|  |
| --- |
|  |
| Index – Public Law |
| 2016 Barrister Exam |

|  |
| --- |
| Last Updated:  4/29/2016 |

|  |  |
| --- | --- |
| Chapter 65:  Chapter 66:  Chapter 67:  Chapter 68:  Chapter 69:  Chapter 70:  Chapter 71:  Chapter 72:  Chapter 73: | Public law: basic principles  Practice before admin tribunals  Judicial review of admin action  Freedom of information and privacy  The division of powers  Interpreting the Charter  Proving a Charter claim  Procedure in constitutional cases  Aboriginal and treaty rights (s. 35) |

|  |  |  |
| --- | --- | --- |
| A |  |  |
| Aboriginal applicants – Judicial Review | 566 | r |
| Aboriginal rights – Charter interaction – cannot be limited by Charter (s. 25) | 601 | r |
| Aboriginal rights – Charter interaction – not enforceable under s. 24 | 601 | r |
| Aboriginal rights – Charter interaction – notwithstanding clause | 601 | r |
| Aboriginal rights – Charter interaction – s. 35 rights cannot be limited under s. 1 | 601 | l |
| Aboriginal rights – Charter interaction – s. 35 rights vs. Charter rights | 601 | l |
| Aboriginal rights – Charter interaction – shield or sword | 601 | l |
| Aboriginal rights – compensation for infringements of Aboriginal title –Delgamuukw | 604 | l |
| Aboriginal rights – constitutional recognition – s. 35 Constitution Act | 601 | l |
| Aboriginal rights – criminal or quasi-criminal prosecutions | 603 | r |
| Aboriginal rights – duty to consult | 603 | l |
| Aboriginal rights – duty to consult – boards and tribunals – Carrier Sekani | 603 | r |
| Aboriginal rights – duty to consult – Crown policies – don’t necessarily meet legal requirements | 603 | r |
| Aboriginal rights – duty to consult – to community, not individual – Beckman v. Little Salmon/Carmacks FN | 603 | l |
| Aboriginal rights – duty to consult – when duty arises – three conditions – Carrier Sekani | 603 | l |
| Aboriginal rights – duty to consult – when triggered | 603 | l |
| Aboriginal rights – extinguishment – federal government only – Constitution Act, s. 91(24) | 602 | r |
| Aboriginal rights – extinguishment – onus of proof | 602 | r |
| Aboriginal rights – extinguishment – R. v. Sparrow | 602 | r |
| Aboriginal rights – extinguishment vs. regulation of Aboriginal or treaty rights | 602 | r |
| Aboriginal rights – infringement – test – *R. v. Sparrow* | 602 | r |
| Aboriginal rights – justification – valid objectives include economic interests and development | 603 | l |
| Aboriginal rights – justification of infringement – test – *R v. Sparrow* | 602 | r |
| Aboriginal rights – limits – Aboriginal title – valid objectives include economic interests and development | 603 | l |
| Aboriginal rights – limits – honour of the Crown | 602 | r |
| Aboriginal rights – limits – test – *R v. Sparrow* | 602 | r |
| Aboriginal rights – Métis claims – R. v. Powley | 601 | r |
| Aboriginal rights – notice of constitutional question | 604 | r |
| Aboriginal rights – oral agreements – SEE also “Aboriginal rights – treaty interpretation” | 602 | l |
| Aboriginal rights – remedies – criminal or quasi-criminal – acquittal under s. 52 | 603 | r |
| Aboriginal rights – remedies – land use disputes – compensation | 604 | l |
| Aboriginal rights – remedies – land use disputes – difficulty in obtaining injunctions | 604 | l |
| Aboriginal rights – remedies – land use disputes – equitable remedies based on fiduciary duty | 604 | l |
| Aboriginal rights – remedies – land use disputes – remedies through duty to consult | 604 | l |
| Aboriginal rights – royal fiat – claims predating Proceeding Against the Crown Act 1962 | 604 | r |
| Aboriginal rights – test for identifying Aboriginal rights – R. v. Van der Peet | 601 | r |
| Aboriginal rights – title – definition and content of Aboriginal title – Delgamuukw | 603 | r |
| Aboriginal rights – title – duty to consult as alternative to seeking injunction | 604 | l |
| Aboriginal rights – treaty interpretation – extrinsic evidence – R. v. Marshall | 602 | l |
| Aboriginal rights – treaty interpretation – oral agreements | 602 | l |
| Aboriginal rights – treaty interpretation – R. v. Badger, Marshall, Simon, Sundown | 602 | l |
| Aboriginal rights – treaty interpretation –incidental rights – R. v. Simon, Sundown | 602 | l |
| Aboriginal rights – what is protected – rights in existence when Constitution Act, 1982 came into effect | 601 | r |
| Aboriginal treaties – SEE “Aboriginal rights – treaty interpretation” | 602 | l |
| AC v. Manitoba – Charter remedies under s. 52 – Charter as interpretative tool | 586 | r |
| Access to Information Act (ATIA) – federal – SEE “Freedom of information” | 569 | l |
| Action vs. application – constitutional litigation – SEE also “Constitutional procedure” | 594 | l |
| Adjudicative facts – vs. legislative facts – Charter context | 589 | l |
| Admin law – definition | 543 | L |
| Admin law – factors in development of | 543 | L |
| Admin law – jurisdiction – provincial court vs. Federal Court | 543 | L |
| Admin law – principles – general | 543 | L |
| Admin law – recent trends – two fundamental elements | 543 | L |
| Admin law – source of power vs. nature of body | 543 | L |
| Admin law – when the principles apply | 543 | R |
| Admin tribunals – ability to consider constitutional matters – SEE “Constitutional procedure – admin tribunals” | 598 | l |
| Admin tribunals – ability to consider questions of law – provincial human rights legislation – Trachemontagne | 598 | r |
| Admin tribunals – accessing prior decisions | 552 | l |
| Admin tribunals – legislation | 551 | l |
| Admin tribunals – materials to examine before the hearing | 551  552 | l  l |
| Admin tribunals – motions – different than motions in civil court | 553 | l |
| Admin tribunals – no inherent jurisdiction | 554 | l |
| Admin tribunals – policies or practice directions | 551 | r |
| Admin tribunals – policies or practice directions – Human Rights Tribunal consideration | 551 | r |
| Admin tribunals – regulations; by-laws | 551 | r |
| Admin tribunals – rules – SEE “SPPA – rules” | 551 | r |
| Admin tribunals – tribunals covered by SPPA | 552 | l |
| Administration of justice – provincial power – SEE “Division of powers” | 577 | r |
| ADR – admin tribunals – SPPA s. 4.8 | 554 | l |
| Aggrieved person – JR – standing at common law | 562 | l |
| Appeal – difference between JR and appeal | 555 | l |
| Appeal – standard of review on – Housen v. Nikolaisen | 555 | l |
| Arbitrary detention or imprisonment – Charter s. 9 | 583 | l |
| B |  |  |
| Badger (R. v.) – interpretation of Aboriginal treaties – SEE “Aboriginal rights – treaty interpretation” | 602 | l |
| Baker factors – (1) nature of decision being made | 549 | l |
| Baker factors – (2) nature of statutory scheme | 549 | l |
| Baker factors – (4) legitimate expectations of individual | 549 | r |
| Baker factors – (5) choice of procedure by agency | 549 | r |
| Baker v. Canada – apprehension of bias – reasons for the decision | 548 | l |
| Baker v. Canada – factors affecting content of duty of fairness | 549 | l |
| Band council decisions – JR – SEE “JR – Aboriginal” | 567 | l |
| BC (Workers’ Comp. Board) v. Figliola – matter not remitted to tribunal where result “inevitable” | 550 | r |
| Beckman v. Little Salmon/Carmacks FN – Aboriginal rights – duty to consult | 603 | l |
| Bias (natural justice) – institutional | 547 | l |
| Bias (natural justice) – institutional – authorized by statutory scheme | 547 | r |
| Bias (natural justice) – institutional – independence of DM – ousted by statutory language – Ocean Port Hotel | 547 | r |
| Bias (natural justice) – institutional – internal consultation – factors – *Ellis-Don Ltd* | 547 | r |
| Bias (natural justice) – institutional – involvement in various functions – *Gardner v. Ontario* | 547 | r |
| Bias (natural justice) – institutional – whether tribunal arrived at a preliminary judgment – WD Latimer | 547 | r |
| Bias (natural justice) – personal | 543 | c |
| Bias (natural justice) – remedy – decision void | 548 | l |
| Bias (natural justice) – source of apprehension of bias – disclosure by decision-maker | 548 | l |
| Bias (natural justice) – source of apprehension of bias – public statements of decision-maker – test | 548 | l |
| Bias (natural justice) – source of apprehension of bias – reasons for the decision – *Baker v. Canada* | 548 | l |
| Bias (natural justice) – test – reasonable apprehension of bias | 547 | l |
| Bias (natural justice) – waiving right to allege bias – when to raise allegation | 548 | l |
| Bias (natural justice) – when to raise allegation – waiving right to allege bias | 548 | l |
| *Borowski v. Canada (Attorney General)* – constitutional procedure – mootness – determining mootness | 593 | r |
| Brandeis briefs – proving a Charter claim – placing social science evidence before court | 589 | r |
| British Columbia Motor Vehicle Act (Re) – proving a Charter claim – constitutional debates not dispositive | 589 | r |
| C |  |  |
| Cadeddu (R. v.) – duty of fairness – influence of Charter principles | 549 | r |
| Canada (AG) v. PHS Community Services Society – division of powers – overlap between federal and provincial realms | 578 | r |
