

Aspects of Canadian Administrative Law: Bias and Independence

A leading student of American administrative law once observed: "We must recognize that agencies are set up to promote certain affirmative policies. They cannot be expected to act independently and with cold neutrality of an impartial judge". Do you believe that this is recognized in contemporary Canadian Administrative Law? Should it be?

The issues raised by this question, as I understand them are meant to assess the principles relating to the Independence of tribunals on the one hand and the minds of the decision makers on the other. I will commence with the issue as it relates to influences on the minds of the decision-makers in terms of whether they are or are expected to act with the cold neutrality of an impartial judge shortly put, whether they are or expected to be unbiased in their decision-making and thereafter examine the approach to tribunal independence.

In the Canadian Administrative law environment the principles governing unbiased decision making follows the evolution of this area of law from judicial classifications in the natural justice era to broad-based classifications in the era of procedural fairness where a wider range of decision-making processes have become or are capable of becoming the subject of review or scrutiny. The approach to principles of neutrality and independence have generally followed from a standard of what was appropriate for judges in a court of law but as will be seen with the advent of procedural fairness a context sensitive approach has been taken in dealing with the issue of bias in light of the broader range of agencies that have now become subject to review. It means that what is appropriate for a judge in a court of law might not be appropriate in the context of administrative agencies as a result of this the courts of

set up a sliding scale of standards to be applied according to where on the scale they fall whether close to the administrative end or to the judicial end.

The notion of bias in Anglo Canadian administrative law is not so much influenced by whether “agencies are set up to promote certain affirmative policies” but by the principles of procedural fairness and more so by the a principle that has its roots in natural justice that a man must not be a Judge in his own cause.

The judiciary or the courts are regarded as generalists and the administrative tribunals as specialists. The Judges operate in an environment where there is a separation of functions and they preside over and decide “cases in solitary splendour in the context of an adversary system”^[1] whereas the agencies are many in number, cover various matters and have a range of functions, which extend beyond adjudicative functions. The members of the administrative agencies are appointed from and operate in “a small community of experts or peers and may be expected to engage in collegial or collective decision-making, their processes may be far less adversarial than those of regular courts and involve inquisitorial and generally activist approaches, and they may be engaged in decision-making with an explicit and high policy content”.^[2] They preside over individualized matters that vary from those requiring sensitivity to those requiring expertise gained in some measure from previous experiences and it is felt that they will operate more effectively if they are drawn from all segments of society and especially from among those that have an interest in the operations of the board. In Canadian administrative

law consumer advocates are encouraged to be members of administrative tribunals. The general tendency therefore is to encourage the appointment of persons who have an intimate knowledge of the area gained either from having previously worked in the field or as an advocate in the area. The study of this aspect of administrative law therefore is not so much in the nature of “disqualification for any form of bias but of what constitutes impermissible biases” [3], more in the nature of exploring the limits of involvement.

In Canada bias is governed by common law principles except in cases where the enabling statute creates exceptions for situations that would normally constitute bias at common law. The probe is not one for actual bias but for a reasonable apprehension of bias.

Bias relates to factors or associations that can be said to predispose an adjudicator to come to a particular decision. These factors include self-interest and professional or family obligations. Bias has been expanded to cover independence, which focuses on the extent to which “considerations internal to the relevant statutory regime” [4] results in the impairment of the integrity of the judicial process of either the decision makers or of the entire tribunal. Jurisprudence in terms of the lack of independence developed out of the Charter era and in particular from the language in section 11(d) which speaks to an “independent and impartial tribunal” which have been carried over to section 7 with respect to the fundamental justice provisions. Similar provisions are to be found in the Quebec Charter and the Canadian Bill of Rights; the latter is limited in its application to Federal Tribunals. Justice Le Dain

has interpreted judicial independence for the purpose of section 11 (d) by making a distinction between the “status and relationship of judicial independence and the state of mind of the tribunal in the exercise of its judicial function”.^[5] The latter is more properly referred to as impartiality and the former relates to the structure of the tribunal.

