

Table of Contents

<i>Foreword</i>	F-1
<i>Preface</i>	P-1
<i>Editors and Contributors</i>	ED-1
<i>Table of Cases</i>	TC-1

Chapter 1 LEGAL PERSONALITY OF THE CROWN

1.10	Introduction.....	1-1
1.20	Historical and Theoretical Background	1-2
1.20.10	The Development of the English/British Monarchy.....	1-3
1.20.20	The Crown in Canada	1-7
1.20.20(1)	The Indivisibility of the Crown.....	1-12
1.20.20(2)	Divisibility of the Crown in Right of a Single Jurisdiction	1-16
1.20.30	Crown as “Corporation Sole”	1-17
1.20.40	Practical Implications of Conceptions of Crown Personality.....	1-20
1.20.40(1)	Executive and Legislative Power of the Crown.....	1-21
1.30	Inherent Rights of the Crown and the Prerogative	1-22
1.30.10	General Capacity of the Crown	1-23
1.30.20	The Crown Prerogative.....	1-24
1.30.20(1)	Legislative Displacement of the Prerogative	1-28
1.30.20(2)	Prerogative Rights and the Civil Liberty of the Crown.....	1-29
1.30.20(3)	Crown Immunity from Statute	1-30
1.30.20(3)(a)	Federal Immunity from Provincial Statute	1-34
1.30.20(3)(b)	Crown Immunity from Penal Sanction	1-39
1.40	Crown Proceeding Legislation	1-40
1.40.10	Substantive Differences in Crown Proceedings Acts?	1-43
1.40.20	Defences in the Crown Proceedings Acts.....	1-46
1.50	For Whom is the Crown Liable?.....	1-46.2
1.50.10	Corporate Crown Agents.....	1-46.2
1.50.20	Crown Employees	1-46.4
1.50.20(1)	Status of Crown Employee.....	1-46.5
1.50.20(2)	Scope of Employment.....	1-46.7

1.50.30	Independent Contractors and Non-Delegable Duties	1-49
1.50.30(1)	Scope of Non-Delegable Duty	1-52
1.50.40	Joint Venture and Other Relationships.....	1-52
1.60	Practice and Pleadings	1-54

**Chapter 1A LEGAL PERSONALITY OF OTHER
 GOVERNMENT BODIES**

1A.10	Introduction.....	1A-1
1A.20	When Does a Governmental Entity Have Civil Personality?.....	1A-2
1A.20.10	Practical Effects of Distinct Civil Personality.....	1A-5
1A.30	Crown Agents	1A-6
1A.30.10	Test for Crown Agency Status.....	1A-6.2
1A.30.20	Scope of Agency	1A-8
1A.40	Specific Governmental Entities	1A-9
1A.40.10	Ministries, Departments and Ministers.....	1A-9
1A.40.20	Boards and Tribunals	1A-10
1A.40.30	Crown Corporations.....	1A-11
1A.40.40	Local Governments	1A-12

Chapter 2 CROWN LIABILITY IN CONTRACT

2.10	Introduction.....	2-1
2.20	The Crown and Contract Formation.....	2-4
2.20.10	Introduction	2-4
2.20.20	Crown Capacity to Create Contracts	2-5
2.20.20(1)	Crown Capacity at Common Law	2-5
2.20.20(2)	Constitutional Limits on Crown Capacity	2-8
2.20.20(2)(a)	Direct and Indirect Fettering	2-9
2.20.20(2)(b)	Mandatory Statutory Liability	2-14
2.20.20(2)(c)	Expenditure Must Be Statutorily Authorized	2-14
2.20.20(3)	Legislated Limits on Crown Capacity.....	2-15
2.20.20(4)	Capacity of Crown Contractual Partners.....	2-24
2.20.30	Authority to Bind the Crown to Contracts.....	2-24
2.20.30(1)	Common Law Authority.....	2-24
2.20.30(2)	Legislative Limits on Authority	2-25
2.20.40	Intention to Create Contracts.....	2-26
2.20.40(1)	Political Promises	2-26
2.20.40(2)	Campaign Promises	2-29
2.20.40(3)	Inter-Governmental and Other Political Accords.....	2-29
2.20.40(4)	Oral Contracts	2-31
2.30	The Crown and Breach of Contract	2-31
2.30.10	Introduction	2-31
2.30.10(1)	Presumption Not to Bind Use of Public Authority..	2-34
2.30.10(2)	Honour of the Crown	2-36

