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An Administrative Lawyer's Thoughts on the Standard of Review for Commercial Arbitration Decisions after *Sattva* and *Vavilov*

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Arbitration is intended to be an efficient non-judicial means for resolving disputes by a mutually acceptable third-party. It is not surprising, therefore, that the legislative framework for arbitrations provides only limited rights of appeal to the courts from an arbitration award. This gives rise to two questions: (1) *Is* an appeal available? and (2) if so, what standard of review should the court apply? The answers to these questions have been in a state of flux since the Supreme Court's decisions in *Sattva* in 2016 and *Vavilov* in 2019. The purpose of this presentation is to examine these issues.

A. Rights of appeal from arbitration awards

The Alberta *Arbitration Act*[2] allow the parties to determine the scope of any appeal:

> 44 (1) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law, on a question of fact or on a question of mixed law and fact.

In the absence of such an agreement, an appeal may only be taken on a question of law, with the permission of the court:

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1. I thank Olivia Pring from our office for her contribution to this presentation.

2. RSA 2000, c A-43.

> 44 (2) If the arbitration agreement does not provide that the parties may appeal an award to the court on a question of law, a party may, with the permission of the court, appeal an award to the court on a question of law.
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> (2.1) The court shall grant the permission referred to in subsection (2) only if it is satisfied that
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> (a) the importance to the parties of the matters at stake in the arbitration justifies an appeal, and
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> (b) the determination of the question of law at issue will significantly affect the rights of the parties.
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> (3) Notwithstanding subsections (1) and (2), a party may not appeal an award to the court on a question of law that the parties expressly referred to the arbitral tribunal for decision.

An appeal or application for leave to appeal must be made within 30 days from receipt of the award: section 46(1).

And there is a further right of appeal to the Court of Appeal: section 48.

Given parties' autonomy in designing their arbitration regime, presumably the arbitration agreement could specify another body to hear an appeal, as well as the particular standards of review.[3]

In addition, the Court may set aside an award on various grounds specified in section 45(a) such as invalidity of the arbitration agreement or the appointment of the arbitral tribunal; unfair procedures or a reasonable apprehension of bias; non-compliance with the Act; or fraud.

The Alberta *International Commercial Arbitration Act*[4] incorporates the *Uncitral Model Law*, which does not provide for a right of appeal, but specifies that the exclusive judicial remedy is to set aside the award on grounds similar to those in section 45(a) of the Alberta *Arbitration Act*.

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3. James Plotkin, "The Standard of Review on Appeals from Domestic Arbitral Awards Should be Open to Party Agreement", (2018-19) 5 McGill Journal of Dispute Resolution 171.

4. RSA 2000, c I-5.

B. Cross-overs between principles of judicial review in administrative law and appeals of arbitration awards

Arbitrations and adjudicative administrative proceedings are functionally similar. However, arbitrations are consensual and are not statutory in nature (even if there is a statutory backdrop that provides a framework for the arbitration agreement, the essence is consensual).

Administrative law remedies like *certiorari* are only available with respect to statutory tribunals. Because arbitration panels are not statutory tribunals, administrative law remedies as such are not available to review arbitration awards. Nevertheless, the courts adopted a broad interpretation of the statutory reference to "misconduct" as a ground for setting aside a non-statutory arbitration award, going beyond mere errors of law, and broadly parallelling the grounds for judicial review of statutory decisions.[5]

Similarly, the courts had a tendency to apply the administrative law concept of deference when determining how intensely to review arbitral decisions—that is, the *standard* of review.[6] For some years in the late 1990s and early 2000s, the Supreme Court of Canada itself transposed the complicated standard-of-review analysis from administrative law into the context of statutory appeals: *Pezim*,[7] *Southam*,[8] *Ryan*[9] and *Dr. Q.*[10] Both statutory appeals and applications for judicial review were lumped together as "judicial review" (as opposed to "curial review"). As a result, for many years in Canadian administrative law the mere existence of a right of appeal about a question of law or even "on the merits" did not

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5. *Kent v. Elstob*, (1802) 3 East 18; *R.O.M. Construction Ltd. v. Electric Power Equipment Ltd.*, (1981) 121 DLR (3d) 753 (AB CA), leave to appeal refused at 121 DLR (3d) 753n; *Athabasca Realty Co. v. Merenick*, (1982) 36 AR 507 (QB).

6. *Shalansky v. Board of Governors of Regina Pasqua Hospital*, (1983) 145 D.L.R. (3d) 413 (SCC) at 416; *Suncor v. McMurray Independent Oil Wkrs, Loc. 1*, [1983] 1 WWR 604 (AB CA) where Kerans JA asserted that the patently unreasonable standard of review (as it then was) from administrative law (and particularly labour arbitrations, which *are* statutory in nature) would apply to consensual arbitrations.

7. [1994] 2 SCR 557.

8. [1997] SCR 748.

9. [2003] 1 SCR 247.

10. [2003] 1 SCR 226.

determine the standard of review to be applied by the appellate body, and did not automatically engage the correctness standard of review.[11]

The first part of *Vavilov*[12] changed course entirely, and made it clear that the civil standards of review from *Housen v. Nikolaisen*[13] apply to statutory appeals to the courts (whether from a statutory or a non-statutory body), not the standards of review applicable in applications for judicial review from statutory delegates. In *Housen*, the standard of review for a question of law is correctness.

C. The decision in *Sattva*

Prior to the 2014 Supreme Court of Canada's decision in *Sattva*,[14] the interpretation of the underlying commercial contract giving rise to an arbitration was generally considered to be a question of law—which both (1) gave the court jurisdiction to deal with appeal, and also (2) at least theoretically engaged the correctness standard of review applicable in civil appeals.

Sattva decided that the interpretation of a contract was not a pure question of law, but rather a question of mixed fact and law that needed to take into account the context and circumstances surrounding the formation of the contract. Accordingly, because the statute only provided for appeals (with leave) on questions of law, no appeal was available. This is the *ratio* of the Supreme Court's decision. However, Justice Rothstein (writing for a unanimous seven-member panel) went on in *obiter* to consider that a deferential standard of review would apply if the court had had jurisdiction to deal with the question of mixed fact and law, applying the analogy of the deferential administrative law standard of reasonableness from *Dunsmuir*:

> **Standard of Review Under the AA**
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> [102] I now turn to consideration of the decisions of the appeal courts. It is first necessary to determine the standard of review of the arbitrator's decision in respect of the question on which the CA Leave Court granted leave: whether the arbitrator construed the finder's fee provision in light of the Agreement as a whole, particularly,

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11. The situation in England is different: the courts will correct all errors of law made by statutory delegates.

12. 2019 SCC 65.

13. 2002 SCC 33 at paragraph 33.

14. [2014] 2 SCR 633.

whether the finder's fee provision was interpreted having regard for the "maximum amount" proviso.

[103] At the outset, it is important to note that the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, which sets out standards of review of the decisions of many statutory tribunals in British Columbia (see ss. 58 and 59), does not apply in the case of arbitrations under the *AA*.

[104] Appellate review of commercial arbitration awards takes place under a tightly defined regime specifically tailored to the objectives of commercial arbitrations and is different from judicial review of a decision of a statutory tribunal. For example, for the most part, parties engage in arbitration by mutual choice, not by way of a statutory process. Additionally, unlike statutory tribunals, the parties to the arbitration select the number and identity of the arbitrators. These differences mean that the judicial review framework developed in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, and the cases that followed it, is not entirely applicable to the commercial arbitration context. For example, the *AA* forbids review of an arbitrator's factual findings. In the context of commercial arbitration, such a provision is absolute. Under the *Dunsmuir* judicial review framework, a privative clause does not prevent a court from reviewing a decision, it simply signals deference (*Dunsmuir*, at para. 31).

[105] Nevertheless, judicial review of administrative tribunal decisions and appeals of arbitration awards are analogous in some respects. Both involve a court reviewing the decision of a nonjudicial decision-maker. Additionally, as expertise is a factor in judicial review, it is a factor in commercial arbitrations: where parties choose their own decision-maker, it may be presumed that such decision-makers are chosen either based on their expertise in the area which is the subject of dispute or are otherwise qualified in a manner that is acceptable to the parties. For these reasons, aspects of the *Dunsmuir* framework are helpful in determining the appropriate standard of review to apply in the case of commercial arbitration awards.

[106] *Dunsmuir* and the post-*Dunsmuir* jurisprudence confirm that it will often be possible to determine the standard of review by focusing on the nature of the question at issue (see for example *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 44). In the context of commercial arbitration, where appeals are restricted to questions of law, the standard of review will be reasonableness unless the question is one that would attract the correctness standard, such as constitutional questions or questions of law of central importance to the legal system as a whole and outside the adjudicator's expertise (*Alberta Teachers' Association*, at para. 30). The question at issue here, whether the arbitrator interpreted the Agreement as a whole, does not fall into one of those categories. The relevant portions of the *Dunsmuir* analysis point to a standard of review of reasonableness in this case.