The test for bias was first formulated by de Grandpre` J. in a dissenting judgment^[6] but which has later gained acceptance in the Supreme Court of Canada in the cases of Newfoundland Telephone^[7] and Baker^[8]: -

...[T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information...[T]hat test is “what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.”

This an objective test and is measured in terms of the impression of the reasonable observer. The categories in which reasonable apprehension of bias can occur are not closed and vary according to functions in keeping with the general principles of procedural fairness. The limits of bias can be examined in the context of antagonism during the hearing, prior association, involvement in the preliminary stage, statutory authorization and attitudinal bias. What are the limits of each of these factors or how far can a decision maker or tribunal go before being disqualified on account of anyone of these factors.

Generally speaking an active role in the hearing process or a closed mind is not symptomatic of bias. An adjudicator should not however, cast ‘gratuitous aspersions’ on the character or physical attributes of the

participant, his counsel or representative. This was the case in Baker where officer Lorenzo during the 'hearing' displayed that he had a closed mind and that he was not weighing the particular circumstances free from stereotypes'.^[9] According to the court it seems that he did not decide the case on the evidence before him but on the basis of the personal attributes of the participant such as the fact that she was a single mother of several children and a domestic helper suffering from a mental illness. This was inferred from various facts in the case including his use of capital letters when writing the number of Miss Baker's children. The case was in the area of immigration law and involved human and compassionate considerations as a result of which the court found that the context of the case, was one of a personalized and individualized nature where the matters are very sensitive and of great importance to the persons affected by them so that the officer should have been more sensitive and was required to exhibit a recognition of the diversity of his society, an understanding of others, and an openness to difference. In terms of his attitude he seemed predisposed to a particular conclusion and could not be said to have directed his mind to the claim before him.

In keeping with the general approach to bias persons who have been appointed to boards or regulatory bodies are not automatically disqualified on account of their advocacy for a cause or an issue or their prior association with an affected community even if they still regard themselves as being closely akin to the particular cause or view. The Newfoundland Telephone case^[10], in the area of economic regulation illustrates this point and is relevant to a determination of the

circumstances in which prior association and attitudinal bias will give rise to a disqualification on account of a reasonable apprehension of bias. In terms of the issue of prior association Andy Wells was appointed to the regulatory board and promised to continue his support for the consumer during his tenure. The challenge arose in circumstances where he vigorously objected to the salaries being paid to the board members as well as their pension plan and he made his position clear prior to the hearing and continued to do so while the hearing was in progress and even in the face of a challenge to his inclusion on the panel for the hearing the issue.

The judgment of the court provides a very useful insight into the workings of Canadian administrative law. The courts confirmed that the standard of what constitutes bias varies with the nature of the function performed by the board, which will determine whether a strict or lenient standard for disqualification will apply. The boards that are at the adjudicative end of the spectrum are required to comply with a standard akin to a court of law which means that they are "required to act with the cold neutrality of the impartial judge" or as close thereto as possible not so much because they are set up to promote affirmative policies but because of the way that administrative law has evolved from classical distinctions between judicial and administrative proceedings to the broad spectrum 'sliding scale' contextual approach under procedural fairness. At the other end of the spectrum are the boards that are made up of elected representatives such as municipal councillors who perform planning and development functions where a more lenient standard is applied. The challenging party is required to establish that the matter was prejudged in order to succeed in an

application to disqualify the members of these boards. Boards that are concerned with policy implementation are closely equivalent to those comprised of municipal councillors and a strict application of the rules of reasonable apprehension of bias may undermine the role entrusted to them by the legislature.

