JUDICIAL REVIEW: INSTITUTION AND BACKGROUND

THE EXPERIENCE OF ENGLAND AND WALES

D. G. T. WILLIAMS

(GREAT BRITAIN)

Address to the confenrece on judicial review of administrative rulings

CANADIAN INSTITUTE FOR THE ADMINISTRATION OF JUSTICE

MONTREAL

NOVEMBER 10-11-12, 1982

JUDICIAL REVIEW: INSTITUTION AND BACKGROUND

THE EXPERIENCE OF ENGLAND AND WALES

The courts in England and Wales exercise judicial review of the actions of a highly-centralised administration serving a population of around 50 million people.[1] They are not, any more than the courts in Scotland and Northern Ireland, competent to question the validity of primary legislation;[2] they have acquired relatively little legislative endorsement of the extent to which they review the activities of central, local and other public officials and agencies; and they are often reminded of their constitutional vulnerability, as in Lord Devlin's warning that "judicial interference with the executive cannot for long very greatly exceed what Whitehall will accept."[3]

One of the ironies of the last twenty years is that increased judicial assertiveness in administrative matters - reflected in such cases as Padfield v Minister of Agriculture, Fisheries and Food,[4] Congreve v Home Office,[5] Secretary of State for Education and Science v Tameside Metropolitan Borough Council,[6] and Bromley London Borough v Greater London Council[7] - has coincided with a consistent rejection by some officials and politicians of any extension of judicial control into so-called "political" matters. Discussions of the pros and cons of a Bill of Rights have been bedevilled by the fear that such an instrument "would risk compromising the necessary independence and impartiality of the judiciary by requiring the judges to work in a more political arena"[8]; hesitation about judicial review of Scottish and Welsh legislation affected the debates on devolution;[9] proposals for a new type of devolution for Northern Ireland have been coupled with an avoidance of judicial review;[10] and distrust of the judges as arbiters of sensitive issues is evident in such fields as parliamentary privilege,[11] govern-

mental secrecy[12] and even public order.[13] The judges themselves are acutely aware of such sentiments, and they sometimes expressly disavow any intention to stray beyond the traditional limits of judicial review of administrative action.

The wariness of the judges is seen in the three recent decisions of considerable importance. In Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd., Lord Roskill in the House of Lords emphasized how important it is "that the courts do not by use or misuse of the weapon of judicial review cross that clear boundary between what is administration, whether it be good or bad administration, and what is an unlawful performance of the statutory duty by a body charged with the performance of that duty"[14]; in Bromley London Borough Council v Greater London Council, Oliver L.J. in the Court of Appeal admitted that "it behoves the court to be very wary indeed of interfering with an exercise of discretion by an elected body"[15] and Lord Diplock in the House of Lords went out of his way emphatically to deny that their Lordships were concerned with anything more than "the legality of the G.L.C. action in reducing bus and tube fares in Greater London;[16] and in Chief Constable of the North Wales Police v Evans, the limits of judicial review were stressed in the House of Lords by Lord Hailsham[17] and by Lord Brightman.[18] From time to time counsel may be tempted to remind judges of their limited jurisdiction, though the suggestion in one case that if the court intervened "it would not be long before the powers of the court would be called in question" was interpreted by Lord Denning as perhaps "only a piece of advocate's licence." Outside court the judiciary is frequently taken to task for alleged excess of jurisdiction on its own part.[20]

The variety of subject-matter coming before the courts in the exercise

of judicial review, however, suggests that there is still ample opportunity for litigants and their advisers and the judges themselves to adapt the principles of review to new demands and in response to new pressures. Inevitably there are "pockets" of subject-matter which, at least for a few years, arise time after time in the courts. These presently include immigration, amid controversy as to the desirability of establishing a formal right of appeal to the courts[21]; administrative action under the Housing (Homeless Persons) Act 1977, a statute which operates in another controversial and sensitive area of decision-making[22]; and various aspects of criminal procedure at the level of magistrates' courts.[23] A recent example of a series of cases is provided by challenges to coroners' verdicts or rulings: in R v Hammersmith Coroner, Ex.p. Peach[24] the Court of Appeal overruled the coroner on the question of whether a jury was required and in R v West Yorkshire Coroner, Ex.p. Smith[25] the Court of Appeal questioned the coroner's decision not to hold an inquest into the death of a young nurse in Saudi Arabia.

