ADMINISTRATIVE LAW – A PERSPECTIVE FROM THE BENCH

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To invite a judge to speak on administrative law from his or her perspective on a court, is to invite a commentary on judicial review of administrative action. That is, of course, by no means a complete picture of administrative law. Although the court reviews the operations of others involved in the administrative process, including the operation of the *Freedom of Information Act*, the Ombudsman and the Independent Commission Against Corruption, to take but three specific examples, those cases are more to do with statutory interpretation (albeit in an administrative law context) as compared with the application of administrative law principles, which is the function of judicial review of administrative action. Accordingly, judicial review will be the focus of my remarks tonight.

The jurisdiction of superior courts to review administrative action is a critical element in the rule of law: it is the mechanism by which an independent judiciary is called upon to determine whether the executive arm of government has acted within the boundaries imposed by the law on the exercise of executive power. The jurisdiction used to operate primarily through the so-called prerogative writs by which an individual could invoke the power of the Crown to prohibit unlawful conduct and set aside unlawful decisions. However, in New South Wales the writs no longer issue and the jurisdiction to grant remedies in the nature of writs is now to be found in s 65 and, more generally, s 69 of the *Supreme Court Act* 1970. A question arose soon after the commencement of the Act as to whether that change involved any departure from the principles of substantive law that conditioned the availability and issue of the prerogative writs. It was held in *Dickinson v Perrignon*[1] that the established rules continued to apply. After referring to the powers conferred on the

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[1] [1973] 1 NSWLR 72 at 79E (Moffitt JA) and 82-83 (Street CJ in Eq)

Supreme Court by ss 65 and 75 to order a person to fulfil a duty and to make declarations respectively, Street CJ in Eq stated:

> "Where appropriate, as in a case such as the present, the substantive law underlying the grant of prerogative writs would have relevance to the exercise of jurisdiction under ss 75 and 65. But the Court is relieved from the burden of evaluating a significant part of the technical and procedural considerations that have arisen to encumber rather than to enable the exercise of the Court's supervisory powers."

The historical basis of relief by way of prerogative writ was discussed at some length by Gaudron and Gummow JJ in *Re Refugee Review Tribunal; Ex parte Aala*,[2] a case in which the Tribunal had mistakenly assured the applicant that it had various documents when in fact it did not. This constituted procedural unfairness, but the primary question in the High Court was whether relief should be refused on the basis that there was no satisfactory demonstration that the error affected the outcome of the case. As their Honours explained, the origin of the prerogative writs derived from the fact that all lawful jurisdiction was based on Royal authority and an exercise of power not authorised by the Royal authority was a usurpation of that authority and should be restrained:[3] quoting Willes J in *Mayor of London v Cox*.[4]

As Gummow and Gaudron JJ noted, that explanation no longer applies in the federal sphere, as the lawful limits of judicial power depend on Chapter III of the Constitution. In this State the Supreme Court was established by the Charter of Justice granted by Letters Patent of 13 October 1823, issued pursuant to an Imperial Act, namely the *New South Wales Act* 1823. As Sugerman JA explained in *Clyne v East*,[5] the Supreme Court is now governed by an Act of the State Parliament and all other courts in the State "are entirely the creation of the local legislature which has defined their powers and functions, provided for the appointment and tenure of their judges or other members, and regulated their practice and procedure or conferred powers for that purpose".[6]

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2 (2000) 204 CLR 82
3 At [44]
4 (1867) LR 2 HL 239 at 254
5 (1967) 68 SR 385 at 401
6 See also Anne Twomey, *The Constitution of New South Wales* (2004), Ch 13

It may not matter much whence the authority of a court is derived, but there is at least a basis for supposing that, to the extent that Royal authority governed the issue of prerogative relief in the UK, any constraints on the grant of such relief which derived from that source would have little relevance in 21st century New South Wales. Spigelman CJ suggested as much in *Solution 6 Holdings Ltd v Industrial Relations Commission of New South Wales*,[7] although the suggestion was not countenanced by Mason P[8] agreeing with Handley JA.[9]

In a sense, this issue may be of largely academic interest. The powers of the court with respect to judicial review, in many jurisdictions, though not comprehensively in New South Wales, now depend upon statute: see, eg, the *Administrative Decisions (Judicial Review) Act* 1977 (Cth) and the *Judicial Review Act* 1991 (Qld). Further, though to an extent which has not been fully explored, any historical restrictions on the issue of the writs may be sidestepped by seeking declaratory relief. Finally, there is little doubt that, although the grounds for relief are still subject to critical constraints, the content of the grounds has moved with the times. I shall return to this topic below. It appears that the factors most likely to be determined by reference to principles developed with respect to the prerogative writs are the requirements of standing for an applicant for relief and the extent to which the remedy will be seen as discretionary in circumstances where the basis for relief has been established.

