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Did *Catalyst (2012)* really signal a break from *Dunsmuir*?

By Edward Brook

Introduction

In *Catalyst Paper Corp v. North Cowichan (District)*, the Supreme Court of Canada applied *Dunsmuir* to municipal administrative actors for the first time.[1] *Catalyst* is now the leading Canadian case on substantive judicial review in the municipal context. In the two years since, however, a handful of scholars, and at least one lower court, have read *Catalyst* as signalling a departure from the *Dunsmuir* framework. In their view, *Catalyst* fractured the reasonableness standard by reintroducing a third standard of review for municipalities.

This short paper attempts to correct that misconception. A careful reading of *Catalyst* confirms what municipal lawyers already know—namely, that reasonableness is a single and unified standard that "takes colour from the context."[2] *Catalyst* did not create a special standard of review for municipalities, and those challenging or defending municipal bylaws on substantive grounds should continue to rely on *Dunsmuir* and its progeny. As David Mullan writes, *Catalyst* reminds us that there are two standards of review, to be applied "no matter how awkward the fit."[3]

I will begin by reviewing the facts of *Catalyst* and identifying the problematic readings that have emerged over the past two years. I will then review how *Dunsmuir* unified the reasonableness standard and how "context" has become a keystone concept for the reasonableness inquiry. I will then return to the Supreme Court's reasoning in *Catalyst* and explain where the problematic readings go wrong. I will conclude by considering some recent decisions from the Federal Court and Federal Court of appeal that have, in my view, drawn the correct lesson from the decision.

Background

One of Catalyst Paper's mills was located in the District of North Cowichan, British Columbia. In response to changing demographics and increasing use of municipal services, the District began raising the relative tax rate on Catalyst's property. By 2009, the tax rate for residential property was only $2.1430 per $1,000, while the tax rate for major industrial property (i.e. Catalyst's property) was $43.3499 per $1,000. The ratio between residential and industrial property was roughly 1:20, and as of 2012, one of the highest in British Columbia.[4]

Unhappy with its disproportionate tax burden, Catalyst began pressuring the District to lower its tax assessment. Although it had some success negotiating with the District, Catalyst felt that the relief

[1] *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2, [2012] 1 SCR 5; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 106.
[2] *Catalyst*, *supra* note 1 at para 18.
[3] "The State of Judicial Scrutiny of Public Contracting in New Zealand and Canada" (2012) 43 *VUWLR* 173 at 188.
[4] *Ibid* at para 3.

was too little, too late. It sought recourse with the courts. However, both the British Columbia Supreme Court and the Court of Appeal upheld the impugned municipal tax bylaw.[5]

At issue in the Supreme Court of Canada was how courts should approach the substantive judicial review of municipal bylaws. Although Catalyst and the District agreed that municipal bylaws should be reviewed on a standard of reasonableness, they differed over what reasonableness requires of municipal actors and their bylaws. Catalyst argued that reasonableness requires municipal bylaws to fall "within a range of reasonable outcomes, having regard to objective factors relating to consumption of municipal services."[6] In contrast, the District argued that "reasonableness, in the context of municipal bylaws, must take into account…a broad array of social, economic and demographic factors relating to the community as a whole."[7] The Court held in favour of the District. Writing for a unanimous Court, McLachlin CJC found that the power of courts to set aside municipal bylaws is a narrow one and that, due to the context of municipal decision-making, courts should consider a broad spectrum of factors when evaluating the reasonableness of municipal bylaws.[8]

The Court's reasoning in *Catalyst* is robust. McLachlin CJC applied *Dunsmuir* and *Khosa* with clarity, outlining the test for reasonable municipal bylaws with few surprises. But some commentators have taken issue with the Chief Justice's reasonableness inquiry. Notably, Paul Daly has argued that "in *Catalyst*, the Court effectively "in Catalyst, the Court effectively reintroduced a third standard of review: municipal bylaws can be struck down only where they are so unreasonable that no reasonable municipality could have enacted them."[9] Likewise, Donald Brown and The Honorable John Evans have suggested that the Court in *Catalyst* excluded non-adjudicative municipal decision-making from the *Dunsmuir* framework.[10] In both cases, the scholars seem to view *Catalyst* as carving out a special space for municipalities within the judicial review landscape.