[Underlining added]

D. *Teal Cedar*

The litigation in *Teal Cedar v. British Columbia*[15] straddled the Supreme Court's decision in *Sattva*. After remitting the matter to the B.C. Court of Appeal to consider the effect of *Sattva*, the Supreme Court of Canada's decision in 2017 noted that arbitration statutes restrict the availability of appeals to questions of law only, so that characterization is a jurisdictional limitation; and confirmed in *Sattva* that the standard of review for an error of law in an arbitration matter is "almost always" reasonableness, not correctness.

> I. Overview
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> [1] In British Columbia, the scope of appellate intervention in commercial arbitration is narrow in two key ways. First, there is limited jurisdiction for appellate review of arbitration awards because that jurisdiction is statutorily limited to questions of law (*Arbitration Act*, R.S.B.C. 1996, c. 55, s. 31). Second, even where such jurisdiction exists, our Court recently held that a deferential standard of review — reasonableness — "almost always" applies to arbitration awards (*Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at paras. 75, 104 and 106). Together, limited jurisdiction and deferential review advance the central aims of commercial arbitration: efficiency and finality.

(a) The jurisdictional issue

Appeals are creatures of statute, and rights of appeal do not exist in the absence of a statutory provision. Because the applicable arbitration statute only provided an appeal on a question of law, a finding that the question on appeal is *not* a question of law necessarily means that the court does not have jurisdiction to entertain the appeal.

> [42] Unlike privative clauses which merely "signa[l]" deference in the context of judicial review of administrative tribunal decisions, statutory limitations on the scope of appellate review of arbitration awards are "absolute" (*Sattva*, at para. 104). In consequence, a finding that the questions on appeal — the Valuation, Interest and Lillooet Issues — are not questions of law would wholly dispose of the issue of the courts' jurisdiction to review those questions.

Two observations about this quote, which again contains a comparison with administrative law:

- First, the scope of the court's jurisdiction with respect to a statutory appeal is determined by the statute, whereas a superior court has inherent jurisdiction to

15. [2017] 1 SCR 688 (*per* Gascon J for the five-member majority; Moldaver, Côté, Brown and Rowe JJ dissenting in part).

judicially review the actions of statutory delegates, subject to being limited by a privative clause. In the former case, the statutory language *creates* the court's jurisdiction; in the latter case, the statutory language limits the court's jurisdiction.

- Secondly, Justice Gascon's statement that privative clauses merely signal deference in the context of judicial review of administrative tribunal refers to the *standard* of review, not to the court's jurisdiction. While the statement arguably reflected the state of administrative law in 2017 after *Pushpanathan*[16] and *Dunsmuir*,[17] there is a longstanding issue (simmering since *Vavilov*) about whether the legislation can—with absolutely clear language—constitutionally deprive the court of jurisdiction to review a statutory delegate's decision: *Crevier*,[18] *Best Buy*,[19] *Northback*[20] and *Democracy Watch*.[21]

As Justice Gascon observes,[22] where the statutory appeal provision *requires* a question of law (as in section 44(2) of the *Arbitration Act*), the characterization of the issue as a question of fact or mixed fact and law will prevent there being any appeal to the court, whereas for an appeal in other civil litigation such a characterization would only change the applicable standard of review (from correctness to the more deferential standard of there being a palpable and overriding error).

Of course, the Alberta Act contemplates that the parties might agree in the arbitration agreement for a right of appeal on a question of fact or a mixed question of fact and law: section 44(1). This would change the scope of the jurisdictional question to be determined by the court, as well as the applicable standard of review.

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16. *Pushpanathan v. Canada (Minister of Employment & Immigration)*, [1998] 1 SCR 982.

17. *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190.

18. *Crevier v Quebec*, [1981] 2 SCR 220.

19. *Best Buy v. Canada*, 2021 FCA 161.

20. *Northback Holdings Corporation v Alberta Energy Regulator*, 2025 ABCA 186 (especially the *obiter* dissent by Khullar CJA).

21. *Democracy Watch v. Attorney General of Canada*, 2024 FCA 158; leave to appeal granted by SCC.

22. At paragraphs 42 and 46.

(b) "Extricable errors of law"

In relatively rare cases, there may be an "extricable error of law" even in situations involving questions of fact or mixed fact and law, if the underlying legal test has been altered or improperly applied:

> [44] That said, while the application of a legal test to a set of facts is a mixed question, if, in the course of that application, the underlying legal test may have been altered, then a legal question arises. For example, if a party alleges that a judge (or arbitrator) while applying a legal test failed to consider a required element of that test, that party alleges that the judge (or arbitrator), in effect, deleted that element from the test and thus altered the legal test. As the Court explained in *Southam*, at para. 39:
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> > . . . if a decision-maker says that the correct test requires him or her to consider A, B, C, and D, but in fact the decision-maker considers only A, B, and C, then the outcome is as if he or she had applied a law that required consideration of only A, B, and C. If the correct test requires him or her to consider D as well, then the decision-maker has in effect applied the wrong law, and so has made an error of law.
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> Such an allegation ultimately challenges whether the judge (or arbitrator) relied on the correct legal test, thus raising a question of law (*Sattva*, at para. 53; *Housen*, at paras. 31 and 34-35). Accordingly, such a legal question, if alleged in the context of a dispute under the *Arbitration Act*, and assuming the other jurisdictional requirements of that Act are met, is open to appellate review. These "extricable questions of law" are better understood as a covert form of legal question — where a judge's (or arbitrator's) legal test is implicit to their application of the test rather than explicit in their description of the test — than as a fourth and distinct category of questions.
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> [45] Courts should, however, exercise caution in identifying extricable questions of law because mixed questions, by definition, involve aspects of law. The motivations for counsel to strategically frame a mixed question as a legal question — for example, to gain jurisdiction in appeals from arbitration awards or a favourable standard of review in appeals from civil litigation judgments — are transparent (*Sattva*, at para. 54; *Southam*, at para. 36). A narrow scope for extricable questions of law is consistent with finality in commercial arbitration and, more broadly, with deference to factual findings. Courts must be vigilant in distinguishing between a party alleging that a legal test may have been altered in the course of its application (an extricable question of law; *Sattva*, at para. 53), and a party alleging that a legal test, which was unaltered, should have, when applied, resulted in a different outcome (a mixed question).

(c) A question of statutory interpretation is a question of law

Justice Gascon held that part of the Valuation Issue involved a question of statutory interpretation (namely, which methods of valuation which are acceptable under the terms of the *Revitalization Act*), and accordingly are questions of law which the courts have jurisdiction to review—unlike most contractual interpretation, which involves mixed questions of fact and law.

Accordingly, characterizing the nature of the specific question before the court requires delicate consideration of the narrow issue actually in dispute.[23]

(d) The jurisdictional issue must be determined first

Justice Gascon was clear that the jurisdictional issue must be determined first, before attempting to answer the issue by assuming the court jurisdiction:

> [60] Likewise, it is improper to claim that a court should have jurisdiction to review the arbitrator's contractual analysis merely on the basis that it was allegedly incorrect. Indeed, it would even be improper to claim jurisdiction to review an arbitrator's analysis merely on the basis that it was unreasonable. A court looking at the Amended Agreement could have held that the No Interest Clause precluded interest payments and that the Arbitration Clause incorporated that preclusion when it submitted "compensation" (without interest) to arbitration. But to immediately launch into the merits of the arbitrator's contractual analysis — whether it is incorrect or unreasonable — is to put the cart before the horse. His analysis must first be characterized as raising a legal question. And only on the basis of that characterization may his analysis then be reviewed.

(e) The standard of review in *Teal* for an appeal under the *Arbitration Act* on a question of law

Justice Gascon affirmed the finding in Sattva that the standard of review for a commercial arbitration award is almost always reasonableness—characterizing the issue as a question of law does not necessarily or automatically engage the correctness standard of review:

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23. Paragraph 47.

B. *Standard of Review*

(1) Standard of Review for Commercial Arbitration Awards

> [74] In an arbitral context like this one, where the decision under review is an award under the *Arbitration Act*, *Sattva* establishes that the standard of review is "almost always" reasonableness (para. 75). This preference for a reasonableness standard dovetails with the key policy objectives of commercial arbitration, namely efficiency and finality. In *Sattva*, Rothstein J. emphasizes that in "commercial arbitration, where appeals are restricted to questions of law, the standard of review will be reasonableness unless the question is one that would attract the correctness standard" (para. 106). He suggests that this may arise only in rare circumstances, such as where a constitutional question or a question of law of central importance to the legal system as a whole and outside the adjudicator's expertise is at issue (paras. 75 and 106).
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> [75] It follows that the nature of the question under review — i.e. legal, factual, or mixed — may inform whether one of those circumstances is present, but it is not dispositive, in itself, of the applicable standard of review. For instance, it would be an error to claim that all statutory interpretation by an arbitrator demands correctness review simply because it engages a legal question. While statutory interpretation is a legal question (*Heritage*, at para. 23, citing *Canadian National Railway*, at para. 33), the mere presence of a legal question does not, on its own, preclude the application of a reasonableness review in a commercial arbitration context. *Sattva* is clear in this regard.
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> [Underlining added]

Justice Gascon criticized the Court of Appeal's implicit application of the correctness standard of review, saying it ignored what *Sattva* decided:

> [78] However, on remand, the Court of Appeal had the benefit of *Sattva*, and its decision was specifically directed toward reconsidering the majority's decision in light of *Sattva*. In my view, the Court of Appeal erroneously held that the standard of review should be correctness for the Valuation Issue (paras. 35-37). Its decision appears to suggest that questions of law, such as statutory interpretation, necessarily attract a correctness standard of review (paras. 36-37). In so far as the Court of Appeal intended to make this suggestion, it is incorrect. As stated before, while the nature of the question (legal, mixed, or fact) is dispositive of the standard of review in the civil litigation context (*Housen*, at paras. 8, 10 and 36), it is not in the commercial arbitration context (*Sattva*, at paras. 75 and 106).
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> [79] Rather, the standard of review on the legal questions arising from the arbitrator's analysis of the Valuation Issue is reasonableness. As discussed, under *Sattva*, reasonableness review is almost always applied in commercial arbitration (para. 75). That preference is not negated here in light of the nature of the question at issue and the arbitrator's presumed expertise.

