Table of Contents

CHAPTER 1. AN OVERVIEW OF THE LAW OF JUSTICIABILITY IN CANADA

I. INTRODUCTION

§ 1:1 Chapter Overview

II. DEFINING JUSTICIABILITY

- § 1:2 Overview
- § 1:3 Justiciability: A Substantive or Procedural Doctrine?
- § 1:4 Justiciability Distinguished from Enforceability
- § 1:5 Justiciability in Private and Public Law Settings
- § 1:6 Conclusion

III. THE SEPARATION OF POWERS IN CANADA

§ 1:7 Generally

IV. COMPARATIVE APPROACHES TO JUSTICIABILITY

- § 1:8 Introduction
- § 1:9 The Law of Justiciability in the United Kingdom
- § 1:10 The Law of Justiciability in the United States

V. AN OVERVIEW OF JUSTICIABILITY IN CANADIAN LAW

§ 1:11 Justiciability in Canadian Law

CHAPTER 2. PROCEDURAL DIMENSIONS OF JUSTICIABILITY

I. INTRODUCTION

§ 2:1 Scope of Chapter

II. TIMING OF RAISING ISSUES OF JUSTICIABILITY

§ 2:2 Common Law and the Scope of Abuse of Process

Boundaries of Judicial Review: Law of Justiciability in Canada

- § 2:3 The Statutory Context and Article 85 of the Quebec Code of Civil Procedure
- § 2:4 Motions to Strike or Determine Legal Questions
- § 2:5 Summary Judgment or Summary Trial
- § 2:6 Justiciability at Trial
- § 2:7 The Dynamics of Discovery
- § 2:8 Justiciability on Appeal or Judicial Review

III. REMEDIES AND JUSTICIABILITY

- § 2:9 Overview
- § 2:10 Declaratory Actions
- § 2:11 Interlocutory Injunctions
- § 2:12 References and their Procedures

IV. ARBITRATION AGREEMENTS

- § 2:13 General Framework for Staying Proceedings in Face of Arbitration Clauses
- § 2:14 Exceptions to Enforcement of Arbitration Agreements

V. SPECIFIC CONSIDERATIONS FOR HOW TO CONTEST THE "BOUNDARIES" OF JUDICIAL REVIEW

- § 2:15 Overview
- § 2:16 Standing
- § 2:17 Ripeness
- § 2:18 Mootness
- § 2:19 —Special Costs Considerations
- § 2:20 Subject Matters that are Inherently Political
- § 2:21 Cases that Affect the Political Process
- § 2:22 Cases Otherwise Ill-Suited to Judicial Review

VI. CONCLUSION

§ 2:23 Generally

CHAPTER 3. STANDING

I. INTRODUCTION

§ 3:1 Scope of Chapter

II. PURPOSES OF STANDING LAW

- § 3:2 Generally
- § 3:3 Preventing Litigation by "Busybodies"
- § 3:4 Need to Conserve Judicial Resources
- § 3:5 The Adversary System/Need to Ensure Courts are Given Adequate Evidentiary Records
- § 3:6 The Role of Attorneys General

III. THE AMERICAN LAW OF STANDING

§ 3:7 Generally

IV. STANDING AS A PARTY/AS OF RIGHT

- § 3:8 Generally
- § 3:9 Aboriginal Rights Claims
- § 3:10 Intervention as a Party

V. STANDING AS A NON-PARTY

- § 3:11 Generally
- § 3:12 Intervention as a Friend of the Court
- § 3:13 Attorneys General
- § 3:14 Administrative Tribunals

VI. PUBLIC INTEREST STANDING

A. GENERAL PRINCIPLES

- § 3:15 Overview
- § 3:16 The Principle of Legality
- § 3:17 The History of Public Interest Standing

B. THE DOWNTOWN EASTSIDE SEX WORKERS FRAMEWORK

- § 3:18 Introduction
- § 3:19 Has a Serious Justiciable Issue Been Raised?
- § 3:20 Does the Litigant Have a Genuine Interest?
- § 3:21 Is the Proposed Litigation "a" Reasonable Way to Bring the Issues to Court?
- § 3:22 —Does the Plaintiff Have Capacity to Bring the Claim Forward?
- § 3:23 —Is the Case of Public Interest and What Impact Will it Have on Access to Justice?

