

INDEX

- ABDICATION OF LEGISLATIVE POWER, 32-38 *See also*
CONSTITUTIONAL ASPECTS OF CANADIAN ADMINISTRATIVE LAW
- ABUSE OF DISCRETION *See also* JURISDICTION
fettering discretion, 170, 207-213
improper intention, 187-198
improper result, 199-206
inadequate material, 198-199
misconstruing law, 206-207
- ACQUIESCENCE
effect on judicial review, 414
effect on prerogative remedies, 648-649
- ADJOURNMENT *See also* *AUDI ALTERAM PARTEM* RULE
availability of, 357-362
- ADMINISTRATIVE LAW GENERALLY
attempts to limit judicial review, 16-18
 effect of privative clauses, 16-18
 judicial review vs. legislative sovereignty, 17
 “privative clauses” defined, 16
defined, 3-4
delegation, jurisdiction and doctrine of *ultra vires*, 6
delegation of governmental powers, statutory, 4-6
 factors justifying delegation, 4-5
historical development, 10-12
 central features of our system, 11
 inherent jurisdiction of superior courts to supervise, 11
 prerogative remedies, 10-12
judicial review, grounds for, 6-10
 judicial review vs. appeal, 7
 jurisdictional defects, 8-9
 jurisdictional errors, 8
 prerogative remedies, 7
 procedural errors going to jurisdiction, 9
 ultra vires doctrine, 6, 7, 8
public vs private organizations and actions, 18-19
remedies and standing, 12-16
 application for judicial review, 14-15
 certiorari, 12-13
 damages, claim for, 14
 declaratory relief, 14
 grounds for judicial review increased, 15

ADMINISTRATIVE LAW GENERALLY — *Continued*

habeas corpus, 13
mandamus, 13
non-judicial remedies, 15
quo warranto, 13
summary, 19

ADMINISTRATIVE PROCEDURES AND JURISDICTION ACT
(ALBERTA), Appendix 1

ADMINISTRATIVE TRIBUNALS ACT (BRITISH COLUMBIA), Appendix 6

ALBERTA RULES OF COURT, Appendix 4

APPEALS FROM ADMINISTRATIVE DECISIONS

administrative appeal bodies appeals to, 587-588
creation, 601-602
appeal's effect on availability of judicial review, 602-607
appellate discretion, exercise of, 596
conclusion, 615-616
courts, to, 588-590
form of appeals, 595-596
introduction, 585-586
issue estoppel, 613-614
no common law right of appeal, 586-587
ombudsman as alternative to appeal, 610-613
reforms to permit appeals to courts, 598-600
scope of statutory appeals, 590-595
issues to be appealed, 590-592
standing, 592-594
statutory provisions relating to appeals, 594-595
standard of appellate review, 597-598
statutory, Appendix 7

AUDI ALTERAM PARTEM RULE

content of principle, 282-284
duty to be fair during hearing, 328-365
adjournment, availability of, 357-362
cross-examination of witnesses, 344-347
generally, 344-345
Innisfil (Township) v. Vespra (Township), 345-346
Murray v. Council of Municipal District of Rocky View, 346-347
Strathcona (Municipality) v. Maclab Enterprises, 346
evidentiary considerations, 335-343
expert evidence, 337
hearsay, 338-339
judicial notice, 339-341
parol evidence, 343
privileged communications, 343

AUDI ALTERAM PARTEM RULE — *Continued*

- rules of evidence, 335-337
- views, taking, 342
- exclusion of parties, 329
- legislative prescription for administrative procedure, 364-365
- open court and *in camera* proceedings, 329-335
- reverse order questioning, 356-357
- right of reply, 347
- right to counsel, 348-356
 - Charter* context, 352-356
 - generally, 348-349
 - Guay v. Lafleur*, 349-350
 - Irvine*, 351-352
 - Pett*, 350-351
- role of statutory delegate's counsel during hearing, 362-364
- generally, 281-282
- post-hearing processes, 365-415
 - consultation with other members of statutory delegate, 366-371
 - Consolidated Bathurst*, 368-370
 - Tremblay*, 370-371
 - deliberation between members of statutory delegate, 366
 - deliberative secrecy, 371-383
 - Ellis-Don*, 373-375
 - generally, 371-372, 380-383
 - Laval*, 378-379
 - Payne*, 375-377
 - Tremblay*, 372-373
 - generally, 365
 - issue estoppel, 411-414
- reasons for decisions, 388-407
 - adequacy of reasons, 395-403
 - Baker*, 395
 - Dunsmuir*, 395-396
 - Newfoundland and Labrador Nurses' Union*, 396-397
 - repeating or copying policy or submissions, 401-402
 - supplementation, 402-403
 - Vavilov*, 397-400
 - development of requirement
 - Baker*, 390
 - Future Inns*, 388-389
 - Lafontaine*, 390-391
 - Newfoundland and Labrador Nurses' Union*, 391
 - Vavilov*, 392
 - effect of failure to give adequate reasons, 403
 - effect of giving reasons disclosing error in decision, 403-406
 - statutory requirement, 392-393

