

CONTENTS

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

PART I GENERAL PRINCIPLES

Chapter 1 Introduction: What is Administrative Law?	3
1. What is Administrative Law?	3
2. The Relationship of Administrative Law to Constitutional Law	4
3. Statutory Delegation of Governmental Powers	4
4. Delegation, Jurisdiction, and the Doctrine of <i>Ultra Vires</i>	6
5. Grounds for Judicial Review	6
6. Historical Development of Judicial Review of Administrative Action	9
7. Remedies	10
8. Privative Clauses	14
9. Summary	16
10. Selected Bibliography	17
Chapter 2 Constitutional Aspects of Canadian Administrative Law	21
1. Introduction: The Relevance of British Law	22
2. The Sovereignty of Parliament in Britain	23
(a) British Parliament Omnipotent	23
(b) British Parliament Unfettered for the Future	24
(c) Courts Bound by Acts of Parliament	24
(d) Administrative Powers Derive from Statute or the Royal Prerogative	25
(e) No Constitutional Separation of Powers	25
3. The United States: A Contrasting Model	26
4. The Canadian Model	27
(a) Structural Considerations	28
(i) Federalism and the Division of Legislative Powers	28
(ii) The Ability to Delegate	29
(iii) Delegation, but not Abdication	30
(A) Cases dealing with provincial delegation	31

(B) Cases dealing with federal delegation	32
(iv) Offices of Queen, Governor General and Lieutenant Governor Constitutionally Protected	37
(v) No Inter-delegation	40
(vi) The Section 96 Problem	40
(A) The historical inquiry	42
(B) Judicial function	46
(C) Institutional setting	47
(D) Deference and privative clauses	48
5. Jurisdiction to Decide Constitutional Issues	50
(a) Statutory Grants of Jurisdiction	50
(b) Common Law Jurisdiction to Decide Constitutional Questions	51
(c) Common Law Jurisdiction to Grant Remedies Under the <i>Charter</i>	55
(d) Conclusion	60
6. The <i>Canadian Charter of Rights and Freedoms</i> and Administrative Law	61
(a) Introduction to the <i>Charter</i>	61
(b) To Whom Does the <i>Charter</i> Apply?	62
(c) The Impact of Section 7 on Administrative Law	69
(i) Introduction	69
(ii) Life, Liberty and Security of the Person	70
(iii) Principles of Fundamental Justice	72
(A) The principles of procedural fundamental justice	73
(B) The principles of substantive fundamental justice	77
(d) Examples of Other <i>Charter</i> Sections Impacting Administrative Law	81
(i) Section 2	82
(ii) Section 8	84
(iii) Section 15	88
(e) Conclusion	88
Chapter 3 Statutory Delegation of Governmental Powers	91
1. Institutions of Government	91
(a) The Judicial Branch	92
(b) The Executive or Administrative Branch	93
2. Institutions Versus Functions of Government	95
3. Reasons for Characterizing Delegated Powers: “Legislative”, “Judicial” or “Administrative”	97
4. Discretionary Powers	98
(a) Duties Compared with Discretionary Powers	99
(b) The Ambit of Discretion	99
(c) Pre-conditions to the Exercise of Discretion	100
(d) The Concept of a “Quasi-Judicial” Power	101

