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## Administrative Law Exam Summaries

### JUDICIAL REVIEW

#### JUDICIAL REVIEW

#### JURISDICTION, JUSTICIABILITY AND STANDING – JA & CC

##### JA & CC

Note under s 44 JA – the HC has jurisdiction to remit a matter of JR that comes to it and over which the HC has original jurisdiction to the Federal Court. When the HC remits a matter to the FC, the FC must also have jurisdiction through s 39B JA.

Note s 75(iii) CC – if there is a matter where the jurisdictional requirements under s 75(v) are not met, may fall back on s 75(iii) but not clear.

##### **JURISDICTION**

In order for the FC to have jurisdiction to hear an application for review, s 39B of the *Judiciary Act (JA)* makes it clear that it is necessary that i) there must be a “matter”, ii) that the decision in question was made by an “officer of the Commonwealth” and iii) that there is an appropriate remedy being sought.

##### **OR**

In order for the High Court to have jurisdiction to hear an application for review under s 75(v) *Commonwealth Constitution (CC)* it is necessary that i) there is a “matter”, ii) that the decision in question was made by an “officer of the Commonwealth” and iii) that there is an appropriate remedy being sought.

##### Matter

A “matter” involves a controversy about rights, duties or liabilities (*McBain, Fencott*). Here, X [applicant to JR] is seeking judicial review of X’s [who made decision] to do X [grant/not grant license to do X etc] pursuant to section X [of relevant exam Act].

X (applicant) is seeking to do X (link above). This is something that, in the absence of such license/permit, it would be unlawful under section X [of relevant exam Act]. Therefore, it is a matter involving a controversy about rights, duties or liabilities are required by s 39B JA.

##### Officer of the Commonwealth

The complexities in determining who is an “Officer of the Commonwealth” was highlighted by the Court in *M61/2010E*. Because X [the person who made the decision] is [commonwealth minister, delegate, statutory body, federal public servant, member of federal court, member of military service or tribunal, employee of

government department or agency], it can be presumed that they are therefore an “Officer of the Commonwealth” as required by s 39B JA.

### Pregogative Writs

X will want to seek X [writ of certiorari/mandamus/prohibition] to [quash/exercise discretion/prohibiting] the decision [to grant X permit/license]. It must be determined whether this/these remedies will be available on the facts

WRIT	EFFECT	WHEN
<b>Certiorari</b>	‘Quashes’ a decision. It operates as a determination that the decision is to be treated as not having any legal effect.	It operates once a decision has been made, or purportedly to be made and the decision maker has completed their task.
<b>Prohibition</b>	Prohibits a person from taking a proposed course of action or making a proposed decision.	Before a decision has been made
<b>Mandamus</b>	Requires a decision-maker to exercise a discretion in accordance with the law.	When a decision maker is under a duty to act, and they refuse or fail to exercise their jurisdiction.

### *If Certiori*

Certiorari is an order quashing a defective decision that has been made, which carries an implied power to send the quashed decision back to be remade.

Certiorari will be available only with respect to the exercise of public power (*Datafin*). Because the decision to do X is made pursuant to statute under section X [of relevant exam Act] it is made available pursuant to the exercise of public power.

Certiorari is only available to quash a decision’s legal effects (*Ainsworth*). For the reasons outlined above, under “matter”, the decision to do X, enables X to lawfully do X, something that it would otherwise not be able to do. Accordingly, the decision has a legal effect.

**OPTIONAL:** In *Ainsworth* the Court held that certiorari did not apply in circumstances where a report which made recommendations to the government, which were not binding and where the government could make their own decisions because it has no legal effect or consequences.

HOWEVER, Certiorari is an ancillary remedy, not expressly mentioned in s 39B JA. Therefore, X must seek another remedy, off which they can receive certiorari.

### *If Mandamus*

Mandamus is an order requiring a decision maker to exercise a discretion in accordance with the law. For mandamus to be available, X [decision maker] must be under a public duty to exercise a discretion under section X [of relevant exam Act]. In *Game Association* the Court held that when there is a statutory provision that grants a discretion to a decision maker, that discretion would normally be considered a discretion for which the decision maker is under a public duty to exercise. There the duty is public.

Moreover, there is no discrepancy between the purpose of the Act and the decision-making power under s X *Game Association*. The purpose of the relevant exam Act is to..... Discretion was exercised by the decision maker for purposes which align with this purpose of the Act (cf. *Game Association*). Therefore, the X [decision maker] is under a public duty to exercise their discretion.

**OPTIONAL:** this can extend to where a decision maker wrongly believed that they did not have jurisdiction to act (*Toohey*).

Therefore, an order for mandamus is available.

### *If Prohibition*