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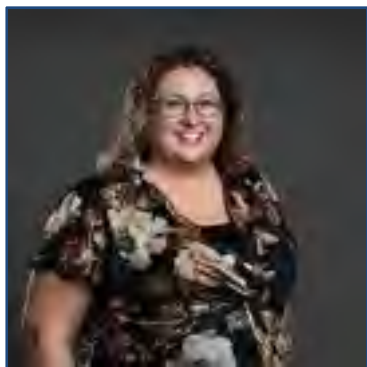


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PRESIDENT'S MESSAGE

MARCH 2020



March is known for many things, the start of spring, St. Patrick's Day, Daylight Savings Ends, and for teachers and school aged kids: March Break! I remember the anticipation for the arrival of March Break, when I was a kid. We didn't go anywhere during that time, but just having the opportunity to sleep in and do nothing was good enough for me! I would envy those people who went away to Florida, or to other sunny destinations. If you plan on staying local, there are tons of things you can find to occupy your kids.

This website offers 24 different ideas in Kitchener, Waterloo, Cambridge and surrounding areas. <https://www.explorewaterlooregion.com/2018/03/24-things-march-break/>

You can check out Max's Sports World or visit THE MUSEUM's VR live research Demos. Take in a St. Jacobs Horse Drawn Maple Sugar Bush Tour. Maybe a Day camp would be something your kids would love. The Kitchener Market 'Kids in the Kitchen' March Break camp, or the Kitchener Humane Society Animal Camp. You don't have to jump on a plane this March Break to find fun activities your whole family will love.

Please join us at Golf's Steakhouse on March 26, 2020 where we will be hosting Stantec who will be discussing Environmental Remediation. Please visit the K-W OIAA website for further details <https://www.kw-oiaa.ca/Events>

Our Battle of the Bands, Elections and Fun Night tickets are now on sale! April 30th at Maxwell's Concerts and Events in Waterloo. We have some amazing bands ready to rock on! There are some returning favourites and some new bands ready to battle for the top spot. To get tickets to this event please visit the K-W OIAA Website for further details: <https://www.kw-oiaa.ca/Events>

Our events are successful because of all of you who continue to support the K-W OIAA! Thank you and I hope to see you on March 26th, at Golf's steakhouse.

**Thank you,
Jaime Renner
President of K-W OIAA**

K-W OIAA EXECUTIVE COUNCIL 2019-2020

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If you have any questions, concerns or comments, please do not hesitate to contact any of the above committee members.

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Save the date in your calendar...**Thursday April 30, 2020!**

At **Maxwell's 35 University Avenue East, Waterloo** – enjoy the true concert experience!

2018 & 2019 Champs **Haz-Matt (DKI Golden Triangle)** are returning to defend their title.

Will they be 3-time winners? Or will a new challenger come out on top?

We are opening band registration to local K- W OIAA adjusters and industry partners first. Let us know you are interested in playing by **February 21, 2020** by contacting jennifer.brown@economical.com or ckeogh@goremutual.ca

Band registration will open to other chapters after February 21, 2020.

Are you ready for a fun night filled with music?

This means if you miss out, you'll need to get in early for next year!

Cost to attend Battle of the Bands will be \$25/person.

If you are interested in sponsoring the event, please contact

jennifer.brown@economical.com

All proceeds raised from sponsoring will be given to charity!



EVENTS SCHEDULE 2019-2020

March 26, 2020

**Educational Seminar – Environmental
Remediation with Stantec
David Bushell & Stephanie Klages**

April 30, 2020

**Election night & Battle of the Bands
Jennifer Brown, Carrie Keogh & Matthew
Bowker**

Election for positions available on the board, Members wishing to join the board must be in good standing with the K-W OIAA.

Any member of the OIAA with a Band is encouraged to sign up to play and see if you can beat the two-time defending champs the Haz-Mats

May 28, 2020

**Educational Seminar – Property Loss Prevention
Jeff Cronk & Randy Henderson**

June 24, 2020

**John McHugh Memorial Golf Tournament
Ariss Valley Golf & Country Club
Jaime Renner & Ellie Celestine**

All events will be held at Golf's Steak House and Seafood unless otherwise noted.





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SOCIAL CHIT CHAT

March 2020



Well it's not officially Spring just yet but all of a sudden, it's like we've turned the page on winter. For a lot of people, January and February are the hardest months from a mental health perspective but that doesn't mean we are in the clear just because March has arrived. With Easter in April this year, there is no formal holiday this month; even more reason not to take your mental health for granted.



