

**SUPREME COURT OF CANADA**

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| **Citation:** West Fraser Mills Ltd.*v.* British Columbia(Workers’ Compensation Appeal Tribunal), 2018 SCC 22, [2018] 1 S.C.R. 635 | **Appeal Heard:** December 4, 2017  **Judgment Rendered:** May 18, 2018  **Docket:** 37423 |

Between:

West Fraser Mills Ltd.

Appellant

and

Workers’ Compensation Appeal Tribunal and Workers’ Compensation Board of British Columbia

Respondents

- and -

Workers’ Compensation Board of Alberta

Intervener

**Coram:** McLachlin C.J. and Abella, Moldaver, Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ.

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| **Reasons for Judgment:**  (paras. 1 to 51): | McLachlin C.J. (Abella, Moldaver, Karakatsanis, Wagner and Gascon JJ. concurring) |

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| **Dissenting Reasons:**  (paras. 52 to 111): | Côté J. |

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| **Dissenting Reasons:**  (paras. 112 to 125) | Brown J. |

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| **Dissenting Reasons:**  (paras. 126 to 130) | Rowe J. |

West Fraser Mills Ltd. *v.* British Columbia (Workers’ Compensation Appeal Tribunal), 2018 SCC 22, [2018] 1 S.C.R. 635

West Fraser Mills Ltd. Appellant

v.

Workers’ Compensation Appeal Tribunal and

Workers’ Compensation Board of British Columbia Respondents

and

Workers’ Compensation Board of Alberta Intervener

**Indexed as:** West Fraser Mills Ltd. ***v.* British Columbia (**Workers’ Compensation Appeal Tribunal)

2018 SCC 22

File No.: 37423.

2017: December 4; May 18, 2018.

Present: McLachlin C.J. and Abella, Moldaver, Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ.

on appeal from the court of appeal for british columbia

*Administrative law — Boards and tribunals — Jurisdiction — Workers’ Compensation Board of British Columbia — Regulation adopted by Board imposing duty on owners of forestry operation to ensure that their operations are planned and conducted in accordance with safe work practices — Whether regulation ultra vires — Applicable standard of review to exercise of Board’s delegated regulatory authority — Workers Compensation Act, R.S.B.C. 1992, c. 492, s. 225 — Occupational Health and Safety Regulation, B.C. Reg. 296/97, s. 26.2(1).*

*Workers’ compensation — Forestry operation — Offences and enforcement — Administrative penalty — Interpretation — Owner — Employer — Tree faller fatally struck by rotting tree while working within forestry operation — Owner of forestry operation employed site supervisor — Tree faller employed by independent contractor — Workers’ Compensation Board found that owner had failed to ensure that all forestry operations were planned and conducted consistent with Occupational Health and Safety Regulation — Workers Compensation Act permitting Board to penalize “an employer” — Board imposed administrative penalty on owner — Decision confirmed by Workers’ Compensation Appeal Tribunal — Whether Tribunal’s interpretation of administrative penalty provision to enable penalty against “owner” was patently unreasonable — Workers Compensation Act, R.S.B.C. 1992, c. 492, s. 196(1) — Occupational Health and Safety Regulation, B.C. Reg. 296/97, s. 26.2(1).*

A tree faller was fatally struck by a rotting tree while working within the area of a forest license held by West Fraser Mills Ltd. The faller was employed by an independent contractor. As the license holder, West Fraser Mills was the “owner” of the workplace, as defined in Part 3 of the *Workers Compensation Act*.

The Workers’ Compensation Board investigated the accident and concluded that West Fraser Mills had failed to ensure that all activities of the forestry operation were planned and conducted in a manner consistent with s. 26.2(1) of the *Occupational Health and Safety Regulation*, which had been adopted by the Board pursuant to s. 225 of the Act. The Board also imposed an administrative penalty on West Fraser Mills pursuant to s. 196(1) of the Act, which permits the Board to penalize an “employer”. These aspects of its decision were confirmed by the review division. The Workers’ Compensation Appeal Tribunal dismissed West Fraser Mills’ appeal, but reduced the administrative penalty. The British Columbia Supreme Court and the Court of Appeal upheld the Tribunal’s order.

*Held* (Côté, Brown and Rowe JJ. dissenting): The appeal should be dismissed.

*Per* McLachlin C.J. and Abella, Moldaver, Karakatsanis, Wagner and Gascon JJ.: Section 225 of the Act empowers the Board to “make regulations [it] considers necessary or advisable in relation to occupational health and safety and occupational environment”. Where the statute confers such a broad power on a board to determine what regulations are necessary or advisable to accomplish the statute’s goals, the question the court must answer is not one of *vires* in the traditional sense, but whether the regulation at issue represents a reasonable exercise of the delegated power, having regard to the statute’s goal. Section 26.2(1) is clearly linked to workplace safety and meets this requirement. It also fits with other provisions of the statute, which allow the Board to make regulations that apply to any persons working in or contributing to the production of an industry and in support of the promotion of occupational health and safety in the workplace in broad terms. Finally, two external contextual factors, both within the expertise and capacity of the Board, are relevant. First, the Board adopted s. 26.2(1) in its present form in response to a concern about the growing rate of workplace fatalities in the forestry sector, a concern that is plainly one of “occupational health and safety and occupational environment”, the focus of s. 225 of the Act. Second, s. 26.2(1) is a natural extension of an owner’s duty to maintain the worksite. To fulfill that duty, the owner must ensure that the work is planned and conducted safely.

With respect to the administrative penalty provision, the Tribunal’s interpretation of s. 196(1) was not patently unreasonable. Courts reviewing administrative decisions are obliged to consider, not only the text of the law and how its internal provisions fit together, but also the consequences of interpreting a provision one way or the other and the reality of how the statutory scheme operates on the ground, particularly where the standard of review is patent unreasonableness.

The Tribunal had before it two competing plausible interpretations of s. 196(1). One was a narrow approach that would undermine the goals of the statute. The other was a broad approach, which both recognized the complexity of overlapping and interacting roles on the actual worksite and would further the goals of the statute and the scheme built upon it. The Tribunal’s choice of the second approach was not openly, clearly and evidently unreasonable so as to border on the absurd. In this case, the respective consequences of the competing interpretations and the intended operation of the scheme militate against finding that the interpretation chosen by the Tribunal is patently unreasonable. West Fraser Mills’ obligation to ensure the health and safety of workers at the worksite was not limited to the health and safety of its own employees. A broad interpretation of s. 196(1) to include employers under the Act whose conduct can constitute a breach of their obligations as owners will best further the statutory goal of promoting workplace health and safety and deterring future accidents. This interpretation is also responsive to the reality that maintaining workplace safety is a complex exercise involving shared responsibilities of all concerned. Finally, while s. 196(1) can be engaged on the basis of an employer’s failure to comply with specific obligations provided in the Act, the provision is not limited to such circumstances.

*Per* Côté J. (dissenting): Section 26.2(1) of the Regulation is *ultra vires* on the correctness standard of review, but even if this were not the case, it was patently unreasonable to impose an administrative penalty — applicable only to breaches committed when acting in the capacity of an employer — on the basis that West Fraser Mills was found guilty of breaching its obligations as an owner under s. 26.2(1).

When a regulator acts in an adjudicative capacity, it may bring technical expertise to bear or exercise discretion in accordance with policy preferences. In this context, there may exist a range of reasonable conclusions. However, when a regulator acts in a legislative capacity, the court must determine whether the impugned regulation falls within that grant of authority. In that situation, there is no reasonable range of outcomes, so correctness is the appropriate standard of review. Here, the Board concedes that it was engaged in an exercise of legislative power when it enacted s. 26.2(1), so it is not entitled to any deference as to its own conclusion that it had the authority to enact the impugned regulation.

A regulation may not undermine the operation of the statute as a whole by assigning duties to owners that are clearly not contemplated by the Act. In enacting s. 26.2(1), the Board exceeded its mandate and the scope of its delegated legislative powers by impermissibly conflating the duties of owners and employers in the context of a statutory scheme that sets out separate and defined obligations for those workplace entities. The legislative scheme defines “employer” and “owner” as separate entities and expressly differentiates their duties in ss. 115 to 121. Read together, ss. 115 and 119, which set out the general duties of employers and owners, respectively, create separate silos of responsibility, whereby the duties ascribed to employers and owners are tethered to their unique roles and capacities to ensure workplace safety. Employers are in the best position to ensure that workers are informed of known or reasonably foreseeable safety hazards because of their direct supervisory relationship with their employees; owners are in the best position to assume macro‑level responsibilities pertaining to the workplace more generally.

This structural reading of the statute is bolstered by s. 107(2)(e) of the Act. Section 107(2)(e) states that one of the purposes of Part 3 of the Actis to ensure that employers, workers and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of each party’s authority and ability to do so. Section 107(2)(e) also makes it clear that the Act aims to impose obligations on parties only to the extent of their authority and ability, which aligns with the manner in which duties are assigned to employers and owners under ss. 115 and 119 of the Act. Further, it expressly limits the extent to which and the means by which the legislature pursues that purpose. Section 26.2(1) does not respect these silos of responsibility. It requires owners to assume responsibility for the manner in which activities are planned and conducted. This micro‑level obligation is categorically different from the macro‑level duties related to workplace conditions that are assigned to owners under s. 119. By imposing upon owners a type of obligation that the Actreserves to employers, the Board contravened the clear structure of divided responsibility that the Act creates. The external contextual factors that the majority outlines are neither persuasive nor appropriate considerations — they do not permit the Board to undermine the legislature’s statutory scheme for addressing workplace health and safety.

Even assuming that the impugned regulation is *intra vires*, there is no nexus between the underlying violation and the imposition of an administrative penalty. West Fraser Mills was charged with violating its obligations as an owner under s. 26.2(1) of the Regulation. Yet, it was subjected to an administrative penalty under s. 196(1) of the Act, which only authorizes the Board to impose such a penalty on an entity acting in the capacity of an employer. That decision was patently unreasonable.

Reading s. 196(1) to apply to an owner, so long as that owner is also an employer at the workplace, was erroneous for several reasons. First, the category of “employer” does not encompass “owner”. Second, s. 196(1) specifies that an administrative penalty may be imposed on an employer, which suggests that it cannot be imposed on other categories of persons. Third, the legislature used the word “person” or “persons” where it intended to encompass multiple entities or entities acting simultaneously in multiple roles. Fourth, the use of the term “employer” in s. 196(1) was no accident, as none of its other subsections uses the term “person” or “owner” rather than “employer”. Finally, it is consistent with the statutory scheme as a whole for certain remedial measures to be reserved for breaches of certain types of obligations.