| Canada (AG) v. PHS Community Services Society (Insite) – Charter remedies under s. 24 – mandatory injunction | 587 | r |
| Canada (Attorney General) v. Bedford – proving a *Charter* claim – use of precedent – **\*addendum** | 589 | l |
| Canada (Citizenship and Immigration) v. Khosa – JR – standard of review – statute provides standard as patent unreasonableness | 550 | l |
| Canada (PM) v. Khadr – Charter remedies – Crown prerogative | 588 | l |
| Canada Mortgage and Housing Corp. v. Iness – admin law power limited by division of powers | 544 | l |
| Canada v. Hislop – Charter – retroactive effect of equality provision | 583 | r |
| Canadian Western Bank v. Alberta – division of powers – inter-jurisdictional immunity | 579 | l |
| Carrier Sekani – SEE Rio Tinto Alcan v. Carrier Sekani Tribal Council | 603 | l |
| Catholic school funding in ON – required under Constitution Act, 1867 – SEE also “Division of powers – education” | 577 | r |
| Central Ontario Coalition Concerning Hydro (Re) – natural justice – adequate notice | 546 | r |
| Certiorari – JR – relief available – prerogative | 560 | l |
| Charter – Aboriginal rights – s. 35 rights vs. Charter rights – SEE also “Aboriginal rights – Charter interaction” | 601 | l |
| Charter – admin tribunals – proving that tribunal has jurisdiction to consider Charter issue | 590 | l |
| Charter – application – activity that is “governmental” in nature – Eldridge v. BC | 581 | l |
| Charter – application – common law – can be challenged where inconsistent with Charter values | 581 | l |
| Charter – application – extraterritorial, if international obligation violated | 581 | l |
| Charter – application – government action, not private action | 581 | l |
| Charter – application – human rights commissions, public transit agencies, municipalities | 581 | l |
| Charter – application – proving government action under s. 32 | 590 | r |
| Charter – application – universities, hospitals, labour unions, school boards, colleges | 581 | l |
| Charter – application – who is protected – contingent on specific right | 581 | r |
| Charter – application to corporations – LLSP (s. 7) | 583 | l |
| Charter – arbitrary detention or imprisonment – s. 9 | 583 | l |
| Charter – *Charter* remedies – s. 52 – reading in and reading down | 586 | l |
| Charter – constitutional exemption – remedies under s. 52 | 587 | l |
| Charter – costs – proving costs | 592 | r |
| Charter – court of competent jurisdiction – s. 24 remedies | 587 | l |
| Charter – criminal justice rights – application in varied contexts, e.g. immigration and extradition | 583 | l |
| Charter – criminal justice rights – ss. 8-14   * Unreasonable search or seizure, s. 8 * Arbitrary detention, s. 9 * Rights upon arrest, including habeas corpus, s. 10 * Cruel and unusual treatment, s. 12 | 583 | l |
| Charter – cruel and unusual treatment or punishment – s. 12 | 583 | l |
| Charter – damages – proving damages | 592 | r |
| Charter – declaration of breach – remedies under s. 24 | 587 | r |
| Charter – declaration of invalidity – SEE “Charter – remedies” | 586 | l |
| Charter – democratic rights – ss. 3-5   * Right to vote, s. 3 * Electoral riding boundaries, s. 3 * Frequency of elections, s. 4 * Sittings of Parliament, s. 5 | 582 | l |
| Charter – detention and imprisonment – rights under ss. 9-12 | 583 | l |
| *Charter* – DM balancing mandate with *Charter* – Reasonableness – *Doré v. Barreau du Québec* | 544 | l |
| Charter – elections – ss. 3-5 | 582 | l |
| Charter – equality – analogous grounds – e.g. unmarried spouses, same-sex spouses, native persons living off-reserve | 583 | r |
| Charter – equality – analysis under s. 15 – Law v. Canada, Withler and Kapp | 583 | r |
| Charter – equality – clarifications of the Law test – Withler and Kapp | 584 | l |
| *Charter* – equality – enhance substantive equality – s.15(2) | 584 | l |
| Charter – equality – perpetuating negative attitudes is irrelevant – consider under s. 1 | 584 | l |
| Charter – equality – personal circumstances vs. personal characteristics | 584 | l |
| Charter – equality – retroactive application of s. 15 – Canada v. Hislop | 583 | r |
| Charter – exclusion of evidence – remedy under s. 24(2) | 588 | r |
| Charter – extradition to face death penalty – s. 12 – cruel and unusual treatment | 583 | l |
| Charter – freedom of association – s. 2(d) – protects collective bargaining | 582 | l |
| Charter – freedom of expression – s. 2(b) | 581 | r |
| Charter – freedom of religion – s. 2(a) | 582 | l |
| Charter – habeas corpus – rights upon arrest under s. 10 | 583 | l |
| Charter – health care issues and s. 7 – including abortion and safe injection sites | 582 | r |
| Charter – immigration detention – s. 10 | 583 | l |
| Charter – injunctions – SEE “Charter – remedies” | 587 | r |
| Charter – language rights – ss. 16-23 | 584 | l |
| Charter – limits – internal limits | 584 | l |
| Charter – limits – interpretive limits | 584 | r |
| Charter – limits – notwithstanding clause, a.k.a. override provision – s. 33 | 581 | r |
| Charter – limits – section 1 – Oakes test | 584 | r |
| Charter – limits – section 1 – *Oakes* test – government objectives – examples | 585 | l |
| Charter – limits – section 1 – Oakes test applied in flexible and contextual manner | 584 | r |
| Charter – limits – section 1 – onus on party seeking to uphold the limitation | 584 | r |
| Charter – limits – section 1 – prescribed by law | 585 | l |
| Charter – LLSP (life, liberty and security of the person) – s. 7 | 582 | r |
| Charter – LLSP (s. 7) – child protection cases | 583 | l |
| Charter – LLSP (s. 7) – health care issues, including unwanted medical treatment, abortion, safe injection sites | 582 | r |
| Charter – LLSP (s. 7) – immigration and refugee issues, parole and human rights cases | 583 | l |
| Charter – LLSP (s. 7) – not applicable to corporations | 583 | l |
| Charter – LLSP (s. 7) – sex worker safety – **\*addendum** | 582 | r |
| Charter – mobility rights – s. 6 | 582 | l |
| Charter – mobility rights under s. 6(1) – extradition requests | 582 | l |
| Charter – mobility rights under s. 6(2) – permanent residents | 582 | l |
| Charter – nature and purpose of rights – sources of evidence to draw on | 590 | r |
| Charter – no force or effect – SEE “Charter – remedies” | 586 | l |
| Charter – notwithstanding clause – s.33 – does not apply to language rights | 584 | l |
| Charter – notwithstanding clause – SEE “Charter – limits” | 581 | r |
| Charter – Oakes test – SEE “Charter – limits” | 584 | r |
| Charter – override provision – SEE “Charter – limits” | 581 | r |
| Charter – principles of fundamental justice – arbitrariness | 582 | r |
| Charter – principles of fundamental justice – gross disproportionality | 582 | r |
| Charter – principles of fundamental justice – LLSP under s. 7 – Malmo-Levine, D.B. | 582 | r |
| Charter – principles of fundamental justice – overbreadth | 582 | r |
| Charter – principles of fundamental justice – vagueness | 582 | r |
| Charter – privacy rights – s. 8 | 583 | l |
| Charter – proving a claim – adjudicative facts vs. legislative facts | 589 | l |
| Charter – proving a claim – admin tribunals – jurisdiction to consider Charter issue | 590 | l |
| Charter – proving a claim – Brandeis briefs – placing social science evidence before court | 589 | r |
| Charter – proving a claim – burden of proof | 590 | r |
| Charter – proving a claim – checklist – jurisdiction of tribunal | 590 | l |
| Charter – proving a claim – checklist – proceeding-specific facts | 590 | l |
| Charter – proving a claim – checklist – standing and mootness | 590 | l |
| Charter – proving a claim – costs | 592 | r |
| Charter – proving a claim – damages – Vancouver (City) v. Ward | 592 | r |
| Charter – proving a claim – existence of a breach – section 7 claim – causation re: government action | 590 | r |
| Charter – proving a claim – existence of breach – kinds of evidence to draw on | 590 | r |
| Charter – proving a claim – government action | 590 | r |
| Charter – proving a claim – Hansard | 589 | l |
| Charter – proving a claim – nature and purpose of rights – sources of evidence to draw on | 590 | r |
| Charter – proving a claim – notice of constitutional question | 590 | l |
| Charter – proving a claim – refuting existence of breach | 591 | l |
| Charter – proving a claim – remedies – *Schachter v. Canada* | 591 | r |
| Charter – proving a claim – section 1 justification – general | 591 | l |
| Charter – proving a claim – section 1 justification – legislative objective | 591 | l |
| Charter – proving a claim – section 1 justification – minimal impairment | 591 | r |
| Charter – proving a claim – section 1 justification – proportionality | 591 | r |
| Charter – proving a claim – section 1 justification – rational connection | 591 | l |
| Charter – proving a claim – social science experts | 589 | r |
| Charter – proving a claim – use of precedent – *Canada (Attorney General) v. Bedford* – **\*addendum** | 589 | l |
| Charter – proving a claim – using freedom of information legislation to access government materials | 590 | r |
| Charter – reasonable limits prescribed by law, free and democratic society – SEE “Charter – limits” | 584 | r |
| Charter – remedies – changing the law under s. 52 | 581 | r |
