

# Index

## ABUSE OF PROCESS

- Authority of agencies to deal with, § 35:32
- Contempt, § 40:13 to § 40:18
- Delay causing, § 16:75 to § 16:82
- Meaning, § 16:75 to § 16:82
- Mootness, § 16:115, § 35:32
- Power to order rehearing, § 35:32
- Power to order removal of counsel, § 16:165
- Relitigation, § 16:114
- Waiver as, § 28:7

## ACCESS AND PRIVACY LEGISLATION

- Access procedures, § 32:3
  - notice, § 32:3
- Access to Information Act, § 32:1
- Agencies covered by legislation, § 32:4
  - institution, § 32:4
  - records, § 32:4
- Appeals
  - adjudication, § 32:3
  - from head's decision, § 32:3
  - hearing, § 32:3
  - judicial review, § 32:3
  - mediation, § 32:3
  - order, § 32:3
  - report, § 32:3
  - review, § 32:3
- Confidentiality of third party information, § 32:3
- Constitutional rights, § 32:3
- Exemptions
  - abortion services, § 32:3
  - advice of public servant, § 32:3
  - auditor general, information in possession of, § 32:3
  - cabinet records, § 32:3
  - closed meetings, § 32:3
  - compelling public interest, § 32:3
  - confidential evaluations, § 32:3
  - conservation, § 32:3
  - crime, profiting from, § 32:3
  - defence, § 32:3

## ACCESS AND PRIVACY

### LEGISLATION—Cont'd

- Exemptions—Cont'd
  - economic interests, § 32:3
  - harm to species, § 32:3
  - information to be published, § 32:3
  - law enforcement, § 32:3
  - personal privacy, § 32:3
  - relations with other governments, § 32:3
  - safety, danger to, § 32:3
  - security of property, § 32:3
  - severability provision, § 32:3
  - solicitor-client privilege, § 32:3
  - tax information, § 32:3
  - testing/audit matters, § 32:3
  - third party information, § 32:3
  - when inapplicable, § 32:3
- General layout of access legislation, § 32:3
  - definitions, § 32:3
  - disclosure details, § 32:3
  - exemptions, § 32:3
  - goals, § 32:3
  - procedures, § 32:3
- Head of institution
  - duty to provide information, § 32:3
  - duty to provide reply, § 32:3
- Health information legislation, § 32:1
- Historical development
  - Canadian overview, § 32:2
  - Williams Report, § 32:2
- Notice
  - given by head, § 32:3
  - offences, § 32:3
  - of refusal, § 32:3
  - to affected persons, § 32:3
- Paramouncy of access legislation, § 32:3
- Personal information
  - access, § 32:3
  - exceptions, § 32:3
  - request for, § 32:3

**ACCESS AND PRIVACY**

**LEGISLATION—Cont'd**

- Personal Information and Electronic Documents Act (Canada), **APP B1, § 32:1, § 32:3**
  - application of Act, **§ 32:3**
  - individual's right to own personal information, **§ 32:3**
  - publicly available information, **§ 32:3**
  - restrictions on collection, use and disclosure of personal information, **§ 32:1, § 32:3**
- Privacy Act (Canada), **§ 32:1**
  - hearings, conduct of, **§ 32:3**
  - powers, **§ 32:3**
  - role, **§ 32:3**
  - salaries, **§ 32:3**
  - staff, **§ 32:3**
- Private sector legislation, **§ 32:1**
- Provincial legislation
  - Alberta, **§ 32:1**
  - British Columbia, **§ 32:1**
  - New Brunswick, **§ 32:1**
  - Newfoundland, **§ 32:1**
  - Northwest Territories, **§ 32:1**
  - Nova Scotia, **§ 32:1**
  - Quebec, **§ 32:1**
  - Saskatchewan, **§ 32:1**
  - Yukon, **§ 32:1**
- Public sector legislation, **§ 32:1**
- Records
  - copy of, **§ 32:3**
  - inspection of, **§ 32:3**
  - request for, **§ 32:3**
- Reply, **§ 32:3**
  - appeal from, **§ 32:3**
  - reference, **§ 32:3**
- Requests, **§ 32:3**
  - notice to, **§ 32:3**
  - third party information, **§ 32:3**
  - written reply to request third party objection by, **§ 32:3**
  - written request, **§ 32:3**

**ACCOUNTANTS**

- Appointment to agencies, **§ 4:32**
- Canadian Transport Commission, **§ 19:18**

**ADDRESSES**

- Attorneys General, **§ 38:163**

**ADMINISTRATIVE AGENCIES**

- Advantages of, **§ 2:4**
- American agencies
  - Administrative Law Judges, **§ 41:4 to § 41:8**
    - rule making by, **§ 41:9 to § 41:13**
- Appellate agencies, **§ 2:6 to § 2:8**
- Appellate jurisdiction of, constitutionality, **§ 43:5**
  - general, **§ 43:4 to § 43:8**
- Background, **§ 4:2**
- Challenging agency decisions, **§ 44:21 to § 44:30**
- Characteristics of, **§ 4:3, § 5:4**
  - general, **§ 43:2**
  - non-operating agencies, **§ 5:15**
- Concerns
  - appointment of members, **§ 8:5**
    - general, **§ 8:1**
  - independence of agencies, **§ 8:6**
  - lack of comparative standards, **§ 8:4**
  - lack of consensus
    - lack of coordination, **§ 8:9**
    - lack of training, **§ 8:7**
  - powers of agencies, **§ 8:3**
  - purpose of agencies, **§ 8:2**
- Contempt power, **§ 46:20**
- Contracted to "tribunals," **§ 2:7**
- Courts compared, **§ 1:4, § 1:5, § 19:1, § 41:2**
- "Decisions" of, **§ 46:19**
- Defined, **§ 2:1, § 2:7**
- Differences between agencies, **§ 41:2**
- Enforcement of orders, **§ 46:19**
- Expectations of, **§ 2:5**
- Functions of, **§ 1:2, § 1:3, § 2:6 to § 2:8**
- Funding, **§ 3:3**
- Historical development, **§ 1:1, § 1:2**
- Independence of, **§ 3:1 to § 3:3, § 43:2, § 47:3**
- Influences upon
  - cabinet petitions, **§ 3:17**
  - communications, **§ 3:13**
    - general, **§ 3:4 to § 3:17**
  - government policies, **§ 3:9**
  - judicial interpretation, **§ 3:6**
  - memorandum of understanding, **§ 3:14**
  - parliamentary and legislative review, **§ 3:15**
  - policy directives, **§ 3:7**

**ADMINISTRATIVE AGENCIES****—Cont'd**

- Influences upon—Cont'd
  - policy guidelines, § 3:8
  - statutory limitations, § 3:5
- Interaction with other agencies, § 11:1, § 11:4
- Interim decisions, § 46:25
- Interrelation with government, § 2:5, § 43:2, § 44:10 to § 44:18
  - memoranda of understanding, § 44:11 to § 44:18
- Investigative powers
  - improper use of, § 16:212
  - unreasonable search and seizure, § 16:205 to § 16:211
- Local government agencies, § 2:6 to § 2:8
- Mandating legislation, § 8:8, § 8:10, § 43:2
- Natural resource agencies, § 2:6 to § 2:8
- Nature of, § 4:1
- Numbers of, § 1:2
- Performance quality, § 43:2
- Planning sessions, § 4:41 to § 4:48
- Powers, recommended, § 46:1 et seq.
- Power to control own procedure, § 13:1
- Problems with, § 43:2
- Product/commodity marketing agencies, § 2:6 to § 2:8
- Public access, § 44:20
- Publication of decisions, § 21:17
- Reasons for creation, § 2:3 to § 2:5, § 43:2
- Reasons for growth, § 1:2
- Regulatory agencies, § 2:6 to § 2:8
- Review agencies, § 2:6 to § 2:8
- Review procedure
  - Ontario, § 3:16
  - procedural guidelines, § 3:16
  - “Rule-making” by, § 46:12
- Socio-economic agencies, § 1:3, § 2:6 to § 2:8
- Specialization, § 1:5
- Standing before a tribunal, § 13:43
- Structural changes required
  - general, § 44:1
  - program evaluation, § 44:2
  - “sunsetting,” § 44:3
- Structure of ministerial agencies, § 2:7

**ADMINISTRATIVE AGENCIES****—Cont'd**

- Types of agencies, § 2:8, § 43:2
  - adjudicative, § 2:5, § 2:8
  - administrative, § 2:8
  - advisory, § 2:8
  - disciplinary, § 2:8
  - operational, § 2:8
  - regulatory, § 2:8

**ADMINISTRATIVE AGENCY  
ADVISORY COMMISSIONS**

## Agency problems

- accountability to government, § 43:2
- government misunderstanding of agency purposes, § 43:2
- independence of agencies, § 43:2
- legislative differences, § 43:2
- performance quality, § 43:2
- quality of appointments, § 43:2
- salaries of agency members, § 43:2
- training of members, § 43:2
- American agencies, § 41:4 to § 41:8
- Constitutionality of, § 43:4 to § 43:8
- Functions
  - creation of performance standards, § 43:3
  - funding of agencies, § 43:3
  - produce model agency rules, § 43:3
  - recommendation of appointments, § 43:3
  - review of agency decisions, § 43:3
  - training of agency members, § 43:3
- Legislation
  - need for, § 41:9 to § 41:13, § 43:1
  - recommended reform, § 41:4 to § 41:8

**ADMINISTRATIVE LAW**

- Defined, § 1:6, § 2:1
- Historical development North America, § 1:1
- Operational advantages, § 1:4
- Public law aspect, § 1:3
- Views of
  - Arthurs concept of pluralism, § 1:10
  - Canada Law Reform Commission, § 1:13
  - Charter of Rights view, § 1:12
  - Dicey-McRuer concept, § 1:12
  - Laskin-Dickson concept of judicial deference, § 1:11

**ADMINISTRATIVE LAW—Cont'd**

Views of—Cont'd  
Willis concept of functionalism, § 1:9

**ADMINISTRATIVE LAW JUDGES**

American agencies, § 41:4 to § 41:8

**ADMINISTRATIVE PROCEDURE  
STATUTES**

Act Respecting Administrative Justice  
(Quebec), § 50:81 to § 50:83

Act Respecting Administrative Justice  
(Quebec - Bill 130), APP B16,  
§ 50:87, § 50:88

Adjudicative Tribunals Accountability,  
Governance and Appointments Act,  
2009 (Ontario), § 50:2 to § 50:64

Administrative Procedures Act (Alberta),  
APP B8 § B8:1, § 50:65 to § 50:79

Administrative Tribunals Act (British  
Columbia), § 50:80, § 51:1 et seq.