Moreover, in a recent decision from the Alberta Court of Queen's Bench, *Nor-Chris Holdings Inc. v Sturgeon (County)*, Grasser J. adopted a similar reading, citing *Catalyst* to support the view that "patent unreasonableness" still exists as a standard of review within the municipal context.[11] Justice Grasser even went so far as to say that, given *Catalyst*, the prevailing characterization of *Dunsmuir* "may not be technically correct" and patent unreasonableness standard may still apply in certain circumstances.[12]

These readings of *Catalyst* should be taken seriously. They challenge the predominant understanding of substantive judicial review and they force us to think carefully about how the reasonableness inquiry has developed since *Dunsmuir*. They also highlight an important takeaway from *Catalyst*, namely, that in the context of municipal decision-making, reasonableness is an easy threshold to meet.[13]

Nevertheless, these readings are problematic insofar as they mistake the Supreme Court's lesson in *Catalyst* about the importance of context for a reconsideration of whether reasonableness has

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[5] 2010 BCCA 199, 286 BCAC 149, 484 WAC 149; 2009 BCSC 1420, 98 BCLR (4th) 355, 88 RPR (4th) 203.
[6] *Catalyst*, *supra* note 1 at para 17.
[7] *Ibid.*
[8] *Ibid* at para 9, 30.
[9] "*Dunsmuir*'s Flaws Exposed: Recent Decisions on Standard of Review," (2012) 58:2 McGill LJ 483 at 503.
[10] Donald JM Brown & The Honourable John M Evans, Judicial Review of Adminstrative Action in Canada, (loose-leaf consulted on 21 October 2013), (Carswell, 2009), ch 15 at 3311.
[11] *Nor-Chris Holdings Inc v. Sturgeon (County)* 2013 ABAB 184 at para 69.
[12] *Ibid* at para 66-68. Graesser J.'s standard of review analysis in Nor-Chris will probably be overturned. (The Supreme Court has repeatedly stated that the standard no longer exists.)
[13] *Supra* note 9 at 503.

degrees—or as Graesser J. put it, whether "there are many separate standards within reasonableness."[14] This question was first raised by Binnie J. in his concurring opinion in *Dunsmuir* and has since been the subject of significant debate.[15] Accordingly, it will helpful to consider how *Dunsmuir* and its progeny have struggled (against this question) to develop reasonableness into a uniform, but flexible, contextual standard of review.

Dunsmuir

Judicial review is a constitutionally-protected mechanism used by courts to ensure that state actors exercise their power in accordance with the law.[16] Because state actors do not have absolute, unfettered discretion, their decisions are subject to review for both substance and process.[17] When the Supreme Court decided *Dunsmuir* in 2008, it fundamentally changed the landscape of judicial review in Canada.

Crucially, *Dunsmuir* introduced a two-standard approach to judicial review. Courts conducting judicial review now begin by asking which standard applies—correctness or reasonableness.[18] Reasonableness is a deferential standard, and courts conducting a reasonableness review must be cognizant that certain questions do not lend themselves to specific answers.[19] Correctness, in contrast, does not call for deference. Courts reviewing for correctness need not have regard for the decision-maker's reasoning process.[20] On the correctness standard, there *is* a specific answer—the one reached by the court. After determining which standard applies, the reviewing court then asks whether impugned decision was, depending on the standard, reasonable or correct.[21] If prior caselaw already establishes the appropriate standard of review, the court may skip the categorical approach and proceed to step two—applying the appropriate standard of review.[22]

Where the appropriate standard of review is reasonableness, the court must consider both the decision-maker's process of reasoning and the outcome of that reasoning. Regarding the former, the court should be concerned with "justification, transparency and intelligibility."[23] Regarding the latter,

