

Administrative Law and the *Charter*  
– The Latest Chapter:  
*Doré v. Barreau du Québec*<sup>1</sup>

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# Administrative law and the *Charter*



# Overview

1. Mapping *Charter* jurisdiction: Top-Down *Charter* application meets common law constitutionalism
  2. *Doré*: Switching tracks . . . to the administrative law approach
  3. Questions arising post-*Doré*
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# 1. Mapping *Charter* jurisdiction

- ▶ *Statutory bases of Charter jurisdiction*
  - Authority to determine *Charter* validity of a term of the enabling statute (*Martin v Laseur*<sup>2</sup> “test”)
  - Authority to award s.24(1) *Charter* remedies (*Conway* “test”)<sup>3</sup>
- ▶ *Common law obligation to exercise administrative discretion in light of Charter (and other fundamental) values*
  - *Doré* proportionality . . .

# *Martin and Laseur* (SCC 2003): Authority to determine *Charter* validity of enabling legislation

- ▶ *Martin*: Clear rejection of the logic of dissent of Lamer J. in *Cooper*
  - “Only courts have the requisite independence to be entrusted with the constitutional scrutiny of legislation . . .”
    - *Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854 at para 13

# *Martin and Laseur* (SCC 2003)

- ▶ “[B]y virtue of s.52(1), the question of constitutional validity inheres in every legislative enactment. Courts may not apply invalid laws, and the same obligation applies to every level and branch of government, including the administrative organs of the state.”
  - *Martin and Laseur*, at para 28

## *Martin and Laseur (SCC 2003)*

- ▶ If an ADM “is endowed with the power to consider questions of law relating to a provision, that power will normally extend to assessing the constitutional validity of that provision. . . .”

## *Martin and Laseur.* Authority to determine *Charter* validity of enabling legislation

1. Does ADM have jurisdiction – express or implied – to decide questions of law arising under the challenged provision?
  2. Has the presumption raised by explicit or implicit grant of authority to decide questions of law been rebutted?
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## *Martin and Laseur (SCC 2003)*

If tribunal authority in place . . .

- Traditional *Charter* analysis of law: right-infringement, s.1 justification
- Correctness standard of review
- Determination of invalidity applicable only to the case at hand

# Principles animating Martin . . .

- S.52(1) Constitution is “supreme law”
- Access to the *Charter* – “Not some holy grail”
- Authority “does not undermine the role of the courts as final arbiters of constitutionality in Canada” (correctness review, limited application)
- ADM insights into specific administrative context / ability to compile factual record . . .

# Principles animating Martin . . .

- ▶ “In the case of *Charter* matters which arise in a particular regulatory context, the ability of the decision maker to analyze competing policy concerns is critical. . . . The informed view of the Board, as manifested in a sensitivity to relevant facts and an ability to compile a cogent record, is also of invaluable assistance.”
  - – Martin at para 30, citing La Forest J. in *Cuddy Chicks*, at pp. 16–17 (emphasis added)

# Supporting / expanding case law

- ▶ Paul v. British Columbia (Forest Appeals Commission) 2003 SCC 55
  - Provincial tribunal – authority to deal with aboriginal rights engaged by s.35 of CA, 1982

# Martin: Questions & fallout

- ▶ Coherence of denial of *Charter* jurisdiction?  
*No authority to interpret law?*
  - Martin v. Canada (Attorney General), 2013 FCA 15
  - Ontario (Attorney General) v. Patient, 2005 CanLII 3982 (ON SCDC)
- ▶ Coherence of access rationale for extending Charter jurisdiction?
  - Charter jurisdiction VS administrative justice?
  - Accessible, timely, inexpensive processes?
  - Individual rights claims swamping public purposes?