It was held that ordinarily his conduct would not have given rise to a successful challenge for reasonable apprehension of bias but that in this case he had gone too far. He had gone too far because his comments went past the investigative stage and he indicated that he had a closed mind and that any submissions made would be futile. The court held that:

“once the matter reaches the *hearing stage* a greater degree of discretion is required of a member. Although the *standard* for the Commissioner sitting in a hearing of the Board of Commissioners of Public Utilities *need not be as strict and rigid as that expected of a judge presiding at a trial*, nonetheless procedural fairness must be maintained”. (emphases added)^[11]

In this context Cory J also made a statement also relevant in the context of attitudinal bias, to be discussed below, that: -

Furthermore a member of a board which performs a policy formation function should not be susceptible to a charge of bias simply because of the expression of strong opinions prior to the hearing. This does not of course mean that there are no limits to the conduct of board members. *It is simply a confirmation of the principle that the courts must take a flexible approach to the problem so that the standard which is applied varies with the role and function of the Board which is being considered.* In the end however, commissioners must base their decision on the evidence which is before them. Although they may draw upon their relevant expertise and their background of knowledge and understanding, this must be applied to the evidence which has been adduced before the board. (emphases mine)

A context-based approach was also taken in the category of attitudinal

bias and similar reasoning was applied. The issue here is the extent to which persons that have previously taken a public position on an issue are qualified to sit on a tribunal that is hearing the same issue. This was the case of Large v. Stratford (City), [\[12\]](#) a decision in the context of human rights. It was held that his comments did not violate the well-established standards of administrative neutrality for that:

Human rights inquiry boards are drawn from those who have some experience on human rights issues. To exclude everyone who ever expressed a view on human rights issues would be to exclude those best qualified to adjudicate fairly and knowledgeably on sensitive areas of public policy.

The case was distinguished from the Newfoundland Telephone Case on the basis that in any event the Professor was called upon to decide a different issue in addition to the fact that the adjudicator clearly exhibited that he had closed his mind and went too far.

This case is to be contrasted with the Gale [\[13\]](#) case where there was a successful challenge to the sitting of an adjudicator in a case involving systemic discrimination against women. The adjudicator, Miss Backhouse was on record as one of the complainants in respect of the very issue before the commission. This case was a marginal case and is said to illustrate the dimensions of the problem of advocacy and adherence to particular causes: -

In our view, the unique aspect of this case is that Miss Backhouse *went beyond* the position of an advocate and *descended personally*, as a party, into the very arena over which she has been appointed to preside in relation to the very same issues she has to decide. (Emphases mine).

In this case in a concurring judgment the court said, "It is trite to state that simple justice required a high degree of neutrality". This is not to

import the neutrality of judges into the administrative law arena but sets the limits of involvement or attitude to be tolerated in each case. The distinguishing feature between this and the case of Large is that in Large the comment was on the general issue in the case. In this case not only was the comment on the specific issue but also the adjudicator had become personally involved. In addition to this the court took into consideration the fact that this was the first time that a case of systemic discrimination against women was raised in Ontario and therefore there was a reasonable apprehension that she could use her position to vindicate her cause.

From the foregoing it can be seen that the standard varies with the stage of the proceedings as well as with the role and function of the board so that it can be said that a contextual approach is applied such that there are shifting standards with respect to disqualifying conduct. The shifting standards are also evident in cases of prior involvement where the prior involvement arises because of the nature of the board for example those performing a policy function. These boards are generally adjudged to be at the legislative end of the scale and as such a high threshold is required to establish bias. In the case of Old St. Boniface Residents Association v. Winnipeg (City) [1990] 3 S. C. R. 1170 (Man.), the municipal councillor was intimately involved in the approval process within the municipality of a residential development that required among other things a change of zoning. It was held that the function was of a legislative nature and therefore it would not hold him to the same strict rules on prior involvement as in cases involving professional disciplinary matters. In delivering the unanimous judgment of the Supreme Court of Canada Sopinka J. adopted the reasoning of

