Impact of the *Charter* on Administrative Law: Same Game—New Rules

John FRECKER*

Before engaging in any discussion regarding the impact of the *Charter* on administrative law, it helps to have a clear sense of what the term "administrative law" encompasses. All law relating to the legal structuring and control of administrative action by public authorities can arguably be characterized as administrative law. This includes that body of law relating to internal governance of public institutions and to public accountability of those who exercise state authority, which can loosely be subsumed under the rubric of public law. It also includes the law governing issues of regulatory compliance, which crosses over into the realm of criminal law. And, to the extent that administrative law engages issues of jurisdictional competence of government agencies, at both the federal and the provincial level, to act in particular areas or to execute their authority in particular ways, it enters more into the realm of what is generally described as constitutional law. When administrative law is looked at in this broad, all-encompassing way, the impact of the *Charter* has been enormous. In a sense, every way in which the *Charter* has affected the relationship between individuals and public authorities could be characterized as an impact on administrative law.

In a much narrower sense, administrative law is synonymous with judicial control of administrative action; the content of administrative law relating to practice and procedure before administrative tribunals and to judicial review of administrative actions. It is the impact of the *Charter* on administrative law, defined in this narrower sense, that is the focus of my presentation today.

---

* Mr. Frecker is the founder and president of Legistec Inc., an Ottawa-based consulting firm specializing in matters relating to regulatory compliance and to the design, structure and operation of administrative tribunals.

Jones & DeVillars, in their textbook *Principles of Administrative Law,* provide a clear description of the state of administrative law in Canada prior to implementation of the *Charter* in 1982:

> "Prior to 1982, Administrative Law was largely a collection of common law rules which the courts developed to supervise the exercise of delegated authority by the bodies or persons upon whom such powers have been conferred. These rules were developed over a long period of time, and on an *ad hoc* basis. Before the Charter there was no constitutional grant to the courts of the power of judicial review of administrative action. The exercise of such authority was simply assumed to be an inherent part of the judge's job of enforcing and interpreting legislation. The judge-made rules ensured that subordinate agencies acted within jurisdiction, that they did not make errors of law, and that they followed a fair procedure when affecting rights. Behind these judge-made rules, however, was the fundamental notion that the elected legislative branch was supreme and could make or unmake any laws (subject, of course, to the structural constraints arising chiefly out of the federal nature of Canada…). Before 1982, the courts had no power to consider the validity of federal or provincial laws passed by legislators within their jurisdiction. Administrative Law was concerned with the formal validity and procedural propriety, not the substantive justness of legislation.[1]"

In principle, the *Charter* has expanded the scope for judicial review by establishing constitutionally entrenched authority for the courts to disallow actions taken by state agents that infringe substantive rights guaranteed under the *Charter*. But this does not appear to have radically altered the way in which judicial review cases are conducted. My fellow panelist, Anne Wallace, suggests that the *Charter* has had surprisingly little impact on the development of administrative law in Canada over the past twenty years. She notes that the *Charter* has had a significant impact on the development of substantive law applied by administrative tribunals in areas such as immigration and human rights. But developments on the pure administrative law side, which is more focused on procedural fairness, have continued to be rooted in classic common law principles, including the rules of natural justice. Ms. Wallace notes that section 2(b) of the *Charter* has been directly applied in a way that has made tribunal

---

[1] D. Jones & A. DeVillars, *Principles of Administrative Law*, 3d ed. (Toronto: Carswell, 1999) at 46.

proceedings considerably more open. However, most other significant developments in administrative law over the past twenty years, including developments with respect to the issues of pre-hearing disclosure and tribunal independence, have been based primarily on classic common law principles and application of the rules of natural justice.

The likelihood of *Charter* challenges may be relatively rare, for the reasons outlined by Ms. Wallace. However, the mere possibility that such challenges may arise has forced governments to be much more attentive to issues of procedural and substantive fairness in legislation. All proposals for legislative change, including all proposed new regulations must be vetted to ensure that they are *Charter*-compliant before they can be sent to Cabinet for approval. In this sense, the influence of the *Charter* on administrative law has been anticipatory rather than remedial.