# Martin: Questions & fallout

## ▶ Fallout . . .

### ◦ **Statutory removal of jurisdiction?**

- **Umbrella statutes** (BC Administrative Tribunals Act, SBC 2004, c45, ss43–45; Alberta’s Admin Procedures and Jurisdiction Act, RSA 2000, c.A–3, s.11)
- **Discrete regimes** (Ontario Health Care Consent Act, s. 70.1)
  - “The Board shall not inquire into or make a decision concerning the constitutional validity of a provision of an Act or a regulation.”

## *R. v. Conway* (SCC 2010): Authority to award s.24(1) Charter remedies

- ▶ Consolidates *Martin* and 2 other lines of precedent (*Slaight, Mills*)
- ▶ Confirms *Martin's* **rationales** for recognizing expanded tribunal authority to hear and decide matters involving Charter guarantees
- ▶ **BUT** does *Conway* expand remedial powers beyond existing statutory powers?

# *Conway* “test”

1. General authority to grant s.24(1) *Charter* remedies? (*Martin*-type analysis)

- Explicit or implicit authority to decide questions of law raises presumption . . .
- . . . No clear legislative intent to withdraw Charter from the tribunal’s jurisdiction

2. Authority to grant the specific remedy?  
(Legislative intent / statutory scheme)

. . . “Now You See It, Now You Don’t”<sup>4</sup>

## 2. *Doré*: Switching tracks . . . to the administrative law approach

- ▶ Top-down model of Charter jurisdiction
  - Statute confers or removes
  - Exercise reviewed on correctness standard
- ▶ VS “Democratic (interactive) constitutionalism”<sup>5</sup>
  - All 3 branches participate, in interaction w/ each other and legal subjects, in working out the implications of fundamental values for social ordering

# Doré v. Barreau du Québec (SCC 2012) in a nutshell

- 1) Administrative **discretion** . . . .
- 2) engaging *Charter* values . . . .
- 3) must be exercised “reasonably” (evincing **proportionality**) . . . .
- 4) and **deference** must be shown to the ADM’s proportionality analysis on review.

# *Doré*: Background

- ▶ Lawyer discipline proceedings
- ▶ Personal / professional criticisms in letter to judge breached *Code of Ethics* art.2.03:
  - “The conduct of an advocate must bear the stamp of objectivity, moderation and dignity”
- ▶ Reprimand / 21 day suspension
- ▶ *Charter* challenge to decision . . .

# Pre-Doré: 2 main approaches to review of discretion alleged to breach *Charter*

1. **Orthodox approach** (*Slaight (Dickson J), Multani*)  
– Rights-infringement / s.1 justification

2. **Administrative law approach** (*Lake v. Canada* (SCC 2008), *Baker v. Canada* (SCC 1999))<sup>6</sup>

– Identify / apply standard of review

**BUT: Rule against review of the weight placed on competing factors informing discretion**

– Fox-Decent & Pless, in *Administrative Law in Context* (2008 & 2013)

# *Doré*: Switching tracks (why?)

- ▶ Orthodox approach fit for legislation, not discretion . . .
  - “prescribed by law”; “pressing and substantial objective” (who appears / defends?)
- ▶ Common law (now) recognizes internal limits on discretion – including fundamental values (*Baker*)

# *Doré's* close cousin: *Baker*

- ▶ The exercise of discretion must be consistent with “the values underlying the grant of discretion” [including]

the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the *Charter*

- – *Baker*, per L’Heureux–Dubé J at para 56

# Building on *Baker*

- ▶ “Integrating *Charter* values into the administrative approach, and recognizing the expertise of these decision-makers, opens **“an institutional dialogue** about the appropriate use and control of discretion, rather than the older command-and-control relationship”
  - Dore at para 35, citing Mary Liston [in *Administrative Law in Context, 2008*] at p. 100).

# Two tracks now: depending on the *Charter* target

- ▶ Is the challenge to the law?
  - ▶ Does the law “expressly or by necessary implication” confer power to limit Charter rights?
    - Martin / Conway track
    - Orthodox analysis of breach / s.1 / Charter remedy
- ▶ Or discretion?
  - Decision under imprecise grant of authority that does *not* confer power to limit Charter rights
    - Requires proportionality of mandate and Charter values (per Doré)

# Element 1: Discretion?

“The concept of discretion refers to decisions where the law does not dictate a specific outcome, or where the decision-maker is given a choice of options within a statutorily imposed set of boundaries.”