AUDI ALTERAM PARTEM RULE — *Continued*

- summary, 406-407
- where statute silent, 393-394
- rehearings, reconsideration and doctrine of *functus officio*, 407-411
 - res judicata* and issue estoppel, 411-414
- role of statutory delegate's counsel after hearing, 382-388
 - waiver or acquiescence, 414
- pre-hearing procedures, 284-328
 - disclosure requirements, 292-301
 - form of hearing, 308-321
 - bifurcated hearings, 320-321
 - oral hearing, no requirement for, 308
 - common law and statutory requirements, 316-320
 - constitutional and quasi-constitutional rights, 311-316
 - generally, 308-311
 - legitimate expectations, 321-328
 - Agraira*, 328
 - Baker*, 322
 - Mont-Sinai*, 322-324
 - Moreau-Bérubé c. Nouveau-Brunswick*, 324-326
 - Pacific International Securities*, 327-328
 - retired judges case, 326-327
- generally, 285
- investigative stage, 285-289
- notice of hearing, 289-292
- privacy considerations
 - freedom of information, 307-308
 - Parliamentary privilege, 305-307
 - solicitor-client privilege, 301-304

BIAS RULE

- application of rule: to whom does it apply?, 419-420
- evidence of bias, 477-482
 - disclosure, voluntary and compulsory, 479-482
 - record and affidavits, 477-478
- generally, 418-419
- institutional bias, 444-463
 - examples, 447-463
 - consultation between members of statutory delegate, 459-463
 - generally, 447-448
 - interested parties having role in statutory delegate, 456-458
 - overlapping functions of members of statutory delegate, 448-453
 - overlapping functions of statutory delegate staff , 454-455
 - statutory delegate with interest in outcome, 458-459
 - generally, 444-446
 - general test for institutional bias, 447
- reasonable apprehension of bias, legal effect of, 471-473

BIAS RULE — *Continued*

- structural independence, 463-470
 - factors in common with institutional bias, 463-464
- summary, 482
- test for bias, 420-425
 - National Energy Board* case, 421-425
 - “reasonable apprehension of bias” test, 420
- timing to raise bias argument and waiver, 473-477
 - factors considered, 475-476
- what constitutes bias, 425-444
 - comments or behaviour, inappropriate, 435-444
 - comments or behaviour during hearing or deliberations, 439-444
 - Newfoundland Telephone*, 441-444
 - Old St. Boniface*, 439-441
 - Save Richmond Farmland*, 439-441
 - generally, 435-439
- financial interest in outcome of dispute, 426-430
 - direct financial interest giving rise to reasonable apprehension of bias, 426-428
 - indirect financial interest more problematic, 428-430
- generally, 425-426
- outside knowledge of or involvement dispute, 432-435
- relationships with persons involved with dispute, 430-432

CERTIORARI *See* ERRORS OF LAW ON FACE OF RECORD, PREROGATIVE REMEDIES and STANDARDS OF REVIEW**CHARTER OF RIGHTS AND FREEDOMS** *See also* CONSTITUTIONAL ASPECTS OF CANADIAN ADMINISTRATIVE LAW

- conclusion, 93
- damages, constitutional aspect of, 736-740
- introduction, 61-63
- section 1 analysis, 69-71
- section 2 and administrative law, 85-88
 - application to disciplinary decision, 87-88
 - infringement justified for purpose of s. 1, 85-86
 - Personal Information Protection Act*, constitutionality of, 87-88
 - reasonable accommodation, 85
- section 7, impact of, 71-84
 - fundamental justice, principles of, 75-85
 - generally, 75
 - procedural fundamental justice, principles of, 75-79
 - level of procedural protection, factors affecting, 76-78
 - balancing of competing interests of state and individual, 77-78
 - “characterization of functions” approach, 78
 - shocking Canadian conscience if remedy denied, 77
 - principles not immutable, 76