I submit that the *Charter* has also affected the way in which administrative tribunals function and the way in which tribunal members view their responsibilities. For example, within the tribunal with which I am most familiar, the Immigration and Refugee Board, *Charter* requirements clearly limit how far the Board can go in streamlining the refugee determination process to deal with the growing inventory of claims. According to the Supreme Court of Canada decision in *Singh* v. *Minister of Employment and Immigration*[2], the principles of fundamental justice require that refugee claimants be given an oral hearing in any case where credibility is in issue. For all practical purposes, this means that an oral hearing is required in any case where the outcome is not immediately obvious based on the evidence presented. This *Charter* requirement is the defining element in the structure and operation of the refugee determination process in Canada. More summary procedures that might enable the IRB to deal with cases more quickly are placed beyond consideration. I do not have first-hand experience with any other tribunals, but I suspect that the *Singh* decision has had a similarly profound impact on the way in which they deal with any cases where the right to life, liberty and security of persons before them may be adversely affected.

I submit that existence of the *Charter* has led to a significant shift in focus in administrative law. In the pre-*Charter* era, the State could essentially operate without justifying its actions to the courts. Any action by a public authority, duly authorized by the federal Parliament or by any

---

[2] *Singh* v. *Minister of Employment and Immigration*, [1985] 1 S.C.R. 177 [hereinafter *Singh*].

provincial legislature within its proper sphere of jurisdiction, had the force of law and could only be challenged on procedural or jurisdictional grounds. With the introduction of the *Charter*, there must now be a balancing of interests by way of an assessment of the State's interests and the rights of individuals who are affected by the actions of public authorities. The *Charter* has elevated to the level of constitutionally entrenched rights a collection of legal and political rights that previously existed only in the common law and were subject to being ousted by legislative fiat.

The courts have assumed a new and very significant role in the balancing of State interests and the *Charter*-protected individual rights. Judicial review of administrative action, which is the classic remedial mechanism of administrative law, has taken on new importance because it has become a crucial forum in which the courts exercise their greatly expanded authority as final arbiter between State interests and individual rights. The judicial review game is nominally being played in the same way. The terminology and the procedures remain relatively unchanged. But the endgame or possible outcome of the judicial review process has fundamentally changed. The courts now have the authority to declare any legislation that infringes rights protected under the *Charter* void and of no effect. It is not a question of the *Charter* having somehow had a subtle, incremental impact on administrative law. It has simply altered the scope of administrative law and has made judicial review a potentially much more potent vehicle for the protection and advancement of individual rights.

I am not in any position to say how frequently or infrequently lawyers raise *Charter* arguments in the context of judicial review applications. Even if such arguments are raised relatively infrequently, as Ms. Wallace suggests, they are always potentially available. Lawyers must be mindful of the possibility that *Charter*-based rights may be affected by administrative proceedings. In any case where a client's *Charter*-protected rights have been violated, a lawyer would be negligent not to at least consider the possibility of raising the alleged *Charter* violations as an issue on judicial review. This means that lawyers should routinely address potential *Charter* issues as a standard part of their preparation for judicial review applications. In the absence of any *Charter* considerations, the classic analysis required for judicial review applications is focused on possible procedural and jurisdictional defects. The analysis required to identify possible *Charter* violations is focused on the specific rights

protected under the *Charter*. As a consequence, the way in which lawyers approach administrative law cases has necessarily changed.

As previously noted, section 7 of the *Charter* has significantly affected the way in which proceedings before administrative tribunals are conducted, at least in cases involving possible infringement of the right to life, liberty and security of the person. Beyond the fact that parties to such cases must be given an oral hearing before the responsible decision-maker, it is arguable in certain circumstances that section 7 of the *Charter* also requires that they be provided with publicly funded legal representation. I would now like to examine the implications of the 1999 Supreme Court of Canada decision in *New Brunswick (Minister of Health and Community Services)* v. *G.(J.)*[3] in this regard.

To set the context for this discussion, it is useful to summarize the key aspects of this particular case. The appellant in the case was an indigent mother whose three children were temporary wards of the Minister of Health and Community Services in New Brunswick. She wanted to contest an application by the Minister to extend the temporary custody order for a further six months. The legal aid plan in New Brunswick specifically excluded coverage for custody cases of this sort.

The Supreme Court of Canada held that possible continued loss of custody of the children could constitute a serious interference with mother's psychological integrity. The Minister's application thereby threatened to restrict the appellant's "right to security of the person" guaranteed under section 7 of the *Charter*. In accordance with the principles of fundamental justice, a parent whose right to security of the person is threatened must have an opportunity to present her case effectively before the responsible decision-making authority for the custody hearing to be fair.