Sitting through a presentation on motivation and stress management at the recent OIAA Georgian Bay chapter's monthly meeting, it was a reminder how intertwined those two subjects are and also how easy it is to let a few mental challenges reduce our motivation and increase stress. Now that we are starting to experience more hours of daylight, more sunshine and warmer temperatures, it's the perfect opportunity to do some of the things that will help our motivation, reduce stress and improve our overall mental health.

- Go for a walk after dinner with a friend, your family or even on your own
- When you plan your week, formalize time for something fun and enjoyable – on your own or with others
- Plan a vacation and book the time off work
- Go through your closet, basement or garage and purge things that you no longer use
- Hang a bird feeder in your yard to attract the songbirds that are starting to arrive
- Do one thing nice each day for yourself, then do one nice thing for someone else

Enjoy the transition that is March; from snow and cold to early Spring flowers and warmer days and don't forget to join us on March 26th for the next K-W OIAA educational meeting!

Randy Henderson
K-W OIAA Social Director





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PROVINCIAL DELEGATE REPORT



In March, the OIAA executive meets to elect the next secretary to the provincial board. I look forward to announcing the incumbent next month.

I am really looking forward to the next few months in the OIAA when all the chapters are introducing their newest board members. I know that 7 years ago I agreed to join the K-W OIAA to be secretary, I felt like I needed to join this organization as they were really looking for members to join the board. I initially wasn't told that this was a 5+ year commitment as you move up through the positions, at least in K-W that's how we progress.

What I have learned in the organization, is that all of the volunteers are what make this organization what it is. We are the backbone and the force that keeps it moving forward. With the amazing individuals across Ontario that work within the various OIAA chapters, we are an organization that supports numerous charity organizations while providing education and camaraderie to our members, industry partners and social members.

If you ever have the opportunity to join the OIAA or another board that impacts your life, I highly recommend that you take it. Is it hard work? It can be. Time consuming? Yes it is, but you have the opportunity to make something better for your organization and community.

I have met some of my greatest friends, got over my fear of public speaking, learned to manage and organize events for 800+ people. Met a lot of very inspiring individuals in our organizations and along the way also met many people that have hidden musical talents, which you can see yourself at the K-W OIAA's 3rd Battle of the Bands on April 30th.

Upcoming events:

April 8, 2020- Toronto Delegate Elections and Educational seminar co-hosted with the CIAA.

- Interjurisdictional Claims Handling presented by Dan Strigberger, of Strigberger Brown Armstrong LLP and Kelly Peck-McDonnell, CIP Senior Adjuster, Crawford & Company (Canada) Inc.
- Liability and the Sharing Economy including AirBnB and Bullying and Exposure under Home Owners presented by Michael Blinick of Marta Watson LLP

Regards,

Jennifer Brown

K-W OIAA Chapter, Provincial Delegate

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SUPREME COURT OF CANADA STREAMLINES STANDARD OF REVIEW ANALYSIS FOR JUDICIAL REVIEW

Article by Evan Bawks

Late in 2019, the Supreme Court of Canada released a trilogy of decisions that simplified the standard of review analysis for judicial review from administrative tribunals. The trilogy of decisions touches on principles of the deference accorded to a decision maker from an administrative tribunal, when decisions should fall under the more deferential standard of “reasonableness” or the more strict standard of “correctness”, and clarifying the steps taken for the legal “reasonableness” analysis.

Background

While standard of review principles can be a little-understood topic outside of the legal profession, they are important considerations that affect how decisions are made by administrative bodies and the recourse parties have to appeal those decisions. Administrative decision-makers are creatures of statute and are empowered to rule on specific areas or issues – for example, think of bodies such as the Financial Services Commission of Ontario (FSCO) or the Licence Appeals Tribunal (LAT) for accident benefits disputes. These decisions can have major impacts on people and exist to enable specialized and streamlined decision-making. The standard of review analysis, which dictates how courts can uphold or overturn administrative decisions on judicial review, has historically needed to balance principles of legislative intent, the delegated and specialized nature of many administrative bodies, and ensuring administrative bodies do not overreach.

The trilogy of Supreme Court of Canada decisions were *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66 (involving two appeals), and *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. The first two appeals involved Bell Canada and the National Football League appealing the 2016 decision of the Canadian Radio-television and Telecommunications Commission which prohibited the “simultaneous substitution” of the Super Bowl, essentially allowing Canadians to see the high profile American commercials on the broadcast in Canada. The majority of the Court ultimately allowed the appeals and quashed the order of the CRTC, finding that the CRTC incorrectly interpreted the scope of its authority under the *Broadcasting Act*.