CHARTER OF RIGHTS AND FREEDOMS — *Continued*

- rules of natural justice, 75-76
- introduction, 71-72
- “life, liberty and security of the person”, 72-74
 - potential penal consequences for failure to comply with procedural demand, 73
 - security interest, scope of, 74
- substantive fundamental justice and doctrine of vagueness, principles of, 80-85
 - arbitrary laws, 83
 - doctrine of vagueness, rationales supporting, 80-81
 - intelligible standard, 82
 - overbreadth, 83
 - sufficient guidance for legal debate, 82
 - “danger to the security of Canada”, 83
 - vague provision not sufficiently delineating areas of risk, 82
 - two-step analysis, 72
- section 8 and administrative law, 88-92
 - procedural safeguards, 89
 - public’s interest vs. government’s interest, 89
 - reasonable expectation of privacy, protection of, 89, 90
 - contextual analysis, 92
 - corporations not having same reasonable expectation, 90
 - inspection of documents vs. search of business premises, 91-92
 - tax audit vs. investigation functions, 92
 - differing levels of Charter protection, 92
 - section 15, 92
 - whom Charter applying to, 63-69
 - college part of government apparatus, 65
 - government, all aspects of, 64
 - hospitals, 65
 - hospital not government actor, 65
 - medical services commission subject to Charter, 66
 - section 32 of Charter, 63-64
 - universities not subject to Charter scrutiny, 64
 - whether body carrying out government objective, 67

CONSTITUTIONAL ASPECTS OF CANADIAN ADMINISTRATIVE LAW*See also* **CHARTER OF RIGHTS AND FREEDOMS**

- British law, relevance of, 24-25
- British Parliament, sovereignty of, 25-28
 - administrative powers derived from statute or Royal Prerogative, 27
 - courts bound by Acts of Parliament, 26-27
 - introduction, 25
 - no constitutional separation of powers, 27-28
 - omnipotent, 25-26
 - unfettered for future, 26

CONSTITUTIONAL ASPECTS OF CANADIAN ADMINISTRATIVE LAW —

Continued

Canadian model, 29-51

Constitution Act, 1867 being basic constitutional document, 29

delegate, ability to, 31

delegation but not abdication of legislative functions, 32-38

abdication principle rarely applied, 32, 38

broad delegations being lawful, 33

federal delegation, cases dealing with, 34-38

Commission's report incorporated into legislation, 36

constitutional necessity, 38

delegation to Cabinet of legislative power, 34

delegation to Governor General of power to proclaim part of section, 36

delegation to Governor in Council of legislative power, 35

limitations on delegation, 35-36

division of judicial philosophy, 37

extensive hand-off of legislative powers constituting unlawful abdication, 38

resolution asking British Parliament to amend *B.N.A. Act*, 1867, 37

unwritten constitutional principles, 38

provincial delegation, cases dealing with, 33-34

delegation of legislative powers, 32

federalism and division of legislative powers, 30-31

courts having duty to determine constitutionality of legislation, 30

inter-delegation not permitted, 41-42

judicially enforced constitutional restrictions, 29

Queen, Governor General and Lieutenant Governor constitutionally protected, 38-41

Constitution Act, 1867 requiring unanimous consent to amend offices, 39

limitation on ability of legislatures to delegate being untenable, 41

restriction presenting obstacle to delegation of legislative powers, 39-40

section 96: federal appointment of superior court judges, 42-51

historical inquiry, 44-48

institutional setting, 49-50

judicial function, 49

privative clauses, 50-51

statutory delegate's jurisdiction to decide constitutional issues and grant constitutional remedies, 51-61

statutory delegate's jurisdiction to decide constitutional questions, 52-56

statutory delegate's jurisdiction to grant constitutional remedies, 56-61

Mills test, 58-59

CONSTITUTIONAL ASPECTS OF CANADIAN ADMINISTRATIVE LAW —

Continued

- s. 52 vs. s. 24 remedies, 56-58
- generally, 51, 61
- statutory grants of jurisdiction to decide constitutional issues, 51-52
- standards of review, 516-517
- United States: contrasting model, 28