Judicial Review Act (Prince Edward  
Island), B17:1

Judicial Review Procedure Act (British  
Columbia), APP B11

Judicial Review Procedure Act (Ontario),  
APP B14

Proposed federal administrative procedure  
statute, § 50:84 to § 50:86

Regulated Health Professions Act  
(Ontario), APP B6

Statutory Powers and Procedure Act  
(Ontario), APP B16

**ADVISORY BODIES**

Generally, § 43:2

**AGENCY CONSULTANTS**

Accountants, as, § 23:8

Architects, as, § 23:8

Contract for outside consultant, APP 14A

Economists, as, § 23:8

Fees, § 23:9

Need for

experience of agency, § 23:4

expertise of agency staff, § 23:3

general, § 23:1 to § 23:6

legislative authority, § 23:2

parties' participation level, § 23:6

subject matter of hearing, § 23:5

Planners, § 23:8

**AGENCY MEMBERS**

See also Appointments

**AGENCY MEMBERS—Cont'd**

Appointment process (Ontario), § 4:10 to  
§ 4:12

Appointments, § 44:4 to § 44:8

Authority to appoint multiple decision  
general, § 5:16

makers, APP 4A

procedure, § 44:7, § 44:8

Bad behavior, § 4:74

Chair

accountability, § 5:5

appointments, § 5:5

authority, statutory descriptions of,  
§ 5:3, § 5:6 to § 5:10

chief executive officers, § 5:11 to  
§ 5:16

definitions of, § 5:11 to § 5:16

chief operating officer and board  
secretary, § 5:14

manager, § 5:13

memorandum of understanding,  
§ 5:10

responsibilities, § 5:3, § 5:5, § 5:17  
to § 5:37

adjudicative side of agency,  
management of, § 5:29 to  
§ 5:37

administration, management of,  
§ 5:18 to § 5:28

Conduct of, § 4:40

Conflict of interest, § 4:38

Continuing education of, § 4:37

Daily routine, § 4:39

Failure to follow policy guidelines  
penalty, § 10:27

Independence of, APP 4F

Model code of conduct (sample), APP  
50F

Oath of secrecy, APP 4D

Other public service, § 4:36

Ouellette Report recommendations,  
§ 2:12, § 2:19

Performance

competency framework (sample), APP  
50C

Performance appraisal (sample), APP 5F

Performance management guidelines  
(sample), APP 50D

Performance management program  
(sample), APP 50C

**AGENCY MEMBERS—Cont'd**

- Planning sessions
  - agenda, § 4:43
  - duration, § 4:44
  - frequency of, § 4:48
  - general, § 4:41 to § 4:48
  - location, § 4:45
  - objectives, § 4:42
  - participation in, § 4:46
  - structure of, § 4:47
- Procedure for appointment, § 4:73
- Public hearing experience, § 4:27
- Quality of appointments, § 43:2
- Reasonable cause, § 4:74
- Role of, § 16:12
- Salaries of, § 43:2, § 44:9
- Security of tenure, § 43:2
- Technical knowledge requirements, § 4:26
- Tenure, § 44:4 to § 44:8
- Termination
  - incomplete hearings, § 28:10
- Training of, § 4:49 to § 4:71, § 8:7, § 43:2
  - core courses, § 4:50
    - adjudicator's role, § 4:61
    - administration, § 4:54
    - administrative law, § 4:56
    - Charter of Rights, § 4:57
    - communication, § 4:55
    - decision writing, § 4:64
    - general government, § 4:51
    - hearing preparation, § 4:59
    - implicit bias, § 4:71
    - Information and Privacy Commissioner, § 4:53
    - judicial review, § 4:53
    - media relations, § 4:69
    - mock hearings, § 4:65
    - Ombudsman, § 4:52
    - “pitfalls,” § 4:70
    - post-hearing procedures, § 4:63
    - practice and procedure, § 4:60
    - rehearings and appeals, § 4:66
    - rules of evidence, § 4:62
    - stating a case, § 4:68
    - statutory interpretation, § 4:58

**AGENCY RULES**

- Authority to establish, § 46:4

**AGENCY STAFF**

- Adjudicating boards, § 19:8, § 19:10
- Disclosure of staff reports, § 28:11, § 28:61, § 28:62
- Examples
  - Alberta Public Utilities Board, § 19:17
  - Canadian Radio-television and Telecommunications Commission, § 19:19
  - Canadian Transport Commission, § 19:18
  - National Energy Board, § 19:20
  - Ontario Energy Board, § 19:21
- Hearings, involvement in, § 19:12 to § 19:15
  - advance public interest, § 19:13
  - forecasting, § 19:15
  - review applications, § 19:14
- Non-adjudicating boards, § 19:7, § 19:9
- Reports
  - disclosure of, § 28:11, § 28:61, § 28:62
- Responsibilities, § 19:11
- “Staff defined, § 19:2 to § 19:5
- Standards, § 19:5
- Use of staff
  - court decisions, § 19:3
  - courts compared, § 19:1
  - hearings, § 19:12 to § 19:15

**AGREEMENTS**

- Agreements between parties, § 16:134
- Staff recommendations, § 16:134

**ALBERTA LABOUR RELATIONS BOARD**

- Stare decisis, and, § 10:3

**ALBERTA PUBLIC UTILITIES BOARD**

- Hearing process, § 19:17
- Organization, § 19:17
- Staff, § 19:17

**ALTERNATIVE DISPUTE RESOLUTION**

- See also Private Courts
- Administrative Dispute Resolution Act, 1990
  - concerns about ADR, § 41:10
  - features of ADR, § 41:12
  - implementation, § 41:13
  - legal issues, § 41:11

**ALTERNATIVE DISPUTE**

**RESOLUTION—Cont'd**

Administrative Dispute Resolution Act, 1996, § 41:15

American experience activities, § 41:7

Administrative Conference of United States, § 41:4 to § 41:8

demise, § 41:14

general, § 41:4 to § 41:8

importance, § 41:8

mandate, § 41:5

structure, § 41:6

Conciliation, § 41:18, § 46:10

Conferences, § 41:19, § 46:7

Courts and administrative agencies compared, § 41:2

General, § 41:1 to § 41:3, § 41:16, § 41:20

Mediation, § 41:18, § 46:10

in labour arbitration context, § 48:6

Need for, § 41:1 to § 41:3

Negotiated settlements, § 7:11, § 41:17

Obstacles to, § 41:1 to § 41:3

Workshops, § 41:19

**AMICUS CURIAE**

Generally, B:2

**ANTI-AVOIDANCE**

Generally, B:3

**APPEALS**

See also Judicial Review

Administrative

constitutionality, § 43:5

general, § 43:4 to § 43:8

self-governing bodies, § 49:8

Burden of proof, § 37:29

Discretion, appellate review of, § 37:26 to § 37:28

Effect of appeal, § 37:2 to § 37:9

redress (standard of review), § 37:7 to § 37:9

stays, § 37:3 to § 37:6, § 38:140 to § 38:148

determining if appeal stays decision, § 37:4

effect of stay, § 37:5

individual criteria, § 38:144

balance of convenience, § 38:147

irreparable harm, § 38:146

**APPEALS—Cont'd**

Effect of appeal, § 37:2 to § 37:9

—Cont'd

stays, § 37:3 to § 37:6, § 38:140 to § 38:148—Cont'd

individual criteria, § 38:144—Cont'd

serious question, § 38:145

injunctive relief, same test, § 38:143

relationship between a stay and an interim injunction, § 38:143

suspending agency proceedings or order, § 38:140

test for stay, § 37:6, § 38:142

Evidence on appeal

admission of new evidence, § 37:24

new issues raised on appeal, § 37:23, § 38:149

Judicial appeals, § 44:25, § 46:35

Leave

appealing decision on leave, § 37:17

generally, § 37:16, § 37:17

requirement not contrary to Charter, § 7:3

test for granting, § 37:16

Nature of appeal, § 37:25

Ontario Energy Board, from, § 7:7

Right of appeal, § 37:1, § 37:10, § 44:25, § 46:35

Standard of review, § 37:30

Stays pending, § 37:2 to § 37:9

Timing of appeal and time limits

before agency proceedings completed, § 37:11, § 37:12

interim and final decisions, § 37:12

prematurity, § 37:11

decision that first embodies decision to be appealed, § 37:18

extending time limits, authority, § 37:21

existence of authority, § 37:21

test to be applied, § 37:22

mandatory or directory time limit to appeal decision, § 37:19

when time limit begins to run, § 37:20

Who can appeal, § 37:13, § 37:14

agency's ability to appeal, § 37:14

entities directly affected, § 37:13

**APPEALS TO MINISTER**

General, § 44:24

## INDEX

### APPOINTMENTS

- Accountants, § 4:32
- Ad hoc members, § 4:4 to § 4:9
- Appointment agreement (sample), APP 50B
- Architects, § 4:33
- Chair, § 5:2
- Concerns with, § 8:5
- Cooperation with other members, § 4:30
- Criteria, § 4:25 to § 4:36, § 44:6
  - ability to work with others, § 4:30
  - experience in public hearings, § 4:27
  - knowledge of political structure, § 4:29
  - representative balance, § 4:35
  - technical knowledge, § 4:26
  - writing ability, § 4:28
- Death of member
  - incomplete hearings, § 28:10
- Economists, § 4:34
- Engineers, § 4:33
- Full-time, § 4:4 to § 4:9
- Independence and re-appointment, APP 4A, § 5:29 to § 5:37
- Issues, § 44:5
- Model code of conduct for appointees (sample), APP 50F
- Other public service, § 4:36
- Part-time member, § 4:4 to § 4:9
- Patronage, APP 4A
- Process, § 4:10 to § 4:12, § 44:7
- Recommendations, § 44:8
- Refusal to perform duties, APP 4A
- Retirement
  - incomplete hearings, § 28:10
- Temporary members, § 4:4 to § 4:9
- Tenure at pleasure, § 4:16
  - British common law, § 4:16
  - outside statute, § 4:16
  - recent decisions, § 4:16
  - statutory authority, § 4:16
- Tenure of
  - general, § 4:13 to § 4:22
  - short-term appointments, § 4:14, § 4:15
- Termination
  - incomplete hearings, § 28:10
- Types, § 4:4 to § 4:9
- Volunteers, § 4:4 to § 4:9

### ARCHITECTS

- Appointment to agencies, § 4:33

### ARTHURS

- Pluralism concept, § 1:10

### AUSTRALIAN ADMINISTRATIVE APPEALS TRIBUNALS

- General, § 43:8

### BIAS

- Active adjudication, § 16:19
- Board counsel, § 14:4
- Circumstances giving rise to, § 52:7 to § 52:14, § 52:22 to § 52:28
- Conduct giving rise to, § 52:10, § 52:24
- Constitutional requirements, § 13:10 to § 13:37, § 52:6
- Definition, § 52:2, § 52:20
- Determining impermissible bias, § 52:4 to § 52:19
- Financial interest, § 52:9, § 52:20, § 52:23
- Generally, § 52:1 et seq.
- Impartiality, § 13:10 to § 13:37, § 28:61, § 28:62, § 52:1 et seq.
- Independence, § 2:1 et seq., § 3:1 et seq., § 4:1 et seq., § 8:1 et seq., § 13:10 to § 13:37
- Institutional bias, § 52:13, § 52:28
- Legislative solutions to, § 52:16
- Necessity, § 52:16
- Over sensitivity, § 52:1
- Procedure to deal with allegations, § 52:19
- Purpose of rule against, § 52:3
- Relationships, § 52:12, § 52:26
- Sample factum arguing, § 52:20
- Standard of bias
  - closed mind, § 52:11
  - neutral mind, § 52:11
  - reasonable apprehension, § 52:4 to § 52:20
- Standard of review, § 52:18
- Statutory authorization for, § 52:5
- Taint spread to other members, § 52:4 to § 52:19
- Unconscious bias, § 52:14
- Views and predeterminations, § 52:11, § 52:25
- Waiver see Waiver
  - function of, § 23:7

### BOARD COUNSEL

- Bias, § 14:4

**BOARD COUNSEL—Cont'd**

- Role of, § 14:1
- Solicitor-client privilege, § 14:2, § 22:16 to § 22:22
  - disclosure on grounds of duty of fairness, § 14:3
  - general, § 14:2
- Staff notes, § 14:5

**CABINET DIRECTIVES**

- General, § 46:36

**CABINET PETITIONS**

- Appeals, and, § 38:32
- Cabinet authority to intervene, § 46:34
- Canadian Radio-television and Telecommunications Commission, § 38:32, § 38:33 to § 38:42
  - Desirability of, § 46:32
  - Fair petition process required, § 43:3
  - Form, § 36:5
  - General, § 3:17, § 36:1, § 44:23, § 46:31
  - Intervention by cabinet, § 38:33 to § 38:42
    - Legal characteristics of, § 36:2
    - Necessity of, § 46:32
    - Ontario Municipal Board, § 38:32
    - Parties, § 36:6
    - Procedure, § 38:33 to § 38:42
    - Provisions for, § 36:3
    - Secrecy of procedure, § 36:4, § 38:33 to § 38:42
    - Statutory authority, § 38:32
    - When appropriate, § 46:33

**CANADA LAW REFORM COMMISSION**

- View of administrative law, § 1:13

**CANADIAN BILL OF RIGHTS**

- “He who hears must decide,” § 28:15
- Text of statute, APP B17 § B17:1

**CANADIAN PENSION COMMISSION**

- Functions of, § 1:3

**CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION**

- Cabinet petitions, § 38:32 to § 38:42
- Costs, § 1:5, § 34:2
- Counsel
  - broadcasting hearings, § 19:19

**CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION—Cont'd**

- Counsel—Cont'd
  - general, § 19:19
  - telecommunications hearings, § 19:19
- Drafting of decisions, § 19:19
- Functions of, § 1:3
- Regulatory body, as, § 1:3
- Staff, § 19:19
- Structure, § 19:19

**CANADIAN TRANSPORT COMMISSION**

- Accountants, § 19:18
- Economists, § 19:18
- Function of, § 1:3
- Historical development, § 1:1
- Legal staff, § 19:18
- Operating specialists, § 19:18
- Statisticians, § 19:18
- Tariff specialists, § 19:18

