

# Index

## ABORIGINAL RIGHTS CASES

- Appeals, **10:15**
- Class actions, **5:22**
- Costs, **6:51**
- Damages, **6:50**
- Discovery issues
  - generally, **9:42 to 9:49**
  - archival documents, **9:46**
  - Crown's duty to produce, **9:46**
  - documents, **9:45, 9:46**
  - historical fact, questions of, **9:43**
  - immunity, public interest, **9:48**
  - inquiry, duty to make, **9:44**
  - production of documents, ongoing obligation, **9:45**
  - public interest immunity, **9:48**
  - questions of fact, **9:43**
  - questions of mixed fact and law, **9:47**
  - reasonable inquiry, duty to make, **9:44**
  - solicitor-client privilege, **9:49**
- Evidentiary issues
  - generally, **8:25 to 8:36**
  - business records, **8:29**
  - documents, **8:28**
  - emerging disciplines, **8:31**
  - expert evidence, **8:29, 8:30, 8:33, 8:34**
  - factual record, need for, **8:26**
  - historians, **8:30**
  - historical documents, **8:28**
  - improper legal argument, **8:32**
  - independence, lack of, **8:33**
  - judicial notice, **8:36**
  - learned treatises, **8:35**
  - oral histories, **8:27**
  - public documents, **8:28**
  - record, need for a factual, **8:26**
  - scope of expertise, **8:34**
  - sui generis nature of litigation, **8:25**
  - treatises, **8:35**
- Plaintiffs, **3:24**
- Remedies
  - generally, **6:44 to 6:51**
  - compensatory remedies, **6:50, 6:51**
  - constitutional exemptions, **6:47**

## ABORIGINAL RIGHTS CASES

### —Cont'd

- Remedies—Cont'd
  - declarations under s. 52 of Constitution Act, 1982, **6:46**
  - injunctions, **6:48, 6:49**
  - interlocutory injunctions, **6:48**
  - purposes of, **6:44**
  - specific, **6:45**
  - structural injunctions, **6:49**
- Standing, **3:22**

## ACTOR

- Control test
  - Canadian law, **2:13**
  - U.S. law, **2:3**
- Entwinement test, **2:5**
- Factors to consider, summary of, **2:22**
- Government function test, **2:14**

## ADMINISTRATIVE TRIBUNALS

- Generally, **4:4 to 4:10**
- Appeals from, **5:25 to 5:27**
- Choice among, **4:7**
- Constitution, impact of, **4:5**
- Discovery issues, **9:41**
- Discretion, constitutional impact on, **4:5**
- Judicial review from
  - generally, **5:25 to 5:27**
  - alternatives to, **5:26**
  - evidentiary hearings, **5:26**
  - government decisions, other, **5:27**
- Jurisdiction
  - cases, table, **4:10**
  - Charter challenges, **4:8**
  - constitutional issues, **4:4 to 4:10**
  - exclusive jurisdiction model, **4:6**
  - remedial, **4:1**
  - under s. 24 of Charter, **4:4 to 4:6, 4:9, 4:11**
  - under s. 52 of Constitution Act, 1982, **4:4 to 4:6, 4:8, 4:9**
- Proceedings, **5:24**
- Questions of law, authority to decide, **4:8**
- Remedial jurisdiction, generally, **4:1**

## **ADMINISTRATIVE TRIBUNALS**

### **—Cont'd**

Section 52 of Constitution Act, 1982, **4:4 to 4:6, 4:8, 4:9**

Weber v. Ontario Hydro, **4:5**

## **APPEALS**

Generally, **10:10 to 10:16**

Appeal route, **10:12**

Evidence, new, **10:14**

Issues, new, raising of, **10:13**

Notice requirements, **10:11**

Remedial issues, **10:16**

Standard of review, **10:15**

Tribunals, appeals from  
generally, **5:25 to 5:27, 10:10 to 10:16**  
evidentiary hearings, **5:26**  
government decisions, other, **5:27**