BOUNDARIES OF JUDICIAL REVIEW: LAW OF JUSTICIABILITY IN CANADA

- § 3:24 —Are There Alternative Means to Bring the Issues Forward, Including Parallel Proceedings?
- § 3:25 Is the Proposed Litigation "A" Reasonable Way to Bring the Issues to Court?—What is the Potential Impact on the Rights of Others?
- § 3:26 Overall Balancing and Discretion

VII. CONCLUSION

§ 3:27 General

CHAPTER 4. RIPENESS

I. INTRODUCTION

§ 4:1 Scope of Chapter

II. THE AMERICAN LAW OF RIPENESS

§ 4:2 Generally

I. THE CANADIAN LAW OF RIPENESS

A. INTRODUCTION

§ 4:3 Overview

B. PREMATURITY

- § 4:4 Generally
- § 4:5 Prematurity in Charter Cases
- § 4:6 Prematurity and Administrative Law
- § 4:7 Prematurity and Private Law
- § 4:8 Conclusion

C. HYPOTHETICAL QUESTIONS

- § 4:9 Overview
- § 4:10 Speculative or Contingent Questions—Generally
- § 4:11 —The "Susceptibility to Proof" Test
- § 4:12 —The "Reasonable Likelihood" Test
- § 4:13 Abstract or Academic Questions

D. ALTERNATIVE GROUNDS

- § 4:14 Generally
- § 4:15 Unnecessary Questions

§ 4:16 The "Exhaustion" Doctrine

IV. CONCLUSION

§ 4:17 Towards a Test for Ripeness

CHAPTER 5. THE DOCTRINE OF MOOTNESS

I. INTRODUCTION

§ 5:1 Scope of Chapter

II. THE AMERICAN LAW OF MOOTNESS

§ 5:2 Generally

III. THE CANADIAN LAW OF MOOTNESS

- A. GENERALLY
- § 5:3 Overview
 - B. MOOTNESS PRIOR TO BOROWSKI
- § 5:4 Generally
 - C. THE *BOROWSKI* FRAMEWORK AND CRITERIA FOR DECIDING MOOT CASES
- § 5:5 Overview
 - D. THE APPLICATION OF THE BOROWSKI CRITERIA
 - 1. Must the Issue of Mootness be Considered?
- § 5:6 Generally
 - 2. What are the Causes of Mootness?
- § 5:7 Legal Changes
- § 5:8 Factual Changes
 - 3. When Will Moot Cases be Heard?
 - a. Overview
- § 5:9 Generally

BOUNDARIES OF JUDICIAL REVIEW: LAW OF JUSTICIABILITY IN CANADA

b. Adversarial Nature of the Dispute

- § 5:10 Generally
 - c. Judicial Economy
- § 5:11 Generally
- § 5:12 The "Practical Effects on the Rights of the Parties"
- § 5:13 The Likelihood of Recurrence and Evasiveness of Review
- § 5:14 The Public Interest and "Social Costs of Uncertainty"

E. THE PROPER ROLE FOR THE JUDICIARY

- § 5:15 Generally
 - F. BEYOND BOROWSKI
- § 5:16 Introduction
- § 5:17 Anticipated Mootness
- § 5:18 Costs and Mootness
- § 5:19 The Interests of Justice

IV. CONCLUSION

§ 5:20 General

CHAPTER 6. POLITICAL QUESTIONS AND POLICY DISPUTES

I. POLITICAL QUESTIONS

- A. INTRODUCTION
- § 6:1 Generally
 - B. ANGLO-AMERICAN APPROACHES TO POLITICAL QUESTIONS
- § 6:2 Overview
- § 6:3 American approach to political questions
- § 6:4 Australian approach to political questions
- § 6:5 U.K. approach to political questions