CROWN IMMUNITY, 743-749

DAMAGES, 700-756 *See also* PRIVATE LAW REMEDIES AND TORT LIABILITY OF PUBLIC AUTHORITIES

DELEGATION OF GOVERNMENTAL POWERS, STATUTORY

- characterization of delegated powers, reasons for, 101-102
- discretionary powers, delegation of, 102-107
 - ambit of discretion, 103-104
 - duties compared with discretionary powers, 103
 - pre-conditions to exercise of discretion, 104-105
 - “quasi-judicial” power, concept of, 105-107
 - quasi-judicial vs. administrative powers distinction less important, 106
 - reasons for delegation, 102
 - section 96 prohibition, 107
 - talisman guiding Parliament not available, 107
- generally, 4-5
- institutions of government, 95-99
 - executive or administrative branch, 97-99
 - Crown, Governor in Council and ministers, 97
 - independent boards and tribunals, 98-99
 - judicial branch, 96-97
 - legislative branch, 95-96
- institutions vs. functions of government, 99-101
- subordinate legislation, 107-108

DUTY TO BE FAIR *See* BIAS RULE, NATURAL JUSTICE AND THE DUTY TO BE FAIR and *AUDI ALTERAM PARTEM* RULE

ERRORS OF LAW ON FACE OF RECORD

- discretion to refuse *certiorari*, 507
- errors of law vs. errors of fact, 495-500
 - error of fact when reviewable, 499
 - lack of evidence, 499-500
 - what is “error of law”, 495-499
- introduction, 485-486
- jurisdictional and intra-jurisdictional errors of law, distinction between, 487-488

ERRORS OF LAW ON FACE OF RECORD — *Continued*

- limitations on availability of *certiorari* to correct non-jurisdictional errors, 488-490
 - ambit of *certiorari* against administrative decisions, 488
 - whether statutory delegate involved, 488-490
- privative clauses, effect of, 500-503
 - generally, 500-501
 - preliminary or collateral matters, 501
 - unreasonable interpretation of law, effect, 501-503
- record, 490-494
- standards of review, curial deference and intra-jurisdictional errors of law, 503-507
- summary on intra-jurisdictional errors of law, 508

FUNCTIONAL AND PRAGMATIC APPROACH *See* STANDARDS OF REVIEW**GROUNDINGS FOR JUDICIAL REVIEW GENERALLY**

- ambit of jurisdiction, problems in determining, 152-159
 - delegate's actions incorporated into legislation, 156-159
 - grant of delegated powers in broad or subjective terms, 154-156
 - limits of delegated power being difficult to determine, 154
 - subjective grant of power being difficult to review, 154-156
 - preliminary or collateral matters, 153-154
 - statutory intent, implied, 152-153
- discretion to refuse remedy where grounds for judicial review existing, 160
- introduction, 6-10, 149-150
- judicial review, jurisdiction and privative clauses, 151-152
- jurisdiction, "narrow" and "wide" meanings of, 150-151
- summary, 160
- ultra vires* action void or voidable, 159-160

HABEUS CORPUS, 623-625 *See also* PREROGATIVE REMEDIES**INJUNCTIONS**, 665-686 *See also* PRIVATE LAW REMEDIES AND TORT LIABILITY OF PUBLIC AUTHORITIES**INSTITUTIONAL BIAS** *See* BIAS RULE**JUDICIAL REVIEW** *See* ERRORS OF LAW ON FACE OF RECORD and GROUNDINGS FOR JUDICIAL REVIEW GENERALLY**JUDICIAL REVIEW PROCEDURE ACT (ONTARIO)**, Appendix 3**JURISDICTION** *See also* GROUNDINGS FOR JUDICIAL REVIEW GENERALLY

- abuse of discretion, losing jurisdiction through, 183-214
 - fettering discretion, 207-213
 - contractual fetters on exercise of discretion, 212
 - generally, 207-209

