



Case in Brief: **Auer v. Auer**

Judgment of November 8, 2024 | On appeal from the Court of Appeal of Alberta
Neutral citation: 2024 SCC 36

The Supreme Court upholds guidelines used to determine child support amounts in case of divorce.

This appeal and [*TransAlta Generation Partnership v. Alberta*](#), 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 federal Parliament, 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.

Mr. Roland Auer and Ms. Aysel Auer were married in 2004. They had one child together and divorced in 2008. Mr. Auer paid child support to Ms. Auer, but brought an application for judicial review challenging the *Federal Child Support Guidelines*, subordinate legislation which determines the amount of child support to be paid in case of divorce. The Governor in Council (the Governor General acting on the advice of Cabinet) has authority under the *Divorce Act* to make guidelines dealing with orders for such child support. Mr. Auer argued that the Governor in Council had gone beyond this authority in making the *Guidelines* (that they were *ultra vires*) because they require a payer parent like Mr. Auer to pay a greater share of the child-related costs than the recipient parent.

The Court of King's Bench concluded that the *Guidelines* were within the authority of the Governor in Council to make and dismissed Mr. Auer's application for judicial review. It held that, following a decision of the Supreme Court of Canada called [*Canada \(Minister of Citizenship and Immigration\) v. Vavilov*](#), reasonableness is the presumptive standard of review for assessing whether there was authority to make subordinate legislation. 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. The Court of King's Bench also said that reasonableness review should be informed by the principles outlined in an earlier Supreme Court case called *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*. 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 unanimously dismissed Mr. Auer's appeal but was divided on the standard of review. A majority held that *Vavilov* did not change the principles from *Katz Group* and that to conclude the *Guidelines* were not authorized by the *Divorce Act* because they were inconsistent with the purpose of that Act, they had to be "irrelevant, extraneous, or completely unrelated" to that purpose.

Mr. Auer appealed again to the Supreme Court of Canada, arguing that the *Guidelines* were not authorized by law. The Supreme Court has dismissed his appeal.

The guidelines fall reasonably within the scope of the Governor in Council's authority under the *Divorce Act*.

Writing for a unanimous Court, Justice Côté explained that *Vavilov's* robust reasonableness standard is the presumptive standard for reviewing whether subordinate legislation was authorized by law. Some of the principles from *Katz Group* continue to inform such reasonableness review. However, 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 statutory 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, the Guidelines fall reasonably within the Governor in Council's scope of authority under the *Divorce Act*, having regard to the relevant constraints. Under s. 26.1(1), the Governor in Council is granted extremely broad authority to establish guidelines respecting child support. Section 26.1(2) constrains this authority by requiring that the guidelines be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute. The Guidelines respect this constraint.

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)

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