Write your exam code here: _____
Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

Attachments:
1. Appendix: Statutory Materials

THIS EXAMINATION CONSISTS OF 14 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – DECEMBER 2018 EXAM

LAW 372 / 509
Administrative Law

Section 001
Professor Mary Liston

TOTAL MARKS: 100

*** EXAM-ONLY WRITERS ***

TIME ALLOWED: 3 HOURS
including reading/review time

**** COMBINED ASSIGNMENT / EXAM WRITERS ****

TIME ALLOWED: 2 HOURS
including reading/review time

****

NOTE:

1. This is an OPEN BOOK examination. You may bring COURSE MATERIALS into the exam such as: the casebook, cases, materials posted on the course website, and your own notes. You may NOT use library books.

2. The exam is composed of three (3) Parts.

Instructions continued

3. Students writing the 100% final option should answer all of the questions in Parts A and B.

4. Students writing the 100% final option should answer only <u>one</u> of the questions in Part C.

5. **<u>If you have chosen the OPTIONAL ESSAY, answer ONLY the questions which have been indicated in Parts A and B. Do NOT answer any of Part C.</u>

6. Statutory and other legal materials can be found in Appendix 1.

7. The marks and suggested time for each question are in the margin and you should budget your time accordingly.

8. 30 minutes has been allocated for reading/reviewing out of the total time.

9. Please put your **EXAM CODE** on all booklets used.

10. If you are handwriting, please DOUBLE-SPACE your answers and try to write legibly.

Part A

35 Marks: 55 minutes

Note: Relevant legal and other materials are found in Appendix 1.

*****If you chose the OPTIONAL ESSAY ASSIGNMENT, answer ONLY Questions 1 and 3 in Part A. You should allocate 45 minutes for this Part.*****

Nikola Motors Canada ("NMC") is a licensed car dealer with three stores in Alberta that sell electric cars. Several other companies (the "Big Four") also sell electric vehicles in Alberta. But, unlike the Big Four, NMC does not design or manufacture its cars in Alberta or anywhere else in Canada. Instead, it is a subsidiary whose overseas parent company, Nikola International, designs, manufactures and distributes these electric vehicles. To purchase a Nikola electric car, a customer places an order with a Canadian dealer and awaits shipment and delivery from Nikola International.

For many years now, Alberta has had programs that encourage the purchase of zero emission motor vehicles. Since 2011, Alberta has provided a program of incentives (or subsidies) for purchasing electric vehicles, a program established under section 10 of the *Public Transport Act* ("PTA"). Subsidies could be paid directly to the sellers if they passed on the savings to their customers. Later, under the *Clean Energy Act* ("CEA"), Alberta also introduced a rebate program for electric vehicles as part of its 2016 Making Progress on Climate Change Plan. Both of these programs have been funded out of the Greenhouse Gas Account ("GGA"), an account that receives its money from taxing carbon in the province. Since September 2017, no funds were available for electric cars costing more than $75,000. Prior to 2018, none of NMC's vehicles cost less than $75,000 and so it was excluded from the subsidies and its customers did not receive the rebate. In January 2018, Nikola International announced the introduction of a new, more affordable electric car that would qualify for the both subsidy and the rebate programs because the price was set at $55,000. NMC's Alberta dealerships immediately received hundreds of orders.

In May 2018, a change of government occurred. In mid-July, the new Minister of Transportation ("Minister") suddenly announced that the provincial carbon tax would be immediately scrapped and, consequently, the GGA and its associated clean energy programs would be cancelled. The Minister publicly announced that all dealers and anyone who had purchased a vehicle or had one on order, so long the cars were delivered by September 16, would receive the benefits. The terms of the transition program were made under the Minister's authority in the PTA and CEA. The Premier also weighed in to publicly state in the legislature: "If you meet the conditions our responsible Minister has communicated you will still qualify for the benefits before September 16."

At the end of July, however, the Minister made a further statement in the legislature saying: "We are trying to be fair in the way we have ended the program. As I said earlier, all dealers and those qualifying purchasers will receive their benefits—all that is, except NMC." This was the first time that NMC was made aware that they and their customers would be excluded from the transition program.