TABLE OF CONTENTS

2.30.10(3)	Best Efforts Interpretations	2-38
2.30.10(4)	Incorporation of Legislation in Contracts.....	2-39
2.30.10(5)	Specific Contracts.....	2-40
2.30.10(5)(a)	Employment Contracts.....	2-40
2.30.10(5)(b)	Service, Construction and Goods Contracts	2-41
2.30.10(5)(c)	Other	2-41
2.30.20	Non-Performance	2-42
2.30.30	Defences.....	2-42
2.30.30(1)	Legislation	2-42
2.30.30(2)	Frustration	2-45
2.30.30(3)	Promissory Estoppel	2-46
2.30.30(4)	Unconscionability and Duress	2-47
2.40	Remedies in Contract	2-49
2.40.10	Damages	2-49
2.40.20	Administrative Law Remedies	2-50
2.40.20(1)	Declarations.....	2-52
2.40.20(2)	<i>Certiorari</i>	2-52.1
2.40.20(3)	Mandamus.....	2-52.4
2.40.30	Specific Performance	2-52.4
2.40.40	Rectification	2-52.5
2.50	Tendering	2-52.5
2.50.10	History: <i>Ron Engineering</i> and After	2-54
2.50.20	Formation of Contract A.....	2-56
2.50.30	Implied Terms of Contract A	2-59
2.50.30(1)	Duty of Fairness and Equality.....	2-59
2.50.30(2)	Duty to Accept Only Compliant Bids.....	2-62
2.50.30(3)	Duty to Disclose Evaluative Criteria	2-64
2.50.30(4)	Duty to Accept Qualifying Bid with Best Price	2-64
2.50.30(5)	Irrevocability.....	2-65
2.50.30(6)	Use of Confidential Information for Bid Shopping	2-65
2.50.40	Clauses Reserving Rights to Owner	2-66
2.50.40(1)	Privilege Clauses.....	2-66
2.50.40(2)	Discretion Clauses	2-68
2.50.40(3)	Limitations of Damages Clauses	2-70
2.50.40(4)	Revocation of Tender	2-71
2.50.50	Remedies	2-71
2.50.50(1)	Remedies in Contract and Tort	2-71
2.50.50(2)	Administrative Law Remedies	2-72
2.50.50(3)	Agreement on Internal Trade	2-73
2.50.50(4)	British Columbia-Alberta Trade Investment and Labour Mobility Agreement (TILMA)	2-74
2.60	Practice and Pleadings	2-75

Chapter 3 CROWN LIABILITY IN RESTITUTION

3.10	Introduction.....	3-1
3.10.10	Restitution and Crown Proceedings Statutes.....	3-2
3.10.20	<i>Kingstreet</i> and Restitution for Unlawful Taxes	3-3
3.10.20(1)	Issues Left Unresolved by <i>Kingstreet</i>	3-5
3.20	Elements of Claim in Unjust Enrichment.....	3-7
3.20.10	Benefit to Defendant	3-8
3.20.20	Detriment to Plaintiff	3-11
3.20.30	Absence of <i>Prima Facie</i> Juristic Reason	3-12
3.20.30(1)	Contract	3-12
3.20.30(1)(a)	Failed Contractual Negotiations and Necessitous/ Officious Intervention	3-13
3.20.30(2)	Disposition of Law	3-14
3.20.30(2)(a)	Valid Legislation	3-14
3.20.30(2)(b)	Alternative Remedies	3-14.1
3.20.30(3)	Donative Intent and Voluntariness.....	3-14.3
3.20.30(3)(a)	Donative Intent of the Crown.....	3-16
3.20.40	Residual Defences	3-16.1
3.20.40(1)	Mistake of Law	3-16.1
3.20.40(2)	Change of Position, Estoppel.....	3-16.1
3.20.40(3)	Res Judicata, Collateral Attack	3-17
3.20.40(4)	Closing the Transaction	3-17
3.20.40(5)	<i>De Facto</i> Doctrine/Qualified Immunity	3-17
3.50	Recovery of Governments Against Each Other	3-18
3.60	Remedies	3-19
3.70	Practice and Pleadings	3-20

