

CONTENTS

<i>Dedication</i>	iii
<i>Preface to the Seventh Edition</i>	v
<i>Table of Cases</i>	xxv

PART I GENERAL PRINCIPLES

<i>Chapter 1 Introduction: What is Administrative Law?</i>	3
1. What is Administrative Law?.....	3
2. The Relationship Between Administrative Law and Constitutional Law	4
3. Statutory Delegation of Governmental Powers	4
4. Delegation, Jurisdiction, and the Doctrine of <i>Ultra Vires</i>	6
5. Judicial Review of Administrative Action	6
6. Historical Development of Judicial Review of Administrative Action	10
7. Remedies	12
8. Attempts to Limit Judicial Review of Administrative Action	16
9. Public versus Private Organizations and Actions.....	18
10. Summary	19
11. Selected Bibliography.....	19
<i>Chapter 2 Constitutional Aspects of Canadian Administrative Law</i>	23
1. Introduction: The Relevance of British Law.....	24
2. The Sovereignty of Parliament in Britain	25
(a) British Parliament Omnipotent	25
(b) British Parliament Unfettered for the Future	26
(c) Courts Bound by Acts of Parliament	26
(d) Administrative Powers Derive from Statute or the Royal Prerogative.....	27
(e) No Constitutional Separation of Powers.....	27
3. The United States: A Contrasting Model.....	28
4. The Canadian Model.....	29
(a) Structural Considerations.....	30

(i)	Federalism and the Division of Legislative Powers.....	30
(ii)	The Ability to Delegate	31
(iii)	Delegation, but not Abdication.....	32
	(A) Cases dealing with provincial delegation	33
	(B) Cases dealing with federal delegation	34
(iv)	Offices of Queen, Governor General and Lieutenant Governor Constitutionally Protected	38
(v)	No Inter-delegation	41
(vi)	The Section 96 Problem.....	42
	(A) The historical inquiry.....	44
	(B) Judicial function	49
	(C) Institutional setting.....	49
	(D) Privative clauses.....	50
5.	The Statutory Delegate's Jurisdiction to Decide Constitutional Issues and Grant Constitutional Remedies	51
(a)	Statutory Grants of Jurisdiction to Decide Constitutional Issues.....	51
(b)	Statutory Delegate's Jurisdiction to Decide Constitutional Issues at Common Law	52
(c)	Statutory Delegate's Jurisdiction to Grant Constitutional Remedies	56
(d)	Conclusion	61
6.	The <i>Canadian Charter of Rights and Freedoms</i> and Administrative Law	61
(a)	Introduction to the <i>Charter</i>	61
(b)	To Whom Does the <i>Charter</i> Apply?.....	63
(c)	Section 1 Analysis in the Administrative Law Context.....	69
(d)	The Impact of Section 7 on Administrative Law	71
	(i) Introduction	71
	(ii) Life, Liberty and Security of the Person.....	72
	(iii) Principles of Fundamental Justice	75
	(A) The principles of procedural fundamental justice	75
	(B) The principles of substantive fundamental justice	80
(e)	Examples of Other <i>Charter</i> Sections Impacting Administrative Law	85
	(i) Section 2.....	85
	(ii) Section 8.....	88
	(iii) Section 15.....	92
(f)	Conclusion	93
	Chapter 3 Statutory Delegation of Governmental Powers	95
1.	Institutions of Government.....	95
	(a) The Legislative Branch	95