[80] The question at issue — determining the category of appropriate valuation methodologies under a BC forestry statute — is not a previously recognized exceptional question identified in *Sattva* (paras. 75 and 106). It is clearly not a constitutional question. Similarly, it is neither of central importance to the legal system as a whole (limited, as it is, to a single province and a single industry) nor is it outside the expertise of the arbitrator (whom the parties chose to adjudicate this very dispute and whose expertise is therefore presumed). Further, the relevant portions of the *Dunsmuir* analysis (as per *Sattva*, at para. 106) favour reasonableness review.

[81] For example, specialized expertise supports reasonableness review here. As discussed, the parties selected the arbitrator to adjudicate this exact issue, hence unambiguously affirming their acceptance of his sufficient expertise. Despite this, in its decision on remand, the Court of Appeal held that the arbitrator's lack of expertise regarding forestry statutes favoured a correctness standard of review (para. 35). With respect, that disregards this Court's guidance in *Sattva* that arbitrators chosen by the parties "may be presumed . . . chosen either based on their expertise in the area which is the subject of dispute or . . . otherwise qualified in a manner that is acceptable to the parties" (para. 105). The Court of Appeal's reasoning also disregards the practical reality that, to weigh an arbitrator's actual (as opposed to presumed) expertise in every arbitration would require some sort of preliminary assessment of the arbitrator's level of expertise with a view to establishing the standard of review for every particular hearing — which would be antithetical to the efficiencies meant to be gained through the arbitration process.

[82] Of course, the presumed expertise of a decision-maker remains a "contextual" consideration (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 64). In *Sattva*, the arbitration was voluntary (para. 9), whereas arbitration in this case was statutorily imposed (*Revitalization Act*, s. 6(6)), a point specifically made by the Court of Appeal in its decision on remand (para. 35). But that distinction does not amount to much. The parties in this case still had complete control over the choice of their arbitrator; despite anticipated regulations "prescribing requirements for the selection of arbitrators" (*Revitalization Act*, s. 13(2)(b)(v)), no such regulations had been enacted at the time the arbitration arose. In addition, as noted, the arbitrator here considered the very issue he was mandated to address by both statute and party consent. If an issue were to arise in the course of an arbitration that was beyond the foreseeable scope of an arbitrator's mandate, that could well undermine an arbitrator's presumed expertise. But that is simply not the case before us.

[83] In closing on this point, I observe that the applicability of a reasonableness standard of review in this case is hardly disputable. We are, after all, in a commercial arbitration context, in which, from a policy perspective, the deliberate aim is to maximize efficiency and finality. Further, the arbitrator was specifically assigned jurisdiction over the discrete issue of valuation by the *Revitalization Act* (s. 6(6)), an issue in which he, having been chosen by consent of the parties, is expected to have specialized expertise. This merits deferential review.

[Underlining added.]

(f) The arbitrator's decision on the Valuation Issue was reasonable.

Applying the reasonableness standard of review, Justice Gascon held that the arbitrator's award on the Valuation Issue was reasonable.

(g) The minority's decision

The minority (Justices Moldaver, Côté, Brown and Rowe) agreed that the issues of contractual interpretation were not questions of law that were reviewable under the *Arbitration Act*.

However, they did not find it necessary to decide the standard of review for the interpretation of s. 6(4). There was only one interpretation that was either correct or reasonable: namely, that Teal as a licence holder was only entitled to receive compensation for its limited interest in the improvements. Accordingly, they would have allowed the appeal on this issue, and remitted the issue of compensation for the improvements relating to the three licences held by Teal to the arbitrator. (The majority upheld the arbitrator's decision on this issue.)

(h) Comment on the majority's reasoning on selecting the reasonableness standard of review

As in *Sattva*, this line of analysis makes perfect sense if one applies the standard-of-review analysis from *Dunsmuir* in administrative law. Specifically, in applications for judicial review in administrative law, questions of law do not automatically engage the correctness standard of review.

E. *Vavilov*

(a) What did *Vavilov* do?

The 2019 decision in *Vavilov*[24] involved a comprehensive re-working of standards of review in administrative law, and had two principal parts:

- First, *Vavilov* set reasonableness as the general default standard of review for applications for judicial review (with very limited exceptions). This builds on *Dunsmuir*, and effectively abolishes the "standard of review analysis" previously required by *Pushpanathan*. It also moved "expertise" from the first step of determining the standard of review, making it relevant only to the determination

24. *Canada v. Vavilov*, 2019 SCC 65.

of whether the impugned administrative decision was reasonable. The default reasonableness standard of review applies to virtually all questions of law, not correctness. The default reasonableness standard of review is the part of *Vavilov* which is most relevant to administrative law.

- Secondly, *Vavilov* provides that the standards of review on an appeal from a statutory delegate to a court[25] are the appellate standards of review set out in *Housen v. Nikolaisen* in civil litigation.

> B. *Derogation From the Presumption of Reasonableness Review on the Basis of Legislative Intent*
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> [33] This Court has described respect for legislative intent as the "polar star" of judicial review: *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539, at para. 149. This description remains apt. The presumption of reasonableness review discussed above is intended to give effect to the legislature's choice to leave certain matters with administrative decision makers rather than the courts. It follows that this presumption will be rebutted where a legislature has indicated that a different standard should apply. The legislature can do so in two ways. First, it may explicitly prescribe through statute what standard courts should apply when reviewing decisions of a particular administrative decision maker. Second, it may direct that derogation from the presumption of reasonableness review is appropriate by providing for a statutory appeal mechanism from an administrative decision maker to a court, thereby signalling the application of appellate standards.
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> . . .
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> [37] It should therefore be recognized that, where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision. This means that the applicable standard is to be determined with reference to the nature of the question and to this Court's jurisprudence on appellate standards of review. Where, for example, a court is hearing an appeal from an administrative decision, it would, in considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision maker's authority, apply the standard of correctness in accordance with *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8. Where the scope of the statutory appeal includes questions of fact, the appellate standard of review for those questions is palpable and overriding error (as it is for questions of mixed fact and law where the legal principle is not readily extricable): see *Housen*, at paras. 10, 19 and 26.37. Of course, should a legislature intend that a different standard of review apply in a

25. But not to another administrative body: *Moffat v. Edmonton (City) Police Service*, 2021 ABCA 183.

> statutory appeal, it is always free to make that intention known by prescribing the applicable standard through statute.
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> [Underlining added.]

This was a departure from the previous jurisprudence which had applied the same standards of review analysis to applications for judicial review and to appeals: *Dr Q, Pezim*, *Southam*, etc. (which could result in the courts on an appeal deferring on questions of law rather than correcting errors). The Court justified this change (a) as a simplification that (b) was faithful to the intention of the legislature in creating the appeal, (c) treated all statutory appeals in the same way, and (d) was consistent with moving away from a contextual analysis to determine the applicable standard of review.[26] See Appendix A to this paper for the majority's rationale.

(b) Does *Vavilov* apply to appeals to the court from arbitration awards?

Vavilov's rationale would apply to appeals to the court from arbitration awards—that is, like any other appeal, the *Housen v. Nikolaisen* standards of review would apply, including correctness for any issue of law. This would change the deferential exhortations in *Sattva* and *Teal Cedar*.

Justices Brown, Côté and Rowe, writing for the minority in *Wastech*,[27] addressed this issue:

> [117] Our colleague refrains from identifying the standard of review, since on either standard he would overturn the arbitrator's conclusions. In our view, however, this Court ought to provide clear guidance on this point. Conflicting lines of authority have arisen concerning the application of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, to arbitration appeals (*Northland Utilities (NWT) Limited v. Hay River (Town of)*, 2021 NWTCA 1, at paras. 21-44 (CanLII); *Ontario First Nations (2008) Limited Partnership v. Ontario Lottery And Gaming Corporation*, 2020 ONSC 1516, at paras. 62-75 (CanLII); *Cove Contracting Ltd. v. Condominium Corporation No 012 5598 (Ravine Park)*, 2020 ABQB 106, 10 Alta. L.R. (7th) 178, at paras. 3-12; *Allstate Insurance Co. v. Ontario (Minister of Finance)*, 2020 ONSC 830, 149 O.R. (3d) 761, at paras. 12-19; *Buffalo Point First Nation v. Cottage Owners Association*, 2020 MBQB 20, at paras. 46-48 (CanLII); *Clark v. Unterschultz*, 2020 ABQB 338, 41 R.F.L. (8th) 28, at paras. 55-56). This question ought to be resolved.

