

**SUPREME COURT OF CANADA**

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| **Citation:** McLean *v.* British Columbia (Securities Commission),2013 SCC 67, [2013] 3 S.C.R. 895 | **Date:** 20131205  **Docket:** 34593 |

**Between:**

**Patricia McLean**

Appellant

and

**Executive Director of the British Columbia Securities Commission**

Respondent

- and -

**Financial Advisors Association of Canada and Ontario Securities Commission**

Interveners

**Coram:** LeBel, Fish, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

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| **Reasons for Judgment:**  (paras. 1 to 73)  **Concurring Reasons:**  (paras. 74 to 82) | Moldaver J. (LeBel, Fish, Rothstein, Cromwell and Wagner JJ. concurring)  Karakatsanis J. |

McLean *v.* British Columbia (Securities Commission), 2013 SCC 67, [2013] 3 S.C.R. 895

Patricia McLean Appellant

*v.*

Executive Director of the British Columbia Securities

Commission Respondent

and

**Financial Advisors Association of Canada and**

Ontario Securities Commission Interveners

Indexed as: McLean *v.* British Columbia (Securities Commission)

2013 SCC 67

File No.:  34593.

2013:  March 21; 2013:  December 5.

Present: LeBel, Fish, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

on appeal from the court of appeal for british columbia

*Administrative law — Securities — Standard of review — Limitation of actions — Appellant entering into settlement agreement with Ontario Securities Commission in respect to certain possible improper actions — B.C. Securities Commission initiating secondary proceedings based on settlement agreement — B.C. Securities Act establishing limitation period of six years from date of “events” giving rise to proceedings — Whether “events” triggering six‑year limitation period are the underlying misconduct giving rise to the settlement agreement, or the settlement agreement itself — Whether the standard of review of the Commission’s decision should be correctness or reasonableness — Having regard to the standard of review, whether there is any basis to interfere with the Commission’s interpretation — Securities Act, R.S.B.C. 1996, c. 418, ss. 159, 161(6)(d).*

On September 8, 2008, M entered into a settlement agreement with the Ontario Securities Commission in respect to misconduct that occurred in Ontario, in 2001 or earlier. The Ontario Securities Commission issued an order in the public interest barring her from trading in securities for five years and banning her from acting as an officer or director of certain entities registered in Ontario for 10 years. On January 14, 2010, the respondent notified M that he was applying to the British Columbia Securities Commission for a public interest order against her based on s. 161(6)(d) of the *Securities* *Act*, R.S.B.C. 1996, c. 418. Section 161(6)(d) empowers the Commission to bring proceedings in the public interest against persons who have agreed with another jurisdiction’s securities regulator, by way of a settlement agreement, to be subject to regulatory action. Section 159 of the *Securities* *Act* sets out that all proceedings under the Act “must not be commenced more than 6 years after the date of the events that give rise to the proceedings”. The Commission issued a reciprocal order adopting the same prohibitions as are set out in the Ontario Securities Commission’s order. In doing so, the Commission implicitly interpreted s. 159, as it applies to s. 161(6)(d), such that “the event” that triggered the six‑year limitation period was M’s entering into a settlement agreement and not the misconduct that occurred in 2001 or earlier. The Court of Appeal applied a correctness standard of review and upheld the Commission’s implied decision that “the event” that gave rise to the proceedings in British Columbia under s. 161(6)(d) was the agreement in Ontario.

*Held*: The appeal should be dismissed

*Per* LeBel, Fish, Rothstein, Cromwell, Moldaver and Wagner JJ.: The question presented is whether, for purposes of s. 161(6)(d), “the events” that trigger the six‑year limitation period in s. 159 are (i) the underlying misconduct that gave rise to the settlement agreement or (ii) the settlement agreement itself. A review of the ordinary meaning, the context, and the purpose of both ss. 159 and 161(6) of the *Securities* *Act* reasonably supports the Commission’s conclusion that the event giving rise to a proceeding under s. 161(6)(d) is the fact of having agreed with a securities regulatory authority to be subject to regulatory action. The appropriate standard of review is reasonableness. Both parties proposed reasonable interpretations of s. 159 of the *Securities Act*, as it applies to s. 161(6)(d). However, under reasonableness review, courts defer to any reasonable interpretation adopted by an administrative decision maker, even if other reasonable interpretations may exist. Because the Commission’s interpretation has not been shown to be an unreasonable one, there is no basis to interfere on judicial review.

The Court of Appeal erred by applying a correctness standard of review. It is presumed that courts will defer to an administrative decision maker interpreting its own statute or statutes closely connected to its function. This presumption is not rebutted in this case. Nor does the question fall within any exceptional category that warrants a correctness standard. Although limitation periods generally are of central importance to the fair administration of justice, the issue here is statutory interpretation in a particular context within the Commission’s specialized area of expertise. The possibility that other provincial securities commissions may arrive at different interpretations of similar statutory limitation periods is a function of the Constitution’s federalist structure and does not provide a basis for a correctness review. Finally, and most significantly, the modern approach to judicial review recognizes that courts may not be as qualified as an administrative tribunal to interpret that tribunal’s home statute. In particular, the resolution of unclear language in a home statute is usually best left to the administrative tribunal because the tribunal is presumed to be in the best position to weigh the policy considerations often involved in choosing between multiple reasonable interpretations of such language.

The Commission’s interpretation of the limitations period here is reasonable. The ordinary meaning of “the events” in s. 159 that give rise to a proceeding under s. 161(6)(d) is the fact of having agreed with a securities regulatory authority to be subject to regulatory action. Although s. 159 predates s. 161(6), and originally limitation periods were understood to run from the date of the underlying misconduct, that drafting history is not dispositive. The phrase “the events” is deliberately open‑ended and applicable to a variety of contexts. As applied to s. 161(6)(d), it can mean the date the person “has agreed with a securities regulatory authority”. Finally, allowing secondary jurisdictions to wait until the conclusionof a primary proceeding obviates the need for parallel and duplicative proceedings that will overburden securities commissions and the targets of proceedings. The Commission’s interpretation thus furthers the legislative goal of improving interjurisdictional cooperation between provinces and territories.

Although the Commission’s interpretation significantly extends the duration of time for which a person may be subject to regulatory action, of itself, that is not offensive to the purpose of limitation periods. Limitation periods are always driven by policy choices that attempt to balance the interests of the parties. The Commission’s interpretation strikes a reasonable balance between facilitation of interprovincial cooperation and the underlying purposes of limitation periods.

*Per* Karakatsanis J.: The Commission was reasonable in interpreting s. 159 to require that secondary proceedings under s. 161(6) must be initiated within six years of a person being sanctioned in another jurisdiction. However, the opposite interpretation — that the limitation period runs from the time of the underlying misconduct — is not reasonable. Such an interpretation would require duplicative proceedings in cases, like this one, where an investigation in another jurisdiction does not conclude within six years of the underlying misconduct. It is inconsistent with the legislative objective of facilitating interjurisdictional cooperation and it is at odds with a purposive interpretation. Consequently, it would not have been open to the Commission to interpret the limitations period as the appellant urges.