Considering the complex nature of the custody proceedings, the important interests in issue, the appellant's lack of financial resources, and her limited ability to participate effectively in the proceedings without assistance, the Court held that section 7 of the *Charter* required that the appellant be provided with publicly funded legal counsel. The Court found that the proposed budgetary savings to be realized from denying legal aid in Crown custody cases were minimal and the additional cost of providing

---

[3] *New Brunswick (Minister of Health and Community Services)* v. *G.(J.),* [1999] 3 S.C.R. 46.

publicly funded counsel was insufficient to constitute a justification within the meaning of section 1 of the *Charter*. This is the first instance where the Supreme Court has extended the right to publicly funded legal counsel to a civil law case that did not include any criminal or penal element.

On its face, this decision is limited to very specific circumstances—a situation where a state agency is seeking custody of children and a natural parent of the child wants to challenge that application. Both Chief Justice Lamer, writing for the majority, and Madam Justice L'Heureux-Dubé, in concurring reasons, held that the protection of the *Charter* is only engaged when the protected rights are threatened by the actions of a state agent. They further held that the threatened infringement of protected rights must be serious. A remedy will not be provided to cure every conceivable infringement of rights guaranteed under the *Charter*. The right to publicly funded legal counsel only arises in circumstances where issues are complex and the parent who wishes to challenge the custody application lacks the education, linguistic and communication skills to be able to participate effectively in the hearing without assistance. There is also the further implicit qualification that the parent contesting the custody application must lack sufficient financial resources to retain counsel on his or her own. However the general principles upon which the *G.(J.)* decision is based are open to broader application.

Basic logic dictates that the right to publicly funded legal counsel might also be triggered in other instances where rights to life, liberty or security the person are seriously threatened, if the other three elements (financial need, complexity of proceedings, and limited capacity of the affected person) are also present. The unanswered question is what sorts of other circumstances might these conceivably be.

In February 2002, the Canadian Bar Association published a report in which a number of leading legal scholars commented on the current state of the law regarding access to legal aid in Canada.[4] Summarizing observations from the various background papers, the author of the report, Vicki Schmolka, argues that the *G.(J.)* case may mark a significant expansion of the constitutional right to legal counsel in matters where individual rights are affected by state actions. While the *G.(J.)* decision itself relates to a family law matter, proceedings where state actions have a

---

[4] V. Schmolka, ed., *The Right to Publicly-Funded Representation in Canada: Making the Case,* (Ottawa: Canadian Bar Association, 2002).

potentially profound impact on individual rights are the core subject matter of administrative law.

Joseph Arvay, in one of the background papers to the CBA report, notes that the courts have already found that section 7 interests may arise when the following rights are threatened:[5]

- The right to make important fundamental life choices;
- The right to establish where to establish one's home;
- The right to nurture one's child and make decisions on upbringing;
- The right to privacy with respect to intimate issues;
- The right to be free from physical punishment or suffering or the threat thereof;
- The right to be free from impairments or risks to health;
- The right to free from threats to psychological integrity;
- The right to be free from "overlong subjection to the vexations and vicissitudes of pending criminal accusation";
- The right to control over one's body and to choose medical treatment.

Nicolas Bala, in another background paper to the CBA report, suggests that the right to publicly funded legal counsel could arguably be extended to a number of other proceedings in the family law area, such as adoption cases in which rights of a biological parent may be terminated, actions by persons in state care for contact with siblings, and cases involving issues of paternity.[6]

In addition to these cases, which are generally not seen as falling within the domain of administrative law, Margaret McCallum, in another background paper to the CBA report, identifies a number of situations

---

[5] J.J. Arvay, "Constitutional Right to Legal Aid", in Schmolka, ed., *supra* note 4, 35E at 37E.

[6] N. Bala, "The Constitutional Right to Legal Representation in Family Law Proceedings", in Schmolka, ed., *supra* note 4 at 57E-81E.

where the right to publicly funded legal counsel might arguably extend to proceedings before administrative tribunals.[7] These include:

- Proceedings regarding involuntary committal of the mentally ill;
- Immigration inquiries that might lead to deportation, especially where there is cogent evidence that the life or liberty of the person concerned is in danger in the home state;
- Disciplinary hearings in federal or provincial institutions;
- Parole hearings;
- Appeals against termination of social welfare benefits;
- Expropriation proceedings;
- Applications to evict tenants from public housing;
- Proceedings to revoke a licence to carry on the occupation by which a person earns a livelihood.