*Per* BrownJ. (dissenting): There is agreement with the majority that s. 225 of the Act is sufficiently broad to support the conclusion that the Board’s adoption of s. 26.2(1) of the Regulationis *intra vires*, although for different reasons. Administrative bodies must be correct in their determinations of true questions of jurisdiction or *vires*. The Board’s authority to adopt s. 26.2(1) is an issue of *vires* relating to subordinate legislation, and is therefore manifestly jurisdictional. Questions of jurisdiction are always to be reviewed for correctness. However, as long as the statutory delegate operates within the bounds of its grant of authority, the overall reasonableness of how the delegate has chosen to exercise its lawful authority is not the proper subject of judicial attention. The majority’s sidestepping the jurisdictional inquiry in favour of a review of various contextual factors which are said to support reasonableness review ought to be rejected. If the Board’s adoption of s. 26.2(1) presents a jurisdictional question, such contextual factors are irrelevant.

On the question of the penalty, there is agreement with Côté J. that the Board’s decision to impose a penalty upon West Fraser Mills under s. 196(1) of the Act for a breach of s. 26.2(1) of the Regulation was patently unreasonable.

*Per* RoweJ. (dissenting): Judicial review of the validity of a regulation has two steps. The first relates to jurisdiction, and the second is a substantive inquiry into the exercise of the grant of authority. There is agreement with the majority that s. 26.2(1) of the Regulation is *intra vires*, with the caveat that working day to day with an administrative scheme does not give greater insight into statutory interpretation, including the scope of jurisdiction. That is a matter of legal analysis.

Concerning the monetary penalty, there is agreement with Côté J. that the Tribunal’s decision was patently unreasonable and runs directly contrary to the clear wording of s. 196(1) of the Act.

**Cases Cited**

By McLachlin C.J.

**Referred to:** *Dunsmuir v. New Brunswick*,2008 SCC 9, [2008] 1 S.C.R. 190; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360; *Katz Group Canada Inc. v. Ontario (Health and Long‑Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; *Voice Construction Ltd. v. Construction & General Workers’ Union, Local 92*, 2004 SCC 23, [2004] 1 S.C.R. 609; *Speckling v. British Columbia (Workers’ Compensation Board)*, 2005 BCCA 80, 46 B.C.L.R. (4th) 77; *Vandale v. British Columbia (Workers’ Compensation Appeal Tribunal)*,2013 BCCA 391, 342 B.C.A.C. 112; *Petro‑Canada v. British Columbia (Workers’ Compensation Board)*, 2009 BCCA 396, 98 B.C.L.R. (4th) 1; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293; *Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708.

By Côté J. (dissenting)

*Dunsmuir v. New Brunswick*,2008 SCC 9, [2008] 1 S.C.R. 190; *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485; *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135; *Noron Inc. v. City of Dieppe*, 2017 NBCA 38, 66 M.P.L.R. (5th) 1; *Gander (Town) v. Trimart Investments Ltd.*, 2015 NLCA 32, 368 Nfld. & P.E.I.R. 96; *1254582 Alberta Ltd. v. Edmonton (City)*, 2009 ABCA 4, 448 A.R. 58; *Canadian Council for Refugees v. Canada*, 2008 FCA 229, [2009] 3 F.C.R. 136; *Cargill Ltd. v. Canada (Attorney General)*, 2014 FC 243, 450 F.T.R. 121; *Broers v. Real Estate Council of Alberta*, 2010 ABQB 497, 489 A.R. 219; *Algoma Central Corp. v. Canada*, 2009 FC 1287, 358 F.T.R. 236; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360; *Katz Group Canada Inc. v. Ontario (Health and Long‑Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810; *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247; *Toronto Star Newspapers Ltd. v. Canada*, 2010 SCC 21, [2010] 1 S.C.R. 721; *Greenshields v. The Queen*, [1958] S.C.R. 216; *Reference re Broadcasting Regulatory Policy CRTC 2010‑167 and Broadcasting Order CRTC 2010‑168*, 2012 SCC 68, [2012] 3 S.C.R. 489; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559; *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6.

By Brown J. (dissenting)

*Dunsmuir v. New Brunswick*,2008 SCC 9, [2008] 1 S.C.R. 190; *Canadian Copyright Licensing Agency (Access Copyright) v. Canada*, 2018 FCA 58; *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485; *Noron Inc. v. City of Dieppe*, 2017 NBCA 38, 66 M.P.L.R. (5th) 1; *Gander (Town) v. Trimart Investments Ltd.*, 2015 NLCA 32, 368 Nfld. & P.E.I.R. 96; *1254582 Alberta Ltd. v. Edmonton (City)*, 2009 ABCA 4, 448 A.R. 58; *Canadian Council for Refugees v. Canada*, 2008 FCA 229, [2009] 3 F.C.R. 136; *Broers v. Real Estate Council of Alberta*, 2010 ABQB 497, 489 A.R. 219; *Algoma Central Corp. v. Canada*, 2009 FC 1287, 358 F.T.R. 236; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *Kruse v. Johnson*, [1898] 2 Q.B. 91; *Saumur v. City of Quebec*, [1953] 2 S.C.R. 299; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293; *Quebec (Attorney General) v. Guérin*, 2017 SCC 42, [2017] 2 S.C.R. 3; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Pham v. Secretary of State for the Home Department*, [2015] UKSC 19, [2015] 1 W.L.R. 1591; *Canada (Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, [2015] 2 F.C.R. 1006; *Mills v. Workplace Safety and Insurance Appeals Tribunal*, 2008 ONCA 436, 237 O.A.C. 71.

By Rowe J. (dissenting)

*Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *Dunsmuir v. New Brunswick*,2008 SCC 9, [2008] 1 S.C.R. 190; *Garneau Community League v. Edmonton (City)*, 2017 ABCA 374, 60 Alta. L.R. (6th) 1.

**Statutes and Regulations Cited**

*Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 58.

*Occupational Health and Safety Regulation*, B.C. Reg. 296/97, s. 26.2(1).

*Workers Compensation Act*,R.S.B.C. 1996, c. 492, Part 3, ss. 106 “employer”, “owner”, 107, 111, 115 to 121, 115, 119, 123, 186.1, 194, 195, 196(1), 196.1, 198, 213(1), 217, 225, 230(2)(a), 254, 255.

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Mullan, David J. “Establishing the Standard of Review: The Struggle for Complexity?” (2004), 17 *C.J.A.L.P.*59.

Sullivan, Ruth. *Sullivan on the Construction of Statutes*, 6th ed. Markham, Ont.: LexisNexis, 2014.

APPEAL from a judgment of the British Columbia Court of Appeal (Newbury, Tysoe and Groberman JJ.A.), 2016 BCCA 473, 405 D.L.R. (4th) 621, 12 Admin. L.R. (6th) 189, [2016] B.C.J. No. 2486 (QL), 2016 CarswellBC 3290 (WL Can.), affirming a decision of MacKenzie J., 2015 BCSC 1098, 2 Admin. L.R. (6th) 148, [2015] B.C.J. No. 1362 (QL), 2015 CarswellBC 1780 (WL Can.), dismissing an application for judicial review of a decision of the Workers’ Compensation Appeal Tribunal, 2013 CanLII 79509. Appeal dismissed, Côté, Brown and Rowe JJ. dissenting.

Donald J. Jordan, Q.C.,and Paul Fairweather, for the appellant.

Jeremy Thomas Lovell, for the respondent Workers’ Compensation Appeal Tribunal.

Ben Parkin, *Ian R. H. Shaw* and *Nicolas J. Bower*, for the respondent Workers’ Compensation Board of British Columbia.

Jason J. J. Bodnar, for the intervener Workers’ Compensation Board of Alberta.

The judgment of McLachlin C.J. and Abella, Moldaver, Karakatsanis, Wagner and Gascon JJ. was delivered by

The Chief Justice —

1. Introduction
2. A tree faller was fatally struck by a rotting tree while working within the area of a forest license held by the appellant West Fraser Mills Ltd. As the license holder, West Fraser Mills was the “owner” of the workplace, as defined in Part 3 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492. The faller was employed, not by West Fraser Mills, but by an independent contractor.
3. The Workers’ Compensation Board of British Columbia investigated the accident and concluded that West Fraser Mills had failed to ensure that all activities of the forestry operation were planned and conducted in a manner consistent with s. 26.2(1) of the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97. The Board also imposed an administrative penalty on West Fraser Mills pursuant to s. 196(1) of the Act — a fine of $75,000. These aspects of the Board’s decision were confirmed by the review division.
4. On appeal to the Workers’ Compensation Appeal Tribunal, West Fraser Mills argued: (1) that s. 26.2(1) of the Regulation was *ultra vires*; and (2) that an administrative penalty under s. 196(1) of the Act can only be levied against an entity acting as an “employer”, and not against an “owner”. West Fraser Mills argued that it was not the faller’s employer, but solely an “owner” within the terms of the Act, and so s. 196(1) did not apply and West Fraser Mills could not be fined.
5. The Tribunal rejected West Fraser Mills’ arguments and dismissed the appeal (2013 CanLII 79509). Noting West Fraser Mills’ general history of compliance with safety standards and that it had not intentionally disregarded such standards leading up to the incident in question, the Tribunal reduced the administrative penalty by 30 percent. The British Columbia Supreme Court (2015 BCSC 1098, 2 Admin. L.R. (6th) 148) and Court of Appeal (2016 BCCA 473, 405 D.L.R. (4th) 621) upheld the Tribunal’s order. West Fraser Mills now appeals to this Court.
6. For the reasons that follow, I would dismiss the appeal and uphold the Tribunal’s order against West Fraser Mills.
7. The Validity of Section 26.2(1) of the Regulation
8. Section 225 of the Act gives the Board broad powers to make regulations for workplace safety. It states, in relevant part:

**225** (1) In accordance with its mandate under this Part, the Board may make regulations the Board considers necessary or advisable in relation to occupational health and safety and occupational environment.

(2) Without limiting subsection (1), the Board may make regulations as follows:

(a) respecting standards and requirements for the protection of the health and safety of workers and other persons present at a workplace and for the well-being of workers in their occupational environment;

(b) respecting specific components of the general duties of employers, workers, suppliers, supervisors, prime contractors and owners under this Part;

. . .

1. Pursuant to s. 225 of the Act, the Board adopted the Regulation at issue in this case. Section 26.2(1) of the Regulation imposes a duty on owners to ensure that forestry operations are planned and conducted in accordance with the Regulation and safe work practices:

**26.2** (1) The owner of a forestry operation must ensure that all activities of the forestry operation are both planned and conducted in a manner consistent with this Regulation and with safe work practices acceptable to the Board.

