

## JUDICIAL REVIEW CHEAT SHEET

TOPIC	CASE(S)	COMMENT
<b>First Principles of Judicial Review</b>		
<b>Foundational Cases</b>	<p><i>Baker v. Canada (Minister of Citizenship and Immigration)</i>, [1999] 2 SCR 817</p> <p><i>Dunsmuir v. New Brunswick</i>, 2008 SCC 9</p> <p><i>Canada (Minister of Citizenship and Immigration) v. Vavilov</i>, 2019 SCC 65</p>	<ul style="list-style-type: none"> <li>▪ Government delegates power (usually through legislation) to administrative bodies.</li> <li>▪ Administrative actors must act within their scope of delegated power (rule of law).</li> <li>▪ Judicial review ensures that rule of law is maintained, deference ensures the decision of the legislature to delegate authority is respected.</li> </ul>
<b>Inherent Supervisory Jurisdiction</b>	<i>Dunsmuir</i> , para 31	<ul style="list-style-type: none"> <li>▪ Power of superior courts to review administrative action stems from ss. 96-101 of the <i>Constitution Act, 1867</i></li> </ul>
<b>Judicial Review v. Statutory Appeal</b>	<i>Vavilov</i> , para 36	<ul style="list-style-type: none"> <li>▪ Presumption is that court performs an appellate function, distinct from judicial review.</li> </ul>
<b>No Private Duty</b>	<p><i>The Queen (Can.) v. Saskatchewan Wheat Pool</i>, [1983] 1 S.C.R. 205</p> <p><i>Holland v. Saskatchewan</i>, 2008 SCC 42</p> <p><i>Wu v. Vancouver (City)</i>, 2019 BCCA 23, para 43</p>	<ul style="list-style-type: none"> <li>▪ No duty of care for officials to act in accordance with statute / regulations.</li> <li>▪ Public law issue cannot be converted into private law tort.</li> </ul>

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<b>Subject of Judicial Review</b>		
<b>Exercise of Public Authority</b>	<p><i>Judicial Review Procedure Act, RSBC 1996, c 241, ss. 1 and 2(2)</i></p> <p><i>Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall, 2018 SCC 26, para 14</i></p> <p><i>Nova-BioRubber Green Technologies Inc. v. Investment Agriculture Foundation British Columbia, 2022 BCCA 247, paras 53-55</i></p>	<ul style="list-style-type: none"> <li>▪ <i>Must be an exercise of state authority that is sufficiently public in character.</i></li> <li>▪ <i>"Sufficiently public" means public law as opposed to private dispute.</i></li> <li>▪ <i>Must involve question about the rule of law and the limits of administrative power.</i></li> <li>▪ <i>Decision that exercises statutory power determines rights, powers, privileges, immunities, duties, or eligibility of a person.</i></li> </ul>
<b>Failure to Exercise Authority</b>	<p><i>Blencoe v. British Columbia (Human Rights Commission), 2000 SCC 44, para 149</i></p> <p><i>Wu v. Vancouver (City), 2019 BCCA 23, para 40</i></p>	<ul style="list-style-type: none"> <li>▪ <i>Where there is a duty on a public body to make a decision and no decision has been made, a party can seek an order in the nature of <i>mandamus</i> to compel the decision maker to issue the decision.</i></li> </ul>
<b>Justiciability</b>	<p><i>Reference re Secession of Quebec, [1998] 2 SCR 217, para 26</i></p> <p><i>Democracy Watch v. British Columbia (Lieutenant Governor), 2023 BCCA 404, paras 68-78</i></p>	<ul style="list-style-type: none"> <li>▪ <i>Some issues are not appropriate for the court to determine.</i></li> <li>▪ <i>Question is whether the court has institutional capacity and legitimacy to adjudicate the matter or whether it should defer to another decision maker (e.g. elected government on political issues)</i></li> <li>▪ <i>Must have a sufficient legal component.</i></li> </ul>