JURISDICTION — *Continued*

- inflexible policy fettering on exercise of discretion, 209-211
- reference to other governmental policies, 212-213
- improper intention, 187-198
 - application, 197-198
 - bad faith, 192-194
 - generally, 187-188
 - irrelevant considerations, 194-197
 - unauthorized or ulterior purpose, 188-192
- improper result, 199-206
 - discrimination, 203-204
 - retroactivity, 204-205
 - uncertainty, 205-206
 - unreasonableness, 200-203
- inadequate material, acting on, 198-199
- introduction, 184-187
 - types of abuses, 184-185
- misconstruing law, 206-207
- standard of review of discretionary decisions, 213
- summary, 214
- defects in acquiring, 163-181
 - constitution of delegate 164-172
 - appointment of members of statutory delegate, 171-172
 - sub-delegation, 165-171
 - whether delegator can continue to exercise delegated functions, 170-171
 - whether sub-delegation permitted, 165-169
 - whether valid sub-delegation has taken place, 169-170
 - evidentiary considerations, 179-180
 - generally, 163-164, 180-181
 - preliminary or collateral matters, 174-179, 180
 - Anisimic*, 174-175
 - Bell*, 175
 - CUPE*, 177
 - Dunsmuir*, 179
 - Parkhill Bedding*, 175-177
 - Syndicat*, 177-179
 - Vavilov*, after, 180
 - statutory requirements, compliance with, 172-174
 - mandatory vs. directory statutory provisions, 173-174
 - substantive ultra vires, 164

MANDAMUS, 632-635 *See also* PREROGATIVE REMEDIES

MISFEASANCE IN PUBLIC OFFICE, 724-735 *See also* PRIVATE LAW
REMEDIES AND TORT LIABILITY OF PUBLIC AUTHORITIES

NATURAL JUSTICE AND THE DUTY TO BE FAIR, *See also* AUDI

ALTERAM PARTEM RULE and BIAS RULE

- breach of duty, effect, 256-258
- delay and abuse of process, 270-273
- development of duty to be fair in Canada, 231-245
 - Campeau*, 235-236
 - Harvie*, 237-239
 - Martineau (No. 2)*, 241-245
 - McCarthy*, 239-240
 - Nicholson*, 231-235
- development of duty to be fair in England, 228-231
 - Re H.K.*, 231
 - Ridge v. Baldwin*, 228-231
- duty to be fair and “principles of fundamental justice”, 258-259
- historical background, 219-228
 - Cooper and Rice*, 221-222
 - erosion of principles, 223-228
 - Canada
 - Alliance*, 225-226
 - Calgary Power v. Copithorne*, 226-228
 - Saltfleet v. Knapman*, 226
 - focusing on identity of decision-maker, 223-224
 - “super-added duty to act judicially”, 224-225
 - “judicial or quasi-judicial”, origin of phrase, 219-221
- introduction, 218-219
- legislative functions and decisions of cabinet, applicability of duty, 248-254
 - Cabinet, 251-254
 - legislative powers and duty to be fair, 248-251
- merits of decision, applicability of duty, 254-256
- modern concept of duty to be fair, 245-248
- public employment, 260-270
 - Cyr*, 267-268
 - Generally, 269-270
 - Knight v. Indian Head School Division No. 19*, 262-265
 - Laval*, 268-269
 - Martin*, 268
 - New Brunswick (Board of Management) v. Dunsmuir*, 265-267
 - Nicholson v. Haldimand-Norfolk*, 261-262
 - Ridge v. Baldwin*, 260-261
- standards of review, 273-276
- summary, 276

POST-HEARING PROCESSES, 365-416 *See also* AUDI ALTERAM PARTEM
RULEPRE-HEARING PROCEDURES, 284-328 *See also* AUDI ALTERAM PARTEM
RULE

PREROGATIVE REMEDIES

- Alberta application for judicial review, 655-658
 - appeal, 658
 - originating application, 656
 - record required to be filed by delegate, 657
 - time limit, 656
- certiorari* and prohibition, 625-632
 - availability now to control exercise of statutory authority, 628
 - certiorari* vs. prohibition, 625
 - Federal Court of Appeal's jurisdiction, 632
 - historical development, 625-628
 - illegal governmental action, controlling, 629
 - limitations on availability of remedies, 629-630
 - public law field, confined to, 628
 - supervisory role of superior courts, 626
 - void decision, 627
- conclusion, 660
- discretionary nature of prerogative remedies, 647-655
 - alternative remedies, availability of, 654-655
 - clean hands and general conduct of parties, 650-651
 - delay, unreasonable, 649-650
 - futility, mootness and non-material errors, 651-653
 - generally, 647-648
 - waiver and acquiescence, 648-649
- Federal Courts Act*, 658-659, Appendix 5
 - Federal Court of Appeal's jurisdiction, 659
 - grounds specifically articulated, 659
 - listed federal delegates, 658
- habeas corpus*, 623-625
- introduction, 619-623
- mandamus*, 632-635
 - compelling performance of statutory duty owed to applicant, 632
 - conditions to be fulfilled before order issued, 632-635
 - Crown not subject to *mandamus*, 635
 - Federal Court of Appeal's jurisdiction, 635
- quo warranto*, 636
- standing, 636-647
 - common law, standing under, 638-642
 - generally, 636-638
 - intervention in judicial review application, 647
 - legal personality and standing of statutory delegates, 644-646
 - public interest standing, 642-643
 - statutory provisions, standing under, 643-644
 - timing, 646