- Baker v Canada (para 52)

# Discretion? (examples)

- ▶ Remedial discretion
- ▶ Multi-factor “balancing test”
  - “A balancing test is a legal rule whose application should be very subtle and flexible, but not mechanical . . . The most that can be said is that the Tribunal should consider each factor; but the according of weight to the factors should be left to the Tribunal.” (Can. v. Southam (SCC 1997) para 43)
- ▶ Exemption “where the Minister is satisfied” it is warranted “owing to humanitarian and compassionate considerations” (*Baker*)

# Different from law–interpretation?

“It is, however, inaccurate to speak of a rigid dichotomy of “discretionary” or “non–discretionary” decisions. [. . .] [T]here is no easy distinction to be made between interpretation and the exercise of discretion; interpreting legal rules involves considerable discretion to clarify, fill in legislative gaps, and make choices among various options.”

- Baker at para 54

# Question

- ▶ Does the *Doré* analysis apply wherever law–interpretation engages Charter values?
  - ▶ *Canada v Mossop*: interpretation of “family”?
  - ▶ What would it mean to require “proportionality” whenever law–interpretation engages *Charter* values?
- ▶ Or is proportionality analysis reserved for a narrower class of “discretion”?

# Watch for it at the SCC

- ▶ *United Food and Commercial Workers, Local 401 v Alberta (Attorney General)* 2012 ABCA 130
  - Adjudicator deemed statutory term unambiguous, meaning *Charter* values could not be consulted.
    - Per *Bell Express Vu* (SCC 2003)<sup>8</sup>
  - Alta CA applied *Doré* (declared interpretation & order invalid because disproportionate)
    - But was this “discretion”?

# Element 2: *Charter* values

- ▶ How do *Charter* values differ from *Charter* rights?
  - ▶ What *other* fundamental values are relevant to the exercise of discretion (must they too be balanced on a model of proportionality?)
  - ▶ How do I know a *Charter* (or other fundamental) value when I see one?
- 

## From *Doré*

- ▶ [A]dministrative decisions are *always* required to consider fundamental values. The *Charter* simply acts as “a reminder that some values are clearly fundamental and . . . cannot be violated lightly”.

# *Charter* values as an end run around *Charter* application

- ▶ “The concept of “*Charter* values” has been invented by the Supreme Court of Canada to mitigate the fact that the *Charter of Rights* applies only to governmental action. . . .”
- ▶ “[W]hen. . . confronted with a plausible claim that the common law offends the *Charter* the Court has not been able to bring itself to say simply “too bad, go and talk to the Legislature.””

(Peter Hogg, 2003)<sup>9</sup>

## Peter Hogg on *Charter* values (2003)

- ▶ “Every *Charter* right is probably also a *Charter* value, but the latter is stated at a higher level of generality, without the detail that the Court has carefully en-grafted onto the actual right.
- ▶ . . . and the section 1 analysis does not follow the strict protocol established by the Court in *Oakes* but is ‘more flexible’.”
  - Ibid.

# (Deeper) constitutional values? *Secession Reference* (SCC 1998)<sup>10</sup>

- ▶ “Our law's claim to legitimacy also rests on an appeal to moral values, many of which are imbedded in our constitutional structure. It would be a grave mistake to equate legitimacy with the "sovereign will" or majority rule alone, to the exclusion of other constitutional values.”  
(*Secession Reference*)

# Values & unwritten law

- ▶ “The tension between written and unwritten law is really the tension between a conception of law as the conscious and creative product of political or sovereign will (usually recorded in writing), and a conception of law as reason revealed through the practices and customs of a special form of moral discourse (not contingent on writing).”
  - Mark D. Walters, “‘Common Public Law in the Age of Legislation’: David Mullan and the Unwritten Constitution”<sup>11</sup>

# “Values” in constitutional law: Secession Reference

- ▶ Four “fundamental and organizing principles of the Constitution
- ▶ federalism;
- ▶ democracy;
- ▶ constitutionalism and the rule of law; and
- ▶ respect for minorities.”
  - These “may in certain circumstances give rise to substantive legal obligations . . . which constitute substantive limitations upon government action.”

