Appeal right or appeal wrong? SCC finds only one reasonable interpretation of immigration appeal right

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In *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21, the Supreme Court of Canada held that the Immigration Appeal Division (IAD) of the Immigration and Refugee Board of Canada had unreasonably interpreted its jurisdiction under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) when it held that an individual who entered Canada under a valid permanent resident visa could lose their right to appeal an exclusion order based on the timing of the decision. The Court's decision clarified several points in administrative law. First, the presumption of reasonableness review is not rebutted by concerns about the potential for multiple competing interpretations of a statutory provision. Second, citing a precedent in a decision is not enough—the precedent must be on point and relevant to the question before the decision-maker, and reliance on it must be justified in the reasons. Third, interpreting a procedural right in a manner that is absurd or arbitrary will not be reasonable in the absence of clear legislative intent. Fourth, a higher burden of justification may apply to decisions with significant consequences for vulnerable individuals. Finally, in terms of remedy, a narrow issue of statutory interpretation with limited interpretive options may lead a court to more readily conclude that there is only one reasonable interpretation.

Background

The appellant came to Canada in March 2018 after being issued a permanent resident visa as an accompanying dependent of her father. A permanent resident visa is issued for a period of no longer than a year, and its expiry date is tied to the expiry date of the underlying documents, in this case medical documentation. Upon arrival, the appellant disclosed to Canadian border officials that she had recently married, which made her ineligible as a dependent child. She was admitted into Canada for further examinations, culminating in an admissibility hearing held in September 2018, a few days after her visa expired. After the admissibility hearing, the Immigration Division of the Immigration and Refugee Board issued an exclusion order.

The appellant appealed to the IAD under s. 63(2) of the IRPA, which grants a right to appeal to a "foreign national who holds a permanent resident visa." The IAD found that the appellant did not "hold" a permanent resident visa because her visa had already

expired, and therefore she could not bring an appeal under this provision. The IAD's interpretation was upheld by both the Federal Court and the Federal Court of Appeal.

The Supreme Court's decision

The Supreme Court allowed the appeal and set aside the IAD's jurisdictional finding. Writing for a 6-judge majority, Justice Martin found that the applicable standard of review was reasonableness, that the IAD's decision was unreasonable, and that the only reasonable interpretation of s. 63(2) was one in which appeal eligibility was based on the validity of the visa at the time of arrival into Canada. On this basis, Justice Martin remitted the matter to the IAD to consider the appeal on its merits with the appeal right established.

Justice Rowe agreed with the majority that the decision was unreasonable but wrote a partial dissent on remedy, taking the view that the interpretive question should be remitted to the IAD. In a dissenting opinion, Justices Côté and O'Bonsawin would have upheld the decision as reasonable.

Standard of review

All of the justices agreed that the applicable standard of review was reasonableness. Justice Martin did not accept the appellant's argument that correctness should apply either under an existing or new exception to the presumption of reasonableness where the possibility of multiple competing interpretations of a statutory provision would lead to absurd consequences. Justice Martin noted that this issue had already been settled in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

The decision was unreasonable

Justice Martin found that the IAD's interpretation of the statutory appeal right under s. 63(2) of the IRPA was unreasonable based on the IAD's improper reliance on precedents and failure to conduct its own statutory interpretation. Although decision-makers may rely on precedents, merely citing case law is not sufficient—the decision-maker must ensure the precedent is pertinent, on point, and will help to answer the question before them. The decision-maker cannot rely on clearly inapplicable or distinguishable case law without justifying and explaining its relevance. Justice Martin found that the IAD failed to justify its reliance on the cited precedents because they involved different provisions or distinguishable facts, while the IAD brushed aside another relevant case that favoured the appellant.

Although it is not always necessary for a decision-maker to do a full statutory interpretation analysis, in this case, given that the precedents relied on were not sufficiently material or binding to resolve the statutory interpretation question, Justice Martin found that the IAD should have considered the grammatical and ordinary meaning of the text, the object and intention of Parliament, and the context in which s. 63(2) of the IRPA operates.

Justice Martin went on to find that the IAD's interpretation could not be justified in light of these principles of statutory interpretation. She found that the ordinary meaning of the provision, which refers to a person who "holds a permanent resident visa", did not

resolve the central question of when the person must hold the visa. The purpose of the provision was to grant an appeal right to the holder of a permanent resident visa to challenge an exclusion order, creating a procedural and substantive safeguard in the system. Based on this purpose, the IAD's interpretation was absurd because a person could lose their right to appeal based on the ordinary passage of time in an administrative investigation, even before the decision to be appealed was issued. Justice Martin further held that this interpretation was arbitrary because the appeal right was tied to dates that had no rational connection to the right of appeal being granted.

Finally, Justice Martin found that the IAD was required to consider the potential impact of the decision on affected individuals. As set out in the Court's decision in *Vavilov*, where a decision has the potential for particularly harsh personal consequences, the reasons should specifically account for these consequences and explain why they are justified and "best reflect" Parliament's intention. Justice Martin noted that this requirement may lead to a more coherent approach to vulnerability in Canadian administrative law, which is particularly relevant in the immigration context. In this case, the IAD did not account for the appellant being separated from her family and barred entry into Canada for five years.

Remedy

On remedy, Justice Martin found that the only reasonable interpretation of the appeal right in s. 63(2) was that the individual must hold a valid permanent resident visa at time of entry into Canada, since the alternatives would be absurd and arbitrary. As a result, this was an appropriate case to not remit the interpretive question to the IAD. She returned the matter to the IAD to hear the appeal on the merits with the right to appeal established. Justice Martin signalled that a single reasonable interpretation of a statutory provision may not be uncommon because legislatures intend to speak with clarity and purpose and noted that this will be more plausible "when the question of interpretation is narrow, the statutory language is highly precise, and there are functionally very few options to choose from."

Justice Rowe agreed with the majority's reasonableness analysis but dissented on the remedy, finding that it should be remitted to the IAD to decide with the Court's guidance. Justice Rowe was of the view that the possibility of unintended consequences under the IRPA that were best left to the IAD to consider and commented that the majority's approach risked slipping into disguised correctness review. In a dissenting opinion, Justices Côté and O'Bonsawin would have upheld the decision as reasonable, including based on the relevant precedents, but also noted their disagreement with the majority's choice of remedy, agreeing with Justice Rowe that it was akin to correctness review.

Key takeaways

- Concerns about the potential for multiple competing interpretations in decisions of the same decision-maker do not rebut the presumption of reasonableness review.
- Precedents must be pertinent, on point, and relevant to the question before the decision-maker, and reliance on those precedents must be explained and

justified in the reasons, including in light of the principles of statutory interpretation.
- Some statutory contexts that involve vulnerable individuals, such as immigration, may require a higher burden of justification since decision-makers must take into account and justify any particularly harsh consequences for affected individuals.
- On narrow issues of statutory interpretation with limited interpretive options, courts may be more willing to conclude that there is only one reasonable interpretation rather than remit the decision for reconsideration.

Nadia Effendi and Teagan Markin of Borden Ladner Gervais LLP represented the Canadian Civil Liberties Association as an intervener before the Supreme Court of Canada.

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