**Cases Cited**

By Moldaver J.

**Distinguished:** *Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35, [2012] 2 S.C.R. 283; **referred to:** *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37, [2001] 2 S.C.R. 132; *McLean (Re)*, 2008 LNONOSC 660, 31 O.S.C.B. 8734; *Heidary (Re)*, 2000 LNONOSC 79, 23 O.S.C.B. 959; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; *City of Arlington, Texas v. Federal Communications Commission*, 133 S. Ct. 1863 (2013); *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471; *Nor‑Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, 2011 SCC 59, [2011] 3 S.C.R. 616; *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, [2013] 2 S.C.R. 458; *British Columbia Securities Commission v. Bapty*, 2006 BCSC 638 (CanLII); *National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 S.C.R. 1324; *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650; *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405; *Woods (Re)*, 1997 LNBCSC 11 (QL); *Seto (Re)*, 2006 BCSECCOM 569 (CanLII); *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, [1993] 3 S.C.R. 724; *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140; *Montréal (City) v. 2952‑1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141; *Dennis (Re)*, 2005 BCSECCOM 65, 2004 LNBCSC 705 (QL); *Perka v. The Queen*, [1984] 2 S.C.R. 232; *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21, [2000] 1 S.C.R. 494; *Novak v. Bond*, [1999] 1 S.C.R. 808; *Friedland (Re)*, 2010 BCSECCOM 654 (CanLII); *Nielsen (Re)*, 2013 LNONOSC 254, 36 O.S.C.B. 3478; *Robinson (Re)*, 2013 LNABASC 295, 2013 ABASC 317 (CanLII); *Maitland Capital Ltd. (Re)*, 2012 LNONOSC 95, 35 O.S.C.B. 1729; *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6; *Cholmondeley v. Clinton* (1820), 2 Jac. & W. 1, 37 E.R. 527; *Lines v. British Columbia (Securities Commission)*, 2012 BCCA 316, 35 B.C.L.R. (5th) 281; *Roncarelli v. Duplessis*, [1959] S.C.R. 121; *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623; *Murphy v. Welsh*, [1993] 2 S.C.R. 1069; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559.

By Karakatsanis J.

**Referred to:**  *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21, [2000] 1 S.C.R. 494; *Reference re Securities Act*, 2011 SCC 66, [2011] 3 S.C.R. 837.

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Bill 28, *Securities Amendment Act, 2007*, 3rd Sess., 38th Parl., British Columbia (Third reading, October 23, 2007).

*Securities Act*, C.C.S.M., c. S50, ss. 137, 148.4(1).

*Securities Act*, R.S.A. 2000, c. S‑4, s. 198(1.1).

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 127, 127.1, 140(a), 140.94, 159, 161(1), (6).

*Securities Act*, R.S.N.L. 1990, c. S‑13, ss. 127(1.1), 129.

*Securities Act*, R.S.N.S. 1989, c. 418, s. 134(1A).

*Securities Act*, R.S.O. 1990, c. S.5, s. 127(10).

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*Securities Act*, S.Nu. 2008, c. 12, s. 60(3).

*Securities Act*, S.N.W.T. 2008, c. 10, s. 60(3).

*Securities Act*, S.Y. 2007, c. 16, s. 60(3).

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APPEAL from a judgment of the British Columbia Court of Appeal (Saunders, Chiasson and Neilson JJ.A.), 2011 BCCA 455, 312 B.C.A.C. 288, 531 W.A.C. 288, 343 D.L.R. (4th) 432, [2011] B.C.J. No. 2124 (QL), 2011 CarswellBC 2929, allowing an appeal from a decision by the British Columbia Securities Commission, 2010 BCSECCOM 262, 2010 LNBCSC 222 (QL). Appeal dismissed.

*Christopher H. Wirth* and *Fredrick Schumann*, for the appellant.

*Stephen M. Zolnay*, for the respondent.

*Lou Brzezinski* and *John Polyzogopoulos*, for the intervener the Financial Advisors Association of Canada.

*Johanna M. Superina* and *Usman M. Sheikh*, for the intervener the Ontario Securities Commission.

The judgment of LeBel, Fish, Rothstein, Cromwell, Moldaver and Wagner JJ. was delivered by

Moldaver J. —

I. Introduction

1. In Canada, the individual provinces and territories bear primary responsibility for the regulation of stocks, bonds, and other securities. However, because modern securities markets transcend provincial and territorial borders, the provinces and territories have in recent years taken steps to harmonize their securities laws and to improve cooperation between their securities regulators.
2. As a result of these efforts, the British Columbia Securities Commission (the “Commission”), like all of its provincial and territorial peers, has been empowered to bring proceedings in the public interest against persons who, among other things, have agreed with another jurisdiction’s securities regulator, by way of a settlement agreement, to be subject to regulatory action; see s. 161(6)(d) of the *Securities* *Act*, R.S.B.C. 1996, c. 418. In the jargon of the industry, these proceedings are known as “secondary proceedings” because they piggy-back on another jurisdiction’s efforts. Subject to a few exceptions, all proceedings under the *Act* — secondary or otherwise — “must not be commenced more than 6 years after the date of the events that give rise to the proceedings” (s. 159).
3. At issue in this appeal is whether, for purposes of s. 161(6)(d), “the events” that trigger the six-year limitation period in s. 159 are (i) the underlying misconduct that gave rise to the settlement agreement or (ii) the settlement agreement itself. The Commission takes the position that the settlement agreement is the triggering event. On that basis, it commenced secondary proceedings against the appellant after she entered into a settlement agreement with another regulator, even though the underlying misconduct referred to in that agreement occurred roughly nine years earlier. Had the Commission adopted the alternative interpretation, as the appellant argues it should have, the secondary proceeding would have been commenced outside the six-year limitation period and thus been statute-barred.
4. Applying the governing standard of review, which I consider to be reasonableness, I am satisfied that the Commission’s interpretation is a reasonable construction of the relevant statutory language. Significantly, the Commission’s conclusion supports the legislative objective of facilitating interjurisdictional cooperation in secondary proceedings and does so without undercutting the crucial role of limitation periods. Accordingly, I see no reason to interfere and would dismiss the appeal.