# “Values” in constitutional law: *R. v. Oakes* (SCC 1986)<sup>12</sup>

- ▶ The Court must be guided by the values and principles essential to a free and democratic society which I believe embody, to name but a few . . .

## *R. v. Oakes*: fundamental values

- ▶ respect for the inherent dignity of the human person,
  - ▶ commitment to social justice and equality,
  - ▶ accommodation of a wide variety of beliefs,
  - ▶ respect for cultural and group identity, and
  - ▶ faith in social and political institutions which enhance the participation of individuals and groups in society
- 

# Putting values to work: *BC Health Services* (SCC 2007)<sup>13</sup>

- ▶ “Human dignity, equality, liberty, respect for the autonomy of the person and the enhancement of democracy are among the values that underlie the *Charter*. [. . .]
- ▶ . . . All of these values are complemented and indeed, promoted, by the protection of collective bargaining in s. 2(*d*) of the *Charter*.”

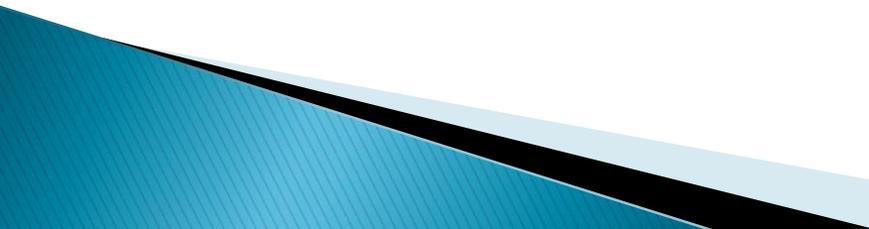
## But . . . Rothstein J. in *Ontario (Attorney General) v Fraser*<sup>14</sup>

- ▶ “The role of the Court is to determine what the *Charter* requires and what it does not and then apply the requirements it finds to the case before it. It is not to simply promote, as much as possible, values that some subjectively think underpin the *Charter* in a general sense.” (para 252)

# Fundamental values – bubbling up through the common law?

- ▶ “Softer ground” – not (necessarily) attached to formal analytical models of entrenched rights
- ▶ *Hill v. Church of Scientology* [1995] 2 SCR 1130
  - Defamation action seeking change to common law (“actual malice”)
  - **weighing reputation VS freedom of expression**
  - See my paper at pp 18–23

# Cory J in *Hill* – reputation as a fundamental value

- ▶ “Although it is not specifically mentioned in the *Charter*, the good reputation of the individual represents and reflects the innate dignity of the individual, a concept which underlies all the *Charter* rights.
  - ▶ It follows that the protection of the good reputation of an individual is of fundamental importance to our democratic society.”
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# Cory J in Hill

- ▶ Weighs the value of reputation with freedom of expression (no presumed priority of the Charter-protected right)
- ▶ Neutral interest-balancing in the absence of gov't action
  - *Common law-ification of the Charter?*

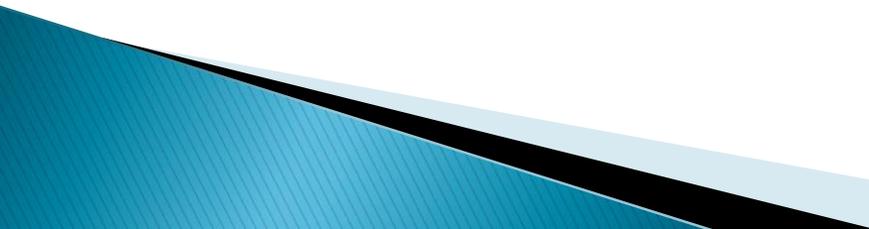
# Fundamental values: trickling down from international law?

