

# 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
<b>Chapter 3 Statutory Delegation of Governmental Powers. . . . .</b>		<b>95</b>
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
<b>Chapter 4 Subordinate Legislation .....</b>	<b>109</b>
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**  
**FOUNDATIONS FOR JUDICIAL REVIEW**

<i>Chapter 5</i> <b>Introduction to the Grounds for Judicial Review</b> .....	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</i> <b>Defects in Acquiring Jurisdiction</b> .....	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</i>	<b>Losing Jurisdiction Through an Abuse of Discretion . . . . .</b>	<b>183</b>
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</i>	<b>Natural Justice and the Duty to be Fair: Historical Development and General Principles. . . . .</b>	<b>217</b>
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
<b>Chapter 9 The Duty to be Fair: <i>Audi Alteram Partem</i> . . . . .</b>		<b>279</b>
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</i>	<b>The Duty to be Fair: The Rule Against Bias</b> . . . . .	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</i>	<b>Errors of Law on the Face of the Record</b> . . . . .	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</i>	<b>Standards of Review</b> .....	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	

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