PRIVATE LAW REMEDIES AND TORT LIABILITY OF PUBLIC AUTHORITIES

PRIVATE LAW REMEDIES AND TORT LIABILITY OF PUBLIC AUTHORITIES — *Continued*

- class actions, 735-736
- conclusion, 755-756
- damages, 700-756
 - constitutional aspect of damages, 736-740
 - immunities, 741-755
 - Crown immunity, 743-749
 - generally, 664-665
 - judicial officers, 750-752
 - members of Parliament and provincial legislatures, 749-750
 - public officials acting legislatively, 752-754
 - public officials acting quasi-judicially, 754-755
 - statutory immunity, 741-743
 - introduction, 581, 700-703
 - misfeasance in public office, 724-735
 - development of tort, 726-731
 - Finney*, 733-734
 - generally, 724-726, 734-735
 - Odhavji Estate*: law on misfeasance crystallized, 731-732
 - negligence, 704-724
 - generally, 704-706, 723-724
 - Canadian law evolution of, 709-721
 - Brown, Swinamer*, 713-714
 - Cooper, Edwards*, 715-719
 - Imperial Tobacco*, 719-721
 - Just* case, 712-713
 - Kamloops* case, 709-712
 - need for new administrative law approach to public liability claims, 722
 - starting point: *Anns*, 706-709
 - nominate torts, 703-704
- declarations, 686-695
 - availability, 690-694
 - discretionary remedy, 694
 - practical value, 693-694
 - requirement of justiciability, 691-693
 - Crown liability, 694-695
 - nature of declarations, 686-690
 - standing, 695-698
 - current test for public interest standing, 698-700
 - liberal approach to question of standing, trend to, 696-698
 - summary, 698
 - traditional rule, 695-696
- injunctions, 665-686
 - availability of injunctive relief, 667-670

PRIVATE LAW REMEDIES AND TORT LIABILITY OF PUBLIC AUTHORITIES — *Continued*

- interim form of relief, 705
- mandatory injunctions granted to enforce public law rights, 705-706
- parliamentary proceedings, 672-673
- use by Attorney General or public authorities, 671-672
- Crown immunity, 679-686
 - common law immunity, 679-681
 - statutory immunity, 681-686
- introduction, 665
- nature of injunctions, 665-667
 - discretionary nature of injunctions, 678-679
 - interim or interlocutory injunctions, 673-677
 - importance of, 673-677
 - test for, 674-676
 - undertaking in damages, 676-677
 - mandatory injunctions, 665-666
 - permanent injunctions, 666
 - prohibitory injunction, 666
- stay of proceedings, 677-678
 - discretionary nature of stay, 678-679

PRIVATIVE CLAUSES, *See also* STANDARDS OF REVIEW

- constitutional aspects, 50-51
- defined, 16
- effect, 16-18, 500-503
- generally, 583, Appendix 7
- jurisdiction, standard of review and, 151-152

PROHIBITION, 625-632 *See also* PREROGATIVE REMEDIES, *certiorari* and prohibition, and PRIVATE LAW REMEDIES AND TORT LIABILITY OF PUBLIC AUTHORITIES, injunctions

QUO WARRANTO, 636 *See also* PREROGATIVE REMEDIES

REASONS FOR DECISION, 388-407 *See also* *AUDI ALTERAM PARTEM* RULE, post-hearing processes

REGULATIONS *See* SUBORDINATE LEGISLATION

REMEDIES GENERALLY *See also* PREROGATIVE REMEDIES and PRIVATE LAW REMEDIES AND TORT LIABILITY OF PUBLIC AUTHORITIES

- Alberta procedural reforms, 581-582
- appeals, 579-580
- federal procedural reforms, 582
- Ontario procedural reforms, 581
- prerogative remedies, 580
- private law remedies, 581