In press and television interviews that followed, the Minister gave several versions of this statement throughout mid-August:

> In our review of the rebate program, it became clear that some private companies and their clientele were unfairly benefitting. We can no longer afford this kind of

> generosity, by giving rebates of up to $25,000 to millionaires. We need to end this government-subsidized gravy train that NMC and its buddies are riding on. The hard-working folk of Alberta should no longer be forced to support the fabulously rich to buy their $100,000 luxury green cars.
>
> If Nikola Motors wants to sell cars here, they should set up a manufacturing and distributing facility like the Big Four have.

These statements shocked NMC. The government's own evidence showed that the maximum rebate was capped at $15,000, the maximum car price for which subsidies would be paid was $75,000, and that NMC's new affordable model was not the most expensive car to qualify for subsidies.

NMC immediately tried to set up a meeting with the Minister. Not only did NMC want to find out why they had been singled out for differential treatment than the Big Four, NMC also wanted to encourage the Minister to provide a public correction of the erroneous facts. NMC received no response. It tried several more times to meet with the Minister, but met with no response to its emails or letters except for one automated email reply acknowledging receipt of an email from NMC. In the meantime, NMC was flooded with questions and concerns from current and potential customers, including those who wished to cancel their orders since it appeared they would receive no rebate. At least 300 new cars were already en route to dealerships, set to arrive before the end of August, and another 200 were due to arrive before the September 16 cut-off date.

Many NMC customers were enraged and distressed. One customer said to a reporter: "Although I am not poor, $15,000 is a lot of money. I felt really left out, especially because I knew every other manufacturer was allowed to give the rebate to their customers. I felt like I was being targeted." In responding to media inquiries about the public outcry, the Minister provided the following clarification: "We intended the transition program to only extend to franchised dealerships. NMC Canada is not a franchised dealership." The Big Four, however, are franchised dealerships.

On August 26, NMC received a brief letter from the Minister stating: "I regret to inform you that the recently implemented transition program only applies to orders for electric cars made by franchised automobile dealerships and not a dealership, such as yours, where orders for electric cars are placed through the dealership to the original manufacturer. The transition program therefore does not apply to Nikola Motors Canada or its customers." Apart from this letter, NMC received no further information such as studies or reports setting out findings from the government's review of the clean energy program, or information explaining the exclusion of non-franchised dealerships from the transition program. NMC, however, learned from a well-placed insider that an internal memo regarding the Minister's decision does in fact exist.

It is now early September 2018 and NMC has come to your firm to seek judicial review on an urgent basis. NMC thinks it is entitled to procedural fairness and wants to argue that it received absolutely no procedural fairness at all. In addition, NMC believes that the Minister and the current government have unfairly demonized the company. You and your principal are working together on the matter and she has asked you to answer several questions about procedural fairness.

1. In your opinion, did the process used by the Minister to cancel the rebate program breach the duty to hear the other side? In your answer, make sure you provide your opinion regarding whether or not you agree with NMC that it received no procedural fairness at all. [15 marks]

2. Briefly set out your understanding of the doctrine of legitimate expectations and the significant implications it has for the question of whether or not NMC and its customers should actually receive the subsidy and rebate monies if judicial review is successful. [5 marks]

3. In mid-September, NMC also learned that the Minister had earlier met with the Big Four in late June. NMC was not informed or invited. NMC does not know what was discussed at the meeting but believes it unlikely that cancellation of the carbon tax and the two programs was not part of the agenda. Also in September, the CEO of Very Intelligent Automobiles, the electric car division of one of the Big Four companies, became an unofficial advisor to the Ministry of Transportation.

   This new information has only intensified NMC's belief that the Minister singled out, punished, and vilified NMC. Your principal and NMC wish to know whether you think a viable bias claim can be made in these circumstances. [15 marks]

Part B

40 Marks: 60 minutes

Note: Relevant legal and other materials are found in the Appendix.
Note: The BC ATA does NOT apply in this fact pattern.

*****If you chose the OPTIONAL ESSAY ASSIGNMENT, answer ONLY Questions 1 and 2 in Part B. You should allocate 45 minutes for this Part.*****

At the end of summer 2015, Rosie Baker decided that she wanted to install a new backyard patio in her summer home in Grand Bend, Ontario so that her young grandchildren would have more space to play. As a recent widow, she thought that this would bring great joy to herself and her remaining family. She arranged with a local contractor to begin construction in spring 2016. In April 2016, before she returned to Canada from her winter home in Florida, Rosie received an email from the contractor telling her that he had run into a "bit of a pickle" because he had unearthed a human skull while digging for the new patio. As required by law, he reported the finding to the Ontario police. The police undertook a brief investigation of the site, concluded that murder wasn't involved, and to Rosie's great relief, informed her that she wasn't a suspect. According to the police's forensic anthropologist, the skull appeared old, possibly from the mid to late 1800s. The police also informed Rosie that when human remains are found on private property, they must be investigated for anthropological potential according to the *Burial, Cremation, and Funeral Services Act* ("BCFSA").