**Chapter 4 “TAKINGS”: GOVERNMENT LIABILITY
TO COMPENSATE FOR FORCIBLY
ACQUIRED PROPERTY**

4.10	Introduction.....	4-1
4.20	Protections at Common Law	4-3
4.20.10	Distinguish Takings from Injurious Affection	4-3
4.20.20	General Observations on the State of Takings Law in Canada.....	4-6
4.20.20(1)	An Emergent Area of Crown Liability	4-6
4.20.20(2)	Expropriation Statutes	4-7
4.20.20(3)	Uncertainty in the Law	4-8
4.20.30	The Source of the Crown’s Power to Take	4-9
4.20.40	Pleading a Case in Takings	4-10
4.20.50	Do the Facts Show a Taking of Property?.....	4-11
4.20.50(1)	What is Property?.....	4-11
4.20.50(1)(a)	Property’s Broad Scope.....	4-11

TABLE OF CONTENTS

4.20.50(1)(b)	Interests in Public Natural Resources	4-14
4.20.50(1)(c)	Contractual Rights	4-16.1
4.20.50(1)(d)	Partially Diminished Value of Property	4-17
4.20.50(2)	When is Property “Taken”?.....	4-18
4.20.50(2)(a)	Regulation of Use of Property: The Constructive Taking	4-18
4.20.50(2)(b)	Quantitative Threshold of a Constructive Taking	4-21
4.20.50(2)(c)	Doubts About the Threshold	4-23
4.20.50(2)(d)	Municipal Land Use Regulation	4-27
4.20.60	The Nature of the Crown’s Obligation to Compensate	4-29
4.20.60(1)	Authorities Supporting a Substantive, Common Law Right	4-33
4.20.60(1)(a)	<i>Manitoba Fisheries v. Canada</i>	4-33
4.20.60(1)(b)	<i>British Columbia Medical Assn. v. British Columbia</i>	4-35
4.20.60(1)(c)	<i>Canadian Pacific Railway Co. v. Vancouver (City)</i>	4-36
4.20.60(2)	Authorities Supporting a Statutory Right	4-37
4.20.60(2)(a)	<i>Cream Silver Mines Ltd. v. British Columbia</i>	4-38
4.20.60(2)(b)	<i>Teal Cedar Products Ltd. v. British Columbia</i>	4-40
4.20.70	Other Issues.....	4-42
4.20.70(1)	An Exception to the Compensatory Rule: The Purpose of the Statute	4-42
4.20.70(2)	The Measure of Compensation for Interests in Public Natural Resources.....	4-43
4.20.70(2)(a)	Why Property Interests in Public Natural Resources are Different	4-43
4.20.70(2)(b)	A Possible Solution: Compensation on a Reliance Measure.....	4-47
4.20.70(3)	Ripeness	4-48.1
4.20.70(3)(a)	Alternate Available Remedies.....	4-48.1
4.20.70(3)(b)	Crystallization of a Constructive Taking	4-48.3
4.20.80	Pleadings and Practice Considerations.....	4-48.4
4.30	The <i>Canadian Bill of Rights</i>	4-49
4.40	Provincial Statutes.....	4-51
4.40.10	The <i>Alberta Bill of Rights</i>	4-51
4.40.20	The <i>Alberta Personal Property Bill of Rights</i>	4-53
4.50	Treaties and Declarations.....	4-54
4.50.10	United Nations Treaties.....	4-55
4.50.10(1)	Universal Declaration of Human Rights.....	4-55
4.50.10(2)	The Covenants	4-55
4.50.20	American Declaration on the Rights and Duties of Man	4-56
4.50.30	North American Free Trade Agreement.....	4-56
4.50.30(1)	Chapter 11	4-56.1

4.50.30(2)	Chapter 11’s Impact on Canadian Takings Law.....	4-58
4.50.30(3)	Pleadings and Practice Considerations.....	4-61
4.50.30(3)(a)	Investors’ Direct Access to Arbitration	4-61
4.50.30(3)(b)	Commencing Proceedings	4-62
4.50.30(3)(c)	Procedure at the Tribunal.....	4-63
4.50.30(3)(d)	Remedies — Interim Relief	4-64
4.50.30(3)(e)	Remedies — Final Award.....	4-64
4.50.30(3)(f)	Judicial Review	4-65