## **APPLICANTS**

See PLAINTIFFS OR APPLICANTS

## **APPLICATION OF CONSTITUTION**

Aboriginal rights cases, **2:27**

Activity

generally, **2:6, 2:15**

factors to consider, **2:23**

government approval test, **2:7, 2:17**

government encouragement test, **2:8, 2:18**

government function test, **2:10**

statutory power, **2:16**

sympiotic relationship test, **2:9**

Actor

generally, **2:2, 2:12**

control test, **2:4, 2:13**

entwinement test, **2:5**

government function test, **2:14**

government itself, **2:3**

Canadian law, **2:11 to 2:19**

Control test, **2:4, 2:14**

Courts, **2:20**

Division of powers cases, **2:26**

Dolphin Delivery Ltd. v. R.W.D.S.U.,  
Local 580, **2:20**

Entwinement test, **2:5**

Extraterritorial application, **2:25**

United States law, **2:2 to 2:10**

## **APPLICATIONS**

Generally, **5:10 to 5:12**

Ontario, **5:11**

## **APPLICATIONS—Cont'd**

Originating, **7:6**

Other jurisdictions, **5:12**

## **ATTORNEYS GENERAL**

Intervention, **3:38**

Naming as defendant, **3:25 to 3:32**

Standing, **3:21**

## **BALANCE OF (IN)CONVENIENCE**

See also INTERIM REMEDIES

Generally, **6:35 to 6:37**

## **BIFURCATED HEARINGS**

Generally, **10:6 to 10:9**

Civil cases, **10:8**

Criminal cases, **10:7**

General approach, **10:6**

## **BILL OF RIGHTS**

See U.S. CONSTITUTIONAL LAW

## **BRANDEIS BRIEFS**

Generally, **8:21 to 8:24**

Charter cases, early, **8:23**

Current approach, **8:24**

Pre-Charter cases, **8:22**

## **CANADA ELECTIONS ACT**

Generally, **5:6**

## **CANADA EVIDENCE ACT**

Aboriginal cases, **9:48, 9:49**

Discovery of government, **9:3**

Immunity, government, **9:5**

Section 37: public interest immunity  
generally, **9:38**

factors to consider, **9:34**

Section 38: national defence and  
international relations

generally, **9:32**

factors to consider, **9:34**

international relations, **9:35**

national defence, **9:36**

procedure, **9:33**

Section 39: cabinet confidences

generally, **9:25 to 9:30**

adverse inference, **9:29**

constitutionality of, **9:26**

defined, **9:28**

immunity, **9:30**

scope of review, **9:27**

## CANADA LABOUR CODE

Generally, **4:5**

## CANADIAN BILL OF RIGHTS

Generally, **3:15, 5:16**

## CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Action under, **2:11 to 2:19**

summary of, **2:21 to 2:24**

Activities subject to

generally, **2:15**

Eldridge v. British Columbia (Attorney General), **2:16**

government approval test, **2:17**

government encouragement or coercion test, **2:18**

statutory power plus government program or policy, **2:16**

symbiotic relationship, **2:19**

Actors subject to

generally, **2:12**

control test, **2:13, 2:16**

government function, **2:14**

Application, generally, **2:11 to 2:19**

Application to courts, **2:20**

Cases, table, **2:24**

“Constitutional torts,” **5:16**

Courts, **2:20**

Evidence

generally, **8:1 to 8:24**

Brandeis briefs, **8:21 to 8:24**

expert, **8:11 to 8:20**

extrinsic, **8:4**

judicial notice, **8:21 to 8:24**

legislative facts vs. adjudicative facts, **8:10**

need for factual record, **8:1 to 8:9**

Exclusion of evidence under section 24(2)

generally, **6:18 to 6:27**

administration of justice, effect on, **6:21**

criteria for, **6:18 to 6:21**

notice of application to exclude evidence, **10:5**

R. v. Collins, **6:18 to 6:21**

seriousness of breach, **6:20**

trial fairness, **6:19**

Jurisdiction

generally, **4:1**

administrative tribunals, **4:4 to 4:10**

## CANADIAN CHARTER OF RIGHTS

### AND FREEDOMS—Cont’d

Jurisdiction—Cont’d

courts, provincial superior, **4:2**

courts, statutory, **4:11 to 4:17**

criminal trial courts, **4:13**

exclusive jurisdiction model, **4:6**

Federal Court of Canada, **4:3**

“functional and structural” approach, **4:11, 4:12**

judges, preliminary inquiry, **4:14**

judicial review, **5:26**

Language rights under s.23, **6:5**

Notwithstanding clause, **6:1**

Remedial powers under s. 24(1)