Many of the cases, even in familiar subject-matter, raise new and often unexpected issues. The Commission for Racial Equality has only recently lost a drawn-out struggle over a proposed investigation of the housing policy of Hillingdon London Borough Council as to immigrants arriving at Heathrow airport,[26] and the decision of the House of Lords touched inter alia on the audi alteram partem rule of natural justice. In two cases heard in 1981 the Court of Appeal was obliged to consider difficult and elusive factors underlying police discretion in the context of public order, the first concerned with processions and the second with non-violent protest on private property.[27] An area where intervention by the courts can be unusually controversial is that of constituency boundaries, but this has not deterred members of the Labour Party from instituting legal proceedings in August 1982 to

prevent the Boundary Commissioners for England from presenting their latest recommendationsto the Home Secretary.[28] As if to inject even the Falklands events into judicial review, litigation arose in the summer of 1982 on the claim that a subsidiary company of an American corporation had lost a valuable contract with the Severn-Trent Water Authority because of dislike of the policy of the United States in the early stages of the South Atlantic conflict.[29]

To equip them for the vagaries and contortions of judicial review, the courts have had little direct assistance from Parliament. There has been no burst of legislation and institutional change akin to the imaginative developments in Australia undertaken in the wake of Kerr, of Bland, and of Ellicott.[30] Actual and proposed developments elsewhere have nonetheless encouraged a greater readiness on the part of English lawyers to evaluate the experience of other jurisdictions both in case-law and in other aspects of administrative law. This new awareness is especially helpful in the evaluation of such areas as independent complaints procedures, formal administrative adjudication, and subordinate legislation, all of which are important and complex subjects on their own as well as influencing the scope of judicial review of administrative action.

The adoption of independent complaints procedures on the model of the ombudsman dates from the events leading up to the Parliamentary Commissioner Act 1967, and subsequent legislation has extended the model to the National Health Service and to local government. The powers of the various ombudsmen are rarely considered by the courts[31] but there is little doubt that the courts stand to lose potential work because of, first, the overlapping jurisdiction of the ombudsman[32] and, secondly, advantages of informality and low cost offered by the ombud-

smen.[33] An "outstanding example" of an interaction between investigations by the Parliamentary Commissioner in the United Kingdom and adjudication by the courts is seen in the TV licence case, Congreve v Home Office[34], but such instances are unlikely to arise frequently. What is becoming clearer each year is "that many problems of administrative law which are in the course of receiving judicial answers are at the same time coming before the Ombudsman, there to be answered for his own purposes. For the time being ... parallel provisions exist, each having certain advantages and disadvantages relative to the other."[35]

Formal administrative adjudication - if such a term is appropriate to cover tribunals and inquiry procedures - is extremely extensive in the United Kingdom and has been the subject of two official inquiries resulting in reports which appeared fifty and twenty-five years ago respectively.[36] Since the Franks Report appeared in 1957 the number of tribunals has continued to grow, so much so that the "total number of cases heard by tribunals in 1978 was six times the number of contested civil cases that were disposed of at trial before the High Court and County Courts."[37] The use of public local inquiries, often as a preliminary stage to Ministers' decisions on planning and compulsory acquisition of land, continues widely; and the legal problems of so-called "big public inquiries" into projects of environmental concern present the courts with some of their most uncomfortable issues in subsequent litigation.[38] The decision of the House of Lords in the well-known case of Local Government Board v Arlidge[39] which was decided just before the outbreak of the First World War in the context of housing and public health, may be contrasted with the recent decision of the House of Lords in Bushell v Secretary of State for the Environment[40] arising in the context of motorway developments: each demonstrated, seventy years apart, the difficulty of applying the rules of

natural justice in areas of ministerial policy and decision-making.

From most tribunals established by central government there is an appeal on law to the courts, and this means that the jurisdiction to review for error of law on the face of the record is nowadays confined to fewer and fewer inferior courts and tribunals.[41] The decision in R v Crown Court at Knightsbridge, Ex.p. International Sporting Club (London) Ltd.[42] is a rare example of a general ruling on the scope of error of law on the face of the record. Through appeal or review, however, the courts frequently have to determine what is or is not a question of law.[43] From most ministerial decisions arrived at after an inquiry or hearing there is - subject to strict time-limits[44] - a statutory avenue of challenge in the courts, based on a formula (originally introduced in the Housing Act 1930) which encompasses what has been described as "statutory ultra vires"[45] and may indeed have produced an area of judicial review with its own remedy and its own scope.[46] The courts, then, are authorised by statute or otherwise to exercise a measure of control in most areas of administrative adjudication, but it is a jurisdiction that they wisely handle with care; and a move towards closer judicial scrutiny of the merits of tribunal and similar decisions would doubtless require express sanction from Parliament and probably a new institutional structure.[47]