II. Facts

A. *The Primary Investigation and The Settlement Agreement*

1. The facts are straightforward and undisputed. From March 1996 to June 2001, the appellant, Patricia McLean, served as a director of Hucamp Mines Ltd., a reporting issuer registered in Ontario under the *Securities Act*, R.S.O. 1990, c. S.5. Beginning in July 2001, the appellant began cooperating with the Ontario Securities Commission (“OSC”) in respect of “certain possible improper actions at Hucamp” (Settlement Agreement Between OSC Staff and Patricia McLean, at para. 63 (A.R., at p. 45)). The particulars of the alleged misconduct are not relevant, but the timing is — the allegations pertain to conduct that occurred in 2001 or earlier.
2. On July 11, 2005, the OSC announced that it would hold a hearing under its public interest powers to sanction the appellant and certain others for their alleged misconduct at Hucamp; see *Securities Act*, ss. 127 and 127.1. Such powers, which exist in each of the provincial and territorial statutes, confer a “very wide discretion” to make whatever orders the OSC considers to be in the public interest (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37, [2001] 2 S.C.R. 132, at para. 39).
3. Three years later, on September 8, 2008, the appellant entered into a settlement agreement with the OSC staff wherein she “consent[ed] to the making of [such] an order against her” (Settlement Agreement, at para. 2 (A.R., at p. 33)). On the same day, the OSC approved the settlement agreement and issued the agreed-upon order (*McLean (Re)*, 2008 LNONOSC 660, 31 O.S.C.B. 8734).
4. In its pertinent parts, the OSC order barred the appellant for five years from trading in securities (with some exceptions) and banned her for ten years from acting as an officer or director of certain entities registered under the Ontario *Securities Act*. By virtue of the OSC’s provincial jurisdiction, the reach of these sanctions did not extend beyond Ontario’s borders. No one challenges the propriety of the OSC’s order.

B. *The Secondary Investigation and the B.C. Order*

1. All was quiet for the next 15 months — until January 14, 2010 to be exact — when the appellant was notified by the Executive Director of the B.C. Securities Commission (the respondent) that he was applying to the Commission under s. 161(1) of the *Act* for a “public interest” order against her based on s. 161(6)(d). For present purposes, the relevant aspects of those provisions are as follows:

**159** [Limitation Period] Proceedings under this Act, other than an action referred to in section 140, must not be commenced more than 6 years after the date of the events that give rise to the proceedings.

. . .

**161** (1) [Enforcement Orders] If the commission or the executive director considers it to be in the public interest, the commission or the executive director, after a hearing, may order one or more of the following:

. . .

(b) that

. . .

(ii) the person or persons named in the order, . . .

. . .

cease trading in, or be prohibited from purchasing, any securities or exchange contracts, a specified security or exchange contract or a specified class of securities or class of exchange contracts;

. . .

(d) that a person

(i) resign any position that the person holds as a director or officer of an issuer or registrant,

(ii) is prohibited from becoming or acting as a director or officer of any issuer or registrant,

. . .

(6) The commission or the executive director may, after providing an opportunity to be heard, make an order under subsection (1) in respect of a person if the person

(a) has been convicted in Canada or elsewhere of an offence

(i) arising from a transaction, business or course of conduct related to securities or exchange contracts, or

(ii) under the laws of the jurisdiction respecting trading in securities or exchange contracts,

(b) has been found by a court in Canada or elsewhere to have contravened the laws of the jurisdiction respecting trading in securities or exchange contracts,

(c) is subject to an order made by a securities regulatory authority, a self regulatory body or an exchange, in Canada or elsewhere, imposing sanctions, conditions, restrictions or requirements on the person, or

(d) has agreed with a securities regulatory authority, a self regulatory body or an exchange, in Canada or elsewhere, to be subject to sanctions, conditions, restrictions or requirements.

1. In asserting that it had authority to make an order under s. 161(1) based on s. 161(6)(d), the Commission relied on the appellant’s settlement agreement with the OSC. And thus began the present case.
2. There is no dispute that had the Commission proceeded *solely* under s. 161(1), the proceeding would have run afoul of s. 159. The respondent accepts that the six-year limitation period in s. 159 as applied to s. 161(1) alone begins to run from “the last event in the series of events which form the course of conduct” sanctioned by the order (R.F., at para. 79, citing *Heidary (Re)*, 2000 LNONOSC 79, 23 O.S.C.B. 959, at p. 961). By January 2010, it had been almost nine years since the last event described in the settlement agreement.
3. The question in this case is whether the same conclusion holds true for secondary proceedings initiated using s. 161(6)(d). If it does, as the appellant contends, the Commission’s order must be set aside for the same reason that an order based on s. 161(1) alone would be — it had been almost nine years after the last event described in the settlement agreement and three years beyond the requisite limitation period. If, however, the clock under s. 161(6)(d) starts running on the date of the settlement agreement referred to in that provision, as the Commission concluded, the Commission’s order must stand because the proceeding was commenced well within the six-year window prescribed by s. 159.

III. Proceedings Below

A. *British Columbia Securities Commission, 2010 BCSECCOM 262 (CanLII)*

1. After receiving notice of the secondary proceeding, the appellant “made extensive written submissions on the limitation period issue” to the Commission arguing that it lacked authority to make an order against her by virtue of s. 159 (A.F., at para. 10). She raised no other issues or arguments.
2. The Commission implicitly rejected the appellant’s limitations argument by issuing what it termed a “reciprocal order” that was substantially identical to the OSC order. In particular, the Commission barred the appellant from trading in securities under s. 161(1)(b) (except for those trades permitted under the OSC order) and prohibited her from acting as an officer or director of certain entities registered under the *Act* under s. 161(1)(d)(i) and (ii). The prohibitions expired on the same day as the OSC order — that is, five years and ten years, respectively, from September 8, 2008.
3. As a consequence of the twin orders from the Ontario and B.C. Commissions, the appellant was prohibited from engaging in substantially identical conduct in both Ontario and British Columbia for identical periods of time.

B. *British Columbia Court of Appeal, 2011 BCCA 455, 312 B.C.A.C. 288*

1. On appeal, the appellant reiterated her limitations argument. The B.C. Court of Appeal concluded that “generally the interpretation of a limitation period provision in a statute by an administrative tribunal will engage the standard of correctness” (para. 15). Applying that standard, it nonetheless found in favour of the Commission. On a “plain reading”, the court concluded that “although the acts which gave rise to the Ontario proceedings obviously occurred before the agreement was made, the event that gave rise to the [B.C.] proceedings under s. 161(6)(d) was the agreement in Ontario” (para. 20). The interpretation put forward by the appellant “would eliminate the effective operation of s. 161(6)(d) which cannot have been the intention of the Legislature” (*ibid*.).
2. The appellant also challenged the Commission’s failure to give reasons for its order, both as to the limitation period and as to why the order was in the public interest. As regards the limitation argument, the court held that “although it might have been of assistance” had the Commission given reasons for its interpretation of s. 159, reasons were not essential because the question was one of law reviewable on a standard of correctness (para. 27). With respect to the order being in the public interest, the court concluded that “the complete absence of reasons makes appellate review of the public interest aspect of the decision and the sanctions imposed impossible” (para. 30). Hence, the court remitted the matter to the Commission for a “brief explanation” (para. 31). The Commission subsequently provided such an explanation (2012 BCSECCOM 50 (CanLII)), and that aspect of its decision is not challenged before this Court.