| Charter – remedies – general | 581 | r |
| Charter – remedies – s. 24 – bad faith not necessary to award damages – Vancouver (City) v. Ward | 588 | l |
| Charter – remedies – s. 24 – court of competent jurisdiction | 587 | l |
| Charter – remedies – s. 24 – Crown prerogative | 588 | l |
| Charter – remedies – s. 24 – declaration of breach | 587 | r |
| Charter – remedies – s. 24 – examples of remedies granted | 588 | r |
| Charter – remedies – s. 24 – injunctions – evidence | 592 | r |
| Charter – remedies – s. 24 – who can apply for relief under s. 24(1) | 587 | l |
| Charter – remedies – s. 24 – wide range of possible remedies | 588 | r |
| Charter – remedies – s. 24(2) – exclusion of evidence – R. v. Grant | 588 | r |
| Charter – remedies – s. 52 – “no force or effect” | 586 | l |
| Charter – remedies – s. 52 – consequences can vary depending on court or tribunal | 581 | r |
| Charter – remedies – s. 52 – constitutional exemption | 587 | l |
| Charter – remedies – s. 52 – constitutional exemption – evidence | 592 | l |
| Charter – remedies – s. 52 – declaration of invalidity | 586 | l |
| Charter – remedies – s. 52 – declaration of invalidity – suspension | 592 | l |
| Charter – remedies – s. 52 – reading in and reading down – Charter as interpretative tool – AC v. Manitoba | 586 | r |
| Charter – remedies – s. 52 – reading in and reading down – criteria | 586 | l |
| Charter – remedies – s. 52 – reading in and reading down – legislature has last word | 586 | r |
| Charter – remedies – s. 52 – severance | 586 | r |
| Charter – remedies – s. 52 – severance – criteria | 586 | r |
| Charter – remedies – s. 52 – severance, reading in, or reading down – legislative intent | 592 | l |
| Charter – remedies – s. 52 – striking down | 586 | l |
| Charter – remedies – s. 52 – suspending declarations of invalidity | 586 | r |
| Charter – sentencing – s. 12 – cruel and unusual treatment or punishment | 583 | l |
| Charter – severance – remedies under s. 52 | 586 | r |
| Charter – social science evidence – SEE “Charter – proving a claim” | 589 | r |
| Charter – striking down – SEE “Charter – remedies” | 586 | l |
| Charter – suspending declarations of invalidity – remedies under s. 52 | 586 | r |
| Charter – test litigation – breach of statute by test litigant | 600 | l |
| Charter – unreasonable search and seizure – privacy rights – s. 8 | 583 | l |
| Charter – who is protected – citizens, permanent residents, corporations | 581 | r |
| Charter values – application to common law | 581 | l |
| Charter values as interpretive tool – admin tribunals | 599 | l |
| Chaterjee v. Ontario – division of powers – pith and substance analysis | 578 | l |
| Civil remedies against public authorities – federal – Crown Liability and Proceedings Act | 566 | l |
| Civil remedies against public authorities – provincial – Proceedings Against the Crown Act | 566 | l |
| Collateral challenge – definition – constitutional procedure | 593 | l |
| Committee for Justice and Liberty v. National Energy Board – reasonable apprehension of bias – test | 547 | l |
| Common law – can be challenged where inconsistent with Charter values | 581 | l |
| Constitution Act, 1867 – SEE “Division of powers” | 575 | l |
| Constitution Act, 1982 – remedies under ss. 24 and 52 – SEE “Charter – remedies” | 581 | r |
| Constitution Act, s. 91(24) – federal government – extinguishment of Aboriginal and treaty rights | 602 | r |
| Constitutional exemption – Charter remedies under s. 52 | 587 | l |
| Constitutional procedure – action vs. application – superior courts | 594 | l |
| Constitutional procedure – admin tribunals – Charter values | 599 | l |
| Constitutional procedure – admin tribunals – express jurisdiction | 598 | l |
| Constitutional procedure – admin tribunals – implied jurisdiction – *Nova Scotia (Workers’ Comp. Board) v. Martin* | 598 | r |
| Constitutional procedure – admin tribunals – jurisdiction | 598 | l |
| Constitutional procedure – admin tribunals – jurisdiction – failure to exercise jurisdiction – error of law | 598 | r |
| Constitutional procedure – admin tribunals – jurisdiction – remedies under Charter s. 24(1) | 599 | l |
| Constitutional procedure – admin tribunals – limited effect of constitutional ruling | 599 | l |
| Constitutional procedure – admin tribunals – notice of constitutional question | 599 | r |
| Constitutional procedure – admin tribunals – procedural considerations | 599 | l |
| Constitutional procedure – applications for JR of admin decisions – Div Court | 596 | l |
| Constitutional procedure – breach of statute by test litigant – narrow exception to Rules of Professional Conduct | 600 | l |
| Constitutional procedure – collateral challenge – definition | 593 | l |
| Constitutional procedure – direct challenge – definition | 593 | l |
| Constitutional procedure – Div Court – damages not available | 596 | l |
| Constitutional procedure – Div Court – evidence | 596 | l |
| Constitutional procedure – Div Court – interim relief | 596 | l |
| Constitutional procedure – Div Court – jurisdiction – only collateral challenges | 596 | l |
| Constitutional procedure – Div Court – notice of constitutional question | 596 | r |
| Constitutional procedure – Div Court – notice requirements | 596 | r |
| Constitutional procedure – factors influencing choice of procedure | 593 | l |
| Constitutional procedure – Federal Court | 596 | r |
| Constitutional procedure – Federal Court – action vs. application | 597 | l |
| Constitutional procedure – Federal Court – Crown Liability and Proceedings Act | 597 | r |
| Constitutional procedure – Federal Court – intervenors | 597 | l |
| Constitutional procedure – Federal Court – jurisdiction – applications for JR | 596 | r |
| Constitutional procedure – Federal Court – jurisdiction – cannot hear direct challenges – Northern Telecom | 596 | r |
| Constitutional procedure – Federal Court – jurisdiction – concurrent jurisdiction – liability of federal Crown | 596 | r |
| Constitutional procedure – Federal Court – jurisdiction – exclusive jurisdiction – re: federal board/comm./tribunal | 596 | r |
| Constitutional procedure – Federal Court – jurisdiction – liability of federal Crown – concurrent jurisdiction | 596 | r |
| Constitutional procedure – Federal Court – jurisdiction – preferred forum – expertise – *Reza v. Canada* | 596 | r |
| Constitutional procedure – Federal Court – limitation periods | 597 | r |
| Constitutional procedure – Federal Court – notice of constitutional question – FCA vs. provincial Courts of Justice Act | 597 | r |
| Constitutional procedure – Federal Court – notice requirements (not incorporated from provincial statutes) | 597 | r |
| Constitutional procedure – Federal Court – parties – AG Canada | 597 | r |
| Constitutional procedure – Federal Court – procedural options | 597 | l |
| Constitutional procedure – jurisdiction – admin tribunals | 598 | l |
| Constitutional procedure – jurisdiction – Div Court | 596 | l |
| Constitutional procedure – jurisdiction – Federal Court | 596 | r |
| Constitutional procedure – jurisdiction – superior courts | 594 | l |
| Constitutional procedure – limitation periods – superior courts | 594 | r |
| Constitutional procedure – mootness – determining mootness – *Borowski v. Canada (Attorney General)* | 593 | r |
| Constitutional procedure – mootness – factors influencing discretion to hear moot appeal | 593 | r |
| Constitutional procedure – mootness – how moot cases arise | 593 | r |
| Constitutional procedure – mootness – strategies for avoiding mootness | 594 | l |
| Constitutional procedure – notice of constitutional question – Div Court | 596 | r |
| Constitutional procedure – notice of constitutional question – failure to give notice | 595 | r |
| Constitutional procedure – notice of constitutional question – Federal Court | 597 | r |
| Constitutional procedure – notice of constitutional question – superior courts | 595 | l |
| * Constitutional procedure – parties – superior courts | 594 | r |
| Constitutional procedure – provincial superior courts – SEE “Constitutional procedure – superior courts” | 594 | l |
| Constitutional procedure – public interest standing | 593 | r |
| Constitutional procedure – reference – definition | 593 | l |
| Constitutional procedure – references – need for thorough factual record | 599 | r |
| Constitutional procedure – references – referring constitutional questions to ONCA or SCC | 599 | r |
| Constitutional procedure – remedies under Charter s. 24 – restricted to Charter violations | 599 | l |
| Constitutional procedure – standing | 593 | r |
| Constitutional procedure – standing – public interest standing | 593 | r |
| Constitutional procedure – standing – test – Canadian Council of Churches | 593 | r |
| Constitutional procedure – strategies for avoiding mootness | 594 | l |
| Constitutional procedure – Superior Court of Justice (ON) – SEE “Constitutional procedure – superior courts” | 594 | l |
| Constitutional procedure – superior courts – applicant’s choice of proceeding not final | 594 | r |
| Constitutional procedure – superior courts – inherent jurisdiction | 594 | l |