Issues relating to standing have not loomed large in the recent caseload of the Court of Appeal and I will say no more about that issue today. Questions of discretionary refusal of relief do arise from time to time and may be critical in some circumstances: see, eg, the recent judgment of the Court in *Lee v Cha*.[10] Discretionary refusal of relief sought by "strangers", who had appeared as *amici curiae* in the court of trial, was considered by the High Court in the challenge by the Catholic Bishops to the Federal Court determination that the *Infertility Treatment Act* 1995 (Vic) (which restricted certain treatments to women who were married or living in a de facto relationship) was inconsistent with the prohibition on discrimination based on marital status, arising from the *Sex Discrimination Act* 1984 (Cth): see *Re McBain; Ex parte*

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7 (2004) 60 NSWLR 558 at [133]-[135]
8 At [160]
9 At [184]
10 [2008] NSWCA 13

Australian Catholic Bishops Conference.[11] Again, I do not intend to explore these issues further today.

Proper parties

There are two issues of general practical concern which I do seek to address. The first can be dealt with shortly and concerns the proper parties to an application for relief in the nature of prerogative relief in the Supreme Court. Judicial review proceedings have always been conducted in adversary form, usually between the person who has a grievance as a result of an administrative decision, whether of a tribunal or another body, and the officer or government which has an interest in upholding the decision. With respect to the exercise of statutory power, the proper respondent is sometimes defined by statute: see, eg, the *Migration Act* 1958 (Cth), s 479 which requires that the Minister or Secretary of the Department is the appropriate governmental party. Where a constitutional writ is sought under s 75(v) of the Constitution, the writ is directed to the Commonwealth officer who made the decision and that party (which may be a tribunal) must be joined in an application for review: see *SAAP v Minister for Immigration and Multicultural and Indigenous Affairs*.[12]

The Court of Appeal has held that a similar practice should be adopted in relation to relief under s 69 of the *Supreme Court Act*: see *Campbelltown City Council v Vegan*.[13] It might be thought that this was an unnecessary extrapolation from the pre-s 69 procedures, but that is not necessarily so. Putting to one side requests for declaratory relief alone, relief under ss 65 or 69 of the *Supreme Court Act* will be in the same form as if there had been the issue of a writ. That means that a decision may be set aside and a tribunal or other officer prohibited from taking a particular course, or directed to fulfil a specific duty. Although there will often be two active parties to such a dispute, the relief is not in its form directed to the other individual or the government authority concerned in the outcome of the dispute. Thus, although

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[11] [2002] HCA 16; 209 CLR 372
[12] [2005] HCA 24; 79 ALJR 1009 at [43] (McHugh J) and [91] (Gummow J), [153] (Kirby J) and [180] (Hayne J)
[13] [2006] NSWCA 284; 67 NSWLR 372

that party should be joined so that it will be bound, the body to whom the order is expressly directed, namely the decision-maker, should also be a party.

In accordance with the principles espoused in *The Queen v Australia Broadcasting Tribunal; Ex parte Hardiman*,[14] the administrative decision-maker should generally not be an active participant in the review proceedings. See also *Oshlack v Richmond River Council*.[15]

In one sense, the substantive result will be little different from an appeal which results in a decision of a court being set aside and the matter remitted for further hearing. The court is not a party to the appeal. On that approach there is a basis for saying that joinder of the decision-maker is an anachronistic formality. On the other hand, the requirement that the administrative decision-maker be joined may provide a timely reminder that the proceedings are not by way of appeal and that the grounds relied upon will need to conform to the limitations of judicial review.