generally, **6:9 to 6:16**

administrative tribunals, **4:4 to 4:10**

application, **6:9**

concurrent constitutional remedies, **6:2**

costs, criminal cases, **6:41**

criminal cases, **6:9**

Crown immunity and, **7:3**

Crown immunity provisions, conflict with, **7:3**

damages, **6:10**

exclusion of evidence, **6:9**

forum, choice of, **4:2**

injunctions, **6:12 to 6:16**

limitation periods, government, **7:4**

rules to use, **6:9**

standing, **3:7 to 3:21**

suspension of remedies, **6:17**

Standing under, **3:7 to 3:21**

## CLASS PROCEEDINGS

Generally, **5:13 to 5:23**

Aboriginal cases, **5:22**

Certification

generally, **5:15**

application of Guimond v. Quebec (A.G.), **5:18, 5:19**

denial of, **5:18**

granting of, **5:19**

Combined causes of action, **5:21**

“Constitutional torts”

5:14, 5:16

Guimond v. Quebec (A.G.), **5:17**

Outlook for, **5:23**

“Representative actions,” **5:16**

Res judicata, **5:20**

United States experience, **5:14**

## **CONSTITUTION ACT, 1867**

- Definition of “Indian,” **3:24**
- Division of powers, **2:26**
- Jurisdiction of courts, **4:3**

## **CONSTITUTION ACT, 1982**

- Aboriginal rights, **3:24**
- Constitutional supremacy, **4:8**
- Jurisdiction, remedial
  - courts and tribunals, generally, **4:1**
  - tribunals, **4:8**
- Legitimacy, **1:3**
- Public interest standing, **3:9**
- Relief under s. 52(1)
  - generally, **6:4 to 6:8**
  - concurrent with s. 24 of Charter, **6:2**
- Section 52 relief, authority to grant
  - preliminary inquiry judges, **4:14**
  - provincial criminal trial court, **4:13**
  - statutory courts, **4:11 to 4:17**
  - tribunals, **4:4 to 4:10**
- Standing, criminal prosecutions, **3:10**

## **CONSTITUTIONAL LITIGATION**

- Generally, **1:1 et seq.**
- Distinctive nature of, **1:6**
- Scope of, **2:1 et seq.**
  - see also APPLICATION OF CONSTITUTION

## **CONSTITUTIONAL QUESTION**

- See also NOTICE
- Generally, **10:2 to 10:4**

## **CONTROL TEST**

- Canadian law, **2:13**
- U.S. law, **2:4**

## **CORPORATIONS, STANDING**

- Generally, **3:17**

## **COSTS**

- Generally, **6:40 to 6:43**
- Aboriginal cases, **6:51**
- Civil cases, **6:40**
- Criminal cases, **6:41**
- Criteria to be satisfied, **6:40**
- Interim, **6:43**
- Intervenors, **6:42**
- Solicitor-client costs, **6:40**

## **COURTS**

- See also FORUMS

## **COURTS—Cont’d**

- Generally, **4:1 et seq.**
- Appellate courts, **4:16**
- Federal Court of Canada, **4:3**
- Provincial superior courts, **4:2**
- Remedial jurisdiction, **4:1**
- Statutory
  - generally, **4:11 to 4:17**
  - criminal trial courts, **4:13**
  - judges, preliminary inquiry, **4:14**
  - jurisdiction to decide constitutional issues, **4:11 to 4:16**
  - Ontario Divisional Court, **4:15**
  - provincial offences courts, **4:12**

## **CRIMINAL CODE**

- Generally, **4:14, 4:16**

## **CROWN LIABILITY AND PROCEEDINGS ACT**

- Attorney General, naming of, **3:28**
- Damages claims, **3:27**
- Defendants, naming of, **3:30**
- Discovery of government, **9:4**
- Representative of Crown, **9:9**

## **CROWN OR GOVERNMENT**

- Immunity
  - aboriginal cases, **9:48**
  - cabinet confidences, **9:10 to 9:30**
  - discovery and, **9:1**
  - federal government, **9:5**
  - public interest, **9:38**
- Rules of
  - generally, **7:2 to 7:4**
  - Crown immunity provisions, **7:3**
  - limitation periods, **7:4**
  - notice of claim provisions, **7:2**