1. This Court summarized the approach courts should take to judicial review of the exercise of delegated administrative powers in *Dunsmuir v. New Brunswick,* 2008 SCC 9, [2008] 1 S.C.R. 190*.* For situations where the jurisprudence has not already determined in a satisfactory manner the degree of deference to be accorded, this Court emphasized the importance of referring to the legislative and administrative context to determine the level of discretion the Legislature conferred on a board or tribunal. In most cases, a contextual assessment leads to the conclusion that the appropriate standard of review is reasonableness.
2. Applying this central teaching of *Dunsmuir*,this Court has adopted a flexible standard of reasonableness in situations where the enabling statute grants a large discretion to the subordinate body to craft appropriate regulations: see *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC2, [2012] 1 S.C.R. 5, at paras. 13, 18 and 24; *Green v. Law Society of Manitoba*,2017 SCC 20, [2017] 1 S.C.R. 360, at para. 20. Those authorities point us to reasonableness as the applicable standard of review. Reasonableness review “recognizes the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime”: D. J. Mullan, “Establishing the Standard of Review: The Struggle for Complexity?” (2004), 17 *C.J.A.L.P.* 59, at p. 93, cited with approval in *Dunsmuir*, at para. 49.
3. The question before us is whether s. 26.2(1) of the Regulation represents a reasonable exercise of the Board’s delegated regulatory authority. Is s. 26.2(1) of the Regulation within the ambit of s. 225 of the Act? Section 225 of the Act is very broad. Section 225(1) empowers the Board to make “regulationsthe Board considers necessary or advisable in relation to occupational health and safety and occupational environment”. This makes it clear that the Legislature wanted the Board to decide what was necessary or advisable to achieve the goal of healthy and safe worksites and pass regulations to accomplish just that. The opening words of s. 225(2) — “Without limiting subsection (1)” — confirm that this plenary power is not limited by anything that follows. In short, the Legislature indicated it wanted the Board to enact whatever regulations it deemed necessary to accomplish its goals of workplace health and safety. The delegation of power to the Board could not be broader.
4. From this broad and unrestricted delegation of power we may conclude that any regulation that may reasonably be construed to be related to workplace health and safety is authorized by s. 225 of the Act. The Legislature, through s. 225 of the Act, is asking the Board to use its good judgment about what regulations are necessary or advisable to accomplish the goals of workplace health and safety. A regulation that represents a reasonable exercise of that judgment is valid: *Catalyst*, at para. 24; *Green*, at para. 20.
5. Determining whether the regulation at issue represents a reasonable exercise of the delegated power is, at its core, an exercise in statutory interpretation, considering not only the text of the laws, but also their purpose and the context. The reviewing court must determine if the regulation is “inconsistent with the objective of the enabling statute or the scope of the statutory mandate” to the point, for example, of being “‘irrelevant’, ‘extraneous’ or ‘completely unrelated’”: *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810, at paras. 24 and 28. To do this, the Court should turn its mind to the typical purposive approach to statutory interpretation and seek an “interpretative approach that reconciles the regulation with its enabling statute”: *Katz*, at paras. 25-26.
6. First, applying the usual principles of statutory interpretation to s. 225 of the Act, it is clear that it authorizes s. 26.2(1). I have already discussed the broad wording of s. 225 of the Act. The Board is expected to craft such regulations as it deems necessary or appropriate in order to promote workplace health and safety. Section 26.2(1) is clearly linked to workplace safety and meets this requirement.
7. Second, the Regulation fits with other provisions of the statute. Section 26.2(1) is consistent with s. 230(2)(a) of the Act, which allows the Board to make regulations that apply to any “persons working in or contributing to the production of an industry”. This would include forest license owners like the appellant. Section 26.2(1) is also consistent with s. 111 of the Act, which provides that the Board’s mandate includes making regulations in support of the purpose of Part 3 of the Act. The purpose of Part 3 is captured in s. 107: it aims to promote occupational health and safety in the workplace in broad terms. Section 26.2(1) shares that purpose.
8. My colleague, Côté J., argues that s. 26.2(1) is at odds with the way the Act sets out the responsibilities of owners and employers. She reads the Act as creating two silos of responsibility — one for “owners” and one for “employers” — which can never overlap. She argues that because s. 26.2(1) makes an owner’s responsibilities overlap to some extent with an employer’s responsibilities, it cannot be reconciled with the Act and must be held to be invalid.
9. I cannot agree with the central premise of this argument — that the Act creates two silos of responsibility and that the duties of owners and employers can never overlap. Côté J. grounds this premise in ss. 115 and 119 of the Act, which state the duties of “employers” and “owners” respectively, and s. 107(2)(e), which my colleague reads to indicate the Legislature’s intent to preclude overlapping obligations for different parties. For reference, s. 107(2)(e) provides:

(2) Without limiting subsection (1), the specific purposes of this Part are

. . .

(e) to ensure that employers, workers and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of each party’s authority and ability to do so . . .

1. The practical effect of Côté J.’s interpretation is to limit the scope of regulations impacting owners to only those obligations outlined in s. 119 of the Act. Under that interpretation, any regulation not specifically tethered to s. 119 would be impermissible. However, this is inconsistent with the text of s. 119 itself — s. 119 is not a complete and exhaustive statement of owners’ duties. It does not say “the owners’ duties are the following”, much less that these are owners’ only duties. It is true that s. 26.2(1) of the Regulationimposes duties not set out in s. 119(a) and (b) of the Act, which deal with maintaining land and premises, and providing information to employers and contractors. However, s. 119 of the Act does not say that owners’ duties are limited to the specific duties found in s. 119(a) and (b). On the contrary, s. 119 (c) imposes a broad duty, not only to “comply with this Part,” but also with “the regulations”. The Legislature has thus indicated that other duties can be imposed by regulation. The text of s. 119 directly invites readers to consider owners’ obligations in light of the scheme as a whole.
2. Similarly, s. 107(2) simply lists particular facets of the scheme’s broad purpose to promote workplace safety. The text of s. 107(2) explicitly states that the specific purposes detailed, including s. 107(2)(e), are not meant to limit the broad workplace safety purpose outlined in s. 107(1). Section 107(1) provides a clear indication that the scheme is meant to promote workplace safety in the broadest sense. In addition, s. 107(2)(e) specifically notes that occupational health and safety is a shared responsibility between “employers, workers and others who are in a position to affect the . . . safety of workers”. Similarly, s. 107(2)(f) asks these parties to “foster cooperative and consultative relationships” regarding workplace safety. In my view, it is inconsistent with a purposive interpretation of the scheme to read the phrase “to the extent of each party’s authority and ability to do so” from s. 107(2)(e) — which my colleague finds to be dispositive — in a formalistic manner that disregards the scheme’s focus on shared responsibility.
3. Finally, two additional external contextual factors are relevant for this inquiry: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 59; *Catalyst*, at paras. 18 and 24. These considerations are both within the expertise and capacity of the Board.
4. First, the Board adopted s. 26.2(1) of the Regulation in its present form in 2008 in response to a concern in the province about the growing rate of workplace fatalities in the forestry sector. This concern is plainly one of “occupational health and safety and occupational environment”, the focus of s. 225. The Board’s adoption of s. 26.2(1) of the Regulation in response to this significant workplace safety concern provides a clear illustration of why a legislature chooses to delegate regulation-making authority to expert bodies — so that gaps can be addressed efficiently.
5. Second, s. 26.2(1) is a natural extension of an owner’s duty under s. 119(a) to maintain the worksite. Forestry worksites are constantly changing due to weather and other natural occurrences. To maintain the worksite in the face of the dynamic interaction of natural forces and work practices, the owner must ensure that the work in question is planned and conducted safely. Therefore, to fulfill the duty of maintaining a safe worksite under s. 119 of the Act, the owner must ensure that the work is planned and conducted safely. The two go hand in hand.
6. I conclude that s. 26.2(1) represents a reasonable exercise of the delegated power conferred on the Board by s. 225 of the Act to “make regulations [it] considers necessary or advisable in relation to occupational health and safety and occupational environment”.
7. It is true that this Court, in *Dunsmuir*, referred to prior jurisprudence to indicate that true questions of jurisdiction, which some suggest the present matter raises, are subject to review on a standard of correctness — noting, however, the importance of taking a robust view of jurisdiction. Post-*Dunsmuir*, it has been suggested that such cases will be rare: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 33. We need not delve into this debate in the present appeal. Where the statute confers a broad power on a board to determine what regulations are necessary or advisable to accomplish the statute’s goals, the question the court must answer is not one of *vires* in the traditional sense, but whether the regulation at issue represents a reasonable exercise of the delegated power, having regard to those goals, as we explained in *Catalyst* and *Green*, two recent post-*Dunsmuir* decisions of this Court where the Court unanimously identified the applicable standard of review in this regard to be reasonableness. In any event, s. 26.2(1) of the Regulation plainly falls within the broad authority granted by s. 225 of the Act as an exercise of statutory interpretation. This is so even if no deference is accorded to the Board and if we disregard all of the external policy considerations offered in support of its position.
8. The Penalty Under Section 196(1) of the Act
9. West Fraser Mills argues that it was not open to the Board to issue a penalty against the company under s. 196(1) of the Act because it was not acting as an “employer” during the breach in question. Section 196(1) provides:

**196** (1) The Board may, by order, impose on an employer an administrative penalty under this section if the Board is satisfied on a balance of probabilities that

(a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,

(b) the employer has not complied with this Part, the regulations or an applicable order, or

(c) the employer’s workplace or working conditions are not safe.

1. The Tribunal rejected West Fraser Mills’ argument and upheld the penalty.
   1. Standard of Review
2. The *Administrative Tribunals Act*,S.B.C. 2004, c. 45,applies to the Tribunal’s decision in this matter. Section 58 of that statute provides in relevant part:

**58** (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.

(2) In a judicial review proceeding relating to expert tribunals under subsection (1)

(a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,

(b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and

(c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal’s decision is correctness.