Chapter 5 NEGLIGENCE

5.10	Introduction.....	5-1
5.20	The <i>Anns</i> Duty of Care Test.....	5-3
5.30	<i>Anns</i> Stage One: The <i>Prima Facie</i> Duty of Care.....	5-7
5.30.10	The “Neighbour Principle”: From <i>Donoghue</i> to <i>Anns</i>	5-7
5.30.20	Beyond Foreseeability: The Role of Proximity.....	5-9
5.30.30	Proximity and Public Authorities: <i>Cooper</i> and <i>Edwards</i>	5-10
5.30.40	Establishing Proximity by Way of Established Categories....	5-12
5.30.40(1)	Actions Causing Foreseeable Harm to Person or Property	5-14
5.30.40(2)	Negligent Misstatement.....	5-15
5.30.40(3)	Duty to Warn of the Risk of Danger	5-17
5.30.40(4)	Negligent Building Inspection	5-18
5.30.40(5)	Negligent Implementation of a Road Maintenance Policy	5-20
5.30.40(6)	Limited Categories of Relational Economic Loss	5-21
5.30.50	Established Categories of No Proximity	5-22
5.30.60	Establishing Proximity in Novel Cases	5-23
5.30.60(1)	Proximity Under Statute	5-23
5.30.60(2)	Proximity Through Interactions.....	5-26
5.40	<i>Anns</i> Stage Two: Negating Policy Consideration.....	5-27
5.40.10	The Policy Defence.....	5-27
5.40.10(1)	“True” or “Core” Government Policy Decisions	5-29
5.40.10(2)	The Good Faith Requirement	5-32
5.40.10(3)	Immunity for Legislative and <i>Quasi</i> -Judicial Decisions	5-33
5.40.10(4)	Exercises of Statutory Discretion	5-36
5.40.20	Other Policy Considerations.....	5-37
5.40.20(1)	Indeterminate Liability.....	5-37
5.40.20(2)	Alternative Remedies	5-37
5.40.20(3)	Danger of Re-Litigation.....	5-38
5.40.20(4)	Categories Not Closed	5-39
5.50	Statutory Immunity Clauses	5-39
5.50.10	Who is Covered by a Good Faith Immunity Clause?	5-39
5.50.20	The Meaning of “Good Faith” in Immunity Clauses.....	5-41

TABLE OF CONTENTS

5.60 Affirmative Statutory Duties 5-41
5.70 Standard of Care..... 5-42
 5.70.10 Policy Factors Reducing the Standard of Care 5-43
 5.70.20 The Role of Legislation and Policy in Defining
 Standard of Care..... 5-45
5.80 Practice and Pleadings Considerations..... 5-46
 5.80.10 Proper Parties 5-46
 5.80.20 Pleading the Cause of Action 5-48
5.90 Appendix 5-49
 5.90.10 Duty of Care 5-49
 5.90.20 No Duty of Care..... 5-53

Chapter 6 NUISANCE

6.10 Introduction..... 6-1
6.20 Standing 6-5
 6.20.10 Standing to Sue..... 6-5
 6.20.10(1) Tenants of the Crown in Possession of
 Crown Property 6-5
 6.20.10(2) Holders of *Profits à Prendre*, Licences and
 Rights of Way..... 6-6
 6.20.10(3) Interference with Indian Lands 6-8
 6.20.20 Who Can be Sued 6-9
 6.20.20(1) The Defendant Need Not be an Immediate
 Neighbour 6-9
 6.20.20(2) When the Crown Owns the Land But Does Not
 Create the Nuisance..... 6-9
 6.20.20(3) Continuation or Adoption..... 6-12
6.30 The Elements of the Tort of Private Nuisance 6-14
 6.30.10 Cases Involving Physical Injury to Land 6-16
 6.30.20 The Balancing Exercise in Nuisance Law 6-17
 6.30.30 Social Utility..... 6-19
 6.30.35 Cases Involving Access to Land 6-22.2
 6.30.40 Two Special Cases of Importance in the Crown Context .. 6-22.4
 6.30.40(1) The Flow of Water 6-22.4
 6.30.40(2) Natural Hazards Upon Land..... 6-25
6.40 Public Versus Private Nuisance..... 6-30
6.50 The Role of Statutes..... 6-35
 6.50.10 Statutes Which Prohibit Conduct 6-35
 6.50.20 Statutes Limiting Civil Nuisance Actions 6-35
 6.50.30 Statutes as Standards of Reasonableness 6-36
6.60 Foreseeability 6-37
6.70 Defences 6-41
 6.70.10 The Defence of Statutory Authority..... 6-41
 6.70.20 Availability of a Government Policy Defence 6-46.1