Rosie's neighbour from across the street, Marshall Binnie, is a retired judge and amateur historian. When he learned about the finding, he did a little research and discovered that the properties on their street were originally part of St. Jude's Anglican Church. The Church had burned down in 1880 and was rebuilt in town. He found some records indicating that the church had a graveyard, but could not find a map showing graves or any records indicated that bodies had been buried there or were disinterred and moved to a new site. Rosie mooted the idea to Marshall that this might be the end of the matter, but he advised "no." He said there might be other legal considerations to think about and that she should call the government "just to make sure."

Rosie therefore contacted Jane Umbridge, the provincial Registrar in the Ministry of Government and Consumer Services, who in addition to overseeing the regulation of cemetery and funeral services, also attends to matters involving burial sites, war graves, and closed and abandoned cemeteries. Umbridge informed Rosie that Rosie was actually obliged to hire a licensed archaeologist to conduct an archaeological dig on her property and, even more surprising, that this would be undertaken at Rosie's expense. When Rosie asked if she could just simply rebury the skull, Umbridge officiously replied that citizens were not permitted to shirk their archaeological responsibilities and if Rosie reburied the skull she could be fined $50,000 and face two years in jail. Rosie asked if the Ministry had a list of approved archaeologists and then contacted one of the companies on the list.

An authorized archaeologist examined the property in March 2017. In his preliminary report, he wrote that this was going to be a "complex project" given the history of the property and its links to the church as well as its proximity to the reserve of Pine Creek First Nation ("PCFN"). His conclusion: "I anticipate that the assessment of soils and other materials will involve considerable effort and much expense to the property owner." Moreover, until the project was over, her patio project was indefinitely on hold. The project had three stages. The Stage 1 report stated that Rosie's property had the potential to glean knowledge about pre-contact Aboriginal and Euro-Canadian archaeological resources. The report also noted that, despite the fact that St. Jude's burial register from the time indicated three hundred interments between 1835 and 1880 in the vicinity, church documents did not say exactly where the bodies had been buried and if any had even been buried on Rosie's property at all. Archaeological expertise on these matters therefore hit a dead end. It was now the end of Summer 2017.

Stage 2, an assessment for Indigenous materials, then began. For this, her entire back yard was dug up right to the property line to a depth of four feet. Six pits were also dug in her front and side yards. Stage 2 ended in November 2017 and, according to one of the Indigenous archaeologists who participated in this phase of the investigation, they turned up *gaawiin gegoo*—which in the local Indigenous language means " a whole lot of nothing". Stage 3 focused on the nature and extent of any Euro-Canadian remains. Rosie was told that she was lucky no other remains or burial materials were found, otherwise the Act would require them to excavate down another twenty centimeters. In June 2018, the Stage 3 final report concluded: "Despite careful and extensive excavation, no Aboriginal or further Euro-Canadian resources could be found."

Rosie's yard now looked like a WWI battlefield. The cost of the archaeologists' time on the three digs amounted to $35,000. The costs of the various machinery used to excavate her yard added another $25,000. Putting the yard back together and replacing her watering system would cost another $15,000. At this point she had no clear sense of what it would cost to replace her garden, but it would likely add $10,000 to the total. With tax on top, the total cost to Rosie was $100,000. And, she still needed a new patio.

The Registrar may compensate persons like Rosie if the mandatory investigation poses an "undue hardship." Rosie wrote to the Registrar to say that the total cost was prohibitive for a retiree who only worked part time at the local library. She requested compensation. The Registrar wrote back saying:

> You have asked us to compensate you for the full amount of the archaeological investigation on your property. The Compensation Committee advised that half of your costs could be covered, but I disagree. I do not think you qualify as you are employed, have assets, and own more two residences. Citizens are obliged to pay for the archaeological expertise they have benefitted from. Ontarians have a duty to support and maintain their history and their heritage. I am bolstered in

> this conclusion by the fact that your property was clearly historically a cemetery and burial ground. You must now ensure that the remains are interred in a cemetery located in the same municipality as the site and you are responsible for all applicable costs of reburying.