(b) The Judicial Branch	96
(c) The Executive (or Administrative) Branch	97
2. Institutions of Government versus Functions of Government.....	99
3. Reasons for Characterizing Functions as “Legislative”, “Judicial” or “Executive or Administrative”.....	101
4. Discretionary Powers	102
(a) Duties Compared with Discretionary Powers	103
(b) The Ambit of Discretion.....	103
(c) Pre-conditions to the Exercise of Discretion	104
(d) The Concept of a “Quasi-Judicial” Power.....	105
5. Subordinate Legislation	107
Chapter 4 Subordinate Legislation	109
1. Introduction	110
2. The Meaning of Subordinate Legislation	110
3. The Reasons for Subordinate Legislation.....	111
4. The Growth of Subordinate Legislation.....	112
5. The Power to Enact Subordinate Legislation and Sub-delegation	113
6. The Effectiveness of Subordinate Legislation	114
7. The Preparation of Subordinate Legislation.....	116
8. Forms of Subordinate Legislation.....	117
9. Regulations.....	117
(a) What is a Regulation?.....	117
(i) The Definition of a “Regulation” — Generally.....	117
(ii) The Federal Definition of “Regulation”.....	120
(b) The Power to Enact Regulations.....	122
(c) The Preparation and Passing of Regulations	123
(i) The Requirement for Public Consultation	124
(ii) The Filing and Publication of Regulations.....	125
(iii) Effect of Failure to File or Register Regulations.....	127
(iv) Publication of Regulations and Exemption from Publication	128
(d) Final Comments Concerning Regulations	131
10. Municipal Bylaws	132
11. Parliamentary Scrutiny of Subordinate Legislation.....	134
12. Challenging Subordinate Legislation	139
(a) Subordinate Legislation is <i>Ultra Vires</i> or Unconstitutional	139
(b) Parent Act is Repealed	141
(c) Parent Act is <i>Ultra Vires</i> or Unconstitutional	141
(d) Conditions Precedent	141
(e) Composition or Procedure of the Statutory Delegate	141
(f) Conflict with Other Acts.....	142
(g) Implied Restrictions.....	142

(i) Good Faith	142
(ii) Reasonableness.....	142
(iii) The Legitimate Expectations Doctrine	143
13. Summary.....	143
14. Selected Bibliography.....	143

PART II GROUNDS FOR JUDICIAL REVIEW

<i>Chapter 5 Introduction to the Grounds for Judicial Review</i>	149
1. General.....	149
2. The “Narrow” and “Wide” Meanings of “Jurisdiction”	150
3. Jurisdiction, Standard of Review and Privative Clauses	151
4. Problems in Determining the Ambit of Jurisdiction	152
(a) Implied Statutory Intent	152
(b) Preliminary or Collateral Matters	153
(c) Granting Delegated Powers in Broad or Subjective Terms	154
(d) Incorporating the Statutory Delegate’s Actions into Legislation.....	156
5. Is an <i>Ultra Vires</i> Action Void or Voidable?	159
6. The Discretion to Refuse a Remedy Where Grounds for Judicial Review Exist	160
7. Summary	160
8. Selected Bibliography.....	160
<i>Chapter 6 Defects in Acquiring Jurisdiction.</i>	163
1. Introduction	163
2. Substantive <i>Ultra Vires</i>	164
3. Constitution of the Statutory Delegate.....	164
(a) Sub-delegation	165
(i) Determining whether sub-delegation is permitted	165
(ii) Determining whether valid sub-delegation has taken place	169
(iii) Can the delegator also continue to exercise the delegated functions?.....	170
(b) Appointment of Members of the Statutory Delegate	171
4. Compliance with Statutory Requirements	172
5. Preliminary or Collateral Matters	174
(a) <i>Anisminic</i>	174
(b) <i>Bell</i>	175
(c) <i>Parkhill Bedding</i>	175
(d) <i>CUPE</i>	177
(e) <i>Syndicat</i>	177
(f) <i>Dunsmuir</i>	179
6. Evidentiary considerations	179