Table of Contents

C. CANADA'S POLITICAL QUESTIONS DOCTRINE & PURELY POLITICAL MATTERS

- § 6:6 Generally
 - D. PREROGATIVE POWERS AND ORDERS-IN-COUNCIL
- § 6:7 Generally
 - E. CHALLENGES TO THE WISDOM OF GOVERNMENT ACTION
- § 6:8 Generally
- § 6:9 "Second Guessing" Government Decisions under section 1 of the *Charter*
- § 6:10 Remedial Discretion
 - F. CONSTITUTIONAL CONVENTIONS
- § 6:11 Generally
 - G. UNWRITTEN CONSTITUTIONAL PRINCIPLES
- § 6:12 Generally
 - H. POLITICAL TRUSTS
- § 6:13 Generally
 - I. INTERGOVERNMENTAL AGREEMENTS
- § 6:14 Generally
- II. NON-JUSTICIABLE POLICY DISPUTES
- § 6:15 Generally
- III. NON-BINDING GUIDELINES, MANUALS, SOFT LAW
- § 6:16 Generally
- IV. DOCUMENTS THAT ADDRESS THEIR OWN. JUSTICIABILITY
- § 6:17 Generally

V. CONCLUSION

§ 6:18 General

CHAPTER 7. LEGISLATIVE ACTION & THE LEGISLATIVE PROCESS

I. THE LEGISLATIVE PROCESS

- A. JUSTICIABILITY AND THE SCOPE OF THE LEGISLATIVE PROCESS
- § 7:1 Generally
 - B. THE JUDICIAL ROLE AND THE STAGES OF THE LEGISLATIVE PROCESS
- § 7:2 Procedural fairness does not apply to the legislative process
- § 7:3 The puzzle of regulations
- § 7:4 Legislative consultations and advisory processes
- § 7:5 The process of drafting, introducing and revising legislation
- § 7:6 The post-enactment process

II. PARLIAMENTARY PRIVILEGES

§ 7:7 Generally

III. PROROGATION AND DISSOLUTION

§ 7:8 Generally

IV. AGENTS OF PARLIAMENT

§ 7:9 Generally

V. CONCLUSION

§ 7:10 Generally

CHAPTER 8. MATTERS ILL-SUITED TO JUDICIAL REVIEW

I. INTRODUCTION

§ 8:1 Chapter Overview

Table of Contents

II. HONOURS

- § 8:2 Generally
- § 8:3 Honours Prerogative
- § 8:4 The Order of Canada

III. DISPUTES INVOLVING SOCIAL AND ECONOMIC RIGHTS

§ 8:5 Generally

IV. CLIMATE CHANGE LITIGATION

§ 8:6 Generally

V. INTERNATIONAL LAW AND/OR INTERNATIONAL RELATIONS

- § 8:7 Generally
- § 8:8 International Agreements
- § 8:9 Customary International Law
- § 8:10 Actions of a Foreign State
- § 8:11 Prerogative of Going to War
- § 8:12 Conclusion

VI. DISPUTES INVOLVING RELIGION

- § 8:13 Generally
- § 8:14 "True" Theological Matters
- § 8:15 Private Law Causes of Action Affecting and Incorporating Religious Tenets
- § 8:16 Religious (and Voluntary Association) Membership

VII. SPECIFIC REGIONAL CONSIDERATIONS

§ 8:17 Generally

VIII. INDIGENOUS LAW

§ 8:18 Generally

IX. CONCLUSION

§ 8:19 Generally

CHAPTER 9. LOOKING FORWARD

I. INTRODUCTION

§ 9:1 Chapter Overview

II. JUSTICIABILITY OF ALGORITHMIC CODE AND AI

§ 9:2 Generally

III. JUSTICIABLE RIGHTS OF NON-HUMAN ANIMALS

§ 9:3 Generally

IV. JUSTICIABLE RIGHTS OF RIVERS, TREES, AND MOUNTAINS

§ 9:4 Generally

V. CONCLUSION

§ 9:5 Generally

Table of Cases

Index