| Constitutional procedure – superior courts – jurisdiction – Courts of Justice Act (CJA) | 594 | l |
| Constitutional procedure – superior courts – limitation periods | 594 | r |
| Constitutional procedure – superior courts – parties   * Her Majesty Queen in Right of ON – when seeking damages   Attorney General ON – when challenging legislation | 594 | r |
| Constitutional procedure – superior courts – parties – intervenors and friends of the court | 594 | r |
| Constitutional procedure – superior courts – Proceedings Against the Crown Act – notice requirement when seeking damages against Crown | 595 | l |
| Conway (R. v.) – admin tribunals – jurisdiction to grant remedies under Charter s. 24(1) | 599 | l |
| *Coroners Act* – statutory reconsideration or appeal | 545 | l |
| Costs – Charter context – proving costs | 592 | r |
| Court of competent jurisdiction – Charter remedies under s. 24 | 587 | l |
| Court of competent jurisdiction – Charter remedies under s. 24 – can include admin tribunals | 599 | l |
| Criminal justice rights – Charter ss. 8-14   * Unreasonable search or seizure, s. 8 * Arbitrary detention, s. 9 * Rights upon arrest, including habeas corpus, s. 10 * Cruel and unusual treatment, s. 12 | 583 | l |
| Criminal justice rights – Charter ss. 8-14 – application in varied contexts, e.g. immigration and extradition | 583 | l |
| Criminal law – federal power – SEE “Division of powers – criminal law” | 576 | l |
| Cross-examination – admin tribunals – SPPA s. 10.1(b); s. 23 | 552 | r |
| Crown liability – civil remedies | 566 | l |
| Crown Liability and Proceedings Act – constitutional procedure – claims against federal government | 597 | r |
| Crown Liability and Proceedings Act – suing the Crown for damages – federal | 566 | l |
| Crown prerogative – Charter remedies | 588 | l |
| Crown Zellerbach (R. v.) – division of powers – POGG – national concern | 575 | r |
| Cruel and unusual treatment or punishment – Charter s. 12 | 583 | l |
| CUPE v. Ontario Minister of Labour – reasonable apprehension of bias | 547 | l |
| CUPE, Local 963 v. New Brunswick Liquor Corp. – modern approach to substantive review – judicial restraint | 550 | l |
| D |  |  |
| Dagenais v. CBC – Charter section 1 – proportionality | 585 | l |
| Dagg v. Canada (Minister of Finance) – purpose of freedom of information legislation | 569 | l |
| Damages – Charter context – proving damages | 592 | r |
| Declaration – JR – relief available – equitable | 560 | r |
| Declarations of invalidity – SEE “Charter – remedies” | 586 | l |
| Declarations re: constitutionality – JR – Charter | 556 | l |
| Delegated power – Charter and division of powers limits | 544 | l |
| Delegated power – common law limits | 544 | l |
| Delegated power – control over exercise of | 544 | r |
| Delegated power – errors of law limits | 544 | r |
| Delegated power – exercise of – public law | 543 | R |
| Delegated power – jurisdictional limits – CL | 544 | r |
| Delegated power – limits on – from Constitution and common law | 544 | l |
| Delegated power – procedural limits and natural justice – CL and SPPA | 544 | r |
| Delegated power – procedure vs. substantive standards | 544 | l |
| Delegated power – questions regarding the source of decision-making power | 543 | R |
| Delegated power – source of decision-making power | 543 | R |
| Delegated power – statutory reconsideration or appeal | 545 | l |
| Delegated power – supervisory control of | 543 | L |
| Delgamuukw v. BC – compensation for infringements of Aboriginal title | 604 | l |
| Delgamuukw v. BC – definition and content of Aboriginal title | 604 | l |
| Democratic rights – Charter ss. 3-5 | 582 | l |
| Direct challenge – definition – constitutional procedure | 593 | l |
| Division of powers – Aboriginal matters – federal power under s. 91(24) | 576 | r |
| Division of powers – administration of justice – provincial power under s. 92(14) | 577 | r |
| Division of powers – aeronautics – federal power – POGG | 575 | r |
| Division of powers – agriculture – concurrent authority under s. 95 | 575 | l |
| Division of powers – ancillary powers doctrine | 578 | r |
| Division of powers – ancillary powers doctrine – test – based on degree of intrusion – *Kirkbi v Ritvik* | 579 | l |
| Division of powers – banking – exclusive federal power under s. 91(15) | 577 | l |
| Division of powers – bankruptcy – exclusive federal power under s. 91(21) | 577 | l |
| Division of powers – competition – federal power – “general trade and commerce” | 576 | l |
| Division of powers – Constitution Act, 1867, ss. 91-95 | 575 | l |
| Division of powers – copyright – exclusive federal power under s. 91(23) | 577 | l |
| Division of powers – core of jurisdiction – SEE “Division of powers – inter-jurisdictional immunity” | 579 | l |
| Division of powers – criminal law | 576 | l |
| Division of powers – criminal law – federal power – BUT provincial offences under s. 92(15) | 576 | r |
| Division of powers – criminal law – federal power under s. 91(27) | 576 | l |
| Division of powers – criminal law – prohibition backed by a penalty | 576 | l |
| Division of powers – criminal law – valid criminal law purpose – Margarine Reference | 576 | l |
| Division of powers – criminal procedure – exclusive federal power | 576 | l |
| Division of powers – double aspect | 578 | r |
| Division of powers – education – Catholic school funding in – required under Constitution Act, 1867 | 577 | r |
| Division of powers – education – provincial power under s. 93 | 577 | l |
| Division of powers – federal powers | 575 | l |
| Division of powers – general | 575 | l |
| Division of powers – health – federal payments under Canada Health Act | 577 | l |
| Division of powers – health – provincial power (mostly) | 577 | l |
| Division of powers – incidental effect – will not doom an otherwise constitutional law | 578 | r |
| Division of powers – incorporation of federal companies – federal power – POGG | 575 | r |
| Division of powers – Indians and lands reserved for the Indians – federal power under s. 91(24) | 576 | r |
| Division of powers – inter-jurisdictional immunity | 579 | l |
| Division of powers – inter-jurisdictional immunity – “narrow” doctrine, apply with restraint | 579 | r |
| Division of powers – inter-jurisdictional immunity – asymmetry in practice | 579 | l |
| Division of powers – inter-jurisdictional immunity – example re: provincial labour laws | 579 | l |
| Division of powers – inter-jurisdictional immunity – examples | 579 | r |
| Division of powers – inter-jurisdictional immunity – importance of precedent | 579 | r |
| Division of powers – inter-jurisdictional immunity – protects a “core” of jurisdiction | 579 | l |
| Division of powers – inter-jurisdictional immunity – provincial law would “impair” federal competence | 579 | r |
| Division of powers – international treaties – federal power – POGG | 575 | r |
| Division of powers – interprovincial and int’l transport and communication – federal power | 576 | r |
| Division of powers – JR on federalism grounds – general | 577 | r |
| Division of powers – limiting admin law power – *Canada Mortgage and Housing Corp. vs. Iness* | 544 | l |
| Division of powers – marine pollution – federal power – POGG | 575 | r |
| Division of powers – municipalities – power delegated from provinces | 577 | r |
| Division of powers – municipalities – provincial power under s. 92(8) | 577 | r |
| Division of powers – national concern – POGG – Crown Zellerbach (R. v.) | 575 | r |
| Division of powers – national emergency – POGG | 575 | r |
| Division of powers – nuclear energy – federal power – POGG | 575 | r |
| Division of powers – paramountcy – “impossibility of dual compliance” | 580 | l |
| Division of powers – paramountcy – frustrating Parliament’s objective | 580 | r |
| Division of powers – paramountcy – Law Society of BC v. Mangat – respecting provincial law would frustrate Parliament’s objective | 580 | r |
| Division of powers – paramountcy – point-in-time doctrine | 580 | r |
| Division of powers – patents – exclusive federal power under s. 91(22) | 577 | l |
| Division of powers – pith and substance – *Chaterjee v. Ontario* | 578 | l |
| Division of powers – pith and substance – double aspect | 578 | r |
| Division of powers – pith and substance – incidental effect | 578 | r |
| Division of powers – POGG – federal power under s. 91 | 575 | l |
| Division of powers – POGG (peace, order, and good government) | 575 | l |
| Division of powers – policing – provincial power | 577 | r |
| Division of powers – provincial offences under s. 92(15) | 576 | r |
| Division of powers – provincial powers | 576 | r |
| Division of powers – securities regulation – NOT federal power – Reference re Securities Act | 576 | l |
| Division of powers – shared or concurrent authority | 575 | l |
| Division of powers – superior court judges, appointment and salaries – exclusive federal power | 577 | r |
| Division of powers – trade and commerce – “general trade and commerce” – five indicia – General Motors v. City National Leasing | 576 | l |
| Division of powers – trade and commerce – federal power under s. 91(2) | 575 | r |
| Division of powers – trademarks – federal power – “general trade and commerce” | 576 | l |