IV. Issues

1. At issue in this appeal is the proper interpretation of the limitation period in s. 159 as it relates to public interest orders made under s. 161(6)(d) of the *Act*. The following two questions arise:

(1) What is the standard of review for the Commission’s interpretation of s. 159 as it applies to s. 161(6)(d)?

(2) Having regard to the applicable standard of review, is there any basis to interfere with the Commission’s interpretation?

V. Analysis

A. *Standard of Review*

(1) The Presumption of Reasonableness Review for Home Statutes

1. As noted, the Court of Appeal was of the view that the standard of review was correctness. Before this Court, the parties and the intervener, the OSC, disagreed on that issue. For the reasons that follow, I am satisfied that the standard of review is reasonableness.
2. Before turning to my analysis, I pause to note that the standard of review debate is one that generates strong opinions on all sides, especially in the recent jurisprudence of this Court. However, the analysis that follows is based on this Court’s existing jurisprudence — and it is designed to bring a measure of predictability and clarity to that framework.[[1]](#footnote-1)
3. Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, this Court has repeatedly underscored that “[d]eference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity” (para. 54).[[2]](#footnote-2) Recently, in an attempt to further simplify matters, this Court held that an administrative decision maker’s interpretation of its home or closely-connected statutes “should be presumed to be a question of statutory interpretation subject to deference on judicial review” (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 34).
4. The presumption endorsed in *Alberta Teachers*, however, is not carved in stone. First, this Court has long recognized that certain categories of questions — even when they involve the interpretation of a home statute — warrant review on a correctness standard (*Dunsmuir*, at paras. 58-61). Second, we have also said that a contextual analysis may “rebut the presumption of reasonableness review for questions involving the interpretation of the home statute” (*Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35, [2012] 2 S.C.R. 283, at para. 16). The appellant follows both these routes in urging us to accept a correctness standard. I propose to deal with her second argument first as it can be dispensed with quickly.

(2) The Presumption of Reasonableness Review Is Not Rebutted

1. The appellant contends that the presumption of reasonableness review has been rebutted. She relies on our recent decision in *Rogers*, where we held that a correctness standard was appropriate because of a statutory scheme under which both an administrative tribunal and the courts had concurrent jurisdiction at first instance in interpreting the relevant statute.
2. This case is different. As Rothstein J. made clear in *Rogers*, it was the fact that both the tribunal and the courts “may each have [had] to consider the same legal question at first instance” that “rebutt[ed] the presumption of reasonableness review” (para. 15 (emphasis added)). Here, the legal question is the interpretation of s. 159 as it applies to s. 161(6)(d)— and it is *solely* the Commission that is tasked with considering that matter in the first instance. Accordingly, there is no possibility of conflicting interpretations with respect to the question actually at issue. The logic of *Rogers* is thus inapplicable.

(3) The Question Does Not Fall Into an Exceptional Category

1. I return then to the appellant’s first argument — that the question presented falls into an exceptional category warranting “correctness” review. Post-*Dunsmuir*, it has become fashionable for counsel to argue that the question before an administrative decision maker falls into one of the few recognized exceptional categories. One wave of cases focuses on whether the question raised is a “true” question of *vires* or jurisdiction; see *Alberta Teachers*, at paras. 37-38 (citing various cases). In that case, the Court expressed serious reservations about whether such questions can be distinguished as a separate category of questions of law, but ultimately left the door open to the possibility (para. 34).[[3]](#footnote-3)
2. A second wave — the one which the appellant now rides — focuses on “general questions of law that are both of central importance to the legal system as a whole and outside the adjudicator’s specialized area of expertise” (*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471 (“*Mowat*”), at para. 22, referring to *Dunsmuir*, at para. 60); see also *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, 2011 SCC 59, [2011] 3 S.C.R. 616; *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, [2013] 2 S.C.R. 458. In each of these cases, this Court unanimously found that the question presented did not fall into this exceptional category — and I would do so again here.
3. The logic underlying the “general question” exception is simple. As Bastarache and LeBel JJ. explained in *Dunsmuir*, “[b]ecause of their impact on the administration of justice as a whole, such questions require uniform and consistent answers” (para. 60). Or, as LeBel and Cromwell JJ. put it in *Mowat*, correctness review for such questions “safeguard[s] a basic consistency in the fundamental legal order of our country” (para. 22).
4. Here, the appellant’s arguments in support of her contention that this case falls into the general question category fail for three reasons. First, although I agree that limitation periods, as a conceptual matter, are *generally* of central importance to the fair administration of justice, it does not follow that the Commission’s interpretation of *this* limitation period must be reviewed for its correctness. The meaning of “the events” in s. 159 is a nuts-and-bolts question of statutory interpretation confined to a particular context. Indeed, the arguably complex legal doctrines such as discoverability that the appellant says demand correctnessreview (see A.R.F., at para. 9) have been specifically *excluded* from any application to s. 159. The appellant recognizes this fact elsewhere in her submissions (A.F., at para. 25, citing *British Columbia Securities Commission v. Bapty*, 2006 BCSC 638 (CanLII), at para. 28). Accordingly, there is no question of law of central importance to the legal system as a whole, let alone one that falls outside the Commission’s specialized area of expertise.
5. Second, while it is true that reasonableness review in this context necessarily entails the possibility that other provincial and territorial securities commissions may arrive at different interpretations of their own statutory limitation periods, I cannot agree that such a result provides a basis for correctness review — and thus judicially mandated “consisten[cy] . . . across the country” (A.R.F., at para. 13). No one disputes that each of the provincial and territorial legislatures can enact entirely different limitation periods. Indeed, one of them has; see Manitoba’s *Securities Act*, C.C.S.M., c. S50, s. 137 (providing an eight-year period, instead of the six-year norm). By the same token, it may be the case that provincial and territorial securities regulators come to differing (but nonetheless reasonable) interpretations of those limitation periods (though that has yet to occur). If there is a problem with such a hypothetical outcome, it is a function of our Constitution’s federalist structure — not the administrative law standards of review.
6. Third, and most significantly, the problem with the appellant’s argument is her narrow view of the Commission’s expertise. In particular, the appellant argues that limitation periods “are not in themselves part of substantive securities regulation, the area of the [Commission’s] specialised expertise” (A.R.F., at para. 9). The argument presupposes a neat division between what one might call a “lawyer’s question” and a “bureaucrat’s question”. The logic seems to be that because the meaning of “the events” in s. 159 cannot possibly require any great technical expertise — there is, after all, no specialized “bureaucratese” to interpret — why should the matter be left to the Commission?
7. While such a view may have carried some weight in the past, that is no longer the case. The modern approach to judicial review recognizes that courts “may not be as well qualified as a given agency to provide interpretations of that agency’s constitutive statute that make sense given the broad policy context within which that agency must work” (*National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 S.C.R. 1324, at p. 1336, *per* Wilson J.; see also *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650, at para. 92; *Mowat*, at para. 25).
8. In plain terms, because legislatures do not always speak clearly and because the tools of statutory interpretation do not always guarantee a single clear answer, legislative provisions will on occasion be susceptible to multiple *reasonable* interpretations (*Dunsmuir*, at para. 47; see also *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405). Indeed, that is the case here, as I will explain in a moment. The question that arises, then, is *who gets to decide among these competing reasonable interpretations?*
9. The answer, as this Court has repeatedly indicated since *Dunsmuir*, is that the resolution of unclear language in an administrative decision maker’s home statute is usually best left to the decision maker. That is so because the choice between multiple reasonable interpretations will often involve policy considerations that we presume the legislature desired *the administrative decision maker* — not the courts — to make. Indeed, the exercise of that interpretative discretion is part of an administrative decision maker’s “expertise”.