7.	Preliminary or collateral matters after <i>Vavilov</i>	180
8.	Summary	180
9.	Selected Bibliography.....	181
<i>Chapter 7 Losing Jurisdiction Through an Abuse of Discretion</i>		183
1.	Introduction	184
2.	The Abuse of an Improper Intention: Unauthorized or Ulterior Purpose, Bad Faith, Irrelevant Considerations.....	187
(a)	Unauthorized or Ulterior Purpose	188
(b)	Bad Faith	192
(c)	Irrelevant Considerations.....	194
(d)	The Abuse of Improper Intention Applies to all Types of Delegated Discretionary Powers.....	197
3.	The Abuse of Acting on Inadequate Material: No Evidence or Ignoring Relevant Considerations.....	198
4.	The Abuse of Improper Result: Unreasonable, Discriminatory, Retroactive or Uncertain Administrative Actions	199
(a)	Unreasonableness	200
(b)	Discrimination	203
(c)	Retroactivity	204
(d)	Uncertainty.....	205
5.	The Abuse of Misconstruing the Law	206
6.	The Abuse of Fettering Discretion	207
(a)	Inflexible Policy Fetters on the Exercise of Discretion.....	209
(b)	Contractual Fetters on the Exercise of Discretion	212
(c)	Reference to Other Governmental Policies	212
7.	The Standard of Review of Discretionary Decisions.....	213
8.	Summary	214
9.	Selected Bibliography.....	214
<i>Chapter 8 Natural Justice and the Duty to be Fair: Historical Development and General Principles</i>		217
1.	Introduction	218
2.	The Historical Background of the Duty to be Fair	219
(a)	Origins of the Phrase: “Judicial or Quasi-judicial”	219
(b)	Principles of Natural Justice: <i>Cooper</i> and <i>Rice</i>	221
(c)	First Erosion of the Principles of Natural Justice: Focusing on Identity of Decision-Maker	223
(d)	Second Erosion of the Principles of Natural Justice: The “Super-added Duty to Act Judicially”	224
(e)	Erosion of the Principles of Natural Justice in Canada.....	225
(i)	Alliance	225
(ii)	<i>Saltfleet v. Knapman</i>	226
(iii)	<i>Calgary Power v. Copithorne</i>	226

3.	The Development of the Duty to be Fair in England	228
(a)	<i>Ridge v. Baldwin</i>	228
(b)	<i>Re H.K.</i>	231
4.	The Development of the Duty to be Fair in Canada	231
(a)	<i>Nicholson</i>	231
(b)	<i>Campeau</i>	235
(c)	<i>Harvie</i>	237
(d)	<i>McCarthy</i>	239
(e)	<i>Martineau (No. 2)</i>	241
5.	The Modern Concept of the Duty to be Fair	245
6.	Applicability of the Duty to be Fair to Legislative Functions and Decisions of Cabinet.....	248
(a)	Legislative Powers and the Duty to be Fair	248
(b)	The Cabinet and the Duty to be Fair.....	251
7.	Applicability of the Duty to be Fair to the Merits of a Decision	254
8.	The Effect of a Breach of the Duty to be Fair	256
9.	The Relationship Between the Duty to be Fair and the “Principles of Fundamental Justice”.....	258
10.	The Duty to be Fair in the Context of Public Employment	260
(a)	<i>Ridge v. Baldwin</i>	260
(b)	<i>Nicholson v. Haldimand-Norfolk (Regional Municipality) Commissioners of Police</i>	261
(c)	<i>Knight v. Indian Head School Division No. 19</i>	262
(d)	<i>New Brunswick (Board of Management) v. Dunsmuir</i>	265
(e)	<i>Cyr</i>	267
(f)	<i>Martin</i>	268
(g)	<i>Laval</i>	268
(h)	Summary on Duty to be Fair in the Context of Public Employment	269
11.	The Duty to be Fair, Delay, and Abuse of Process	270
12.	The Duty to be Fair and Standards of Review.....	273
13.	Summary on the Duty to be Fair.....	276
14.	Selected Bibliography.....	276
	<i>Chapter 9 The Duty to be Fair: Audi Alteram Partem</i>	279
1.	Introduction	281
2.	The Content of <i>Audi Alteram Partem</i>	282
3.	The Duty to be Fair in Pre-Hearing Procedures.....	284
(a)	Investigation Stage.....	285
(b)	Notice Requirements	289
(c)	Disclosure Requirements.....	292
(d)	Privacy Considerations and Privilege	301
(i)	Solicitor-Client Privilege	301
(ii)	Parliamentary Privilege	305