| Division of powers – transport and communication – interprovincial and int’l – federal power | 576 | r |
| Division of powers – ultra vires and intra vires legislation | 578 | l |
| Divisional Court (ON) – constitutional matters – SEE “Constitutional procedure – Div Court” | 596 | l |
| Doré v. Barreau du Québec – admin law power limited by *Charter* – DM balancing mandate with *Charter* – reasonableness | 544 | l |
| Doucet-Boudreau v Nova Scotia – Structural Injunctions – Charter s 24 | 587 | r |
| Doucet-Boudreau v. Nova Scotia – Charter remedies under s. 24 – structural injunction | 587 | r |
| Dunsmuir v. New Brunswick – JR – SCC introduced new test for standard of review | 557 | l |
| Dunsmuir v. New Brunswick – JR – standard of review – two standards | 557 | l |
| Duty to consult – Aboriginal rights – boards and tribunals – Carrier Sekani | 603 | r |
| Duty to consult – Aboriginal rights – Crown policies – don’t necessarily meet legal requirements | 603 | r |
| Duty to consult – Aboriginal rights – SEE also “Aboriginal rights – duty to consult” | 603 | l |
| Duty to consult – Aboriginal rights – to community, not individual – Beckman v. Little Salmon/Carmacks FN | 603 | l |
| Duty to consult – Aboriginal rights – when duty arises – three conditions – Carrier Sekani | 603 | l |
| E |  |  |
| Eaton v. Brant County – failure to give notice of constitutional question – constitutional procedure | 596 | L |
| Education – provincial power – SEE “Division of powers” | 577 | l |
| Edwards Books and Art Ltd. (R. v.) – proving a *Charter* claim – section 1 justification | 591 | l |
| Eldridge v. BC – Charter application – activity that is “governmental” in nature | 581 | l |
| Electronic hearings – SPPA s. 5.2 | 552 | r |
| Ellis-Don Ltd. v. Ontario (Labour Relations Board) – institutional bias – internal consultation – factors | 547 | r |
| Error of law – definition | 544 | r |
| Errors of admin law permitting judicial intervention | 550 | r |
| Evidence – admin tribunals – relaxed threshold for admission – SPPA s. 15 | 553 | l |
| Evidence – exclusion of – remedy under Charter s. 24(2) | 588 | r |
| Evidence – JR – admissibility | 561 | l |
| Existing Aboriginal rights – protected under s. 35(1) | 601 | r |
| Existing jurisprudence – factor in determining standard of review – JR – nature of Q and DM | 557 | l |
| Expertise of tribunal – factor in determining standard of review – JR | 558 | r |
| Extinguishment of Aboriginal and treaty rights – SEE “Aboriginal rights – extinguishment” | 602 | r |
| Extradition to face death penalty – Charter s. 12 – cruel and unusual treatment | 583 | l |
| Extrinsic evidence – Aboriginal treaties – R. v. Marshall | 602 | l |
| F |  |  |
| Fairness (duty of) – application to both judicial and non-judicial decisions | 548 | r |
| Fairness (duty of) – Baker factors – (1) nature of decision being made | 549 | l |
| Fairness (duty of) – Baker factors – (2) nature of statutory scheme | 549 | l |
| Fairness (duty of) – Baker factors – (3) importance of decision to individuals affected – *Homex*; *Webb* | 549 | l |
| Fairness (duty of) – Baker factors – (4) legitimate expectations of individual | 549 | r |
| Fairness (duty of) – Baker factors – (5) choice of procedure by agency | 549 | r |
| Fairness (duty of) – Baker factors – (6) influence of Charter principles – *Cadeddu* | 549 | r |
| Fairness (duty of) – basic content of doctrine – right to know case to meet, right to make submissions, and potentially right to reasons | 548 | r |
| Fairness (duty of) – courts reluctant to intervene if elements present – Knight v. Indian Head | 548 | r |
| Fairness (duty of) – definition – Nicholson | 548 | r |
| Fairness (duty of) – factors affecting content of duty – Baker factors | 549 | l |
| Fairness (duty of) – purpose – meaningful chance to present case, have it considered by DM | 548 | r |
| Federal Court – constitutional matters – SEE “Constitutional procedure – Federal Court” | 596 | r |
| Federal Court – privacy – role in reviewing decisions related to personal information | 573 | r |
| Federal Court – procedure – SEE also “Constitutional procedure – Federal Court” | 596 | r |
| Federal Courts – jurisdiction re: constitutional questions – SEE also “JR” | 556 | l |
| Federal Courts Act – 2003 amendments creating two separate courts | 563 | l |
| Federal Courts Act (FCA) – JR – federal | 545 | r |
| Federal Courts Act (FCA) – JR – relief available (s. 18.1(3)) | 559 | r |
| Federal Courts Act (FCA) – jurisdiction of Federal Courts (ss. 2(1), 18.1, 28) | 555 | r |
| Federal paramountcy – SEE “Division of powers – paramountcy” | 579 | r |
| Federal powers – SEE also “Division of powers” | 575 | l |
| Freedom of association – Charter s. 2(d) – protects collective bargaining | 582 | l |
| Freedom of expression – Charter s. 2(b) | 581 | r |
| Freedom of information – appeal or complaint rights | 570 | r |
| Freedom of information – burden of proof – exemptions and exclusions | 571 | l |
| Freedom of information – commissioners – binding orders vs. non-binding recommendations | 571 | l |
| Freedom of information – commissioners – federal Information Commissioner – ombudsman-like role | 571 | l |
| Freedom of information – commissioners – federal vs. ON – slightly different powers | 571 | l |
| Freedom of information – commissioners – ON Info and Privacy Commissioner – power to issue binding orders | 571 | l |
| Freedom of information – commissioners – review of decisions | 571 | l |
| Freedom of information – costs – fees | 569 | r |
| Freedom of information – exclusions | 570 | l |
| Freedom of information – exclusions – burden of proof | 571 | l |
| Freedom of information – exclusions under federal legislation – ATIA | 570 | r |
| Freedom of information – exclusions under Ontario legislation – FIPPA and MFIPPA | 570 | l |
| Freedom of information – exclusions vs. exemptions | 570 | l |
| Freedom of information – exemptions | 570 | l |
| Freedom of information – exemptions – “severed” or “redacted” records | 570 | l |
| Freedom of information – exemptions – burden of proof | 571 | l |
| Freedom of information – exemptions – mandatory vs. discretionary | 570 | l |
| Freedom of information – federal – Access to Information Act (ATIA) | 569 | l |
| Freedom of information – fees – costs | 569 | r |
| Freedom of information – general | 569 | l |
| Freedom of information – importance for legal practice | 569 | l |
| Freedom of information – informal requests or routine disclosure | 569 | r |
| Freedom of information – invalid grounds for refusing to disclose | 570 | r |
| Freedom of information – legislation – purpose – Dagg v. Canada (Minister of Finance) | 569 | l |
| Freedom of information – making a request | 569 | l |
| Freedom of information – making a request – specifying reasons for request – not necessary | 569 | r |
| Freedom of information – mandatory vs. discretionary exemptions | 570 | l |
| Freedom of information – municipal – Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) | 569 | l |
| Freedom of information – provincial – ON Freedom of Information and Protection of Privacy Act (FIPPA, ON) | 569 | l |
| Freedom of information – records vs. oral information or testimony | 569 | r |
| Freedom of information – review of decisions by commissioners | 571 | l |
| Freedom of information – severed or “redacted” records | 570 | l |
| Freedom of information – timing | 570 | l |
| *Freedom of Information and Protection of Privacy Act* (*FIPPA*, ON) – provincial – ON – *SEE “Freedom of information”* | 569 | l |
| G |  |  |
| Gardner v. Ontario (Civilian Commission on Police Services) – institutional – involvement in various functions | 547 | r |
| General Motors v. City National Leasing – division of powers – “general trade and commerce” | 576 | l |
| Government action – Charter – necessary for application of Charter | 581 | l |
| Grant (R. v.) – Charter remedies under s. 24(2) – exclusion of evidence in criminal cases | 588 | r |
| Grounds of review – JR – FCA s. 18.1(4), JRPA s. 2 | 562 | r |
| Guignard (R. v.) – Charter remedies under s. 52 – constitutional exemption | 587 | l |
| H |  |  |
| Habeas corpus – Charter s. 10 – rights upon arrest | 583 | l |
| Habeas corpus – JR – relief available – prerogative | 560 | l |
| Haida Nation v. BC – Aboriginal rights – duty to consult | 603 | l |
| Hansard – proving a Charter claim | 589 | l |
| Heads of power – Parliament vs. provinces – SEE also “Division of powers” | 575 | l |
| Health – provincial power (mostly) – SEE “Division of powers” | 577 | l |
| Hearing – form and conduct of – natural justice | 547 | l |
| Hearing – in camera – admin tribunals | 552 | r |
| Hearing – open to public, generally | 552 | r |
| Homex Realty v. Wyoming – duty of fairness | 549 | l |
| Housen v. Nikolaisen – standard of review on appeal | 555 | l |
| *Human Rights Code* – statutory reconsideration or appeal | 545 | l |
| Human rights legislation – admin tribunals – jurisdiction to consider – Trachemontagne | 598 | r |
| Huu-Ay-Aht FN v. BC (Minister of Forests) – Aboriginal title – duty to consult | 604 | r |
| I |  |  |
| Immigration detention – Charter s. 10 | 583 | l |
| In camera hearing – admin tribunals | 552 | r |