B. *The Commission’s Interpretation of Section 159 Was Reasonable*

(1) Overview

(a) *The Appellant’s Position*

1. In a nutshell, the appellant argues that s. 161(6) merely “codifies the [Commission’s] already-existing ability to rely on convictions, findings, orders, or agreements as *evidence* of a person’s conduct contrary to the public interest” (A.F., at para. 40 (emphasis in original)). The law is clear that the Commission could — and did — issue reciprocal orders using its existing power under s. 161(1) on the strength of factual findings in other jurisdictions prior to the introduction of s. 161(6); see, e.g., *Woods (Re)*, 1997 LNBCSC 11 (QL), at p. 5 (where the Commission relied on “the findings of fact and law of the Ontario courts, and the enforcement orders made by the Ontario Securities Commission”); *Seto (Re)*, 2006 BCSECCOM 569 (CanLII), at para. 4 (where the Commission drew the facts “solely from the decision and order of the [Alberta Securities Commission] and the judgment of the Alberta Provincial Court”).
2. In those earlier cases, “the events” meant the underlying misconduct — and no one suggests otherwise. As such, the Commission’s choice to rely on the “procedural shortcut” reflected in s. 161(6)(d) does not change the nature of the proceedings such that the *agreement* becomes *the event* (A.F., at para. 40). Rather, because s. 161(6)(d) must be fused with s. 161(1), the proceedings remain s. 161(1) proceedings — and “the events” must thus remain the underlying misconduct.

(b) *The Respondent’s Position*

1. The respondent says that the appellant’s argument is untenable because the plain wording of s. 161(6) says nothing about decisions, orders, or settlement agreements being admissible as “evidence”. Rather, “the provisions empower the Commission to make an order in specific circumstances (*i.e.*, if a person is subject to another regulator’s order or has agreed to be subject to sanctions)” (R.F., at para. 53). Because securities investigations do not always conclude within the six-year window, the purpose of s. 161(6)(d) would be undermined if the Commission were “barred from making an order in any case where the extra-provincial proceeding concludes more than six years after the date of the wrongdoer’s misconduct” (R.F., at para. 84). Put simply, on the appellant’s interpretation, the limitation period could expire before the event referred to in s. 161(6)(d) ever occurs — and that would all but defeat the purpose of the provision.

(c) *The Choice Between the Two Interpretations*

1. For the reasons that follow, I conclude that both interpretations are reasonable. Here, the statutory language is less than crystal clear. Or, as Professor Willis once put it, “the words are ambiguous enough to induce two people to spend good money in backing two opposing views as to their meaning” (J. Willis, “Statute Interpretation in a Nutshell” (1938), 16 *Can. Bar Rev.* 1, at pp. 4-5, cited in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 30).
2. It will not always be the case that a particular provision permits multiple reasonable interpretations. Where the ordinary tools of statutory interpretation lead to a single reasonable interpretation and the administrative decision maker adopts a different interpretation, its interpretation will necessarily be unreasonable — no degree of deference can justify its acceptance; see, e.g., *Dunsmuir*, at para. 75; *Mowat*, at para. 34. In those cases, the “range of reasonable outcomes” (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 4) will necessarily be limited to a single reasonable interpretation — and the administrative decision maker must adopt it.
3. But, as I say, this is not one of those clear cases. As between the two possible interpretations put forward with respect to the meaning of s. 159 as it applies to s. 161(6)(d), both find somesupport in the text, context, and purpose of the statute. In a word, both interpretations are *reasonable.* The litmus test, of course, is that if the Commission had adopted the otherinterpretation — that is, if the Commission had agreed with the appellant — I am hard-pressed to conclude that we would have rejected its decision as unreasonable.
4. The bottom line here, then, is that the Commission holds the interpretative upper hand: under reasonableness review, we defer to *any* reasonable interpretation adopted by an administrative decision maker, *even if* other reasonable interpretations may exist. Because the legislature charged the administrative decision maker rather than the courtswith “administer[ing] and apply[ing]” its home statute (*Pezim*, at p. 596), it is the decision maker, first and foremost, that has the discretion to resolve a statutory uncertainty by adopting any interpretation that the statutory language can reasonably bear. Judicial deference in such instances is itself a principle of modern statutory interpretation.
5. Accordingly, the appellant’s burden here is not only to show that her competing interpretation is reasonable, but also that the Commission’s interpretation is *unreasonable.* And that she has not done. Here, the Commission, with the benefit of its expertise, chose the interpretation it did. And because that interpretation has not been shown to be an unreasonable one, there is no basis for us to interfere on judicial review — even in the face of a competing reasonable interpretation.

(2) Ordinary Meaning

1. Beginning with the ordinary meaning of “the events”, on the surface it would appear that “the even[t]” giving rise to a proceeding under s. 161(6)(d) is the fact of “ha[ving] agreed with a securities regulatory authority” to be subject to regulatory action. By ordinary meaning, I refer simply to the “natural meaning which appears when the provision is simply read through” (*Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, [1993] 3 S.C.R. 724, at p. 735). The ordinary meaning would thus appear to support the Commission’s interpretation.
2. However, satisfying oneself as to the ordinary meaning of the phrase “is not determinative and does not constitute the end of the inquiry” (*ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140, at para. 48). Although it is presumed that the ordinary meaning is the one intended by the legislature, courts are obliged to look at other indicators of legislative meaning as part of their work of interpretation. That is so because

[w]ords that appear clear and unambiguous may in fact prove to be ambiguous once placed in their context. The possibility of the context revealing a latent ambiguity such as this is a logical result of the modern approach to interpretation.

(*Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at para. 10)

1. That possibility is realized here. Though the ordinary meaning seems apparent enough, digging deeper into the context and purpose of the provision casts some doubt on that conclusion — and introduces the possibility of another reasonable interpretation.