Rosie immediately showed this letter to her good friend Marshall. He thought that the decision was "outrageous" and that her property is clearly an "irregular burial site," but Rosie isn't sure she agrees Marshall recommended that Rosie seek your legal advice, given your expertise in administrative and public law.

1. Anticipate judicial review of the Registrar's decision. Apply the *Dunsmuir* two-step test to determine the appropriate standard of review you think a reviewing court would select. Make sure you indicate whether or not you think that Rosie Baker may be able to base their legal challenge on one of the grounds for correctness review. Do you think a reviewing court would conclude that the Registrar's decision is either incorrect or unreasonable? [20 marks]

While preparing your advice, Rosie contacted you with further information. She had tried to get the skull back, but to her shock no one knew where it was. The Registrar's office did not have it. She then contacted the forensic archaeologists who also did not know where it was. They thought it might have been sent to the Centre for Forensic Science in Ottawa. It appeared to be lost. Through a roundabout set of phone calls, two months later Rosie learned that it was located on a shelf in the coroner's office in Toronto. She arranged to ship it back to Grand Bend.

2. Given information from the fact pattern and this new information above, consider the range of remedies that might be appropriate in Rosie's case. [10 marks]

Finally, news of how this human skull had been treated its reached the PCFN. This is because the skull had been "received" at the local funeral home after it had been found, and the director of the home is a member of the First Nation. Given the inconclusive history that was established by the archaeological team, PCFN is not convinced that the skull does not belong to one of their ancestors, since ancestors were sometimes buried at the location where they died during historic battle with European settlers. They contacted both Rosie and the Registrar to request that they be the party who buries the skull in their current cemetery and offered to pay the costs. Rosie agreed. The Registrar, however, rejected their request saying: "The property is not an aboriginal peoples burial ground and it is clear that the skull is not aboriginal either. As a result of this conclusion, I also do not need to meet with any Pine Creek First Nation representatives for the purposes of further consultation and discussion about the significance of the artifact."

3. Does the BCFSA support the Registrar's conclusion about not needing to establish relations with PCFN? In your answer, draw on the your understanding of Aboriginal administrative law and the principles and practices that the Registrar might wish to make use of in relation to Pine Creek First Nation. [10 marks]

PART C

25 Marks: 35 minutes

Note: Relevant legal materials are found in the Appendix.

****If you chose the OPTIONAL ESSAY ASSIGNMENT, do NOT answer any question in Part C.****

Write an essay answer addressing **ONE** of the following questions.

1. In a recent article, Stratas JA called the law of substantive review a "never-ending construction site where one crew builds structures and then a later crew tears them down to build anew, seemingly without an overall plan." Drawing on course materials (i.e., textbook, cases, blog posts), why do you think administrative law is so unsettled? Look at the list below and pick two possible jurisprudential directions to discuss. Which do you think will meet the legal objectives of making the selection of the standard of review easier and more predictable and also of providing a proper balance between respecting the rule of law and legislative choices?

    - Mandate correctness review for all questions of law, including interpretive questions in the home statute;
    - Impose of a general duty to give reasons on *all* administrative decision-makers;
    - Adopt Rothstein J's argument in *Khosa* that *only* the presence of a privative clause indicates reasonableness review, deference and expertise;
    - Select the presumptions of expertise and reasonableness over the two-step test.

2. In *Wilson v Atomic Energy of Canada Ltd.,* [2016] 1 SCR 770, 2016 SCC 29, Abella J. mooted in *obiter* the idea of further reducing the standards of review from two to just one: reasonableness. Her justification was to further simplify the "standard of review labyrinth" [para 19] administrative law still finds itself in despite the changes brought by *Dunsmuir v New Brunswick,* [2008] 1 SCR 190, 2008 SCC 9:

    > [24] … Are we not saying essentially the same thing when we conclude that there is only a single "reasonable" answer available and when we say it is "correct"? And this leads to whether we need two different names for our approaches to judicial review, or whether both approaches can live comfortably under a more broadly conceived understanding of reasonableness.
    >
    > …
    >
    > [31] Nothing *Dunsmuir* says about the rule of law suggests that constitutional compliance dictates how many standards of review are required. The only requirement, in fact, is that there *be* judicial review in order to ensure, in particular, that decision-makers do not exercise authority they do not have. I see nothing in its elaboration of rule of law principles that precludes the adoption of a single standard of review, so long as it accommodates the ability to continue to protect both deference *and* the possibility of a single answer where the rule of law demands it, as in the four categories singled out for correctness review in *Dunsmuir.*

    Drawing on the relevant jurisprudence, content, and class discussions, provide one argument **for** Abella J's proposed reform to have only one standard of review of reasonableness and one argument **against** this proposition.