Henry J in the Cadillac^[14] case where the Council was called upon to consider the repeal of a land-use by-law. In that case a majority of the court had made up their mind and said so. In dismissing the application to quash the by-law on this ground, Henry J stated:

In respect of a quasi-judicial tribunal in the fullest sense of that concept required to adhere to the principles of natural justice this would amount to an allegation of bias such as might be ground for quashing the decision. *But regard must be had to the nature of the body reviewing the matter. A municipal council is an elected body having a legislative function within a limited and delegated jurisdiction.* Under the democratic process the elected representatives are expected to form views as to matters of public policy affecting the municipality. Indeed, they will have been elected in order to give effect to public views to important policies to be effected in the community....

They are not Judges, but the legislators from whom ultimate recourse is to the electorate. Once having given notice and fairly heard the objections, the Council is of course free to decide as it sees fit in the public interest.[emphasis added]

This case reinforces the point that the closer one approaches the judicial and quasi-judicial end of the scale the greater the degree of neutrality required whereas at the legislative end it is less restrictive. The court then went on to state the test to be applied in the functioning of municipal bodies hearing the complaints of objectors as being that of a body that is capable of being persuaded expressed in the words, [s]tatements made by individual members of the Council while they may very well give rise to an appearance of bias will not satisfy the test unless the court concludes that they are the expression of a final opinion on the matter, which cannot be dislodged." ^[15] In a case on similar facts, the Richmond^[16] case Sopinka J for the majority adopted the amenable to persuasion test whereas La Forest for the minority

approved the dictum of Southin J. A. that “the decision-maker is entitled to bring a closed mind to the decision-making process, provided that the “closed mind is the result not of corruption, but of honest opinions strongly held.” Notwithstanding the variance in the tests in these it was made clear that the threshold for establishing bias would be at the high end of the scale having regard to the nature of the decision to be made it being of a legislative or policy nature.

The situation would have been different however, where the board does not have legislative or political duties. This was established in the as in the Committee for Justice and Liberty case^[17] where the adjudicator was previously involved in the planning for and routing of a proposed pipeline in the McKenzie Valley. The issue was whether his ‘apparent commitment to a pipeline created a reasonable apprehension of bias’ and the Supreme Court of Canada found that it did. The case turned on the fact that he was very involved in the planning stages of the very application that came before him and the fact that prejudgment on issues was not inherent in the nature of his functions as in the case of the municipal bodies in Richmond and Old St. Boniface.

Some boards by their very nature involve decision makers in various stages of the process, this overlapping of functions is very often to be found in their statutory scheme so that a defence to a challenge on the ground of bias in this context would be statutory authorization assuming that the constitutionality of the statute is not in issue. This is mostly seen in the context of securities legislation where the employees have overlapping roles. In the Brosseau^[18] case Madame Justice L’Heureux-Dube in her judgment said that the fact that the securities commission is

a specialized body makes it more possible that the same decision-makers will be involved repeatedly with a particular party on more than one occasions. In these circumstances she says it is clear from the enabling statute that the commission is not intended to act like a court “and that certain activities which might otherwise be considered biased is an integral part of its operations”. In these circumstances the adjudicator is involved from the receiving of a complaint stage to the making of a determination that an investigation is appropriate and directing or otherwise participating in the investigation, deciding whether charges should be laid and a hearing convened and then presiding at the hearing. The court ruled that the only basis on which it could be held, on the facts of this case, that a reasonable apprehension of bias existed was if it could be shown that the commission acted ultra vires the statute. This was the situation in the case of Manning^[19] a case involving the Ontario Securities Commission where the commission’s chair was disqualified for issuing an ultra vires policy statement, which had the effect of prejudging the companies activities that were the subject of the hearing. The statement was not however, sufficient to disqualify the whole commission on the basis of corporate tainting especially having regard to the fact that members at the time of the hearing were new appointees.