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<b>Final Decision / Reconsiderations</b>	<p><i>Jozipovic v. British Columbia (Workers' Compensation Board)</i>, 2012 BCCA 174</p> <p><i>Yellow Cab Company Ltd. v. Passenger Transportation Board</i>, 2014 BCCA 329</p>	<ul style="list-style-type: none"> <li>▪ Only the final administrative decision is open to judicial review.</li> <li>▪ Where a party accesses an optional reconsideration right, the reconsideration decision will be the final decision.</li> <li>▪ If denied leave for reconsideration, it may be the final decision if it denies leave based on an evaluation of the merits</li> </ul>
<b>Discretionary Bars</b>		
<b>Prematurity – Exhaust Internal Remedies</b>	<p><i>Strickland v. Canada (Attorney General)</i>, 2015 SCC 37, paras 40-45</p> <p><i>Colwill v. Workers' Compensation Board</i>, 2019 BCCA 453</p> <p><i>Petrell v. British Columbia (Forests, Lands, Natural Resource Operations and Rural Development)</i>, 2023 BCCA 80</p> <p><i>Diaz-Rodriguez v. British Columbia (Police Complaint Commissioner)</i>, 2020 BCCA 221 at para. 29.</p>	<ul style="list-style-type: none"> <li>▪ Where there are administrative remedies available to a party, they must be exhausted before the party seeks judicial review.</li> <li>▪ This respects the system set up by the legislature and provides the court with the benefit of views of the administrative decision maker.</li> <li>▪ Goal is to let the tribunal get on with its work and prevent piecemeal proceedings / costs / delays.</li> </ul>
<b>Prematurity – Adequate Alternative Remedies</b>	<p><i>Yellow Cab Co. Ltd. v. Passenger Transportation Board</i>, 2014 BCCA 329</p>	<ul style="list-style-type: none"> <li>▪ <i>If the administrative remedy would not assist the party with the alleged error and/or requested relief, it is not an adequate alternative remedy and does not need to be exhausted before judicial review.</i></li> </ul>
<b>Prematurity – Interim Decisions</b>	<p><i>Chu v. British Columbia (Police Complaint Commissioner)</i>, 2021 BCCA 174, para 76</p>	<ul style="list-style-type: none"> <li>▪ Courts are unlikely to judicially review interim decisions as they are premature.</li> </ul>

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<p><b>Prematurity – When Early JR Is Appropriate</b></p>	<p><i>Vancouver Island Health Authority v Safaei and British Columbia Human Rights Tribunal</i>, 2025 BCSC 340, paras 45-56</p>	<ul style="list-style-type: none"> <li>▪ Where an interim decision concerns a final determination on an issue that will not be revisited in a final hearing, JR prior to final decision may be appropriate.</li> <li>▪ Interim decision that could avoid unnecessary proceedings if JR is successful (e.g. dismissal application), JR may be appropriate.</li> </ul>
<p><b>Mootness</b></p>	<p><i>Borowski v. Canada (Attorney General)</i>, [1989] 1 S.C.R. 342</p> <p><i>Public Service Alliance of Canada v. Canada (Attorney General)</i>, 2021 FCA 90, para 6</p> <p><i>Kassian v. British Columbia</i>, 2023 BCCA 383</p>	<ul style="list-style-type: none"> <li>▪ Cases are moot when there is no longer a live controversy to be decided.</li> <li>▪ The court will hear moot judicial reviews on a discretionary basis. Generally, this will be when there will still be a practical impact on the parties, it raises an issue of public importance, or the issue might otherwise evade judicial review.</li> </ul>
<p><b>Delay</b></p>	<p><i>Administrative Tribunals Act</i>, SBC 2004, c 45</p> <p><i>JRPA</i>, s. 11</p> <p><i>Lowe v. Diebolt</i>, 2014 BCCA 280, paras. 38 and 59</p> <p><i>British Columbia (Superintendent of Motor Vehicles) v. Chahal</i>, 2022 BCCA 416</p>	<ul style="list-style-type: none"> <li>▪ Statutes may establish specific periods during which a petition for judicial review must be filed.</li> <li>▪ Statutes can adopt s. 57 of the ATA which gives a 60-day deadline that can be extended.</li> <li>▪ With no statutory deadline, there is no filing limitation and common law principles of laches apply (<i>JRPA</i>, s. 11)</li> <li>▪ Judicial reviews can be refused based on delay when substantial prejudice or hardship will result.</li> </ul>