3. **Be it resolved: The BC Legislature should repeal sections 58 and 59 of the *Administrative Tribunals Act* (*ATA*), which set out standards of review.**

You are a participant in a legal debate on this proposition at the next Canadian Bar Association conference on Administrative Law. Note that one influential judge has said on this matter: "As a result of *Alberta Teachers' Association* and *McLean* it is now settled law that, with the lonely exception of those tribunals and statutory powers of decision to which BC's *Administrative Tribunal Act* applies, reasonableness is the standard of review presumptively applicable to tribunals' interpretation of their enabling or a closely related statute." In light of the changes to the jurisprudence wrought by *Dunsmuir*, *Alberta Teachers', Doré* and subsequent cases, is the BC *ATA* now out of date? Drawing on arguments for and against this position in terms of the jurisprudential history, current problems with the standard of review, and the reasons for codification that we have discussed and examined in class, provide one argument **for** this position and one argument **against** this repeal. The relevant sections can be found in the Appendix.

END OF EXAMINATION

Good luck and happy holidays!

Appendix 1

Statutory Materials: Part A

1. ***Public Transport Act,*** **RSA 2008, c 25**

Grants, loans, etc., for specific projects

10. The Minister may, out of money appropriated therefor by the Legislature and upon such conditions as he or she considers advisable, provide grants, loans and other financial assistance to any person, including a municipal corporation, for specific projects the Minister considers to be of provincial significance.

2. ***Clean Energy Act,*** **RSA 2014, c 13**

Purpose

1. (1) Recognizing the critical environmental and economic challenge of climate change that is facing Alberta and the global community, the purpose of this Act is to create a regulatory scheme,

(a) to reduce greenhouse gas in order to respond to climate change, to protect the environment and to assist Albertans to transition to a low-carbon economy; and

(b) to enable Alberta to collaborate and coordinate its actions with similar actions in other jurisdictions in order to ensure the efficacy of its regulatory scheme in the context of a broader international effort to respond to climate change.

Intention of the Legislature

4. For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision in this Act.

Clean energy plan

7. The Government of Alberta shall prepare a clean energy plan that sets out actions under a regulatory scheme designed to modify behaviour that will enable Alberta to achieve its targets for the reduction of greenhouse gas emissions.

Impact on low-income households

53. The action plan must consider the impact of the regulatory scheme on low-income households and must include actions to assist those households with Alberta's transition to a low-carbon economy.

Incentives for electric vehicles

60. Subject to the Minister's determination, the rebate program will extend to 2020 for leasing or buying eligible electric vehicles.

Participation

70. The Minister may create procedures for participation in decision-making as are deemed appropriate in the circumstances.

Statutory Materials: Part B

1. *Burial, Cremation, and Funeral Services Act,* S.O. 2002, c 33

Part I – Definitions

Definitions

1. In this Act,

"aboriginal peoples" includes the Indian, Inuit and Métis peoples of Canada;

"aboriginal peoples burial ground" means land set aside with the apparent intention of interring in it, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were one of the aboriginal peoples of Canada;

"burial ground" means land set aside with the apparent intention of interring in it, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were not one of the aboriginal peoples of Canada;

"burial site" means land containing human remains that is not a cemetery; …

"cemetery" includes land that,
(a) is known to contain human remains,
(b) was set aside to be used for the interment of human remains,
(c) was and continues to be set aside for the interment of human remains, and
(d) was and remains readily identifiable as land containing human remains …

"First Nations Government" means the government of a "band" as defined in the *Indian Act*;

"representative", when used in connection with a person whose remains are interred, means,

(a) in the case of a burial ground,
(i) a descendant of the interred person, or
(ii) if there is no known surviving descendant, a representative of the religious denomination with which the interred person was affiliated as evidenced by the place of interment, or

(b) in the case of an aboriginal peoples burial ground,
(i) the nearest First Nations Government, or
(ii) another community of aboriginal peoples that is willing to act as a representative and whose members have a close cultural affinity to the interred person "human remains" means a dead human body or the remains of a cremated human body;

"irregular burial site" means a burial site that was not set aside with the apparent intention of interring human remains in it; …

"unapproved" means not approved in accordance with this Act or a predecessor of this Act

Part II – Administration

Registrar
1. The Minister shall appoint one or more Registrars for the purposes of this Act.