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26. Paragraphs 38 to 47.

27. *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7.

[118] In *Vavilov*, this Court concluded that the appellate standards of review identified in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, apply to statutory rights of appeal from administrative decisions (para. 37). Certain trial courts have, however, resisted applying this principle to appeals from arbitral awards. Two reasons are offered for this. First, *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, and *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32, [2017] 1 S.C.R. 688, do not support the application of appellate standards of review to arbitration appeals, and *Vavilov* did not expressly overrule those decisions (*Ontario First Nations*, at para. 71; *Cove Contracting Ltd.*, at paras. 10 12). Secondly, *Vavilov* was driven by "constitutional considerations that justify deference by the judiciary to the legislature" (*Ontario First Nations*, at para. 72). In contrast, the standard of review that applies to appeals from private arbitration awards is "guided by commercial considerations about respect for the decision makers chosen by the parties. As a result, deference is justified by the parties' contractual intent" (*Ontario First Nations*, at para. 72).

[119] There are important differences between commercial arbitration and administrative decision making (*Sattva*, at para. 104). Those differences do not, however, affect the standard of review where the legislature has provided for a statutory right of appeal. Appellate standards of review apply as a matter of statutory interpretation. As this Court explained in *Vavilov*, "a legislative choice to enact a statutory right of appeal signals an intention to ascribe an appellate role to reviewing courts" (para. 39). This interpretive principle applies in similar manner to statutory rights of appeal from arbitral awards:

> More generally, there is no convincing reason to presume that legislatures mean something entirely different when they use the word "appeal" in an administrative law statute than they do in, for example, a criminal or commercial law context. Accepting that the word "appeal" refers to the same type of procedure in all these contexts also accords with the presumption of consistent expression, according to which the legislature is presumed to use language such that the same words have the same meaning both within a statute and across statutes: R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at p. 217.
> (*Vavilov*, at para. 44)

[120] Factors that justify deference to the arbitrator, notably respect for the parties' decision in favour of alternative dispute resolution and selection of an appropriate decision maker, are not relevant to this interpretive exercise. What matters are the words chosen by the legislature, and giving effect to the intention incorporated within those words. Thus, where a statute provides for an "appeal" from an arbitration award, the standards in *Housen* apply. To this extent, *Vavilov* has displaced the reasoning in *Sattva* and *Teal Cedar*. Concluding otherwise would undermine the coherence of *Vavilov* and the principles expressed therein.

> [121] The appeal in this case was brought pursuant to s. 31 of the *Arbitration Act*, R.S.B.C. 1996, c. 55,[2] which provides that, either by consent of the parties or with leave of the Supreme Court of British Columbia, a party to an arbitration "may appeal to the court on any question of law arising out of the award". In light of *Vavilov*, it follows that the standard of review to be applied by this Court in this case is correctness (*Housen*, at para. 8).
>
> Our conclusion on this point is limited to the specific statutory provision at issue. In every case, the question is one of legislative intention, as reflected in the language of the statute.
>
> [Underlining added.]

On the other hand, some courts have ruled that *Vavilov* did not change the standard of review on commercial arbitration appeals because *Vavilov* was an administrative law decision dealing with statutory delegates, and made no reference to *Sattva* or *Teal Cedar*.[28] As Justice Hainey put it in *Ontario First Nations (2008) Limited Partnership v. Ontario Lottery and Gaming Corporation*:[29]

> [71] The Supreme Court of Canada's comprehensive decision in *Vavilov* does not refer to the court's previous decisions in either *Sattva* or *Teal Cedar*. It is not reasonable to conclude that the Supreme Court meant to overrule these important decisions without making any reference to them or to the area of law to which they relate.
>
> [72] Further, as a matter of legal principle it is appropriate that *Vavilov* does not apply to commercial arbitrations. The administrative law standard of review established in *Vavilov* derives from constitutional considerations that justify deference by the judiciary to the legislature. This principle does not apply to commercial arbitrations. The standard of review for commercial arbitrations is guided by commercial considerations about respect for the decision-makers chosen by the parties. As a result, deference is justified by the parties' contractual intent. It is for this reason that Rothstein J. identified the key differences between administrative decisions and arbitral awards in *Sattva* and concluded that the judicial review framework for administrative decisions is not applicable in the commercial arbitration context.
>
> [74] ... The standard of review applicable to the majority's contractual interpretation of the GRSFA and to the damage award is reasonableness....

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28. See also *Cove Contracting Ltd.*, 2020 ABQB 106 at paragraph 6 (Dunlop J); *1010805 Alberta Ltd. v. Sundial Growers Inc.*, 2024 ABKB 173 (Nixon ACJ).

29. 2020 ONSC 1516.

Gerald Ghikas, KC has written two recent articles advocating reasonableness as the continuing standard of review, and describing how the courts should go about applying that standard.[30]

In *ATCO Electric v. AUC*,[31] Justice Slatter observed that *Vavilov* should not have the effect that the Court of Appeal is running the electrical system. Previous decisions about the applicable standard of review on appeals from the senior expert boards still presumptively apply—previous decisions that described an impugned decision as reasonable may very well also have found it was correct.

> **Standard of Review**
>
> [15] Section 29 of the *Alberta Utilities Commission Act*, SA 2007, c. A-37.2 provides an avenue of appeal from decisions of the Commission on a question of law or jurisdiction if permission to appeal is granted. The standard of review in statutory administrative appeals is the standard applied in ordinary civil appeals: *Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65 at para. 36, [2019] 4 SCR 653. Since appeals from the Commission are only possible on questions of law, the standard of review in this appeal is correctness. Deference is no longer extended to the Commission's decisions on points of law.
>
> [16] As the concurring reasons in *Vavilov* point out at para. 245, it is unlikely that the Legislature had the standard of review in mind when it replaced common law judicial review of regulatory tribunals with judicial review via statutory appeals. This was merely a choice of procedure and the reviewing forum. One thing is clear: by enacting a statutory appeal route the Legislature did not intend that the Court would take over the management of the electrical distribution and transmission system in Alberta. As noted in *FortisAlberta* at para. 172:
>
> > 172 One must also bear in mind that the questions raised have political and economic aspects. Courts are poorly positioned to opine on such matters. Judicial review considers the scope or breadth of jurisdiction, but by legislative design the selection of a policy choice from among a range of options lies with the Commission empowered and mandated to make that selection.
>
> This means that while appeals can be taken on points of law, the Court should not be quick to identify extricable questions of law in what are more properly categorized as

30. "The Reasonableness Standard of Review on Appeals on Questions of Law under Section 59 of the *Arbitration Act*", (2025) 83 The Advocate 185; "The 'Miscarriage of Justice' Test and the Reasonableness Standard of Review under Section 59(4)(A) of the *Arbitration Act*, S.B.C. 2020, c. 2", (2025) 83 Advocate 515.

31. 2023 ABCA 129 (footnotes omitted).

> mixed questions of fact and law, questions of policy, or matters of discretion: *Teal Cedar Products Ltd. v British Columbia*, 2017 SCC 32, [2017] 1 SCR 688. Deference to the Commission and its expertise are still appropriate on many important issues, and its reasons are important input in the correctness review: *Vavilov* at para. 54; *Planet Energy (Ontario) Corp. v Ontario Energy Board*, 2020 ONSC 598 at paras. 26, 31 (Div Ct).
>
> [17] Another predictable effect of *Vavilov* is that it has the potential to destabilize some of the precedents of this Court in this important area of law: see *Neptune Wellness Solutions v Canada (Border Services Agency, President)*, 2020 FCA 151 at para. 13. For example, in *FortisAlberta* this Court held that the standard of review of the Commission's legal decisions was reasonableness, even though a correctness standard of review had been used in *Stores Block*. One premise of the reasonableness standard of review was that some legal issues were open to several interpretations, particularly having regard to policy and discretionary considerations. In the present appeal the appellant argues that *FortisAlberta* is no longer a binding precedent because the standard of review has changed.
>
> [18] *Vavilov* should not be read as automatically displacing all the case law decided under the pre-*Vavilov* standard of review regime. For one thing, even if a decision was reviewed for "reasonableness" and found to be reasonable, that does not mean that the reviewing court did not also agree that the decision was "correct": see for example *FortisAlberta* at paras. 130, 134, 137-38, 148. Further, decisions like *FortisAlberta* were themselves based on binding decisions like *Stores Block*. If the tribunal decision in *FortisAlberta* had failed to follow binding precedent it would not have been reasonable. The importance of stability in the law means that after *Vavilov* binding precedents of this Court should presumptively be regarded as continuing to be binding, notwithstanding the change in the standard of review analysis: see *Vavilov* at paras. 18, 143-33.

Appendix B to this paper sets out some of the decisions and reasoning dealing with the effect of *Vavilov* on the standard of review in appeals from arbitration awards.

