

PRACTISING ADMINISTRATIVE LAW

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Canberra Perspective

The perspective I bring to this evening's seminar is that of a solicitor in private practice with one of the larger Australian firms. More particularly, the perspective is from one who practices in the Canberra office of a national firm. The perspective is quite different from that of a practitioner with one of the larger firms in Sydney or Melbourne. There, the client base is such that one may have an active administrative law practice acting from interests in, say, the broadcasting area, the customs area, the migration area, etc.

In Canberra, on the other hand, the one client which dominates the landscape and dominates the practice of administrative law is the Government itself. So the practice of administrative law in this city is predominantly a respondent practice.

True it is that, from time to time, one handles the odd administrative law matter for an applicant, whether in the income taxation field, freedom of information, the welfare area generally or perhaps in the migration area.

Other areas too may prove to be fertile fields for the administrative lawyer. I will say a little more about this later. However, as I mentioned above, clearly the largest consumers

of administrative law services in this city are the Government departments and agencies. Where does that leave the administrative lawyer in private practice, given that historically the government has used legal resources from within the government sector, principally the Attorney-General's Department, to service its legal requirements? Rather hungry and rather poor, one may think.

Period of change

As many of you would be aware, the provision of legal services to the Government is undergoing a period of historic change. Since the start of the 1992-93 financial year, Government agencies have been paying for the external legal services provided to them by the Attorney-General's Department. In the very near future that regime of user pays will have the added feature of user choice. The result will be that in many, but not all, areas of Commonwealth legal work agencies will be free to make their own choices whether to continue to use the services of Attorney-General's Department or to use other firms. 1 July 1995 was set as the date upon which this quite dramatic change was due to occur. A review under way at present within the Attorney-General's portfolio may result in the bringing forward of that date to 1 July next year, at least in some areas.

In spite of the limitation that is apparently to apply under which the tie to the Attorney-General's Department may be maintained in the case of litigation in the courts, I expect the administrative law area to be one of the key areas where private firms will compete with the Attorney-General's Department for legal work

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from agencies. Many of the firms represented in Canberra (and indeed certain of the firms from outside this city) are now planning for this significant change and are actively developing their profiles within the ranks of Government agencies.

It might be very interesting to run this seminar again in two years time to see what impact the changes have in fact had on the practice of administrative law in Canberra.

Current arrangements

Speculation about the future is not, however, what this evening's seminar is essentially about. The focus this evening is on how an administrative lawyer in private practice in Canberra currently sustains an administrative law practice. I can only draw on my own experience in answering that question. Others may have a different outlook.

I suspect that the answer to the question is not much different from the answer which many who practise as administrative lawyers in other cities would also give, namely, that administrative law is not the sole component of my practice but is merely a part of a broader practice. Even the 'Administrative Lawyer' in Sydney or Melbourne who has, for example, an active town planning appeal practice would often handle a range of further work in the property area.

While recognising therefore that it would be unusual for a practitioner to live on administrative law alone, it may be of some interest to give a brief outline of administrative law practice.

In my firm, we have been fortunate enough to do a considerable amount of work over some years for a handful of significant Government Business Enterprises (GBEs). The principle of

the level playing field under which many GBEs operate has meant that they have had greater freedom than Government Departments to use the services of outside firms. The legal needs of GBEs can range across property work, patents and trade marks, contract preparation, taxation and a range of other areas. From time to time administrative law work can also arise, whether in the Federal Court or in the Administrative Appeals Tribunal, whether involving Freedom of Information requests or statements of reasons, or whether the GBE merely wants advice on an administrative law problem. Most of this administrative law work is 'respondent' practice.

Of more interest perhaps is the 'Applicant' work. In my case a good part of this work arises from what American lawyers call 'Regulatory Law'. In some areas, particularly though acting for national associations with headquarters in Canberra, I have been able to build up some sort of profile as a person with a reasonable understanding of a particular regulatory scheme. In the first instance you may find that you are asked to assist the national body in coming to grips with the scheme. Then you may find that constituent members of the body will want to make use of your services when they experience problems in trying to achieve what they want from the Government out of the particular scheme. Occasionally, the problems can be sorted out through personal contact or correspondence with the relevant Department. One's knowledge of Commonwealth administration may help in this regard. In other cases, however, the matter can lead to administrative law proceedings.

The other main source of my administrative law work, although not a terribly significant one, is as the

'Canberra end' of a particular matter which a client brings to the firm in another city. The opportunity for this sort of work probably comes only through the larger national firms. The extent to which it happens of course depends on your being diligent in building up contact with your colleagues in other offices of the firm and making sure that they are aware of the sort of expertise in the Government area which you may be able to offer their client.

Government law work generally

I tend to find within my firm that many of my colleagues think of 'Administrative Law' in very broad terms, not confined to the traditional ambit of that branch of the law. As a result, 'Administrative Law' and 'Government Law' become synonymous, covering almost anything that has to do with Government. And perhaps it is reasonable enough to think of Administrative Law in this more expansive way. Certainly, much Government related work relies on techniques and skills that are familiar to the administrative lawyer, namely an ability to find your way through legislation and legislative instruments and knowledge of the government system and the administrative process. I have, for example, acted for one of the larger private health insurance organisations under the National Health Act in acquisitions by the organisation of the business of other health insurances organisations. The acquisitions are effected by means of schemes of merger under the National Health Act. They are essentially like any other sale of a commercial business, involving due diligence enquiries and establishing the usual contractual basis for such a sale. However, the mergers also require the lawyer to have a good understanding of those sections of the National Health Act regulating the

mergers of registered organisations, including the criteria that the Minister or his or her delegate will apply in considering whether to approve the scheme of merger.

In this sort of area, the skills and techniques of the administrative lawyer can play a vital part in the successful resolution of the commercial transaction.

One reason why the administrative lawyer has much to offer in a commercial transaction of this kind is that such a lawyer has a knowledge of, and a feel for, the public interest issues that are involved in the transaction and a capacity to handle the legislative and administrative procedures. The skills and techniques of the administrative lawyer can therefore make a valuable contribution in areas beyond the practice of administrative law in the traditional sense.