CONTENTS

Foreword	xiii
Preface	XV
Table of cases	xvii
Table of legislation	xxxvii
1 INTRODUCTORY MATTERS	1
INTRODUCTION	1
JUDICIAL REVIEW PROCEEDINGS	1
JUDICIAL REVIEW: PROCESS OR MERITS?	2
JUDICIAL REVIEW AND APPEAL	3
CONCLUSION	5
2 APPLYING FOR JUDICIAL REVIEW	6
INTRODUCTION	6
LEAVE OF THE COURT	7
MISREPRESENTATION AND NON-DISCLOSURE	11
DELAY	13
AMENDMENTS	20
COSTS	22
PARTIES	26
INCORRECT PROCEDURE	33
3 CLAIMANTS AND STANDING	37
INTRODUCTION	37
LOCUS STANDI IN JUDICIAL REVIEW	37
INTERVENERS	49
PUBLIC INTEREST LITIGANTS	51
CAPACITY	53
COMPANIES	54

4 DEFENDANTS AND DECISIONS SUBJECT TO JUDICIAL REVIEW	55
INTRODUCTION	55
STATE INSTITUTIONS	55
PUBLIC AUTHORITIES	57
Cabinet	57
Ministers of government	59
Permanent secretaries	61
The decision maker	62
AMENABILITY TO JUDICIAL REVIEW	63
STATUTORY CORPORATIONS	67
PUBLIC SERVICE AND OTHER COMMISSIONS	72
SUPERVISOR OF INSURANCE	73
CHIEF IMMIGRATION OFFICER	73
EMPLOYMENT	74
EDUCATIONAL INSTITUTIONS	78
DIRECTOR OF PUBLIC PROSECUTIONS	80
Introduction	80
Scope of the DPP's powers	80
Are decisions of the DPP subject to judicial review?	81
Judicial review of decisions of the DPP	81
Conclusion	84
CIRCUIT COURT	85
5 EXCLUSION OF JUDICIAL REVIEW	87
INTRODUCTION	87
DISCRETIONARY REMEDY	87
NON-JUSTICIABILITY	90
Introduction	90
Policy decisions	91
Actions of the Executive	92
National security The military and defence force	95 98
ABUSE OF PROCESS	99
ALTERNATIVE REMEDY	101

	•••
Contents	V11

	DISPUTES OF FACT	107
	DELEGATED LEGISLATION	108
	IMPROPER FORUM	110
	PREMATURITY	111
	PUBLIC INTEREST CONSIDERATIONS	113
	OUSTER CLAUSES	113
	Introduction	113
	Statutory ouster clauses	114
	Constitutional ouster clauses	115
6	JURISDICTION OVER FACT AND LAW	120
	INTRODUCTION	120
	ERROR OF LAW	120
	Introduction	120
	Statutory interpretation	122
	Service commissions	124
	Fundamental rights and freedoms	125
	Mistaken view of the law	125
	Interim relief	126
	Reasons	127
	ERROR OF FACT	127
	Errors of law and errors of fact	127
	No evidential basis – error of law or fact?	128
	SUBJECTIVITY	129
	NON-COMPLIANCE WITH STATUTORY REQUIREMENT	133
	MANDATORY OR DIRECTORY	138
	The old approach	138
	The modern approach	141
7	RETENTION OF DISCRETION	145
	INTRODUCTION	145
	RETENTION OF DISCRETION	145
	General	145
	Constitutionality of discretionary powers	151
	Firearms licences	153
	Liquor licences	156

	Immigration	157
	Telecommunications	160
	Environmental	161
	ABDICATION	162
	DELEGATION	165
8	ABUSE OF DISCRETION	172
	INTRODUCTION	172
	FETTERING OF DISCRETION	172
	IMPROPER PURPOSE	182
	BAD FAITH	185
	IRRELEVANT CONSIDERATIONS	189
9	LEGITIMATE EXPECTATIONS	194
	INTRODUCTION	194
	LEGITIMACY REQUIREMENTS	196
	Clear, ambiguous and unqualified	196
	Doctrine of estoppel	199
	Unlawful expectations	199
	Actual or ostensible authority	202
	PROCEDURAL LEGITIMATE EXPECTATION	204
	SUBSTANTIVE LEGITIMATE EXPECTATION	210
	STANDARD OF REVIEW	218
	Introduction	218
	The United Kingdom	218
	The Commonwealth Caribbean	223
	SECONDARY CASE OF PROCEDURAL PROTECTION	229
	RENEWAL OF EMPLOYMENT CONTRACTS OF MAGISTRATES	232
	EXCEPTIONS	235
10	STANDARD OF REVIEW	236
	INTRODUCTION	236
	WEDNESBURY UNREASONABLENESS	236
	PROPORTIONALITY	251