Refugee status determination hearings immediately come to mind as another obvious type of case where the right to publicly funded counsel might arise under the principles articulated by the Supreme Court in the *G.(J.)* decision. The Court has already held in *Singh* v. *M.E.I.*[8] that possible deportation to a country where a refugee claimant allegedly faces persecution constitutes a potential threat to the claimant's right to life, liberty and security of the person, which engages section 7 of the *Charter*. As a consequence, refugee claims must be determined in accordance with the principles of fundamental justice. The great majority of refugee claimants are totally unfamiliar with the Canadian legal system. When they appear before the immigration and Refugee Board, most claimants are unable to communicate effectively in either of Canada's two official languages. The process for determining refugee claims can be quite complex, involving as it does application of domestic Canadian law and

---

7 M. McCallum, "Is there a Constitutionally-Protected Right to Legal Aid in Canada?", in Schmolka, ed., *supra* note 4 at 143E.

8 *Singh*, s*upra* note 2.

international agreements. And most refugee claimants lack the financial resources to retain counsel on their own.

Other cases in the immigration context that may engage section 7 interests include detention review hearings, appeals of removal orders, and appeals of decisions denying applications to sponsor spouses or dependant children for landing as permanent residents in Canada.

As the Court was careful to note in the *G.(J.)* decision, it is not appropriate to make a blanket rule that applies across the board. Each case must be assessed individually. First, one must determine if the proceeding in question entails a serious threat to the right to life, liberty or security of the person. Then one must determine whether the nature of the administrative proceeding and the limited capacity of the person whose rights are affected make it imperative that the person be represented by counsel to be able to participate effectively in the proceeding. Finally, one must determine whether the person concerned can afford to retain counsel on their own or whether they already have access to legal aid.

At the present time, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan do not provide legal aid coverage for immigration and refugee proceedings. The provincial governments in Ontario and British Columbia, two provinces where a significant number of immigration and refugee cases are heard, have indicated their intention to reduce legal aid coverage for such cases. It can be anticipated that unavailability of legal aid, particularly for refugee claimants, will give rise to test cases under the *Charter* to establish what are the minimum requirements for a fair hearing. If the decision of the Supreme Court of Canada in the *G.(J.)* case is extended to cover immigration and refugee matters, it would have a profound impact on how proceedings under the new *Immigration and Refugee Protection Act* unfold.

In a 2001 decision,[9] the Federal Court of Appeal considered and rejected an application to apply the *G.(J.)* decision in an immigration-related case where the appellant, a Convention refugee from Ethiopia, claimed a right to state-funded counsel. The processing of the appellant's application for landing as a permanent resident was halted when the Minister of Citizenship and Immigration alleged that he had committed war crimes outside of Canada and was thus a member of an inadmissible

---

[9] *A.B.* v. *Canada (Minister of Citizenship and Immigration)*, [2001] A.C.F. No 14 (QL). Downloaded from http://www.canlii.org/ca/cas/fca/2001/2001fca10034.html.

class under provisions of the Immigration Act. The matter was referred for an inquiry before an IRB Adjudicator. Depending on the outcome of the inquiry, the appellant was liable to be deported from Canada.

The appellant had received a certificate from Legal Aid Ontario covering up to sixteen hours preparation time for the inquiry plus whatever actual hearing time might be required for the inquiry. The certificate was refused by the lawyer representing the appellant because the time allowed for case preparation did not appear to be adequate. Since the matter was within federal jurisdiction, the appellant made application to the Federal court for an order directing the government to pay for the legal counsel required for the inquiry.

In a unanimous decision, written by Mr. Justice Evans, the Court noted that under the Canada Health and Social Transfer payments to the provinces, the federal government provides part of the funding used for legal aid. However, constitutional responsibility to provide funds for legal representation in individual cases is normally borne by the relevant province. According to the Court,

> "[I]t would be unwarranted to impose on the federal government an additional constitutional obligation to provide legal aid when funding is already provided under a provincial scheme to which the federal government has contributed."[10]

This judgement neatly sidesteps the underlying issue of whether the decision in *G.(J.)* gives rise to a substantive right to publicly funded legal representation in immigration proceedings. The issue is complicated by the fact that Legal Aid Ontario had approved funding for the particular case. The appellant's contention in the *A.B.* case was that no lawyer could provide the required representation within the sixteen-hour limit set by Legal Aid Ontario. As a consequence, the case did not directly address the issue of whether refugee claimants have a right to publicly funded counsel. This issue will be engaged much more clearly if provinces withdraw legal aid coverage for immigration proceedings on the grounds that such proceedings are entirely within federal jurisdiction, as governments of Ontario and British Columbia have officially indicated they intend to do. Should this happen, the issue of whether there is a right to state-funded legal representation in such proceedings may have to be reconsidered by the Federal Court.