**CASE MANAGEMENT**

- General, § 46:15

**CERTIORARI**

- Availability of, § 44:28
- Defined, § 38:93 to § 38:129

**CHAIRPERSON**

- Appointment, § 5:2
- Restrictions on powers, APP 44A

**CHARTER OF RIGHTS**

- See also Constitutional Issues

Agencies

- agency jurisdiction to determine constitutional validity of legislation, § 29:10 to § 29:12.50
- agency jurisdiction to grant remedy
  - agency must have power to interpret law, § 29:22
  - constitutional competency test, § 29:19, § 29:20
  - constitutional exemptions, § 29:22
  - damages as remedy under s. 24(1), § 29:21
  - three jurisdiction test, § 29:14 to § 29:18
  - under s. 24, § 29:13 to § 29:22
- authority to determine if legislation consistent with constitution, § 29:12

**CHARTER OF RIGHTS—Cont'd**

- Agencies—Cont'd
  - authority to determine if legislation—Cont'd
    - remedies under section 52 of Constitution Act, 1982, § 29:11
    - section 52, Constitution Act, 1982, § 29:10
  - curial deference for rulings of agencies, § 29:23
  - suggested procedure re constitutional issue, § 29:24
- Application to Aboriginal and Indigenous Law, § 17:20.50
- Application to agencies, § 21:19
- Criminal/regulatory distinction, § 16:196, § 16:198
- Cross-examination, § 49:9
- Documents, § 21:20
- Evidence, exclusion of, § 16:213
- Freedom of expression, § 21:18
- “Government,” meaning of, § 29:4
- Government agencies subject to, § 29:3 to § 29:6
  - agencies carrying out government policy, § 29:6
  - agencies which are apparatus of government, § 29:5
- Hearings
  - limitations on public access, § 21:22
  - media right of attendance, § 21:21, § 21:23
  - public right of attendance, § 21:1 to § 21:3
- “He who hears must decide,” § 28:15
- Investigation powers of agencies, § 16:209
- Jurisdiction of agencies, § 29:7 to § 29:9
  - constitutional determinations, § 29:2, § 29:7
  - when jurisdiction exists, § 29:8
- Life, liberty and security of the person (section 7), relationship to administrative law, § 38:118.50
- Notice of constitutional question, § 29:25 to § 29:29
  - failure to give notice, § 29:26, § 38:161 to § 38:163, § 38:183
  - form of notice, § 29:27
  - legislative requirements, § 29:25

**CHARTER OF RIGHTS—Cont'd**

- Notice of constitutional question, § 29:25 to § 29:29—Cont'd
    - on whom does obligation to give notice rest, § 29:28
    - reviewing tribunal Charter decisions under Vavilov, § 29:29
  - Oral hearing rights, § 16:219
  - Policies, § 10:8
  - Regulatory procedures, and, § 11:5
  - Right to counsel, § 16:182
  - Right to funding for counsel, § 16:182
  - Self-governing bodies, § 49:10
  - Self-incrimination, right against, § 16:189 to § 16:204
    - contextual application, § 16:199
    - protections for witness's answer, § 16:191 to § 16:193
    - regulatory context, § 16:197
      - distinguishing criminal/penal from regulatory, § 16:199
      - legal fictions, § 16:197
      - voluntary regulatory enterprises, § 16:198
    - right not to be compelled to incriminate oneself, § 16:194 to § 16:199
      - elements of the right, § 16:196
      - right not to incriminate oneself, § 16:195
  - Strategic lawsuits against public participation (SLAPPs), and, § 54:1
  - Text of Charter, APP B17 § B17:1
  - Tribunals, and
    - applicability of Charter, § 29:3 to § 29:6
      - general, § 29:1
  - Unreasonable search and seizure, right against, § 16:205 to § 16:211
    - compliance investigations, § 16:209
    - investigation power, improper use of, § 16:212
    - judicial warrant, need for, § 16:207
    - section 8, § 16:206
    - subpoenas and summonses issued by agencies, § 16:210
  - View of administrative law, § 1:12
- CODES OF CONDUCT**
- Agency authority respecting members, § 6:60
  - Conduct rules flowing from contract or employee status, § 6:59

**CODES OF CONDUCT—Cont'd**

Generic statutes, § 6:4 to § 6:57  
 Federal Agencies and Conflict of Interest Act, § 6:5 to § 6:26  
     about Act and how it applies, § 6:7  
     annual reviews of information, § 6:23  
     anti-avoidance, § 6:25  
     application, § 6:8  
     confidential reports to conflict of interest commissioner, § 6:20  
     contracts, § 6:16  
     controlled assets, § 6:19  
     duty to arrange affairs to avoid conflict of interest, § 6:10  
     employment offers, § 6:21  
     enforcement, § 6:26  
     former public office holders, § 6:24  
     fundraising, § 6:18  
     gifts, § 6:15  
     improper use of position and influence, § 6:14  
     inside information, § 6:13  
     other public declarations and reports, § 6:22  
     preferential treatment, § 6:12  
     prohibited activities, § 6:17  
     prohibition against participating in decisions, § 6:11  
     real obligations and real teeth, § 6:6  
     terms, § 6:9  
 Internal codes of conduct, § 6:61, § 6:62  
     what is conflict of interest, § 6:62  
     writing internal codes, § 6:61  
 Introduction, § 6:1  
 Nova Scotia Agencies and the Conflict of Interest Act, § 6:46  
     application, § 6:46  
     conflict of interest, § 6:46  
     enforcement, § 6:46  
     post-service restrictions, § 6:46  
 Ontario Agencies and Ontario Public Service Act, § 6:27 to § 6:45  
     accepting gifts, § 6:33  
     benchmark Lt. Gov. Ministry conflict of interest rules, § 6:31  
     benefiting self, spouse or children, § 6:32  
     disclosing confidential information, § 6:34

**CODES OF CONDUCT—Cont'd**

Ontario Agencies and Ontario Public Service Act, § 6:27 to § 6:45—Cont'd  
     duty to disclose certain financial interests, § 6:40  
     engaging in business, § 6:37  
     giving preferential treatment, § 6:35  
     hiring family members, § 6:36  
     matters that might involve private sector, § 6:39  
     participating in decision-making, § 6:38  
     political activity, § 6:42  
     prohibition on certain purchases, § 6:41  
     public bodies, § 6:29  
     public servants, § 6:28  
     which conflict of interest rules apply, § 6:30  
 Specific statutes, § 6:3  
     British Columbia Business Corporations Act, § 6:3  
     Canadian Transportation Accident Investigation and Safety Board Act, § 6:3  
     Subordinate legislation, § 6:58  
**CONFLICT OF INTEREST**  
     General, § 4:38  
**CONSTITUTIONAL ISSUES**  
     See also Charter of Rights  
     Addresses of Attorneys General, § 38:163  
     Agency jurisdiction to determine authority to determine if legislation consistent with constitution, § 29:12  
     constitutional validity of legislation, § 29:10 to § 29:12.50  
     remedies under section 52 of Constitution Act, 1982, § 29:11  
     section 52, Constitution Act, 1982, § 29:10  
     unwritten constitutional principles, § 29:12.50  
     Agency jurisdiction to grant remedy under s. 24, § 29:13 to § 29:22  
     agency must have power to interpret law, § 29:22  
     constitutional competency test, § 29:19, § 29:20  
     jurisdiction over person and subject, § 29:21

## INDEX

### CONSTITUTIONAL ISSUES—Cont'd

- Agency jurisdiction to grant remedy under s. 24, § 29:13 to § 29:22
  - Cont'd
  - three jurisdiction test, § 29:14 to § 29:18
- Constitutional determinations, § 29:2
- Constitutionality of administrative agency
  - advisory commissions, § 43:4 to § 43:8
  - institutional context, § 43:7
  - nature of appeal power, § 43:5
  - privative clause, § 43:6
  - summary, § 43:6
- Curial deference for rulings of agencies, § 29:23
  - suggested procedure re constitutional issue, § 29:24
- Notice of constitutional question, § 29:25 to § 29:29
  - failure to give notice, § 38:161 to § 38:163, § 38:183
  - form of notice, § 29:27
  - legislative requirements, § 29:25
  - on whom does obligation to give notice rest, § 29:28
  - reviewing tribunal Charter decisions under Vavilov, § 29:29
- Policies, § 10:8, § 10:9
- Prerogative powers, § 38:5 to § 38:15
- Privative clauses, § 43:6
- S. 32 Constitution Act, § 29:3 to § 29:6
  - agencies carrying out government policy, § 29:6
  - agencies which are apparatus of government, § 29:5
  - “government,” meaning of, § 29:4
- S. 96 Constitution Act, 1867, § 38:164 to § 38:179, § 43:7
  - determining if grant offends s. 96, § 2:43
  - determining if power conforms to core court power, § 2:45
  - determining if power is judicial, § 2:46
  - determining if power is subsidiary or ancillary, § 2:47
  - prohibition against agency intrusion on Superior Court functions, § 2:42

### CONSTRUCTIVE TAKING

- Overview, § 12:4

### CONTEMPT

- Abuse of process, § 40:13 to § 40:18
- Agencies, contempt powers of, § 40:13 to § 40:25
  - court of record, agency as, § 40:15
  - recourse to courts where no contempt power, § 40:26 to § 40:29
  - restrictive approach, § 40:19 to § 40:25
  - sources, § 40:1, § 40:14
- Bias, § 40:35
- Burden of proof, § 40:37
- Charter of Rights, and, § 40:33
- Civil
  - criminal standard of proof applies, § 40:38 to § 40:42
  - definition, § 40:3 to § 40:5
- Compellability of contemner, § 40:39
- Contemner rights, § 40:33, 40:39
- Contempt citation, reopening, § 40:46
- Criminal
  - conduct which is not criminal contempt, § 40:5
  - Criminal Code, § 40:14
  - definition, § 40:3 to § 40:5
  - standard of proof, § 40:38 to § 40:42
  - types of, § 40:4
- Defences
  - duress, § 40:41
  - factors beyond one's control, § 40:41
  - intent, § 40:41
  - knowledge of order, § 40:41
  - other, § 40:42
- Ex facie (out of presence of court), § 40:6 to § 40:12
- Failure to appear, § 40:7
- Failure to obey orders, § 40:9
  - order not issued, § 40:11
  - third party, § 40:10
  - void orders, § 40:12
- Form of order, § 40:36
- Fundamental justice, § 40:33
- In facie (in presence of court), § 40:6 to § 40:12
- Initiation of proceedings
  - by agency before court, § 40:26 to § 40:29
  - by judge, § 40:32
- Jurisdiction of agencies, § 40:13 to § 40:18

**CONTEMPT—Cont'd**

- Orders
  - form of, § 40:36
  - must be clear, § 40:40
- Parties, role of, § 40:32
- Power to be exercised as last resort, § 40:31
- Presiding officer, § 40:35
- Presumption of innocence, § 40:33
- Procedure, § 40:30 to § 40:37
  - adjournments, § 40:33
  - cross-examination, § 40:33
  - hearing, § 40:33
  - notice, § 40:33
  - strictly followed, § 40:31
  - timing, § 40:34
- Public law element, § 40:32
- Punishment, § 40:43 to § 40:46
  - mitigating factors, § 40:45
  - possible penalties, § 40:44
  - purging contempt, § 40:32, § 40:45
- Quasi-criminal proceedings, § 40:38 to § 40:42
- Registration clauses, § 40:27
- Registration of orders, § 35:30
  - court determines existence of contempt, § 40:29
  - remains agency order, § 40:28
- Sources of authority, § 40:1, § 40:13 to § 40:18
- Standard of proof, § 40:38 to § 40:42
- Statutory grants, examples, § 40:1, § 40:16 note, § 40:20 to § 40:23
- Statutory Powers Procedure Act (Ontario), § 40:16, § 40:26 to § 40:29
- Summary, § 40:47
- Timing, § 40:34
- Use only when necessary, § 40:31

**COSTS**

- Canadian Radio-television and Telecommunications Commission, § 34:7
- Consolidated Hearings Act, § 34:3
- Criteria for, § 49:8
- Defined, § 33:1, § 34:2 to § 34:4
- Funding, and, § 33:1
- General, 27NC, § 46:22
- Hearing expenses, § 46:23
- Interim costs, § 34:6, § 34:7
  - meaning of, § 34:6