## **DAMAGES**

- Aboriginal Cases, **6:50**
- Under Charter, **6:10**

## **DECLARATORY ACTION**

- Generally, **5:13 to 5:23**

## **DECLARATORY RELIEF**

- Generally, **6:5**

## **DEFENCE, DRAFTING OF**

- Generally, **7:8**

## **DEFENDANTS OR RESPONDENTS**

- Generally, **3:25 to 3:32**

## DEFENDANTS OR RESPONDENTS

### —Cont'd

- Claims against Federal Crown, **3:28**
- Claims in damages, **3:27**
- Crown Liability And Proceedings Act,  
**3:26 to 3:28**
- Damages, claims in, **3:27**
- Declaration of invalidity, **3:26**
- “Dyson declaration,” **3:26**
- Judicial review, naming of respondents,  
**3:31**
- Ministers, **3:27, 3:29, 3:30**
- Other parties, **3:32**
- Persona ficta rule, **3:27, 3:31**
- “Petition of right,” **3:26**
- Premiers, **3:27**
- Representative capacity
  - federal Ministers, **3:30**
  - provincial Ministers, **3:29**

## DISCOVERY OF GOVERNMENTS

- Generally, **9:1 et seq.**
- Aboriginal rights cases
  - generally, **9:42 to 9:49**
  - immunities of Crown, **9:48, 9:49**
  - scope of discovery, **9:43 to 9:47**
- Access to information legislation, **9:39**
- Adverse interests, **9:29**
- Balancing interests, **9:12**
  - factors applied in, **9:15**
- Cabinet confidences
  - generally, **9:10 to 9:30**
  - balance of interests, **9:12**
  - definition, **9:28**
  - factors applied, **9:15**
  - federal government, **9:25 to 9:30**
  - interests, competing, **9:12**
  - onus on parties, **9:12**
  - provincial governments, **9:11 to 9:24**
  - section 39 of Canada Evidence Act,  
**9:27, 9:28, 9:30**
  - what documents should be protected,  
**9:24**
- Canada Evidence Act, **9:25 to 9:30, 9:32**
- Criminal cases, disclosure in, **9:40**
- Federal government, **9:3**
  - immunities under CEA, **9:4, 9:25 to 9:30**
- Immunity, public interest
  - generally, **9:38**
  - aboriginal rights cases, **9:48, 9:49**

## DISCOVERY OF GOVERNMENTS

### —Cont'd

- Immunity of Crown
  - aboriginal rights cases, **9:48, 9:49**
  - common law, **9:1**
- Information legislation, **9:39**
- Interests, balancing of, **9:12**
- International relations and, **9:31 to 9:37**
- Limitations, **9:22**
- Ministers, **9:9**
- National defence
  - generally, **9:31 to 9:37**
  - section 38 of CEA, **9:32**
  - Security of Information Act, **9:37**
- Privilege, **9:2**
- Provincial governments, **9:2**
- Representative, **9:7 to 9:9**
  - federal government, **9:9**
  - interests, balance of, **9:12, 9:15**
  - provincial governments, **9:8**
- Scope of, **9:6**
- Statutory scheme, **9:2 to 9:5**
- Tribunal proceedings, **9:41**

## DIVISION OF POWERS CASES

- Evidence and, **8:1 to 8:24**
- Jurisdiction of federal courts, **4:3**
- Scope of government action, **2:25**

## ENTWINEMENT

- See also U.S.
- CONSTITUTIONAL LAW
- Generally, **2:5**

## EVIDENCE

- Generally, **8:1 et seq.**
- Aboriginal rights litigation, **8:25 to 8:36**
- Adjudicative facts
  - defined, **8:10**
  - disclosure and, **9:40**
  - versus legislative facts, **8:10**
- Admissibility, factors to consider, **8:7**
- Appeal, fresh evidence on, **10:14**
- Brandeis briefs
  - generally, **8:21 to 8:24**
  - current approach, **8:24**
  - early Charter cases, **8:23**
  - pre-Charter cases, **8:22**
- Exclusion of evidence under s. 24(2) of Charter
  - generally, **6:18 to 6:27**

## **EVIDENCE—Cont’d**

Exclusion of evidence under s. 24(2) of Charter—Cont’d  
application for, **10:5**  
criteria for, **6:18 to 6:21**

### **Expert**

generally, **8:11 to 8:20**  
admissibility, test for, **8:11 to 8:20**  
affidavits, **8:17**  
boundaries of expertise, **8:15**  
challenges to, **8:16**  
cost-benefit analysis, **8:11 to 8:20**  
cross-examination, **8:18**  
duties, **8:14**  
findings of legislative face, deference to, **8:20**  
improper legal argument, **8:13**  
lack of independence, **8:14**  
qualifications, **8:12**  
test for admissibility of, **8:11 to 8:20**  
weighing of, **8:19**