(3) Drafting History

1. The limitation period in s. 159 predates the addition of s. 161(6) by roughly a decade. Before s. 161(6) was introduced by the *Securities Amendment Act, 2006*, S.B.C. 2006, c. 32, it was clear that s. 159 ran from the date of the underlying misconduct; see, e.g., *Dennis (Re)*, 2005 BCSECCOM 65, 2004 LNBCSC 705 (QL), at para. 38; *Bapty*, at para. 28. As mentioned, the parties do not contend otherwise.
2. It was only with the addition of s. 161(6) that the start date for the limitations clock became unclear. Given that the legislature chose not to change the wording of s. 159 after it added s. 161(6), it stands to reason that the legislature intended “the events” in s. 159 to continue to refer to the misconduct at issue, regardless of the addition of s. 161(6). In other words, the original meaning of “the events” did not change overnight. And as Dickson J. (as he then was) observed, “words must be given the meanings they had at the time of enactment” (*Perka v. The Queen*, [1984] 2 S.C.R. 232, at p. 265, citing E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 163). If one accepts this line of reasoning, it lends support to the appellant’s interpretation.
3. On the other hand, one could argue that the original meaning of “the events” never changed — all that did was what qualified as an “event” in a particular context. It is important to distinguish between these two concepts. As Professor Sullivan has explained, “even though the meaningof a word remains constant, the thingsor eventsthat fall within its ambit may change dramatically over time” (R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at p. 149; see also P.-A. Côté, in collaboration with S. Beaulac and M. Devinat, *The Interpretation of Legislation in Canada* (4th ed. 2011), at pp. 287-88). This argument, which lends support to the Commission’s interpretation, is best illustrated by a contextual reading of s. 159, to which I now turn.

(4) The Provision Read in Context

1. The use of the phrase “the events that give rise to the proceedings” in s. 159 is relatively open-ended, as can be seen when contrasted with the language used in other limitations provisions in the *Act*. For example, s. 140(a), which provides for limitation periods for actions for rescission, speaks of “180 days after the date of the transaction that gave rise to the cause of action”. Section 140.94, which concerns actions related to secondary market disclosure, speaks of “3 years after the date on which the document containing the misrepresentation was first released”.
2. The distinctive diction of s. 159 arguably makes sense in context. Unlike ss. 140 and 140.94, which refer to specific proceedings in the *Act*, s. 159 is a residual limitation provision applicable to *all* other proceedings. Thus, it stands to reason that “the events” is a deliberately open-ended phrase because it must be capable of applying to a variety of different contexts. As applied to s. 161(1)(a)(i), “the events” read in its ordinary sense means the date of the misconduct whereby a person was “contravening . . . a provision of [the] Act”. That, of course, was the interpretation as understood prior to the introduction of s. 161(6). But it is also easy to see how, as applied to s. 161(6)(a), “the events” can mean the date the person “has been convicted . . . of an offence”. And as applied to s. 161(6)(d), the provision at issue here, “the events” can mean the date the person “has agreed with a securities regulatory authority [. . .] to be subject to sanctions, conditions, restrictions or requirements”.
3. What the appellant asks the Commission to do is to interpret “the events that give rise to the proceedings” restrictively as “the *misconduct* that gives rise to the proceedings”. Indeed, that is essentially how Manitoba’s general limitation provision reads; see *Securities Act*, s. 137 (“the proceedings to prosecute a person or company for an offence under this Act shall not be commenced after eight years after the date on which the offence was committed”). It cannot be said, however, that a contextual reading of s. 159 points toward such a restrictive interpretation. Rather, a flexible reading of “the events” — capable of adapting to the various provisions to which it is applied, including new provisions added over time, such as s. 161(6)(d) itself — makes more sense in context. Accordingly, and setting aside whatever quibbles one might have with the significance of the provision’s drafting history, a contextual reading of s. 159 supports the Commission’s interpretation.

(5) The Nature of Secondary Proceedings

1. For better or worse, securities regulation in Canada remains largely a matter of provincial and territorial jurisdiction. However, given the reality of interprovincial, if not international, capital markets, “[t]here can be no disputing the indispensable nature of interjurisdictional co-operation among securities regulators today” (*Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21, [2000] 1 S.C.R. 494, at para. 27). That is where provisions such as s. 161(6)(d) come in.
2. In 2004, recognizing the inefficiencies of the existing framework, all the provinces and territories (except Ontario, for reasons that are not relevant here) signed a memorandum of understanding (“MOU”); see *A Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation* (online). The MOU set up a “passport system” for securities regulation, which provides a single window of access to market participants. Under this passport system,

[h]ost jurisdictions will rely on the securities regulator in the primary jurisdiction of a market participant for the enforcement of the requirements of securities laws applicable to those areas covered by the passport system.

• The securities regulator in a host jurisdiction that receives a complaint about a market participant will conduct a preliminary assessment of the complaint and refer the complaint along with their findings and the documents compiled to the primary jurisdiction for further investigation and, if appropriate, enforcement action.

• The host securities regulator will await the outcome of the primary securities regulator’s investigation and will undertake its own investigation and, if appropriate, enforcement action if it is in the public interest to do so or if the primary securities regulator has referred the matter back to the host securities regulator for further action. [Emphasis added; para. 5.6.]

1. Not long after the MOU was signed, the B.C. legislature introduced legislation to implement its provisions, including the secondary proceeding powers now found in s. 161(6); see Bill 20, *Securities Amendment Act, 2006*; Bill 28, *Securities Amendment Act, 2007*. Section 161(6)(d), of course, recognizes settlement agreements in other jurisdictions; other provisions speak to convictions for securities-related offences (s. 161(6)(a)), judicial findings as to securities laws (s. 161(6)(b)), and regulatory orders (s. 161(6)(c)).
2. As a consequence of these legislative amendments, while the Commission cannot abrogate its responsibility to make its own determination as to whether an order is in the public interest, one could argue, as the respondent does, that s. 161(6) obviates the need for inefficient parallel and duplicative proceedings in British Columbia by expressly providing a new basis on which to initiate proceedings. In other words, s. 161(6) achieves the legislative goal of facilitating interprovincial cooperation by providing a triggering “event” *other than the underlying misconduct*. The corollary to this point must be the ability to actually rely on that triggering event — that is, the other jurisdiction’s settlement agreement(or conviction or judicial finding or order, as the case may be) — in commencing a secondary proceeding. But the appellant’s reading of s. 159 as it applies to s. 161(6) leads to the troublesome conclusion that the Commission could be time-barred from proceeding under this provision *before the triggering event even exists*.
3. The appellant’s response is that where there is a risk that the six-year limitation window could expire before the primary jurisdiction has completed its proceeding, British Columbia and every other secondary province and territory should initiate their ownproceedings in reliance on s. 161(1) alone — or, in the case of another province or territory, their provincial or territorial equivalent of that section — with the possibility that s. 161(6) or its equivalent could be invoked later on. Of course, the implication of this approach is clear: the appellant says that s. 161(6) does not change anything with respect to the timing of when a secondary proceeding must begin.
4. The facts of this case, however, illustrate how problematic the appellant’s interpretation can prove in practice. Though the OSC was first alerted to the issues at Hucamp in 2001, it did not commence formal proceedings until 2005 (four years later). A settlement agreement was not reached until 2008 (a further three years later, and a full seven years after the last event of misconduct). No one suggests this lengthy period reflects any foot-dragging on the OSC’s part. And yet, on the appellant’s view, as the calendar turned to 2007, the B.C. Commission should have commenced its own proceeding under s. 161(1) so as to preserve its ultimate authority to make an order using both ss. 161(1) and 161(6)(d). If that had been done, the appellant seems to accept that the Commission could then have waited until the conclusion of the OSC’s proceeding to make its actual order.
5. The difficulty with the appellant’s approach is that if each province and territory has to initiate proceedings before its limitations clock runs out — instead of relying on the outcome of the proceedings in the primary jurisdiction — overlapping cases would clog up the legal system and overburden the securities commissions. A multiplicity of simultaneous proceedings would also place a high burden on the target of the proceedings, who could well face multiple proceedings all across the country, all needing to be defended simultaneously.
6. On the other hand, allowing secondary jurisdictions to use s. 161(6) such that they can wait until the *conclusion* of the primary proceeding avoids some of these complications. That can happen only if the secondary jurisdictions are allowed to begin their work (and their limitation clocks start ticking) once the original proceeding has actually concluded — and no earlier. As such, it can be said that *the very purpose of s. 161(6) is to provide a new limitation clock*. Unless it is interpreted in this manner, s. 161(6) is no solution to the challenges inherent in the decentralized structure of securities regulation in Canada.
7. In the end, the Commission’s interpretation is a reasonable one because it furthers the legislature’s manifest goal of improving interprovincial cooperation. The appellant’s interpretation, by contrast, fits uneasily with the broader indicators of legislative intent available to us. In reducing s. 161(6) to a belts-and-suspenders codification of what is already common practice, her interpretation does little to improve interprovincial cooperation. I do not say that the appellant’s interpretation is inconsistent with such efforts — only that it does not further them to the same extent as the Commission’s interpretation.