The law of bias has been stretched to cover independence as aforesaid. The Sethi^[20] case is an illustration of the general principle that matters of a legislative nature are not generally subject to review. In the case Sethi, alleged that proposed legislation about the abolition of one Board and its replacement by another in circumstances

where there was no security of tenure or compensation on termination raised an apprehension of bias. The governments' appeal was allowed on the basis that the right minded person would not have come to the conclusion that the board would be prejudiced but the more profound reason was that to allow such an allegation to be sustained would have a

"...chilling effect on the democratic process as it developed in Canada. Public debate, consultation and input have become important elements in the *government's decision-making process*... On the dubious assumption that a Court could find, in a statement of government intention, sufficient certainty upon which to base a conclusion having legal effect, *it should be slow to do so*". [Emphasis mine]

This statement does suggest that as a policy the courts should not be quick to interfere with government decision and policy making and that there is more benefit in this approach in terms of enabling public input than if there were no consultations. In the circumstances we cannot expect much jurisprudence from this area as opposed to where constitutional and bill of rights issues are concerned and in this respect there is focus on the extent to which administrative tribunals mirror judicial independence.

The test for independence was formulated by Grandpre` J^[21] in terms of the right minded person and involves the following considerations:

[W]hether the tribunal enjoys the essential objective conditions or guarantees of judicial independence, and not a perception of how it will in fact act, regardless of whether it enjoys such conditions or guarantees."

He interprets independence to mean the "status or relationship of judicial independence as well as the state of mind or attitude of the tribunal in the actual exercise of its judicial function" this interpretation makes the decision of Sethi seem correct as what was

involved there was government policy-making as a possible area in which bias could be attributed to a tribunal. When a claim is raised on the issue of independence it focuses on the structure or design of the tribunal and not on the decision-makers. The courts have taken into account the factors that are usually indicative of judicial independence as a guide or standard against which agency independence is measured. These factors are security of tenure, financial security and institutional independence.

In the Alex Couture^[22] case the Quebec Court of Appeal felt that the factors were to be interpreted to mean that the conditions should have a '*reasonable connection*' with the diversity of the agencies which were subject to section 11(d) and that the essence of the guarantee was expressed in the form of *minimal conditions* with respect to security of tenure, financial security and institutional independence. 'Reasonable connection' and 'minimal standards' conjures up images of a less exacting standard when the principles of judicial independence are applied to tribunals generally. Reasonable connection suggests that some tribunals may not be subject to these standards at all, but they did not say how. The possibility of a varying standard was qualified as not meant to give rise to standards of varying content. I must confess that it is difficult to see how it is possible to have varying standards without varying content. In the final analysis they found that the tribunal in issue was independent even though in the security of tenure category the periods of appointment of were between five and seven years with protection against dismissal for cause for the lay members. This was found to be quite appropriate even when compared with the fact that judges were employed for life, security was assured here in light of the

requirement for an inquiry where dismissal was contemplated and which was felt to be a fair process in light of the fairness doctrine. The minimalist requirement was also satisfied in the area of financial security and the court found that there was nothing wrong with the Governor in Council setting the remuneration or with an appraisal system to determine salary increases. In the category of institutional independence the absence of the requirement that the chair could only be replaced for misconduct was not sufficient to compromise the independence of the tribunal and in fact the Court found that all three criteria were unnecessary for a finding of institutional independence. In the Canadian Pacific^[23] case there were tensions between the contextual approach and the functional approach, which resulted in a split decision in the sense that although the entire Court was unanimous in its conclusion that the appeal should be dismissed they did so for different reasons. There were two views, those of Lamer C. J. C. with whom Justice Cory concurred and that of Sopinka J with whom Justices L'Heureux-Dube`, Gonthier and Iacobucci concurred. Both views accepted that the Valente principles were applicable, that is guarantees akin to judicial independence and as in Couture the diversity of institutions was recognised by Lamer C. J. C. who says some tribunals will enjoy more independence than others such as where the issue is security of the person. The learned Chief Justice then makes a statement that creates confusion in his application of the principles. He says, "In this case we are dealing with an administrative tribunal adjudicating disputes relating to the assessment of property taxes. In my view, this is a case where a *more flexible approach is clearly*