6.70.30	Contributory Negligence	6-48
6.70.40	Other Defences	6-50.1
6.80	Remedies	6-51
6.80.10	No Injunctive Relief Against the Crown.....	6-51
6.80.20	Damages	6-52
6.80.30	Abatement.....	6-55
6.90	Practice and Pleadings Considerations.....	6-56

Chapter 7 MISFEASANCE IN PUBLIC OFFICE

7.10	Introduction.....	7-1
7.20	Elements of the Tort.....	7-3
7.20.10	The Defendant is a Public Officer.....	7-4
7.20.10(1)	The Test for “Public Office”.....	7-6
7.20.10(2)	Judicial and <i>Quasi</i> -Judicial Officers.....	7-8
7.20.20	Duty/Power Associated with Public Office	7-9
7.20.20(1)	Administrative and Operational Duties	7-10
7.20.20(2)	Prerogative Powers	7-10
7.20.20(3)	Legislative Functions	7-11
7.20.30	Misfeasance	7-12
7.20.30(1)	Targeted Malice (Category A)	7-12
7.20.30(1)(a)	Establishing Malice/Improper Motive.....	7-12.1
7.20.30(1)(b)	Proof of Malice by Collective Body.....	7-13
7.20.30(2)	Knowing Excess of Power (Category B)	7-14
7.20.30(2)(a)	<i>Three Rivers</i>	7-14
7.20.30(2)(b)	Category B Liability in Canadian Law	7-15
7.20.40	Duty Owed to the Plaintiff.....	7-17
7.20.50	Damages	7-18
7.20.50(1)	General/Aggravated Damages	7-18
7.20.50(2)	Punitive Damages.....	7-19
7.30	Practice and Procedural Considerations.....	7-20
7.30.10	Parties	7-20
7.30.20	Pleadings and Evidence.....	7-20
7.40	Summary	7-22

Chapter 8 MALICIOUS PROSECUTION

8.10	Introduction.....	8-1
8.20	The History of Malicious Prosecution	8-2
8.30	The Difference Between Malicious Prosecution and False Arrest....	8-3
8.40	The Future of Malicious Prosecution	8-3
8.50	Malicious Prosecution: Elements of the Cause of Action	8-6
8.50.10	Initiation of Proceedings by Defendant	8-7
8.50.20	Termination of Criminal Proceedings in Favour of the Plaintiff.....	8-9

TABLE OF CONTENTS

8.50.30 Absence of Reasonable and Probable Cause..... 8-10
8.50.30(1) Proving Lack of Reasonable and Probable Cause ... 8-14
8.50.40 Malice or Improper Purpose 8-15
8.60 Damages..... 8-20.3
8.60.10 Punitive Damages..... 8-20.5
8.70 Practice and Pleadings Considerations..... 8-20.6
8.70.10 Who are the Proper Parties?..... 8-20.6
8.70.10(1) The Crown, the Attorney General, and Crown
Attorneys..... 8-20.6
8.70.10(2) The Attorney General and Crown Attorneys 8-22
8.70.10(3) Police 8-23
8.70.20 Applications to Strike and Summary Disposition..... 8-24
8.70.30 Pleading Particulars of Malice 8-26
8.70.40 Leave to Amend Pleadings..... 8-27

Chapter 9 FALSE ARREST OR FALSE IMPRISONMENT

9.10 Introduction.....9-1
9.20 The Difference Between False Imprisonment and Malicious
Prosecution 9-1
9.30 Elements of the Cause of Action..... 9-2
9.40 Onus 9-3
9.50 Defences 9-4
9.60 Remedies 9-5