- ▶ [T]he legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred.
  - Ruth Sullivan (as cited in Baker)<sup>15</sup>

# trickling down . . . ?

- ▶ In *Baker*, international convention supported determination that “best interests of the child” was a mandatory relevant factor in H & C exemption decisions.

# Questions - *Charter* (and other fundamental) values

- ▶ Does the shift from *Charter* rights to *Charter* values devalue the entrenched rights (including their priority over private law rights)?
  - ▶ Or expand the significant interests cognizable at common law as having “weight”?
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# Questions – *Charter* (and other fundamental) values

- ▶ Is “failure to consider” a *Charter* value a basis for judicial review?
  - Cannot decide *Charter* claim in a factual or policy vacuum
    - (e.g., *Bell Expressvu* at para 58; *Mikail v. Canada (A.G.)* 2012 FC 940, para 34))
  - BUT *Dore* states an “obligation” to consider
  - AND other mandatory relevant factors may also take some reaching
    - *Baker, CUPE v. Ontario (Min of Labour)*<sup>16</sup>

# Questions – *Charter* (and other fundamental) values

- ▶ Is “failure to consider” other fundamental values (e.g., inattention to relevant principles of international law) a basis for judicial review?

# Element 3: Doré Proportionality

## Proportionality from the ground up . . .

“[T]he decision-maker should

- ▶ 1. Consider the statutory objectives
- ▶ 2. Ask how the *Charter* value at issue will best be protected in view of the statutory objectives.” (paras 55–56)

# Doré proportionality: standard of review

- ▶ Where “a tribunal is determining the constitutionality of a law, the standard of review is correctness”

BUT

- ▶ When question is whether ADM “has taken sufficient account of *Charter* values in making a discretionary decision,” **correctness review not required** (Doré, para 43)

# Rationale for deference (or *presumption* thereof)

- ▶ An ADM “exercising a discretionary power under his or her home statute, has, by virtue of expertise and specialization, particular familiarity with the competing considerations at play in weighing *Charter* values” (para 47)

# *Doré* ‘reasonableness’ = proportionality

- ▶ In the *Charter* context, the reasonableness analysis is one that centres on **proportionality**, that is, on ensuring that the decision interferes with the relevant *Charter* guarantee no more than is necessary given the statutory objectives. (Dore, para. 7)
  - Is the interference “necessary”?
  - Interferes “no more than is necessary”

# Context-sensitive review

- ▶ Judicial review to take account of
  - impact of the Charter protection
  - nature of the decision and the statutory and factual contexts
- ▶ “Proportionate balancing of the Charter protections at play?” (para 57)
  - ▶ “some leeway” (as under *Charter*, s.1)
  - ▶ Does the decision fall “within the range of possible, acceptable outcomes” (*Dunsmuir*).
  - ▶ Above factors informing the “margin of appreciation”

# Context & rights–reconciliation

- ▶ “The key to rights reconciliation, in my view, lies in a fundamental appreciation for *context*. Charter rights are not defined in abstraction, but rather in the particular factual matrix in which they arise. When understood in this way, the exercise of reconciling competing Charter values becomes a less onerous and daunting task.”
  - Former Justice Iacobucci, “Reconciling Rights’ The Supreme Court of Canada’s Approach to Competing Charter rights (2002), 20 S.C.L.R. (2d) 137

# Doré proportionality applied

- ▶ Public interest on both sides of the ledger
  - Maintaining lawyer civility / Ensuring lawyers can express themselves about the justice system
- ▶ Values characterized (w/ reference to *Code of Ethics*, commentary, case law)
- ▶ Excerpt from tribunal
  - Code may restrict expressive rights
  - Restrictions inappropriate where lawyer is defending client's rights