1. Section 254 of the Act grants the Tribunal exclusive jurisdiction over “all appeals from Board decisions”. Sections 254 and 255 of the Act constitute a strong privative clause. It follows that the appropriate standard of review is “patent unreasonableness”, pursuant to s. 58(2)(a) of the *Administrative Tribunals Act*.
2. A legal determination like the interpretation of a statute will be patently unreasonable where it “almost border[s] on the absurd”: *Voice Construction Ltd. v. Construction & General Workers’ Union, Local 92*,2004 SCC 23, [2004] 1 S.C.R. 609, at para. 18. In the workers’ compensation context in British Columbia, a patently unreasonable decision is one that is “openly, clearly, evidently unreasonable”: *Speckling v. British Columbia (Workers’ Compensation Board)*, 2005 BCCA 80, 46 B.C.L.R. (4th) 77, at para. 33; *Vandale v. British Columbia (Workers’ Compensation Appeal Tribunal)*,2013 BCCA 391, 342 B.C.A.C. 112, at para. 42 (emphasis deleted).
3. By stipulating the standard of patent unreasonableness, the Legislature has indicated that courts should accord the utmost deference to the Tribunal’s interpretation of the legislation and its decision.
   1. The Tribunal’s Interpretation of Section 196(1) of the Act
4. The Board imposed an administrative penalty on West Fraser Mills pursuant to s. 196(1) of the Act, which permits the Board to penalize an “employer”. West Fraser Mills submits that it was not an “employer” in relation to the fatality, but only an “owner”, and hence cannot be penalized under s. 196(1) of the Act. West Fraser Mills was an employer under the Act on other sites, and indeed employed a person to supervise this particular site. However, it submits that, because the events in question led to its breach as an “owner”, it therefore cannot be penalized separately as an “employer”.
5. The Tribunal found that s. 196(1) of the Act allows the Board to issue an administrative penalty against an entity that is an “employer” under the Act, even if the impugned conduct could also lead to consequences for the entity as the owner of a worksite. At the worksite where the incident occurred, West Fraser Mills was both an owner and an employer as defined by the Act. As an owner of the forest license, it had sufficient knowledge and control over the workplace to enable it to ensure the health and safety of workers at the worksite locations. Its obligation in that regard was not limited to the health and safety of its own employees. The Tribunal held that as both an employer and as an owner, West Fraser Mills’ duty extended to ensure the health and safety of all workers and to take sufficient precautions for the prevention of work-related injuries.
6. The question is whether the Tribunal’s interpretation of s. 196(1) to enable a penalty against West Fraser Mills qua “employer” was patently unreasonable. I conclude that the decision cannot be said to reach the high threshold imposed by the standard of patent unreasonableness — being “openly, clearly [or] evidently unreasonable”, or to “border on the absurd”: *Vandale*, at para. 42; *Voice*, at para. 18.
7. West Fraser Mills mounts arguments against the Tribunal’s interpretation of s. 196(1) on the basis that, once the events in question were deemed to constitute an “owner’s” breach, s. 196(1) was not available.
8. First, it argues that the wording and context of s. 196(1) push against an interpretation that allows a penalty against an “employer” in its capacity as an “owner”. The Act distinguishes between “employers” and “owners” and lays out the duties of each: ss. 115 and 119.
9. Second, it asserts that the Legislature made specific choices about who to target in the enforcement provisions laid out in the Act. Some provisions apply to an “employer” only: ss. 186.1, 196(1) and 196.1. Others apply more broadly to a “person” in the sense of ‘anyone’: ss. 194, 195 and 198. To read “employer” broadly to capture breaches committed by an entity in its role as an “owner” in light of this drafting is idiosyncratic, it contends.
10. Third, West Fraser Mills points out that s. 123 of the Act provides that where an entity acts as both an employer and an owner “in respect of one workplace”, it must meet the duties of both. This suggests that the Legislature anticipated overlap between functions, but only where the functions are linked by the same workplace. West Fraser Mills argues that the Tribunal did not find that there was an employment-like relationship between West Fraser Mills and the tree faller, and that this case is therefore distinguishable from *Petro-Canada v. British Columbia (Workers’ Compensation Board)*, 2009 BCCA 396, 98 B.C.L.R. (4th) 1, upon which the Tribunal relied.
11. However, these arguments are not conclusive. They support one way of interpreting s. 196(1) — a plausible but narrow way. They are countered by other arguments that support the broader interpretation of s. 196(1) that the Tribunal chose.
12. A second plausible interpretation of s. 196(1) — one more supportive of the goal of promoting safety and the overall operation of the scheme — is available. On this interpretation, West Fraser Mills, while it was the “owner” of the license to log on the site, was also an “employer” in relation to the worksite and the fatality that occurred. The evidence, accepted by the Tribunal and not challenged here, showed that West Fraser Mills employed persons to carry out the duties imposed by s. 26.2(1) of the Regulation*.* Those employees had responsibilities directly related to the worksite where the accident occurred. In this sense, West Fraser Mills was an “employer” for purposes of s. 196(1) because there is a factual link between West Fraser Mills’ activities and choices as an employer of individuals meant to monitor the worksite and the incident that occurred. More broadly, West Fraser Mills had statutory and regulatory duties with respect to this particular site that, as a corporation, it could discharge only as an employer.
13. The difference between the two interpretations comes down to this. The first interpretation — the logical extension of the interpretation urged by West Fraser Mills — holds that s. 196(1), in these circumstances, would apply only to the actual employer of the person injured or killed in the accident, which would exclude West Fraser Mills. The second interpretation says s. 196(1) extends to employers under the Act generally and therefore would include owners who employ people to fulfill their duties with respect to the worksite where the accident occurred, which would include West Fraser Mills. Both interpretations posit an actual connection to the specific accident at issue. One limits itself to the employment relationship *with the person injured*,while the other extends to employment with respect to the *worksite that led to the accident and injury*.
14. So we arrive at the crux of the debate. The Tribunal had before it two competing plausible interpretations of s. 196(1) (although it did not articulate the options precisely as I have). One was a narrow approach that would undermine the goals of the statute. The other was a broad approach, which both recognized the complexity of overlapping and interacting roles on the actual worksite and would further the goals of the statute and the scheme built upon it. The Tribunal chose the second approach. Was this choice “openly, clearly [and] evidently unreasonable” so as to border on the absurd? I cannot conclude that it was.
15. Courts reviewing administrative decisions are obliged to consider, not only the text of the law and how its internal provisions fit together, but also the consequences of interpreting a provision one way or the other and the reality of how the statutory scheme operates on the ground: see e.g. *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293, at para. 61. This is particularly the case where the standard of review is patent unreasonableness. Practical justifications and the avoidance of impacts that would undermine the objects of the statute may close the door to a conclusion that a particular interpretation “border[s] on the absurd” or is “openly, clearly [and] evidently unreasonable”.
16. In this case, the respective consequences of the competing interpretations militate against finding that the interpretation chosen by the Tribunal is patently unreasonable. The same is true when one considers the intended operation of the scheme.
17. First, as already discussed, a broad interpretation of s. 196(1) to include employers under the Act whose conduct can constitute a breach of their obligations as owners will best further the statutory goal of promoting workplace health and safety and deterring future accidents. This broad interpretation supports the statutory purpose, which, again, is “to benefit all citizens of British Columbia by promoting occupational health and safety and protecting workers and other persons present at workplaces from work related risks to their health and safety”: s. 107 of the Act. There is a connection between increased remedies against owners who hold duties as employers for given workplaces and increased occupational health and safety. The general scheme of the Act is to hold both owners and employers responsible in an overlapping and cooperative way for ensuring worksite safety.
18. Second, this interpretation is responsive to the reality that maintaining workplace safety is a complex exercise involving shared responsibilities of all concerned. By contrast, a narrow interpretation of s. 196(1) would hold only one actor — the actual employer of the person injured — responsible for what is, in fact, a more complex joint set of interactions that, in combination, produced the accident.
19. Third, and crucially, while it is true that s. 196(1) can be engaged on the basis of an employer’s failure to comply with its specific obligations as an “employer” under the Act and any applicable regulations (by virtue of s. 196(1)(b)), the provision is not limited to such circumstances. Employers can also be subject to a penalty under s. 196(1) if they fail “to take sufficient precautions for the prevention of work related injuries or illnesses” (s. 196(1)(a)) or if “the employer’s workplace or working conditions are not safe” (s. 196(1)(c)). Section 196(1)(c) in particular indicates the Legislature’s choice to focus, not on the specific relationship between the impugned employer and the victim of a workplace accident, but on the relationship between the employer and the worksite that led to the accident and injury.
20. Seen in this light, it is not specifically West Fraser Mills’ violation of s. 26.2(1) of the Regulation (in its role as owner) that triggers s. 196(1). Instead, the same failures that led to the infraction under s. 26.2(1) can be separately seen as either a failure “to take sufficient precautions” or as an indication that the “workplace or working conditions are not safe” (or perhaps both). The same misconduct may attract multiple sanctions. For example, the negligence of a forest license owner in particular factual scenarios could amount to a breach of s. 26.2(1) of the Regulation as well as a “fail[ure] to take sufficient precautions” under s. 196(1) of the Act. Indeed, it was at least partly on this basis that the penalty was initially imposed on West Fraser Mills and deemed appropriate by the Tribunal.
21. The Tribunal’s approach in this regard is supported by prior jurisprudence. In my view, the Tribunal did not err in relying on *Petro-Canada*. *Petro-Canada* held that it was reasonable for the Board to conclude thatthe corporate employer/owner of various service stations had obligations as an employer under s. 115 of the Act for those diverse workplaces because it exercised sufficient control over them. Here, West Fraser Mills had sufficient knowledge and control over the worksite in question to render it responsible for the safety of the worksite. It was not erroneous for the Tribunal to rely on *Petro-Canada*, which would suggest that West Fraser Mills’ obligations with respect to the worksite were not limited to concerns about the health and safety of *its own* employees.
22. It is true that the Tribunal in this case did not find an employment-like relationship between West Fraser Mills and the fatally injured faller, but, as discussed above, it did find a relationship between West Fraser Mills and the safety of the worksite — West Fraser Mills employed an individual whose job it was to monitor the worksite in a manner consistent with West Fraser Mills’ duties under the Act. West Fraser Mills’ relationship to the safety of the worksite was not solely that of an owner; West Fraser Mills was implicated in the fatality as an “employer”. Therefore, it was not “absurd” for the Tribunal to interpret s. 196(1) to apply in this case, and to find that West Fraser Mills failed in its role as an employer under the Act, given both West Fraser Mills’ link to the worksite and the factual basis underlying the s. 26.2(1) infraction.
23. Finally, while the Tribunal did not put the matter precisely as I have in these reasons, this is not fatal. It cannot be denied that the Tribunal understood the debate that it was tasked to resolve; it recognized the big picture and understood the implications of competing interpretations of s. 196(1). It understood and discussed the fundamental choice it faced — the choice between a narrow, textual approach and a broader, more contextual approach. Its decision is reasoned and presents a justiciable basis for review. Reviewing courts are entitled to supplement the reasons of an administrative body, within appropriate limits: *Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at paras. 16-18. This case clearly falls within those limits.
24. For these reasons, I conclude that the Tribunal’s interpretation of s. 196(1), which covers West Fraser Mills as it operated with respect to the worksite where the fatality occurred, is not patently unreasonable.
25. Conclusion
26. I would dismiss the appeal and confirm the decision of the Tribunal, with no costs to the Tribunal and costs here and below to the Board, both as requested.