(iii) Freedom of Information	307
(e) Determining Form of Hearing	308
(i) Constitutional and Quasi-Constitutional Rights to Oral Hearings.....	311
(ii) Common Law and Statutory Requirements for Oral Hearings	316
(iii) Bifurcated Hearings	320
(f) Legitimate Expectations.....	321
(i) Baker.....	322
(ii) Mont-Sinaï	322
(iii) Moreau-Bérubé c. Nouveau-Brunswick	324
(iv) The Retired Judges Case.....	326
(v) Pacific International Securities	327
(vi) Agraira.....	328
4. The Duty to be Fair During the Hearing	328
(a) Exclusion of the Parties	329
(b) Open Court and <i>In Camera</i> Proceedings	329
(i) Millward v. Canada (Public Service Commission)	330
(ii) McVey.....	332
(iii) Edmonton Journal.....	334
(iv) Vancouver Sun	335
(c) Evidentiary Considerations	335
(i) Applicability of Traditional Rules of Evidence.....	335
(ii) Expert Evidence.....	337
(iii) Hearsay	338
(iv) Taking of Official Notice	339
(v) Gathering Evidence and Taking Views.....	342
(vi) Parol Evidence.....	343
(vii) Privileged Communications.....	343
(d) Cross-examination of Witnesses	344
(i) Innisfil (Township) v. Vespra (Township)	345
(ii) Strathcona (Municipality) v. Maclab Enterprises Ltd.	346
(iii) Murray v. Rocky View (Municipal District No. 44)	346
(e) Right of Reply.....	347
(f) Right to be Represented by Legal Counsel or Agent.....	348
(i) Guay v. Lafleur	349
(ii) Pett.....	350
(iii) Irvine.....	351
(iv) The Impact of the <i>Charter</i> on the Right to Counsel	352
(g) Reverse Order Questioning	356
(h) Availability of Adjournments.....	357
(i) Role of Statutory Delegate's Legal Counsel During the Hearing	362

(j) Legislative Prescriptions for Administrative Procedures.....	364
5. The Duty to be Fair After the Hearing.....	365
(a) Deliberation Between Members of Statutory Delegate Who Heard the Case.....	366
(b) Consultation with Other Members of Statutory Delegate	366
(i) Consolidated Bathurst	368
(ii) Tremblay	370
(c) Deliberative Secrecy.....	371
(i) Tremblay	372
(ii) Ellis-Don	373
(iii) Payne	375
(iv) Laval.....	378
(v) Other Cases on Deliberative Secrecy	380
(vi) Summary on Deliberative Secrecy	381
(d) Role of Statutory Delegate's Legal Counsel After the Hearing.....	382
(e) Requirement for Written Reasons for Decisions	388
(i) Development of the Requirement to Provide Reasons	388
A. Future Inns	388
B. Baker.....	390
C. Lafontaine	390
D. Newfoundland and Labrador Nurses Union	391
E. Vavilov.....	392
(ii) Statutory Requirements to Provide Reasons	392
(iii) Factors to Consider When the Statute is Silent	393
(iv) Adequacy of Reasons	395
A. Baker.....	395
B. Dunsmuir	395
C. Newfoundland and Labrador Nurses Union	396
D. Vavilov.....	397
E. Repeating or Copying Policy or Submissions	401
F. Supplementation of Reasons.....	402
(v) Effect of Failing to Give Adequate Reasons	403
(vi) Effect of Giving Reasons Which Disclose an Error in the Decision	403
(vii) Summary on Requirement to Give Written Reasons	406
(f) Re-hearings, Reconsideration and the Doctrine of <i>Functus Officio</i>	407
(g) <i>Res Judicata</i> and Issue Estoppel.....	411
(h) Waiver or Acquiescence	414
6. Conclusion	414
7. Selected Bibliography.....	415

