LAW REFORM COMMISSION OF BRITISH COLUMBIA

c/o British Columbia Law Institute
1822 East Mall, University of British Columbia
Vancouver, British Columbia V6T 1Z1
Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: bcli@bcli.org
Website: www.bcli.org

Backgrounder

LRC 18—Report on A Procedure for Judicial Review of the Actions of Statutory Agencies

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At the time this report was written, the procedure for challenging administrative action or inaction by government agencies was governed by a very old and complicated set of legal rules. As a result of these rules, many otherwise meritorious cases have been rejected on technical grounds. This report examines proposed legislative reforms intended to modernize and simplify the procedure for applying to court for judicial review. It focuses primarily on the longstanding common-law prerogative writs of certiorari, prohibition, and mandamus, and on the use of declarations and injunctions as a means to obtain judicial review. The report does not address the substantive law of judicial review.

After a brief introduction, the report sets out the current position of the law in British Columbia in four chapters. These chapters discuss each of the prerogative writs under review as well as declarations and injunctions. Each chapter discusses the grounds for applying for a writ, declaration, or injunction, the procedure to be employed, any limitations on a writ, declaration, or injunction, standing to apply, judicial discretion, government immunity, and the relationship to other remedies.

The report first examines the writs of certiorari and prohibition. These writs are the most common devices used to ensure that those exercising statutory powers do so according to the law. The main difference between them is that prohibition may be invoked earlier in the process than certiorari. An application for certiorari is appropriate when a decision made pursuant to a statutory power has been made in error; an application for prohibition is appropriate before the decision has been made.

The report then examines the writ of mandamus. This writ is used to compel the performance of a public duty owed to a person legally entitled to require the performance of the duty in question. Mandamus is most commonly granted where the agency or person required to perform the duty has refused to perform it. Mandamus has also been granted where the performance of the duty has been coloured with impropriety.

The next two chapters of the report deal with declarations and injunctions. Unlike the prerogative writs, declarations were originally thought to be inappropriate for use against administrative abuse. At common law, no procedure existed for the making of declaratory judgments. A statutory procedure was created in England in the mid-nineteenth century. This procedure was ultimately adopted in British Columbia. Declarations have proved to be most useful in testing the validity of subordinate legislation. Like declarations, injunctions are used for many purposes not necessarily connected with administrative law. Injunctions originated as a private law remedy. In administrative law, injunctions have tended to be used in the same manner as the writs discussed above and as declarations.

After a brief chapter discussing the relationship of the prerogative writs to declarations and injunctions, the report concludes by setting out the commission's proposals for reform. The commission's main recommendation is that a single procedure should apply to all writs discussed in the report, as well as declarations and injunctions, when they are applied for as remedies in connection with judicial review of statutory agencies. There are also a number of recommendations aimed at providing a procedural framework for the report's main recommendation.

Further Developments

See *Judicial Review Procedure Act*, S.B.C. 1976, c. 25 (now *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241).