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[14] *Ibid* at 68.
[15] *Supra* note 1 at para 140.
[16] *Catalyst*, *supra* note 1 at para 10.
[17] *Ibid* at para 12.
[18] *Dunsmuir*, *supra* note 1 at para 45.
[19] *Ibid* at para 47.
[20] *Ibid* at para 50.
[21] Some call the first step—determining which standard applies—the "categorical approach" because *Dunsmuir* identified a series of non-exhaustive categories for correctness and reasonableness. *Smith v Alliance Pipeline* Ltd., 2011 SCC 7, [2011] 1 SCR 160 at para 25. If the impugned decision falls within a correctness category, the appropriate standard is correctness, and likewise for reasonableness categories. Writing for a majority in *Smith v Alliance* (*ibid* at 26), Fish J. summarized *Dunsmuir*'s correctness categories as (1) a constitutional issue; (2) a question of general law that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise; (3) the drawing of jurisdictional lines between two or more competing specialized tribunals; and (4) a true question of vires. Justice Fish then listed the reasonableness as (1) questions relating to interpretation of the tribunal's home statute; (2) questions rasing issues of fact, discretion or policy; and (3) questions involving intertwined legal and factual issues.
[22] If the category approach does not resolve the question of which standard applies, the court must turn to the four *Pushpanathan* factors. See *Khosa*, *supra* note 3at para 54:

> This conclusion is reinforced by the second step of the analysis when jurisprudential categories are not conclusive. Factors then to be considered include: (1) the presence or absence of a privative clause; (2) the purpose of the IAD as determined by its enabling legislation; (3) the nature of the question at issue before the IAD; and (4) the expertise of the IAD in dealing with immigration policy (Dunsmuir, at para. 64).

[23] *Dunsmuir*, *supra* note 1 at para 47.

the court should be concerned with "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."[24]

In his concurring opinion in *Dunsmuir*, Binnie J. argued that the majority's two-standard approach swept patent unreasonableness under the rug without actually resolving the difficulties arising from repeated attempts to explain the difference between reasonableness *simpliciter* and patent unreasonableness.[25] Simply put, you can call it a "two-standard approach" but if different situations require different levels of deference, judicial review inevitably involves multiple reasonableness standards. For Binnie J., "'[c]ontextualizing' a single standard of review will shift the debate (slightly) from choosing *between* two standards of reasonableness that each represent a different level of deference to a debate *within* a single standard of reasonableness to determine the appropriate level of deference."[26]

Post-Dunsmuir Reasonableness

The Ontario Court of Appeal was the first appellate court to reject Binnie's suggestion that reasonableness contains multiple standards.[27] Writing for the Court in *Mills v. Ontario*, Rouleau J.A. held that "[t]he 'revised system' established in *Dunsmuir* was designed in part to make the approach judicial review of administrative decisions 'simpler and more workable'" and furthermore, that "[a]n analysis of the varying degrees of deference to be accorded to the tribunal within the reasonableness standard…fails to comply with this objective."[28] Other appellate courts agreed with Rouleau J.A. The Federal Court of Appeal adopted this approach in *Canada Revenue Agency v. Telfer*,[29] and the Alberta Court of Appeal in *International Machinists.*[30]

The Supreme Court of Canada followed suit in *Alberta Teachers.* Writing for the majority, Rothstein J. rebuked Binnie J. for trying to reintroduce, in his concurring judgment, the idea that reasonableness must allow for varying levels of scrutiny:

> The majority reasons in *Dunsmuir* do not recognize variable degrees of deference within the reasonableness standard of review….Once it is determined that a review is to be conducted on a reasonableness standard, there is no second assessment of how intensely the review is to be conducted. The judicial review is simply concerned with the question at issue.[31]

Nevertheless, in spite of their differences, both Rothstein and Binnie J.J. emphasized the importance of context to the reasonableness inquiry. The reasonableness of a decision, according to