F. Some remaining issues

In my view, there isn't any authoritative decision from the Supreme Court changing the deferential standard of review from *Sattva* and *Teal Cedar* for appeals from arbitration awards.

However, the rationale in *Vavilov* would engage the standards of review from *Housen v. Nikolaisen* for appeals from arbitration awards. One consequence would be to change the standard of review for questions of law to correctness.

If the particular arbitration agreement permits appeals on questions of fact or mixed fact and law, the palpable and overriding standard from *Housen* would apply. In such a case, there

would not be the jurisdictional issue that Justice Gascon focussed on in *Teal Cedar*. But the language of stating the standard of review would be different ("palpable and overriding" vs. "unreasonable").

Does the fact that the parties have chosen arbitration, and the arbitrators, nevertheless support continuing with deferential review from *Sattva* and *Teal Cedar*, even on questions of law, notwithstanding *Vavilov*?

Should the legislature amend the *Arbitration Act* to specify a deferential standard of review on questions of law?

Could the agreement contain a provision about the standard of review? Would the courts give effect to that because arbitration is the creature of an agreement between the parties? Or would it be contrary to public policy?

G. Resources

- James Plotkin: "*Vavilov* at 5–*Vavilov's* Impact on Private Arbitration," in Mark Mancini's *Sunday Evening Administrative Law Review* for December 22, 2024, accessible at https://sear.substack.com/p/vavilov-at-5-james-plotkin.

- James Plotkin & Mark Mancini, "Inspired by *Vavilov*, Made for Arbitration: Why the Appellate Standard of Review Should Apply to Appeals from Arbitral Awards", (2021) Vol 2, No. 1, *The Canadian Journal of Commercial Arbitration* 1; accessible at https://www.canlii.org/commentary/journals/83/4517.

- Gerald Ghikas, KC, "The Reasonableness Standard of Review on Appeals on Questions of Law under Section 59 of the *Arbitration Act*", (2025) 83 *The Advocate* 185.

- Gerald Ghikas, KC, "The 'Miscarriage of Justice' Test and the Reasonableness Standard of Review under Section 59(4)(A) of the *Arbitration Act*, S.B.C. 2020, c. 2", (2025) 83 *The Advocate* 515.

- Lauren J. Wihak, K.C., "Selecting Standards of Review on Statutory Appeals: A Major Change from *Vavilov* Garnering Minimal Attention But Having Significant Theoretical and Practical Implications", (2025) 63 Alta. L.R. 1, accessible at https://albertalawreview.com/index.php/ALR/issue/view/256.

- Paul Daly, "Unresolved Issues after *Vavilov*", 2022 85-1 Sask L.R., accessible at 2022 CanLIIDocs 1412.

- Jones & de Villars, *Principles of Administrative Law*, 8th ed 2025 (Thomson Reuters), Chapter 12.

APPENDIX A

The justification in *Vavilov* for applying *Housen v. Nikolaisen* standards of review for appeals to the court from a statutory delegate

[38] We acknowledge that giving effect to statutory appeal mechanisms in this way departs from the Court's recent jurisprudence. However, after careful consideration, we are of the view that this shift is necessary in order to bring coherence and conceptual balance to the standard of review analysis and is justified by a weighing of the values of certainty and correctness: *Craig*, at para. 27. Our conclusion is based on the following considerations.

[39] First, there has been significant judicial and academic criticism of this Court's recent approach to statutory appeal rights: see, e.g., Y..M. Morissette, "What is a 'reasonable decision'?" (2018), 31 *C.J.A.L.P.* 225, at p. 244; the Hon. J. T. Robertson, *Administrative Deference: The Canadian Doctrine that Continues to Disappoint* (April 18, 2018) (online), at p. 8; the Hon. D. Stratas, "The Canadian Law of Judicial Review: A Plea for Doctrinal Coherence and Consistency" (2016), 42 *Queen's L.J.* 27, at p. 33; Daly, at pp. 541.42; *Québec (Procureure générale) v. Montréal (Ville)*, 2016 QCCA 2108, 17 Admin. L.R. (6th) 328, at paras. 36.46; *Bell Canada v. 7262591 Canada Ltd.*, 2018 FCA 174, 428 D.L.R. (4th) 311, at paras. 190.92, per Nadon J.A., concurring, and at paras. 66 and 69.72, per Rennie J.A., dissenting; *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374, 60 Alta. L.R. (6th) 1, at paras. 91 and 93-95, per Slatter J.A., concurring; *Nova Scotia (Attorney General) v. S&D Smith Central Supplies Limited*, 2019 NSCA 22, at paras. 250, 255.and 274-302 (CanLII), per Beveridge J.A., dissenting; *Atlantic Mining NS Corp. (D.D.V. Gold Limited) v. Oakley*, 2019 NSCA 14, at paras. 9.14 (CanLII). These critiques seize on the inconsistency inherent in a standard of review framework based on legislative intent that otherwise declines to give meaning to an express statutory right of appeal. This criticism observes that legislative choice is not one-dimensional; rather, it pulls in two directions. While a legislative choice to delegate to an administrative decision maker grounds a presumption of reasonableness on the one hand, a legislative choice to enact a statutory right of appeal signals an intention to ascribe an appellate role to reviewing courts on the other hand.

[40] This Court has in the past held that the existence of significant and valid judicial, academic and other criticism of its jurisprudence may justify reconsideration of a precedent: *Craig*, at para. 29; *R. v. Robinson*, [1996] 1 S.C.R. 683, at paras. 35.41. This consideration applies in the instant case. In particular, the suggestion that the recent treatment of statutory rights of appeal represents a departure from the conceptual basis underpinning the standard of review framework is itself a compelling reason to re-examine the current approach: *Khosa*, at para. 87, per Rothstein J., concurring in the result.

[41] Second, there is no satisfactory justification for the recent trend in this Court's jurisprudence to give no effect to statutory rights of appeal in the standard of review analysis absent exceptional wording: see *Tervita Corp. v. Canada (Commissioner of Competition)*,

2015 SCC 3, [2015] 1 S.C.R. 161, at paras. 35.39. Indeed, this approach is itself a departure from earlier jurisprudence: the Hon. J. T. Robertson, "Judicial Deference to Administrative Tribunals: A Guide to 60 Years of Supreme Court Jurisprudence" (2014), 66 *S.C.L.R.* (2d) 1, at pp. 91.93. Under the former "pragmatic and functional" approach to determining the applicable standard of review, the existence of a privative clause or a statutory right of appeal was one of four contextual factors that a court would consider in order to determine the standard that the legislature intended to apply to a particular decision. Although a statutory appeal clause was not determinative, it was understood to be a key factor indicating that the legislature intended that a less deferential standard of review be applied: see, e.g., *Pezim*, at pp. 589.92; *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.*, [1995] 2 S.C.R. 739, at paras. 28.31; *Southam*, at paras. 30.32, 46 and 54.55; *Pushpanathan*, at paras. 30.31; *Dr. Q*, at para. 27; *Mattel*, at paras. 26.27; *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247, at paras. 21 and 27.29; *Barrie Public Utilities v. Canadian Cable Television Assn.*, 2003 SCC 28, [2003] 1 S.C.R. 476, at para. 11; *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54, [2004] 3 S.C.R. 152, at para. 7.

[42] The Court did indeed sometimes find that, even in a statutory appeal, a deferential standard of review was warranted for the legal findings of a decision maker that lay at the heart of the decision maker's expertise: see, e.g., *Pezim*. In other instances, however, the Court concluded that the existence of a statutory appeal mechanism and the fact that the decision maker did not have greater expertise than a court on the issue being considered indicated that correctness was the appropriate standard, including on matters involving the interpretation of the administrative decision maker's home statute: see, e.g., *Mattel*, at paras. 26.33; *Barrie Public Utilities*, at paras. 9.19; *Monsanto*, at paras. 6.16.

[43] Yet as, in *Dunsmuir*, *Alberta Teachers*, *Edmonton East* and subsequent cases, the standard of review analysis was simplified and shifted from a contextual analysis to an approach more focused on categories, statutory appeal mechanisms ceased to play a role in the analysis. Although this simplification of the standard of review analysis may have been a laudable change, it did not justify ceasing to give *any* effect to statutory appeal mechanisms. *Dunsmuir* itself provides little guidance on the rationale for this change. The majority in *Dunsmuir* was silent on the role of a statutory right of appeal in determining the standard of review, and did not refer to the prior treatment of statutory rights of appeal under the pragmatic and functional approach.

[44] More generally, there is no convincing reason to presume that legislatures mean something entirely different when they use the word "appeal" in an administrative law statute than they do in, for example, a criminal or commercial law context. Accepting that the word "appeal" refers to the same type of procedure in all these contexts also accords with the presumption of consistent expression, according to which the legislature is presumed to use language such that the same words have the same meaning both within a statute and across statutes: R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at p. 217. Accepting that the legislature intends an appellate standard of review to be applied when it uses the word "appeal" also helps to explain why many statutes provide for *both* appeal and judicial review mechanisms in different contexts, thereby indicating two roles for reviewing courts: see, e.g., *Federal Courts Act*, R.S.C. 1985, c. F.7, ss. 27 and 28.