5. Delegated Legislation	103
Chapter 4 Subordinate Legislation	105
1. Introduction	106
2. The Meaning of Subordinate Legislation	106
3. The Reasons for Subordinate Legislation	107
4. The Growth of Subordinate Legislation	108
5. The Power to Make Subordinate Legislation and Sub-delegation	109
6. The Effectiveness of Subordinate Legislation	110
7. The Preparation of Subordinate Legislation — Generally	112
8. Forms of Subordinate Legislation	113
9. Regulations	114
(a) What is a Regulation?	114
(i) Definition of a “Regulation” — Generally	114
(ii) The Federal Definition of “Regulation”	117
(b) The Power to Enact Regulations	119
(c) The Preparation and Passing of Regulations	120
(i) The Requirement for Public Consultation	121
(ii) The Filing and Publication of Regulations	122
(iii) Effect of Failure to File or Register Regulations	124
(iv) Publication of Regulations and Exemption From Publication	126
(d) Final Comments Concerning Regulations	129
10. Municipal Bylaws	130
11. Parliamentary Scrutiny of Subordinate Legislation	132
12. Challenging Subordinate Legislation	137
(a) Subordinate Legislation is <i>Ultra Vires</i>	138
(b) Parent Act is Repealed	139
(c) Parent Act is <i>Ultra Vires</i>	139
(d) Conditions Precedent	139
(e) Composition or Procedure of the Delegate	139
(f) Conflict with Other Acts	139
(g) Implied Restrictions	139
(i) Good Faith	139
(ii) Reasonableness	140
(iii) The Legitimate Expectations Doctrine	140
13. Summary	140
14. Selected Bibliography	141
15. Reports of the Federal Scrutiny Committee	143

PART II

GROUNDS FOR JUDICIAL REVIEW

Chapter 5 Introduction to the Grounds for Judicial Review	147
1. General	147
2. The “Narrow” and “Wide” Meanings of “Jurisdiction”	148
3. Judicial Review, Jurisdiction and Privative Clauses	149

4. Problems in Determining the Ambit of Jurisdiction	150
(a) Implied Statutory Intent	150
(b) Preliminary or Collateral Matters	151
(c) Granting Delegated Powers in Broad or Subjective Terms ...	152
(d) Incorporating the Delegate's Actions Into Legislation	155
5. Is an <i>Ultra Vires</i> Action Void or Voidable?	157
6. The Discretion to Refuse a Remedy Where Grounds for Judicial Review Exist	158
7. Summary	158
8. Selected Bibliography	159
Chapter 6 Defects in Acquiring Jurisdiction	161
1. Introduction	161
2. Substantive <i>Ultra Vires</i>	162
3. Constitution of the Delegate	162
(a) Sub-delegation	162
(b) Appointment of Members of the Delegate Body	168
4. Compliance with Statutory Requirements	169
5. Preliminary or Collateral Matters	171
6. Summary	179
7. Selected Bibliography	180
Chapter 7 Losing Jurisdiction Through an Abuse of Discretion	181
1. Introduction	182
2. The Abuse of an Improper Intention: Unauthorized or Ulterior Purpose, Bad Faith, Irrelevant Considerations	185
(a) Unauthorized or Ulterior Purpose	186
(b) Bad Faith	190
(c) Irrelevant Considerations	192
(d) Improper Intention Applies to all Types of Delegated Discretionary Powers	195
3. The Abuse of Acting on Inadequate Material: No Evidence; Ignoring Relevant Considerations	197
4. The Abuse of Improper Result: Unreasonable, Discriminatory, Retroactive or Uncertain Administrative Actions	198
(a) Unreasonableness	198
(b) Discrimination	201
(c) Retroactivity	203
(d) Uncertainty	204
5. The Abuse of Misconstruing the Law	205
6. The Abuse of Fettering Discretion	206
(a) Inflexible Policy Fetters on the Exercise of Discretion	208
(b) Contractual Fetters on the Exercise of Discretion	211
(c) Reference to Other Governmental Policies	211
7. The Standard of Review of Discretionary Decisions	212
8. Summary	212
9. Selected Bibliography	213