Grounds of review

The second matter of practical importance, to which I now turn, is the content of the appropriate grounds. Stated at a high level of generality, the purpose, and sole purpose, of judicial review proceedings is to determine whether the administrative tribunal has acted according to law. If it has purported to act in excess of its jurisdiction, properly understood, generally its decision will be invalid and an improper exercise of power. However, the underlying assumption of judicial review proceedings is that by whatever law a power has been conferred on the decision-maker, so long as there is compliance with the jurisdictional limits imposed by that law, the decision-maker will be free to exercise the power as he or she thinks fit in the circumstances that are presented.

This principle is commonly reflected in the statement that judicial review is concerned with the limits of legality and not with the merits of the decision. Thus, in the well-known language of Brennan J in *Attorney-General (NSW) v Quin*:[16]

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[14] (1980) 144 CLR 13 at 35-36
[15] (1998) 193 CLR 72 at [12] (Gaudron and Gummow JJ)
[16] (1990) 170 CLR 1 at 35-36

> "The duty and jurisdiction of the court to review administrative action do not go beyond the declaration and enforcing of the law which determines the limits and governs the exercise of the repository's power. If, in so doing, the court avoids administrative injustice or error, so be it; but the court has no jurisdiction simply to cure administrative injustice or error. The merits of administrative action, to the extent that they can be distinguished from legality, are for the repository of the relevant power and, subject to political control, for the repository alone."

As with other statements to similar effect, that passage is treated as a statement of basic principle which requires no authority by way of justification. That is because the principle states a limit to judicial power. It may thus be seen as a dividing line between judicial and executive power. Ultimately this distinction must depend for its justification on an implicit separation of powers, which permits the executive the right to exercise power as it thinks fit, so long as legal limitations are respected. To that extent, it makes sense to say that the constitutional structure of Australian States incorporates a principle of the separation of powers. It may be true that the principle, as it operates under the State Constitution, does not create boundaries between all three arms of government, as arise under the Commonwealth Constitution, but it is useful to bear in mind that the cases which purport to declare that New South Wales knows no doctrine of the separation of powers have involved complaints that the legislature has sought in particular ways to exercise judicial power: *Clyne v East* was an example, as was *Building Construction Employees and Builders' Labourers Federation (NSW) v Minister for Industrial Relations*.[17]

But the statement of the principle invites a further question: how and precisely where does one draw the line between legal and other forms of error? And is any form of legal error sufficient?

I want to answer these questions by reference to a number of distinctions which tend to cause confusion in practice.

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[17] (1986) 7 NSWLR 372

Errors of law not fact

The first proposition to be addressed is that because judicial review is explained by reference to the legal limits of a power, it must involve legal error and not factual error. That follows, it is argued, from statements such as that of Brennan J in *Quinn*.

Unfortunately, that approach involves a misconception. Although the nature of the misconception is widely understood, its limits and application are not. Thus, it is possible to identify the boundaries of the lawful exercise of power by reference to facts as much as to law. But facts do not exist in the abstract, at least within the judicial system: they must be determined by a relevant body or court. To say that merit review is prohibited is merely to say that the determination of operative facts is a matter for the administrative authority. However, where the jurisdiction of the administrative authority depends on the existence of a fact, objectively determined, the fact will be described as a "jurisdictional fact" and its existence or otherwise may be challenged in a court exercising supervisory jurisdiction. In such a case, the facts will need to be determined on the basis of admissible evidence, which must be tendered on an application for judicial review. In cases where the power is conditioned upon a factual finding required to be made by the administrative authority, the phrase "jurisdictional fact" has been said to apply to the opinion of the decision-maker: see *Minister for Immigration v Eshetu*[18] following the language of Latham CJ in *R v Connell; Ex parte Hetton Bellbird Collieries Ltd*.[19]

The purpose of using such language is to emphasise that matters of fact, even when they lie within the decision-making function of the administrative authority, are not beyond review. Thus, as explained in *Hetton Bellbird Collieries*, demonstration that an opinion was "arbitrary, capricious, irrational or not bona fide" will indicate that the opinion required by the relevant statute has not been formed and the exercise of power is therefore ultra vires.[20] Establishing that an opinion lacked essential elements of validity has the same effect as demonstrating that the ultimate decision was based on a misconstruction of the statutory requirements or some other relevant legal error.

