

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Background

LRC 17—Report on Procedure Before Statutory Agencies

Date: November 1974

This report focuses on the decisions made by statutory agencies in administering the policies of the legislature. The report gives the term *agency* a broad meaning—embracing the Lieutenant-Governor in Council (which is, essentially, the provincial cabinet), provincial government ministers, tribunals, boards, commissions, local authorities, public servants, and municipal employees. The decisions made by these agencies have the potential to have a profound impact on individuals and their property. So, it is one of the most fundamental ideals of a democratic society that the power of the executive branch of government should be exercised in a fair and just manner according to law. The problem faced in this report is that conceptions of what is fair and just in statutory decision-making tend to shift over time. Further, for historical reasons, common-law jurisdictions, such as British Columbia, have resisted setting up specialized courts or tribunals to deal with administrative law. As a result of these factors, the law governing the complex relationships between the legislature, the courts, the executive, and the individual when the fairness or legality of the acts of the various agencies of the executive toward the individual are at issue has become marked by a lack of consistent organizing principles.

The report begins with a description of the nature of the administrative process. Although much of the study of administrative procedure has tended to focus on agency decision-making, it is important to note that intervention is possible at other stages in the process, and that such intervention may sometimes be necessary to provide adequate protection for the public. The report sets out a number of control points in the administrative process. It observes that these points may be found in relation to the three main functions of the administrative process: adjudication, investigation, and rulemaking. The report defines these terms as follows. Adjudication is the process by which agencies make decisions, authorized by law, which determine rights, duties, or legitimate expectations of specific parties, and result in binding, enforceable orders. Investigation involves the statutory power of one or more persons to conduct investigations of the affairs, conduct, or character of individuals, and then to make a report, with or without recommendations, to an agency that has the ultimate decision-making power in the matter. Rulemaking includes the process of regulation making by agencies, as well as the making of informal procedural rules or guidelines, and decision criteria or policies intended to guide agencies in the exercise of decision functions.

The report then considers the existing law and practice. This chapter describes in considerable detail the various historical common-law procedural safeguards and the common-law and statutory safeguards existing in British Columbia (as of the date of the report) for persons affected by the decisions of statutory agencies. The report then proceeds to consider these safeguards in relation to the three functions of administrative process—adjudication, investigation, and rulemaking.

The report concludes with the commission's proposal for reform. The commission noted that there have been two broad approaches to reform. One involves enacting a code embodying a number of principles of procedural fairness that apply, with certain exceptions, to all agencies exercising certain kinds of powers. The other is to make no abstract decision on the merits of the principles of procedural fairness, but to examine each agency and its various functions with a view to testing which, if any, of the principles can be applied without an unreasonable disruption in the governmental process. The commission noted the experience of other jurisdictions and observed that, in practice, the differences between these two approaches may not be as clear-cut as they appear in summary form. The commission favoured the second approach, but it chose not to make the implementation of this approach the focus of its recommendations. Instead, the commission proposed the creation of a dedicated body of inquiry to study the issue. This special inquiry body's mandate would be to examine all government agencies in British Columbia and their functions, on an individual basis, with the limited purpose of reaching rational conclusions on whether rules of procedural fairness can or ought to be applied to them. Such a body would also be free of the constraints that limit the commission itself from performing this role.

Further Developments

The report's recommendations have not been implemented by legislation.