

Charter Values

Where do we go from here?

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Meera Bennett (she/her)

Deputy Supervisor, Ministry of Attorney General,
Legal Services Branch

Steven Davis (he/him)

Legal Counsel, Ministry of Attorney General,
Legal Services Branch

*All views expressed are their own

Outline

- Overview of the *Charter* values framework
- Problems with *Charter* values, and possible solutions
- Long term implications

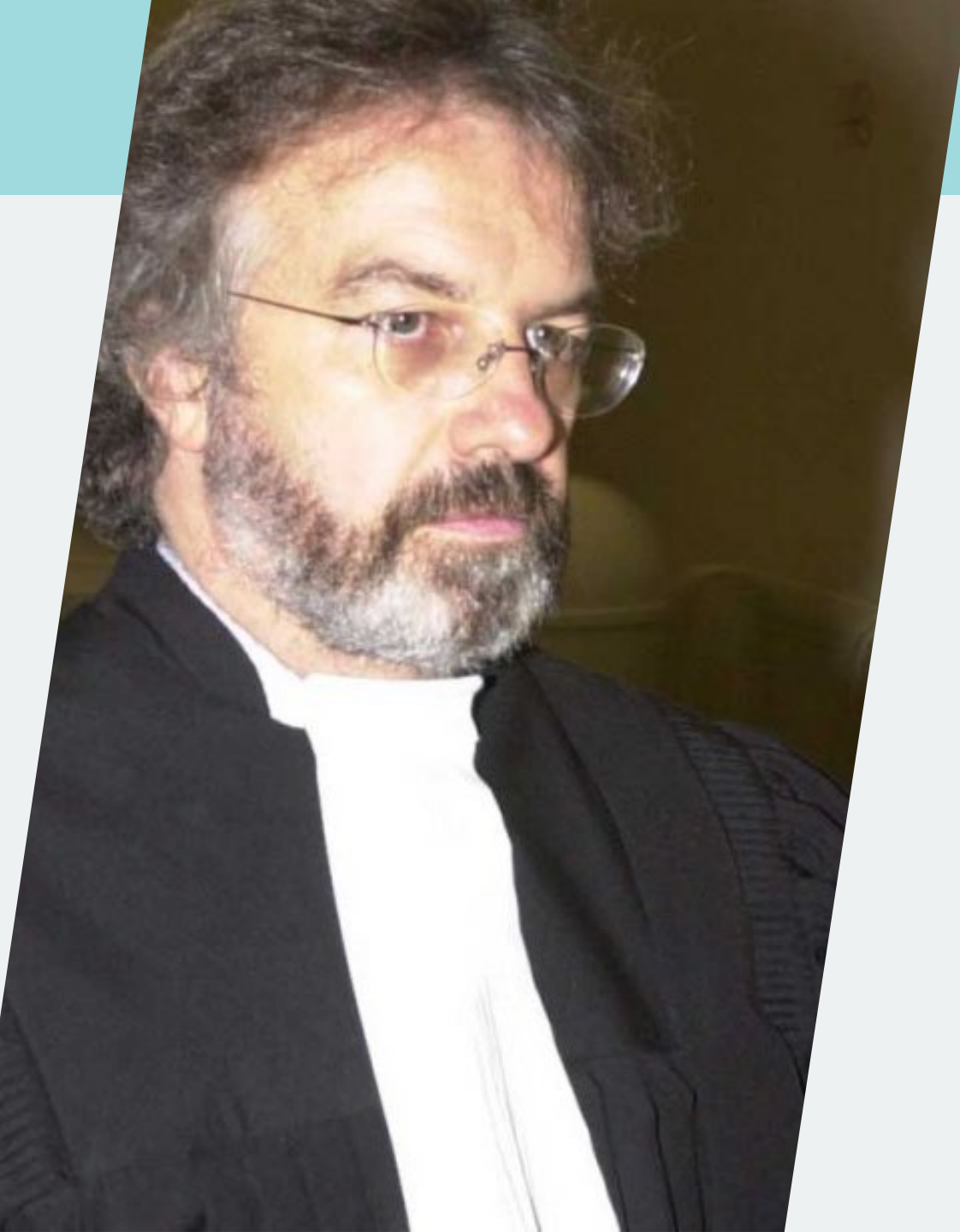


What are *Charter* values?

- Applies to discretionary decisions made by administrative decision makers.
- The decision maker must consider “*Charter* values” and “proportionately” balance the *Charter* interests against the statutory objective.
- In a judicial review the Court will give deference to the administrative decision.
- Burden is on the applicant to show lack of justification (vs. burden on the state to justify infringement under *Oakes*)

What is proportionality?

- Drawn from the *R. v. Oakes*, [1986] 1 S.C.R. 103 framework (see *Loyola* at para. 40).
- *Oakes* is a balancing exercise between the benefits of a legislative objective and the harmful effects of a *Charter* infringement.
- The purpose of *Oakes* is to ensure proportionality between government's means and objectives.
- In *Charter* values, proportionality is a balancing exercise between the government's objectives as expressed through the legislative scheme against the *Charter* right/value.



Doré v. Barreau du Québec, 2012 SCC 12

[58] If, in exercising its statutory discretion, the decision-maker has properly balanced the relevant Charter value with the statutory objectives, the decision will be found to be reasonable.