Contents ix

11 HUMAN RIGHTS AND ADMINISTRATIVE LAW	258
INTRODUCTION	258
LOCUS STANDI IN CONSTITUTIONAL AND HUMAN RIGHTS LAW	258
AMENABILITY TO CONSTITUTIONAL REDRESS	264
JUDICIAL REVIEW AS AN ALTERNATIVE REMEDY	266
WEDNESBURY UNREASONABLENESS	269
LEGITIMATE EXPECTATIONS AND DUE PROCESS	269
RIGHT TO PROPERTY AND DUE PROCESS	278
NATURALJUSTICE	281
REMEDIES	284
12 REGIONAL ORGANISATIONS, CARIBBEAN COMMUNITY LAW AND INTERNATIONAL LAW	287
INTRODUCTION	287
CARICOM LAW AND DOMESTIC LAW	287
IRRELEVANT CONSIDERATIONS	290
REGIONAL ORGANISATIONS	291
JURISDICTION: DISPUTES OF FACT	292
THE UNIVERSITY OF THE WEST INDIES	293
CARICOM LAW Locus standi of companies Locus standi of individuals Judicial review of decisions of Community organs State liability for breaches of the revised treaty Enforcement of the CCJ's orders	295 295 298 300 302 304
STANDARD OF REVIEW IN DOMESTIC LAW	307
REMEDIES	308
13 PROCEDURAL FAIRNESS	310
INTRODUCTION	310
ADEQUATE DISCLOSURE Introduction The professions	310 310 311

Immigration	313
Public Service Commission	314
Educational institutions	316
Permits and licences	317
Planning decisions	319
HEARINGS	322
Adjournment	322
The right to cross-examine	325
Oral hearing	331
EXCEPTIONS	334
Need for urgent action	334
Preliminary hearings	336
14 THE RIGHT TO REASONS	339
INTRODUCTION	339
COMMON LAW	340
The public service	340
Nature of the duty	343
Courts and tribunals	345
The professions	349
Planning decisions	351
Financial institutions	354
Ministry of Education	354
Immigration and national security	355
Director of Public Prosecutions	356
A STATUTORY RIGHT TO REASONS	358
Administrative Justice Act of Barbados	358
Judicial Review Act of Trinidad and Tobago	359
Conclusion	360
15 THE RULE AGAINST BIAS	362
INTRODUCTION	362
AUTOMATIC DISQUALIFICATION	362
APPARENT BIAS	365
Officers of the court	365
Coroners	368
Judges	370
Judicial and Legal Service Commission	373

Contents	X1

Magistrates	374
The applicable test	381
16 TRIBUNALS AND INQUIRIES	383
INTRODUCTION	383
INQUIRIES	383
Introduction	383
Appointment of Commissions of Inquiry	384
Representation by counsel	386
Evidence	386
Cross-examination	387
Standard of review	388
Natural justice	388
The rule against bias	389
Public hearings	393
Standing of a Commission of Inquiry	394
Mandatory or directory	395
TRIBUNALS	398
Locus standi	398
Error of law	399
The rule against bias	401
Abdication	403
Irrelevant considerations	405
Right to a fair hearing	406
17 PUBLIC LAW REMEDIES	407
INTRODUCTION	407
CERTIORARI	407
MANDAMUS	411
PROHIBITION	417
18 PRIVATE LAW REMEDIES	421
INTRODUCTION	421
DAMAGES	421
Administrative Justice Act of Barbados	421
Judicial Review Act of Trinidad and Tobago	425
Old rules of court	427
New Civil Procedure Rules	432

INJUNCTION	435
RESTITUTION	443
DECLARATION	445
Bibliography	440
Index	451