### **Extrinsic evidence**

Charter cases, **8:4**  
division of powers cases, **8:6**  
factual context, **8:4**  
historically, **8:2**  
legislative context, **8:6**  
unreliable or improper material, **8:3**

Factors to consider on admissibility, **8:7**

### **Legislative facts**

Brandeis briefs and, **8:21 to 8:24**  
defined, **8:10**  
disclosure and, **9:40**  
versus adjudicative facts, **8:10**

Record, need for factual, **8:1 to 8:9**

## **EXCLUSION OF EVIDENCE UNDER SECTION 24(2) OF THE CHARTER**

Generally, **6:9 to 6:16**

Application, **6:18 to 6:21**

Conscriptive evidence, **6:19**

Criteria for, **6:18 to 6:27**

Discoverability test, **6:19**

### **Factors to consider**

administration of justice, effect on, **6:21**  
fairness of trial, **6:19**  
seriousness of breach, **6:21**

## **FEDERAL COURTS ACT**

Constitutional question, notice of, **10:2**

Defendants, naming of, **3:30**

### **Judicial review**

applications, **3:25 to 3:32**  
parties to, **3:31**  
review of government decisions, **5:27**

### **Jurisdiction**

claims against federal Crown, **3:30**  
courts, **4:3**

Reference, tribunal, **5:24**

## **FEDERAL COURTS RULES**

Class actions, **5:15**

Discovery, federal government, **9:4, 9:9**

Judicial review applications, **3:25 to 3:32**

Originating applications, **5:12**

Summary judgment, **5:8**

## **FEDERAL CROWN LIABILITY AND PROCEEDINGS ACT**

Generally, **3:27, 3:28, 3:30**

## **FORUMS**

Generally, **4:1 et seq.**

Administrative tribunals, **4:4 to 4:10**

Appellate courts, **4:16**

Choice of, generally, **4:1 et seq.**

### **Courts**

generally, **4:11 to 4:17**

bail hearing judges, **4:17**

Charter relief, authority to grant, **4:11, 4:13, 4:14**

criminal trial courts, **4:13**

Federal Court of Canada, **4:3**

judges, preliminary inquiry, **4:14**

jurisdiction re constitutional issues, **4:11**

Ontario Divisional Court, **4:15**

provincial offences courts, **4:12**

provincial superior courts, **4:2**

Federal Court of Canada, **4:3**

“Functional and structural” approach, **4:11, 4:12**

Provincial offences courts, **4:12**

Provincial superior courts, **4:2**

Section 24(1) of Charter and, **4:1, 4:2**

Section 52 of Constitution Act, 1982 and, **4:1**

Tribunals, **4:4 to 4:10**

**FRIEND OF THE COURT**

See also INTERVENORS  
Generally, **3:39**

**GOVERNMENT ACTION**

Generally, **2:1 et seq.**  
Aboriginal rights cases, **2:27**  
Charter, action under, **2:11 to 2:19**  
Courts, special case of, **2:20**  
Division of powers cases, **2:26**  
Extraterritorial application of Charter,  
**2:25**  
United States, state action in, **2:2 to 2:10**

**HEARINGS**

Generally, **10:1 et seq.**  
Appeals  
    generally, **10:10 to 10:16**  
    appeal route, **10:12**  
    evidence, new, **10:14**  
    issues, new, **10:13**  
    notice requirements, **10:11**  
    remedial issues, **10:16**  
    standard of review, **10:15**  
Bifurcated hearings  
    generally, **10:6 to 10:9**  
    civil cases, **10:8**  
    criminal cases, **10:7**  
    general approach, **10:6**  
    statutory bifurcation, **10:9**  
Notice  
    appeal, **10:11**  
    application to exclude evidence, **10:5**  
    constitutional question, **10:2 to 10:4**  
    requirements, generally, **10:2 to 10:5**

**HUMAN RIGHTS CODE**

Generally, **4:6**

**IMMIGRATION ACT**

Generally, **4:3**

**IMMIGRATION AND REFUGEE  
PROTECTION ACT**

Generally, **4:3**

**IMMUNITY, CROWN**

Aboriginal cases, **9:48**  
Cabinet confidences, **9:10 to 9:30**  
Discovery and, **9:1**  
Federal government, **9:5**  
Provisions, **7:3**  
Public interest, **9:38**