This offers further support for giving effect to statutory rights of appeal. Our colleagues' suggestion that our position in this regard "hinges" on what they call a "textualist argument" (at para. 246) is inaccurate.

[45] That there is no principled rationale for ignoring statutory appeal mechanisms becomes obvious when the broader context of those mechanisms is considered. The existence of a limited right of appeal, such as a right of appeal on questions of law or a right of appeal with leave of a court, does not preclude a court from considering other aspects of a decision in a judicial review proceeding. However, if the same standards of review applied regardless of whether a question was covered by the appeal provision, and regardless of whether an individual subject to an administrative decision was granted leave to appeal or applied for judicial review, the appeal provision would be completely redundant — contrary to the well-established principle that the legislature does not speak in vain: *Attorney General of Quebec v. Carrières Ste-Thérèse Ltée*, [1985] 1 S.C.R. 831, at p. 838.

[46] Finally, and most crucially, the appeals now before the Court have allowed for a comprehensive and considered examination of the standard of review analysis with the goal of remedying the conceptual and practical difficulties that have made this area of the law challenging for litigants and courts alike. To achieve this goal, the revised framework must, for at least two reasons, give effect to statutory appeal mechanisms. The first reason is conceptual. In the past, this Court has looked past an appeal clause primarily when the decision maker possessed greater relative expertise — what it called the "specialization of duties" principle in *Pezim*, at p. 591. But, as discussed above, the presumption of reasonableness review is no longer premised upon notions of relative expertise. Instead, it is now based on respect for the legislature's institutional design choice, according to which the authority to make a decision is vested in an administrative decision maker rather than in a court. It would be inconsistent with this conceptual basis for the presumption of reasonableness review to disregard clear indications that the legislature has intentionally chosen a more involved role for the courts. Just as recognizing a presumption of reasonableness review on all questions respects a legislature's choice to leave some matters first and foremost to an administrative decision maker, departing from that blanket presumption in the context of a statutory appeal respects the legislature's choice of a more involved role for the courts in supervising administrative decision making.

[47] The second reason is that, building on developments in the case law over the past several years, this decision conclusively closes the door on the application of a contextual analysis to determine the applicable standard, and in doing so streamlines and simplifies the standard of review framework. With the elimination of the contextual approach to selecting the standard of review, the need for statutory rights of appeal to play a role becomes clearer. Eliminating the contextual approach means that statutory rights of appeal must neither play no role in administrative law or be accepted as directing a departure from the default position of reasonableness review. The latter must prevail.

APPENDIX B

After *Vavilov*:
Standard of Review for Appeals of Arbitral Decisions

	Reasonableness Standard	Appellate Standard	Quotes from Case Law
1.		*Esfahani v Samimi*, 2022 ABKB 795 decision by Justice M.A. Marion	[76] In Alberta, the Court of Appeal has not yet considered the standard of review in a section 44 arbitration appeal since *Vavilov*: see *Moffat v Edmonton (City) Police Service*, 2021 ABCA 183. Alberta Court of King's Bench decisions are split. Some have held that Vavilov did not overrule *Sattva* and *Teal Cedar*, and apply the *Sattva* deferential standard, or have otherwise implied that the reasonableness standard continues to apply, both in section 44(1) and 44(2) appeals: *Cove Contracting Ltd v Condominium Corporation No 012 5598 (Ravine Park)*, 2020 ABQB 106 at paras; 6-12; *Ong v Fedoruk*, 2022 ABQB 557 at para 31; *Athan Homes Inc v Phan*, 2021 ABQB 119 at paras 31; *MAS v CGL*, 2022 ABQB 281 at para 4. Other cases have expressly held that *Vavilov* modified the standard of review for arbitration appeals and have applied the appellate standard of review or have otherwise implied that the appellate standard of review now applies, at least in the context of section 44(2) of the Act: *719491 Alberta Inc v The Canada Life Assurance Company*, 2021 ABQB 226 at paras 60-63; *Alvarez v Alvarez*, 2021 ABQB 717 at para 14. [77] In all of these circumstances, there is no binding appellate decision respecting the application of *Vavilov* to arbitration appeals, or with respect

	Reasonableness Standard	Appellate Standard	Quotes from Case Law
			to its impact, if any, on *Sattva* and *Teal Cedar*. However, I find *Northland Utilities* persuasive. Further, while the statements in *Vavilov* do not directly deal with arbitration appeals, and the Court did not mention *Sattva* or *Teal Cedar* in the decision, it seems to me that the Court's reasoning would apply to any statutory appeal right, including arbitration appeals, as contemplated in the concurring obiter comments in *Wastech*. I cannot ignore the strong statements in *Vavilov* about the legislative intent associated with the Legislature's choice in the Act to create a statutory appeal and the presumption of consistent expression: *Vavilov* at para 44. In my view, the presumption is not rebutted in respect of the section 44 of the Act—rather, the context and legislative history is consistent with the presumption. [85] Based on the foregoing, I proceed to consider this Appeal using the appellate standard of review, namely: (1) the standard of review for statements of law or conclusions on issues of law, is correctness; (2) the standard of review on findings of fact, including inferences of fact, are reviewed for manifest error or palpable and overriding error; (3) the standard of review for mixed fact and law is palpable and overriding error unless there is an extricable question of law; Nilsson at para 37; *Flock Estate v Flock*, 2022 ABCA 229 at para 19; Moffat at para 42; *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 26-39.

	Reasonableness Standard	**Appellate Standard**	**Quotes from Case Law**
2.	*Cove Contracting Ltd v Condominium Corporation No 012 5598 (Ravine Park)*, 2020 ABQB 106 decision by Justice G.S. Dunlop		[6] I find that *Vavilov* does not change the standard of review on commercial arbitration appeals, because *Vavilov* and its two companion decisions deal with judicial review of administrative bodies, and because the Supreme Court makes no reference in its December 19, 2019 decisions to its earlier decisions in *Teal Cedar Products Ltd. v British Columbia* 2017 SCC 32 and *Creston Moly Corp v Sattva Capital Corp* 2014 SCC 53, which establish reasonableness as the standard of review on commercial arbitration appeals.
3.		*Moffat v Edmonton (City) Police Service*, 2021 ABCA 183 decision by Justice Thomas W. Wakeling, Justice Sheila Greckol and Justice Elizabeth Hughes	[56] We would stress that our conclusion is not dependent on *Vavilov* being restricted to the issues with which it explicitly dealt. For instance, it has recently been held that *Vavilov* also changed the standard of review for commercial arbitration in instances where the governing legislation provides a statutory appeal from a decision of an arbitrator to a court: *Northland Utilities (NWT) Limited v Hay River (Town of)*, 2021 NWTCA 1 at paras 20-44; see also *Wastech Services Ltd. v Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 at paras 117-121, per Brown and Rowe JJ (concurring). In such instances, the *Housen* framework is said to apply because, as a matter of statutory interpretation, the word "appeal" should be given a consistent meaning in legislation. However, even if *Vavilov* does extend to the review of certain commercial arbitration decisions (a question we need not decide), this has no bearing on the question of internal administrative review...

	Reasonableness Standard	Appellate Standard	Quotes from Case Law
4.		*719491 Alberta Inc v The Canada Life Assurance Company*, 2021 ABQB 226 decision by Justice W.P. Sullivan	[60] First is the applicable standard of review. Conflicting lines of authority have arisen concerning the application of *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] to arbitration appeals. Most recently, Brown and Rowe JJ (Côté J concurring) opined that the Supreme Court of Canada ought to elucidate the standard of review to be applied in arbitration appeals, especially considering the diverging lines of authorities emerging out of various jurisdictions. Although the majority declined to comment on the issue, Brown and Rowe JJ unequivocally held that in light of *Vavilov*, "the standard of review to be applied [in arbitration appeals] is correctness": *Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 at para 121. [61] The conclusion reached by Brown and Rowe JJ is consistent with a recent decision from the Court of Appeal for the Northwest Territories, a panel comprised of three Justices of the Court of Appeal of Alberta: *Northland Utilities (NWT) Limited v Hay River (Town of)*, 2021 NWTCA 1.cor 2 [*Hay River*]. In *Hay River*, the Court carefully canvassed the legal propositions flowing from *Sattva* and subsequently *Vavilov* and concluded at para 44: > We therefore conclude that the revised standard of review framework described in *Vavilov* applies to commercial arbitration decisions reviewed as a result of a right of appeal

	Reasonableness Standard	Appellate Standard	Quotes from Case Law
			given by statute. As noted, this does not mean that all issues under appeal pursuant to the *Arbitration Act* are to be automatically reviewed on a standard of correctness. As this legislation does not limit the right of appeal to questions of law, an appellate standard of review is to be applied to all issues raised, including not only questions of law reviewed for correctness, but questions of fact or of mixed fact and law which will continue to be reviewed on a standard of palpable and overriding error. [62] Considering the above, I agree that the standard of review for arbitration appeals has effectively been modified under the *Vavilov* regime.
5.	*1010805 Alberta Ltd v Sundial Growers Inc*, 2024 ABKB 173 decision by Associate Chief Justice D.B. Nixon		[31] The exception in *Ledcor* is centered on the importance of having clear appellate reasoning that applies for standard form contracts that will have significant impact on Canadians. The present case involves an appeal from an arbitrator where much of the information of the agreements will be under seal and it is highly unlikely that there will be much precedential value that derives from it. As a result, based on the evidence and my analysis of the law, the exception set out in *Ledcor* does not apply. The standard of review on appeal for contractual interpretation in this case is therefore that as set out in *Sattva*. Given this determination, I find that the standard of review for questions of contractual interpretation in this case is reasonableness.