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[24] *Ibid.* Of course, this does not mean that the two steps are completed isolated from each other. In *Newfoundland Nurses*, 2011 SCC 62; [2011] SCR 708, Abella J. stated that the reasonableness review "is a more organic exercise…the reasons must be read together with the outcome." *Ibid* at para 14.
[25] *Dunsmuir*, *supra* note 1 at para 135-41.
[26] *Ibid* at para 139.
[27] *Mills v. Ontario (Workplace Safety and Insurance Appeals Tribunal)* 2008 ONCA 436.
[28] *Ibid* at para 21.
[29] *Canada Revenue Agency v Telfer*, 2009 FCA 23, at para 29: "While the formulation of the standard of unreasonableness as applied to the process for making discretionary decisions is invariable, its application is context-specific."
[30] *International Association of Machinists and Aerospace Workers*, *Local Lodge No. 99 v Finning International Inv.* 2008 ABCA 400 at para 12: "the respondents submit that there is a spectrum of reasonableness…We reject that proposition. No such spectrum exists. The decision is either reasonable, that is, "whether the decision falls within a range of possible, acceptable outcomes, which are defensible in respect of the facts and law" or it is not."
[31] *Alberta (Information and Privacy Commissioner) v Alberta Teacher's Association*, 2011 SCC 61, [2011] 3 SCR 654 at para 47.

Rothstein J., "will be governed by the context."[32] Or as Binnie J. put it, "'the range of acceptable and rational outcomes' is context specific and varies with the circumstances."[33] Thus, while Supreme Court in *Alberta Teachers* rejected the view that deference has degrees and the reasonableness standard contains varying levels of scrutiny, it maintained that the reasonableness is governed by context.

Context and Deference

But how can this work? How can the reasonableness standard be context-specific without making deference a matter of degree? In *Canada (AG) v. Abraham*, Stratas J.A. of the Federal Court of Appeal suggested that the answer lays with the idea that reasonableness is "concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."[34] Echoing Binnie J. in *Alberta Teachers*, Stratas J.A. held that the *breadth* of the range of acceptable and possible outcomes is what varies from case to case. Sometimes the range will be wide, sometimes it will be narrow.[35] Context does not splinter the reasonableness standard or force it into a spectrum but rather "affects the breadth of ranges" of reasonable outcomes.[36]

This approach shares similarities with Rouleau J.A.'s approach in *Mills.*[37] Writing for the Court, Rouleau J.A. stated that the context of a decision—that is, "the nature and mandate of the decision-maker and the nature of the question being decided"—affects the breadth of the range of reasonable outcomes:

> Where, for example, the decision-maker is a minister of the Crown and the decision is one of public policy, the range of decisions that will fall within the ambit of reasonableness is very broad. In contrast, where there is no real dispute on the facts and the tribunal need only determine whether an individual breached a provision of its constituent statute, the range of reasonable outcomes is, perforce, much narrower.[38]

The general approach taken by Stratas and Rouleau J.J.A. packs an intuitive punch. Putting ranges and outcomes aside for a moment, the basic idea that reasonableness is contextual seems to suggest that whether a decision is reasonable depends on *who* the decision-maker is—and for that matter, *what* the decision is about, and *whom* the decision concerns. What is reasonable for you may not be reasonable for me, and vice versa. It depends on our circumstances: who we are, what sort of powers we have, what sort of obligations or restrictions have been placed upon us, what sort of question we find ourselves facing—the list goes on.

Thus, because what is reasonable varies with the context we should expect the range of acceptable and possible outcomes under the reasonableness standard to expand or contract depending on "factors such as the decision-making process, the type and expertise of the decision-maker, as well as the nature and complexity of the decision."[39]

It is in this way that reasonableness is both context-dependent and uniform at the same time. Reasonableness is not sliding scale of intensity, does not admit degrees, and does not contain multiple

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[32] *Ibid* at para 47.
[33] *Ibid* at para 85.
[34] *Canada (AG) v Abraham*, 2012 FCA 266 at para 41.
[35] *Ibid* at para 45.
[36] *Ibid* at para 43.
[37] In fact, Stratas J. cites Mills to support his analysis.
[38] *Supra* note 27 at para 22.
[39] *Ibid.* The same point can be made using the language of deference. Because reasonableness is a deferential standard and deference is an attitude taken toward particular decision-makers, reviewing courts must ask whether the decision was reasonable for *this* decision-maker in *this* administrative context with *these* issues at play.

standards, each with varying levels of scrutiny. As Rothstein J. stated in *Alberta Teachers*, "[each question] will be governed by the context. But there is no determination of the intensity of the review with some reviews closer to a correctness review and others not."[40]

Did the Supreme Court Change its Mind in *Catalyst*?