<i>Chapter 10 The Duty to be Fair: The Rule Against Bias</i>	417
1. Introduction to the Rule Against Bias	418
2. To Whom Does the Rule Against Bias Apply?	419
3. The Test for Bias.....	420
(a) The Facts of the <i>National Energy Board</i> Case	421
(b) The Judgments	421
4. What Constitutes Bias in Law?	425
(a) Financial Interest in the Outcome of the Dispute.....	426
(b) Relationships with Persons Involved in the Dispute.....	430
(c) Outside Knowledge of or Prior Involvement in the Dispute.....	432
(d) Inappropriate Comments or Behaviour.....	435
(i) Municipal Councillors: <i>Old St. Boniface</i> and <i>Save Richmond Farmland</i>	439
(ii) The Newfoundland Telephone Case.....	441
5. Institutional Bias	444
(a) Introduction	444
(b) The General Test for Institutional Bias.....	447
(c) Some Examples of Institutional Bias.....	447
(i) Overlapping Functions of Members of Statutory Delegate	448
(ii) Overlapping Functions of Statutory Delegate Staff	454
(iii) Interested Parties Having a Role in Statutory Delegate	456
(iv) Statutory Delegate Having Interest in the Outcome.....	458
(v) Consultation Between Members of the Statutory Delegate	459
(A) <i>Consolidated Bathurst</i>	459
(B) <i>Tremblay</i>	460
(C) <i>Ellis-Don</i>	461
6. Structural Independence.....	463
7. The Legal Effect of a Reasonable Apprehension of Bias	471
8. The Timing to Raise a Bias Argument and Waiver	473
9. Evidence of Bias	477
(a) The Record and Affidavits.....	477
(b) Voluntary and Compulsory Disclosure.....	479
10. Summary	482
11. Selected Bibliography.....	483
<i>Chapter 11 Errors of Law on the Face of the Record</i>	485
1. Introduction	485
2. The Distinction Between Jurisdictional and Intra-Jurisdictional Errors of Law.....	487

3.	Limitations on the Availability of <i>Certiorari</i> to Correct Intra-Jurisdictional Errors of Law	488
(a)	The Ambit of <i>Certiorari</i> Against Administrative Decisions	488
(b)	Is a Statutory Delegate Involved?	488
4.	The Record.....	490
5.	Errors of Law versus Errors of Fact	495
(a)	What is an Error of “Law”?	495
(b)	Other Circumstances in Which an Error of Fact May be Reviewed	499
(c)	Is Lack of Evidence an Error of Law?	499
6.	The Effect of a Privative Clause.....	500
(a)	Preliminary or Collateral Matters	501
(b)	Effect of an Unreasonable Interpretation of Law.....	501
7.	Standards of Review, Curial Deference, and Intra-Jurisdictional Errors of Law	503
8.	The Discretion to Refuse <i>Certiorari</i>	507
9.	Summary on Intra-Jurisdictional Errors of Law on the Face of the Record as a Ground for Judicial Review	508
10.	Selected Bibliography.....	508

PART III STANDARDS OF REVIEW

<i>Chapter 12 Standards of Review</i>	513	
1.	Introduction	514
2.	The Constitutional and Conceptual Basis for Different Standards of Review.....	516
3.	Historical Development of Different Standards.....	518
(a)	The High-Water Mark for Judicial Review: Anisminic	518
(b)	The English Extension: All Errors of Law are Jurisdictional	519
(c)	The Low-Water Mark for Judicial Review in Canada: <i>C.U.P.E.</i> and the “Not Patently Unreasonable” Test as a Shield from Judicial Review.....	520
(d)	The Subsequent Clarification: The “Correctness Test” still applied to some matters	521
(e)	The Pragmatic and Functional Approach for Identifying Jurisdictional Matters: <i>Bibeault</i> and <i>Econosult</i>	521
(f)	The Development of the Concept of a Spectrum of Standards of Review, the Articulation of the Intermediate Standard of “Reasonableness	