# Doré proportionality applied

**“In light of the excessive degree of vituperation in the letter’s context and tone, [decision to reprimand] cannot be said to represent an unreasonable balance of Mr. Doré’s expressive rights with the statutory objectives.”**



# Critique

- ▶ Perfunctory analysis of Doré's interest in expression?
  - “No consideration of whether a formal reprimand *was necessary* to achieve the statutory objectives . . .”
  - “. . . though this is not surprising considering the replacement of the proportionality test with a less robust balancing exercise.”
  - Paul Daly “The Charter and Administrative Adjudication” (blog, May 2012)

# Questions – proportionality

- ▶ Common law reasonableness comes into its own? (equipped to oversee value judgments)
  - Claim: reasonable *weighing* of significant interests or “fundamental values” is an expectation internal to administrative legality
- ▶ Or unprecedented dilution of *Charter*-protected interests?
  - *Common law-ification of the Charter?*

# Questions – proportionality

- ▶ In what, if any, circumstances should ADMs (or courts) adopt traditional *Charter*-based analytical models for rights-infringement?
  - Doré: “limit” on expression was a given
  - Other rights (equality): Need claimant establish a *prima facie* case?

# Questions – proportionality

- ▶ Is the expectation that ADMs evince proportionality compromised by the lack of a **formal shift in onus** (as occurs at the s.1 stage in a *Charter* claim)?
  - Is “justification, intelligibility, transparency” per common law reasonableness an adequate substitute?

# Questions – proportionality

- ▶ Should the nature of the **decision-maker** affect the expectation of proportionality?
  - E.g., greater insistence on “minimal impairment” where decision-maker lacks independence?
    - Factum of David Asper Centre for Constitutional Rights, *Divito v. Canada* (Public Safety and Emergency Preparedness), 2013 SCC 47.

# Other questions arising post-Doré

## i) The decline of s.32 *Charter* analysis?

- ▶ Has *Doré* displaced s.32 determinations of whether a discretionary decision is subject to the *Charter*?
- ▶ “Tests” for common law judicial review and s.32 *Charter* differ (s.32 requires a closer nexus to government).
- ▶ Dilution of Charter guarantees or “strengthening the fabric of public law in Canada”?

## ii) Characterizing the decision (Do *Charter* values apply?)

- *Loyola High School* (Que CA 2012)<sup>17</sup>: Discretion vs “jurisdictional question”
  - Superior Ct: regulation mandates exemption from Ethics and Religious Culture program where alternative is “equivalent”
    - Minister *exceeded jurisdiction* by devising criteria “beyond the ordinary meaning of the term”
  - Quebec CA: provision conferred discretion (exemption for programs “the Minister judges equivalent”)

## *United Food*: added twist

- ▶ Statutory withdrawal of Info & Privacy Commissioner's jurisdiction to deal with constitutional questions.
  - “There can be no balancing as between the purpose of PIPA and a *Charter* right if the Act does not pass constitutional muster, but the Adjudicator cannot decide whether the statute does or does not pass constitutional muster.”
    - From the Application for Leave to Appeal to Supreme Court of Canada (Information and Privacy Commissioner of Alberta) (the appeal was heard June 11, 2013)

## *United Food*: added twist

- ▶ Alberta CA in *United Food*: “The [AJPA] should not be viewed as a direction to Alberta tribunals that they should ignore *Charter* values. As *Doré* states at para. 35 ‘administrative decisions are *always* required to consider fundamental values’.”
- ▶ *But* a statutory denial of jurisdiction “to determine a question of constitutional law” indicates a “limited role to play in this area” THEREFORE (according to the Alta CA), correctness review of *Doré* proportionality

### iii) Conjoining analyses of rights–infringement & *Doré* proportionality

- ▶ *Loyola*: Did decision breach 2(a) (freedom of religion)? *No*
- ▶ *In the alternative*, if 2(a) breached, proportionate per *Doré* . . .