In light of the Supreme Court's firm and continued resistance to the notion that reasonableness has degrees, the reading put forward by Daly and others suggests that the Supreme Court changed its mind dramatically in *Catalyst*. Recall that according to Daly, the Supreme Court in *Catalyst* introduced a third standard for municipal bylaws. For him, *Catalyst* shows that "in *Dunsmuir*, the Court spoke too soon. A third standard is necessary."[41]

But there are good reasons to think that Daly misunderstands the Supreme Court's reasoning in *Catalyst*. Daly gives two main arguments in support of his reading and both are problematic. First, Daly relies on a passage in the Court's reasonableness analysis where McLachlin states that "the applicable test is this: only if the bylaw is one no reasonable body informed by these factors could have taken will the bylaw be set aside."[42] Second, Daly points to the fact that the Court did not undertake a standard of review analysis but proceeded directly to reasonableness review instead.

The latter problem can be put to rest immediately. Here Daly seems to conflate the Court's reasonableness analysis with its standard of review analysis. Of course, here Daly is not entirely to blame. Chief Justice McLachlin does cite paragraph 54 and 57 of *Dunsmuir* for the proposition that context matters for the reasonableness analysis. Given the connotations those well-worn passages carry, Daly's confusion is understandable.[43]

Because neither the District nor Catalyst had any qualms with the reasonableness standard, the Court wasted little effort addressing the standard of review. After outlining *Dunsmuir*'s two-standard approach, the Court moved directly to reasonableness review. While lamentable in some respects,[44] skipping the standard of review analysis when the standard is not in dispute has become common practice. Since *Khosa* was decided in 2009, courts have begun "concentrating their analysis on the application of the standard of review, as opposed to determining the standard of review itself."[45] Thus, when reading *Catalyst*, one must remember that the Court quickly determines that reasonableness is the appropriate standard of review and moves on. [46] The Court's subsequent dilations on context are aimed at illuminating the inner workings of reasonableness review.

The sentence that serves as a fulcrum for Daly's reading will require a little more work. To understand why the sentence, read in its proper context, does not support Daly's claim, we must take a closer look at the Court's reasonableness review. Roughly, because the reasonableness of a decision depends on its context, the unique (quasi-legislative) role played by municipal decision-makers gives rise not to a third standard of review, but rather a range of possible and acceptable outcomes far greater than otherwise available to most decision-makers.

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[40] *Alberta Teachers*, *supra* note 31 at para 47.
[41] *Supra* note 9 at 504.
[42] *Supra* note 1 at 24.
[43] Paragraph 54 and 57 in *Dunsmuir* address the standard of review analysis rather than the reasonableness analysis.
[44] Determining the correct standard of review is a question of law. See *Dr. Q v College of Physicians and Surgeons of British Columbia* 2003 SCC 19 at para 43. Technically, it is not for the parties to decide that reasonableness is the appropriate standard. In such cases, the Court should still run through the standard of review analysis.
[45] Andrew Wray & Christian Vernon, "Administrative Law Developments in Ontario & Standard of Review Update" *Law Society of Upper Canada – Six Minute Adminstrative Lawyer*, (2010) at 5.
[46] *Catalyst*, *supra* note 1 at para 16. Italics removed.

Reasonableness Review in *Catalyst*

The Court in *Catalyst* distilled the dispute into an acute question about reasonable outcomes. According to McLachlin CJC, "[t]he critical question is what factors the court should consider in determining what lies within the range of possible reasonable outcomes. Is it the narrow group of objective consumption-related factors urged by Catalyst? Or is it a broader spectrum of social, economic and political factors, as urged by North Cowichan."[47] To answer this question, the Court was forced grapple with the intricacies of what it means to be a "reasonable" outcome.

