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CONSTITUTIONAL LITIGATION IN CANADA

Lokan & Fenrick
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This one volume looseleaf is a comprehensive resource on the topic of constitutional litigation. It features a full and systematic treatment of the issues that arise at all stages of a proceeding from a practical perspective. Both practitioners and students alike will find included precedents, such as pleadings, affidavits, and facta, useful.

This release features updates to the Appendix WP — Words and Phrases.

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Highlights

- **WORDS AND PHRASES—CONSTITUTIONAL OBLIGATIONS—Nova Scotia**—[T]he Governor in Council referred the following question ... to the Nova Scotia Court of Appeal, pursuant to the *Constitutional Questions Act* [R.S.N.S. 1989, c. 89]: “Is the infrastructure which protects the interprovincial transportation, trade and communication links across the Chignecto Isthmus within the exclusive Legislative Authority of the Parliament of Canada?” ... Nova Scotia’s argument, in part, relied on what it referred to as “unwritten constitutional principles”. As it described them, the principles create a constitutional obligation on Canada to maintain a link between Nova Scotia and the rest of the country.
- Canada says this does not fall within the scope of the Question and it did not deal with this alleged obligation in its submissions. Canada also says if this issue was in play, it would have included additional materials in the Record. We agree with Canada that this was not included in the scope of the reference as drafted, and we should not be addressing it. Legislative jurisdiction and constitutional obligations are not the same. Although Nova Scotia presents this as an alternative argument, we cannot answer a question that has not been asked. (*Reference re Constitutional Questions Act (NS) Chignecto Isthmus*, 2025 CarswellNS 464 (N.S. C.A.))
- **WORDS AND PHRASES DOCTRINE OF INTERJURISDICTIONAL IMMUNITY—Supreme Court of Canada**—“The doctrine of interjurisdictional immunity serves to protect the core of an exclusive power – either federal or provincial – from being impaired by the other level of government. It is rooted in the notion of exclusivity that appears in the text of ss. 91 and 92 of the *Constitution Act, 1867* [30 & 31 Victoria, c.3 (U.K.)] (...) and is thus anchored in our law, since the primacy of the written Constitution is ‘one of the fundamental tenets of our constitutional framework’...” (*Opsis Services aéroportuaires inc. c. Québec (Procureur général)*, 2025 CarswellQue 4534 (S.C.C.))
- **WORDS AND PHRASES—IMPAIRMENT—Supreme Court of Canada**—“Impairment implies that there are adverse consequences, and it must therefore involve more than mere effects, without necessarily amounting to paralysis or sterilization (...). The core of the exclusive power of Parliament or a provincial legislature must be seriously or significantly trammled...” (*Opsis Services aéroportuaires inc. c. Québec (Procureur général)*, 2025 CarswellQue 4534 (S.C.C.))
- **WORDS AND PHRASES—PUBLIC INTEREST IMMUNITY—Alberta**—“[P]ublic interest immunity is not a ‘class immunity’. It does not just attach to a whole class of records such as ‘Cabinet documents’. In each case the justifications for preserving the confidentiality of Cabinet deliberations ... must be weighed against the competing public policy in favour of disclosure. The assertion by the Crown that a record should be protected by public interest immunity is not conclusive, because it is up to the court to determine whether the record should be disclosed.” (*Black Eagle Mining Corporation v. Alberta*, 2025 CarswellAlta 115 (Alta. C.A.))