REMEDIES GENERALLY — *Continued*

- privative clauses, 583
- substantive reforms, 582

RIGHT TO COUNSEL, 348-356 *See also* *AUDI ALTERAM PARTEM* RULE,
oral hearing processes

STANDARDS OF REVIEW

- consensual tribunals, applicability of standards of review analysis to, 573-574
- constitutional and conceptual basis for different standards of review, 516-517
 - traditional view of judicial review, 516-517
- distinction between standard of review and content of duty of procedural fairness, 554-560
- expertise, concept and role of, 544-554
 - different types, 546-547
 - establishing expertise, 549-550
 - expertise in *Pushpanathan*, 545-546
 - indicator of legislative intent, as, 550
 - role in *Vavilov*, 550-554
 - relative expertise, 547-549
- historical development of different standards, 518-525
 - complexity of modern standards of review, 523-525
 - Toronto (City) v. C.U.P.E., Local 79*, 523-525
 - “correctness test” applied to some matters, 521
 - English extension: all errors of law being jurisdictional, 519-520
 - “functional and pragmatic” test for identifying jurisdictional matters, 521
 - four *Pushpanathan* factors to be used, 522
 - high water mark for intensive judicial review: *Anisminic*, 518-519
 - low water mark for judicial review in Canada, 520
 - spectrum of standards of review, 522
 - standards along spectrum, 523
 - three standards of review: *Dr. Q* and *Ryan* cases, 523
- introduction, 514-516
- reasonableness standard of review and discretionary decisions, 565-571
 - court does not weigh relevant factors, 569-570
 - Figliola*, 570-571
 - generally, 565-566
 - identifying relevant factors: *Retired Judges*, 566-569
- simplification in *Dunsmuir*, 526-536
 - background, 526-527
 - decision by Justice Binnie, 529-531
 - decision by Justice Deschamps, 532-533
 - majority decision, 527-529
 - refinements after decision, 533
 - unresolved questions, 533-536
- summary on standards of review, 574-575

STANDARDS OF REVIEW — *Continued*

- traditional view of judicial review, 516-517
- true questions of jurisdiction, 542-544
- Vavilov*, application of reasonableness standard of review to questions of law, 563-565
- Vavilov*, re-framing of standards of review analysis, 536-542
 - generally, 536-537
 - majority's new framework, 537-539
 - majority's response to minority's criticism, 541-542
 - minority's disagreement about new conceptual framework, 540-541
- Vavilov*, standard of review for adequacy of reasons, 561-563
- Vavilov*, standard of review for validity of subordinate legislation, 571-573

STATUTORY POWERS PROCEDURE ACT (ONTARIO), Appendix 2**SUBORDINATE LEGISLATION**

- challenging subordinate legislation, 139-143
 - composition or procedure of delegate, 141-142
 - conditions precedent, 141
 - conflict with other Acts, 142
 - parent Act repealed, 141
 - parent Act *ultra vires*, 141
 - restrictions, implied, 141
 - good faith, 142
 - legitimate expectations doctrine, 143
 - reasonableness, 142
 - ultra vires*, 139-141
- forms of, 117
- growth of subordinate legislation, 112-113
- introduction, 110
- meaning, 110-111
- municipal bylaws: particular type of subordinate legislation, 132-134
- Parliamentary scrutiny of subordinate legislation, 134-138
 - generally, 134
 - Standing Joint Committee, 134-138
 - disallowance procedure, statutory, 136
 - goals, 137
 - recommendations, 135-136
 - terms of reference, 134-135
- power to enact, 113
- reasons for subordinate legislation, 111-112
- regulations, 117-132
 - filing and publication of,
 - definition of "regulation", 117-120
 - Alberta definition, 117-118
 - federal definition, 120-122
 - generally, 131-132

SUBORDINATE LEGISLATION — *Continued*

- power to enact, 122-123
- preparation of, 116, 123-131
- subordinate legislation as effective as parent legislation, 114-115
- summary, 143

TORT LIABILITY OF PUBLIC AUTHORITIES *See* **PRIVATE LAW
REMEDIES AND TORT LIABILITY OF PUBLIC AUTHORITIES**