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<b>Other Preliminary Issues</b>		
<b>Judicial Review on the Record</b>	<p><i>JRPA</i>, s. 1 and 17</p> <p><i>Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)</i>, 2018 BCCA 387, paras 34-41</p> <p><i>British Columbia (Lieutenant Governor in Council) v. Canada Mink Breeders Association</i>, 2023 BCCA 310</p> <p><i>Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)</i>, 2012 FCA 22</p> <p><i>SELI Canada Inc. v. Construction and Specialized Workers' Union, Local 1611</i>, 2011 BCCA 353</p> <p><i>Gichuru v. Law Society of British Columbia</i>, 2012 BCSC 1109</p>	<ul style="list-style-type: none"> <li>▪ Judicial review is a review on the record before the decision maker. Admission of any other evidence must be in keeping with the court's limited supervisory role.</li> <li>▪ Evidence that helps the court understand the nature of a tribunal's expertise and experience can be introduced.</li> <li>▪ Evidence that goes to the procedural fairness of the tribunal's process can be introduced.</li> <li>▪ Cannot introduce evidence that should have been before the decision maker but was not.</li> </ul>
<b>Raising New Issues on Judicial Review</b>	<p><i>Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association</i>, 2011 SCC 61, paras 21-29</p> <p><i>Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)</i>, 2018 BCCA 387, paras 45-60</p> <p><i>Brazeau (County) v. Drayton Valley (Town)</i>, 2024 ABKB 445</p>	<ul style="list-style-type: none"> <li>▪ Because judicial review is supervisory in function, it is generally not permissible to raise new issues for the first time on judicial review.</li> <li>▪ Exceptions include cases where the administrative tribunal did not have jurisdiction to decide the issue (for example <i>Charter</i> claims).</li> <li>▪ New issues may also be allowed where the record is sufficient and there is no prejudice to either party.</li> </ul>

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<b>Standing of Administrative Tribunals in a Judicial Review</b>	<p><i>Ontario (Energy Board) v. Ontario Power Generation Inc.</i>, 2015 SCC 44</p> <p><i>18320 Holdings Inc. v. Thibeau</i>, 2014 BCCA 494</p> <p><i>C.S. v. British Columbia (Workers' Compensation Appeal Tribunal)</i>, 2019 BCCA 406 at para. 48</p> <p><i>British Columbia (Human Rights Tribunal) v. Gibraltar Mines Ltd.</i>, 2023 BCCA 168</p>	<ul style="list-style-type: none"> <li>▪ Balance between need to maintain impartiality and need for fully informed adjudication.</li> <li>▪ Where the decision maker is the only party who can ensure that a full response is before the court, it is appropriate for the decision maker to defend the merits of the decision.</li> </ul>
<b>Public Interest Standing</b>	<p><i>Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)</i>, 2012 SCC 45 at paras. 20, 37, 44, and 52</p> <p><i>Delta Air Lines Inc. v. Lukács</i>, 2018 SCC 2</p>	<ul style="list-style-type: none"> <li>▪ Where establishing private interest standing is difficult, the court may grant public interest standing on serious issues where the applicant has a genuine interest in the outcome and the proposed proceeding is a reasonable and effective means of bringing the matter before the court.</li> </ul>
<b>Collateral Attack</b>	<p><i>Danyluk v. Ainsworth Technologies Inc.</i>, 2001 SCC 44</p> <p><i>Toronto (City) v. C.U.P.E., Local 79</i>, 2003 SCC 63</p> <p><i>British Columbia (Workers' Compensation Board) v. Figliola</i>, 2011 SCC 52</p>	<ul style="list-style-type: none"> <li>▪ Can occur between tribunals of concurrent jurisdiction.</li> <li>▪ Can also occur between administrative tribunal and court.</li> <li>▪ Issue estoppel, collateral attack, and abuse of process are all principles that can be called on to prevent re-litigation outside of the appropriate process that would be a misuse of resources and would risk an inconsistent outcome.</li> </ul>