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[18] (1999) 197 CLR 611 at [128]-[131] (Gummow J)
[19] (1944) 69 CLR 407 at 430
[20] Latham CJ at p 432

The question which immediately arises is how a litigant seeking to challenge such a decision should set about establishing the necessary factual premise for success. There are two principal ways in which error of this kind can be demonstrated. The first and most basic is to take the actual decision and place it in its factual and legal context. Before more recent developments imposing an obligation on a decision-maker to give reasons for a decision, that was the primary means available. Under the general law, discovery and interrogatories were routinely not permitted in judicial review cases: see *O'Reilly v Mackman* [1983] 2 AC 237 at 280 (Lord Diplock) and *Regina v Secretary of State; Ex parte World Development Movement Ltd* [1995] 1 WLR 386 at 396 (Rose LJ). As explained by Dixon J in *Avon Downs Pty Ltd v Federal Commissioner of Taxation:*[21]

> "Moreover, the fact that he has not made known the reasons why he was not satisfied will not prevent the review of his decision. The conclusion he has reached may, on a full consideration of the material that was before him, be found to be capable of explanation only on the ground of some such misconception. If the result appears to be unreasonable on the supposition that he addressed himself to the right question, correctly applied the rules of law and took into account all the relevant considerations and no irrelevant considerations, then it may be a proper inference that it is a false supposition. It is not necessary that you should be sure of the precise particular in which he has gone wrong. It is enough that you can see that in some way he must have failed in the discharge of his exact function according to law."

The availability of reasons will often render the task of demonstrating error more easily satisfied. However, while reasons are more commonly available in recent times, as *Public Service Board v Osmond*[22] demonstrated, there is no general law obligation on administrative decision-makers to give reasons for their decisions.

In federal jurisdiction, the *Administrative Decisions (Judicial Review) Act* 1977 (Cth) imposes such an obligation in relation to statutory decisions to which it applies. Other federal statutes may impose such an obligation, the content of which may need to comply with s 25D of the *Acts Interpretation Act* 1901 (Cth). Similarly, under State law, there may be an entitlement to obtain reasons pursuant to Practice Note

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[21] (1949) 78 CLR 353 at 360
[22] (1986) 159 CLR 656

SC CL 3, par 23; see also, in relation to reviewable decisions under the *Administrative Decisions Tribunal Act* 1997 (NSW), s 49.

Even where reasons are provided, they must be treated with care. As explained by the Full Court of the Federal Court in *Collector of Customs v Pozzolanic*,[23] in a passage adopted by the High Court in *Minister for Immigration and Ethnic Affairs v Wu Shan Liang*[24] the court should not be "concerned with looseness in the language … nor with unhappy phrasing". Further, "the reasons for the decision under review are not to be construed minutely and finely with an eye keenly attuned to the perception of error". The contextual approach referred to in *Avon Downs* should continue to be applied.

How the *Pozzolanic* principle is applied may depend upon the nature of the decision-maker and how the reasons are presented. Administrative officers learn to adapt over time to the requirement to give reasons and may have legal assistance where a challenge is anticipated. Orders to supply reasons in the course of litigation are rarely sought as it is assumed they will be settled by senior counsel for the government: see, perhaps, *Re Minister for Immigration and Multicultural Affairs; Ex parte Palme*.[25] Nevertheless, the process of adapting may be slow, especially for those with training outside the law, such as medical assessors operating under the workers compensation or motor accident legislation, where appeals apply similar principles, because restricted to errors of law.

Turning from the basis of the decision itself, a common ground for attacking the validity of an administrative decision is challenging the process through which it was reached by asserting a breach of procedural fairness. However, what is sometimes forgotten when allegations of procedural unfairness are raised is that the procedures adopted will often be a matter of fact and may be in dispute. If the facts need to be proved to the supervisory court, they must be properly proved by admissible evidence. If they can be demonstrated from the documentary record, it may be sufficient to place that before the court. If further primary material is required, that should be properly proved by the applicant for review.

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[23] (1993) 43 FCR 280 at 287
[24] (1996) 185 CLR 259 at 272
[25] (2003) 216 CLR 212

It may be seen, therefore, that while judicial review is concerned with patrolling the legal boundaries of administrative action, there are various ways in which factual issues may need to be determined by a court, both as grounds in specific situations and as underpinning complaints of legal error in other cases. As with all litigation, judicial review requires careful attention not only to the limited grounds of review, but also to the factual issues likely to arise.