(6) The Purpose of Limitation Periods

1. I would be wary of focussing only on the legislative purpose of secondary provisions while overlooking the legislative purpose of limitation periods. Instead, regard must also be had for the legislative purpose of both s. 161(6)(d) *and* s. 159.
2. The appellant fears that the Commission’s interpretation undermines two of the three purposes of limitation periods, namely, allowing for repose and encouraging diligence (*Novak v. Bond*, [1999] 1 S.C.R. 808, at para. 67). Most notable is the possibility that allowing the limitations clock to start with each new proceeding would allow a string of secondary proceedings, piggy-backing on each other, which could stretch for decades. We are told that “[w]ith twelve jurisdictions having such provisions, a person could be subject to serial proceedings for *seventy-four years*” (A.F., at para. 54 (emphasis in original)).
3. There is also a related concern with respect to s. 161(6)(c), which provides that the Commission may commence a proceeding so long as a person is “subject to an order” by another regulator. Public interest orders may last 20 years or more; see, e.g., *Friedland (Re)*, 2010 BCSECCOM 654 (CanLII) (20 years); *Nielsen (Re)*, 2013 LNONOSC 254, 36 O.S.C.B. 3478 (25 years); *Robinson (Re)*, 2013 LNABASC 295, 2013 ABASC 317 (CanLII) (permanent); *Maitland Capital Ltd. (Re)*, 2012 LNONOSC 95, 35 O.S.C.B. 1729 (permanent). Were the Commission able to commence a secondary proceeding six years *after* a person is no longer “subject to” such a primary order, that approach could radically expand the length of the limitation period — even beyond 74 years.
4. Such concerns, in my view, are not idle. Limitations periods exist for good reasons, two of which deserve mention here. First, “[t]here comes a time . . . when a potential defendant should be secure in his reasonable expectation that he will not be held to account for ancient obligations” (*M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6, at p. 29). Second, at some point “[i]t is better that the negligent [plaintiff], who has omitted to assert his right within the prescribed period, should lose his right, than that an opening should be given to interminable litigation” (*Cholmondeley v. Clinton* (1820), 2 Jac. & W. 1, 37 E.R. 527, at p. 577; see also *M. (K.)*, at p. 30).
5. Against those rationales, the appellant’s interpretation has something to it. Manifestly, the Commission’s reading significantly extends the duration of time for which a person may be subject to regulatory action. Common sense suggests that the authorities will always want more time to go after law-breakers, but fairness demands their chase eventually come to an end. Absent more, regard for the purpose of limitation periods thus counsels in favour of the appellant’s interpretation.
6. There is, however, a simple answer to the disquieting hypotheticals raised by the appellant. Although securities commissions are conferred with broad discretion to make orders in the public interest, their authority “is not unlimited” (*Asbestos Minority Shareholders*, at para. 41). Accordingly, no order — secondary or otherwise — is immune from appellate review for its reasonableness; see, e.g., *Lines v. British Columbia (Securities Commission)*, 2012 BCCA 316, 35 B.C.L.R. (5th) 281 (where the court found the Commission’s order under s. 161(6)(d) unreasonable because it imposed a severe sanction in sole reliance on another jurisdiction’s settlement agreement in which no wrongdoing was admitted).
7. “[T]here is always a perspective within which a statute is intended to operate” (*Roncarelli v. Duplessis*, [1959] S.C.R. 121, at p. 140). And keeping the appellant’s concerns in mind, it seems to me that a regulator that sought to act on these scenarios would run afoul of the legislative purpose of limitation periods and distort the purpose of secondary proceeding provisions.
8. To his credit, the respondent acknowledges as much in his oral and written submissions (see transcript, at p. 55; R.F., at para. 90). In what I believe is a reasonable and responsible approach, he accepts the following three propositions:

1. Regardless of which of the four secondary proceeding clauses in s. 161(6) is at issue, “the events” refers to the date the relevant action first occurred. Accordingly, if a settlement agreement is entered into on January 1, 2013 and terminates on January 1, 2015, it is the *first* date, not the second, which starts the clock.

2. A secondary proceeding may not be commenced under s. 161(6) if the period of the original order has already lapsed. In other words, using the same example, the Commission could not commence a secondary proceeding on February 1, 2015, because the original order would no longer be in place at that time.

3. Any order initiated using s. 161(6) must be based on an *original* proceeding in the primary jurisdiction. Secondary proceedings cannot be “stacked” on top of one another in the manner feared by the appellant.

Although this is not the case to put our stamp of approval on these concessions, to my mind, they make eminent good sense. Thus, to the extent that regulators commence secondary proceedings in these situations, they must, as always, be prepared to defend the reasonableness of their decisions on appellate review.