The following are the reasons delivered by

Côté J. (dissenting) —

1. Introduction
2. West Fraser Mills Ltd. (“West Fraser”) hired an independent contractor to fall “trap trees” to reduce beetle population levels on its property. The contractor, in turn, hired a faller to carry out the work. The faller reported to and was supervised by the contractor, not West Fraser. Although West Fraser was an “owner” of the workplace within the meaning of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, all parties agree that it was not the faller’s employer.
3. The Workers’ Compensation Board of British Columbia (“Board”) investigated the faller’s death after he was struck by a rotting tree. It issued a report concluding, in relevant part, that West Fraser violated s. 26.2(1) of the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97. It also imposed an administrative penalty under s. 196(1) of the Actwith respect to the violations of s. 26.2(1) of the Regulation.
4. This appeal raises two questions. First, is s. 26.2(1) of the Regulation *ultra vires*? And if not, can the Board impose an administrative penalty on West Fraser for violating its obligations as an owner? In my view, s. 26.2(1) falls beyond the Board’s delegated authority and is therefore *ultra vires*. But even if s. 26.2(1) was *intra vires*, the Board erred in imposing an administrative penalty on West Fraser. Therefore, I would allow the appeal.
5. Validity of Section 26.2(1) of the Regulation
6. The *Workers Compensation Act* empowers the Board to enact certain types of regulations. Pursuant to those powers, the Board promulgated s. 26.2(1), which imposes specific obligations on owners of forestry operations. West Fraser, which the Board found to have violated s. 26.2(1), challenges whether the Board had lawful authority to enact this provision of the Regulation under the terms of the Act.
   1. Standard of Review
7. Correctness is the appropriate standard of review for determining whether a regulator exceeded the scope of its statutory authority to promulgate regulations. The first question in this appeal is jurisdictional in nature: whether the Board has the authority to adopt a regulation of this nature *at all*. This is not a challenge to the merits or the substance of a regulation. This inquiry lends itself to only one answer: either the Board acted within its powers, or it did not. There is no “reasonable” range of outcomes when a court is asked to determine whether the Board — which possesses only the authority that is delegated to it by statute — exercised its legislative powers in accordance with its mandate. In this context, correctness simply means that a reviewing court must engage in a *de novo* analysis of the regulator’s statutory authority to promulgate regulations, applying the usual approach to statutory interpretation, and determine whether the impugned regulation falls within that grant of authority.
8. This appeal highlights an important distinction between actions taken by a regulator in an adjudicative capacity and actions taken by a regulator in a legislative capacity — a distinction that is central to the policy concerns that animate judicial review and the traditional standard of review analysis.
9. A regulator (in this case, the Board) acts in an adjudicative capacity when it resolves case-specific disputes that are brought before it in accordance with its statutory mandate and applicable law. It is in this context that a tribunal may bring technical expertise to bear or exercise discretion in accordance with policy preferences. It is also in this context that there may exist a range of reasonable conclusions, as it may not be possible to say that there is one “single ‘correct’ outcome” for any given dispute (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 146, per Binnie J.).
10. On the other hand, a regulator acts in a legislative capacity when it enacts subordinate legislation pursuant to a statutory grant of power. The scope of the body’s regulation-making authority is a question of pure statutory interpretation: Did the legislature permit that body to enact the regulation at issue, or did the body exceed the scope of its powers? A regulator does not possess greater expertise than the courts in answering this question. Moreover, a challenge to a regulator’s exercise of legislative powers involves no case-specific facts and no direct considerations of policy, as the merits of the impugned regulation are not at issue. In this context, respect for legislative intent — a cornerstone of judicial review — requires that courts accurately police the boundaries of delegated power.
11. Here, the Board was unquestionably engaged in an exercise of legislative rather than adjudicative power when it enacted s. 26.2(1) of the Regulation, as the Board itself concedes. To determine the standard of review, the question the Court must answer is whether this Board is entitled to any deference as to its own conclusion that it had the authority to enact the impugned regulation.
12. The standard of review framework established in *Dunsmuir* was developed in the context of a challenge to a tribunal’s exercise of adjudicative power. The issue there was the validity of an adjudicator’s conclusions regarding an employee’s dismissal and the standard of review that should apply. *Dunsmuir*’s categories of reasonableness review and correctness review must be understood in that context. In contrast, this case does not raise the issue of whether a case-specific dispute was resolved appropriately. Rather, the issue it raises is whether a regulator exceeded its authority when it enacted an impugned regulation, which is an exercise of legislative power.
13. However, *Dunsmuir* is instructive. It recognized that “[a]dministrative bodies must . . . be correct in their determinations of true questions of jurisdiction or *vires*” (para. 59 (emphasis added)). It also cited approvingly to *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485, in which this Court considered whether a Calgary bylaw that froze the issuance of taxi plate licences was within the city’s statutory powers under the *Municipal Government Act*, S.A. 1994, c. M-26.1. Writing for a unanimous court, Bastarache J. stated, at para. 5:

The only question in this case is whether the freeze on the issuance of taxi plate licences was *ultra vires* the City under the *Municipal Government Act*. Municipalities do not possess any greater institutional competence or expertise than the courts in delineating their jurisdiction. Such a question will always be reviewed on a standard of correctness: *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, 2000 SCC 13, at para. 29. There is no need to engage in the pragmatic and functional approach in a review for *vires*; such an inquiry is only required where a municipality’s adjudicative or policy-making function is being exercised. [Emphasis added.]

1. *United Taxi* squarely governs this case. It recognized the distinction between legislative and adjudicative power (see also *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135, at para. 51) and the imperative of applying correctness review where there is a direct challenge to the *vires* of a regulation. This is why *Dunsmuir* held that true questions of jurisdiction *must* be reviewed on the standard of correctness. Unlike exercises of adjudicative power, which may be reviewed for reasonableness under *Dunsmuir* and its progeny, depending on the particular context, questions of *vires* can attract only one answer. As a result, lower courts have generally understood the enactment of subordinate legislation to be subject to correctness review. See D. J. M. Brown and J. M. Evans, with the assistance of D. Fairlie, *Judicial Review of Administrative Action in Canada* (loose-leaf), at pp. 15-58 to 15-59, in which the authors write, “[c]ourts apply the standard of correctness when deciding whether delegated legislation is *ultra vires*”, at p. 15-58. See also *Noron Inc. v. City of Dieppe*, 2017 NBCA 38, 66 M.P.L.R. (5th) 1, at para. 11; *Gander (Town) v. Trimart Investments Ltd.*, 2015 NLCA 32, 368 Nfld. & P.E.I.R. 96, at para. 14; *1254582 Alberta Ltd. v. Edmonton (City)*, 2009 ABCA 4, 448 A.R. 58, at para. 12; *Canadian Council for Refugees v. Canada*, 2008 FCA 229, [2009] 3 F.C.R. 136, at para. 57; *Cargill Ltd. v. Canada (Attorney General)*, 2014 FC 243, 450 F.T.R. 121, at para. 56; *Broers v. Real Estate Council of Alberta*, 2010 ABQB 497, 489 A.R. 219, at para. 29; *Algoma Central Corp. v. Canada*, 2009 FC 1287, 358 F.T.R. 236, at para. 66. Indeed, in this case, it is instructive that the trial court (2015 BCSC 1098, 2 Admin. L.R. (6th) 148), the Court of Appeal (2016 BCCA 473, 405 D.L.R. (4th) 621), West Fraser, and the Board all agreed that correctness was the appropriate standard of review for the *vires* question.
2. *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, and *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360, are not to the contrary. Neither case addressed the question at issue here: whether a regulator had the *authority* to adopt a particular regulation. Rather, both involved challenges to the *substance* or *merits* of an impugned regulation. In *Catalyst*, the issue was whether a municipality had exercised its taxation powers in a reasonable manner by imposing a particular tax rate for a certain class of property (para. 7). There was no question as to the municipality’s authority to impose the tax rate, since the relevant enabling legislation gave municipalities “a broad and virtually unfettered legislative discretion to establish property tax rates” (para. 26). In *Green*, the issue was whether the Law Society of Manitoba had acted reasonably in imposing particular rules of conduct. As in *Catalyst*, there was no question that the enabling legislation provided “clear authority for the Law Society to create a [continuing professional development] program” (para. 44).
3. Moreover, there were policy considerations in both cases that militated against correctness review. In *Catalyst*, where the parties agreed that reasonableness was the appropriate standard of review, the Court relied on the fact that municipalities are democratic institutions. Applying reasonableness review in this context ensures that courts “respect the responsibility of elected representatives to serve the people who elected them and to whom they are ultimately accountable” (para. 19). This was especially compelling given that a “deferential approach to judicial review of municipal bylaws has been in place for over a century” (para. 21) — a historical tradition that does not exist here. *Green* invoked the same democratic accountability rationale in the context of an impugned Law Society rule because benchers “are elected by and accountable to members of the legal profession”, the only persons to whom the rules apply (para. 23).
4. Here, the democratic accountability rationale counsels in favour of the correctness standard. The Board is an unelected institution that may exercise only the powers the legislature chose to delegate to it. The correctness standard ensures that the Board acts within the boundaries of that delegation and does not aggrandize its regulation-making power against the wishes of the province’s elected representatives.
5. I take no issue with the notion that courts should interpret statutory authorization to promulgate regulations in a broad and purposive manner, in accordance with modern principles of interpretation. This is precisely how the Court approached the issue in *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810. But that proposition is quite different from the idea that courts should defer to a regulator’s incorrect conclusion as to its authority to enact a particular regulation. It is still possible to interpret statutory mandates broadly and purposively while recognizing that there can be only one answer to the question of whether a regulator exceeded its mandate in promulgating an impugned regulation.
6. In fact, *Katz* supports the case for correctness review. First, nowhere in *Katz* did the Court purport to depart from the traditional reasonableness/correctness framework. One would expect such a significant doctrinal development, if it occurred, to be announced rather than implied. To the extent that *Katz* did not openly state the standard of review, it should not be read as *sub silentio* overturning this Court’s express holding in *United Taxi*, reaffirmed in *Dunsmuir*, that the *vires* of a regulation is subject to correctness review.
7. Second, several of the hallmarks of reasonableness review — paying “respectful attention” to the tribunal’s reasons (*Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247, at para. 49) and determining whether the decision was “defensible in respect of the . . . law” (*Dunsmuir*, at para. 47) — were conspicuously missing in *Katz*. Perhaps this is because a regulator may not produce a recorded set of reasons when it acts in a legislative capacity, as it does when it engages in adjudicative functions — a distinction that further illustrates the awkwardness of applying anything but correctness review to determine the *vires* of a regulation. If a court does not know the reasons justifying a decision or an exercise of jurisdiction, how can it afford any deference? But, in any case, the Court in *Katz* effectively engaged in a *de novo* analysis of the statutory authority for the regulations at issue, looking to the text of the legislative grants of authority and the purpose behind the enabling statutes. This is, by any definition, correctness review. Thus, *Katz* is relevant to this appeal only to the extent that it illustrates the applicable principles of statutory interpretation.
8. For these reasons, I am of the view that correctness is the appropriate standard of review. The majority evidently disagrees; but its rationale largely escapes me. In an effort to sidestep many of the arguments I have raised about the standard of review, the majority posits that “[w]e need not delve into this debate in the present appeal” (para. 23). As a result, important points go unaddressed, and the basis for applying the reasonableness standard remains largely unexplained.
9. First, the majority simply asserts — with no analysis or explanation — that *Catalyst* and *Green* prescribe reasonableness review where an enabling statute grants a subordinate body discretion to enact regulations. It does not tell us *why* this is the case. As I have already described, that is not a proper reading of these cases. The majority offers no rebuttal.
10. Second, the majority reasons do not address *United Taxi*. And so one can only speculate whether the majority has chosen to disregard authorities that are contrary to its position, or whether *United Taxi* is now impliedly overturned. Prospective litigants would be well served by having a clear answer to that question.
11. Third, the majority does not address the distinction between an exercise of legislative power and an exercise of adjudicative power. This distinction, in my view, provides a principled basis for recognizing the jurisdictional nature of the question at issue in this case. The majority offers no basis for its disagreement.
12. In sum, the majority has offered almost no analysis on a question that will prove to be important in subsequent cases where the *vires* of a regulation is at issue. In light of the fact that the parties in this case devoted significant attention to this question, a more thorough account of this issue than the majority’s reasons provide would have been helpful.
    1. Analysis
13. Section 26.2(1) of the Regulationis *ultra vires* because it impermissibly conflates the duties of owners and employers in the context of a statutory scheme that sets out separate and defined obligations for the relevant workplace entities. Therefore, it does not accord with the Board’s enabling legislation and falls beyond the scope of the Board’s delegated powers.
14. Section 26.2(1) of the Regulationrequires owners to assume responsibility for how forestry operation activities are “planned and conducted” on their premises. It states:

**26.2** (1) The owner of a forestry operation must ensure that all activities of the forestry operation are both planned and conducted in a manner consistent with this Regulationand with safe work practices acceptable to the Board.

