

Publisher's Note

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Robert W. Macaulay and James L.H. Sprague Practice and Procedure Before Administrative Tribunals

AUTHOR'S NOTE

The Update to this release includes notes respecting the following administrative law decisions and the point for which the case has been noted. Numbers in parenthesis indicate the chapter in the main text which contains the discussion to which the noted points are relevant.

667895 B.C. Ltd. v. Delta (Corporation), 2018 CarswellBC 141, 2018 BCCA 38 (B.C.C.A.): 1. Common law fairness contains no absolute requirement that an opportunity to be heard be oral (9). 2. Statutory requirement for opportunity for affected to make representations was met with opportunity to present written submissions (9). 3. Reasonable expectation cannot be claimed in the face of an express contrary statement by decision-maker (40).

Brown v. Canada (Public Safety), 2018 CarswellOnt 144, 2018 ONCA 14 (Ont. C.A.): 1. *Habeas corpus* to be a manner of quickly resolving the issue of deprivation of liberty and is to be given priority (28). 2.

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Charter damages should not be heard at same time as application for *habeas corpus* (28). 3. *Charter* damages do not necessarily flow from a *habeas corpus* finding of illegal detention (28).

Canada (Ministre de la Citoyenneté et de l'Immigration) c. Yansane, 2017 CarswellNat 698, 2017 FCA 48, [2017] A.C.F. No. 264, 26 Admin. L.R. (6th) 267 (Fed. C.A.): In reconsidering a matter remitted to it on judicial review agency is bound only by reviewing court's explicit instructions (28).

Caryk v. Alberta (Alberta Works), 2017 CarswellAlta 2599, 2017 ABQB 737 (Alta. Q.B.): 1. "Frivolous" refers to the nature of the pleading, not the party personally (12). 2. A collateral attack is an attack on the validity of an order other than through the designated appellate or judicial review route (29A).

Dykstra v. New Brunswick Cattle Producers, a body corporate under the Natural Products Act, S.N.B. 1999, c. N-1.2, 2018 CarswellNB 11, 2018 NBCA 5 (N.B.C.A.): 1. Agency's reasons need not be perfect but need only sufficiently disclose the underpinning of the decision (22). 2. Presumption of reasonableness review respecting agency's interpretation of extent of authority granted by its home statute (28).

French v. Township of Springwater, 2018 CarswellOnt 347, 2018 ONSC 94 (Ont. Div. Ct.): 1. Operation of the prematurity principle (28). 2. Even true questions of jurisdiction do not operate as exceptional circumstances warranting premature judicial review intervention (28). 3. Where agency empowered to require an audit of election expenses the nature of the audit to be conducted is not a "true" question of jurisdiction (28). 4. Case where agency's participation on judicial review restricted to traditional limitations (28).

Gregory v. British Columbia (Superintendent of Motor Vehicles), 2018 CarswellBC 30, 2018 BCCA 7, 143 W.C.B. (2d) 613 (B.C.C.A.): Deference to adjudicators' interpretation of the B.C. *Motor Vehicle Act* (28).

Li v. Li, 2017 CarswellOnt 18890, 2017 ONCA 942 (Ont. C.A.): Neither *res judicata* nor abuse of process arises from earlier decision where there was no decision on the merits (12).

Ouellet v. Canada (Attorney General), 2018 CarswellNat 99, 2018 FCA 25 (Fed. C.A.): In reconsidering a matter remitted to it on judicial review agency is bound only by reviewing court's explicit instructions (28).

The Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario, 2018 CarswellOnt 1135, 2018 ONSC 579 (Ont. Div. Ct.): 1. Policies adopted pursuant to a statutory mandate which could constitute evidence of professional standards expected of physicians and thus can be considered to be "prescribed by law" for the purposes of section 1 of the *Charter* (6). 2. Issue of the *Charter* constitutionality of policies adopted by the Ontario College of Physicians and Surgeons attracts a correctness standard of review (28). 3. Reasonableness is appropriate standard of review respecting statutory *vires* of policies adopted by Ontario College of Physicians and Surgeons (28). 4. *Oakes* correctness analysis, not *Doré* reasonableness, applies to determination of constitutional validity of policies adopted by College of Physicians and Surgeons (28).

The Dominion of Canada General Insurance Company v. State Farm Mutual Automobile Insurance Company, 2018 CarswellOnt 1280, 2018 ONCA 101 (Ont. C.A.): 1. Appeal judge must be correct in determination of appropriate standard of review (27C). 2. Fact that the interpretation of a standard form contract is a question of law does not direct the application of the correctness standard of review on an appeal from an agency (28).

Union Gas Limited v. Norwich (Township), 2018 CarswellOnt 55, 2018 ONCA 11 (Ont. C.A.): Parties can contract out of benefits granted by statute other than in two situations: where the statute prohibits it or it would be against public policy (12).

Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development), 2018 CarswellNat 158, 2018 SCC 4 (S.C.C.): 1. In order to identify the reasons which an agency had in making a decision as it did a reviewing court should be prepared to read between the lines of an agency's formal reasons (22). 2. Application of principles of statutory interpretation may yield more than one plausible interpretation of a legislative provision (28). 3. Question as to whether on the facts there is a fiduciary duty and whether it was breached is a question of fact and law entitled to deference (28). 4. Deference owed where parliament intended agency to have a measure of flexibility and

adaptation in its application of common law principles to historic claims (28).

Also noted in this Update are the following decisions dealing with aspects of B.C.'s *Administrative Tribunals Act* (chapter 38A); and Ontario's *Statutory Powers Procedure Act* (chapter 38).

British Columbia's *Administrative Tribunals Act*:

Section 31: Summary Dismissal: *Encana Corp. and British Columbia (Oil and Gas Commission), Re*, 2018 CarswellBC 349 (British Columbia Oil and Gas Appeal Tribunal).

Section 58: Standard Of Review If Tribunal's Enabling Act Has Privative Clause: *Shamji v. Workers' Compensation Appeal Tribunal*, 2018 CarswellBC 424, 2018 BCCA 73 (B.C.C.A.).

Ontario's *Statutory Powers Procedure Act*:

Section 9.1: Proceedings Involving Similar Questions: *Warraich v. Choudhry*, 2018 CarswellOnt 3102, 2018 ONSC 1275 (Ont. Div. Ct.).

Section 17.1: Costs: *Wiggins v. Ontario (Environment and Climate Change)*, 2018 CarswellOnt 2515 (Ont. Environmental Review Tribunal).

J.L.H.S.