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THE SUPERVISORY JURISDICTION OF THE SUPREME COURTS

John Basten

In according constitutional protection to the supervisory jurisdiction of the State Supreme Courts, the High Court in Kirk’s case brought Australian law into line with Canadian constitutional law, a step which had been foreshadowed over some years. The basis on which the outcome is justified has implications for approaches to constitutional interpretation more generally. The possible consequences for the interpretation of privative clauses in State legislation are also noted. The limit of legislative intervention is defined by the concept of jurisdictional error. This new-found constitutional role breathes life into a concept long since abandoned in English administrative law and lacking clear boundaries. The courts will need to develop clearer guidelines, based on a functional approach, allowing for differing levels of scrutiny, depending on the nature of the administrative or judicial decision under review. Account should also be taken of changing social, governmental and legal environments. 273

**GOVERNMENT DUTIES TO PROVIDE DIPLOMATIC PROTECTION IN A
COMPARATIVE PERSPECTIVE**

Christopher Tran

It is settled that states have a right to provide diplomatic protection under international law where certain prerequisites are satisfied, but that they are not obliged to do so. Whether such an obligation exists depends on domestic law. This article advances a generic framework for analysing whether such a domestic law duty exists, by reference to the developing case law of the United Kingdom, Germany, South Africa and Canada. It then applies that framework to consider whether the Australian government owes a duty to provide or consider providing diplomatic protection to Australians abroad. 300

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