# Other issues to watch for – Segmentation

- ▶ **Correctness for law–interpretation (or *Charter*–interpretation?) VS reasonableness for discretion?**
  - *Rogers v. SOCAN*<sup>18</sup> (SCC 2012): Copyright Board interpretation of home statute: “pure law”, concurrent jurisdiction = Correctness SOR
  - ABCA in *United Food*:  
“[W]hen reviewing a tribunal decision for Charter compliance, absent an extricable legal error in interpreting the *Charter*, the focus of the analysis will be on “disproportionality leading to unreasonableness.”<sup>13</sup>

# Closing Questions

- ▶ How to open richer constitutional *conversations*<sup>19</sup> about fundamental legal values (and rights), while respecting the role of all three branches in constitutional democracy?

# Closing Questions

- ▶ How to avoid the extremes of judicial abdication and judicial supremacy in the review of discretion engaging *Charter* values?
  - ▶ How to increase predictability, consistency, and manageability of Doré proportionality analysis?
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# Closing Questions

- ▶ Policy-making, stakeholder consultations?
  - Ontario HRC: *Policy on Competing Human Rights*
  - UK Ministry of Justice: *Making sense of human rights – a short introduction; Human Rights, Human Lives – a Handbook for Public Authorities; Human Rights Act for Regulators and Inspectorates*
- ▶ Public education, tribunal education
  - “*Don’t use a sledgehammer to crack a nut!*”

# Notes

1. *Doré v. Barreau du Québec*, 2012 SCC 12
2. *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur*, 2003 SCC 54 (CanLII), [2003] 2 SCR 504
3. *R. v. Conway*, 2010 SCC 22, [2010] 1 S.C.R. 765
4. Stephen Coughlan, “Tribunal Jurisdiction Over *Charter* Remedies: Now You See it, Now You Don't” (2010) 75 CR (6<sup>th</sup>) 238. Also see H. Archibald Kaiser, “Conway: A Bittersweet Victory for Not Criminally Responsible Accused” (2010) 75 CR (6<sup>th</sup>) 241.
5. David Dyzenhaus, “Constituting the Rule of Law: Fundamental Values in Administrative Law” (2002) Queen’s L.J. 445. Also see D Dyzenhaus, “Proportionality and Deference in a Culture of Justification” in *Proportionality*, Grant Huscroft, Brad Miller & Gregoire Webber, eds, (Cambridge: Cambridge UP, forthcoming).

# Notes

6. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817
7. *United Food and Commercial Workers, Local 401 v Alberta (Attorney General)* 2012 ABCA 130
8. *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42.
9. Peter Hogg, “Equality as a Charter Value In Constitutional Interpretation” SCLR 20 (2003) 113 at 116–17.
10. *Reference re Secession of Quebec* [1998] 2 S.C.R. 217 at para 67.
11. In *Inside and Outside Canadian Administrative Law*, Grant Huscroft & Michael Taggart, eds (Toronto: UT Press, 2006) 421 at 422.

# Notes

12. *R. v. Oakes*, [1986] 1 SCR 103

13. *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia* [2007] 2 S.C.R. 391.

14. *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, [2011] 2 S.C.R. 3.

15. *Driedger on the Construction of Statutes* (3rd ed. 1994), at p. 330. Cited in *Baker*, supra at para 70.

16. *C.U.P.E. v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, 2003 SCC 29

17. *Québec (Procureur général) c. Loyola High School* 2012 QCCA 2139

18. *Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada* 2012 SCC 35

# Notes

19. See Bruce Porter, “Enforcing the Right to Reasonableness in Social Rights Litigation: The Canadian Experience” in M. Langford, C. Rodriguez and J. Rossi (eds), *Making it Stick: Compliance with Social Rights Judgments in Comparative Perspective* (Capetown: Pretoria University Law Press, forthcoming).