Relevant and irrelevant considerations

A second and somewhat different, but common basis of confusion, arises where a decision-maker is said to have disregarded relevant criteria or taken into account the irrelevant. Two problems arise. One involves the proper identification of the "considerations" or criteria; a second involves their characterisation as relevant or irrelevant. Dealing first with the question of characterisation, a consideration is "relevant" for the purposes of judicial review, if the statute conferring power requires that the matter be taken into account; it is "irrelevant" if there is a prohibition against taking it into account. Some statutes specify mandatory considerations; a few specify unlawful considerations; a few, but very few, seek to do both. Indeed, most statutes conferring administrative powers say nothing expressly about how the powers are to be exercised, leaving both prohibited and mandatory considerations to be gleaned from the subject matter, scope and purpose of the legislative provision. Importantly, many factors are really legitimate considerations, which are neither mandated nor prohibited. It is important to remember that, like Gaul, considerations are to be divided into three: the mandatory, the legitimate and the prohibited. Failure to consider a legitimate consideration does not involve legal error.

The other difficulty concerns what may be properly identified as "considerations". Arguments are on occasion put in terms that the decision-maker disregarded particular evidence. Evidence, however, is not a consideration. If evidence has been disregarded, a different basis of challenge may be found, such as procedural unfairness, or a constructive failure to exercise the power. Where statutory rules require reasons to be given, they will generally require that the statement of reasons set out material findings of fact. Where a statement does not include a finding on particular material which was before the decision-maker, it may often be inferred that no finding was made. That may be because the evidence was ignored or overlooked

or because it was rejected. A failure to comply with an obligation to give reasons will not necessarily give rise to invalidity of the particular decision: see *Minister for Immigration and Multicultural Affairs v Yusuf*.[26]

The difference between evidence and primary facts on the one hand and relevant considerations on the other can best be understood by reference to their respective sources. Relevant considerations are derived from the statute or other source of executive authority. They must be considered in a specific factual context; they are not the product of that context, but of the defining elements of the statutory power. Of course it may be said that the obligation of a decision-maker to address the content of an application is also prescribed by law. Although it is true that no bright line can always be drawn between the two, as a matter of principle the identification of relevant criteria is different from the assessment of claims which may require conclusions to be reached as to primary facts.

Concept of unreasonableness

A third area of confusion arises from the common use of the term "unreasonable" in the context of judicial review. In *Foley v Padley*[27] the High Court was required to consider the validity of a by-law made under the *Rundle Street Mall Act* 1975 (SA) which prohibited the distribution of anything in the Mall without the permission of the Council. The Court divided 3:2 in upholding the by-law, with both Dawson J (in the majority) and Brennan J (in the minority) considering the possibility that the by-law might be invalid because the Council had failed to form the necessary statutory opinion, namely that the distribution of material was "likely to affect the use or enjoyment of the Mall". Referring to *Hetton Bellbird Collieries*, and other authorities, Dawson J noted:[28]

> "It may be that the subordinate legislation is unreasonable in a way that makes it apparent that the subordinate authority cannot have formed the necessary opinion or belief … . But it is quite clear that if the subordinate authority in fact held an opinion or belief at the time of making the subordinate legislation which was of the kind contemplated by the relevant legislation, it is not for a court to

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[26] (2001) 206 CLR 323 at [75] and [77]
[27] (1984) 154 CLR 349
[28] p 375

> substitute its own opinion or belief however much it might disagree with that of the subordinate authority."

Brennan J put the matter succinctly, but somewhat differently. After referring to the comments of Latham CJ in *Hetton Bellbird Collieries*, his Honour continued:[29]

> "The question for the court is not whether the court would have formed the opinion but whether the repository of the power could have formed the opinion reasonably. Although the area of judgment that a court must leave to a repository of power is not unlimited, [an] allegation of unreasonableness in the formation of opinion may often prove to be no more than an attack upon the merits of the by-law made in the purported exercise of the power. But where, as in the present case, the ambit of the power … and the activities which may be subjected to the by-law … are at large, an opinion which carries otherwise innocent activities within the scope of the power excites careful if not jealous scrutiny by the court."