**INDIAN ACT**

Generally, **3:24**

**INJUNCTIONS**

Generally, **6:11 to 6:16**  
Interlocutory  
    generally, see INTERIM REMEDIES  
    aboriginal rights cases, **6:48**  
Rules of, **6:11**  
Structural injunctions, **6:12 to 6:16**  
    aboriginal rights cases, **6:49**  
    Canadian law, **6:16**  
    United States experience, **6:13 to 6:15**

**INTERIM REMEDIES**

Generally, **6:28 to 6:39**  
Balance of (in)convenience  
    generally, **6:35 to 6:37**  
    elections cases, **6:36**  
    solicitor-client privilege cases, **6:35**  
Exemption, **6:39**  
Interim costs, **6:43**  
Irreparable harm  
    generally, **6:30 to 6:34**  
    election cases, **6:31**  
    language rights, **6:33**  
    remedies after trial, **6:34**  
    social welfare, **6:32**  
Public interest, **6:38**  
Serious constitutional issue, **6:29**  
Suspension, **6:39**  
Test for obtaining relief, **6:28**

**INTERVENORS**

See also INTERVENTION  
Generally, **3:33**

**INTERVENTION**

Generally, **3:33 to 3:46**  
Academic commentary on  
    generally, **3:34**  
    assisting the court, **3:35**  
    legitimacy critiques, **3:36**  
Appeals, intervention on, **3:45**  
Assisting the Court, **3:35**  
Conduct of, **3:46**  
Costs, **6:42**  
Court of first instance, **3:40**  
Critiques of, **3:36**  
Independence of intervenors, **3:46**  
Introduction, **3:33**

## **INTERVENTION—Cont'd**

- Rules of, **3:37**
  - added party vs. “friend of the court”, **3:39**
  - attorneys general, **3:38**
- Tests applied to, **3:41**
  - prejudice to parties, **3:44**
  - sufficient “interest”, **3:43**
  - usefulness and distinctiveness, **3:43**

## **IRREPARABLE HARM**

- See also INTERIM REMEDIES
- Generally, **6:30 to 6:34**
- Election cases, **6:31**
- Language rights, **6:33**
- Remedies after trial, **6:34**
- Social welfare, **6:32**

## **JUDICIAL REVIEW**

- Generally, **1:1 et seq.**
- Alternatives to, **5:26**
- Defendants, **3:31**
- Foundation of, **1:2**
  - enforceability, **1:4**
  - legitimacy, **1:3**
- Parties to, **3:31**
- Powers of court on, **5:26**
- Respondents, **3:31**
- Statutory schemes, **3:25 to 3:32**
- Tribunals, **5:25 to 5:27**
  - evidentiary hearings, **5:26**
  - government decisions, **5:27**

## **LABOUR RELATIONS ACT**

- Generally, **4:6**

## **LIMITATION PERIODS, GOVERNMENT**

- Generally, **7:4**

## **MOOTNESS, DOCTRINE OF**

- Generally, **3:23**

## **MOTIONS**

- Motion for summary judgment, **5:5**
  - Federal Court, **5:8**
  - Ontario, **5:6**
  - other provinces/territories, **5:7**
- Motion to determine question of law, **5:4**
- Motion to strike, **5:3**

## **NOTICE**

- Appeal
  - requirements, **10:11**
- Application to exclude evidence, **10:5**
  - requirements, **10:2 to 10:5**
- Claim against government, **7:2**
- Constitutional question
  - generally, **10:2 to 10:4**
  - case law, **10:4**
  - introduction, **10:2**
  - provincial legislations, table, **10:3**
  - Supreme Court of Canada, **10:3**

## **ONTARIO LABOUR RELATIONS ACT**

- Generally, **4:6**

## **ORIGINATING APPLICATION**

- See APPLICATIONS

## **ORIGINATING DOCUMENTS**

- Generally, **7:6**

## **PARTIES**

- Generally, **3:1 et seq.**
- Applicants, see plaintiffs or applicants
- Defendants or respondents
  - generally, **3:25 to 3:32**
  - claims against federal Crown, **3:28**
  - claims in damages, **3:27**
  - declaration of invalidity, **3:26**
  - judicial review, **3:31**
  - Ministers in representative capacity, **3:29, 3:30**
  - other parties, **3:32**
  - persona ficta rule, **3:27, 3:31**
  - Premiers, **3:27**
- Intervenors, **3:33 to 3:46**
  - see also INTERVENTION
- Plaintiffs or applicants, **3:2 to 3:24**
  - aboriginal rights cases, **3:24**
  - mootness, **3:23**
  - standing, **3:2 to 3:22**