| In camera hearing – admin tribunals – witnesses and their counsel | 553 | l |
| Indians and lands reserved for the Indians – federal power – SEE “Division of powers” | 576 | r |
| Inherent jurisdiction – admin tribunals | 554 | l |
| Inherent jurisdiction – Federal Courts and ON Div Court vs. Superior Court | 555 | r |
| Injunction – JR – relief available – equitable | 561 | l |
| Injunctions – Aboriginal rights – difficulty in obtaining injunctions | 604 | l |
| Injunctions – Charter remedies under s. 24 – SEE “Charter – remedies” | 587 | r |
| Institutional bias – SEE “Bias (natural justice)” | 547 | l |
| Interim orders or decisions – admin tribunals – SPPA s. 16.1 | 553 | r |
| Interim relief, incl. stay of proceeding – JR – relief available – FCA s. 18.2, JRPA s. 4 | 561 | l |
| Inter-jurisdictional immunity – SEE “Division of powers – inter-jurisdictional immunity” | 579 | l |
| Interpretation of Aboriginal treaties – SEE also “Aboriginal rights – treaty interpretation” | 602 | l |
| J |  |  |
| JR – errors of admin law permitting intervention | 550 | r |
| JR – exhausting statutory appeal mechanisms prior to | 545 | r |
| JR – federal – Federal Courts Act (FCA) | 545 | r |
| JR – judicial intervention always discretionary – *Volochay v. College of Massage Therapists* | 545 | r |
| JR – obtaining evidence prior to, under Freedom of Information and Protection of Privacy Act | 545 | r |
| JR – provincial admin action – different remedies | 545 | r |
| JR – provincial admin action – no statutory time limit, but laches | 545 | r |
| JR – provincial admin action – Ontario – *Judicial Review Procedure Act (JRPA)* | 545 | r |
| JR – standard of review – SEE also “Standard of review” | 556 | r |
| JR – substantive review – no remittance to tribunal where result “inevitable” – BC (Workers’ Comp. Board) v. Figliola | 550 | r |
| JRPA – JR – relief available (s. 2) | 559 | r |
| Judicial Review – Aboriginal – Aboriginal applicants | 566 | r |
| Judicial Review – Aboriginal – JR of band council decisions – jurisdiction (generally federal) | 567 | l |
| Judicial Review – Aboriginal – JR of band council decisions – statutory powers delegated by province | 567 | l |
| Judicial Review – admissibility of evidence | 561 | l |
| Judicial Review – availability of | 556 | r |
| Judicial Review – civil remedies against public authorities | 566 | l |
| Judicial Review – constitutional questions – notice requirement to AG | 562 | r |
| Judicial Review – declarations re: constitutionality – ON Sup Court vs. Federal Courts | 556 | l |
| Judicial Review – difference between JR and appeal | 555 | l |
| Judicial Review – discretionary bars – examples where courts may refuse to exercise discretion | 559 | l |
| Judicial Review – discretionary bars – statutory right of appeal exists – provincial (JRPA s. 2) vs. federal (FCA s. 18.5) | 559 | l |
| Judicial Review – federal admin action | 563 | l |
| Judicial Review – federal admin action – appealing decisions of Federal Court to Federal Court of Appeal and SCC | 563 | l |
| Judicial Review – federal admin action – extending timing for JR application – factors | 563 | r |
| Judicial Review – federal admin action – Federal Courts – exclusive jurisdiction | 563 | l |
| Judicial Review – federal admin action – jurisdiction – Federal Court vs. Federal Court of Appeal | 563 | l |
| Judicial Review – federal admin action – parties and rule of tribunal counsel | 563 | r |
| Judicial Review – federal admin action – procedure | 564 | l |
| Judicial Review – federal admin action – procedure – extending deadlines | 564 | r |
| Judicial Review – federal admin action – timing of JR application (generally, 30 days) | 563 | l |
| Judicial Review – Federal Courts – jurisdiction to issue prerogative writs and grant equitable remedies | 556 | l |
| Judicial Review – grounds of review – FCA s. 18.1(4), JRPA s. 2 | 562 | r |
| Judicial Review – interim relief, incl. stay of proceedings – FCA s. 18.2, JRPA s. 4 | 561 | l |
| Judicial Review – jurisdiction – Federal Court vs. Federal Court of Appeal | 563 | l |
| Judicial Review – jurisdiction of Federal Courts vs. provincial courts | 555 | r |
| Judicial Review – jurisdiction to issue prerogative writs | 556 | l |
| Judicial Review – notice of application – must indicate all errors in tribunal decision | 562 | r |
| Judicial Review – Privacy Commissioner – “admin investigator” not adjudicator | 566 | r |
| Judicial Review – Privacy Commissioner – subject to judicial review under FCA | 566 | l |
| Judicial Review – privacy legislation | 566 | r |
| Judicial Review – provincial admin action – appeals to ONCA | 566 | l |
| Judicial Review – provincial admin action – composition of the Divisional Court | 565 | l |
| Judicial Review – provincial admin action – parties and role of tribunal counsel | 565 | l |
| Judicial Review – provincial admin action – procedure | 565 | r |
| Judicial Review – provincial admin action – SPPA – application | 565 | l |
| Judicial Review – provincial admin action – SPPA – SEE also SPPA | 565 | l |
| Judicial Review – purpose and definition | 555 | l |
| Judicial Review – relief available | 559 | r |
| Judicial Review – relief available – costs between parties | 559 | r |
| Judicial Review – relief available – damages not available | 559 | r |
| Judicial Review – relief available – interim relief, incl. stay of proceedings – FCA s. 18.2, JRPA s. 4 | 561 | l |
| Judicial Review – relief available – only against tribunal | 559 | r |
| Judicial Review – standing | 561 | r |
| Judicial Review – standing – aggrieved person – Common Law | 562 | l |
| Judicial Review – standing – discretionary | 562 | r |
| Judicial Review – standing – public interest standing | 562 | l |
| Judicial Review – venues – Federal Courts and ON Div Court | 555 | r |
| Judicial Review – when ON Superior Court can review acts of federal bodies | 556 | l |
| Judicial Review on federalism grounds – SEE “Division of powers” | 577 | r |
| Judicial Review Procedure Act (JRPA) – Ontario | 545 | r |
| Judicial/quasi-judicial DM vs. admin/executive – factors – Minister of National Revenue v. Coopers and Lybrand | 546 | l |
| Jurisdiction – of courts to review admin action – Federal Courts vs. provincial courts | 555 | r |
| K |  |  |
| Kapp (R. v.) – Charter s. 15 – equality | 584 | l |
| Kirbi AG v. Ritvik Holdings – division of powers – example of ancillary powers doctrine in operation | 579 | l |
| Knight v. Indian Head School Division – fairness (duty of) – courts reluctant to intervene if procedural elements present | 548 | r |
| L |  |  |
| Language rights – Charter ss. 16-23 – SEE also “Charter – language rights” | 584 | l |
| Lavigne v. Canada – purpose of privacy legislation | 571 | l |
| Law Society of BC v. Mangat – division of powers – paramountcy | 580 | r |
| Law v. Canada – analysis under Charter s. 15 – equality | 583 | r |
| *Legal Aid Services Act, 1998* – statutory reconsideration or appeal | 545 | l |
| Legislative facts – vs. adjudicative facts – Charter context | 589 | l |
| Life, liberty and security of the person – SEE also “Charter – LLSP” | 582 | r |
| Limitation periods – constitutional litigation – Federal Court | 597 | r |
| Limitation periods – constitutional litigation – superior courts | 595 | l |
| Little Salmon/Carmacks – SEE Beckman v. Little Salmon/Carmacks FN | 603 | l |
| M |  |  |
| M v. H – Charter remedies under s. 52 – severance – unmarried same-sex spouses | 586 | r |
| M v. H – proving a Charter claim – providing social science evidence with Brandeis brief | 589 | r |
| *Malmo-Levine (R. v.)* – principles of fundamental justice – Charter s. 7 | 582 | r |
| Mandamus – JR – relief available – prerogative | 559 | r |
| Margarine Reference – division of powers – valid criminal law purpose | 576 | l |
| Marshall (R. v.) – interpretation of Aboriginal treaties – SEE “Aboriginal rights – treaty interpretation” | 602 | l |
| Martineau v. Matsqui – no sharp distinction between natural justice and fairness | 546 | l |
| May v. Ferndale – JR – relief available – *habeas corpus* – prerogative | 560 | l |
| Métis claims – Aboriginal rights – R. v. Powley | 601 | r |
| Mikisew Cree FN v. Canada – Aboriginal rights – duty to consult | 603 | l |
| Minister of National Revenue v. Coopers and Lybrand – factors – classify as judicial/quasi-judicial DM | 546 | l |
| Motions – admin tribunals – considerations in deciding to bring a motion | 553 | r |
| Motions – admin tribunals – procedure | 553 | r |
| Motions – admin tribunals vs. civil court | 553 | l |
| Multani v. Commission Scolaire – Charter section 1 – minimal impairment | 585 | l |
| *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*) – provincial – ON – *SEE “Freedom of information”* | 569 | l |
| Municipalities – power delegated from provinces – SEE also “Division of powers” | 577 | r |
| N |  |  |
| National emergency – authorizing Parliament to encroach on provincial powers – SEE “POGG” | 575 | r |
| Natural justice – application of – Minister of National Revenue v. Coopers and Lybrand | 546 | l |
| Natural justice – content of – two main components – right to be heard & impartial DM | 546 | r |
