



The Supreme Court upholds guidelines used to assess certain property for municipal tax purposes in Alberta.

This appeal and [*Auer v. Auer*](#), which was released on the same day, are both about the standard of review that applies when subordinate legislation is challenged on judicial review before a court. Subordinate legislation sets out legally binding rules that are not made by a legislature, such as the Legislative Assembly of Alberta, but instead by another entity given authority to make them by that legislature. The standard of review is the approach a court takes to analyzing a decision, like a decision to make subordinate legislation.

TransAlta Generation Partnership owns coal-fired electric power generation facilities in Alberta. In 2016, TransAlta entered into an agreement with Alberta. It agreed to cease coal-fired emissions on or before December 31, 2030, in exchange for substantial transition payments from Alberta for 14 years to compensate for losses resulting from the reduced life of its coal-fired facilities.

TransAlta's coal-fired facilities are assessed as "linear property" for municipal tax purposes. Alberta's *Municipal Government Act* authorizes the Minister of Municipal Affairs to establish guidelines for assessing the value of linear property. In 2017, the Minister established the *2017 Alberta Linear Property Assessment Minister's Guidelines* under the Act. The Guidelines, which are subordinate legislation, deprive TransAlta of the ability to claim a more favourable tax position because of the reduction in its facilities' lifespan resulting from the off-coal agreement. TransAlta said the Minister had gone beyond his authority in making the Guidelines (that they were *ultra vires*) because they are discriminatory and inconsistent with the purposes of the Act.

The Court of King's Bench said the Guidelines were valid and did not discriminate against TransAlta. The Court of Appeal dismissed TransAlta's appeal. The Court of Appeal held that the principles articulated in the Supreme Court of Canada's decision in *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)* determined how the Guidelines should be reviewed. That decision says that in order to find subordinate legislation to be beyond the authority granted by a statute because it is inconsistent with the purpose of that statute, it had to be shown that it was "irrelevant, extraneous, or completely unrelated" to the purpose.

The Court of Appeal held that the subsequent decision in [*Canada \(Minister of Citizenship and Immigration\) v. Vavilov*](#) did not change these principles. Following *Vavilov*, the presumptive standard of review is reasonableness. A reasonable decision is based on a logical chain of reasoning. It has to make sense in light of the law and the facts, but need not be the only right answer.

TransAlta appealed again to the Supreme Court of Canada. The Supreme Court has dismissed its appeal.

The guidelines fall reasonably within the scope of the Minister's authority under Alberta's *Municipal Government Act*.

Writing for a unanimous Court, Justice Côté explained that the reasonableness standard under *Vavilov* presumptively applies when reviewing whether subordinate legislation was authorized by law. Certain principles from *Katz Group* continue to inform reasonableness review, but for a court to find subordinate legislation to be beyond the authority granted in statute because it is inconsistent with the purpose of that statute, it no longer needs to be "irrelevant, extraneous or completely unrelated" to that purpose. The governing statutory scheme, other applicable statutory or common law rules, and the principles of statutory interpretation are particularly relevant constraints when determining whether subordinate legislation falls reasonably within the scope of the authority.

In the instant case, no exception to the presumption of reasonableness review applies. Having regard to the governing statutory scheme, the principles of statutory interpretation, and the common law rule against administrative discrimination, the Guidelines are within the scope of the Minister's authority.

Breakdown of the decision: *Unanimous*: Justice [Côté](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Rowe](#), [Martin](#), [Kasirer](#), [Jamal](#), [O'Bonsawin](#) and [Moreau](#) agreed)

More information: [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [Decision on Judicial Review](#) (Court of King's Bench of Alberta) | [Appeal](#) (Court of Appeal of Alberta)