1. The Board’s regulation-making authority is codified in s. 225 of the Act. That section provides a relatively broad grant of authority, but subject to the limitation that the Board’s regulations must be “[i]n accordance with its mandate under this Part”. It states, in relevant part:

**225** (1) In accordance with its mandate under this Part, the Board may make regulations the Board considers necessary or advisable in relation to occupational health and safety and occupational environment.

(2) Without limiting subsection (1), the Board may make regulations as follows:

(a) respecting standards and requirements for the protection of the health and safety of workers and other persons present at a workplace and for the well-being of workers in their occupational environment;

(b) respecting specific components of the general duties of employers, workers, suppliers, supervisors, prime contractors and owners under this Part;

. . .

1. To determine whether s. 26.2(1) falls within the grant of authority in s. 225 of the Act, it is necessary to examine Part 3 of the Actin its entirety “to understand the part the provision” — here, the grant of regulation-making power — “plays within the broader scheme” (*Toronto Star Newspapers Ltd. v. Canada*, 2010 SCC 21, [2010] 1 S.C.R. 721, at para. 21).See also *Greenshields v. The Queen*, [1958] S.C.R. 216, at p. 225, per Locke J., dissenting; and R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), who writes, at § 13.12, “When analyzing the scheme of an Act, the court tries to discover how the provisions or parts of the Act work together to give effect to a plausible and coherent plan. It then considers how the provision to be interpreted can be understood in terms of that plan.” In other words, the scope of the Board’s regulation-making power must be understood against the backdrop of the legislative design. A regulation will not be consistent with the Act, or “[i]n accordance with [the Board’s] mandate under [Part 3]”, if it runs contrary to or otherwise undercuts the legislative scheme. This is one example of where, in the language of *Katz*, it would not be “possible” to construe the regulation “in a manner which renders it *intra vires*” (para. 25 (emphasis deleted)).
2. In the legislative scheme at issue in this appeal, the Actdefines “employer” and “owner” as separate entities, with distinct definitions in s. 106. It then goes on to expressly differentiate the duties of owners, employers, and others in ss. 115 to 121. The general duties of employers are outlined in s. 115:

**115** (1) Every employer must

(a) ensure the health and safety of

(i) all workers working for that employer, and

(ii) any other workers present at a workplace at which that employer’s work is being carried out, and

(b) comply with this Part, the regulations and any applicable orders.

(2) Without limiting subsection (1), an employer must

(a) remedy any workplace conditions that are hazardous to the health or safety of the employer’s workers,

(b) ensure that the employer’s workers

(i) are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work,

(ii) comply with this Part, the regulations and any applicable orders, and

(iii) are made aware of their rights and duties under this Part and the regulations,

(c) establish occupational health and safety policies and programs in accordance with the regulations,

(d) provide and maintain in good condition protective equipment, devices and clothing as required by regulation and ensure that these are used by the employer’s workers,

(e) provide to the employer’s workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace,

(f) make a copy of this Act and the regulations readily available for review by the employer’s workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review,

(g) consult and cooperate with the joint committees and worker health and safety representatives for workplaces of the employer, and

(h) cooperate with the Board, officers of the Board and any other person carrying out a duty under this Part or the regulations.

1. Read in their entirety, the duties established by s. 115 relate to the supervisory relationship between employers and workers — for instance, employers must ensure the health and safety of workers, ensure that they are aware of known hazards, and provide them with instruction and training in relation to health and safety. It is telling that nearly every provision uses the term “workers”. Framed differently, the Act makes employers responsible for the manner in which work is carried out at the workplace.
2. The general duties of owners are set out in s. 119:

**119** Every owner of a workplace must

* + - * 1. provide and maintain the owner’s land and premises that are being used as a workplace in a manner that ensures the health and safety of persons at or near the workplace,
        2. give to the employer or prime contractor at the workplace the information known to the owner that is necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace, and
        3. comply with this Part, the regulations and any applicable orders.

1. Read in their entirety, the duties established by s. 119 relate to the relationship between owners and employers — for instance, owners must maintain the land in a certain manner and provide the employer or prime contractor (but not workers) with the necessary information to control hazards. None of these duties relates to workers, unlike in s. 115, where *all* of the duties of employers relate to workers.
2. Read together, ss. 115 and 119 create separate silos of responsibility, whereby the duties ascribed to employers and owners are tethered to their unique roles and capacities to ensure workplace safety. Employers, for example, are in the best position to ensure that workers are informed of known or reasonably foreseeable safety hazards because of their direct supervisory relationship with their employees — i.e., they are in the best position to assume responsibilities relating to the activities that occur at the workplace during the course of employment. Owners are in the best position to assume macro-level responsibilities pertaining to the workplace more generally — for instance, ensuring that the premises are adequately maintained. This is the manner in which the legislature went about achieving its goal of protecting health and safety at workplaces in the province.
3. This structural reading of the statute is bolstered by s. 107(2)(e), which states that one of the purposes of Part 3 of the Actis “to ensure that employers, workers and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of each party’s authority and ability to do so”. Employers are mentioned first, and owners are not expressly mentioned at all — emphasizing the primacy of employers in the legislative scheme. This is in contrast to other provisions of the statute in which owners are expressly referenced (see, e.g., s. 123(2)).
4. Moreover, s. 107(2)(e) makes clear that the Actaims to impose obligations on parties only “to the extent of [their] authority and ability”, which aligns with the manner in which duties are assigned to employers and owners, respectively, under ss. 115 and 119 of the Act. Therefore, even though the purpose statement in s. 107(1) contains broad language about “promoting occupational health and safety and protecting workers”, the statement itself expressly limits the extent to which (and the means by which) the legislature pursued that purpose. And, of course, declarations of policy (such as the broad statement in s. 107(1)) “are not jurisdiction-conferring provisions” and “cannot serve to extend the powers of the subordinate body to spheres not granted by [the legislature] in jurisdiction-conferring provisions” (*Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, [2012] 3 S.C.R. 489, at para. 22).
5. The impugned regulation does not respect these silos of responsibility. Section 26.2(1) requires owners to assume responsibility for the manner in which activities are planned and conducted — a function that relates to the relationship between employers and workers and the micro-level decisions about how day-to-day activities at the workplace are carried out. This obligation is categorically different from the macro-level duties related to workplace conditions that are assigned to owners under s. 119. As a result, the Board imposed, by regulation, a type of obligation that the Actreserves to employers. In doing so, it contravened the clear structure of divided responsibility that the Actcreates; it therefore exceeded its mandate and the scope of its delegated legislative powers under s. 225.
6. Section 225(1) of the Actdoes authorize the Board to make regulations it considers necessary or advisable. But this grant of authority cannot be read as permitting the Board to undermine the statutory scheme established by the province’s elected representatives through legislation. Otherwise, there would be no functional limit on the Board’s ability to enact regulations, provided that each regulation is in some way connected to some abstract vision of occupational health and safety.
7. Consider a slightly different case. Section 115(2)(d) of the Actmakes employers responsible for providing and ensuring the use of protective equipment by workers. Could the Board, by regulation, impose that same overlapping responsibility on owners, despite the fact that the legislature clearly chose to assign that duty to employers and *not* to owners? Under the majority’s reasons, it surely could — because, as the majority states, “the Legislature indicated it wanted the Board to enact whatever regulations it deemed necessary” (Chief Justice McLachlin’s reasons, at para. 10). This illustrates the boundless nature of the majority’s interpretive approach, which would permit the Board to erode, or outright ignore, the careful and considered legislative scheme that the province enacted.
8. I agree with the majority that s. 119 of the Act is not “a complete and exhaustive statement of owners’ duties” (Chief Justice McLachlin’s reasons, at para. 17). But the question here is not whether the Board can impose additional duties on owners that are not specified or particularized in the statute — it clearly can. Rather, the question we are asked to answer is whether the Board may impose on owners an obligation *of this nature*. Contrary to what the majority states, at para. 17, it is not my position that a regulation must necessarily be “specifically tethered to s. 119” to be valid in all cases. My point is simply that a regulation enacted pursuant to the Act — whether or not it is expressly linked to the text of the obligations outlined in s. 119 — may not undermine the operation of the statute as a whole by assigning duties to owners that are clearly not contemplated by the Act, when read in light of its structure and the statement of purpose in s. 107(2)(e).
9. Nor do I find the external contextual factors that the majority outlines to be persuasive — factors that, in any event, are not appropriate considerations when assessing the *vires* of subordinate legislation (see Justice Brown’s reasons, at paras. 117‑20). The Board may well have enacted s. 26.2(1) in response to the government’s concern about the growing rate of workplace fatalities in the forestry sector (Chief Justice McLachlin’s reasons, at para. 20). But this does not permit the Board to undermine the legislature’s statutory scheme for addressing workplace health and safety — particularly since the scheme, as I have described it, creates clear lines of authority and accountability for workplace safety issues. In contrast, the impugned regulation would diffuse responsibility across multiple actors.
10. Moreover, s. 26.2(1) is not a “natural extension” of an owner’s obligations under s. 119(a) (Chief Justice McLachlin’s reasons, at para. 21). As discussed, providing and maintaining land or workplace premises is conceptually distinct from managing and supervising the activities undertaken by workers on those premises; and it invokes a different type of competency and authority.
11. As a result, I would find that s. 26.2(1) is *ultra vires*, and I would allow the appeal on that basis.
12. Application of an Administrative Penalty to West Fraser in Its Capacity as Owner
13. Even assuming that the impugned regulation is *intra vires*, as the majority concludes, I would nevertheless allow the appeal on the basis that the Board erred in imposing an administrative penalty on West Fraser. West Fraser was charged with violating its obligations as an *owner* under s. 26.2(1) of the Regulation. Yet, it was subjected to an administrative penalty under s. 196(1) of the Act, which only authorizes the Board to impose such a penalty on an entity acting in the capacity of an *employer*. Since there is no nexus between the underlying violation (as an owner) and the imposition of an administrative penalty (applicable only to employers), the Board’s decision was patently unreasonable.
    1. Standard of Review
14. The *Administrative Tribunals Act*, S.B.C. 2004, c. 45(“ATA”), dictates the standard of review for the second question on appeal. Section 58 of the ATAprovides, in relevant part:

**58** (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.

(2) In a judicial review proceeding relating to expert tribunals under subsection (1)

(a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,

(b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and

(c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal’s decision is correctness.