Chapter 8 Natural Justice and the Duty to be Fair: Historical Development and General Principles	215
1. Introduction	216
2. Historical Development	217
(a) Origins of the Phrase: "Judicial or Quasi-judicial"	217
(b) Early English Cases Applying Natural Justice: <i>Cooper</i> and <i>Rice</i>	218
(c) The First Erosion of Natural Justice: Concentrating on the Identity of the Decision-Maker	220
(d) The Second Erosion of Natural Justice: The "Super-added Duty to Act Judicially"	221
(e) The Development of the Law in Canada	223
(i) The <i>Alliance</i> Case	223
(ii) <i>Saltfleet v. Knapman</i>	224
(iii) <i>Calgary Power v. Copithorne</i>	224
3. The Development of the Duty to be Fair in England	226
(a) <i>Ridge v. Baldwin</i>	226
(b) <i>Re H.K.</i>	229
(c) Advantages of the New Approach	230
4. The Development of the Duty to be Fair in Canada	231
(a) The <i>Nicholson</i> Case	231
(b) The <i>Campeau</i> Case	235
(c) The <i>Harvie</i> Case	236
(d) The <i>McCarthy</i> Case	239
(e) <i>Martineau (No. 2)</i>	241
(f) Conclusion	245
5. The Applicability of the Duty to be Fair to Legislative Functions and to Decisions of the Cabinet	247
(a) Legislative Powers and the Duty to be Fair	248
(b) The Cabinet and the Duty to be Fair	250
6. Theoretically Incorrect Attempts to Make the Duty to be Fair Apply to the Merits of a Decision	253
7. Relationship Between the Duty to be Fair and the "Principles of Fundamental Justice" Contained in s. 7 of the <i>Charter</i>	255
8. Effect of a Breach of the Duty to be Fair	257
9. Summary on the Duty to be Fair	259
10. Selected Bibliography	260
Chapter 9 The Duty to be Fair: Audi Alteram Partem	261
1. Introduction	262
2. Pre-Hearing Procedures	267
(a) Investigation Stage	267
(b) Notice of the Hearing	271
(c) Knowing the Case to be Met – Disclosure	274
(d) Disclosure and Privacy	284
(i) Solicitor-Client Privilege	284

(ii) Freedom of Information	288
(e) Form of Hearing	290
(i) Constitutional and Quasi-Constitutional Rights to Oral Hearings	293
(ii) Common Law and Statutory Requirements for Oral Hearings	298
(iii) Right of Reply	302
(iv) Bifurcated Hearings	302
(f) Legitimate Expectations	304
(i) <i>Moreau-Bérubé c. Nouveau-Brunswick</i>	306
(ii) The <i>Retired Judges</i> Case	309
(iii) The <i>Pacific International Securities</i> Case	310
(iv) <i>Agraira</i>	311
(g) Summary of Duty of Fairness in Pre-Hearing Procedures	312
3. Oral Hearing Processes	312
(a) Cross-examination of Witnesses	312
(i) <i>Innisfil (Township) v. Vespra (Township)</i>	313
(ii) <i>Strathcona (Municipality) v. Maclab Enterprises Ltd.</i>	314
(iii) <i>Murray v. Rocky View (Municipal District No. 44)</i>	315
(b) Evidentiary Considerations	316
(i) Judicial Notice	318
(ii) Taking Views	321
(iii) Hearsay	322
(iv) Parol Evidence	323
(v) Privileged Communications	324
(c) Open Court	324
(i) <i>Millward v. Canada (Public Service Commission)</i>	325
(ii) The <i>McVey</i> Case	326
(iii) The <i>Edmonton Journal</i> Case	329
(d) Right to Counsel	330
(i) The <i>Guay v. Lafleur</i> Case	331
(ii) The <i>Pett</i> Case	332
(iii) The <i>Irvine</i> Case	333
(iv) The Right to Counsel in the <i>Charter</i> Context	334
(e) Reverse Order Questioning	338
(f) Availability of an Adjournment	340
(g) Stay of Proceedings	344
(h) Role of Board Counsel During the Hearing	349
(i) Legislative Prescriptions for Administrative Procedures	351
(j) Summary on Procedural Fairness During Oral Hearings	353
4. Post-Hearing Processes	353
(a) Hearing Before the Person Making the Decision	353
(i) The <i>Consolidated Bathurst</i> Case	355
(ii) The <i>Tremblay</i> Case	357
(iii) Evidence About Consultation and the Deliberative Process	358