Powers and duties
2. The Registrar(s) shall exercise the powers and perform the duties imposed under this Act.

Part III – Burial Sites

Disturbing burial site prohibited
94. No person shall disturb or order the disturbance of a burial site or artifacts associated with the human remains except,

(a) on instruction by the coroner;
(b) pursuant to a site disposition agreement; or
(c) if the disturbance is carried out in accordance with the regulations.

Unmarked burial sites
95. Any person discovering or having knowledge of a burial site shall immediately notify the police or coroner.

Investigation into origins of site
96. (1) The registrar may order the owner of land on which a burial site is discovered to cause an investigation to be made to determine the origin of the site.

Non-application
(2) Section 94 does not apply to a person investigating the nature or origin of the site who is disturbing the site in the course of the investigation.

Minimal disturbance
(3) A person conducting an investigation shall do so with the minimum disturbance to the site that is reasonable in the circumstances.

Where registrar investigates
(4) If the Registrar is of the opinion that an investigation under subsection (1) would impose an undue financial burden on the landowner, the Registrar shall undertake the investigation at its own expense.

Declaration
98. As soon as a burial site is determined, the Registrar shall declare the site to be,

(a) an aboriginal peoples burial ground;
(b) a burial ground; or
(c) an irregular burial site.

Site disposition agreement – approved
99. (1) Unless the regulations provide otherwise, the registrar, on declaring a burial site to be an aboriginal peoples burial ground or a burial ground, shall serve notice of the declaration on the persons or class of persons that are prescribed.

(2) All persons served with notice under subsection (1) shall enter into negotiations with a view of entering into a site disposition agreement.

Site disposition agreement – unapproved

100.(1) Unless the regulations provide otherwise, the registrar, on declaring a burial site to be an unapproved aboriginal peoples burial ground or an unapproved burial ground, shall serve notice of the declaration on the persons or class of persons that are prescribed.

(2) All persons served with notice under subsection (1) shall enter into negotiations with a view of entering into a site disposition agreement.

Irregular burial site

101. Unless the regulations provide otherwise, an owner of land that contains an irregular burial site shall ensure that the remains found in the site are interred in a cemetery.

…

Part VI – Compensation

Compensation fund scheme

110.(1) A compensation fund scheme shall be established for the purposes of this Act in accordance with the regulations.

Purpose

(2) The primary purpose of a prescribed compensation fund shall be to compensate a person who suffers a financial loss due to a failure on the part of a licensed cemetery to comply with this Act or the regulations or with the terms of an agreement made under this Act or in other circumstances deemed appropriate.

…

Management of Fund

124. The Compensation Fund Committee shall manage the affairs of the Fund and advise the Registrar.

Other

126. The Registrar shall have the discretion to make compensatory payments on equitable grounds that are deemed appropriate in the circumstances.

Claims against Fund

202.(1) A person is entitled to payment of compensation from the Fund if the person makes a claim in accordance with this section and satisfies the Registrar that the person has suffered a financial loss and has not otherwise been fully compensated.

(2) A claimant may make a claim by giving written notice of the claim to the Registrar who shall give a copy of the claim to the Committee.

(3) If the Committee determines that a claim made under section 202 is not a proper claim, it shall serve notice of its decision, together with written reasons, on the claimant.

…

Part VIII – Enforcement

Penalties

83. An individual who is convicted of an offence under this Act is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than two years less a day, or both.

Statutory Materials: Part C

1. *Administrative Tribunals Act*, SBC 2004, c 45

Standard of review with privative clause

58.(1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.

(2) In a judicial review proceeding relating to expert tribunals under subsection (1)

(a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,

(b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and

(c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.

(3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,
(b) is exercised for an improper purpose,
(c) is based entirely or predominantly on irrelevant factors, or
(d) fails to take statutory requirements into account.

Standard of review without privative clause

59.(1) In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

(2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3) A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,
(b) is exercised for an improper purpose,
(c) is based entirely or predominantly on irrelevant factors, or
(d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.