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<b>Sufficiency of Pleadings</b>	<i>JRPA</i> , s. 14 <i>Polson v. British Columbia (Superintendent of Motor Vehicles)</i> , 2014 BCSC 700	<ul style="list-style-type: none"> <li>▪ Pleadings must set out the grounds of relief sought, and the nature of the relief sought.</li> <li>▪ A party should not be left guessing about the case it has to meet.</li> </ul>
<b>Procedural Fairness</b>		
<b>Generally</b>	<i>Baker</i> , para 21 <i>Vavilov</i> , paras 76-81 <i>Re Therrien</i> , 2001 SCC 35, para 82 <i>R.N.L. Investments Ltd. v. British Columbia (Agricultural Land Commission)</i> , 2021 BCCA 67, paras 57-61	<ul style="list-style-type: none"> <li>▪ The basic components of procedural fairness are the right to be heard and the right to an impartial hearing.</li> <li>▪ Content depends on: the decision type/process; the statutory scheme; the importance of the decision; legitimate expectations; and deference to the procedural choices of the decision maker.</li> <li>▪ Standard is correctness, whether in all the circumstances, the procedure was fair.</li> </ul>
<b>Reasons</b>	<i>Baker</i> , at 848 <i>Dunsmuir</i> , para 47 <i>Vavilov</i> , para 79 <i>Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)</i> , 2011 SCC 62	<ul style="list-style-type: none"> <li>▪ May or may not be required.</li> <li>▪ Whether or not reasons are adequate is not a question of procedural fairness.</li> </ul>

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<b><i>Impartiality and Independence</i></b>	<i>Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control &amp; Licensing Branch)</i> , 2001 SCC 52	<ul style="list-style-type: none"> <li>▪ Procedural fairness is likely to require an independent decision maker and a decision free of bias or the reasonable apprehension of bias.</li> <li>▪ Sutherland v. British Columbia (Superintendent of Motor Vehicles), 2018 BCCA 65 at paras. 50–55 (institutional bias)</li> </ul>
<b><i>Legitimate Expectations</i></b>	<p><i>Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)</i>, [1990] 3 SCR 1170</p> <p><i>Hastings Park Conservancy v. Vancouver (City)</i>, 2008 BCCA 117, paras 69-74</p>	<ul style="list-style-type: none"> <li>▪ Where representations of the administrative decision maker led a party to believe that a particular procedural right would be provided, a failure to provide that procedural right is unfair.</li> <li>▪ Procedural right only, not substantive.</li> </ul>

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<b>Substantive Review</b>		
<b>Standard of Review</b>	<p><i>Vavilov</i></p> <p><u>Categories of Correctness:</u></p> <p><i>Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Assn.</i>, 2022 SCC 30 at paras. 26 to 4</p> <p><i>Northern Regional Health Authority v. Horrocks</i>, 2021 SCC 42 at para. 9</p> <p><i>O.K. Industries Ltd. v. District of Highlands</i>, 2022 BCCA 12</p> <p><u>Patently Unreasonable</u></p> <p><i>Law Society of British Columbia v. Ryan</i>, 2003 SCC 20, at para. 52</p> <p><i>West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)</i>, 2018 SCC 22 at paras. 28–29</p>	<ul style="list-style-type: none"> <li>▪ Presumptive standard of review is reasonableness, deference to legislative delegation (<i>Vavilov</i>, para 17)</li> <li>▪ Presumption can be rebutted by legislative intent (i.e. ATA patently unreasonable or appeal clause in legislation) (<i>Vavilov</i>, para 33)</li> <li>▪ Correctness standard applies for specific kinds of constitutional questions, question of law of central importance to the legal system, and questions about the boundaries between two or more administrative bodies (<i>Vavilov</i>, para 53)</li> </ul>
<b>Stacking of the Standard of Review</b>	<p><i>The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board</i>, 2022 BCCA 10</p>	<ul style="list-style-type: none"> <li>▪ Stacked standards of review generally mean that the second level reviewer steps into the shoes of the first level reviewer.</li> </ul>