Procedural regularity in tribunals and inquiries is protected by the efforts of the courts (through the application of principles of natural justice or fairness[48]), by the adoption of procedural rules as a form of subordinate legislation,[49] and through the advisory and consultative work of the Council on Tribunals.[50] The Council on Tribunals was created in 1958 under the terms of legislation following the Franks Report, and its role in the context of formal administrative adjudica-

tion is to a greater or lesser extent performed by standing bodies in New Zealand, Australia and the United States.[51] The existence of such bodies and the concern to formulate procedural rules or codes serve to remind us once again that the courts have in effect a residual responsibility. In practice surprisingly few cases come before the English courts on issues of natural justice arising from the functioning of tribunals.[52]

The English courts also have no more than a residual responsibility in the area of subordinate legislation. Given the scale of subordinate legislation and the continuing constitutional problems associated with subordinate legislation,[53] this is at first sight surprising. The challenging of local byelaws was, after all, once a regular source of litigation in England; but the cases became a mere trickle after some of the more contentious subject-matter was transferred to national legislation and after the adoption of "model" byelaws helped to bring some element of consistency into local legislation.[54] In central government, despite a trenchant assertion by Lord Diplock of the availability of judicial review,[55] the cases have always tended to be few; and it is significant that the Joint Committee on Statutory Instruments is expressly charged with the power to consider whether particular instruments are ultra vires.[56]

The variations in judicial responses - as to ombudsman procedures, tribunals and inquiries, and subordinate legislation - underline the difficulty of setting out the grounds of review (and even the remedies) as if they were applicable across the board in the control or supervision of administrative action. With specific reference to the new "application for judicial review" in England and Wales, Lord Hailsham L.C. recently commented: "Since the range of authorities, and the circum-

stances of the use of their power, are almost infinitely various, it is of course unwise to lay down rules for the application of the remedy which appears to be of universal validity in every type of case."[57] This statement, although made with the rules of natural justice in mind, is relevant in all areas of judicial review.

The Scope of Judicial Review

The apparently straightforward cases in administrative law often conceal difficult issues of statutory interpretation but add little to the "general principles" of the subject. In the House of Lords in 1980 the "reasonably incidental" rule was called into play in a case involving a local scheme to provide free or assisted places at independent schools but it was not central to the decision.[58] The general principles, when they arise, may simply provide additional illustrations of their application, whether in the area of procedural requirements (with the troublesome mandatory/directory distinction)[59] or in the area of "fettering discretion" through delegation, policies, contract and possibly estoppel.[60] In other cases the court may be adapting or extending a well-established principle, as in a recent case where the Divisional Court considered the requirements of natural justice in relation to a policy on rate support grants adopted by the Minister.[61]

The operation of estoppel in administrative law raises "a bundle of difficult legal issues,"[62] as we have been reminded in the belatedly-reported case of Western Fish Products Ltd. v Penwith District Council[63] where the Court of Appeal purported to impose severe limits on the doctrine.[64] In the later case of Rootkin v Kent County Council[65], which arose from a dispute over a child's entitlement to free bus

travel to and from school, Lawton L.J. declared that "it is a general principle of law that the doctrine of estoppel cannot be used against local authorities for the purpose of preventing them from using the statutory discretion which an Act of Parliament requires them to use."[66] In effect the courts have signalled a retreat from some of the judicial assertions (notably Lord Denning's) in the past, and it is by no means clear that this is a good thing. Professor Bradley has insisted that "there must be a means of dealing with the mistakes that are bound to occur and sometimes cause hardship or injustice" and gone on to suggest that legislation may now be required to allow a remedy.[67]

Meanwhile, as estoppel withers, natural justice flourishes - either in traditional garb or enveloped in concepts of fairness or fair play. The emergence or re-emergence of "fairness" in the past fifteen years has been noted and discussed in numerous cases and publications in several common law jurisdictions,[68] with recognition that both natural justice and fairness are variable in content[69] and even the suggestion that fairness "need not be treated as confined to procedural matters."[70] Recent decisions of the Court of Appeal of New Zealand demonstrate the subtleties and surprises of natural justice with regard to environmental matters and with regard to the proceedings of a Royal Commission.[71] Both these cases raised issues of bias and predetermination as well as issues of the audi alteram partem rule.[72]

The strains of judicial review have of late been highlighted most of all - at least in England and Wales - in the area of abuse of discretion. Indeed, in one case McNeill J. - with reference to a challenge to budgetary actions taken by the Greater London Council - commented that it is "a matter of real concern that the divisional court, exercising the power of judicial review, was increasingly ...

being used for political purposes superficially dressed up as points of law." His Lordship, after pointing out that a particular issue in the case "was for the ballot box and not the court," added that the "impropriety" of seeking to make political capital in the courts could not be over-stressed.[73] Shortly after McNeill J'sjudgement, the Divisional Court in Pickwell v London Borough of Camden[74] declined to hold that the council, in reaching a local settlement with manual workers on strike, had"ignored relevant material, were guided by improper motives, or acted in such a way as no reasonable council could properly act." Likewise, some weeks before McNeill J's judgement, the Divisional Court in R v Merseyside County Council, Ex p. Great Universal Stores Ltd.[75] had upheld the exercise of discretion by the Council.