## **PLAINTIFFS OR APPLICANTS**

- Generally, **3:2 to 3:24**
- Aboriginal rights cases, **3:24**
- Mootness, **3:23**
- Standing
  - generally, **3:2 to 3:22**
  - aboriginal rights cases, **3:22**
  - Charter, **3:21**
  - division of powers, **3:3 to 3:6**

## **PLEADING A CONSTITUTIONAL CASE**

- Generally, **7:5 to 7:9**
- Amending pleadings, **7:9**
- Defence, drafting of, **7:8**
- Lavigne v. OPSEU, **7:7**
- Statement of claim, drafting of, **7:6**

## **POLICE ACT**

- Generally, **4:6**

## **PRIVILEGE**

- Discovery of government, and, **9:1, 9:2**
- Solicitor-client, see SOLICITOR-CLIENT PRIVILEGE

## **PROCEDURES**

- Actions
  - generally, **5:2 to 5:9**
  - disadvantages of, **5:2 to 5:9**
  - motions for summary judgment, **5:5**
  - motions to determine question of law, **5:4**
  - motions to strike, **5:3**
- Appeals from tribunals, **5:25 to 5:27**
- Applications, **5:10 to 5:12**
  - Ontario, **5:11**
  - other jurisdictions, **5:12**
- Choice of, generally, **5:1 et seq.**
- Class proceedings, **5:13 to 5:23**
  - see also CLASS PROCEEDINGS
- Judicial review from tribunals, **5:25 to 5:27**
  - from evidentiary hearings, **5:26**
  - from other government decisions, **5:27**
- References, **5:28 to 5:30**
  - discretion to refuse to decide, **5:30**
  - scope of, **5:29**
- Tribunal proceedings, **5:24**

## **PROCEEDINGS**

- Generally, **7:1**
- Commencing, **7:1 et seq.**
- Pleadings
  - generally, **7:5 to 7:9**
  - amendment of, **7:9**
  - case study: Lavigne v. OPSEU, **7:7**
  - defences, drafting of, **7:8**
  - statement of claim, drafting of, **7:6**
- Rules, Crown or government
  - generally, **7:2 to 7:4**
  - immunity provisions, **7:3**

## **PROCEEDINGS—Cont'd**

- Rules, Crown or government—Cont'd
  - limitation period, government, **7:4**
  - notice of claim provisions, **7:2**

## **PROCEEDINGS AGAINST THE CROWN ACT, ONTARIO**

- Defendants in damages claims, **3:27**
- Discovery of provincial governments, **9:2**
- Notice of claim provisions, **7:2**

## **PROVINCIAL OFFENCES ACT**

- Generally, **4:12**

## **PUBLIC AUTHORITIES PROTECTION ACT, ONTARIO**

- Discovery of governments and, **9:2**
- Limitation periods, **7:4**

## **PUBLIC INTEREST**

- Immunity, **9:38**
- Intervention, **3:33 to 3:46**
- Standing, **3:4**
  - Charter, standing under, **3:9**

## **READING DOWN**

- See also REMEDIES
- Generally, **6:5**

## **READING IN**

- See also REMEDIES
- Generally, **6:7**

## **REFERENCES**

- Generally, **5:28 to 5:30**
- Discretion to refuse to decide, **5:30**
- Notice requirements and, **10:3**
- Provincial reference statutes, table, **5:29**
- Scope of, **5:29**

## **REMEDIES**

- Generally, **6:1 et seq.**
- Aboriginal rights cases
  - see also ABORIGINAL RIGHTS CASES
  - generally, **6:44 to 6:51**
  - purposes of, **6:44**
  - specific remedies, **6:45**
- Appeal, issues on, **10:16**
- Concurrent constitutional remedies, **6:2**
- Costs
  - generally, **6:40 to 6:43**
  - civil cases, **6:40**
  - criminal cases, **6:41**