(b) Role of Counsel After the Hearing	368
(c) Duty to Consult Prior to Making a Final Decision	374
(d) Changes in Circumstances: Rehearings and Re-openings	375
(e) <i>Res Judicata</i>	379
(f) Issue Estoppel	380
(g) Waiver	381
(h) Reasons for Decisions	382
(i) The Common Law Position	382
A. Baker	382
B. Lafontaine	384
(ii) Statutory Requirements for Reasons	385
(iii) Factors to Consider When Determining Whether Written Reasons Are Required	386
(iv) The Effect of Giving Reasons Which Disclose an Error in the Decision	388
(v) What Constitutes Adequate Reasons?	390
(vi) The Effect of Failing to Give Reasons	395
(vii) Summary on Requirement to Give Reasons	396
5. Duty to be Fair in the Context of Labour and Employment Matters	397
(a) <i>Ridge v. Baldwin</i>	397
(b) <i>Nicholson v. Haldimand-Norfolk (Regional Municipality)</i> <i>Commissioners</i>	398
(c) <i>Knight v. Indian Head School Division No. 19</i>	399
(d) <i>New Brunswick (Board of Management) v. Dunsmuir</i>	402
(e) <i>Cyr and Martin</i>	404
(f) Summary	405
6. Conclusion	406
7. Selected Bibliography	406
Chapter 10 The Duty to be Fair: the Rule Against Bias	409
1. Introduction to the Rule	410
2. To Whom Does the Rule Against Bias Apply?	411
3. The Test for Bias	412
(a) The Facts of the <i>National Energy Board Case</i>	413
(b) The Judgments	413
4. What Constitutes Bias In Law?	418
(a) Financial Interest in the Outcome of the Dispute	418
(b) Relationships with Persons Involved with the Dispute	423
(c) Outside Knowledge of or Prior Involvement with the Matter in Dispute	425
(d) Inappropriate Comments or Behaviour	429
(i) Municipal Councillors: <i>Old St. Boniface and Save</i> <i>Richmond Farmland</i>	432
(ii) The <i>Newfoundland Telephone Case</i>	434
5. Institutional Bias	437
(a) Introduction	437

(b) The General Test for Institutional Bias	440
(c) Some Examples of Institutional Bias	440
(i) Tribunal Members Exercising Overlapping Functions	441
(ii) Tribunal Staff With Overlapping Functions	446
(iii) Institutional Role of Interested Parties	448
(iv) Tribunal Interest in the Outcome	451
(v) Internal Tribunal Consultations	451
(A) <i>Consolidated Bathurst</i>	452
(B) <i>Tremblay</i>	453
(C) <i>Ellis-Don</i>	454
6. Structural Independence	455
7. The Legal Effect of a Reasonable Apprehension of Bias	463
8. Can the Rule Against Bias be Waived?	466
9. Evidence of Bias	470
(a) The Record and Affidavits	471
(b) Voluntary and Compulsory Disclosure	472
10. Summary	475
11. Selected Bibliography	476
Chapter 11 Errors of Law on the Face of the Record	479
1. Introduction	480
2. The Importance of the Distinction Between Jurisdictional and Intra-Jurisdictional Errors of Law	482
3. Inherent Limitations on the Availability of <i>Certiorari</i> as a Remedy to Correct Intra-Jurisdictional Errors of Law	483
(a) The Ambit of <i>Certiorari</i> Against Administrative Decisions	484
(b) Is a Statutory Delegate Involved?	484
4. The Record	485
5. Errors of Law Versus Errors of Fact	490
(a) What is an Error of "Law"?	491
(b) Other Circumstances in Which an Error of Fact May be Reviewed	495
(c) Is Lack of Evidence an Error of Law?	495
6. The Effect of a Privative Clause	496
(a) Preliminary or Collateral Matters	497
(b) An Unreasonable Interpretation of Law Converts an Intra-Jurisdictional Error into a Jurisdictional Error which is not Protected by a Privative Clause	498
7. Standards of Review, Curial Deference, and Intra-Jurisdictional Errors of Law	499
8. The Discretion to Refuse the Remedy	503
9. Summary on Intra-Jurisdictional Errors of Law on the Face of the Record as a Ground for Judicial Review	504
10. Selected Bibliography	504