Chapter 10 THE CROWN AS A FIDUCIARY

10.10 Introduction..... 10-1
10.20 General Principles of Fiduciary Law 10-2
10.30 The Crown as a Fiduciary..... 10-10
10.30.10 What is Meant by “the Crown”? 10-10
10.30.20 Fiduciary Duties in the Governmental Context..... 10-15
10.30.30 Legislative and Executive Functions..... 10-17
10.30.40 Public vs. Private Law Duties..... 10-18
10.30.50 Balancing Conflicting Interests and the Duty of
Utmost Loyalty..... 10-20
10.30.60 Legislation May Limit the Crown’s Fiduciary Duties 10-26.1
10.40 The Crown and Aboriginal People..... 10-26.2
10.40.10 General Principles 10-26.2
10.40.20 Reserve Creation 10-26.9
10.40.30 The Crown’s Fiduciary Duties in Respect of Existing
Reserve Interests 10-26.15
10.40.40 Surrenders of Indian Reserves 10-33
10.40.50 Expropriation of Indian Reserves 10-34.5
10.40.50(1) Management of Indian Moneys 10-36

10.40.60	Conflicting Claims of Bands or Band Members	10-38
10.40.70	Government Benefits Programs	10-40
10.40.80	Section 35 of the <i>Constitution Act, 1982</i>	10-40
10.40.90	Treaty Negotiations.....	10-42
10.40.100	Litigation Costs	10-43
10.40.110	Duty to Consult.....	10-45
10.40.110(1)	Other Circumstances.....	10-46
10.40.110(2)	Métis Claims.....	10-50
10.40.110(3)	Actions of the Registrar.....	10-52
10.40.110(4)	Implementation of Land Claims Agreements	10-52.1
10.40.120	Fiduciary Duty of the Provincial Crown	10-52.2
10.40.130	The Future of the Crown's Fiduciary Duty to Aboriginal People	10-53
10.50	Other Fiduciary Duties Owed by the Crown.....	10-53
10.50.10	Administration of Pensions	10-53
10.50.20	Seizure of Goods by the Crown.....	10-60.1
10.50.30	Guardianship of Children	10-61
10.50.40	Administration of the Taxation Scheme	10-64
10.50.50	Provision of Health Care Services.....	10-64.1
10.50.60	Provision of Educational Services	10-64.3
10.50.70	Provision of Police Services.....	10-64.3
10.50.80	Environmental Claims	10-64.4
10.50.90	Regulation of the Agriculture Industry.....	10-64.5
10.50.100	Provision of Disaster Relief.....	10-64.5
10.60	Defences	10-64.5
10.60.10	Limitations	10-64.5
10.60.20	Equitable Defences.....	10-64.13
10.60.30	Crown Immunity.....	10-64.15
10.60.40	Apportionment	10-64.20
10.70	Remedies	10-64.20
10.80	Practice and Pleadings Considerations.....	10-72
10.80.10	Pleading a Case of Breach of Fiduciary Duty.....	10-72
10.80.20	Other Practice Considerations: Fiduciary Obligation and Litigation Practice	10-74.1
10.80.20(1)	Selection of Counsel and Procedural Defences	10-75
10.80.20(2)	Solicitor-Client Privilege.....	10-76
10.80.20(3)	Settlement Agreements.....	10-82
10.90	Summary	10-83