warranted." [24] After he examines the various provisions of the Indian Act he then makes what I consider a statement, which conflicts with his earlier pronouncement that a more flexible approach is required he says, "I have quoted these excerpts from the bands' by-laws to demonstrate that members of the appeals tribunals *perform adjudicative functions not unlike those of courts.*" [25] This in my mind triggers the application of a stricter standard. (Emphasis added). In fact he did apply the stricter standard to the property tax regime, which he had previously referred to as requiring a more flexible approach. In doing so he found that there was a lack of independence on the part of those charged with the determination of the appeals from taxes imposed for use of land within the Indian reserves. The problem was that there was no provision for financial security or security of tenure and the members of the appeal body could be members of the band. He was of the view that it was sufficient in considering the principles to consider the by-laws only and not the actual working of the tribunal. In those circumstances he found that the by-laws were invalid as there was no assurance of independence or a reasonable person would have a reasonable apprehension of bias. It is submitted that even on his analysis there is confusion as to what the proper standard is to be especially when regard is had to the fact that 'flexibility' and 'adjudicative' are almost complete opposites on the scale of natural justice to procedural fairness, adjudicative in my mind suggests a stricter standard. Notwithstanding the inconsistency he is advocating a functional approach to a determination of the independence of the tribunal. The Sopinka camp was of the view that a contextual approach is to be

taken to the review and in this regard he found that the “taxation scheme under the Indian Act was a very significant contextual factor” in that “it is part of a nascent attempt to foster Aboriginal self-government”. He was of the view that the relevant provision should be interpreted “in the context of the fullest knowledge of how they are applied in practice”. This was required to ensure that the right-minded person did not become uninformed. I am of the view however that the contextual approach seems to take the reasonable man in too deep. Administrative agencies are diverse. How far can he delve into the context of each tribunal and still remain reasonable or objective? The danger with context is from whose perspective whereas function/structure does not lend it to subjective analysis. What is the approach to be? Has the recent decision of Ocean Port^[26] solved this problem?

The issue in this case was whether the Liquor Appeal Board was sufficiently independent to meet the requirements of natural justice. This was examined in the context of the board members being part time appointees who were paid on a per diem basis and were appointed for a term of three years and subject to dismissal at pleasure. In short order Madame Justice L’Heureux-Dube` dismissed the use of the judicial independence analogy vis-à-vis an administrative tribunal and said that the tribunal was not a court and therefore there is no basis for extending a constitutional guarantee of judicial independence to them. She stressed the fact that the licensing board “is not a court, nor does it approach the constitutional role of a court”. She then sought to reinforce her position by stating it is ‘licensing body’ and the suspension complained of was an incident of the licensing board’s function. It is

this latter statement in paragraph 33 of the judgment that some see as a cause for concern. The concern is what if the function had been truly adjudicative? It seems to me that the learned judge was more concerned with structure than with functions. In other words she was making a distinction as it relates to the nature of the body hence her stress that it is a licensing body as distinct from a court and coupled with this it was not exercising judicial but licensing functions so that a body so far removed from a court in structure and function should not be required to conform to principles or standards relating to judicial independence. I submit that her focus was on the structure in another sense as well, that is the place of tribunals within the larger constitutional framework in terms of their relationship with the state's other arms, the executive and the legislature. Judicial independence is borne out of the constitutional relationship between the executive, the legislature and the judiciary so that a judicial function is not sufficient to cloak otherwise specialist and diverse agencies with judicial trappings bearing in mind that agencies do not just apply the law. The question therefore is its place in the constitutional structure, with function being a subsidiary issue.