## **REMEDIES—Cont'd**

- Costs—Cont'd
  - criteria, **6:40**
  - interim, **6:43**
  - intervenor, **6:42**
  - solicitor-client, **6:40**
- Criteria to consider, **6:4**
- Declaratory relief, **6:5**
- Determination of, steps to take in, **6:4**
- Exclusion of evidence under s. 24(2) of Charter
  - generally, **6:18 to 6:27**
  - administration of justice, effect on, **6:21**
  - application, **6:18 to 6:21**
  - seriousness of breach, **6:20**
  - trial fairness, **6:19**
- Injunctions
  - generally, **6:11 to 6:16**
  - rules, generally, **6:11**
  - structural, **6:12 to 6:16**
- Interim remedies
  - generally, **6:28 to 6:39**
  - balance of (in)convenience, **6:35 to 6:37**
  - exemption, **6:39**
  - irreparable harm, **6:30 to 6:34**
  - public interest, **6:38**
  - serious constitutional issue, **6:29**
  - suspension, **6:39**
  - test for obtaining relief, **6:28**
- Legitimacy of, **6:1**
- Limitations imposed by courts, **5:13 to 5:23**
- Principles of, **6:1 to 6:3**
- Reading down, **6:6**
- Reading in, **6:7**
- Reading out (severance), **6:7**
- Relief under s. 24(1) of Charter
  - generally, **6:9 to 6:16**
  - application, **6:9**
  - damages, **6:10**
  - injunctions and, **6:11**
- Relief under s. 52 of Constitution Act, 1982
  - generally, **6:4 to 6:8**
  - application, **6:4**
- Severance (reading out), **6:7**
- Structural injunctions, **6:12 to 6:16**
- Suspension of, **6:17**

## **REPRESENTATIVE ORGANIZATIONS**

Generally, **3:18**

## **SECURITY OF INFORMATION ACT**

Generally, **9:37**

## **SEVERANCE**

See also REMEDIES

Generally, **6:7**

## **SOLICITOR-CLIENT PRIVILEGE**

Aboriginal rights cases, **9:49**

Interim remedies, **6:35**

## **STANDING**

Generally, **3:2 to 3:22**

Aboriginal rights cases, **3:22**

Attorneys general, **3:21**

Challenges to, **3:12**

Charter, under

generally, **3:7 to 3:21**

challenges, procedure on, **3:12**

public interest standing, **3:9**

section 24(1), **3:8**

Corporations, **3:7 to 3:21**

Criminal prosecutions, **3:10**

Existing litigation, **3:11**

Factors considered

generally, **3:13**

“directly affected” or “genuine interest,” **3:15**

illegality, **3:21**

“serious issue,” **3:14**

Organizations, **3:18**

Public interest standing

generally, **3:4**

Charter, under, **3:9**

decisions, **3:13, 5:16**

discretionary, **3:6**

special damage, **3:5**

R. v. Big M Drug Mart Ltd., **3:10**

Representative organizations, **3:18**

Right, as of, **3:3**

## **STATEMENT OF CLAIM**

Drafting of, **7:6**

Topics covered in, **7:6**

## **STATEMENT OF DEFENCE**

Generally, **7:8**

## **STRUCTURAL INJUNCTIONS**

Generally, **6:12 to 6:16**

**STRUCTURAL INJUNCTIONS—Cont'd**

- Aboriginal cases, **6:49**
- Canadian law, **6:16**
- United States
  - generally, **6:13 to 6:15**
  - challenges, **6:13**
  - developments, **6:14**
  - origins, **6:13**
  - response, congressional, **6:15**

**SUMMARY JUDGMENT**

- See also MOTIONS
- Generally, **5:5**
- Federal Court, **5:8**
- Ontario, **5:6**
- Other provinces/territories, **5:7**

**TRIBUNALS**

- See ADMINISTRATIVE TRIBUNALS

**UNEMPLOYMENT INSURANCE ACT**

- Generally, **4:6**

**UNITED STATES CONSTITUTIONAL LAW**

- Action under, **2:2 to 2:10**

**UNITED STATES CONSTITUTIONAL LAW—Cont'd**

- Activities caught by constitution
  - generally, **2:6**
  - government approval test, **2:17**
  - government encouragement or coercion test, **2:18**
  - statutory power plus a specific government program or policy, **2:16**
  - “symbiotic relationship” test, **2:19**
- Actors caught by constitution
  - generally, **2:2**
  - control test, **2:4**
  - entwinement, **2:5**
  - government itself, **2:3**
- Bill of Rights, **2:2 to 2:10**
- Class actions, **5:14**
- “Constitutional torts,” **5:14**
- Control test, **2:4**
- Injunctions, **6:13 to 6:15**
- Judicial review
  - enforceability, **1:4**
  - legitimacy, **1:3**
- Reference power, lack of, **5:28 to 5:30**