Chapter 12 Standards of Review	509
1. Introduction	511
2. The Constitutional and Conceptual Basis for Different Standards of Review	515
3. Historical Development of Different Standards	517
(a) The High-Water Mark for Judicial Review: Anisminic	517
(b) The English Extension: All Errors of Law are Jurisdictional	519
(c) The Low-Water Mark for Judicial Review in Canada: <i>C.U.P.E.</i> and the “Not Patently Unreasonable” Test as a Shield from Judicial Review	520
(i) Post- <i>C.U.P.E.</i> Euphoria	522
(d) The Subsequent Clarification: The “Correctness Test” Applied to Jurisdictional Matters	523
(i) The “Correctness Test” Applied to Preliminary or Collateral Matters	523
(ii) The “Correctness Test” Applied to Other Types of Jurisdictional Issues Too	524
(iii) The <i>Syndicat</i> case	524
(e) The “Functional and Pragmatic” Approach for Identifying Jurisdictional Matters: <i>Bibeault</i> and <i>Econosult</i>	526
(i) The <i>Bibeault</i> case	526
(ii) The <i>Econosult</i> case	527
(iii) The Fact that there are “Jurisdictional Consequences” does not Necessarily Mean that the Correctness Standard Applies	529
(f) The “Patently Unreasonable” Test	530
(i) What Did “Patently” Mean?	530
(ii) “Unreasonableness” Goes Beyond Questions of Law	531
(iii) The Relationship Between an Unreasonable Decision and Jurisdiction	532
(g) The Initial Development of the Concept of a Spectrum of Standards of Review, the Articulation of the Intermediate Standard of “Reasonableness <i>Simpliciter</i> ”, and Using the Functional and Pragmatic Approach to Determine the Applicable Standard of Review	533
(i) <i>Pezim</i>	534
(ii) <i>Southam</i>	535
(iii) Initial Doubt About Whether the Spectrum Applies Both to Appeals and to Applications for Judicial Review	536
(iv) <i>Pushpanathan</i>	537
(h) The Four “ <i>Pushpanathan</i> Factors” to be used in the Functional and Pragmatic Approach to Determine the Applicable Standard of Review	539

(i)	The Fleeting Thought There Might be Many Standards Along the Spectrum	539
(j)	<i>Q</i> and <i>Ryan</i> : The Transference of the Concept of a Spectrum from Standards to Deference, Three Standards of Review, and a Constant Meaning for “Reasonableness <i>Simpliciter</i> ”	540
(i)	A Finite Number of Standards	540
(ii)	The Spectrum is a Spectrum of Deference, Not a Spectrum of Standards	541
(iii)	The Fixed Meaning of Reasonableness <i>Simpliciter</i>	542
(iv)	The Overall Functional and Pragmatic Approach — No Necessary Correlation Between a Particular Type of Error and a Particular Standard of Review	542
(k)	Justice LeBel’s <i>cri de coeur</i> in <i>Toronto (City) v. C.U.P.E.</i> , <i>Local 79</i>	543
4.	The Simplification in <i>Dunsmuir</i>	546
(a)	Background	546
(b)	The Majority Decision	547
(c)	Justice Binnie’s Concurring Decision	550
(d)	The Decision by Justice Deschamps	552
(e)	Unresolved Questions on Standards of Review after <i>Dunsmuir</i>	554
(f)	Summary About the Immediate After-Effects of <i>Dunsmuir</i>	556
5.	The First “ <i>Pushpanathan</i> Factor” — the presence or absence of a privative clause or an appeal	557
(a)	The Absence of a Privative Clause Does Not Automatically Engage the Correctness Standard	558
(b)	The Presence of a Privative Clause Implies Deference	560
(i)	Final and Binding Clauses	560
(ii)	Exclusive Jurisdiction Clauses	562
(iii)	No- <i>certiorari</i> Clauses	562
(iv)	“Full” or “True” Privative Clauses	564
(v)	Elastic Jurisdiction Clauses	564
(vi)	Constitutional Limitations on Privative Clauses in Canada	565
(vii)	Statutory Abolition of Privative Clauses	567
(viii)	Summary on Privative Clauses	569
(c)	The Presence of an Appeal Provision Implies Less Deference	570
(i)	Examples of Appeal Cases where the Correctness Standard was Applied	570
(ii)	Examples of Appeal Cases where the Reasonableness <i>Simpliciter</i> Standard was Applied	572
(iii)	Examples of Appeal Cases where the Patently Unreasonable Standard Was Applied	573
(iv)	Post- <i>Dunsmuir</i> Deference in Appeals	574