<p><i>Simpliciter</i>", and Using the Pragmatic and Functional Approach to Determine the Applicable Standard of Review.....</p> <p>(g) The Four <i>Pushpanathan</i> Factors to be used in the Pragmatic and Functional Approach to Determine the Applicable Standard of Review</p> <p>(h) The Fleeting Thought There Might be Many Standards Along the Spectrum</p> <p>(i) <i>Q and Ryan</i>: The Transference of the Concept of a Spectrum of Standards to a Spectrum of Deference, Three Standards of Review, and a Constant Meaning for "Reasonableness <i>Simpliciter</i>"</p> <p>(j) Justice LeBel's <i>cri de coeur</i> in <i>Toronto (City) v. C.U.P.E., Local 79</i>.....</p>	522 522 523 523 523 523
<p>4. The Simplification in <i>Dunsmuir</i>.....</p> <p>(a) Background</p> <p>(b) The Majority Decision</p> <p>(c) Justice Binnie's Concurring Decision.....</p> <p>(d) The Decision by Justice Deschamps.....</p> <p>(e) Refinements and Unresolved Questions after <i>Dunsmuir</i></p>	526 526 527 529 532 533
<p>5. The re-framing of standards of review analysis in <i>Vavilov</i></p> <p>(a) The majority's new framework in <i>Vavilov</i></p> <p>(b) The minority's disagreement about the new conceptual framework in <i>Vavilov</i></p> <p>(c) The majority's response to the minority's criticism</p>	536 537 540 541
<p>6. "True Questions of Jurisdiction" do not, in and of themselves, engage the correctness standard of review</p>	542
<p>7. The concept and role of expertise.....</p> <p>(a) The concept of expertise</p> <p> 1. Expertise in <i>Pushpanathan</i>.....</p> <p> 2. Different Types of Expertise</p> <p> 3. Relative Expertise</p> <p> 4. How is Expertise Established?.....</p> <p> 5. Expertise was an Indicator of Legislative Intent</p> <p>(b) The role of expertise in <i>Vavilov</i></p>	544 545 545 546 547 549 550 550
<p>8. The Distinction Between the Standard of Review and the Content of the Duty of Fairness — Do the Two Standards of Review Apply to Breaches of Procedural Fairness?.....</p>	554
<p>9. The Standard of Review for Adequacy of Reasons after <i>Vavilov</i></p>	561
<p>10. The Application of the Reasonableness Standard of Review to Questions of Law after <i>Vavilov</i></p>	563
<p>11. The Application of the Reasonableness Standard of Review to Discretionary Decisions.....</p>	565

(a) Identifying the relevant factors: The <i>Retired Judges</i> case	566
(b) The court does not weigh the relevant factors	569
(c) <i>Figliola</i>	570
12. The Standard of Review for the Validity of Subordinate Legislation after <i>Vavilov</i>	571
13. Does the Standards of Review Analysis Apply to Consensual Tribunals?	573
14. Summary on Standards of Review	574
15. Selected Bibliography.....	575

PART IV REMEDIES

<i>Chapter 13 Introduction to Remedies</i>	579
1. General.....	579
2. Appeals	579
3. Prerogative Remedies.....	580
4. Private Law Remedies	581
5. Ontario Procedural Reforms.....	581
6. Alberta Procedural Reforms	581
7. Federal Procedural Reforms	582
8. Substantive Reforms.....	582
9. Privative Clauses.....	583
<i>Chapter 14 Appeals from Administrative Decisions</i>	585
1. Introduction	585
2. No Common Law Right of Appeal.....	586
3. Appeals to Administrative Appeal Bodies	587
4. Appeals to the Courts.....	588
5. Scope of Statutory Appeals.....	590
(a) Issues to beAppealed	590
(b) Standing to Appeal.....	592
(c) Statutory Provisions Relating to Appeals.....	594
6. Form of Appeals	595
7. Exercise of Discretion by the Appellate Body	596
8. Standard of Appellate Review.....	597
9. Isolated Reforms to Permit Appeals to the Courts.....	598
10. The Creation of General Administrative Appeal Bodies	601
11. The Effect of an Appeal on the Availability of Judicial Review.....	602
12. Restrictions on Collateral Attacks Where an Appeal is Available	608
13. The Ombudsman as an Alternative to an Appeal.....	610
14. Issue Estoppel.....	613
15. Conclusion	615