This language tends to be confusing because it involves a departure from the more commonly applied test of *Wednesbury* unreasonableness, which imposes a high hurdle on unreasonableness review. What must be borne in mind, however, is that there are two distinct exercises which need to be addressed. One is the making of findings about primary facts, which may involve matters of evaluation and impression. That is usually the exercise involved in the formation of a relevant opinion or state of mind. *Wednesbury* unreasonableness, on the other hand, is concerned with the exercise of discretionary powers, rather than fact-finding. Again, it is possible to envisage cases which demonstrate the difficulty in drawing a bright line between the two functions. That will occur when the necessary opinion involves a degree of value judgment. To take an example from the related area of discourse in relation to judicial power, the function of sentencing in a criminal court will involve findings of primary fact in relation to the defendant's conduct, an evaluation of aspects of his or her character, an assessment of moral culpability and a decision as to the appropriate punishment. While these elements are often treated as parts of a discretionary judgment, there are circumstances where it is helpful to keep the various functions separate: the same is true of administrative decision-making.

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[29] p 370

Conclusions

In conclusion I want to return to a comment made earlier in this paper, namely that, although the grounds of judicial review are expressed in language which has been largely constant (in this country) over the past 50 years or more, the content of the grounds has changed. The reasons for change are largely speculative and beyond the scope of this paper. One explanation may be found in principles of statutory construction sometimes referred to as "the equity of the statute" or, from a slightly different perspective, the analogical use of a statute for the development of the general law. On this approach, it was not coincidental that the modern scope of judicial review in federal jurisdiction developed after the 1977 enactment of the *Administrative Decisions (Judicial Review) Act*.

A second explanation is simply that the vast growth of government administration demanded a response from the courts, if they were to remain in a real sense upholders of the rule of law.

A third explanation may be found in the increasingly detailed provision made by statutes controlling the exercise of administrative power. For example, in the context of controls over immigration, there have been large changes over the past 100 years from an ill-defined prerogative power to prevent aliens entering a country;[30] to a general discretionary power, largely unfettered in express terms, conferred by statute on the Minister; to the highly regulated and procedurally specific requirements of the current emanation of the *Migration Act* 1958 (Cth). (A history of these changes may be found in the judgment of Black CJ in *Ruddock v Vardarlis*.[31])

Whatever the explanation, one factor which must be borne in mind is the consequence of an expansionist approach to judicial review. Each step taken towards a greater scope of operation for the courts in their supervisory jurisdiction constitutes an additional constraint on the exercise of power by the executive. Such a movement could have constitutional ramifications in that it may effect a change in the boundary between the judiciary and the executive which forms an essential element of the separation of powers. Of course, that concern will not arise if the

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[30] See *Musgrave v Toy* [1891] AC 272
[31] (2001) 110 FCR 491

scope of judicial review merely expands to cover new areas of administrative decision-making. Alternatively, if statutory controls over administrative decision-making are increased, the area of legitimate decision-making may thereby be diminished, not by any unilateral action of the judiciary, but rather because a parliament has imposed more wide-ranging constraints on the executive.

Nevertheless, some changes do have constitutional significance. The easiest to identify have occurred in Britain and not in this country. One was the ostensible abolition of the distinction between jurisdictional error and errors of law generally in *Anisminic Ltd v Foreign Compensation Commission*.[32] A second example is the growing caselaw in the UK accepting the European approach to judicial review based on "proportionality".[33] A third and related development in the UK has been a movement towards the incorporation of principles of substantive fairness as a basis for review of administrative decisions: see *R v North and East Devon Health Authority; Ex parte Coughlan*.[34] These approaches have not been adopted in Australia, as demonstrated by *Re Minister for Immigration Multicultural and Indigenous Affairs; Ex parte Lam*.[35]

I am not seeking to identify any particular movement or direction for movement with respect to judicial review of administrative action in Australia. What I do seek to say is that any movement will have potential constitutional ramifications both at the State and the Commonwealth level.

Individuals and corporations dissatisfied with administrative actions frequently seek to push the boundaries of judicial review. The courts must constantly bear in mind the constitutional ramifications of capitulating to such pressure. As practitioners, you will readily appreciate the need to be conscious of these tensions in advising clients, preparing applications and presenting cases in court.

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[32] [1969] 2 AC 147

[33] See, eg, *R v Secretary of State for Education and Employment; Ex parte Begbie* [2000] 1 WLR 1115 at 1129 (Laws LJ)

[34] [2001] QB 213

[35] (2003) 214 CLR 1 at [65]-[77] (McHugh and Gummow JJ)