

# Top Cases from 2019 Affecting Your In-House Practice

Christine Lonsdale & Dana Peebles, McCarthy Tétrault LLP  
January 16, 2020

	CASE	SUMMARY & KEY TAKEAWAY
1	<p><i>Canada (Minister of Citizenship and Immigration) v. Vavilov</i>, 2019 SCC 65</p> <p><i>Bell Canada vs. Canada Attorney General</i>, 2019 SCC 66</p>	<p>The <i>Bell-NFL-Vavilov</i> trilogy of administrative law appeals resets the standard of review for administrative decisions. Reasonableness is presumptively the standard that applies to judicial review absent certain exceptions. If there is a statutory appeal right then appellate standards apply: correctness for legal question and palpable and overriding error for questions of fact or mixed fact and law.</p>
2	<p><i>Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District</i>, 2019 BCCA 66</p>	<p>The British Columbia Supreme Court overturned an arbitration decision where the arbitrator awarded just under 3 million for a breach of the duty of good faith. The BCCA held that the duty of good faith is not breached whenever a party exercising discretion accorded by contract fails to have regard to the other party's interests in so doing. Leave to appeal to the SCC was granted and the case was argued in December 2019.</p>
3	<p><i>TELUS Communications Inc. v. Wellman</i>, 2019 SCC 19</p>	<p>The Supreme Court of Canada reversed a line of Ontario cases and held that business customers who were parties to standard form wireless contracts with TELUS that required dispute resolution by arbitration could not instead participate in a certified class action along with individual consumers. The Court refused to use the discretionary powers in the Ontario <i>Arbitration Act, 1991</i> to over-rule a contract between the parties; that was a policy decision for the Legislature.</p>
4	<p><i>Christine DeJong Medicine Professional Corporation v. DBDC Spadina Ltd.</i>, 2019 SCC 30</p>	<p>The Supreme Court refused to weaken restitutionary principles in order to apportion losses among various victims of a co-ordinated real estate fraud. The SCC held that a director's or officer's fraud is not attributed to the corporation (which would have allowed a tracing of funds for one set of victims, to recover assets otherwise flowing to another set of victims) when the fraud is found to be part of a larger fraudulent scheme in which the corporation is also a victim.</p>

5	<p><i>St. Lawrence Testing &amp; Inspection Co. Ltd. v Lanark Leeds Distribution Ltd.,</i>  <b>2019 CanLII 69697</b>  <b>(Ont. Small Claims)</b></p>	<p>A fraudster used a trending fraud technique - hacked and impersonated email addresses - to pretend to be a creditor, and directed a debtor to make a wire transfer to the criminal's bank account. The Ontario Small Claims Judge, noting a lack of case law, directed the debtor to re-pay, holding that the creditor was blameless, and so apportioning the loss to the (also defrauded) debtor.</p>
6	<p><i>Bancroft-Snell v. Visa Canada Corporation,</i>  <b>2019 ONCA 822</b></p>	<p>Individual class members of a certified class proceeding do not have standing to appeal settlement decisions if they are not the representative plaintiff. This re-affirmation of <i>Dabbs</i> gives more certainty for defendants when bargaining with the representative plaintiff and class counsel. Class members should be alive to their rights and opt out early or invest in objecting at settlement hearings. Leave to appeal to the SCC sought and no decision on granting leave has been made.</p>
7	<p><i>Dawe v. The Equitable Life Insurance Company of Canada,</i>  <b>2019 ONCA 512</b></p>	<p>The Ontario Court of Appeal reversed the lower court's decision to grant a 30-month notice period to a long-service executive. The motion judge erred in failing to follow the established line of authorities that suggest a base notice period in excess of 24 months is only available in exceptional circumstances. The Ontario Court of Appeal also declined to enforce a limiting provision in the compensation agreement because it had not been brought to the employees' attention specifically enough. Leave to appeal to the SCC has been sought but no decision has been made with respect to granting leave.</p>
8	<p><i>Stegenga v. Economical Mutual Insurance Company,</i>  <b>2019 ONCA 615</b></p>	<p>The plaintiff was insured by the defendant and brought an action alleging bad faith for the way her claim was handled. In 2016, amendments to the <i>Insurance Act</i>, R.S.O. 1990, c. I. 8 gave the <i>License Appeal Tribunal</i> exclusive jurisdiction for Statutory Accident Benefits. The plaintiff was barred from bringing a bad faith claim in Court. The legislature intended the LAT to have exclusive jurisdiction to grant relief.</p>
9	<p><i>Agnew-Americano v. Equifax Canada Co.,</i>  <b>2019 ONSC 7110 (SCJ)</b></p>	<p>The Ontario Superior Court, citing uncertain case law to date, certified a wide variety of causes of action and theories of damages arising out of a criminal data breach. The legal landscape of these cases is lagging behind the frequency and scope of hacks of corporations holding personal data of consumers.</p>
10	<p><i>McCabe v. Roman Catholic Episcopal Corporation for the Diocese of Toronto, in Canada,</i>  <b>2019 ONCA 213</b></p>	<p>The trial jury awarded punitive damages against the Defendant Church because it failed to admit vicarious liability in favour of the Plaintiff (a formerly abused minor) until the first day of trial. The Ontario Court of Appeal reversed, ruling that a Defendant may conduct litigation within the rules, even when the method of doing so can harm the vulnerable opposing party, without being censured with punitive damages (although there may be cost consequences for true "litigation misconduct").</p>