| Natural justice – duty of fairness – SEE “Fairness” | 548 | r |
| Natural justice – reasonable apprehension of bias – test – Committee for Justice and Liberty | 547 | l |
| Natural justice – right to an impartial decision-maker – remedy – decision void | 548 | l |
| Natural justice – right to an impartial decision-maker – SEE “Bias (natural justice)” | 547 | l |
| Natural justice – right to be heard – “the case to meet” | 546 | r |
| Natural justice – right to be heard – adequate notice – “meaningful” – *Central Ontario Coalition Concerning Hydro (Re)* | 546 | r |
| Natural justice – right to be heard – form and conduct of hearing | 547 | l |
| Nature of question – factor in determining standard of review – JR | 557 | r |
| Nicholson v. Haldimand-Norfolk (Re) – Baker factors – importance of decision to individual’s employment | 548 | r |
| Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police (Re) – fairness (duty of) | 548 | r |
| No force or effect – s. 52 – SEE “Charter – remedies” | 586 | l |
| Northern Telecom v. Communication Workers – Federal Court lacks jurisdiction to hear direct constitutional challenges | 596 | r |
| Notice – right to be heard – SEE “Natural justice” | 546 | r |
| Notice of constitutional question – Aboriginal rights | 604 | r |
| Notice of constitutional question – admin tribunals – SEE also “Constitutional procedure – admin tribunals” | 599 | r |
| Notice of constitutional question – Charter – importance of proving you have served notice | 590 | l |
| Notice of constitutional question – Div Court – SEE also “Constitutional procedure – Div Court” | 596 | r |
| Notice of constitutional question – Federal Court – SEE also “Constitutional procedure – Federal Court” | 597 | r |
| Notice of constitutional question – JR | 562 | r |
| Notice of constitutional question – superior courts – SEE also “Constitutional procedure – superior courts” | 595 | l |
| Notwithstanding clause – Charter s. 33 – SEE “Charter – limits” | 581 | r |
| Nova Scotia (Workers’ Comp. Board) v. Martin – ability of admin tribunals to consider constitutional matters – test for implied jurisdiction | 598 | r |
| O |  |  |
| Oakes (R. v.) – SEE “Charter – limits” | 584 | r |
| Ocean Port Hotel v. BC – institutional – independence of DM – ousted by express statutory language | 547 | r |
| ON Div Court – jurisdiction to conduct JR– under JRPA | 555 | r |
| ON Div Court – jurisdiction to review inferior court decisions – JRPA (s. 1) | 555 | r |
| ON Superior Court – jurisdiction – declarations re: constitutionality | 552 | a |
| *Ontario Disability Support Program Act, 1997* – statutory reconsideration or appeal | 545 | l |
| Oral agreements – Aboriginal treaties – SEE also “Aboriginal rights – treaty interpretation” | 602 | l |
| Oral hearings – admin tribunals – SPPA s. 9 – open to public | 552 | r |
| P |  |  |
| Paramountcy – SEE “Division of powers – paramountcy” | 579 | r |
| Participatory rights – admin tribunals – SPPA | 552 | r |
| Peace, order, and good government – federal power – SEE “Division of powers – POGG” | 575 | l |
| Personal bias – SEE “Bias (natural justice)” | 547 | l |
| Personal circumstances vs. personal characteristics – Charter s. 15 – equality | 584 | l |
| Personal information – SEE “Privacy” | 571 | r |
| PF – natural justice – right to be heard – “the case to meet” | 546 | r |
| Pith and substance – SEE “Division of powers – pith and substance” | 578 | l |
| POGG – federal power – SEE “Division of powers – POGG” | 575 | l |
| Powley (R. v.) – Aboriginal rights – Métis claims | 601 | r |
| Pragmatic and functional approach – SEE “Substantive review” | 550 | l |
| Prerogative power – Charter remedies – SEE also “Crown prerogative” | 588 | l |
| Principles of fundamental justice – arbitrariness | 582 | r |
| Principles of fundamental justice – Charter s. 7 – Malmo-Levine, D.B. | 582 | r |
| Principles of fundamental justice – gross disproportionality | 582 | r |
| Principles of fundamental justice – overbreadth | 582 | r |
| Principles of fundamental justice – vagueness | 582 | r |
| Privacy – access by subject individual to personal information | 572 | r |
| Privacy – accuracy of personal information used by institutions | 572 | r |
| Privacy – collection of personal information – when permitted | 572 | l |
| Privacy – commissioners – applying to Federal Court for review | 573 | r |
| Privacy – commissioners – federal vs. ON – slightly different powers | 573 | l |
| Privacy – commissioners – investigatory powers | 572 | r |
| Privacy – commissioners – remedies (e.g. reports, binding orders) | 573 | l |
| Privacy – complaint or appeal to privacy commissioners | 572 | r |
| Privacy – correcting errors or omissions | 572 | r |
| Privacy – disclosure of personal information – when permitted | 572 | r |
| Privacy – exclusions from privacy legislation | 572 | l |
| Privacy – Federal Court – role in reviewing decisions related to personal information | 573 | r |
| Privacy – general | 571 | l |
| Privacy – identifiable information – definition | 571 | r |
| Privacy – legislation – federal | 571 | r |
| Privacy – legislation – provincial – ON and municipal | 571 | l |
| Privacy – legislation – purpose – *Lavigne v. Canada* | 571 | l |
| Privacy – offences under ON privacy legislation | 573 | r |
| Privacy – personal information – correcting errors or omissions | 572 | r |
| Privacy – personal information – definition | 571 | r |
| Privacy – personal information – examples | 571 | r |
| Privacy – personal information – unlawful disclosure is an offence (ON) | 573 | r |
| Privacy – retention, accuracy and disposal of personal information | 572 | l |
| Privacy – right of access to personal information | 572 | r |
| Privacy – rules for handling personal information | 572 | l |
| Privacy – use and disclosure of personal information – when permitted | 572 | r |
| Privacy Act (PA) – SEE “Privacy” | 571 | r |
| Privacy commissioners – JR – “admin investigator” not adjudicator | 566 | r |
| Privacy commissioners – JR – subject to judicial review under FCA | 566 | l |
| Privacy rights – Charter s. 8 | 583 | l |
| Privative clause – factor in determining standard of review – JR | 558 | l |
| Procedural Fairness – natural justice – right to be heard – adequate notice – “meaningful” – *Central Ontario Coalition Concerning Hydro (Re)* | 546 | r |
| Procedural Fairness – no sharp distinction between natural justice and fairness – Martineau v. Matsqui | 546 | l |
| Procedural Fairness – procedural entitlements – natural justice and fairness | 546 | l |
| Procedural Fairness – sources of proper procedure – statutory scheme & *SPPA* | 546 | l |
| Procedural limits on delegated power | 544 | r |
| Procedural rights – *SPPA* | 544 | r |
| Procedure vs. substantive standards – delegated power | 544 | l |
| Proceedings Against the Crown Act – Aboriginal rights | 604 | r |
| Proceedings Against the Crown Act – notice requirement when seeking damages against Crown – SEE also “Constitutional procedure” | 595 | l |
| Proceedings Against the Crown Act – suing the Crown for damages – provincial | 566 | l |
| Prohibition – JR – relief available – prerogative | 560 | l |
| Provincial powers – SEE also “Division of powers” | 576 | r |
| Provincial superior courts – constitutional cases – SEE “Constitutional procedure – superior courts” | 594 | l |
| Public interest standing – constitutional litigation – SEE also “Constitutional procedure – standing” | 593 | r |
| Public interest standing – JR and Charter | 562 | l |
| Public law – definition | 543 | L |
| Public sector freedom of information – SEE “Freedom of information” | 569 | l |
| Public sector privacy laws – SEE “Privacy” | 571 | l |
| Purpose of tribunal and enabling statute – factor in determining standard of review – JR | 558 | r |
| Pushpanathan v. Canada – substantive review – pragmatic and functional approach | 550 | l |
| Q |  |  |
| Quebec (Attorney General) v. A – *Charter* s. 15 – equality – perpetuating negative attitudes is irrelevant | 584 | l |
| Quo warranto – JR – relief available – prerogative | 560 | r |
| R |  |  |
| Reasonable apprehension of bias – SEE also “Natural justice” | 547  548 | l  l |
| Reasons – possible element of duty of fairness | 548 | r |
| Reference – constitutional procedure – definition | 593 | l |
| Reference – constitutional procedure – need for thorough factual record | 599 | r |
| Reference – constitutional procedure – referring questions to ONCA or SCC | 599 | r |
| Reference re Same-Sex Marriage – constitutional references – need for thorough factual record | 599 | r |
| Reference re Securities Act – division of powers – securities regulation | 576 | l |
| Remedies – Charter ss. 24 and 52 – SEE “Charter – remedies” | 581 | r |
| *Residential Tenancies Act, 2006* – statutory reconsideration or appeal | 545 | l |
| *Reza v. Canada* – constitutional procedure – Federal Court – preferred forum – expertise | 596 | r |
| Right of appeal – statutory | 545 | l |
| Right of appeal – statutory – examples of | 545 | l |
| Right to counsel – admin tribunals – witnesses – SPPA s. 11 | 553 | l |
| Right to counsel – parties before admin tribunals – SPPA s. 10.1 | 552 | r |