**COSTS—Cont'd**

- Interim costs, § 34:6, § 34:7—Cont'd
  - power to award, § 34:7
- Judicial review, on, § 34:9
- Liability of agencies for, § 46:28
- National Transportation Act, § 34:2, § 34:3, § 34:8
- Ontario Energy Board, § 34:3, § 34:8
- Power to award, § 34:5, § 34:8
- Prehearing conference, § 15:11
- Private court proceedings, § 42:9
- Recovery from non-parties, § 46:24
- Stated case, § 31:5
- Tribunal costs, § 34:8

**COUNSEL**

- See also Charter of Rights
- Agency attitudes towards, § 16:174 to § 16:181
- Agency duty to deal with counsel, § 16:181
- Credibility, B:4
- Right to
  - Administrative Procedures Act (Alberta), § 16:173
  - common law, § 16:159 to § 16:172
  - Immigration and Refugee Board, § 7:3
  - practice, § 16:174 to § 16:181
  - Statutory Powers Procedure Act (Ontario), § 16:173
- Undertakings, § 16:105

**COURTS**

- See also Private Courts
- Administrative agencies compared, § 1:4, § 1:5, § 12:1, § 41:2

**COURTS OF RECORD**

- Characteristics, § 40:14
- Contempt powers, § 40:14
- Designation of agency as, § 40:16, § 40:47
- Does not make agency a judicial court, § 40:44 (note)
- Types, § 40:14

**DAMAGES**

- Liability of agency members, § 46:27
- Remedy under s. 24(1) of Charter, as, § 29:21

**DECISION-MAKING**

- Authority of agencies, § 10:5

**DECISION-MAKING—Cont'd**

- Case study, § 10:20
- Delegation, § 28:56 to § 28:65
- General, § 10:1, § 10:5
- Generic hearings, § 10:16, § 10:19
- Guidelines, practice hints, § 10:23, § 10:24
  - making, § 10:24
  - problems with, § 10:24
  - working with, § 10:24
- Policy-making
  - Aboriginal rights, § 10:9
  - authority to adopt policy statements, § 10:13
  - characteristics, § 10:12, § 10:14
  - constitutionality, § 10:8, § 10:9
  - general description, § 10:6
  - generic hearing, § 10:16, § 10:19
  - reluctance to declare policy, § 10:17, § 10:18
  - steps, § 10:22
  - various forms, § 10:7
- Policy statement
  - definition, § 10:11
  - distinct from rules, § 10:14
  - precedent, § 10:2, § 10:3
  - provinces other than Ontario, § 10:21
- Restrictions
  - content, § 28:7
- Rule
  - definition, § 10:11
  - distinct from policy statement, § 10:14
- Rule-making
  - advantages, opposed to adjudication, § 10:10
  - characteristics, § 10:12
  - general description, § 10:6
  - generic hearing, § 10:16, § 10:19
  - lack of support for, § 10:17
  - reluctance to issue rules, reasons, § 10:18
  - versus decision-making, § 10:15
- Stare decisis, § 10:2 to § 10:4
- Understanding required, § 28:8 to § 28:16
- Writing mechanics, § 28:70 to § 28:72

**DECISION OF TRIBUNAL**

- See also Appeals, Cabinet Petitions, Hearings, Labour Arbitrations, Rehearings, Judicial Review
- Audience for, § 28:71

**DECISION OF TRIBUNAL—Cont'd**

- Communication between panel members, § 28:17 to § 28:19
- Consultation with agency members
  - Consolidated Bathurst case, § 28:20, § 28:22
  - general, § 28:22
  - with other members, § 7:4 to § 7:6, § 28:20, § 46:29
  - with staff, § 28:21, § 46:29
- Defined, § 28:1, § 46:19
  - mere recommendation, compared to, § 28:2
  - order, compared to, § 28:1
  - reasons, § 28:6
- Delegation, § 28:56 to § 28:65
  - example, § 28:57 to § 28:62
  - general, § 28:64
  - recommended guidelines, § 28:65
  - review of reasons by counsel and other staff, § 28:63
- Dissents, § 48:12, § 48:13
- Final decisions, § 28:3
  - distinguished from interim decisions, § 28:5
- Format of, § 28:24
- Generally, § 28:7
  - “He who hears must decide” principle, § 28:8 to § 28:16, § 28:61, § 28:62
  - absence during part of hearing, § 28:10, § 28:14
  - consequences of breach, § 28:16
  - deliberations in presence of staff, § 28:61, § 28:62
  - ministerial hearings, § 28:12
  - oral hearings, § 28:10
  - paper hearings, investigations and “delegated hearings,” § 28:11
  - reconsiderations and re-hearings, § 28:13
  - separate merits and remedies hearings, § 28:13
  - severable issues, § 28:10
  - signing, § 28:10
  - statutory suspension of principle, § 28:15
  - waiver of principle, § 28:14
- Interim decisions, § 28:4
  - distinguished from final decisions, § 28:5
- Majority rules, § 28:18

**DECISION OF TRIBUNAL—Cont'd**

- Panel decisions, § 28:17 to § 28:19
- Reasons, failure to give, § 28:42 to § 28:46
  - finality and reasons, § 28:46
  - where no requirement, § 28:43
  - where required by common law, § 28:45
    - where statutorily required, § 28:44
- Reasons, format of, § 28:47 to § 28:55
- Reasons, ministerial, § 28:62
- Reasons, when required, § 28:26 to § 28:41
  - common law, § 28:28 to § 28:38
  - statutory requirements, § 28:39 to § 28:41
    - when new issue allowed on review, § 28:38
    - why important, § 28:25
- Reasons for decision, § 28:6
- Release, § 28:69
- Review
  - general, § 38:2 to § 38:4
- Staff, role of, § 28:56 to § 28:65
- Timing of, § 28:66 to § 28:69
  - application to statutorily imposed time limits, § 28:68
  - mandatory vs. directory directions, § 28:67
- When to write, § 28:66
- Writing mechanics, § 28:70 to § 28:72
  - audience for, § 28:71
  - delegation of, § 28:56 to § 28:65
  - practical advice, § 28:70, § 28:72

**DECLARATIONS**

- Defined, § 38:93 to § 38:129

**DELAY**

- Discretionary nature of review, and, § 38:19, § 38:31
- In initiating proceedings, § 16:72 to § 16:74
  - beyond statutory time limits, § 16:72
  - within statutory time limits, § 16:73
- In prosecuting proceedings, § 16:75 to § 16:82
  - whether warrants stay, § 16:75 to § 16:82
    - factors which argue to justice, § 16:81
    - length of delay, § 16:81

**DELAY—Cont'd**

- In prosecuting proceedings, § 16:75 to § 16:82—Cont'd
  - whether warrants stay, § 16:75 to § 16:82—Cont'd
  - prejudice from, § 16:81
  - reasons for delay, § 16:81
  - waiver, § 16:81
  - who can raise, § 16:75 to § 16:82

**DELEGATION OF AUTHORITY**

- Generally, § 28:56 to § 28:65
- Illustrative case, § 28:57 to § 28:60
- Mandatory review, § 28:63
- Recommended guidelines, § 28:65
- Role of staff in decisions and reasons, § 28:57 to § 28:62
- Voluntary review, § 28:61 to § 28:63

**DISCRETION**

- See also Judicial Review
- Cabinet decisions and, § 9:23
- Charter and, § 9:24
- Definition and description, § 9:1
- Exercise of
  - by person authorized to do so, § 9:9
  - for purpose for which granted, § 9:12
  - in compliance with natural justice & fairness, § 9:16
  - in compliance with statutory & regulatory conditions, § 9:15
  - in good faith, § 9:11
  - in non-discriminatory manner, § 9:13
  - obligation to consider all relevant factors, § 9:14
    - on a case-by-case basis, § 9:10
    - when mandatory, § 9:8
  - Fettering discretion, rule against, § 9:10
  - Limits on, § 38:78 to § 38:92
  - Presumption in grant of discretion, § 9:3
  - Purpose for granting, § 9:2
  - Review of discretionary decision-making, § 9:17 to § 9:22
    - generally, § 9:22
    - limited circumstances, § 9:18
  - Structuring of, § 9:5
  - Use for purposes of enabling legislation, § 9:4
  - Vagueness, § 9:6
  - Voluntary review, § 46:29

## INDEX

### ECONOMISTS

Appointment as agency members, § 4:34

### EMPLOYMENT AND IMMIGRATION COMMISSION

Functions of, § 1:3

### ENGINEERS

Appointment to agencies, § 4:33

### ERRORS

In law, § 38:130 to § 38:138

### EVIDENCE

Admissibility, § 38:164

Admission of evidence, § 22:11

Advice to counsel, § 22:33

Affidavits, examination on, § 40:39

Approach to evidence, administrative agencies, § 22:2 to § 22:22

Burden of proof, § 22:25

Character evidence, where inadmissible, § 22:43

Compulsion, testimonial, privilege against, § 38:173

Counsel, from, § 16:174 to § 16:181

Decision-maker, evidence of, § 16:12, § 38:174 to § 38:179

Defined, § 22:2

Disciplinary proceedings, § 49:8

Disclosure, § 16:31, § 16:32  
prehearing, § 16:42

Evidence, generally, § 49:8

Evidence, statutory direction, § 22:26  
discretion of tribunal to admit evidence, § 22:27

#### Exhibits

board member filings, § 16:104

circulation of exhibits, § 16:102

numbering of exhibits, § 16:103

#### Experts

admission of evidence into administrative proceedings, § 22:29 to § 22:41

appointment by tribunal, § 22:41

challenging the expert, § 22:36

curriculum vitae, APP 22A, § 22:34

defined, § 22:29 to § 22:41

establishing expertise of, § 22:29 to § 22:41

independence of, § 22:38

qualifying, § 22:35

### EVIDENCE—Cont'd

#### Experts—Cont'd

receiving evidence of, § 22:29 to § 22:41

use of evidence, § 22:40

Hearsay evidence, § 16:183 to § 16:188, § 22:7 to § 22:10

In camera hearings, § 21:24, § 21:25

Judicial and official notice, § 16:216

#### Opinion evidence

expert witnesses, § 22:33

lay persons, § 22:28

Person represented by counsel, from, § 16:180

Pre-filing evidence, § 16:42 to § 16:44

authority to require, § 16:42

document book, § 16:44

value of, § 16:43

Privilege, § 22:16 to § 22:22

decision-maker's personal notes, § 38:179

limited common law privilege, § 38:173

prima facie case, § 38:173

statutory testimonial privilege, § 38:174 to § 38:179

testimonial compulsion, privilege against, § 38:173

which agencies enjoy, § 38:173

#### Record

confidentiality of, § 38:173

definition (legislative), § 38:167

evidence from the record, § 38:165 to § 38:167

evidence outside of record, § 38:168 to § 38:172

Rules of evidence, § 22:2 to § 22:22

application to administrative agency proceedings, § 22:3 to § 22:6

Immigration and Refugee Board, § 7:3

irrelevant submissions, § 22:15

purposes of, § 22:7 to § 22:10

statutory provisions, § 22:12 to § 22:14

Self-incrimination, § 16:189 to § 16:204

Standard of proof, § 22:24

Statutory discretion, § 22:26

Unreasonable search and seizure, § 16:205 to § 16:211

investigation for regulatory purposes, § 16:207

**EVIDENCE—Cont'd**

- Unreasonable search and seizure,  
§ 16:205 to § 16:211—Cont'd  
investigation in a criminal proceeding,  
§ 16:206
- Views, § 16:152

**EXTENSIONS OF TIME**

- Extensions Of Time (Other Than For  
Appeal To Court), B:5

**FEDERAL COURT**

- Agencies reviewed by Appeal Division,  
§ 38:149
- Agencies reviewed by Trial Division,  
§ 38:149
- Appeal Division, § 38:149
- Appeal rights bar review, § 38:149
- “Federal board, commission or other  
tribunal,” defined, § 38:149
- Federal Court Rules, agency proceedings  
and, § 38:149
- Federal Courts Act, APP B6, § 38:149
  - agencies reviewed by Appeal Division,  
§ 38:149
  - agencies reviewed by Trial Division,  
§ 38:149
  - concurrent jurisdiction with provincial  
superior courts, § 38:149
  - declining jurisdiction, § 38:149
  - extent of court’s review power,  
§ 38:149
- General, § 38:149
- Grounds for review, § 38:149
- Immigration and Refugee Board, § 7:3
- Inter-agency disputes, and, § 11:5
- Interim relief, § 38:149
- Judicial review, § 38:149, § 38:187 to  
§ 38:198
- Jurisdiction, § 38:149, § 38:194.50
- Provincial superior courts, § 38:149
- Remedies, § 38:149
- Trial Division, § 38:149