16. Selected Bibliography.....	616
<i>Chapter 15 The Prerogative Remedies</i>	619
1. Introduction	619
2. <i>Habeas Corpus</i>	623
3. <i>Certiorari</i> and Prohibition.....	625
4. <i>Mandamus</i>	632
5. <i>Quo Warranto</i>	636
6. Standing for Judicial Review.....	636
(a) Standing Under the Common Law	638
(b) Public Interest Standing.....	642
(c) Standing Under Statutory Provisions	643
(d) Legal Personality and Standing of Statutory Delegates	644
(e) Timing.....	646
(f) Intervention	647
7. Discretionary Nature of the Prerogative Remedies	647
(a) Waiver and Acquiescence.....	648
(b) Unreasonable Delay.....	649
(c) Clean Hands and the General Conduct of the Parties	650
(d) Futility, Mootness and Non-Material Errors.....	651
(e) Availability of Alternative Remedies	654
8. The Application for Judicial Review in Alberta	655
9. The <i>Federal Courts Act</i>	658
10. Conclusion	660
11. Selected Bibliography.....	660
<i>Chapter 16 Private Law Remedies and The Tort Liability of Public Authorities</i>	663
1. Introduction	664
2. Injunctions	665
(a) Introduction	665
(b) Nature of Injunctions	665
(c) Availability of Injunctive Relief	667
(d) Use of Injunctions by the Attorney General or Public Authorities.....	671
(e) Parliamentary Proceedings	672
(f) The Importance of Interim Injunctions	673
(i) The Test for Interim Injunctions.....	674
(ii) Undertaking in Damages	676
(g) Stays of Proceedings	677
(h) The Discretionary Nature of Injunctions and Stays.....	678
(i) Crown Immunity from Injunctions	679
(i) At Common Law.....	679
(ii) Crown Immunity Under Statute	681
3. Declarations	686

(a) Nature of Declarations	686
(b) Availability of Declarations	690
(i) The Requirement of Justiciability.....	691
(ii) Practical Value	693
(iii) The Discretionary Nature of Declarations.....	694
(c) Declarations Concerning the Crown	694
4. Standing for Injunctions and Declarations	695
(a) The Traditional Rule	695
(b) The Liberalization of Public Interest Standing Requirements.....	696
(c) The Current Test for Public Interest Standing.....	698
(d) Summary with respect to standing	700
5. Damages.....	700
(a) Nominate Torts	703
(b) Negligence	704
(i) The Starting Point: <i>Anns</i>	706
(ii) The Evolution of the Canadian Law on the Negligence of Public Authorities	709
(A) <i>Kamloops</i>	709
(B) <i>Just</i>	712
(C) <i>Brown and Swinamer</i>	713
(D) <i>Cooper and Edwards</i>	715
(E) <i>R. v. Imperial Tobacco</i>	719
(iii) The call for a new administrative law approach to public liability claims.....	722
(iv) Conclusion on Negligence by Public Authorities	723
(c) Misfeasance in a Public Office	724
(i) Development of the Tort of Misfeasance in Public Office.....	726
(ii) <i>Odhayji Estate</i> : The Supreme Court Crystallizes the Canadian Law on Misfeasance in Public Office	731
(iii) <i>Finney</i>	733
(iv) Conclusion on Misfeasance in Public Office	734
(d) Class Actions.....	735
(e) Constitutional Aspects of Damages.....	736
(f) Immunities.....	741
(i) Statutory Immunity	741
(ii) Crown Immunity	743
(iii) Members of Parliament and Provincial Legislatures ..	749
(iv) Judicial Officers	750
(v) Public Officials Acting Legislatively	752
(vi) Public Officials Acting Quasi-Judicially.....	754
6. Conclusion	755
7. Selected Bibliography.....	757

<i>Appendix 1 Alberta Administrative Procedures and Jurisdiction Act</i>	761
<i>Appendix 2 Ontario Statutory Powers Procedure Act</i>	769
<i>Appendix 3 Ontario Judicial Review Procedure Act</i>	789
<i>Appendix 4 Alberta Rules of Court</i>	795
<i>Appendix 5 Federal Courts Act</i>	799
<i>Appendix 6 British Columbia Administrative Tribunals Act</i>	803
<i>Appendix 7 A Note on Privative Clauses and Statutory Appeals.</i>	805
<i>Index</i>	823