Loyola High School v. Quebec (Attorney General), 2015 SCC 12

[40] A *Doré* proportionality analysis finds analytical harmony with the final stages of the *Oakes* framework used to assess the reasonableness of a limit on a *Charter* right under s. 1: minimal impairment and balancing. Both *R. v. Oakes*, 1986 CanLII 46 (SCC), [1986] 1 S.C.R. 103, and *Doré* require that *Charter* protections are affected as little as reasonably possible in light of the state's particular objectives: see *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 S.C.R. 199, at para. 160. As such, *Doré*'s proportionality analysis is a robust one and "works the same justificatory muscles" as the *Oakes* test: *Doré*, at para. 5.



Vavilov set out a simplified standard of review framework

- The Court in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 set out a unified and simplified standard of review framework.
- This new framework was necessary because *Dunsmuir's* promise of simplicity and predictability had not been realized (paras. 7 and 10).
- Under *Vavilov*, the presumptive standard of review is reasonableness.

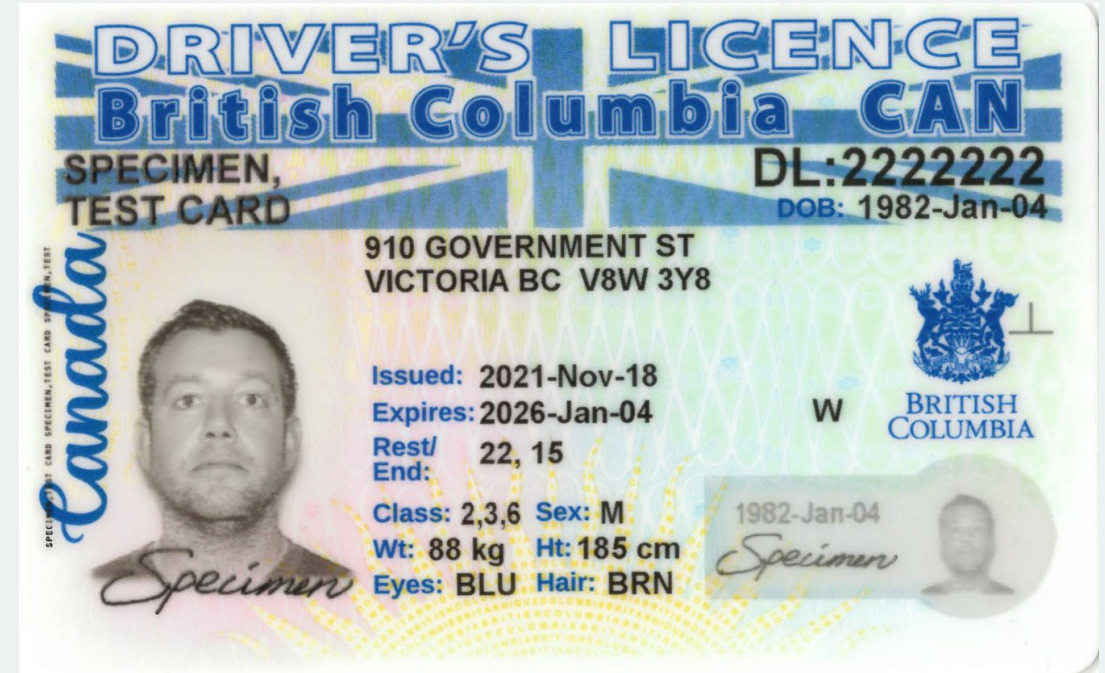


Unclear whether *Vavilov* also revises *Charter* values

- Court in *Vavilov* declined to address whether its decision :
[57] Although the *amici* questioned the approach to the standard of review set out in *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395, a reconsideration of that approach is not germane to the issues in this appeal...
- A court considering a *Charter* values question decides whether a decision is proportionate. If the decision is proportionate, it is reasonable, if not then it is not reasonable.
- This test is arguably inconsistent with *Vavilov* because 1) it is overly complex (thus undermining the goal of simplicity and clarity) and 2) it is not that deferential.

Gordon v. British Columbia (Superintendent of Motor Vehicles), 2022 BCCA 260

[53] The consideration of *Charter* values is not required in every discretionary administrative decision. Rather, the obligation arises when the outcome of an administrative decision limits *Charter* rights, as was the case, for example, in *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32. It also arises in cases, such as this one, where a party has “squarely” raised the issue and asks the decision maker to review state conduct that is contended to have interfered with a *Charter* right: *Canada (Attorney General) v. Robinson*, 2022 FCA 59 at para. 28.



Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment), 2023 SCC 31



[66] An administrative decision maker must consider the relevant values embodied in the Charter, which act as constraints on the exercise of the powers delegated to the decision maker... In practice, it will often be evident that a value must be considered, whether because of the nature of the governing statutory scheme (at para. 108), because the parties raised the value before the administrative decision maker (at paras. 127-28), or because of the link between the value and the matter under consideration...

Some recent *Charter* Values Jurisprudence

- *Sullivan v. Canada (Attorney General)*, 2024 FCA 7
- *Singh Brar v. Canada (Public Safety and Emergency Preparedness)*, 2024 FCA 114

Further Reading

- Meera Bennett & Steven Davis. "A Reasonable (or Correct?) Look at Charter Values in Canadian Administrative Law" (2023) 36 Can. J. Admin. L. & Prac. 91.
- Meera Bennett & Steven Davis, "Case Comment: *CSFTNO*; The SCC Really Values *Charter* Values" (2024) 37 Can. J. Admin. L. & Prac. 157
- Mark Mancini, "The Conceptual Gap Between *Doré* and *Vavilov*" (2020) 43 Dal. L.J. 793



Questions?



Meera.Bennett@gov.bc.ca

Steven.Davis@gov.bc.ca

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