The third, and most important, appeal was contained in the *Vavilov* decision, which set out the new framework and principles for this area of law. *Vavilov* involved a young man, born in Canada, whose parents were arrested and charged with espionage in 2010 in the United States when Mr. Vavilov was sixteen years old. After his parents pled guilty and were returned to Russia, Mr. Vavilov tried to renew his Canadian citizenship. He was initially unsuccessful but was issued a certificate of Canadian citizenship in 2013. However, in 2014, the Canadian Registrar of Citizenship cancelled the certificate, based on an interpretation of the *Citizenship Act*. The Registrar reasoned

that Mr. Vavilov fell under the exemption as a child of “a diplomatic or consular officer or other representative or employee in Canada of a foreign government.” In reality, Mr. Vavilov’s parents were members on assignment for the Russian foreign intelligence service, posing as Canadians. Mr. Vavilov did not know that his parents were not who they claimed to be. Both the majority and dissent in the Supreme Court found in favour of Mr. Vavilov, but differed on the standard of review framework. The majority of the court set forth the new judicial review framework, while Justices Abella and Karakatsanis authored a strong dissent against departing from the previous analysis.

The New Framework

The majority of the Supreme Court found that the previous framework, which largely followed the 2008 decision of *Dunsmuir v. New Brunswick*, had not fully realized the goal of simplicity and predictability. The former contextual analysis was unwieldy and offered limited practical guidance for courts attempting to determine the standard of review. The Court first highlighted the proper analysis for determining the proper standard of review. The Court then provided guidance on the proper application of the reasonableness standard.

The revised standard of review analysis begins with a presumption that reasonableness is the applicable standard in all cases for judicial review of administrative decisions. Instead of engaging in a contextual analysis of the decision, courts are now to start with the presumption that the proper standard is reasonableness, unless the presumption is rebutted and the correctness standard should be used.

The first situation in which the reasonableness presumption will be rebutted is where the legislature has specifically indicated that it intends for a different standard to apply. This respects clear statutory language and intent. The legislature may also provide a specific statutory appeal mechanism from an administrative decision to a court, which would thereby signal the legislature’s intention that appellate standards apply when a court reviews the decision. This would apply the standard of review applicable to appeals from court decisions, which is “correctness” for questions of law and “palpable and overriding error” for questions of fact or mixed fact and law.

The second situation in which the reasonableness presumption will be rebutted is where the rule of law requires that the standard of correctness instead be applied. This will be the case for constitutional questions, general questions of law of “central importance to the legal system as a whole” and questions related to the jurisdictional boundaries between two or more administrative bodies. The application of the correctness standard for these questions ensures that courts have the last word on questions for which the rule of law requires consistency and for which a final answer is determinative and necessary.

Outside of those limited exceptions, the standard of review on judicial review going forward is reasonableness.

The Reasonableness Standard

The Supreme Court outlined that the reasonableness review is meant to ensure that courts intervene in administrative decisions only where it is necessary in order to safeguard the legality, rationality and fairness of the administrative process. This starts with the principle of judicial

restraint and demonstrating respect for the administrative body. However, in conducting the reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale, to ensure that the decision is transparent, intelligible and justified.

The Court stated that the reasonableness review is categorically different from the correctness standard. Instead of determining whether the decision was actually correct, the reasonableness standard must focus on the decision actually made by the administrative body, including the justification offered for it. A court cannot ask what decision it would have made in place of the administrative decision maker, but must only consider whether the decision made was unreasonable, including both the rationale for the decision and the conclusion reached. The Court outlined a few circumstances that would point to an unreasonable result:

1. A failure of rationality to the reasoning process.
2. A decision which is, in some respect, untenable in light of the relevant factual and legal constraints which bear on it.

Criticism of the New Standard

The dissent by Justices Abella and Karakatsanis in *Vavilov* agreed with the outcome, but had harsh words for the majority's reasoning in changing the standard of review framework. The dissent argues that the majority of the Supreme Court, rather than confirming a meaningful presumption of deference for administrative bodies, essentially stripped away deference from hundreds of administrative actors, based on a "formalistic approach that ignores the legislature's intention to leave certain legal and policy questions to administrative decision-makers". In essence, the dissent argues that the majority decision, by setting out how a court may examine the reasonableness of a decision, has eroded the principle of first giving deference to the administrative decision maker. The dissent argues that this essentially expands the correctness review. The dissent also criticized the majority for reading intent onto statutory language that provides for a right of appeal, which was a departure from the last 25 years of statutory interpretation.