1. According to the majority, the appropriate standard of review is patent unreasonableness (Chief Justice McLachlin’s reasons, at para. 29). Assuming that this is the applicable standard of review, I would allow the appeal on the basis that the decision of the Workers’ Compensation Appeal Tribunal (“Tribunal”) (2013 CanLII 79509) was patently unreasonable.
   1. Analysis
2. Section 196(1) of the Act, the administrative penalty provision, reads as follows:

**196** (1) The Board may, by order, impose on an employer an administrative penalty under this section if the Board is satisfied on a balance of probabilities that

(a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,

(b) the employer has not complied with this Part, the regulations or an applicable order, or

(c) the employer’s workplace or working conditions are not safe.

1. On a plain reading of this provision, the Board may only impose an administrative penalty on “an employer”, not on an owner or any other entity. The wording also makes clear that the underlying violation must have occurred when the offender was acting in the capacity of an employer. This is what the statute means when it says that “the employer has failed to take sufficient precautions” and that “the employer has not complied with this Part, the regulations or an applicable order”. An employer fully complies with applicable law where it satisfies the obligations that are assigned to employers.
2. The Tribunal read this provision to apply to an owner, so long as that owner is also an employer at the workplace — even if it satisfied all of the duties and obligations assigned to employers under the Act and the Regulation. This was erroneous for several reasons.
3. First, the category of “employer” does not encompass “owner”. This is evident from the separate definitions of the two terms in s. 106 as well as the distinct responsibilities allocated to each entity in ss. 115 and 119. There is no mention whatsoever of any power to impose an administrative penalty on an owner or on an entity acting in the capacity of an owner — which is precisely what the Board did in this case.
4. Second, the fact that s. 196(1) specifies that an administrative penalty may be imposed on an employer suggests, by negative implication, that a penalty may *not* be imposed on other categories of persons under the Act (see Sullivan, at § 8.92 (“When a provision specifically mentions one or more items but is silent with respect to other items that are comparable, it is presumed that the silence is deliberate and reflects an intention to exclude the items that are not mentioned.”)).
5. Third, the Tribunal’s interpretation fails to give effect to the legislature’s specific choice of language in s. 196(1), which differs from the language used in other provisions in the Act. The legislature would have used broader language if it had intended to empower the Board to impose an administrative penalty on an owner (or, as in this case, an owner that is also an employer, but was only found to have breached its obligations as an owner). In other provisions, the legislature used the word “person” or “persons” where it intended to encompass multiple entities or entities acting simultaneously in multiple roles. (See, e.g., s. 111(2)(d), which states that one of the Board’s functions is “to ensure that persons concerned with the purposes of [Part 3] are provided with information and advice relating to its administration and to occupational health and safety”.) The most salient example is s. 217, the general penalties provision. Section 217 is analogous to s. 196(1) in so far as it authorizes the imposition of penalties and gives the Board an enforcement mechanism. Section 217 states that “a person is liable” to the specified penalties — not only “an employer”, which is the word used in s. 196(1). Likewise, s. 213(1) makes clear that “[a] person who contravenes a provision of this Part” commits an offence subject to the general penalties in s. 217. “[W]hen different terms are used in a single piece of legislation, they must be understood to have different meanings. If [the legislature] has chosen to use different terms, it must have done so intentionally” (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at para. 81). The Tribunal’s interpretation disregards this choice of language and treats s. 196(1) as though it was written identically to ss. 213(1) and 217.
6. Fourth, a fuller examination of s. 196 itself confirms that the use of the term “employer” was no accident, as none of its other subsections uses the term “person” or “owner” rather than “employer”. For example, the due diligence defence (s. 196(3)), the review procedure (s. 196(4)), and the payment procedure (s. 196(5)) all refer to “the employer” or “an employer”. The majority’s reasoning in this case effectively rewrites those provisions as well.
7. Fifth, given that the Actsets out different silos of responsibility for owners and employers, as discussed above, at paras. 79-85, it is consistent with the statutory scheme as a whole for certain remedial measures — here, administrative penalties — to be reserved for breaches of certain types of obligations and not others.
8. The fact that West Fraser is *an* employer in the province, or even at this workplace — although not the employer of the faller who died — does not advance the Tribunal’s position. West Fraser stood accused of breaching its obligations *as an owner* under s. 26.2(1) of the Regulation. There was no accusation whatsoever that West Fraser, as the *employer* of a supervisor who was temporarily present at the workplace, breached any duty it owed in that capacity. The Tribunal did not merely choose between a “narrow approach” and a “broad approach” to the statute (Chief Justice McLachlin’s reasons, at para. 40). Rather, it adopted an unbounded interpretation — one that is “openly, clearly, evidently unreasonable” because it fails to establish any nexus between the underlying breach (of West Fraser’s obligations as an *owner* under s. 26.2(1)) and the applicability of the administrative penalty (to breaches of the Regulation or Act by an entity acting in the capacity of an *employer*, as described above). In order for an administrative penalty to be available, the underlying violation must have occurred when the entity was acting in its capacity as an employer. That was not the case here.
9. The Tribunal’s reasoning would expose everyowner to administrative penalties in the context of forestry operations. Consider the effect of its liability finding in tandem with its interpretation of s. 196(1). As to liability, the Tribunal faulted West Fraser because its supervisor did not take reasonable steps to document potential risks at the second work location (Tribunal’s reasons, at para. 72). Thus, in order to comply with applicable law, a forestry operations owner must have an employee attend to the workplace. But, by doing so, the owner is necessarily exposed to administrative penalties because a supervisor’s presence makes it an “employer” under the Tribunal’s interpretation of s. 196(1). The result is that every owner of a forestry operation that complies with the law — not only West Fraser on the facts of this case — is potentially subject to administrative penalties. The breadth of this interpretation demonstrates that the Tribunal effectively rewrote s. 196(1), replacing the word “employer” with “person”. By doing so, it fundamentally recalibrated the carefully designed scheme of liability set forth in the Act, rendering the distinction between owners and employers — and the specific use of the term “employer” in s. 196(1) — largely meaningless.
10. In my view, the preceding analysis is not simply a “plausible but narrow way” of reading s. 196(1) (Chief Justice McLachlin’s reasons, at para. 37). It is the *only* way. The Tribunal’s conclusion is patently unreasonable because it fails to account for — indeed, it expressly defies — the clear and unambiguous language of s. 196(1). Where there is no doubt as to a statutory provision’s meaning, a tribunal’s disregard of that meaning renders its decision patently unreasonable. The case for patent unreasonableness is even stronger where, as here, the Tribunal’s clearly erroneous interpretation contradicts and undermines the broader statutory scheme.
11. It is no answer to suggest that the Tribunal’s interpretation “will best further the statutory goal of promoting workplace health and safety and deterring future accidents” (Chief Justice McLachlin’s reasons, at para. 43). The legislature may have intended to pursue that purpose, but it did so through limited means — and those means are clearly evident in s. 196(1). To hold that any interpretation that the Tribunal views as advancing the goal of health and safety can survive patent unreasonableness scrutiny would render judicial review meaningless. Patent unreasonableness may be a highly deferential standard, but there are some interpretations of law that are so far beyond the pale that they cannot be permitted to stand.
12. In fact, it is not even clear that the Tribunal’s interpretation *does* best further the goal of occupational safety. Under the Tribunal’s approach, West Fraser could have avoided an administrative penalty altogether by simply not having a supervisor present at that workplace. Surely that does not promote health and safety. Alternatively, the Board could have taken other forms of recourse against West Fraser under the Actrather than pursuing an administrative penalty. The majority considers neither of these possibilities. At a minimum, the suggestion that the Tribunal’s interpretation best furthers the Act’s purposes is an untested and uncertain proposition on its own terms. The mere fact that the Tribunal puts forward this justification cannot serve as a basis for blindly deferring to its interpretation of the statute.
13. Finally, the majority suggests that there could be a differentbasis for imposing an administrative penalty on West Fraser than its breach of s. 26.2(1) of the Regulation. Such an approach totally ignores or disregards what happened in this case. The record is unambiguous: the *only* regulatory violationsthat the Board cited in support of its decision to impose an administrative penalty were violations of s. 26.2 — which, as I have described, outlines duties applicable to *owners*. Nor was there any independent finding that West Fraser failed to prevent workplace injuries or did not maintain a safe workplace, apart from its violation of s. 26.2(1). This is confirmed by the Tribunal’s reasons, which focused on the fact of the violation in upholding the administrative penalty: “The violation by [West Fraser] of section 26.2(1) of the Regulation provides the basis for finding [West Fraser] failed to take sufficient precautions for the prevention of work related injuries” (para. 96 (emphasis added)).
14. The majority’s efforts to tether the penalty to something other than West Fraser’s violations of its obligations as an owner disregard what the Tribunal actually said. A reviewing court is “not empower[ed] . . . to ignore the [Tribunal’s] reasons altogether and substitute its own” (*Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6, at para. 24, per McLachlin C.J.), even on a standard of patent unreasonableness. But that is precisely what has occurred here. West Fraser’s violations as an owner cannot be repackaged as violations by an employer where the Actprovides no authority to impose an administrative penalty. As a result, the Tribunal’s decision to uphold the imposition of an administrative penalty was patently unreasonable.
15. Conclusion
16. In summary, I would find that s. 26.2(1) of the Regulationis *ultra vires* on the correctness standard of review, and I would allow the appeal for that reason. But even if this was not the case, it was patently unreasonable to impose an administrative penalty — applicable only to breaches committed when acting in the capacity of an employer — on the basis that West Fraser was found guilty of breaching its obligations as an owner under s. 26.2(1). I would therefore allow the appeal on this alternative basis as well.

