
CANADIAN ADMINISTRATIVE LAW

—

STUDY GUIDE

(2021)

TABLE OF CONTENTS

1. SETTING THE STAGE.....	5
Institutions of the Administrative State	5
Political and Administrative Redress of Individual Grievances	8
Courts and Administrative Agencies.....	9
Judicial Remedies at common law - prerogative writs	10
Grounds of Review and Standard of Review	10
2. PROCEDURAL FAIRNESS – Sources of procedural Obligations	12
Sources of Procedural Fairness	12
General Procedural Statutes	14
3. PROCEDURAL OBLIGATION TRIGGERS Knight “Three-Prong” and the concept of Legitimate Expectations.....	18
Historical development of the procedural fairness doctrine: Judicial, quasi-judicial and administrative functions.....	18
Ongoing applications of the judicial/quasi-judicial vs. administrative distinction.....	20
Knight three-prong trigger - Knight v Indian Head School Division No 19 [1990] 1 SCR 653 (Sask) (CB pp. 84-93)	21
Decisions Affecting Rights, Privileges, or Interests	22
The nature of the right or interest in application cases.....	23
Inspections and Recommendations	24
Summary: Knight Three Prong test.....	26
Legitimate Expectations	27
Application of Legitimate expectations to legislative decisions	29
Summary: Legitimate Expectations.....	30
4. PROCEDURAL OBLIGATION TRIGGERS - LEGISLATIVE DECISIONS & EMERGENCIES.....	31
Emergencies	31
Decisions of a Legislative and a General Nature	32
Summary: Legislative and General decisions.....	35

5. PROCEDURAL OBLIGATION TRIGGERS – CHARTER AND BILL OF RIGHTS.....	36
The Charter and the Bill of Rights: Issues of General Applicability.....	36
The Charter.....	36
The Bill of Rights – Procedural Thresholds.....	37
Application of the BoR to Legislative Decisions.....	39
<i>Singh v Canada (Minister of Employment and Immigration)</i> [1985] 1 SCR 177 (CB pp. 183-195).....	39
S. 7 and National Security	42
Psychological Harm, Delay, S. 7 of the Charter, and Administrative law remedies	47
Summary – s. 7 of the Charter (as it concerns procedural fairness)	52
Summary – Bill of Rights.....	54
6. PROCEDURAL OBLIGATION TRIGGERS - Constitutional Duty to Consult & Accommodate Indigenous Peoples.....	55
Source of the Duty to Consult and to Accommodate	56
<i>Haida Nation v British Columbia (Minister of Forests)</i> 2004 SCC 73, [2004] 3 SCR 511 (CB pp. 595-601, 616-628).....	56
Threshold for the duty to consult and accommodate.....	58
Does the duty apply to legislative action?	59
Identifying Parties to Consultation.....	59
Content of the Duty to Consult and to Accommodate	60
Summary – Duty to Consult and to Accommodate Aboriginal People	62
7. CONTENT OF PRODECURAL OBLIGATIONS (RIGHT TO BE HEARD).....	64
<i>Baker v. Canada (Minister of Citizenship and Immigration)</i> , 1999 CanLII 699 (SCC), [1999] 2 SCR 817	65
Specific Content Issues.....	72
Notice.....	72
Disclosure of documents	76
Delay.....	77
The Hearing.....	78
Right to Counsel.....	80
Disclosure and Official Notice.....	83
Admissibility of Evidence	92
Reasons	95
8. CONTENT OF PROCEDURAL OBLIGATIONS – RIGHT TO AN UNBIASED AND INDEPENDENT DECISION-MAKER.....	98
Bias & Impartiality.....	99
General Test for Bias: “Reasonable Apprehension of Bias” [RAB].....	99
Pecuniary and other Material Interests.....	102
Variations Depending On Context.....	103
Statutory Authorization.....	106
Institutional Bias	108
Summary – Bias & Impartiality	108

Independence.....	109
Security of Tenure.....	109
9. CONTENT OF PROCEDURAL OBLIGATIONS (ISSUES ARISING FROM INSTITUTIONAL DECISION-MAKING).....	111
Delegation of Authority	112
Deciding without a Hearing.....	115
Consultations Among Agency Members	117
Agency Counsel.....	120
At the Hearing.....	121
The Preparation of Reasons.....	121
Reasons Review.....	123
Agency Guidelines	124
10. BACKDROP TO THE STANDARD OF REVIEW ANALYSIS.....	125
Introduction to substantive review & the standard of review analysis	126
Privative Clauses and Rights of Appeal.....	127
Constitutional limits of Privative Clauses.....	128
Statutory Rights of Appeal.....	128
11. THE VAVILOV TESTS FOR STANDARD OF REVIEW SELECTION AND APPLICATION	129
Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 (CanLII).....	129
Facts (paras 147-151)	129
Issues	131
Holding	132
The Standard of Review Analysis as revised in <i>Vavilov</i>	132
Performing Reasonableness Review.....	135
Application of the law to the facts.....	140
Vavilov – Summary	141
Standard of Review.....	141
Statutory appeal clauses	142
Judicial Review of Decisions that affect constitutional rights	143
12. VENUE AND BASIC PROCEDURE FOR JUDICIAL REVIEW.....	149
Standing – who can apply for judicial review?	149
Role of the Attorney General.....	153
The Status of the Authority Under Attack	154
Allocation of Review Authority: Federal Court and Provincial Superior Courts	157
Relevant provisions of the <i>Federal Courts Act</i>	157
History and Constitutional Considerations.....	162

1. SETTING THE STAGE

- Administrative law concerns the legal structuring and regulation of sovereign authority, both in the state's relations with individuals and in the allocation of authority among various institutions.
- Put otherwise, it is the body of law that governs how people exercising power pursuant to a statutory delegation of power exercise that power "properly" and in line with the rule of law. Almost all of administrative law is about deciding what we mean by "properly".
- The people exercising power are typically members of the executive branch of government, although often at arm's length from it.
- Much of the subject matter of administrative law concerns public programs put in place under the authority of a statute, enacted by either the Parliament of Canada or a provincial or territorial legislature. Such programs typically put in place in order to deal with a problem that is not readily addressed through existing legal frameworks such as the criminal law or taxation, or through market-based solutions.
- Administrative law is concerned primarily with the fair administration of such programs, especially the opportunity for those immediately affected, or otherwise interested, to participate in the decision-making process; the adequacy of both the factual basis and the legal authority for administrative action; the rational exercise of discretion; and the availability of legal remedies to challenge the abuse of power by public bodies and officials.
- Because administrative law touches a broad swath of contexts (e.g.: labour relations, land-use planning, securities regulation, broadcasting and communications, environmental protection, human rights, and immigration – See Examples at CB pp. 6-8), the study of administrative law is **by nature, general**. It does not delve into the minutiae of specific areas of law but rather concerns itself with rules and principles that apply to all public decision-makers and powers.

Institutions of the Administrative State

- **Legislatures**
 - The leading public forum where political decisions taken in the name of the electorate are explained, debated, and decided on.
 - Nearly all public programs must originate with a statute passed by the federal, provincial, or territorial legislature in order to create legal rights and duties.
- **Cabinet and Ministers (also known federally as the governor in council and provincially/territorially as the lieutenant governor in council)**
 - The Cabinet is made up of various ministers and is chaired by the prime minister (federally) or premier (provincially), who assigns ministerial responsibilities.