

Opinion: British Columbia Should Remove the “Patently Unreasonable” Clause to Protect Access to Justice and Improve Administrative Fairness

British Columbia’s administrative law should be built on a simple promise: when government decisions affect rights, livelihoods, or access to public benefits, those affected deserve a meaningful and fair chance to challenge errors.

In 2008 the Canadian Supreme Court simplified administrative law by reducing the three old standards of review down to just two: correctness and a single unified standard of reasonableness.

The Court found that the distinction between “patent unreasonableness” and ordinary “reasonableness” was too unclear in practice, and that a separate patently unreasonable test unacceptably forced courts to let irrational administrative decisions stand if the flaw wasn’t glaring enough.

ALL Canadian Provinces followed suit in repealing the patent unreasonableness clause, with the exception of British Columbia.

This clause is not just a legal technicality. It shapes real outcomes: it affects how courts review administrative decisions, how confidently agencies can act without justification, and how costly it is for affected parties to seek accountability.

In the case of the Office of the British Columbia Container Trucking Commissioner (OBCCTC), the drayage industry, whether it be group action, individual companies or truck drivers, including owner operators; has seen the detriment of this clause, both in the financial cost and how it has played a significant role in shaping the industry — often to the overall detriment of the industry and Canadian trade.

As the British Columbia Container Trucking Act specifically notes the Administrative Act, any case brought against the OBCCTC must not only be judged against a political officer (the Commissioner), but judged at a level of ‘patently unreasonable’.

Under administrative law, courts generally review whether a decision is reasonable, i.e., whether the reasons make sense, whether the decision-maker understood the facts and law, and whether the outcome can be defended. The “patently unreasonable” concept goes further. It tends to raise the bar for judicial intervention by requiring something closer to obvious, extreme, or blatant error before a decision can be overturned.

That higher threshold can create an unhelpful incentive: if agencies know courts will only step in when the error is dramatic and absolutely unfathomable, the system shifts from correcting mistakes

to merely detecting them. The result is a kind of practical immunity for administrative actors — even when decisions are seriously flawed but not perfectly “grossly obvious” on the record.

When government power is exercised, it shouldn’t be judged by a standard that makes review harder than it should be. Especially in the case of the OBCCTC, where the only option for a review of any decision is through court.

When a judicial review is difficult, expensive, or unpredictable, companies face a stark choice: accept potentially unlawful outcomes or incur the costs and time of litigation.

Since 2022, there has been a significant uptick in cases against the OBCCTC.

Despite knowing the cards are stacked against them, company owners, drivers and professional associations, have all taken a financial hit to highlight their concerns through the court system as their only viable option to contest the industry decision maker.

No matter how strong the cases however, the outcome remains. The patently unreasonable standard tends to tilt the system away from accountability and toward administrative finality, even when legal correctness and procedural fairness demand more.

After millions of dollars, both at the expense of the industry, and B.C. taxpayers who fund the OBCCTC legal costs, it is time for British Columbians to take a stand, and have our MLAs bring this issue to light.

The B.C. drayage industry is only one of many being affected by an outdated standard, that most of Canada has long since abandoned.

The issue is not whether the government should have discretion. It is that discretion must be accountable.

Judicial review is inherently a demanding process. It requires a legal backing to move forward, expertise, document-heavy submissions, and timelines that can strain both public resources and private budgets. Adding a “patently unreasonable” threshold effectively increases the cost of bringing challenges, because it reduces the likelihood that a flawed decision will be corrected.

Government discretion is essential. But it must be matched by enforceable responsibility. If British Columbia truly values fairness, legitimacy, and access to justice, it should not maintain a standard that makes accountability harder than it should be.

BC can strengthen its administrative law framework by replacing “patently unreasonable” with a more standard, rights-respecting approach to judicial review; one that allows courts to intervene when decisions are unreasonable in substance, not only when they are glaringly irrational.

This reform would not eliminate deference to expertise or discretion. It would simply ensure that expertise does not become an excuse for inadequate reasoning, legal error, or procedures that fall short of fairness.

British Columbians deserve more than the theoretical right to go to court. They deserve a judicial process with the power to provide meaningful oversight when an administrative decision-maker gets it wrong.

The OBCCTC has been given extraordinary discretionary authority over B.C.'s drayage industry, including the ability to impose administrative penalties of up to \$500,000. When challenged publicly on the radio about the breadth of those powers and his decision-making authority, the Commissioner's response was simple: if someone disagrees with his decision, they can take him to court.

But that answer ignores the reality of the very legal standard governing those court challenges.

The OBCCTC is fully aware that its decisions are protected by the "patently unreasonable" standard — a threshold so extraordinarily high that a court's ability to intervene is severely restricted. Industry participants may technically have access to the courthouse, but meaningful judicial review is another matter entirely.

You cannot point to the courts as the safeguard for broad administrative power while simultaneously benefiting from a legal standard that severely limits what those courts can do.

That is not meaningful accountability.

When one administrative body has the discretion to make decisions capable of affecting livelihoods, businesses, drivers, and penalties reaching hundreds of thousands of dollars, there must be equally meaningful independent oversight.

Our drayage industry, our drivers, our businesses, and our economy cannot afford a system where enormous administrative discretion is paired with judicial review so narrow that only the most extreme decisions can be corrected.

It is time for British Columbia to modernize this standard.

British Columbians deserve reasoned decision-making, genuine accountability, meaningful judicial oversight, and a court system capable of correcting real administrative errors — not simply those that manage to clear the extraordinary threshold of being "patently unreasonable."

The right to challenge a decision means very little when the legal standard has already stacked the deck against meaningful review.

It is time to restore a real right to be heard.

— Port Transportation Association