(d) Specific Statutory Identification of the Standard of Review to be Applied	575
6. The Second “ <i>Pushpanathan</i> Factor” — Expertise	575
(a) Different Types of Expertise	577
(b) Relative Expertise	578
(c) How is Expertise Established?	580
(d) Expertise is only Important as an Indicator of Legislative Intent	581
7. The Third “ <i>Pushpanathan</i> Factor” — the Purpose of the Act as a Whole, and the Provision in Particular	581
8. The Fourth “ <i>Pushpanathan</i> Factor” — The “Nature of the Problem”: A Question of Law or Fact?	583
9. Practical Issues in the Identification and Application of the Appropriate Standard of Review	586
(a) The Standard of Review must be Addressed in Every Case	586
(b) Lack of Predictability	587
(c) Issues of Proof	588
(d) Distinction Between the Standard to be Applied by the Statutory Delegate at First Instance and the Appropriate Standard of Review to be Applied by the Courts	588
(e) A Higher Court will Apply the Correctness Standard to a Lower Court’s Choice and Application of Standard of Review	589
(f) Different Judges may Select Different Standards	589
(g) Different Judges may Apply the Same Standard Differently	590
(h) Different Standards of Review may Apply to Different Issues	592
(i) The Possibility that the Appropriate Standard may Change Over Time	600
10. The Distinction Between the Standard of Review and the Content of the Duty of Procedural Fairness — Do the Two Standards of Review Apply to Breaches of Procedural Fairness?	601
(a) The Standard for Reviewing the Adequacy of Reasons	605
11. The Application of the Standard of Review Analysis to Discretionary Decisions	606
(a) <i>Suresh v. Canada (Minister of Citizenship & Immigration)</i>	607
(b) <i>Chieu v. Canada (Minister of Citizenship & Immigration)</i> ...	612
(c) <i>Moreau-Bérubé c. Nouveau-Brunswick</i>	614
(d) The <i>Retired Judges</i> case	614
(e) <i>Figliola</i>	619
(f) Summary on the Review of the Exercise of Discretionary Powers	620

12. Does the Standards of Review Analysis Apply to Consensual Tribunals?	620
13. Summary on Standards of Review	621
14. Selected Bibliography	622
Chapter 13 Introduction To Remedies	625
1. Appeals	625
2. Prerogative Remedies	626
3. Private Law Remedies	626
4. Ontario Procedural Reforms	627
5. Alberta Procedural Reforms	627
6. Federal Procedural Reforms	627
7. Substantive Reforms	628
8. Privative Clauses	628
Chapter 14 Appeals from Administrative Decisions	631
1. Introduction	631
2. Examples of Circumstances Where There is No Appeal	632
3. Appeals to Other Administrators	633
4. Specific Statutory Appeals to the Courts	634
5. Nature and Scope of Appeals	636
6. Form of Appeals	639
7. Appellate Exercise of Discretion	641
8. Standard of Appellate Review	642
9. Isolated Reforms to Permit Appeals to the Courts	643
10. The Creation of Administrative Appeals Tribunals	646
11. The Ombudsman as an Alternative to Statutory Appeals	647
12. The Effect of an Appeal on the Availability of Judicial Review	651
13. Restrictions on Collateral Attacks Where Appeal Available	657
14. Issue Estoppel	659
15. Conclusion	660
16. Selected Bibliography	662
Chapter 15 The Prerogative Remedies	663
1. Introduction	663
2. <i>Habeas Corpus</i>	666
3. <i>Certiorari</i> and Prohibition	668
4. <i>Mandamus</i>	673
5. <i>Quo Warranto</i>	676
6. Standing	676
(a) Standing Under the Common Law	678
(b) Public Interest Standing	681
(c) Standing Under Statutory Provisions	682
(d) Legal Personality and Standing of Decision-Makers	683
(e) Timing	685
(f) Intervention	686

