

Reasonableness revisited: *Mason* re-affirms law of judicial review

AUTHORS



Yael Bienenstock



Jon Silver



Alex Bogach



John A. Terry

In 2019, the Supreme Court's landmark decision in *Vavilov* [revamped the framework governing judicial reviews](#). Four years later, the Supreme Court has revisited that framework in [Mason v. Canada \(Citizenship and Immigration\)](#), 2023 SCC 21. In its decision, the Court re-affirmed the key principles from *Vavilov* that all reviewing courts must apply when assessing the “reasonableness” of an administrative decision.

What you need to know

Building on *Vavilov*, the Court in *Mason* provided the following guidance:

- **No new correctness category.** Reasonableness is the presumptive standard of review in applications for judicial review of administrative decisions. *Mason* does not alter this framework. The Court rejected an invitation to recognize a new category of cases in which correctness review applies (for certain types of immigration appeals). Writing alone on this point, Justice Côté would have recognized a new category.
- **Reasonableness review starts with the decision under review.** The Court doubled down on its framework from *Vavilov* for conducting reasonableness review. Reviewing courts must start with the reasons offered in the decision under review. Even when statutory interpretation is at issue, the reviewing court cannot conduct a preliminary analysis of the legislation before examining the administrative decision.
- **Decisions with significant impacts require responsive justification.** A reviewing court should conduct reasonableness review mindful of the impact of the decision on the affected individual. The Court took the opportunity to emphasize that where the impact of a decision on an individual's interests is severe, the decision-maker's justificatory burden is higher.
- **The role of international law.** The Court held that the administrative decision-maker's interpretation was unreasonable, in part, because it failed to address international law. Although international law is particularly important in the immigration context, the Court stressed the importance of the interpretive presumption that statutes conform with international law.

Judicial review of administrative action on the reasonableness standard

How courts review administrative decisions on the reasonableness standard

In most applications for judicial review of administrative action, judges must defer to “reasonable” decisions from administrative bodies. This includes the administrative body’s legal conclusions, even when that judge may think that it is not the “best” or “correct” answer to the legal question. Controversy and jurisprudential debate have historically haunted the application of this principle, which has generated regulatory uncertainty for administrative bodies and those who may seek judicial review of their decisions.

In 2019, the Supreme Court of Canada injected some stability in this area of law by providing its most detailed treatment of this legal issue in its *Vavilov* decision. *Mason* is the Court’s first return to this issue since *Vavilov*. Unlike *Vavilov*—which addressed the entire, overarching framework for conducting judicial review—*Mason* focuses specifically on the application of reasonableness review to an administrative body’s statutory interpretation.

The debate in the courts below

Mason involves the interpretation of section 34(1)(e) of the *Immigration and Refugee Protection Act*, which makes foreign nationals inadmissible for “engaging in acts of violence that would or might endanger the lives or safety of persons in Canada.” The key question is whether these “acts of violence” need to have a nexus to national security or whether any “acts of violence” would trigger its application. The Immigration Appeal Division decided that they do not need to have such a nexus.

On judicial review of that decision, the Federal Court ([2020 FC 59](#))—in a decision that pre-dated *Vavilov*—crafted a novel approach to reasonableness review of legal conclusions. It said that reviewing courts should see if the party challenging the administrative decision has a “knock-out punch” that renders the decision unreasonable. The Federal Court overturned the Immigration Appeal Division’s decision because it identified a “knock-out punch”—namely that the structure of the Act was inconsistent with the Immigration Appeal Division’s interpretation.

On appeal, the Federal Court of Appeal ([2021 FCA 156](#)) delivered its own blow to the “knock-out punch” approach, finding that it invited judges to improperly substitute their own legal interpretations. But the Court also explained that when statutory interpretation is at issue, courts should conduct “a preliminary analysis” of the legislation before reviewing the impugned decision. After reviewing the administrative decision-maker’s reasoning, the Court of Appeal said that the correct outcome was “open to some debate”. For the Court of Appeal, the Immigration Appeal Division offered a reasonable answer to that debate. That was enough to uphold it on review.

The Supreme Court’s decision in *Mason*

The Supreme Court agreed that the reasonableness standard of review applied, but the Court overturned the Federal Court of Appeal’s decision. Applying the *Vavilov* framework, the Court concluded that the Immigration Appeal Division did not reasonably interpret section 34(1)(e) of the *Immigration and Refugee Protection Act*.

The Court re-affirmed that reasonableness is the presumptive standard of review in all judicial review cases. The Court rejected the invitation by the parties to apply correctness review in immigration cases where a serious question of general importance has been certified for appeal to the Federal Court. On this point, Justice Côté dissented.

The Court then turned to the decision under review. The Court emphasized a “reasons first” approach: reasonableness review starts with the reasons of the decision-maker. The Federal Court of Appeal’s approach of conducting a “preliminary analysis” of the statute improperly strayed from *Vavilov* and risked slipping into correctness review.

Applying the proper approach, the Court held that the Immigration Appeal Division’s decision was unreasonable. The decision failed to meet its justificatory burden for three reasons: 1) the decision failed to address two points of statutory context raised by the applicant; 2) the decision failed to account for its broad consequences, producing an

absurd interpretation; and 3) the decision failed to address and conform with international law. In these ways, the decision involved a failure of “responsive justification”, which is required when the impact of a decision on an individual’s rights and interests is severe.

The Court ultimately concluded that the relevant legal constraints cumulatively pointed to only one reasonable interpretation of section 34(1)(e)—the provision requires a nexus to national security or the security of Canada. As a result, the Court allowed the appeal and quashed the administrative decisions without remitting them.

Implications: *Vavilov* alive and well

Mason is a strong vindication of the Court’s 2019 *Vavilov* framework. The Court took the opportunity to re-emphasize the key principles and demonstrate their application. For example, the Court’s rejection of the Federal Court of Appeal’s approach leaves no doubt that reasonableness review must start with the decision-maker’s reasons. There was no retreat or recalibration of the *Vavilov* framework. Unlike previous administrative law frameworks, *Vavilov* is proving to be durable.

While reasonableness review is a deferential standard, the Court in *Mason* conducted a probing analysis of the administrative decision-maker’s interpretation of the statute. Even though the decision under review “applied several recognized techniques of statutory interpretation”, those reasons were not sufficient. And even though the Immigration Appeal Division decided no risk to national security was required under the Act, and three judges of the Federal Court of Appeal held that interpretation was reasonable, the Supreme Court disagreed on the basis that there could be only one reasonable interpretation.

One explanation for the level of scrutiny that the Court applied in *Mason* is that the stakes at issue—potential deportation. *Mason* signals that when applicants are facing grave consequences, there is a higher justificatory burden on decision-makers and it may be easier to challenge an administrative decision. But it remains to be seen whether this “justificatory burden” will be applied more broadly outside of the immigration context.

To discuss these issues, please contact the author(s).

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