**FEDERAL TRADE COMMISSION**

- Funding by, § 33:8

**FUNCTIONALISM**

- Willis concept of, § 1:9

**FUNDING**

- Administrative agency advisory commis-  
sions, and, § 43:3

**FUNDING—Cont'd**

- Canadian and American concerns, § 33:2
- Consumer representation, § 33:4, § 33:7
- Costs, and, § 33:1
- Defined, § 33:1
- Eligibility conditions, § 33:9
- Federal Trade Commission, § 33:8
- General, § 33:1
- Justification for, § 33:3
- Mechanisms for, § 33:6
- Program funding criteria, § 33:10
- Public input, § 33:5

**GOVERNMENT**

- Administrative power, § 2:2
- Agencies subject to Charter of Rights,  
§ 29:3 to § 29:6
  - “government,” meaning of, § 29:4
- Cabinet petitions, § 3:17
- Communications with agencies, § 3:13
- Functions of, § 2:2
- Interaction of government levels, § 11:1
- Interrelations with administrative agen-  
cies, § 2:5
- Legislative power, § 2:2
- Memorandum of understanding, § 3:14
- Ombudsman, § 47:1 et seq.
- Policies of, § 3:9, § 3:10, 3:11
- Policy directives, § 3:7
- Review of agencies, § 3:15
- Statements of government policy, § 3:9

**HEALTH PROFESSIONS**

**REGULATION**

- See also Self-Governing Bodies
- Health Professions Board (Ontario),  
§ 49:5
  - complaint reviews, § 49:8
- Regulated Health Professions Act, 1991  
(Ontario), § 49:3, § 49:7

**HEARING CLERK**

- Board members, and, § 20:2
- Duties
  - after the hearing, § 20:3
  - during the hearing, § 20:3
  - preceding the hearing, § 20:3
- General, § 20:1, § 20:4
- Panel chairman, and, § 20:2

## INDEX

### HEARING PANEL

- Chairman of agency
  - role, § 18:3
  - selection of chairman, § 18:2
  - communication between members, § 18:6, § 18:8, § 28:19
  - composition of panel, § 18:1
- Chairman of panel
  - hearing clerk, and, § 20:2
  - role, § 7:7
- Panel members
  - chairman, § 18:4
  - general, § 18:7
  - hearing clerk, and, § 20:2
- Procedure, § 18:8
- Witnesses, and, § 25:1
  - quorum requirements, § 16:107 to § 16:113, § 46:5

### HEARINGS

- See also Evidence, Hearing Clerk, Hearing Panel, In Camera Hearings, Labour Arbitrations, Witnesses
- Accommodation, § 16:46
- Active adjudication, § 16:14 to § 16:21
  - authority for, § 16:16
  - definition, § 16:15
  - general, § 16:14
  - impartiality, § 16:19
  - mental health, § 16:18
  - self-represented parties, § 16:17
  - tribunal member experience, § 16:20
  - tribunal reform, § 16:21
- Adjournments, § 16:123 to § 16:129
  - authority, § 16:123
  - concurrent action, § 16:126
  - considerations, § 7:3, § 16:124
  - Immigration and Refugee Board, § 7:3
  - judicial review, pending, § 16:127
  - legislative change, pending, § 16:128
  - practice, § 16:129
  - time limits, statutory, § 16:125
- Adjudicative agency hearings, § 41:3
- Adjudicative decisions
  - guidelines, Workplace Safety and Insurance Appeals Tribunal, **APP 5C, APP 5D**
- Administrative hearings, § 41:3
- Agency members, and, § 16:12

### HEARINGS—Cont'd

- Applications, § 16:63 to § 16:70
  - filing on weekends and holidays, § 16:70
  - general, § 16:63
  - processing, § 16:63
  - withdrawing, § 16:63
- Arbitrations, § 41:3, § 42:1
- Argument, right to make
  - Administrative Procedures Act (Alberta), § 16:154
  - common law, § 16:153
  - Federal Courts Act, § 16:155
  - Statutory Powers Procedure Act (Ontario), § 16:154
- Argument of counsel
  - common law, § 16:159 to § 16:172
  - general, § 26:1, § 26:6
  - oral argument, § 26:3
  - organization of, § 26:5
  - preparation, § 26:2
  - right to, § 16:156 to § 16:182
  - statutory, § 16:173
  - written argument, § 7:12, § 26:4
- Audi alteram partem, § 16:153, § 28:14, § 28:20
- Background briefing material, § 16:83
- Board counsel role, § 14:1
- Cause of action, § 16:63
- Classification of hearings, § 41:3
- Combining hearings, § 16:214
- Consolidated hearings, § 46:13
- Declining to deal with matter dealt with in another proceeding, § 16:215
- Defined, § 16:1 to § 16:5
- Delay, § 16:71 to § 16:82
  - delay in initiating proceedings, § 16:72 to § 16:74
  - delay in prosecuting proceeding, § 16:75 to § 16:82
- Delegated hearings, § 28:11
- Disclosure, prehearing, § 16:42
- Document books, § 16:44
- Estoppel, issue, § 16:116 to § 16:121
- Evidence
  - see also Evidence
- Exhibits, § 16:102 to § 16:104
  - interrogatories, § 16:41
  - panels of witnesses, § 16:98
  - pre-filed evidence, § 16:42 to § 16:44

**HEARINGS—Cont'd**

Fact sheet (sample), **APP 19A**  
 Failure to attend  
     Immigration and Refugee Board, § 7:3  
 Fair hearing requirements, § 16:9, § 16:22  
     to § 16:39  
     common law fairness, § 16:9  
     fundamental justice requirements,  
     § 16:10  
 Form, § 16:11  
 General, § 16:1 to § 16:5  
 Generic hearings, § 46:11  
 Hearing room setup, **APP 16H**, § 16:45  
 Incomplete hearings  
     death of member, § 44:29, § 46:3  
 Inquiries, § 41:3  
 Internal hearing processes, ability to cure  
     fairness defects, § 16:220  
 Interpreter, right to, § 16:218  
 Interrogatories, right to, § 16:41  
 Interventions, § 16:40  
 Joint hearings, § 46:14  
 Legislative agency hearings, § 41:3  
 Location, § 16:45  
 Media access to, § 21:1, § 21:2  
 Mixed proceedings, § 16:1 to § 16:5  
 Motions, § 16:48  
 Notice, § 49:1 *et seq.*  
     see also Notice  
 Official languages, § 16:217  
 Opening statement, **APP 18A**, § 16:96  
 Outside of agency's province, § 16:47  
 Paper hearings  
     summary of evidence, § 28:11  
 Participation in, § 13:46  
 Preparation for  
     agency manual, § 24:4  
     expert advice, § 24:7  
     final preparations, § 24:8  
     general, § 24:1  
     intervenor, § 24:5  
     legislation, § 24:2  
     pre-hearing conferences, § 24:6  
     research the agency, § 24:3  
 Procedure  
     adjustments, § 16:123 to § 16:129  
     introduction of parties, § 16:97  
     jurisdictional challenge, § 16:106  
     notice, § 16:22 to § 16:39  
     see also Notice

**HEARINGS—Cont'd**

Procedure—Cont'd  
     opening of hearings, § 16:96  
     swearing of witnesses, § 16:99  
     undertakings, § 16:105  
     waiver of procedural rights, § 16:131  
 Public access to, § 21:1, § 21:2, § 44:20,  
     § 49:8  
     Immigration and Refugee Board, § 7:3  
 Purposes of, § 16:7  
 Quorum, § 16:107 to § 16:113  
     concordance, § 16:107 to § 16:113  
     majority decision-making, § 16:107 to  
     § 16:113  
     meaning of quorum, § 16:107 to  
     § 16:113  
     multiple member agencies, § 16:107 to  
     § 16:113  
     number required for, § 16:107 to  
     § 16:113  
     legislative provisions, § 16:107 to  
     § 16:113  
     ex officio members, § 16:107 to  
     § 16:113  
     Interpretation Act provisions,  
     § 16:107 to § 16:113  
     waiver, § 16:107 to § 16:113  
     where no legislative provisions,  
     § 16:107 to § 16:113  
     consequences of no quorum,  
     § 16:107 to § 16:113  
     substantive or procedural matter,  
     § 16:107 to § 16:113  
 Recording hearing, § 16:84  
     see also Recording of Hearing  
 Res judicata, § 16:116 to § 16:121  
 Restrictions, § 16:1 to § 16:5  
 Rules, § 16:1 to § 16:5  
 Seizure by decision maker, § 16:84  
     bias, § 16:95  
     declaring seizure, § 16:93  
     integrity of proceeding, § 16:91,  
     § 16:92  
     legislation, § 16:94  
     meaning, of, § 16:88  
     principles respecting seizure, § 16:89  
 Splitting issues, § 16:214  
 Standards for, § 44:19  
 Structure, § 16:8  
 Transcripts, § 16:84  
     see also Recording of Hearing

**HEARINGS—Cont’d**

- Undertakings, § 16:105
- Views, § 16:152
- Waiver of procedural rights, § 16:131 to § 16:133
- Written hearings, § 46:6

**HUMAN RIGHTS COMMISSION**

- Functions of, § 1:3

**IMMIGRATION APPEAL BOARD**

- Bias, and, § 3:2
- In camera hearings
  - production of evidence, § 21:24, § 21:25

**IMMIGRATION APPEAL DIVISION**

- Functions of, § 1:3

**IN CAMERA HEARINGS**

- Charter of Rights and Freedoms, § 21:18 to § 21:23
  - application to agencies, § 21:19
  - documents, § 21:20
  - freedom of expression, § 21:18
  - limitations on public right of access, § 21:22
  - media, § 21:21, § 21:23
- Defined, § 21:1, § 21:2
- Practical considerations, § 21:3
- Publication bans, § 21:24, § 21:25
- Statutory authority, § 21:4 to § 21:17
  - express, § 21:5
  - factors to consider, § 21:11
  - implied, § 21:10
  - maintaining confidentiality, § 21:16
  - Ontario, § 21:6
- Waiver of right, § 21:9
- Witnesses, § 21:15

**INDIGENOUS PEOPLES AND TRIBUNAL HEARINGS**

- Aboriginal law versus indigenous law, § 17:8
- Aboriginal rights under section 35 of the Constitution, § 10:9, § 17:7
- Administrative law, tribunals and reconciliation, § 17:25
- Application of Charter to Aboriginal and Indigenous Law, § 17:20.50
- Constitutional context for, § 17:5
- Constitutionally protected rights, § 17:19
- Crown-Indigenous relations, § 17:17

**INDIGENOUS PEOPLES AND TRIBUNAL HEARINGS—Cont’d**

- Customary laws, § 17:22
- Definitions, § 17:2
- Discrimination against Indigenous Peoples, § 17:20
  - Duty to accommodate, § 17:18
  - Duty to consult, § 17:18
- Executive action discriminating against Indigenous Peoples, § 17:20
- First Nations, definition of, § 17:2
- First Nations and authority to establish tribunals, § 17:14
- Indian Act, tribunals established under, § 17:12
- Indigenous—Crown relations, § 17:17
- Indigenous Law versus Aboriginal law, § 17:8
- Indigenous legal traditions and customary laws, § 17:22
- Indigenous peoples, definition of, § 17:2
- Legislation discriminating against Indigenous Peoples, § 17:20
- Non-Indigenous tribunals members, § 17:16
- Policies, § 10:9
- Public inquiries with Indigenous community mandates, § 17:23
- Section 35 and Aboriginal rights, § 10:9, § 17:7
- Sources of Indigenous laws, § 17:6
- Traditional knowledge, protocols, practice and procedure for, § 17:21
- Tribunals established under First Nations authority, § 17:14
- Tribunals established under the Indian Act, § 17:12
- Tribunals requiring Indigenous membership, § 17:15

**INJUNCTIONS**

- Anti-SLAPP case law, § 54:6
- Availability, § 38:149
- Interim injunction
  - relationship with stays, § 38:143
  - test, § 38:148
- To enforce statute
  - criteria for grant of, § 55:9
  - generally, § 54:6, § 55:1
  - limited availability of, § 55:3 to § 55:8
  - standing, § 55:3 to § 55:8