The approach suggested in the question is not the Canadian Court's approach and I do not think that it should be or could be adopted in the Canadian context. The Canadian court's approach to the issue of bias and independence is regulated on a sliding scale from those involving adjudicative functions where the court is likely to apply stricter rules of impartiality and independence to decisions with a high policy content where the court is likely to be more lenient in deciding the type of scrutiny that will be applied in each case. As can be seen in the area of

institutional independence the approach is not very clear and there are tensions between the contextual approach and the functional approach. It must be admitted at the outset that the approach suggested by the American student may very well make for more certainty for those who may wish to assert a claim under this head but then on the other hand it is rigid and inflexible and would revert Canada to the pre-Nicholson era when functions were classified as either judicial or administrative and clear injustices would go without remedy as being outside of these classifications. The more liberalised though unsettled but developing Canadian approach is to be preferred where cases are developed based on a contextual basis. It is unpredictable and uncertain but is certainly best suited to the diversity of issues and bodies brought on by the fairness revolution one general standard in these circumstances would be inappropriate.

[1] J. M. Evans, H. N. Janisch, David J. Mullan and R. C. B. Risk: Administrative Law Cases, text

and Materials 4ed, p. 383.

[2] Ibid

[3] J. M. Evans, H. N. Janisch, David J. Mullan and R. C. B. Risk: Administrative Law Cases, Text and Materials 4 ed at page 381

[4] J. M. Evans, H. N. Janisch, David J. Mullan and R. C. B. Risk: Administrative Law Cases, text and Materials 4ed, p. 384.

[5] Ibid at page 461

[6] Committee for Justice and Liberty v. National Energy Board [1978] 1 S. C. R. 369 at 394

[7] Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities, [1992] 1 S. C. R. 623

[8] Mavis Baker v. Minister of Citizenship and Immigration [1999] 2 S. C. R. 817

[9] ibid per Madame Justice L'Heureux –Dube at para. 48

[10] Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities) [1992] S. C. R. 623 (Nfld.) extracted at page 445 Administrative Law Cases Text and Materials supra.

[11] Ibid at page 451

[12] (1992) OR (3d) 104 (Div. Ct.)

[13] Gale v. Miracle Food Mart (1993), 109 D. L. R. (4th) 214 (Ont. Div. Ct.).

[14] Re Cadillac Development Corp. Ltd. and Toronto (City)(1973) 39 D. L. R. (3d) 188 (Ont. HC) extracted in the judgment of Sopinka J on page 437 of Administrative Law Cases Text and materials supra.

[15] Ibid page 439.

[16] Save Richmond Farmland Society v. Richmond (Township) [1990] 3 SCR 1213 (BC).

[17] Supra

[18] Brosseau v. Alberta (Securities Commission) [1989] SCR 301 (Alta.)

[19] E. A. Manning Ltd. v. Ontario Securities Commission (1994) 18 OR (3d) 97 (Div. Ct.); aff'd (1995) 125 DLR (4th) 305 (Ont. CA) extracted at page 407 Administrative Law Cases Text and Materials supra.

[20] Sethi v. Canada (Minister of Employment & Immigration) [1988] 2 F. C. 537 (TD), rev'd [1988] 2 F. C. 552 (CA) extracted in Administrative Law Cases, Text and Materials at 459.

[21] R. v. Valente [1985] 2 S. C. R. 673 at 689

[22] Alex Couture Inc. v. Canada (Attorney General) (1991), 83 D. L. R. (4TH) 577 (Que` . C. A.)

[23] Canadian Pacific Ltd. v. Matsqui Indian Band [1995] 1 S. C. R. 3

[24] Administrative Law Cases Text and Materials supra at page 472

[\[25\]](#) Ibid page 473

[\[26\]](#) Ocean Port Hotel Limited v. British Columbia (General Manager Liquor Control), [1999] B. C. C. A. 317; [2001] S. C. J. No. 17.