The following are the reasons delivered by

1. Brown J. (dissenting) — While I agree with the Chief Justice that the Workers’ Compensation Board of British Columbia had the authority to adopt s. 26.2(1) of the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97, I arrive at that conclusion via different reasoning.
2. The Chief Justice says, at para. 23, that “[i]t is true” that *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, stated that true questions of jurisdiction “are subject to review on a standard of correctness”. But with respect, that significantly downplays what this Court *actually* said in *Dunsmuir*, which was that “[a]dministrative bodies must . . . be correct in their determinations of true questions of jurisdiction or *vires*”: para. 59 (emphasis added). Further, it is no answer to West Fraser’s jurisdictional objection to say, as the Chief Justice also says, at para. 23, that “such [truly jurisdictional] cases will be rare”. This is a particularly inadequate response where, as here, the Chief Justice does not herselfdoubt the jurisdictional quality of the issue at bar. Indeed, the issue is elided altogether by the statement that “[w]e need not delve” into whether the Board’s authority in this case to adopt s. 26.2(1) is such a question, since “the question the [reviewing] court must answer is not one of *vires* in the traditional sense, but whether the regulation at issue represents a reasonable exercise of the delegated power”: para. 23.
3. To that, I offer three points in response. First, the issue of the Board’s authority to adopt s. 26.2(1) is “an issue of *vires* relating to subordinate legislation”: *Canadian Copyright Licensing Agency* *(Access Copyright) v. Canada*, 2018 FCA 58, at para. 80. The question of whether a statutory delegate is authorized to enact subordinate legislation is therefore manifestly jurisdictional “in the traditional sense”, *as this Court’s jurisprudence understands such questions*. In other words, this issue does not go to the *reasonableness* of the Board’s decision to adopt s. 26.2(1), but rather to its *authority* to do so. This falls squarely within the class of questions described by this Court in *Dunsmuir*, at para. 59, as arising “where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter”.
4. Secondly, courts have almost always applied “the standard of correctness when deciding whether delegated legislation is *ultra vires*”: D. J. M. Brown and J. M. Evans, with the assistance of D. Fairlie, *Judicial Review of Administrative Action in Canada* (loose-leaf), at pp. 15-58 to 15-59; see also *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485; *Noron Inc. v. City of Dieppe*, 2017 NBCA 38, 66 M.L.P.R. (5th) 1, at para. 11; *Gander (Town) v. Trimart Investments Ltd.*, 2015 NLCA 32, 368 Nfld. & P.E.I.R. 96, at para. 14; *1254582 Alberta Ltd. v. Edmonton (City)*, 2009 ABCA 4, 448 A.R. 58, at para. 12; *Canadian Council for Refugees v. Canada*,2008 FCA 229, [2009] 3 F.C.R. 136, at para. 57; *Broers* *v. Real Estate Council of Alberta*,2010 ABQB 497, 489 A.R. 219, at para. 29; *Algoma Central Corp. v. Canada*, 2009 FC 1287, 358 F.T.R. 236, at para. 66.
5. This is confirmed by the Court’s own jurisprudence. In *Dunsmuir*, it referred approvingly to its earlier statement in *United Taxi Drivers’ Fellowship* where (as here) the issue was whether the City of Calgary was authorized under the relevant statute to enact subordinate or delegated legislation. In that case, bylaws limited the number of taxi plate licences. This was, the Court said, at para. 5, a question of jurisdiction which is always to be reviewed for correctness. This is because a central judicial function is to ensure that statutory delegates such as the Board act only within the bounds of authority granted to them by the legislature. This understood, the label matters little. Howsoever one characterizes this question — as one of jurisdiction, *vires* or even as a species of a question of law — the principle remains the same. Public power must always be authorized by law. It follows that no statutory delegate, in enacting subordinate legislation (that is, *in making law*), may ever exceed its authority. The rule of law can tolerate no departure from this principle: *Dunsmuir*, at para. 29.
6. Thirdly, I respectfully disagree with the Chief Justice’s framing of the issue before the Court as being whether the Board’s adoption of s. 26.2(1) represents a reasonable exercise of its delegated power under the *Workers Compensation Act*,R.S.B.C. 1996, c. 492. While the judicial role properly and necessarily includes seeing that statutory delegates operate within the bounds of their grant of authority, the overall “reasonableness” of *how* a statutory delegate has chosen to exercise its lawful authority is *not* the proper subject of judicial attention. In short, while the Board’s *authority* to regulate is (and must be) reviewable, the Board’s chosen *means* of regulation are — subject to what I say below about *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5 — a matter for the Board, and not for this or any other court.
7. The Chief Justice’s reasons on this point go well beyond this Court’s judgment in *Catalyst* by effectively recognizing a new generalized basis for judicial review of *the regulatory means chosen* by statutory delegates acting within the bounds of their grant of legal authority. By way of explanation, unreasonableness, as a ground recognized in *Catalyst* for invalidating an action by a statutory delegate, operates narrowly (and only once *vires* has been established). As this Court explained in *Catalyst*, at paras. 21 and 24, the sorts of measures which, in the context of municipal bylaws, would be illegitimate for municipal councillors to take are those which are unreasonable in the sense described by Lord Russell C.J. in *Kruse v. Johnson*, [1898] 2 Q.B. 91 (Div. Ct.):

But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, “Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires.” [pp. 99-100]

Unreasonableness, in the sense affirmed in *Catalyst*, therefore concerns factors or considerations which have long been understood as illegitimate in the context of municipal governance (e.g. *Saumur v. City of Quebec*, [1953] 2 S.C.R. 299), and not factors which might lead a reviewing court to think a measure “unreasonable” in the sense of being merely unnecessary or inadvisable in light of the goals of a particular enabling statute.

1. The point merits restating: the issue before us is not directed to whether the regulation “represents a reasonable exercise of the delegated power”: Chief Justice McLachlin’s reasons, at para. 23. Rather, the issue is whether the Board *is authorized to adopt* the Regulation at issue. I note that the parties in the present appeal and the courts below all viewed the s. 26.2(1) issue as a matter of jurisdiction or *vires*.
2. It follows that I also reject the Chief Justice’s sidestepping of the jurisdictional inquiry in favour of a review of various contextual factors which are said to support reasonableness review: Chief Justice McLachlin’s reasons, at paras. 19-21. If the Board’s adoption of s. 26.2(1) presents a jurisdictional question — which the Chief Justice does not deny — such contextual factors are irrelevant.
3. I agree, however, with the Chief Justice that s. 225 of the Act, which empowers the Board to make regulations it “considers necessary or advisable in relation to occupational health and safety and occupational environment” is sufficiently broad to support the conclusion that the Board’s adoption of s. 26.2(1) of the Regulation is *intra vires*.
4. On the question of the penalty, I agree with my colleague Côté J. that the Board’s decision to impose a penalty upon West Fraser under s. 196(1) of the Act for a breach of s. 26.2(1) of the Regulation was patently unreasonable, and I endorse her reasons offered in support.
5. I add this. The foregoing reasons are driven, as I say, at para. 114, by the understanding of questions of jurisdiction as stated in this Court’s jurisprudence, particularly in *Dunsmuir*. While the category and definition of jurisdictional questions in *Dunsmuir* have occasionally been doubted (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 42) or marginalized as “narrow”, “exceptional” and “rare” (*Alberta Teachers*, at para. 39; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293, at para. 26; and *Quebec (Attorney General) v. Guérin*, 2017 SCC 42, [2017] 2 S.C.R. 3, at para. 42), the framework in *Dunsmuir*, as a matter of *stare decisis*, continues to govern the treatment of such questions.
6. This is not to say that all is well. I accept that, in many cases, the distinction between matters of statutory interpretation which implicate truly jurisdictional questions and those going solely to a statutory delegate’s application of its enabling statute will be, at best, elusive. More generally, while binary standards of review are suitable for appellate review under *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, more flexibility — that is, something focussing more closely on intensity of review, rather than binary categories — might better account for the unavoidably varying contextual considerations that arise in judicial review of administrative decisions. Such contextual considerations could include the breadth of discretion contained in the statutory grant, the nature of the decision, the nature of the decision maker, and the stakes for the affected parties. (See, e.g., *Pham v. Secretary of State for the Home Department*, [2015] UKSC 19, [2015] 1 W.L.R. 1591, at para. 107, per Lord Sumption.) Such an approach, which other jurisdictions have applied, has also found favour in some Canadian appellate courts: *Canada (Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, [2015] 2 F.C.R. 1006, at paras. 90-92; *Mills v. Workplace Safety and Insurance Appeals Tribunal*, 2008 ONCA 436, 237 O.A.C. 71, at para. 22. I see nothing in this general principle — that the framework for deciding the standard of review should allow for sufficient flexibility to reflect the varied nature of administrative bodies, the questions before them, their decisions, their expertise and their mandates — that is inconsistent with the dual constitutional functions performed by judicial review: upholding the rule of law, and maintaining legislative supremacy (*Dunsmuir*, at paras. 27 and 30).
7. I would allow the appeal.

The following are the reasons delivered by

1. Rowe J. (dissenting) — Judicial review of delegated authority is fundamental to upholding the rule of law. As Chief Justice McLachlin described it in *Catalyst Paper Corp. v. North Cowichan (District)*,2012 SCC 2, [2012] 1 S.C.R. 5, at para. 10: “It is a fundamental principle of the rule of law that state power must be exercised in accordance with the law. The corollary of this constitutionally protected principle is that superior courts may be called upon to review whether particular exercises of state power fall outside the law.”
2. One instance in which such review occurs relates to the validity of a regulation. This has two steps. The first relates to jurisdiction “in the narrow sense of whether or not the [board] had the authority to make the inquiry” (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 59). The second is a substantive inquiry into the exercise of the grant of authority: “. . . the substance of [the regulations] must conform to the rationale of the statutory regime set up by the legislature” (*Catalyst*,at para. 25). Both steps involve interpretation of the authorizing statute, the first focusing more on the grant of regulation-making authority, the second having regard more generally to the scheme and objects of the statute.
3. Without referring to the two steps I have noted above, in effect the Chief Justice addresses the first in paras. 10-11 and the second in paras. 12-22. With the foregoing comment, I concur with her analysis that s. 26.2(1) of the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97, is *intra vires*.
4. I would add a further comment. In para. 9, the Chief Justice quotes D. J. Mullan to the effect that reasonableness review recognizes “the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime” (“Establishing the Standard of Review: The Struggle for Complexity?” (2004), 17 *C.J.A.L.P.* 59, at p. 93; *Dunsmuir*, at para. 49). This is an over-generalization that obscures rather than enlightens. I would agree that “working day to day” with an administrative scheme can build “expertise” and “field sensitivity” to policy issues and to the weighing of factors to be taken into account in making discretionary decisions. But how does “working day to day” give greater insight into statutory interpretation, including the scope of jurisdiction, which is a matter of legal analysis? The answer is that it does not. This is one of the myths of expertise that now exist in administrative law (*Garneau Community League v. Edmonton (City)*, 2017 ABCA 374, 60 Alta. L.R. (6th)1, at para. 94).
5. Concerning the monetary penalty, I agree with my colleague Côté J. that the decision of the Workers’ Compensation Appeal Tribunal (2013 CanLII 79509) was patently unreasonable and runs directly contrary to the clear wording of s. 196(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492. Accordingly, I concur with paras. 94-110 of her reasons. I would therefore allow the appeal on that basis.

*Appeal* *dismissed with costs to the Workers’ Compensation Board of British Columbia,* Côté*,* Brown *and* Rowe JJ. *dissenting.*

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