Reasonable Outcomes

Building on remarks from *Dunsmuir* and *Khosa*, the Court reiterated that the reasonableness standard involves "an essentially contextual inquiry" and more specifically, that "reasonableness must be assessed in the *context of the particular type of decision making involved and all relevant factors*."[48] Thus, rather than simply asking whether the bylaw was "within the reasonable range of outcomes" the Court explored the context of the type of decision-making at issue—namely, municipal decision-making. The Court began by looking at what previous courts had said municipal decision-making. The Court was quick to state that considering pre-*Dunsmuir* caselaw "does not contradict the fact that the ultimate question is whether the decision falls within a range of reasonable outcomes" but rather "simply recognizes that reasonableness depends on context."[49] In other words, the previous cases do not determine the standard of review, but rather "point the way to what is reasonable in the particular context of bylaws passed by democratically elected municipal councils."[50]

Notably, the Court considered the seminal nineteenth-century case on municipal decision-making, *Kruse v Johnson* (1898), in which Lord Russell C.J. established a longstanding, deferential approach to judicial review of municipal bylaws.[51] According to the Court, the caselaw, exemplified by *Kruse*, suggests "the review of municipal bylaws must reflect the broad discretion provincial legislators have traditionally accorded to municipalities engaged in delegated legislation."[52] The caselaw requires courts reviewing for reasonableness to acknowledge that municipal councillors must consider a wide variety of factors when enacting bylaws and that this affects what counts a reasonable outcome.[53] Summing up the test for determining a "reasonable outcome" in the context of municipal actors, the Court stated "the test is this: only if the bylaw is one no reasonable body informed by these factors could have taken will the bylaw be set aside."[54]

This is the sentence that Daly points to as reintroducing a third standard of review. It should be clear why Daly is mistaken: the "test" that the Court lays out here is not a third standard of review, but rather *Dunsmuir*'s reasonableness standard in the context of municipal decision-making. It is an instantiation of the idea articulated by Stratas JA that the breadth of reasonable outcomes will vary with the context. As a municipality, the range of acceptable and possible outcomes open to North Cowichan is broad. Although the test that McLachlin CJC describes harkens back to the standard of Wednesbury reasonableness, it is firmly situated within the *Dunsmuir* framework. As we have seen, context is tied to

[47] *Ibid* at para 17.
[48] *Ibid* at para 18.
[49] *Ibid.*
[50] *Ibid* at para 23.
[51] [1898] 2 QB 91.
[52] *Catalyst*, *supra* note 1 at para 19.
[53] *Ibid* at 19.
[54] *Ibid* at para 24

history, and reasonableness in the municipal context will take meaning from early cases dealing with municipal decision-making.[55]

After discussing reasonableness in the context of municipal decision-making, Court moved to the next step of the reasonableness inquiry and asked whether the District's *process* of arriving at the decision (i.e. the bylaw) was reasonable.

Reasonable Processes

Reasonable outcomes are not enough. *Dunsmuir* also requires reviewing courts to have regard for "the process of articulating reasons".[56] This is often the more important stage—or at least, it tends to receive the most attention. As the Court wrote in *Dunsmuir*, "[i]n judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process."[57] However, in *Catalyst*, the requirements of justification, transparency and intelligibility did not play a significant role because of the nature of municipal decision-making.[58] Addressing the issue of reasoning processes, the Court stated that "[i]t is important to remember that requirements of process, like the range of reasonable outcomes, vary with the context and the nature of the decision-making process at issue."[59] In the context of municipal decision-making, we simply cannot expect formal reasons. As McLachlin CJC put it, "[t]o demand that councillors who have just emerged from a heated debate on the merits of a bylaw get together to produce a coherent set of reasons is to misconceive the nature of the democratic process that prevails in the council chamber."[60]

Thus, while it is lamentable that the Court in *Catalyst* did not explicitly ask whether the District's reasons for the bylaw were justified, transparent, and intelligible, the reasonable process step of *Dunsmuir*'s reasonableness inquiry was nevertheless addressed, and it played an important role in the Court's analysis. Because reasonableness depends on the context, and in some circumstances, decision-makers cannot be expected to formulate coherent reasons *Dunsmuir*'s criteria for reasons will not always apply. The Court went on to hold that the District's reasoning process satisfied the reasonableness standard: the voting procedure used by the District was not flawed, and the District's reasons "were clear to everyone".[61]

Thus, although claims like Daly's have some merit—the Court in *Catalyst* approached its reasonableness inquiry through the lens of municipal decision-making—his reading ultimately misses the Court's central lesson. *Catalyst* does break from *Dunsmuir*; it simply develops *Dunsmuir* by emphasizing that context affects reasonableness.

