the court will typically provide directions to be applied by the administrator, including a requirement that the new decision reflect the court's reasons. The administrator is required "to follow the directions of the reviewing court" as a matter of vertical *stare decisis*. Only the passage of declaratory legislation or a precedent from a higher court that directly conflicts with the precedent or the directions of the reviewing court can justify the administrator's departure from either or both.³⁵ However, since the relevant provision would be open to multiple possible reasonable interpretations, the administrator could adopt any reasonable interpretation that is also compatible with the court's directions. For example, the Federal Court of Appeal recently set aside a decision of the Immigration and Refugee Board and directed that its reconsideration of the interpretation of s. 35(1)(b) of the *Immigration and Refugee Protection Act* reflect "the proposition that an interpretation consistent with the principle of non-refoulement is required whenever the inadmissibility at issue effectively sanctions refoulement."³⁶ As such, the administrator can, on reconsideration, adopt any interpretation consistent with this proposition and still be compliant with the Federal Court of Appeal's precedent.

23. A similar dynamic operates even when an unreasonable interpretation is not returned for reconsideration subject to the court's directions. In *Vavilov*, for example, this Court set aside as unreasonable an interpretation of s. 3(2)(a) of the *Citizenship Act* capturing children of individuals who have not been granted diplomatic privileges and immunities at the time of the children's birth. The majority expressly stated that it did "not suggest that there is necessarily 'one reasonable interpretation' of the provision as a whole" and refused "to foreclose the possibility that multiple reasonable interpretations of other aspects [of that provision] might be available to administrative decision makers."³⁷ (emphasis added) In other words, administrators may adopt various possible

³³ *Canada (Public Safety & Emergency Preparedness) v. Wahab*, [2026 FCA 140](#), at paras 117-121.

³⁴ *Vavilov*, at para. 195.

³⁵ *Régie des rentes*, at paras. 46-47; *Superior Propane*, at para. 54; *Corlac*, at para. 18;.

³⁶ e.g. *Wahab*, at paras. 120-121.

³⁷ *Vavilov*, at para. 195.

interpretations of s. 3(2)(a) in decisions rendered subsequent to *Vavilov*. However, the *stare decisis* effect of *Vavilov* on this point prohibits administrators from adopting a contrary interpretation and they may not depart from it except if authorized under *Bedford*. Only a precedent of this Court overruling *Vavilov* as to the interpretation of s. 3(2)(a) could justify an administrator's departure.

24. Further considerations come to bear if a precedent upholds as reasonable an administrator's interpretation of a statutory provision that is not only open to a single reasonable interpretation. The *stare decisis* effect of such precedents does not preclude subsequent administrators from adopting interpretations other than those upheld as reasonable. Any alternative interpretation must, however, itself be reasonable. Further, if a party to an administrative process or proceeding relies on the interpretation upheld as reasonable, any decision failing to apply that interpretation "may be unreasonable" if the administrator "failed to explain or justify a departure" from that precedent. Indeed: "The decision maker would have to be able to explain why a different interpretation is preferable."³⁸ This may include reasons covered under the *Bedford* exceptions to *stare decisis*. As the precedent would have upheld the interpretation of an administrator, it would generally not be open to a subsequent administrator to depart from it if it reasonably "explain[s] why the court's interpretation does not work in the administrative context."³⁹ An exception may arise if the provision is applied in different administrative contexts but the precedent only deals with one.

25. Finally, "precedent will act as a constraint on what the decision maker can reasonably decide" if the precedent applies to "the issue before it" or to a "similar issue."⁴⁰ As concerns statutory interpretation, a precedent will be binding in subsequent cases involving the same provision as long as the precedent has not been overruled or displaced by statute. Precedents are not generally binding in subsequent cases involving different statutory provisions. However, if the precedent concerns the interpretation of a word in a given statutory provision that is also included in other statutory provisions in the same statute, the interpretation of that word may indeed be binding in subsequent cases involving different provisions that also include it.

C. Administrative decisionmakers cannot depart from judicial precedent *sub silentio*

26. This Honourable Court has emphasized that it does not overrule or otherwise depart from its own precedents *sub silentio* – that is, without express acknowledgment and identification of

³⁸ *Vavilov*, at para. 112, cited in *Pepa*, at para. 66. See also *Mason*, at para. 72.

³⁹ *Vavilov*, at para. 112; *Pepa*, at para. 176.

⁴⁰ *Pepa*, at para. 66, citing *Vavilov*, at para. 112.

compelling reasons for doing so.⁴¹ Transparency in the practice of precedential departure contributes to its legitimacy, ensures clarity in the law, and maintains public confidence in the administration of justice. The “parallel justice system” at the heart of the administrative state⁴² is no exception to these concerns. Administrative decisionmakers must therefore similarly be prohibited from departing from precedent providing clear, transparent, and intelligible justification.

27. This is necessary for at least two reasons. **First**, administrative decisions have “profound implications for the day-to-day lives of Canadians,”⁴³ who are entitled to be informed if a decision affecting their interests will be rendered in a manner that departs from the applicable law. As a matter of procedural fairness, decisionmakers should alert parties if they plan to depart from judicial precedent and provide them with an opportunity to make submissions before doing so. **Second**, express acknowledgment and identification of the reasons for precedential departure by administrative decisionmakers is essential to ensuring a robust exercise of the courts’ constitutional power of legality review of administrative action. As emphasized by this Court: “An administrative decision will be unreasonable if it fails to justify a departure from binding precedents.”⁴⁴

28. To be clear, this failure can arise in at least one of two ways: (i) a failure to acknowledge precedential departure; and (ii) an acknowledgment of precedential departure unaccompanied by reasonable justification. If either or both are present, the decision is automatically unreasonable for failing to abide by an applicable legal constraint and for failing to satisfy the requirements of justification, transparency, and intelligibility commanded by the robust conception of reasonableness review espoused in *Vavilov* and its progeny. In the same way that a court is not to supplement the reasons provided by an administrative decisionmaker,⁴⁵ courts ought not to provide reasons justifying a decisionmaker’s departure from precedent when no justification has been provided or when the justification provided is itself unsatisfactory or otherwise unreasonable. Unless there is a single reasonable interpretation or answer, the reviewing court should instead quash the decision and return it for reconsideration in accordance with the court’s directions.

THE WHOLE RESPECTFULLY SUBMITTED THIS 24th DAY OF AUGUST 2026



Lawrence David, JD/BCL, LL.M

⁴¹ e.g., *R. v. Bouvette*, [2025 SCC 18](#), at para. 270.

⁴² *Canada (Public Safety and Emergency Preparedness) v. Chhina*, [2019 SCC 29](#), at para. 28.

⁴³ *Democracy Watch v. Canada (Attorney General)*, [2026 SCC 28](#), at para. 2.

⁴⁴ *Mason*, at para. 72, citing *Vavilov*, at para. 112.

⁴⁵ *Vavilov*, at para. 96, citing *Delta Air Lines Inc. v. Lukács*, [2018 SCC 2](#), at paras. 26-28.

PART VII – ALPHABETICAL TABLE OF SOURCES

A – JURISPRUDENCE

SOURCE	PARAGRAPHS IN FACTUM
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