	Reasonableness Standard	Appellate Standard	Quotes from Case Law
6.		*Northland Utilities (NWT) Limited v Hay River (Town of)*, 2021 NWTCA 1 decision by Justice Bielby, Justice Barbara Veldhuis and Justice Jo'Anne Strekaf	[39] Applying the "presumption of consistent expression", which is one of the principles of statutory interpretation, the word "appeal" is to be given a consistent meaning; see Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, 2014) at paras 13.25-13.26 [*Sullivan*]. That is, "appeal" should be taken to mean the same thing in an administrative law statute as it does in "a criminal or commercial law context": *Vavilov* at para 44. Should the converse then not also be true, that an appeal in a commercial law context means the same thing as an appeal in an administrative law context? [40] In *Vavilov* at para 46, Chief Justice Wagner for the majority expressly observed that "the presumption of reasonableness review is no longer premised upon notions of relative expertise", an approach done away with by the "legislature's institutional design choice" in the context of a statutory appeal. This logic supports the argument, for example, that a commercial arbitrator's presumed expertise does not justify exemption from an appellate standard of review any more than does the expertise of other administrative boards typically staffed by experienced adjudicators. Further, there is no reason to have an otherwise anomalous standard of review that applies only to arbitration decisions when all other decisions are reviewable on the appellate standard. [44] We therefore conclude that the revised standard of review framework described in *Vavilov* applies to commercial arbitration decisions reviewed

	Reasonableness Standard	Appellate Standard	Quotes from Case Law
			as a result of a right of appeal given by statute. As noted, this does not mean that all issues under appeal pursuant to the *Arbitration Act* are to be automatically reviewed on a standard of correctness. As this legislation does not limit the right of appeal to questions of law, an appellate standard of review is to be applied to all issues raised, including not only questions of law reviewed for correctness, but questions of fact or of mixed fact and law which will continue to be reviewed on a standard of palpable and overriding error. **Paragraphs 39 to 44 re standard of review.
7.	*Ontario First Nations (2008) Limited Partnership v. Ontario Lottery And Gaming Corporation*, 2020 ONSC 1516 decision by Justice Hainey		[71] The Supreme Court of Canada's comprehensive decision in *Vavilov* does not refer to the court's previous decisions in either *Sattva* or *Teal Cedar*. It is not reasonable to conclude that the Supreme Court meant to overrule these important decisions without making any reference to them or to the area of law to which they relate. [72] Further, as a matter of legal principle it is appropriate that *Vavilov* does not apply to commercial arbitrations. The administrative law standard of review established in *Vavilov* derives from constitutional considerations that justify deference by the judiciary to the legislature. This principle does not apply to commercial arbitrations. The standard of review for commercial arbitrations is guided by commercial considerations about respect for the decision-makers chosen by the parties. As a result, deference is justified by the parties' contractual intent. It is for this reason that Rothstein J. identified

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			the key differences between administrative decisions and arbitral awards in *Sattva* and concluded that the judicial review framework for administrative decisions is not applicable in the commercial arbitration context. [74] I agree with and adopt G.S. Dunlop J.'s conclusion in this case. The standard of review applicable to the majority's contractual interpretation of the GRSFA and to the damage award is reasonableness....
8.	*Athan Homes Inc v Phan*, 2021 ABQB 119 decision by Justice S. Leonard		[32] Generally, the standard of reasonableness will apply to arbitral decisions (except in certain circumstances that do not apply in this case), and so here the Court must consider "whether there is any arguable merit to the position that the Arbitrator's decision on the question at issue is unreasonable": *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 75.
9.		*Allstate Insurance Company v. Her Majesty the Queen*, 2020 ONSC 830 decision by Justice Davies	[18] There are, however, circumstances in which the presumption of reasonableness review will be rebutted, including when the review is the result of a statutory appeal mechanism. When the legislation includes a statutory appeal mechanism, that signals that the legislature intends the court to perform an appellate function in respect of that decision and the court hearing the appeal is to apply appellate standards of review: > This means that the applicable standard is to be determined with reference to the nature of the question and to this Court's jurisprudence on appellate standards of review. Where, for

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			example, a court is hearing an appeal from an administrative decision, it would, in considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision maker's authority, apply the standard of correctness in accordance with *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8. Where the scope of the statutory appeal includes questions of fact, the appellate standard of review is palpable and overriding error (as it is for questions of mixed fact and law where the legal principle is not readily extricable): see *Housen*, at paras. 10, 19 and 26-37. Of course, should a legislature intend that a different standard of review apply in a statutory appeal, it is always free to make that intention known by prescribing the applicable standard through statute.
10.		*Burwell et al v. Wozniak*, 2024 ONSC 5851 decision by Justice Rees	[42] The revised standard of review analysis begins with a presumption that reasonableness is the applicable standard in all cases. This presumption is rebutted where the legislature explicitly prescribes the applicable standard of review, or where—as here—the legislature has provided a statutory appeal mechanism. In providing for a statutory appeal, the legislature "has subjected the administrative regime to appellate oversight and indicated that it expects the court to scrutinize such administrative decisions on an appellate basis": *Vavilov*, at para. 36. The appropriate standard of review is then determined on the appellate standard.

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			44] Applying the appellate standards of review gives effect to the legislature's intention under the *Arbitration Act*, 1991. The appeal provision in s. 45 expressly uses the word "appeal". As the majority observed in *Vavilov*, at para. 44, "there is no convincing reason to presume that legislatures mean something entirely different when they use the word "appeal" in an administrative law statute than they do in, for example, a criminal or commercial law context". Then why assume the legislature means something different when it uses the word "appeal" in the arbitral context?
11.		*Buffalo Point First Nation et al. v. Cottage Owners Association*, 2020 MBQB 20 decision by Justice Martin	[46] In December 2019, the Supreme Court of Canada released a trilogy of cases re-setting the standard of review of administrative tribunal decisions. The lead case is *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] S.C.J. No. 65 (QL). For purposes of this application, I need only touch upon one material aspect of the decision, the effect of statutory appeal mechanisms. [47] The majority noted at para. 17 that the presumption of reasonableness as the standard of review can be rebutted " … where the legislature has provided a statutory appeal mechanism from an administrative decision to a court, thereby signalling the legislature's intent that appellate standards apply when a court reviews the decision."... [48] Applied to these applications, s. 44(2) of *The Arbitration Act* expressly states "a party may appeal an award to the court …". Following the Supreme Court's dicta, the standard of review should be the appellate standard of correctness, not the reasonableness standard normally associated with a judicial review.

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12.		*Buffalo Point First Nation et al. v. Cottage Owners Association*, 2023 MBKB 141 decision by Justice Martin	[33] The Court of Appeal in *Northland Utilities* also set out comprehensive analytical rational, including addressing commercial arbitration policy considerations arising from *Sattva* and *Teal Cedar*. The Court also noted neither *Sattva* nor *Teal Cedar* were mentioned in *Vavilov*, a rational underpinning numerous decisions that concluded *Vavilov* thus has no effect on the standard or review for commercial arbitrations. Ultimately, the Court concluded "the revised standard of review framework described in *Vavilov* applies to commercial arbitration decisions reviewed as a result of a right of appeal given by statute" (para. 44). *Northland Utilities* was not considered in *Christie*. It was cited in the minority decision in *Wastech* (para. 117). No other Court of Appeal has definitively weighed in that I am aware of. [34] It is against this mixed bag of jurisprudence that I must determine the proper standard of review here. [35] Given the principled approach and analysis in *Vavilov* respecting legislative intent, notably that it is the "polar star" of judicial review (para. 33), the North West Territories Court of Appeal analysis in *Northland Utilities*, other superior court decisions adopting it including *Esfahani*, the unequivocal minority position in *Wastech* (paras. 117 – 122) in light of the majority declining to express a view one way or the other respecting the impact of *Vavilov* on the standard or review principles set out in *Sattva* or *Teal Cedar* (para. 46), and critically the Manitoba legislation at play here, I remain of the view that the standard of review for the questions of law in this case is correctness. In so finding, I decline to address Buffalo Point's submission that the core issues deal with its constitutionally protected rights such that the standard of review cannot be reasonableness, but rather must be correctness, even without consideration of *Vavilov*.

