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SUPREME COURT OF CANADA

Auer v. Auer, 2024 SCC 36

Appeal – Standard of Review

What standard of review applies when we determine whether a regulation is established within the scope of the enabling legislation?

The reasonableness standard set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (“*Vavilov*”) applies when considering if subordinate legislation is within the scope of the enabling legislation, with two exceptions:

- (1) The legislature has indicated that it intends a different standard to apply, or
- (2) the rule of law requires that the correctness standard be applied.

When does the rule of law require that the correctness standard be applied?

- (1) Constitutional questions that require a final and determinate court answer.
- (2) General questions of law of central importance to the legal system.
- (3) Questions about the jurisdictional boundaries between two or more administrative bodies.

What is an example of where a review based on correctness may apply?

A challenge to the validity of subordinate legislation because it fails to respect the division of powers between Parliament and provincial legislatures would require that the correctness standard be applied.

Which principles inform the reasonableness review?

The following principles from *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)* (“*Katz*”) continue to inform a reasonableness review:

- (1) subordinate legislation must be consistent with the specific provisions of the enabling statute and with its overriding purpose or object;
- (2) subordinate legislation is presumed valid;
- (3) we apply a broad and purposive statutory interpretation approach when reviewing the subordinate and enabling legislation; and
- (4) a review of the legal scope of the enabling legislation does not involve assessing the policy merits of the subordinate legislation to determine whether it is necessary, wise or effective in practice.

Which *Katz* principle no longer applies?

One no longer has to show that subordinate legislation is irrelevant, extraneous, or completely unrelated to the statutory purpose.

Why does this *Katz* principle no longer apply?



SCC re Standard of Review of Subordinate Legislation

It would undermine *Vavilov's* promise of simplicity, predictability and coherence.

What does the reasonableness review intend to ensure, and why does this *Katz* principle not align with this intent?

Courts intervene in administrative matters where it is truly necessary to safeguard the legality, rationality, and fairness of the administrative process, remaining a robust form of review.

By contrast, the *Katz* irrelevant, extraneous or completely unrelated threshold connotes a very high degree of deference inconsistent with the degree of scrutiny required under a reasonableness review.