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<p><b><i>Applying the Reasonableness Review to Adjudicative Decisions</i></b></p>	<p><i>Vavilov</i>, paras 99-135</p>	<ul style="list-style-type: none"> <li>▪ <i>Vavilov</i> clearly sets out a framework for conducting a reasonableness review of an adjudicative decision (<i>Vavilov</i>, paras 99-135).</li> <li>▪ Decisions must be reasonable not only in outcome, but also in rationale (<i>Vavilov</i>, paras 82-87). A reasonable outcome based on flawed reasoning is not reasonable.</li> <li>▪ Reasonableness is a single standard that accounts for context (<i>Vavilov</i>, para 88-90)</li> <li>▪ Focus of the review is on written reasons (<i>Vavilov</i>, paras 91-98)</li> </ul>

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<p><b><i>Applying the Reasonableness Review to Legislative Decisions</i></b></p>	<p><i>Auer v. Auer</i>, 2024 SCC 36</p> <p><i>Catalyst Paper Corp. v. North Cowichan (District)</i> 2012 SCC 2</p> <p><i>Katz Group Canada Inc. v. Ontario (Health and Long Term-Care)</i> 2013 SCC 64</p> <p><i>Green v. Law Society of Manitoba</i> 2017 SCC 20</p> <p><i>West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)</i> 2018 SCC 22</p> <p><i>British Columbia (Attorney General) v. Le</i>, 2023 BCCA 200</p> <p><i>Sobeys West Inc. v. College of Pharmacists of British Columbia</i>, 2016 BCCA 41</p>	<ul style="list-style-type: none"> <li>▪ Auer case is a re-set on "reasonableness" review of subordinate legislation.</li> <li>▪ <i>Vavilov</i> applies to <i>vires</i> review of subordinate legislation.</li> <li>▪ Successful challenge requires a regulation to be inconsistent with objective of enabling statute or scope of mandate.</li> <li>▪ Presumption of validity.</li> <li>▪ No assessment of policy merits of the regulation.</li> <li>▪ Standard of "irrelevant, extraneous, or completely unrelated" from <i>Katz</i> is overturned.</li> </ul>

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<b>Charter Questions</b>	<p>ATA, s. 45</p> <p><i>Doré v. Barreau du Québec</i>, 2012 SCC 12</p> <p><i>Beaudoin v. British Columbia (Attorney General)</i>, 2022 BCCA 427</p> <p><i>York Region District School Board v. Elementary Teachers' Federation of Ontario</i>, 2024 SCC 22</p> <p><i>Vabuolas v. British Columbia (Information and Privacy Commissioner)</i>, 2025 BCCA 83</p>	<ul style="list-style-type: none"> <li>▪ Administrative tribunals may or may not have jurisdiction to hear <i>Charter</i> issues and Constitutional questions.</li> <li>▪ For all administrative decision makers, <i>Charter</i> values apply and a decision that contradicts <i>Charter</i> values is likely to be unreasonable.</li> <li>▪ Questions as to whether a provision of the enabling statute violate the <i>Charter</i> are reviewable on the standard of correctness (<i>Oakes</i>), but whether an administrative decision is reasonable based on a consideration of <i>Charter</i> values is not (<i>Dore</i>).</li> <li>▪ <i>York Reason</i> raises question of whether <i>Dore</i> applies post <i>Vavilov</i></li> <li>▪ In <i>Vabuolas</i>, the BCCA applies the <i>Dore</i> framework post <i>Vavilov</i> and applies a reasonableness SOR to the question of balancing <i>Charter</i> rights with statutory aims.</li> </ul>
<b>Charter Issues – Proper Proceeding</b>	<p><i>Ernst v. Alberta Energy Regulator</i>, 2017 SCC 1</p> <p><i>Weeks v Abbotsford (City)</i>, 2025 BCSC 661, para 64</p>	<ul style="list-style-type: none"> <li>▪ Presence of an immunity clause may mean that an action for Charter damages is not sustainable and should instead be a JR of a decision with an application of <i>Charter</i> principles.</li> <li>▪ Doesn't have to be an action for financial damages to benefit from immunity. Also applies to declaratory relief.</li> </ul>