Conclusion

[55] Of course, prior caselaw does not tell the whole story. One must also look at the legislative context. The Court turned to the applicable legislative framework. In this case, the relevant legislation was subsection 197(3) of the Community Charter, which allowed municipalities to set different tax rates for different property classes. According to the Court, "[s]ection 197 gives municipalities a broad and virtually unfettered legislative discretion to establish property tax rates in respect of each of the property classes in the municipality." *Ibid* at para 26.
[56] *Dunsmuir*, *supra* note 1 at para 47.
[57] *Ibid*.
[58] In fact, the three requirements are not even mentioned in the Court's decision.
[59] *Catalyst*, *supra* note 1 at para 28.
[60] *Ibid* at para 29.
[61] *Ibid* at para 33.

Catalyst was the first post-*Dunsmuir* Supreme Court decision to deal with judicial review in the context of municipal decision-making. Although the decision was, in many ways, a straightforward application of *Dunsmuir* and its progeny, the Court also took the opportunity to discuss the role of context within the reasonableness inquiry.

Catalyst is therefore important not just for municipal lawyers, but for administrative law practitioners as a whole. Before *Catalyst*, while it was clear that reasonableness required involved a contextual inquiry, the idea lacked form. *Catalyst* has given structure to the contextual inquiry and has clarified how courts should assess the context of a particular decision. In particular, reviewing courts should look to both pre-*Dunsmuir* caselaw and relevant statutes to determine the reasonable range of outcomes for the decision-maker in question. But this development has been overlooked by some. The suggestion that *Catalyst* departs from *Dunsmuir* and reintroduces a third standard of review muddles the doctrine of judicial review.

Of course, this is not to say everyone has been getting *Catalyst* wrong. In *Doré*, for example, the Supreme Court cited *Catalyst* for the proposition that "the nature of the reasonableness analysis is always contingent on its context."[62] And recent decisions from the Federal Court and Federal Court of appeal suggest that the Supreme Court's lesson about context is being taken to heart.

In *JP Morgan Asset Management (Canada) v. Minister of National Revenue (2013)*, Stratas J.A. cited *Catalyst* for the proposition that range of reasonable outcomes "can be narrow or broad depending on the circumstances."[63] Justice Stratas also relied on *Catalyst* in *Canada (Attorney General) v. Canadian Human Rights Commission (2013)* to make a similar point about the range of reasonable outcomes available to Canadian Human Rights Tribunal.[64]

In *Dhillon v. Canada (Minister of Citizenship & Immigration) (2012)*, Harrington J. held that decision to dismiss an application to sponsor a family member as a permanent resident was unreasonable. Citing *Catalyst*, Harrington J. stated that "reasonableness must be assessed in the context of the particular type of decision making involved with all relevant factors in mind."[65]

Finally, in *Canada (Border Services Agency) v. Levolor Home Fashions Canada (2013)*,[66] Noël J.A stated that *Dunsmuir*'s application of reasonableness had been reiterated in *Catalyst*. With any luck, this will become the prevailing reading of this important case: *Catalyst* did not break from *Dunsmuir* by introducing a third standard of review, but rather reiterated the established two-standard approach to substantive judicial review wherein reasonableness is a flexible standard that takes colour from its context.

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[62] *Doré v. Barreau du Québec*, 2012 SCC 12 at para 7.
[63] 2013 FCA 250 at para 71.
[64] 2013 FCA 75 at para 13.
[65] 2012 FC 192; 212 ACWS (3d) 1023 at para 15.
[66] 2013 FCA 3 at para 6.