**INJUNCTIONS—Cont'd**

To enforce statute—Cont'd  
 statutory right to seek, § 55:6

**INTERNATIONAL JOINT COMMISSION**

Founding of, § 1:1

**INTERPRETER**

See also Hearings  
 Immigration and Refugee Board, § 7:3

**INTERROGATORIES**

Procedural order, APP 16E, APP 16F  
 Tribunal hearings, § 16:41

**INTERVENORS**

See also Standing  
 Generally, § 38:160

**INTERVENTIONS**

Hearings  
 general, § 13:46, § 16:40  
 preparation for, § 24:5  
 public utility board hearings, § 38:151  
 statutory authority, by, § 38:151  
 Ontario Rules of Civil Procedure,  
 § 38:150 to § 38:159

**INVESTIGATIONS**

See also Charter of Rights  
 Improper use of investigation power,  
 § 16:212  
 unreasonable search and seizure,  
 Charter right against, § 16:205 to  
 § 16:212  
 Investigations, B:7  
 Judicial warrant, need for, § 16:207  
 Section 8 of Charter, § 16:206  
 Subpoenas and summonses issued by  
 agencies, § 16:210  
 Summary, § 16:212

**JUDICIAL INDEPENDENCE**

Administrative agencies, and, § 4:23

**JUDICIAL REVIEW**

See also Appeals, Federal Court  
 Agency participation, § 38:150 to  
 § 38:159  
 Appeals  
 regulations, § 38:201  
 significance of right of, § 38:139  
 subordinate legislation, § 28:201

**JUDICIAL REVIEW—Cont'd**

Appeals—Cont'd  
 who can appeal, § 38:200  
 Compensation Commissions, § 38:118.10  
 Correctness, § 38:58  
 Curial deference, § 38:93 to § 38:129.50,  
 § 44:29, § 46:3  
 Declarations, § 38:39 to § 38:41  
 Delay, § 38:19, § 38:31  
 Designate review process, ability of state  
 to, § 38:4  
 Discretionary nature, § 38:16 to § 38:31  
 Discretion of agency  
 judicial deference  
 historical development of, § 38:43  
 judicial deference, § 38:43  
 Errors in law checklist, § 38:130 to  
 § 38:138  
 Federal Court, § 38:187 to § 38:198  
 General, § 38:48 to § 38:55, § 38:57 to  
 § 38:77, § 44:26  
 History, § 38:48 to § 38:55  
 curial deference period, § 38:50  
 Dunsmuir era, § 38:55  
 interventionist period, § 38:49  
 pragmatic and functional period,  
 § 38:51  
 pragmatic and functional approach,  
 § 38:53, § 38:54  
 standards of review, § 38:52  
 who decides, § 38:51  
 Injunctions, § 38:41  
 Issue, first raised, § 38:18  
 Judicial deference, § 44:29, § 46:3  
 Limit, ability of state to, § 38:3  
 Monetary compensation, § 38:42  
 Nature, source and purpose of, § 38:2  
 New issues raised, § 38:85, § 38:86,  
 § 38:149  
 Ontario Judicial Review Procedure Act,  
 § 38:149  
 Patent unreasonableness, § 38:52  
 Political trust, § 38:14.50  
 Precondition to other actions, § 38:32  
 Prematurity, § 38:20 to § 38:30  
 adequate alternative remedy, § 38:23 to  
 § 38:30  
 agency proceedings underway,  
 § 38:26  
 express statutory process, § 38:25  
 generally, § 38:20

## INDEX

### JUDICIAL REVIEW—Cont'd

- Prematurity, § 38:20 to § 38:30—Cont'd
  - reasonableness approach to, § 38:30, § 38:96
- Private court awards, § 42:10
- Privative clauses, § 38:47
- Quashing the decision, § 38:180 to § 38:186
- Reasonableness simpliciter, § 38:51, § 38:61
- Record, the
  - evidence from, § 38:165 to § 38:167
  - evidence outside, § 38:168 to § 38:171
  - legislated definition, § 38:166
- Self-governing bodies, § 49:6
- Standard of review, § 38:43 to § 38:55, § 38:60, § 38:78 to § 38:92, § 38:199
  - stepping into the shoes of the reviewing court, § 38:199
  - two standards, § 38:57 to § 38:77
    - correctness, § 38:58
    - reasonableness, § 38:59
- Stay not automatic
  - stream, ability of state to, § 38:4
  - susceptibility
    - actual impact, § 38:15
    - administrative ground, § 38:14, § 38:14.50
    - justiciable question, § 35:9 to § 35:13
    - private organizations and, § 38:7
    - public, § 38:8
    - state action, § 38:6
- Tribunal's role in, § 38:3, § 38:4, § 38:149, § 44:30
- Vavilov framework, § 28:26 to § 28:41, § 37:7 to § 37:9, § 38:2, § 38:56, § 38:88, § 38:138, § 38:139

### JURISDICTION

- See also Decision-Making, Waiver
- Ability to grant jurisdiction by consent, § 7:2, § 7:3, § 16:107 to § 16:113
- Agency jurisdiction to determine constitutional questions, § 29:7 to § 29:9
- Agency jurisdiction to determine constitutional validity of legislation, § 29:10 to § 29:12.50
  - authority to determine if legislation consistent with constitution, § 29:12

### JURISDICTION—Cont'd

- Agency jurisdiction to determine constitutional validity of legislation, § 29:10 to § 29:12.50—Cont'd
  - remedies under section 52 of Constitution Act, 1982, § 29:11
  - section 52, Constitution Act, 1982, § 29:10
  - unwritten constitutional principles, § 29:12.50
- Agency jurisdiction to grant remedy under s. 24, § 29:13 to § 29:22
  - agency must have power to interpret law, § 29:22
  - constitutional competency test, § 29:19, § 29:20
  - jurisdiction over person and subject, § 29:21
  - three jurisdiction test, § 29:14 to § 29:18
- Challenges to jurisdiction, § 16:106
- Conflict, § 11:3
- Consent cannot bestow, § 16:131, § 28:17 to § 28:19, § 35:5
- Decisions without jurisdiction, § 7:14 to § 7:16
- De facto jurisdiction
  - rule against collateral attacks, § 7:15
- Federal Court, § 38:154 to § 38:158, § 38:194.50
  - distinguishing from tax court, § 38:194.50
- Grants of discretion, § 7:13, § 9:1 to § 9:24
- Grants of power
  - express, § 7:5
  - implied, § 7:6, § 16:138
  - preconditions to existence of authority, § 7:8
  - purposes for which authority may be exercised, § 7:11
  - restrictions on delegation to private entities, § 7:12
  - restrictions on exercise of authority, § 7:10
  - types of grant, § 7:7
- Interpret law, § 29:12
- Jurisdictional conflict, § 11:2
- Necessary implication, doctrine of, § 39:2
- Necessity for grant of authority, § 7:2

**JURISDICTION—Cont'd**

- Powers of agency
  - implied grant, § 39:2
  - necessity for grant of authority, § 39:1
- Practical necessity, § 39:3
- Subdelegation, § 7:17 to § 7:20
  - actual, § 7:19
  - apparent, § 7:20
  - corollary matters, § 7:28
  - determining if intended, § 7:21 to § 7:27

**LABOUR ARBITRATIONS**

- Award
  - composition of, § 48:15
  - arriving at decision, § 48:16
  - compensation, § 48:21
  - decision, § 48:18
  - dissents, § 48:20
  - general, § 48:8
  - issues, § 48:17
  - reasons, § 48:19
  - enforcement of, § 48:22
  - setting aside of, § 48:23
- Expedited process, § 48:5
- Generally, § 48:1
- Grievance, § 48:3
- Hearing, § 48:8
- Hearing, commencement, § 48:8
  - evidence, § 48:13
  - facts, § 48:11
  - jurisdictional issues, § 48:9, § 48:10
  - standard of proof, § 48:12
- Mediation, § 48:6
- Powers of arbitration board, § 48:7
- Remedial authority, § 48:14
- Rights arbitration in Ontario, § 48:2
- Selecting arbitrator, § 48:4

**LAWYERS**

- See also Board Counsel
- Appointment to agencies, § 4:31
- Professional responsibility, § 38:185

**LEGISLATION**

- Agencies, and, § 45:5
- Bill types, § 45:4
- Drafting process
  - general, § 45:2
  - problems facing drafters, § 45:6
  - recommendations, § 45:7

**LEGISLATION—Cont'd**

- Legislative process, § 45:3

**LEGITIMATE EXPECTATIONS**

- Basis for principle, § 53:2
- Cannot displace legislated duties, § 53:7
- Does not apply to legislative actions, § 53:6
- Does not create absolute right to elements necessary, § 53:8 to § 53:16
  - actual expectation, § 53:13
  - capable of giving rise to expectation, § 53:11
  - clear and unambiguous, § 53:12
  - failure to carry out the promise, § 53:16
  - foundational representation or conduct, § 53:9
  - incomplete disclosure, misrep or trickery, 53:15
  - must be reasonable, § 53:14
  - relevant public decision maker, § 53:10
- Meaning, § 53:1
- Only extends to procedural matters, § 53:4
- Parameters, § 53:3 to § 53:7
- Procedure, § 53:5
- Remedy, § 53:17

**MACAULAY REPORT**

- Purpose of, § 2:31 to § 2:41
- Summary of
  - agency concerns, § 2:36
  - agency - court differences, § 2:34
  - “agency” defined, § 2:33
  - conclusions, § 2:41
  - Dicey and McRuer influence, § 2:35
  - increased statutory powers, § 2:40
  - introduction, § 2:32
  - need for agency structural changes, § 2:39
  - Ombudsman and agencies, § 2:37
  - recovering hearing costs, § 2:38

**MANDATORY/DIRECTORY PROVISIONS**

- Issue decisions/reasons, § 28:67
- Time limits
  - commence proceedings, § 49:8
  - failure to apply within, § 16:72 to § 16:74

**MCRUER, JUSTICE JAMES C.**

- McRuer Report, § 2:35, § 49:1, § 49:3

## INDEX

### MEDIATION

See also Alternative Dispute Resolution  
Mediation, **B:8**

### MEMORANDUM OF UNDERSTANDING

Administrative agencies, and, § **3:14**  
Contents of, § **44:11 to § 44:18**

### MINISTERIAL DECISIONS

“He who hears must decide” principle,  
§ **28:12**  
Reasons, § **28:62**

### MINISTERIAL DIRECTIVES

General, § **46:36**

### NATIONAL ENERGY BOARD

Cabinet petitions, § **38:33 to § 38:42**  
Examination of witnesses, § **24:9**  
Functions of, § **1:3**  
Jurisdiction, § **7:11, § 11:3**

### NATIONAL PAROLE BOARD

Functions of, § **1:3**

### NATURAL JUSTICE

See also Hearings  
Agency staff, and, § **19:5**  
Audi alteram partem rule, § **16:153**  
Cabinet petitions, § **38:32**  
Charter of Rights, § **16:219**  
Courts and, § **1:4**  
Delay, § **16:71 to § 16:82**  
    delay in initiating proceedings, § **16:72**  
    to § **16:74**  
    delay in prosecuting proceeding,  
    § **16:75 to § 16:82**  
Duress, § **35:33**  
Effect of failure to comply, § **35:29**  
Fair hearing, § **16:9**  
Hearings, public right of attendance,  
§ **21:1, § 21:2**  
“He who hears must decide” principle,  
§ **28:8 to § 28:16**  
In camera, ex parte proceeding, **APP 13A**  
Mental illness, § **35:33**  
Notice of hearing, § **16:22 to § 16:39**  
    see also Notice  
Notice of possible penalties, **APP 49A**  
Oral hearing, **APP 13A**

### NATURAL JUSTICE—Cont'd

Procedural fairness, and, § **13:8 to**  
§ **13:38**  
    Administrative Procedures Act (Alta.),  
    § **16:154**  
    content of principles, § **13:10 to**  
    § **13:37**  
    effects of breach, § **13:38**  
    Federal Courts Act, § **16:155**  
    Statutory Powers Procedure Act (Ont.),  
    § **16:154**  
    when principles apply, § **13:9**  
Public interest, and, § **12:2**  
Rules vary with circumstances, § **28:16,**  
§ **28:22**

### NEGOTIATED SETTLEMENTS

See also Alternative Dispute Resolution  
As alternative to adjudicative hearing,  
§ **41:17**  
Limitations of, § **41:17**  
Privilege, § **22:16 to § 22:22**  
Procedure, § **41:17**