---

[10] *Ibid*.

Another area where I can foresee arguments being made that there is a right to publicly funded counsel is in relation to applications for disability benefits under the Canada Pension Plan and under provincial Workers' Compensation legislation. Persons suffering from severe disabilities who lack the financial resources to retain counsel often find themselves at a significant disadvantage when pursuing their claims for a disability pension. The application and appeals process is meant to be simple and user-friendly, but in contentious cases where the nature and extent of an alleged disability is not clear-cut, the process can be quite complex. The applicant may have to assemble medical reports from a number of specialists. Experts engaged by the pension authority may contradict this medical evidence. Conflicting jurisprudence from supervisory courts has to be analysed and convincing and cogent arguments have to be put forward as to why the applicant's condition falls within the statutory criteria to qualify for disability benefits.

A disproportionate number of persons applying for disability benefits have limited education.[11] As a result, they have greater need for assistance from counsel than might be otherwise the case. For many applicants, the benefits available under a disability pension, while quite limited in absolute terms, are profoundly important to their financial and psychological well being. Without a pension, the individuals may be unable to pay for basic aids needed to enjoy even a modicum of the mobility that everyone else in Canadian society takes for granted. It must be acknowledged that the resulting constraints on mobility are imposed primarily by physical disablement rather than by state action relating to pension entitlement. However, one can envisage skilled counsel developing the argument that the implications of the outcome of such cases are so profound for the persons concerned, that the right to a fair hearing guaranteed under section 7 of the *Charter* is engaged. Applying the criteria articulated by the Supreme Court in the *G.(J.)* case, it can easily be argued that the persons concerned need access to publicly funded legal representation to have any reasonable prospect of presenting their case effectively.

It is not for me to say whether applications for publicly funded counsel or other *Charter*-based applications made in the context of administrative law proceedings have any prospect for success in specific cases. I simply

---

[11] This may well be a reflection of the fact that people with limited education are more likely to end up in physically demanding occupations that lead to disabilities over the long term.

note these examples to further illustrate the basic point that I wish to make, which is that entrenchment of fundamental rights under the *Charter* has opened the door to a line of argument in administrative law cases that simply did not exist prior to 1982. The game has changed, even if the courts continue to give a fairly restricted reading to the substantive scope of *Charter* rights. While administrative law continues to be rooted in common law principles of natural justice and jurisdictional competence, the *Charter* has had a significant impact on the way in which cases are prepared and argued and the way in which proceedings before administrative tribunals are conducted. Notwithstanding Ms. Wallace's assertion to the contrary, I would also submit that *Charter* has had a significant impact on the way in which lawyers approach judicial review applications, even if thy raise *Charter* arguments in only a minority of cases.

Charter values have also affected the perception that tribunal members have regarding their own role within the legal system. A clear illustration of this can be seen in the debate over the issue of tribunal independence as it has unfolded over the past twenty years. Prior to the ruling from the Supreme Court of Canada in the *Ocean Port*[12] case, tribunal members of my acquaintance who gave any thought to the issue felt that there was a clear trend in decisions emanating from the Supreme Court of Canada to extend application of the principles enunciated in section 11(d) of the *Charter* to proceedings involving the adjudication of rights, particularly in relation to alleged administrative offences. The *Ocean Port* decision, which draws a fundamental distinction between administrative tribunals and the courts, has effectively reversed that trend. But the dismay with which the *Ocean Port* decision has been received in the tribunal community simply serves to highlight the fact that tribunal members had come to believe that *Charter* principles require them to have a degree of independence from the executive branch of government similar to that enjoyed by the regular courts.

A brief recap of the case law relating to tribunal independence may help to clarify why people in the tribunal community came to believe that the need for adjudicative independence applies to administrative tribunals as well as to the regular courts. The Supreme Court of Canada decision in *Valente*[13] in 1985 marked the opening round in this saga. In that case, the

---

[12] *Ocean Port Hotel Ltd.* v. *British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781.