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<b>Factual Findings</b>	<i>Vavilov</i> , para 125 <i>Beaudoin v. British Columbia (Attorney General)</i> , 2022 BCCA 427, para 208-210	<ul style="list-style-type: none"> <li>▪ A reviewing court will not interfere with the factual findings of an administrative decision maker absent exceptional circumstances.</li> </ul>
<b>Remedies</b>		
<b>Prerogative Remedies vs. Remedies under the JRPA</b>	<i>JRPA</i> , s. 2(2)(a), 5, 7	<ul style="list-style-type: none"> <li>▪ Prerogative remedies are <i>mandamus</i>, prohibition, and <i>certiorari</i>.</li> <li>▪ <i>Habeus corpus</i> and <i>quo warranto</i> are also prerogative remedies, but they are rare.</li> <li>▪ Main difference is ability to access relied under the <i>JRPA</i> requires "statutory power of decision" as defined in s. 1, but prerogative remedies (including those under s. 2(2)(a) of the <i>JRPA</i>) can be accessed provided the decision at issue is sufficiently public in nature.</li> </ul>

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<p><b>Preventing or "Undoing" a Decision</b></p>	<p><i>JRPA</i>, s. 2(2)(a), 5, 7</p> <p><i>Vavilov</i>, para 141</p> <p><i>Squamish Nation v. British Columbia (Environment)</i>, 2019 BCCA 321 at para. 100</p> <p><i>Cactus Cafe Turner Road Ltd. v. B.C. (Liquor Control and Licensing Branch)</i>, 2011 BCCA 414 at paras. 15ff</p>	<ul style="list-style-type: none"> <li>▪ The court does not have the jurisdiction to make decisions within the exclusive control of an administrative decision maker, only review those decision.</li> <li>▪ <i>Certiorari</i> and prohibition are quashing a decision or preventing a decision that has not yet been made, respectively. <i>Certiorari</i> is very similar to <i>JRPA</i>, s. 7 setting aside an invalid or unauthorized decision.</li> <li>▪ <i>JRPA</i>, s 5 permit the court to direct the administrative decision maker to reconsider the decision at issue, with our within appropriate directions.</li> <li>▪ In keeping with the supervisory function of judicial review, relief of this type (either "undoing" a decision or directing reconsideration of a decision) is the most common form of relief on judicial review.</li> </ul>
<p><b>Direct Remedies</b></p>	<p><i>Vavilov</i>, para 142</p> <p><i>Allman v. Amacon Property Management Services Inc.</i>, 2007 BCCA 302</p> <p><i>British Columbia (Workers' Compensation Board) v. Figliola</i>, 2011 SCC 52 at para. 54 (dismissal of human rights complaint);</p> <p><i>Gichuru v. Law Society (British Columbia)</i>, 2014 BCCA 396 at paras. 97 and 98</p> <p><i>Gordon v. British Columbia (Superintendent of Motor Vehicles)</i>, 2022 BCCA 260 at para. 129</p>	<ul style="list-style-type: none"> <li>▪ Usually not available. Only appropriate when the outcome is inevitable and remitting the case would serve no purpose.</li> </ul>

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<b>Costs</b>	<i>18320 Holdings Inc. v. Thibeu</i> , 2014 BCCA 494	<ul style="list-style-type: none"><li>▪ Generally, tribunals have immunity from costs in a JR.</li><li>▪ A tribunal can attract costs if it “goes too far” in arguing the merits / takes an adversarial position.</li><li>▪ Can also attract costs based on egregious unfairness / unreasonableness of the decision at issue.</li></ul>