### NOTICE

Adequacy of notice, § **16:22 to § 16:39**  
Deficiencies, § **16:39**  
Definition, § **16:22, § 16:23**  
Disclosure, § **16:31, § 16:32**  
Failure to give, § **16:37**  
Form of notice, **APP 16A, § 16:22,**  
§ **16:23, § 16:30, § 16:33**  
Information required, § **16:29**  
Natural justice, and, § **16:27 to § 16:38**  
Notice of hearing, § **16:34**  
Practice hints, § **16:38**  
“Proper” notice, § **41:14**  
Service of, § **16:36**  
Statutory requirements  
    Alberta, § **16:26**  
    Ontario, § **16:25**  
    timing of, § **16:35**  
    who is to get notice, § **16:28**

### NOTICE OF CONSTITUTIONAL ISSUES

Addresses of Attorneys General, § **38:163**  
Notice of constitutional question, § **29:25**  
to § **29:29, § 38:161 to § 38:163**  
    agency practice, § **38:161 to § 38:163**  
    failure to give notice, § **29:26, § 38:161**  
    to § **38:163, § 38:183**

**NOTICE OF CONSTITUTIONAL ISSUES—Cont'd**

- Notice of constitutional question, § 29:25 to § 29:29, § 38:161 to § 38:163
- Cont'd
- form of notice, § 29:27
- legislative requirements, § 29:25, § 38:162
- on whom does obligation to give notice rest, § 29:28
- reviewing tribunal Charter decisions under Vavilov, § 29:29

**OMBUDSMAN**

- See also Macaulay Report
- Agencies, and, § 47:1 et seq.
- Alternative to, § 47:2
- Background, § 47:1
- Creation of office, § 47:2
- Disclosure of information, § 47:4
- Fairness, § 47:5
- Finality clauses, § 47:4
- General principles, § 47:3
- History of, § 47:1
- Independence of, § 47:1
- Jurisdictional disputes, § 47:4
- Matter of administration, § 47:4
- Open meetings, § 47:4
- Parliamentary privilege, § 47:4
- Powers of, § 47:2, § 47:3
- Quasi-Judicial decisions, § 47:4

**ONTARIO ENERGY BOARD**

- Costs, § 46:22
- Daily routine, § 4:39
- Education programs, § 4:37
- Familiarization process, § 15:15
- In camera hearing, § 21:3
- Interim decisions, § 46:25
- Jurisdiction of, § 39:2
- Price regulation, § 12:3
- Public interest, and, § 12:3
- Reasons for creating, § 2:3 to § 2:5

**ONTARIO LABOUR RELATIONS BOARD**

- Ombudsman, and, § 47:4

**ONTARIO MUNICIPAL BOARD**

- Cabinet petitions, § 38:32
- Policy directives, § 3:7
- Policy guidelines, § 3:8

**ONTARIO MUNICIPAL BOARD**

- Cont'd
- Stare decisis and, § 38:4

**OUELLETTE REPORT**

- Agencies studied, § 2:11
- Analysis of, § 2:16 to § 2:21
- Codification of rules, § 2:13
- Commissioning of, § 2:9
- Consolidation of jurisdictions, § 2:11
- Implementation, § 2:22
- Mandate of, § 2:10
- Rationalization hypotheses, § 2:11
- Recommendations of, § 2:9 to § 2:22
- Report, APP 2B
- Salaries of agency members, § 43:2
- Status of tribunal members, APP 2B, § 2:12

**PENSION APPEAL BOARD**

- Functions of, § 1:3

**PENSION REVIEW BOARD**

- Functions of, § 1:3

**PLURALISM**

- Arthurs concept of, § 1:10

**POLICY DIRECTIVES**

- Advantages of
- defined, § 46:12
- general, § 46:12
- Criteria for, § 3:7
- General, § 3:7

**POLICY GUIDELINES**

- See also Precedent
- Application, power to encourage, § 10:28
- Consistency, § 3:8
- Failure to follow policy guidelines, § 10:27
- Issuance by administrative agencies, § 3:8
- Ontario Municipal Board, § 3:8
- Review for inconsistency with legislative authority, § 10:29
- Review of decisions failing to adhere to guidelines, § 10:29.50

**PRECEDENT**

- Constitutional law issues, § 10:2
- Guidelines for administrative agencies, § 10:3
- Imposition on administrative agencies, 10:4

**PRECEDENT—Cont'd**

- Policy guidelines and, § 10:3
- Role in decision-making, § 10:2, § 10:3

**PREHEARING CONFERENCE**

- Advantage of, § 15:3, § 46:8
- Defined, § 15:1
- Form of, § 15:2
- Legislation requiring, § 15:1, § 46:8
- Private court proceeding, § 42:6, § 42:7
- Procedure
  - checklist, § 15:6
  - costs, § 15:11
  - draft procedural order, § 15:8
  - familiarization process, § 15:15
  - form of notice, APP 15A, § 15:5
  - general, § 15:7
  - orders, § 15:9
  - procedural order, APP 15B, § 15:3, § 15:17
  - timetable, § 15:13
  - transcripts, § 15:10
  - typical scenario, § 15:16
  - witnesses, § 15:12
- Purpose of, § 15:1, § 46:8
- Timing of, § 15:4

**PREROGATIVE POWERS**

- Generally, § 38:5 to § 38:15

**PREROGATIVE REMEDIES**

- Availability of, § 38:33 to § 38:42
- Certiorari, § 38:33 to § 38:38, § 38:93 to § 38:129.50, § 44:28
- Constitutional foundation, § 38:78 to § 38:92
- Declaration, § 38:93 to § 38:129.50
- General, § 38:33 to § 38:38
- Habeas corpus, § 38:33 to § 38:38, § 38:93 to § 38:129.50, § 44:28
- Mandamus, § 38:93 to § 38:129.50, § 44:28
- Prohibition, § 38:33 to § 38:38, § 38:93 to § 38:129.50, § 44:28
- Quo warranto, § 38:33 to § 38:38, § 38:93 to § 38:129.50, § 44:28

**PRICE REGULATION**

- Ontario Energy Board, § 12:3
- Public interest, and, § 12:3

**PRIVATE COURTS**

- Adjudication, § 42:8

**PRIVATE COURTS—Cont'd**

- Advantages over arbitration, § 42:2
- Agreement to use, § 42:4
- American experience, § 42:1
- Appeals from, § 42:10
- Canadian resistance to, § 42:4
- Conciliation services of, § 42:7
- Costs, § 42:9
- Court rules, § 42:5
- Courts compared, § 42:8
- Defined, § 42:2
- Enforcement of awards, § 42:9
- Historical development, § 42:1
- Judicial review, and, § 42:10
- Procedure
  - disclosure, § 42:6
  - rules of procedure, § 42:5
  - settlement conferences, § 42:7
  - “Submission, The,” § 42:4

**PRIVATIVE CLAUSE**

- Constitutionality of, § 43:6, § 43:8
- General, § 1:5, § 44:29
- Judicial review and, § 38:47, § 38:131
- Purpose of, § 44:29

**PRIVILEGE RESPECTING TESTIMONY**

- Generally, § 22:16 to § 22:22
- Privilege Respecting Testimony, B:9

**PROCEDURAL FAIRNESS**

- Appointment process, APP 4A
- Examples, § 13:4 to § 13:39
  - contents of principles, § 13:10 to § 13:37
  - effects of breach, § 13:38
  - natural justice and, § 13:8 to § 13:38
  - when principles apply, § 13:9
- General, § 13:4 to § 13:39

**PROCEDURAL STATUTES**

- Act Respecting Administrative Justice (Quebec), APP B19 § B19:1 to APP B19 § B19:4
- Administrative Procedure Act (U.S.), APP 41A
- Administrative Procedures Act (Alberta), APP B8 § B8:1
- Council of Administrative Agencies Act (Draft), APP 2D

**PROCEDURAL STATUTES—Cont'd**

- Judicial Review Act (Prince Edward Island), **APP B17 § B17:1**
- Judicial Review Procedure Act (British Columbia), **APP B11**
- Judicial Review Procedure Act (Ontario), **APP B14**
- Statutory Powers Procedure Act (Ontario), **APP B16**

**PROCEDURE**

- See also Hearings, Natural Justice, Procedural Fairness
- American and Canadian distinguished, **§ 41:4 to § 41:16**
- courts and agencies compared, **§ 41:2**
- defined, **§ 13:2**
- importance of, **§ 13:3**
- limitations on power to control procedure, **§ 13:4 to § 13:39**
- Conflicts between authorities, **§ 13:39**
- Constitution, the, **§ 13:5**
- legislative direction, **§ 13:6**
- legitimate expectations, **§ 13:7**
- natural justice and fairness, **§ 13:8 to § 13:38**
- content, **§ 13:10 to § 13:37**
- effects of breach, **§ 13:38**
- when principles apply, **§ 13:9**
- Mastery over own procedure, **§ 13:1**
- Motions, **§ 16:48**
- Necessity for procedural directions, **§ 13:40**
- Negotiated settlements, **§ 41:17**
- Ouellette Report
- recommendations, **§ 2:13, § 2:20**
- Prehearing conference, **§ 15:3 to § 15:17**
- Private courts, **§ 42:3 to § 42:10**
- Procedural fairness, **§ 13:3 to § 13:40**
- Procedural orders, **APP 15B, APP 21B**
- Regulatory procedures, **§ 11:5**
- Rules
- necessity for, **§ 13:3**
- power to make or vary, **§ 13:1, § 13:4 to § 13:39**

**PROSECUTION BY TRIBUNALS**

- General, **§ 16:146 to § 16:151**

**PROVINCIAL MINISTRIES**

- Ontario
- agency structure, **§ 2:7**

**PUBLIC INTEREST**

- Balancing with private interest, **§ 1:14 to § 1:19**
- Constructive taking, **§ 12:4**
- Definition, **§ 12:2**
- General, **§ 12:1**
- Intervening in agency proceedings, **§ 13:46**
- Price regulation, and, **§ 12:3**
- Privilege, **§ 22:16 to § 22:22**
- Standing, **§ 13:42 to § 13:45**

**PUBLIC SERVANTS**

- Hearing officers, as
- Immigration and Refugee Board, **§ 7:3**

**PUBLIC UTILITIES BOARD**

- Intervention, **§ 38:151**
- Stare decisis and, **§ 10:3**

**QUASHING DECISION**

- Generally, **§ 38:180 to § 38:186**

**QUASI-JUDICIAL FUNCTION**

- Generally, **§ 13:9, § 21:19**

**RATUSHNY REPORT**

- Generally, **APP 2B, APP 4G, § 2:23 to § 2:30, § 43:2**

**REASONABLENESS**

- Consistency as element, **§ 38:76**
- Errors leading to finding of, **§ 38:62 to § 38:73**
- conclusions on insufficient, incorrect or irrelevant evidence, **§ 38:65**
- essential aspect not determined, **§ 38:63**
- legal principle misunderstood or misapplied, **§ 38:71**
- legislative interpretation, improper, **§ 38:68, § 38:69**
- material evidence misunderstood, **§ 38:66**
- relevant consideration not taken into account, **§ 38:62**
- relevant facts not taken into account, **§ 38:64**
- standard of proof, incorrect, **§ 38:67**
- unclear order issued, **§ 38:70**
- Interpretation, **§ 38:59, § 38:60**
- Material error, effect of, **§ 38:74**
- Precedential value, **§ 38:77**
- Reasoning must be reasonable, **§ 38:75**

## INDEX

### REASONABLENESS—Cont'd

- Standard of review, generally, § 38:59
- Versus correctness, § 38:60
- What falls outside of, § 38:61

### REASONS

- Adequacy, § 38:84
- 'Boiler plates', § 28:70, § 52:11
- Common law requirement, § 28:28 to § 28:38
- Contents, § 28:47 to § 28:55, § 46:26
- Failure to give, § 28:42 to § 28:46
  - where common law requirement, § 28:45
  - where legislative requirement, § 28:44
  - where no requirement, § 28:43
- Finality, § 28:46
- Format, § 28:47 to § 28:55
- General, § 28:6
- Legislative requirement, § 46:26
- Purpose, § 28:25, § 46:26
- Sufficiency of, § 28:48 to § 28:54
  - common law duty of fairness, required by, § 28:49
  - legislative direction, required by, § 28:50
- Writing good reasons, tips for, § 28:54, § 28:72