It remains to be seen if the Supreme Court of Canada's new standard of review principles will have much of an impact on simplifying or streamlining judicial review proceedings. While the principles can appear to be complicated and byzantine, they can have a very real impact on countless administrative bodies and many Canadians.

For more information, please contact:



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EXECUTIVE SUMMARY

The general public are becoming increasingly more cautious of the risks involved with storing their personal information with businesses. Therefore, investing in cybersecurity is crucial not only to prevent fraud and theft and to ensure the continuity of operations— but for businesses of all sizes to demonstrate to customers that they are doing more to protect their personal data.

INTRODUCTION

A survey by the Canadian Internet Registration Authority (CIRA) published in 2019, revealed that almost three quarters of all Canadian organizations had faced at least one serious cyberattack in the previous year¹. This report intends to provide some background knowledge on cyberattacks and look at how Canadian businesses can better protect themselves against these threats.

A cyberattack is an attempt to use, manipulate, alter, disable or destruct electronic information. Or to tamper with the computer infrastructures, networks, or devices that store the information². According to Statistics Canada, in 2018 there were nearly 33,000 cyber-related violations reported in Canada – up from nearly 24,000 in 2016³.

BACKGROUND

In 2019, Canadian news reports were dominated by the rise of cyberattacks, including threats against high-profile targets, such as lab-test provider LifeLabs, the Elections Canada website, Deputy Prime Minister Chrystia Freeland and the Minister of National Defence, Harjit Sajjan.

The industries most at risk of data breaches are financial and insurance, healthcare, and public administration⁴. Losing customers' personal information does not only cause monetary losses to a business, but also loss of reputation and of clients.

The Trade Commissioner Service of Canada divides the groups of people who carry out cyberattacks into four categories⁵:

1. **Individual Hackers** – may be motivated by challenge, employment or may be contractors paid to find system weaknesses;
2. **Activists** – motivated by political views or other ideologies;
3. **Organized criminals** – motivated by financial gain, uses identity theft, extortion, among other schemes;

¹ Strategy, October 15, 2019, <https://strategyonline.ca/2019/10/15/are-canadian-businesses-prepared-for-cyber-attacks>

² The Trade Commissioner Service (TCS) https://www.tradecommissioner.gc.ca/tcs-sdc/guides/spotlight-pleins_feux/spotlight_cybersecurity_pleins_feux_cybersecurite.aspx?lang=eng

³ Statistics Canada, Police-reported cybercrime, by cyber-related violation, Canada (selected police services), https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510000101&request_locale=en

⁴ Canadian Underwriter, Where Canada ranks worldwide in cyber breaches, September 7, 2018, <https://www.canadianunderwriter.ca/technology/canada-ranks-worldwide-cyber-breaches-1004136764>

⁵ The Trade Commissioner Service (TCS) https://www.tradecommissioner.gc.ca/tcs-sdc/guides/spotlight-pleins_feux/spotlight_cybersecurity_pleins_feux_cybersecurite.aspx?lang=eng

4. **Sponsored by nation states** – includes cyber espionage, disrupting military infrastructures, propaganda, amongst others.

The Trade Commissioner Service identifies the most common types of cyberattacks as the following⁶:

- **Phishing** – also known as email fraud, phishing involves sending emails that may point to fake websites with the aim of getting people to volunteer their sensitive information;
- **Watering holes** – involve hackers first accessing a target's system to learn which websites they frequent, before infecting a site - or a chain of sites - with malware⁷;
- **Ransomware** – a type of malware that prevents users' access to their system, essentially hijacking it until a ransom is paid
- **Spear-phishing** – involves sending emails to targeted individuals which contain an attachment or a link to malicious software; and
- **Botnet** – a network of computers infected by malware, under the control of an attacker known as a "bot-herder"

PREVENTION

In 2018, CIRA interviewed 500 individuals with responsibility over cyber security decisions in Canadian businesses. These individuals were able to give some insight into the actions that they took to manage cybersecurity threats⁸. The respondents were asked which activities they undertook to identify security risks and answered the following:

- **Monitoring network and firewall (61%)**
- **Monitoring employees' use of computers and the internet (41%)**
- **Formal risk assessment (29%)**
- **Complete external audit (24%)**
- **Penetration testing (23%)**