1. While it is true that the application of s. 159 to the secondary proceeding provisions such as s. 161(6)(d) will have the effect, as a practical matter, of extending the period under which the cloud of potential regulatory action hangs over a person, that, of itself, is not offensive to the legislative purpose of limitation provisions. Limitations periods are always “driven by specific policy choices of the legislatures” (*Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623, at para. 230, *per* Rothstein J., dissenting), as they attempt to “balance the interests of both sides” (*Murphy v. Welsh*, [1993] 2 S.C.R. 1069, at p. 1080).
2. The Commission’s interpretation strikes a reasonable balance between facilitation of interprovincial cooperation and the underlying purposes of limitation periods. Thus, notwithstanding the appellant’s reasonable concerns, I am unable to conclude that the Commission’s interpretation is rendered unreasonable in light of the purpose of limitation periods.

(7) Conclusion on the Commission’s Interpretation

1. A review of the ordinary meaning, the context, and the purpose of both ss. 159 and 161(6) reasonably supports the conclusion that “the even[t]” giving rise to a proceeding under s. 161(6)(d) is the fact of “ha[ving] agreed with a securities regulatory authority” to be subject to regulatory action. That is not to say that the appellant’s interpretation is not a reasonable alternative. But as I have said, when faced with two competing reasonable interpretations that result from a lack of clarity in its home statute, the Commission, with the benefit of its expertise, is entitled to choose between them. Courts must respect that choice.

C. *The Commission’s Failure to Give Reasons*

1. Briefly, I note that the Commission here failed to give reasons for its interpretation of s. 159. Instead, the Commission issued its order and, in doing so, impliedly decided that the proceeding was not time-barred. As noted in *Alberta Teachers*, “deference under the reasonableness standard is best given effect when administrative decision makers provide intelligible and transparent justification for their decisions” (at para. 54; see also *Dunsmuir*, at para. 47). Nonetheless, “when a reasonable basis for the decision is apparent to the reviewing court, it will generally be unnecessary to remit the decision to the tribunal” (at para. 55; see also *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at para. 58).
2. Unlike *Alberta Teachers*, in the case at bar, we do not have the benefit of the Commission’s reasoning from its decisions in other cases involving the same issue (see paras. 56-57). However, a basis for the Commission’s interpretation is apparent from the arguments advanced by the respondent, who is also empowered to make orders under (and thus to interpret) s. 161(1) and (6). These arguments follow from established principles of statutory interpretation. Accordingly, though reasons would have been preferable, there is nothing to be gained here from requiring the Commission to explain on remand what is readily apparent now.

VI. Disposition

1. For these reasons, I would dismiss the appeal with costs.

The following are the reasons delivered by

1. Karakatsanis J. — I agree with Justice Moldaver’s proposed disposition of this appeal and with much of his analysis. I accept his conclusion that the British Columbia Securities Commission was reasonable in interpreting the limitation period contained in s. 159 of the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, to require that secondary proceedings under s. 161(6) of the Act must be initiated within six years of a person being sanctioned in another jurisdiction, not within six years of the underlying misconduct.
2. However, I part company with my colleague when he suggests that the opposite interpretation urged by the appellant — that the limitation period runs from the time of the underlying misconduct, not the Ontario Securities Commission order — is also reasonable. I do not agree.
3. While the text of the provision, or its drafting history, might bear different interpretations if considered in a vacuum, the legislative objective of facilitating interjurisdictional cooperation weighs heavily against the appellant’s interpretation.
4. Here, legislatures across Canada have enacted similar provisions to permit secondary proceedings in furtherance of interjurisdictional cooperation and consistency in securities regulation and enforcement across the country.[[4]](#footnote-4) These objectives are also reflected in the *Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation*.As my colleague notes, this Court has recognized that interjurisdictional cooperation is “indispensable” to securities regulation: *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21, [2000] 1 S.C.R. 494, at para. 27. Itis particularly important in light of *Reference re Securities Act*, 2011 SCC 66, [2011] 3 S.C.R. 837.
5. On the appellant’s reading, the British Columbia Securities Commission may only initiate secondary proceedings against a person if it does so within six years of the underlying misconduct. This would mean that in cases — like this one — where an investigation in another jurisdiction does not conclude in an order or settlement within six years of the underlying misconduct, the Commission could not use its secondary proceedings power unless it had already started proceedings before the six year clock had elapsed. The appellant’s solution, that the Commission could instead initiate its own primary proceedings before the other jurisdiction’s had concluded, strikes me as duplication that is inconsistent with the objectives of the secondary proceedings regime.
6. In this context, I am not persuaded that it would have been open to the Commission to reasonably interpret the limitation period as the appellant urges. It is at odds with a purposive interpretation.
7. My colleague’s conclusion that both interpretations are reasonable would permit securities commissions in different jurisdictions across the country to come to completely opposite conclusions about the application of essentially equivalent statutory provisions enacted for the same purposes. Such a result has the potential to thwart the legislative objectives of consistency and cooperation that underlie the secondary proceedings regime.
8. As my colleague notes, the disposition of this appeal does not require us to decide whether the appellant’s alternative interpretation is reasonable.
9. Accordingly, with this reservation regarding my colleague’s reasons, I too would dismiss the appeal.

*Appeal dismissed with costs.*

Solicitors for the appellant:  Stockwoods, Toronto.

Solicitor for the respondent:  British Columbia Securities Commission, Vancouver.

Solicitors for the intervener the Financial Advisors Association of Canada:  Blaney McMurtry, Toronto.

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1. For a critique of the present framework, see M. Teplitsky, “Standard of review of administrative adjudication: ‘What a tangled web we weave . . .’” (2013), *Advocates’ Soc. J.* 3. [↑](#footnote-ref-1)
2. Although technically a statutory appeal and not an application for judicial review, general administrative law principles still apply (*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, at pp. 591-92 and 598-99; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226, at para. 21). [↑](#footnote-ref-2)
3. I note that the U.S. Supreme Court has recently shut this door; see *City of Arlington, Texas v. Federal Communications Commission*, 133 S. Ct. 1863 (2013) (“the distinction between ‘jurisdictional’ and ‘nonjurisdictional’ interpretations is a mirage” because “a separate category of ‘jurisdictional’ interpretations does not exist” (pp. 1868 and 1874)). [↑](#footnote-ref-3)
4. See *Securities Act*, R.S.A. 2000, c. S-4, s. 198(1.1); *Securities Act*, R.S.B.C. 1996, c. 418, s. 161(6); *The* *Securities Act*, C.C.S.M., c. S50, s. 148.4(1); *Securities Act*, S.N.B. 2004, c. S-5.5, s. 184(1.1); *Securities Act*, R.S.N.L. 1990, c. S-13, s. 127(1.1); *Securities Act*, R.S.N.S. 1989, c. 418, s. 134(1A); *Securities Act*, S.N.W.T. 2008, c. 10, s. 60(3); *Securities Act*, S.Nu. 2008, c. 12, s. 60(3); *Securities Act*, R.S.O. 1990, c. S.5, s. 127(10); *Securities Act*, R.S.P.E.I. 1988, c. S-3.1, s. 60(3); *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, s. 134(1.1); *Securities Act*, S.Y. 2007, c. 16, s. 60(3). [↑](#footnote-ref-4)