### RECORD

- See also Judicial Review
- Definition, legislative, § 38:167

### RECORDING OF HEARING

- See also Hearings
- Agency reporters
  - general, § 16:84
  - methods, § 16:84
  - transcripts, § 16:84

### REFERENCES TO COURT

- Federal Court, § 11:3, § 38:149

### REGULARITY, PRESUMPTION OF

- Generally, § 28:20

### REGULATIONS

- Regulations, APP B § B:10

### REGULATORY AND PUBLIC WELFARE OFFENCES

- Regulatory and Public Welfare Offences, B:11

### REGULATORY DECISIONS

- General, § 11:4

### REGULATORY PROCEDURES

- Charter of Rights, and, § 11:5

### REHEARINGS

- Absence of appeal rights, § 35:19
- Abuse of powers, § 35:7
- Accidental slip or omission, § 35:23
- Ambiguity, § 35:24
- Arguments for and against having, § 35:1
- Before final decision, § 35:25
- Clerical error, § 35:22
- Consent, § 35:5
- Continuing powers, § 35:20
- Delay, § 35:8
- Error within jurisdiction, § 35:5
- Express authority, § 35:2, § 35:11 to § 35:16
  - Interpretation Act, § 35:16
- Failure to dispose of issue, § 35:30
- Finality of decisions, § 35:27
- Form requirements, compliance, § 35:27
- Fraud, § 35:32
- Functus officio, principle, § 35:2, § 35:4
  - application, § 35:3
  - basis of rule, § 35:4
  - factors which do not warrant exception to principle, § 35:5
- General, § 35:2 to § 35:33, § 44:22
- Hearing, not a new proceeding, § 28:13
- Hearing, who presides over, § 28:13
- "He who hears must decide" principle, § 35:12
- Implied authority, § 35:2, § 35:17 to § 35:33
- Integrity of order, determination of, § 35:31
- Integrity of process, § 35:33
- Interim orders, § 35:20
- Legislative powers, § 35:20
- New facts or evidence, § 35:5 to § 35:8
- Not a new proceeding, § 35:12
- Power to be construed liberally, § 35:6
- Preconditions (statutory) to exercise, § 35:7
- Procedural requirements, compliance, § 35:27
- Procedure to follow, § 35:12
- Quashed decisions, partial, § 38:185

**REHEARINGS—Cont'd**

- Recission of decision, § 35:14
- “Reconsider,” meaning of term, § 35:14
- “Rehear,” meaning of term, § 35:14
- Reserving jurisdiction, § 35:26
- “Review,” meaning of term, § 35:13
- Structure of statute, § 35:19
- Variation of decision, § 35:14, § 46:30, § 47:1 et seq.
- Void order
  - natural justice, § 35:29
  - no jurisdiction, § 35:28
  - wording of other provisions, § 35:19

**RETROACTIVITY**

- Authority of retroactive actions, § 16:142
- Concordance, § 16:136 to § 16:144
- Definition, § 16:137
- General, § 16:136
- Interim rate approvals, § 16:144
- Policy guidelines, § 16:140
- Presumption against, § 16:138
- Presumption against, exceptions, § 16:139
- Rate regulation, § 16:143
- Retrospective provisions, § 16:137
- Vested rights, presumption against interfering with, § 16:141

**REVIEWS OF ADMINISTRATIVE AGENCIES**

- Bates Report, § 2:23 to § 2:30
- Macaulay Report, § 2:23 to § 2:41
- Ontario Law Reform Commission, § 2:23 to § 2:30
- Ratushny Report, APP 4G, § 2:2
- Saskatchewan Ombudsman, § 2:28
- United Kingdom, § 2:29

**RULE OF LAW**

- Dicey-McRuer Concept, § 1:8

**RULES OF PRACTICE**

- Authority to establish, § 46:4
- General, § 13:1

**SELF-GOVERNING BODIES**

- Charter and, § 49:10
- Checklist, § 49:9
- Control over, methods of, § 49:4
- Creation of, reasons for, § 49:2
- Defending a hearing, checklist for, § 49:9
- Disciplinary proceedings, § 49:8
- Operation of, public concern with, § 49:5

**SELF-GOVERNING BODIES—Cont'd**

- Powers of, § 49:3
- Public concern with operation of, § 49:5
- Reasons for creating, § 49:2
- Right to practice, § 49:10
- Scope of regulator’s authority, § 49:11

**SELF GOVERNING PROFESSIONS**

- Charter and, § 49:10
- Checklist, § 49:9
- Control over, methods of, § 49:4
- Creation of, reasons for, § 49:2
- Defending a hearing, checklist for, § 49:9
- Disciplinary proceedings, § 49:8
- Operation of, public concern with, § 49:5
- Powers of, § 49:3
- Public concern with operation of, § 49:5
- Reasons for creating, § 49:2
- Right to practice, § 49:10
- Scope of regulator’s authority, § 49:11

**SELF-REPRESENTATION, APPENDIX**

- Generally, § 16:63 to § 16:70

**SETTLEMENT CONFERENCE**

- Purpose of, § 46:9

**STANDARD OF REVIEW**

- See also Judicial Review
- Appellate standard, § 37:30
- Correctness, § 38:58
- Determination of standard, § 38:78 to § 38:92
  - adequacy, § 38:84
  - consistency, role of, § 38:83
  - different standards for different issues, § 38:80
    - other forms of review, § 38:89
    - presumption of reasonableness, § 38:87
    - right of appeal, significance of, § 38:139
    - statutory appeals, application of Vavilov to, § 38:88
  - legislature may direct, § 38:81
  - question, nature of, § 38:93 to § 38:129.50
    - constitutional questions, § 38:116 to § 38:118.50
    - discretionary decisions, § 38:94 to § 38:97
    - existence or extent of discretion, § 38:95

**STANDARD OF REVIEW—Cont'd**

- Determination of standard, § 38:78 to § 38:92—Cont'd
  - question, nature of, § 38:93 to § 38:129.50—Cont'd
    - mixed question of fact and law, § 38:100 to § 38:102
    - question of concurrent first instance jurisdiction, § 38:129.50
    - question of fact, § 38:98, § 38:99
    - question of law, § 38:108 to § 38:115
      - of central importance to legal system, § 38:122 to § 38:129
      - outside agency's expertise, § 38:122 to § 38:129
    - question of natural justice and fairness, § 38:103 to § 38:106
    - question of true jurisdiction, § 38:119 to § 38:121
    - regulation falls within enabling statutory authority, § 38:128
    - where jurisdictional lines between agencies, § 38:127
- Reasonableness, § 38:59
  - evidence before decision-maker, § 38:135
  - expertise of tribunal, § 38:133
  - governing statute, § 38:131
  - impact of decision on affected party, § 38:138
  - other statutory or common law constraints, § 38:132
  - past practice and past decisions of tribunal, § 38:137
  - patent unreasonableness, § 38:134
  - principles of statutory interpretation, § 38:134
  - submissions before decision-maker, § 38:136
- Standards generally, § 38:43 to § 38:55, § 38:60, § 38:78 to § 38:92

**STANDING**

- Agency on judicial review, § 38:160
- Agency right to limit standing of another agency, § 11:5
- Before agency, § 13:41 to § 13:46, § 38:150 to § 38:159
- General, § 13:46, § 38:150 to § 38:159
- Intervention by statutory authority, § 38:151

**STANDING—Cont'd**

- Public interest standing
  - criteria, § 13:42 to § 13:45

**STATED CASE**

- Authority of agency, § 46:16
- Challenges to, § 31:4
- Constitutional questions, § 29:9
- Costs, § 31:6
- General, § 16:130
- Record, § 31:3
- Standard of review on reference, § 31:5
- Statutory right to, § 31:1
- When appropriate, § 31:2

**STATUTORY POWERS PROCEDURE ACT (ONTARIO)**

- Compared to American Administrative Procedures Acts, § 41:2
- Contempt, § 40:16, § 40:26 to § 40:29, § 40:44
- Cross-examination under, § 16:187
- General, § 16:1 to § 16:5
- Judicial decisions, § 50:2 to § 50:64
- Legislative decisions, § 50:2 to § 50:64
- Right to make argument, § 16:154
- Rules, agency power to establish, § 46:4

**STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPPS)**

- Background, § 54:1
- Canadian SLAPP cases, § 54:6
- Case law, § 54:6
- Charter of Rights, and, § 54:1
- Chilling effect, § 54:1
- Defined, § 54:1
- Draft anti-SLAPP legislation, § 54:2 to § 54:5

**SUBPOENAS**

- See also Hearings
- Application to vacate, § 16:56
- Authority to issue, § 16:52
- Challenging, § 16:56
- Charter of Rights, and, § 16:210
- Compelling issuance, § 16:55
- Enforcement, § 16:62
- Form, APP 16H, § 16:53
- General, § 16:50 to § 16:62
- Interprovincial, § 16:59
- Limits on use, § 16:54

**SUBPOENAS—Cont'd**

- Meaning of term, § 16:51
- Practice, § 16:57
- Refusal to issue, § 16:55
- Request for, § 16:57
- Service, § 16:58
- Summons, meaning of, § 16:51
- Use of, § 16:50

**SUNSET CLAUSES**

- Defined, § 44:3
- Necessity for, § 43:2, § 44:3

**TARIFF BOARD**

- Functions of, § 1:3

**TAX COURT OF CANADA**

- Functions of, § 1:3

**UNDERTAKINGS**

- Enforcement of, § 46:21
- System for, § 16:105

**VOID ORDERS**

- See also Contempt
- Failure to obey, § 40:12
- Rehearing authority
  - natural justice, failure to comply, § 35:29
  - no jurisdiction, § 35:28

**WAIVER**

- Bias, APP 52A, § 28:14, § 52:21
- “He who hears must decide,” § 28:14
- Jurisdiction, cannot bestow through waiver, § 16:131 to § 16:133, § 28:14
- Rules of natural justice, § 28:14
- Substantive law, § 16:131

**WILLIS**

- Functionalism concept, § 1:9

**WITNESSES**

- Apparel, § 22:42
- Conduct of, § 25:2
- Examination of
  - Administrative Procedures Act (Alberta), § 16:187
  - Charter issues, § 16:188
  - common law, § 16:183 to § 16:186
  - cross-examination, § 16:183 to § 16:188, § 24:9
  - face obscuring clothing, § 16:186

**WITNESSES—Cont'd**

- Examination of—Cont'd
  - cross-examination, § 16:183 to § 16:188, § 24:9—Cont'd
    - manner, § 16:184, § 16:185
    - right, § 16:183
  - general, § 24:9
  - Immigration and Refugee Board, § 7:3
  - leading evidence, § 24:9
  - re-examination, § 24:9
  - Statutory Powers Procedure Act (Ontario), § 16:187
- Exclusion of, § 16:101
- Expert witnesses
  - appointment by tribunal, § 22:41
  - challenging the expert, § 22:36
  - curriculum vitae, APP 22A, § 22:33
  - exchanging experts' reports, § 22:37
  - independence of, § 22:38
  - receiving evidence of, § 22:39
  - use of evidence, § 22:40
- Interpreter, right to, § 16:218
- Lay persons
  - opinion evidence, § 7:12, § 22:28
  - qualifying witness, § 22:35
- Natural justice and, § 16:100
- Oaths, § 16:99, § 46:17
- Official languages, and, § 16:217
- Panel members' views of, § 25:1
- Panels of witnesses, § 16:98, § 46:18
- Preparation of, § 24:9
- Recalling of, § 24:9
- Restriction on calling, § 16:101
- Role of counsel, and, § 24:9
- Rules of evidence, § 22:2 to § 22:22
- Self-incrimination, protection against, § 16:189 to § 16:204
- Subpoenas, APP 16G, § 16:50 to § 16:62
  - see also Subpoenas
- Swearing of witnesses, § 16:99, § 16:218, § 46:17

**WRITTEN PROCEEDINGS**

- General, § 16:1 to § 16:5
- Lay persons
  - opinion evidence, § 7:12
  - panels of witnesses, § 16:98, § 46:18
  - restriction on calling, § 16:101
  - self-incrimination, protection against, § 16:189 to § 16:204
  - swearing of witnesses, § 16:99

INDEX

**WRITTEN PROCEEDINGS—Cont'd**  
Subpoenas, **APP 16G, § 16:50 to § 16:62**

**WRITTEN PROCEEDINGS—Cont'd**  
Swearing of witnesses, **§ 16:99, § 46:17**