[13] *Valente* v. *The Queen*, [1985] 2 S.C.R. 673.

court set out the three indicia of judicial independence that is guaranteed under section 11(d) of the *Charter*. These are security of tenure and financial security for the individuals exercising judicial authority, and institutional independence of the tribunal with regard to matters of administration bearing directly on the exercise of the judicial function. This decision was made specifically with reference to provincial courts that deal with offences under the *Criminal Code*.

In a series of subsequent decisions, the Supreme Court elaborated on its interpretation of the three elements identified in *Valente*. In *R.* v. *Généreux*[14], the Supreme Court held that section 11(d) of the *Charter* applied to proceedings before a General Court Martial established as an ad hoc tribunal under the *National Defence Act.* Like *Valente, Généreux* was limited to a tribunal that was dealing with criminal offences.

In *Canadian Pacific Ltd*. v. *Matsqui Indian Band*[15], the Supreme Court addressed application of principles of judicial independence in the context of tribunals set up by First Nations bands to consider the issue of tax assessments for lands located within reserves. In separate opinions that differed in their conclusion, both Lamer, C.J. and Sopinka, J.A. held that the principles set out in *Valente* apply to administrative tribunals, notwithstanding the fact that these tribunals do not fall within the ambit of section 11(d) of the *Charter* since they are not hearing cases involving "someone charged with an offence". Quoting from his earlier judgement in *Généreux,* Chief Justice Lamer noted that

> "The status of a tribunal must guarantee not only its freedom from interference by the executive and legislative branches of government but also any other external force, such as business or corporate interests or other pressure groups."[16]

Chief Justice Lamer went on to qualify his conclusion regarding application of the *Valente* principles to administrative tribunals by noting that the test for institutional independence must be applied in light of the functions being performed by the particular tribunal at issue.

---

[14] *R.* v. *Généreux*, [1992] 1 S.C.R. 259.

[15] *Canadian Pacific Ltd.* v. *Matsqui Indian Band*, [1995] 1 S.C.R. 3.

[16] *Ibid*., at 42.

> "The requisite level of institutional independence (*i.e.*, security of tenure, financial security and administrative control) will depend on the nature of the tribunal, the interests at stake, and other indices of independence such as oaths of office.
>
> In some cases, a high level of independence will be required. For example, where the decisions of a tribunal affect the security of the person of a party (such as the Immigration Adjudicators in Mohammad, *supra*), a more strict application of the Valente principles may be warranted."[17]

On balance, statements made by Lamer, C.J. and Sopinka, J.A. in *Matsqui* left the clear impression that, even though section 11(d) *per se* is limited to tribunals hearing cases involving persons charged with an offence, the principles of judicial independence and impartiality set out in section 11(d) of the *Charter* are applicable in the administrative law context, particularly to administrative tribunals that make decision affecting rights protected under section 7 of the *Charter*. Through the latter half of the 1990s, this notion was widely accepted as a given in the tribunal community.

The decision from the Supreme Court of Canada in the *Ocean Port* case has put an end to any notion that administrative tribunals are functionally distinct from the executive branch of government and that they require a degree of independence from the executive that mimics the independence enjoyed by the courts. But the fact remains that the discourse on the issue of tribunal independence and application of section 11(d) that has taken place since the *Charter* was adopted in 1982 has had a significant impact on the way in which tribunal members have come to define their role within the legal system.

CONCLUSION

I agree fully with Ms. Wallace's conclusion that the *Charter* has had relatively limited impact on substantive administrative law as that is commonly understood. Over the past twenty years, most of the landmark cases that have set out new guiding principles in administrative law have been decided based on interpretation of classic principles of natural justice, rather than by reference to specific provisions in the *Charter of*

---

[17] *Ibid*., at 51.

Rights and Freedoms. However, the *Charter* has cast a long shadow over the entire enterprise of administrative law. It affects the way in which cases before administrative tribunals are prepared and argued and the way in which tribunal proceedings are conducted, especially in cases that arguably engage rights protected under section 7 of the *Charter*.

The entrenchment of individual rights under the *Charter* has also affected the perception that members of administrative tribunals have of their own role within the legal system. Rather than seeing themselves as an adjunct of the executive branch of government, in many cases they have come to view their role as arbiters of disputes between individuals and the administration. Over the past twenty years, there has been a marked tendency to downplay the *administrative* role of administrative tribunals and to place greater emphasis on their quasi-*judicial* role. The Supreme Court decision in the *Ocean Port* case marks a sharp reversal in that trend. It remains to be seen whether *Charter* arguments will continue to be raised to support the case for a more judicialized role for administrative tribunals.