7. Discretionary Nature of the Prerogative Remedies	686
(a) Waiver and Acquiescence	687
(b) Unreasonable Delay	688
(c) Clean Hands and the General Conduct of the Parties	689
(d) Futility, Mootness and Non-Material Errors	690
(e) Availability of Alternative Remedies	691
8. The Application for Judicial Review in Alberta	692
9. The <i>Federal Courts Act</i>	694
10. Conclusion	696
11. Selected Bibliography	696
 Chapter 16 Private Law Remedies and The Tort Liability of Public Authorities	699
1. Introduction	700
2. Injunctions	701
(a) Introduction	701
(b) Nature of Injunctions	701
(c) Availability of Injunctive Relief	703
(d) Use of Injunctions by the Attorney General or Administrative Bodies	706
(e) Parliamentary Proceedings	707
(f) The Importance of Interim Injunctions	708
(i) The Test for Interim Injunctions	708
(ii) Undertaking in Damages	711
(g) Stays of Proceedings	712
(h) The Discretionary Nature of Injunctions and Stays	712
(i) Crown Immunity from Injunctions	713
(i) At Common Law	713
(ii) Crown Immunity Under Statute	716
3. Declarations	721
(a) Nature of Declarations	721
(b) Availability of Declarations	725
(i) The Requirement of Justiciability	725
(ii) Practical Value	727
(iii) The Discretionary Nature of Declarations	728
(c) Declarations Concerning the Crown	728
4. Standing	729
(a) The Traditional Rule	729
(b) The Liberalization of Public Interest Standing Requirements	730
(c) The Current Test for Public Interest Standing	732
(d) Summary with Respect to Standing	734
5. Damages	734
(a) Nominate Torts	737
(b) Negligence	738
(i) The Starting Point: <i>Anns</i>	740

(ii) The Evolution of the Canadian Law on the Negligence of Government Authorities	743
(A) <i>Kamloops</i>	743
(B) <i>Just</i>	746
(C) <i>Brown and Swinamer</i>	747
(D) <i>Cooper and Edwards</i>	749
(E) <i>R. v. Imperial Tobacco</i>	753
(iii) Conclusion on Negligence by Public Authorities	755
(c) Misfeasance in a Public Office	757
(i) Development of the Tort of Misfeasance in Office	758
(d) Class Actions	765
(e) Constitutional Aspects of Damages	767
(f) Immunities	771
(i) Statutory Immunity	771
(ii) Crown Immunity	773
(iii) Members of Parliament and Provincial Legislatures	779
(iv) Judicial Officers	780
(v) Public Officials Acting Legislatively	782
(vi) Public Officials Acting Quasi-Judicially	783
6. Conclusion	784
7. Selected Bibliography	786
 <i>Appendix 1 Alberta Administrative Procedures and Jurisdiction Act</i>	791
<i>Appendix 2 Ontario Statutory Powers Procedure Act</i>	799
<i>Appendix 3 Ontario Judicial Review Procedure Act</i>	819
<i>Appendix 4 Alberta Rules Of Court</i>	825
<i>Appendix 5 Federal Courts Act</i>	829
<i>Appendix 6 British Columbia Administrative Tribunals Act</i>	835
 <i>Index</i>	837