The individuals were also asked what action they would take following a cyberattack to prevent future breaches:

- **Install new software (45%)**
- **Employee training (40%)**
- **Security audit (30%)**
- **Install new hardware (27%)**
- **Add new cloud-based security (21%)**

⁶ The Trade Commissioner Service (TCS) <https://www.tradecommissioner.gc.ca/tcs-sdc/guides/spotlight-pleins-feux/spotlight-cybersecurity-pleins-feux-cybersecurite.aspx?lang=eng>

⁷ CBC News, February 27, 2019, <https://www.cbc.ca/news/canada/montreal/emissary-panda-chinese-hackers-cyberattack-icao-1.5034177>

⁸ Cira, 2018 Cybersecurity survey report, <https://cira.ca/resources/cybersecurity/report/2018-cybersecurity-survey-report>

- Hire of new IT contractor or service providers (16%)
- Hire of new IT staff (12%)

The responses highlight the importance of the role in staff training to increase cybersecurity. The Chief Technology Officer of CIRA also emphasised the importance of cybersecurity awareness training for a businesses' employees, describing this as a "critical element of their defense" - no matter how small an organization, its employees play a critical role in reducing the risk of cyberattacks. Training for staff should include the following⁹:

- Creating strong passwords for all accounts
- Using the Internet and social media safely
- Using approved software and mobile applications
- Identifying phishing emails



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⁹ Canadian Centre for Cyber Security <https://cyber.gc.ca/en/provide-employee-awareness-training>

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Non-Destructive Testing Methods Used in Forensic Engineering Investigation of Concrete Structures

By Farhad Habibi

Any test that does not impair the intended performance of the studied member is classified as non-destructive testing (NDT). In the field of forensic engineering, NDT has been used widely in critical industrial sectors such as nuclear power plants, gas pipelines, and petrochemical facilities. Recently, NDT methods were adopted in the field of civil engineering as a valuable and cost-effective method to assess the quality and safety of structures built with plain or reinforced concrete without enduring any damage.

Easy workability, low cost and high strength, when combined with reinforcing steel bars, has made concrete one of the most widely used materials in construction of buildings, foundations, parking garages, dams and tunnels. However, reinforced concrete elements may suffer various deterioration due to chemical attack, fire, physical and mechanical degradation, shoddy workmanship, or corrosion. These deteriorations can eventually weaken the building to the point of failure.

Below are a few simple cost-effective NDT methods that can be used to examine the current condition or the integrity of concrete structures after a loss. Especially, when destructive testing methods are not possible due to their disruptive nature or building occupants.

Chain Drag and Hammer Tap: Surface delamination can be detected in concrete by interpreting the pitch of the sound that reflects off the concrete. In this method, low pitch sounds can be an indication of surface delamination.

Ultrasonic Pulse Velocity: Quality and inner condition of the concrete and masonry elements can be assessed using Ultrasonic Pulse Velocity (UPV) test. This technique utilizes the ultrasonic waves and measures the speed at which those waves travel through a concrete or masonry element. Higher velocities are the indication of good and dense concrete, while lower velocities usually indicate presence of voids and cracks inside the concrete.

Concrete Hammer Test: Also known as Schmidt hammer or rebound hammer is a device that estimates the elastic properties of the concrete by measuring the rebound of a spring-loaded mass impacting the surface of the concrete element. Using standard conversation charts, these values will correlate to the compressive strength of concrete. Using this technique eliminates or minimizes the need for taking core samples to evaluate the compressive strength of the concrete.

Impulse Radar Testing: Commonly used on masonry vertical elements such as walls to illustrate different layers within the assembly, including air. This method categorizes materials used in the element based on the unique response of each material to an imposed energy wave. The presence and depth of reinforcing bars can also be determined by this technique.

Infrared Testing: One of the most cost-effective and simplest ways to identify areas with voids. Every material has a unique thermal property that distinguishes it from the surrounding area. Using infrared testing method, the variation of the temperature in an element (inconsistent materials) can be detected.

Surface Electrical Resistivity Test: Electrical resistivity test can be used to evaluate the quality and durability of concrete. This NDT technique can provide insight into the water absorption, chloride diffusion coefficient, and corrosion rate of the steel reinforcing bar inside the concrete.

With all the advantages these NDT testing methods provide, each of them has some limitations. Also, if not performed correctly, results may differ significantly from reality. Therefore, all the NDT tests mentioned above must be done and analyzed by a qualified professional.

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