**Chapter 11 PUBLIC LAW ISSUES IN LITIGATION
AGAINST THE CROWN**

11.10	Introduction.....	11-1
11.20	Collateral Attack.....	11-1
11.20.10	Introduction	11-1

TABLE OF CONTENTS

11.20.20	Collateral Attack upon Order of Superior Court.....	11-2
11.20.30	Collateral Attack upon an Administrative Order.....	11-6
11.20.40	Collateral Attack in a Civil Proceeding	11-13
11.20.40(1)	Civil Action	11-13
11.20.40(2)	Judicial Review	11-20
11.20.40(3)	Other Proceedings	11-22
11.30	Charter Damages	11-24
11.30.10	Introduction	11-24
11.30.20	Interplay Between ss. 52 and 24(1) of the Charter	11-24
11.30.30	Procedural Considerations in Claims for Charter Damages	11-27
11.30.30(1)	Proper Defendant	11-27
11.30.30(2)	Standing of Claimant.....	11-28
11.30.30(3)	Actual Infringement.....	11-29
11.30.30(4)	Court of Competent Jurisdiction.....	11-29
11.30.30(5)	Conformity with Rules of Civil Procedure	11-31
11.30.40	Statutory Limits on Availability of Charter Relief.....	11-33
11.30.50	Charter Relief Against Government as Employer.....	11-36
11.30.60	Police Misconduct	11-37
11.30.70	Government Policy, Service or Benefit	11-39
11.30.80	Conclusion.....	11-41
11.40	Injunctions Against and By the Crown.....	11-41
11.40.10	Statutory Prohibition.....	11-41
11.40.20	Common Law Basis for Prohibition.....	11-42
11.40.30	Statute and Common Law Compared	11-43
11.40.40	Constitutional Exception.....	11-44
11.40.50	Declaration in Case of Deliberate Flouting.....	11-46
11.40.60	Statutory Injunctions Sought by the Crown.....	11-46
11.50	Actions Challenging the Enactment of Legislation.....	11-48
11.50.10	Role of the Court.....	11-48
11.50.20	Regulations and <i>Vires</i>	11-48
11.50.30	Changes in the Law.....	11-49
11.50.40	Laws Having an Adverse Effect.....	11-50
11.50.50	Regulations Having an Adverse Effect	11-50

**Chapter 12 PROCEDURE AND REMEDIES AGAINST
 THE CROWN**

12.10	Jurisdiction of the Federal and Provincial Courts.....	12-1
12.10.10	The <i>Constitution Act, 1867</i>	12-1
12.10.20	Federal Court	12-3
12.10.20(1)	The 1971 Amendments.....	12-3
12.10.20(2)	The 1992 Amendments.....	12-6
12.10.20(3)	Current Jurisdiction of the Federal Court.....	12-7

12.10.20(3)(a)	First Branch of the <i>ITO-International Test</i> : A Statutory Grant of Jurisdiction	12-9
12.10.20(3)(b)	Second Brand of the <i>ITO-International Test</i> : Existing Body of Federal Law	12-14
12.10.20(3)(c)	Third Branch of the <i>ITO-International Test</i> : Federal Law Within s. 101 of the <i>Constitution Act, 1867</i>	12-18
12.10.20(4)	The Federal Court Jurisdiction Flow Chart	12-18
12.10.20(5)	Claims Against the Provincial Crown in the Federal Court	12-20
12.10.30	Provincial Superior Courts	12-21
12.10.30(1)	Status Giving Rise to Jurisdiction	12-21
12.10.30(2)	Claims Against the Provincial Crown	12-23
12.10.30(2)(a)	Claims Against the Provincial Crown in Local Superior Court	12-23
12.10.30(2)(b)	Claims Against the Provincial Crown in Superior Courts of Another Province	12-23
12.10.30(2)(c)	Claims Against the Crown in Provincial Court (as Opposed to Superior Court)	12-26
12.10.30(3)	Claims Against the Federal Crown	12-27
12.20	Discovery of the Crown	12-31
12.20.10	Document Discovery	12-32
12.20.20	Examination for Discovery of the Crown	12-33
12.20.30	Public Interest Immunity	12-34
12.20.30(1)	<i>Canada Evidence Act</i> — Specified Public Interest	12-37
12.30	Remedies	12-41
12.30.10	Mandamus, Prohibition and <i>Certiorari</i>	12-41
12.30.10(1)	Mandamus	12-42
12.30.10(2)	Prohibition and <i>Certiorari</i>	12-43
12.30.20	Injunctions, Specific Performance and Declarations	12-47
12.30.30	Damages	12-55
12.30.30(1)	Charter Damages	12-55
12.30.40	Costs and Interests	12-58
12.30.40(1)	Advance Costs	12-62
12.30.40(1)(a)	Conditions — Genuinely Cannot Afford the Litigation	12-63
12.30.40(1)(b)	Conditions — <i>Prima Facie</i> Meritorious	12-64
12.30.40(1)(c)	Conditions — Special Circumstances	12-64
12.30.40(1)(d)	Stringent Cost and Procedural Controls	12-66
12.30.40(1)(e)	Statutory Bars to Order	12-68
12.30.40(1)(f)	Management of a Funding Order	12-68
<i>Selected Legal Literature</i>		SLL-1
<i>Index</i>		IN-1