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13.		*Continental Casualty Company v. Chubb Insurance Company of Canada*, 2022 ONCA 188 decision by Justice J. Simmons	[46] Chubb contends that, post-*Vavilov*[8], the standard of review to be applied in this case is the appellate standard. I agree. [47] At para. 37 of the majority reasons in *Vavilov*, the court stated that it should be recognized that "where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision." [48] The arbitration in this matter was conducted pursuant to the *Arbitration Act*, 1991. Subsections 45(2) and (3) of that Act provide for an appeal on questions of law and mixed fact and law if permitted by the arbitration agreement. Paragraph 6 of the parties' arbitration agreement provides for an appeal without leave to a Superior Court judge on questions of law or mixed fact and law.

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14.		*Clark v Unterschultz*, 2020 ABQB 338 decision by Justice J.M. Ross	[55] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 37, the Supreme Court held: > It should therefore be recognized that, where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision. This means that the applicable standard is to be determined with reference to the nature of the question and to this Court's jurisprudence on appellate standards of review. Where, for example, a court is hearing an appeal from an administrative decision, it would, in considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision maker's authority, apply the standard of correctness in accordance with *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8. Where the scope of the statutory appeal includes questions of fact, the appellate standard of review for those questions is palpable and overriding error (as it is for questions of mixed fact and law where the legal principle is not readily extricable): see *Housen*, at paras. 10, 19 and 26-37. Of course, should a legislature intend that a different standard of review apply in a statutory appeal, it is always free to make that intention known by prescribing the applicable standard through statute. > [Emphasis added]. [56] Thus, in the review of the identified legal issues, the standard of review is correctness.

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15.		*Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 (minority position) decision by Justice Brown, Justice Côté and Justice Rowe	[117] Our colleague refrains from identifying the standard of review, since on either standard he would overturn the arbitrator's conclusions. In our view, however, this Court ought to provide clear guidance on this point. Conflicting lines of authority have arisen concerning the application of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, to arbitration appeals (*Northland Utilities (NWT) Limited v. Hay River (Town of)*, 2021 NWTCA 1, at paras. 21-44 (CanLII); *Ontario First Nations (2008) Limited Partnership v. Ontario Lottery And Gaming Corporation*, 2020 ONSC 1516, at paras. 62-75 (CanLII); *Cove Contracting Ltd. v. Condominium Corporation No 012 5598 (Ravine Park)*, 2020 ABQB 106, 10 Alta. L.R. (7th) 178, at paras. 3-12; *Allstate Insurance Co. v. Ontario (Minister of Finance)*, 2020 ONSC 830, 149 O.R. (3d) 761, at paras. 12-19; *Buffalo Point First Nation v. Cottage Owners Association*, 2020 MBQB 20, at paras. 46-48 (CanLII); *Clark v. Unterschultz*, 2020 ABQB 338, 41 R.F.L. (8th) 28, at paras. 55-56). This question ought to be resolved. [118] In *Vavilov*, this Court concluded that the appellate standards of review identified in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, apply to statutory rights of appeal from administrative decisions (para. 37). Certain trial courts have, however, resisted applying this principle to appeals from arbitral awards. Two reasons are offered for this. First, *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, and *Teal Cedar Products Ltd. v. British Columbia*, 2017 SCC 32, [2017] 1 S.C.R. 688, do not support the application of appellate standards of review to arbitration appeals, and *Vavilov* did not expressly overrule those decisions (*Ontario First Nations*, at para. 71; *Cove Contracting Ltd.*, at paras. 10 12). Secondly, *Vavilov* was driven by "constitutional considerations that justify deference by the judiciary to the

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			legislature" (*Ontario First Nations*, at para. 72). In contrast, the standard of review that applies to appeals from private arbitration awards is "guided by commercial considerations about respect for the decision makers chosen by the parties. As a result, deference is justified by the parties' contractual intent" (*Ontario First Nations*, at para. 72). [119] There are important differences between commercial arbitration and administrative decision making (*Sattva*, at para. 104). Those differences do not, however, affect the standard of review where the legislature has provided for a statutory right of appeal. Appellate standards of review apply as a matter of statutory interpretation. As this Court explained in *Vavilov*, "a legislative choice to enact a statutory right of appeal signals an intention to ascribe an appellate role to reviewing courts" (para. 39). This interpretive principle applies in similar manner to statutory rights of appeal from arbitral awards: > More generally, there is no convincing reason to presume that legislatures mean something entirely different when they use the word "appeal" in an administrative law statute than they do in, for example, a criminal or commercial law context. Accepting that the word "appeal" refers to the same type of procedure in all these contexts also accords with the presumption of consistent expression, according to which the legislature is presumed to use language such that the same words have the same meaning both within a statute and across statutes: R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at p. 217. > (Vavilov, at para. 44)

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			[120] Factors that justify deference to the arbitrator, notably respect for the parties' decision in favour of alternative dispute resolution and selection of an appropriate decision maker, are not relevant to this interpretive exercise. What matters are the words chosen by the legislature, and giving effect to the intention incorporated within those words. Thus, where a statute provides for an "appeal" from an arbitration award, the standards in *Housen* apply. To this extent, *Vavilov* has displaced the reasoning in *Sattva* and *Teal Cedar*. Concluding otherwise would undermine the coherence of *Vavilov* and the principles expressed therein. [121] The appeal in this case was brought pursuant to s. 31 of the *Arbitration Act*, R.S.B.C. 1996, c. 55,[2] which provides that, either by consent of the parties or with leave of the Supreme Court of British Columbia, a party to an arbitration "may appeal to the court on any question of law arising out of the award". In light of *Vavilov*, it follows that the standard of review to be applied by this Court in this case is correctness (*Housen*, at para. 8). Our conclusion on this point is limited to the specific statutory provision at issue. In every case, the question is one of legislative intention, as reflected in the language of the statute.
16.	*Ong v Fedoruk*, 2022 ABQB 557 decision by Justice M.H. Bourque		[31] The Jurisdiction Application does not deal with an appeal of an arbitration award on the merits where a reasonableness standard would normally apply. Rather, subsection 17(9) of the AA directs me to "decide the [jurisdictional] matter". Therefore, I am satisfied that this type of question "is one that would attract the correctness standard" because it involves "questions of law of central importance to the legal system as a whole and outside the [Arbitrator's] expertise".

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17.		*Alvarez v Alvarez*, 2021 ABQB 717 decision by Justice O.P. Malik	[14] It is agreed by the parties that as the Agreement did not expressly contemplate an appeal being brought, the Applicant's right of appeal is circumscribed by section 44(2) of the Act which allows permission to appeal a question of law, for which the appropriate standard of review is correctness (*Capital Power Corporation v Lehigh Hanson Materials Limited*, 2013 ABQB 413 at para 57).
18.	Buffalo Point First Nation v Buffalo Point Cottage Owners Association Inc, 2025 MBCA 72 decision by Justice Marc M. Monnin, Justice Jennifer A. Pfuetzner and Justice Anne M. E. Turner		[44] I start from the premise that *Vavilov* did not expressly or impliedly overturn *Sattva* or *Teal Cedar*. *Vavilov* was a decision with respect to a review of an administrative decision. Commercial arbitration awards are not administrative decisions, which are generally recognized as decisions emanating from a government entity. Commercial arbitration awards are the product of contractual agreements between parties who have chosen to reach a resolution of their own making. While there may be merit in considering the rationale of how to review an administrative decision when considering the review of decisions of commercial arbitrators, that was not the issue in *Vavilov*. It was, however, the issue in *Sattva* and *Teal Cedar* and, until a different outcome is stipulated by the Supreme Court, I am of the view that stare decisis should guide us in reaching the proper conclusion as to what standard of review currently applies. Accordingly, the surest route to the answer to this question is that Sattva and Teal Cedar are still good law until directed otherwise. [45] I am reinforced in that conclusion by the comments of Kasirer J in *Wastech*, to the effect that, even though the issue was raised with the Court in *Vavilov* by counsel for arbitrators who filed briefs, the Court, in its wisdom, chose not to deal with the precedents of *Teal Cedar* and *Sattva*. In my view, it does not "[cut] both ways", as suggested in *Northland* (at para 36). Unless specifically or impliedly overturned, the previous decisions remain and the failure to address it by the Court

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			should not be used as a means of invalidating precedent. Commercial arbitration awards take place "under a tightly defined regime specifically tailored to the objectives of commercial arbitrations" (*Sattva* at para 104). As well, "parties engage in arbitration by mutual choice, not by way of a statutory process" (ibid). The parties to an arbitration select the number and identity of the arbitrators. In *Teal Cedar*, this was described as being a "preference for a reasonableness standard . . . with the key policy objectives of commercial arbitration, namely efficiency and finality" (at para 74). Such factors militate in favour of retaining a reasonableness standard for reviewing commercial arbitration awards. [51] Therefore, I conclude that the standard of review that should have been applied by the appeal judge was that set out in *Sattva* and *Teal Cedar* and was not determined by the decision of the Supreme Court in *Vavilov*. Accordingly, the arbitrator's second supplementary award, which is the only one before this Court, should have been reviewed on the basis of a reasonableness analysis. The appeal judge erred in reviewing it on the basis of correctness. Given the time that has elapsed and the seemingly incessant litigation process, this matter deserves some finality and I would not send it back to the King's Bench for a further review on the basis of reasonableness. I propose to conduct that review myself in accordance with the principles as set out in *Vavilov*.