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<p>JUDICIAL REVIEW OF ADMINISTRATIVE ACTION IN CANADA Brown and Evans Release No. 4, December 2024</p>

This award-winning publication is an in-depth presentation of the law of judicial review of administrative action in Canada. Written by Donald J. M. Brown, Q.C. and The Honourable John M. Evans, both widely regarded as experts in the field of Administrative Law, *Judicial Review of Administrative Action in Canada* offers a substantive view of the law along with practical guidance on the issues that can arise in the judicial review process. This publication is a comprehensive research and working tool for administrative bodies, practitioners and legal scholars and is used across Canada and in academic and court libraries throughout the common law world. Designed to be a primary source of the statute and case law in the field of judicial review, the text also includes important legislation, regulations, rules, forms and practice directions for each jurisdiction.

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Judicial Review of Administrative Action in Canada was the recipient of the prestigious Mundell Medal in 1999. A highly sought after prize, the Mundell Medal is awarded for a “distinguished contribution to letters and law”.

This 3-volume looseleaf captures developments in this ever-changing subject that is relevant to so many areas of the law. In a continuing effort to ensure that the legislation and other documentation throughout the treatise are current and relevant, this release includes significant updates made to the commentary and case law.

What’s New in this Update

This release features updates to the case law and commentary in the following chapters: 8 (Statutory and Constitutional Procedural Requirement), 9 (Pre-Hearing Participatory Rights: Notice, Disclosure, Delay and Adjournments), 10 (The Hearing and Participatory Rights), 11 (Interest, Bias and Independence), 12 (Review of the Decision-Making Process), 13 (The Grant of Authority), 14 (Review of the Exercise of Authority: Administrative Adjudication), 15 (Review of Non-Adjudicative Administrative Action)

Highlights — Note of Developments in Administrative Law in 2024

Standard of Review

The decision in *Societe des casinos du Quebec inc. v. Association des cadres de la Society des casinos du Quebec*, 2024 SCC 13, the SCC stemmed from an application for certification filed by casino managers in Quebec. In short, managers are excluded from the applicable collective bargaining legislation. The managers argued that their exclusion violated section 2(d) of the *Charter*.

In its decision, the Court addressed a number of issues relevant to judicial review of administrative action. Of particular significance, the Court analyzed the standard of review for mixed questions of fact and law that arise in connection with a constitutional question.

Writing for a unanimous Court, Cote J. noted that “no deference is owed in respect of questions of mixed fact and law that arise in connection with a constitutional question because it is important that constitutional questions be answered correctly.” The Court also noted that deference is owed to only to the tribunal’s findings of fact. In light of the issues raised by the applicants, the Court agreed that the standard of correctness applied to the managers’ *Charter* argument.

Judicial Independence

In *R v. Edwards*, 2024 SCC 15, the Supreme Court held that that military judges satisfy the three-part test for judicial independence in *Valente* notwithstanding their military status. Specifically, the Court found that military judges had sufficient administrative and institutional independence within the current legislative regime as to meet the constitutional guarantee of judicial independence.

Charter Values and Administrative Decision Making

In *Commission scolaire francophone des Territoires du Nord-Ouest c. Territoires du Nord-Ouest (Éducation, Culture et Formation)*, 2023 SCC 31, the Supreme Court re-affirmed the “*Doré* framework” and the role of *Charter* values in administrative decision-making. At issue in that decision were applications by a number of parents seeking to have their children admitted to a French-language school board. There was no dispute that the parents did not have rights under section 23 of the *Charter*. Nor did they meet the conditions set out in a Ministerial Directive opening up enrollment in the French-language school to three categories of individuals.

The Supreme Court concluded that there was no infringement of section 23 of the *Charter*. However, applying the framework from *Doré*, the Court concluded that the decision denying the parents’ requests failed to engage with the relevant *Charter* values. The Court noted that discretionary decisions must take *Charter* values into account, even when not raised by the applicants, and that the Minister failed to do so in denying the parents’ applications.