| Right to cross-examination – admin tribunals – SPPA s. 10.1(b); s. 23 | 552 | r |
| Right to present submissions – admin tribunals – SPPA s. 10.1(a) | 552 | r |
| Rights upon arrest, including habeas corpus – Charter s. 10 | 583 | l |
| Rio Tinto Alcan v. Carrier Sekani Tribal Council – Aboriginal rights – duty to consult | 603 | l |
| Royal fiat – Aboriginal rights – claims predating Proceedings Against the Crown Act, 1962-63 | 604 | r |
| S |  |  |
| Schachter v. Canada – Charter breach –remedies cannot be considered in isolation | 591 | r |
| Schachter v. Canada – *Charter* remedies – s. 52 – reading in and reading down; severance | 586 | l |
| Section 35 – Aboriginal and treaty rights – constitutional recognition – SEE also “Aboriginal rights” | 601 | l |
| Section 35 – Aboriginal rights – what is protected | 601 | r |
| Section 35 – Aboriginal rights and the Charter – notwithstanding clause | 601 | r |
| Section 35 – Aboriginal rights and the Charter – s. 1 does not apply | 601 | l |
| Section 35 – Aboriginal rights and the Charter – s. 35 rights vs. Charter rights | 601 | l |
| Self-incrimination – admin tribunals – witnesses – SPPA s. 14 | 553 | l |
| Sentencing – Charter s. 12 – cruel and unusual treatment or punishment | 583 | l |
| Service Employees Int’l Union (Re) – constitutional matters – limits on Div Court jurisdiction | 596 | l |
| Severance – SEE “Charter – remedies” | 586 | r |
| Shaw v. Phipps – standard of review – deference when standard is reasonableness or patent unreasonableness | 550 | l |
| Simon (R. v.) – Aboriginal treaty rights include incidental rights | 602 | l |
| SM v. Ontario – Aboriginal rights – royal fiat | 604 | r |
| Source of decision-making power – delegated power | 543 | R |
| *Sparrow (R. v.*) – aboriginal rights – infringement and justification | 602 | r |
| SPPA – ADR – admin tribunals (s. 4.8) | 554 | l |
| SPPA – application – express exclusion (s. 3(2)) | 552 | l |
| SPPA – application – test for (s. 3(1)) | 552 | l |
| SPPA – decisions – delivery to parties (s. 18) | 554 | r |
| SPPA – decisions – error correction (s. 21.1) | 554 | r |
| SPPA – electronic hearings – generally open to public | 552 | r |
| SPPA – electronic hearings (s. 5.2) | 552 | r |
| SPPA – evidence – judicial notice (s. 16) | 553 | l |
| SPPA – evidence – relaxed threshold for admission (s. 15) | 553 | l |
| SPPA – interim orders or decisions (s.16.1) | 553 | r |
| SPPA – issuing summons to compel witness (s. 12) | 552 | r |
| SPPA – motions – considerations in deciding to bring a motion | 553 | r |
| SPPA – motions – procedure | 553 | r |
| SPPA – operation of | 552 | l |
| SPPA – oral hearings – open to public (s. 9) | 552 | r |
| SPPA – procedural rights | 544 | r |
| SPPA – rules – power to make (s. 25.1) | 551 | r |
| SPPA – rules – regarding costs (s. 17.1) | 551 | r |
| SPPA – witnesses’ rights | 553 | l |
| SPPA – written hearings (s. 5.1) | 552 | l |
| Standard of review – deference when standard is reasonableness – Canada v. Khosa, Shaw v. Phipps | 550 | l |
| Standard of review – deference when standard set by statute is patent unreasonableness – Canada v. Khosa | 550 | l |
| Standard of review – determine before assessing decision – Voice Construction | 550 | l |
| Standard of review – JR | 556 | r |
| Standard of review – JR – categories that attract standard of correctness | 558 | l |
| Standard of review – JR – categories that attract standard of reasonableness | 558 | l |
| Standard of review – JR – definition of “correctness” | 557 | l |
| Standard of review – JR – definition of “reasonableness” | 557 | l |
| Standard of review – JR – determining appropriate standard – prior to Dunsmuir –pragmatic and functional approach | 550 | l |
| Standard of review – JR – existing jurisprudence – nature of Q and DM | 557 | l |
| Standard of review – JR – factors – (1) nature of question | 557 | l |
| Standard of review – JR – factors – (2) privative clause | 558 | l |
| Standard of review – JR – factors – (3) expertise of tribunal | 558 | r |
| Standard of review – JR – factors – (4) purpose of tribunal and enabling statute | 558 | r |
| Standard of review – JR – questions of fact or policy vs. issues of law | 558 | l |
| Standard of review – JR – summary of Dunsmuir test | 558 | r |
| Standard of review – on appeal – Housen v. Nikolaisen | 555 | l |
| Standing – aggrieved person – JR | 562 | l |
| Standing – constitutional litigation – SEE also “Constitutional procedure – standing” | 593 | l |
| Standing – JR – SEE “JR – standing” | 561 | r |
| Standing – public interest – JR and Charter | 562 | l |
| Statutory power of decision – admin tribunals – SEE also SPPA | 552 | l |
| Statutory reconsideration – obtaining evidence prior to JR under Freedom of Information and Protection of Privacy Act | 545 | r |
| Statutory reconsideration – questions guiding possibility of “control” (review or appeal) | 545 | l |
| Statutory reconsideration or appeal – Coroners Act | 545 | l |
| Statutory reconsideration or appeal – Human Rights Code | 545 | l |
| Statutory reconsideration or appeal – Legal Aid Services Act, 1998 | 545 | l |
| Statutory reconsideration or appeal – Ontario Disability Support Program Act, 1997 | 545 | l |
| Statutory reconsideration or appeal – Residential Tenancies Act, 2006 | 545 | l |
| Statutory right of appeal – examples of | 545 | l |
| Stay of proceedings – JR – interim relief – FCA s. 18.2, JRPA s. 4 | 561 | l |
| Striking down – s. 52 – SEE “Charter – remedies” | 586 | l |
| Structural Injunctions – Charter Remedies under s. 24 | 587 | r |
| Substantive review – JR – errors of admin law permitting judicial intervention | 550 | r |
| Substantive review – JR – general | 549 | r |
| Substantive review – JR – judicial restraint –CUPE | 550 | l |
| Substantive review – JR – matter usually remitted to DM – court does not substitute | 550 | r |
| Substantive review – JR – modern approach | 550 | l |
| Substantive review – JR – no remittance to tribunal where result “inevitable” – BC (Workers’ Comp. Board) v. Figliola | 550 | r |
| Substantive review – JR – pragmatic and functional approach (prior to Dunsmuir) | 550 | l |
| Substantive review – JR – statutory decision-makers acting outside jurisdiction (ultra vires) | 549 | r |
| Suing the Crown for damages – federal – Crown Liability and Proceedings Act | 566 | l |
| Suing the Crown for damages – provincial – Proceedings Against the Crown Act | 566 | l |
| Sundown (R. v.) – Aboriginal treaty rights include incidental rights | 602 | l |
| Superior Court of Justice (ON) – constitutional cases – SEE “Constitutional procedure – superior courts” | 594 | l |
| Superior courts (provincial) – constitutional cases – SEE “Constitutional procedure – superior courts” | 594 | l |
| T |  |  |
| Taku River Tlingit FN v. BC – Aboriginal rights – duty to consult | 603 | l |
| Thomson Newspapers v. Canada – Charter section 1 – proportionality | 585 | l |
| Trachemontagne v. ON – admin tribunals – jurisdiction to consider questions of law, incl. constitutional questions | 598 | r |
| Trachemontagne v. ON – admin tribunals – jurisdiction to consider human rights legislation | 598 | r |
| U |  |  |
| UES, Local 298 v. Bibeault – substantive review – pragmatic and functional approach | 550 | l |
| Ultra vires – statutory decision-makers acting outside jurisdiction | 549 | r |
| Unreasonable search and seizure – Charter s. 8 | 583 | l |
| V |  |  |
| Van der Peet (R. v.) – Aboriginal rights – test for identifying Aboriginal rights | 601 | r |
| Vancouver (City) v. Ward – Charter remedies – bad faith not necessary to award damages | 588 | l |
| Voice Construction Ltd. – standard of review – determine before assessing decision | 550 | l |
| Volochay v. College of Massage Therapists – JR – judicial intervention always discretionary | 545 | r |
| Vriend v. Alberta – Charter remedies – s. 52 – reading in | 586 | l |
| W |  |  |
| WD Latimer and Bray (Re) – institutional bias | 547 | r |
| Webb and Ontario Housing Corp. (Re) – duty of fairness – ceasing to provide a benefit vs. granting a benefit | 549 | l |
| Weber v. Ontario Hydro – proving a Charter claim – admin tribunals – availability of alternate remedies | 590 | l |
| Withler v. Canada (Attorney General) – Charter s. 15 – equality | 584 | l |
| Witness – issuing summons to compel witness – admin tribunals – SPPA s. 12 | 552 | r |
| Witnesses’ rights – admin tribunals – SPPA | 553 | l |
| Written hearings – SPPA | 552 | l |

Abbreviations

AG = Attorney General

ATIA = Access to Information Act (federal)

CJA = Courts of Justice Act (ON)

CL = common law

CLPA = Crown Liability and Proceedings Act

Div Court or ON Div Court = Ontario Divisional Court

DM = Decision-Maker

FCA = Federal Courts Act

FCR = Federal Courts Rules

FIPPA = Freedom of Information and Protection of Privacy Act (Ontario)

FN = First Nation(s)

JR = judicial review

JRPA = Judicial Review Procedure Act (Ontario)

LLSP = life, liberty and security of the person

MFIPPA = Municipal Freedom of Information and Protection of Privacy Act

PA = Privacy Act (federal)

PF = procedural fairness

POGG = peace, order, and good government

SCC = If you need to look this up after three years of law school, you’re fucked