All three cases followed in the wake of the much-publicised decision of the House of Lords in Bromley London Borough Council v Greater London Council[76] where - in part with reference to the alleged fiduciary duty owed by councils to their ratepayers[77] - it was ruled that the Greater London Council had acted outside power in providing for a steep reduction in bus and tube fares. In the Court of Appeal Oliver L.J. spoke of his conclusion that the Council's deliberations "were throughout dominated and controlled by what was conceived of as a pre-existing commitment to force through an arbitrary fare reduction regardless of cost and consequence which effectively precluded any proper or impartial consideration of the proposal"[78] and Lord Brandon in the House of Lords said that "the decision of the GLC to persist in the implementation of the election policy on public transport, after it had become apparent that the originally contemplated cost to the ratepayers of the London boroughs would be nearly doubled, was not a decision which the Council, directing itself properly in law, could reasonably have made."[79] Perhaps the unanimous rulings in the Court of Appeal and the House of

Lords are surprising both in resurrecting the concept of a fiduciary duty to ratepayers and in apparently underplaying the Kruse v Johnson[80] doctrine of benevolent interpretation of the actions of elected bodies. At first sight the case seemed to herald a new burst of judicial intervention in the affairs of local authorities, but subsequent developments suggest that the courts are more circumspect in applying principles of judicial review than critics often allow; and it is surely to be welcomed that several judges are especially guarded in adopting dicta from such cases as Associated Provincial Picture Houses Ltd. v Wednesbury Corporation.[81]

Ministers of the Crown have not been exempt from challenge in the courts.[82] In Norwich City Council v Secretary of State for the Environment,[83] however, the Minister beat off a strong attack in the Court of Appeal relating to his intervention in the sale of council-owned houses: the judges recognised the political overtones of the case but stressed that the court's duty "is solely to construe the relevant provisions of the Act and to determine whether the minister's exercise of his powers ... was lawful or not."[84] Indeed, in the important case of Re Toohey; Ex parte Northern Land Council[85] in the High Court of Australia, Gibbs C.J. referred to the Tameside[86] case in a passage where he saw "no convincing reason ... for limiting the ordinary power of the courts to inquire whether there has been a proper exercise of a statutory power by giving to the Crown a special immunity from review ... The courts have the power and the duty to ensure that statutory powers are exercised only in accordance with law."[87] In the same case Mason J. spoke of "a contrast between the readiness of the courts to review a statutory discretion and their reluctance to review the prerogative "[88] and he went on to say that "there is much to be said"[89] for Lord Denning's view that the exercise of a particular prerogative power "can be

examined by the courts just as any other discretionary power which is vested in the executive."[90] More generally - again with reference to English as well as Australian decisions - Wilson J. commented that the "steadily expanding rôle of the state in recent decades provides increasing occasion for the individual citizen to feel aggrieved as the result of administrative action with a consequent need to ensure that the principles of administrative law relating to judicial review of such action remain sufficiently flexible to meet the requirements of justice without imposing unreasonable restraints on the freedom of government action."[91]

Another area where Ministers may be involved is that of "public interest immunity" (which is the term now used in England for "Crown Privilege"[92]). The decision of the House of Lords in Burmah Oil Co. Ltd. v Bank of England[93] involved the direct application of the principles of Conway v Rimmer[94] to the official deliberations of Ministers and officials; and soon afterwards in Williams v Home Office[95] McNeill J. rejected a claim of public interest immunity relating to official documents arising in the sphere of prison administration. There have been numerous recent cases relevant to public interest immunity,[96] but the Burmah Oil and Williams decisions would seem to be particularly important in administrative law because of the apparent readiness of the courts to delve, when appropriate, into the inner sanctums of central government. In Burmah Oil Lord Scarman had been encouraged by "the trend towards inspection and disclosure to be found both in the United States and in Commonwealth countries,"[97] and that trend was certainly reinforced by the later decision of the Court of Appeal of New Zealand in Environmental Defence Society Inc. v South Pacific Aluminium Ltd.[98] Inevitably there are signs of hesitation and even apprehension on the part of judges when invited to override

executive claims of confidentiality, and some of the misgivings have been forcefully expressed by Lord Denning in the very recent case of Air Canada v Secretary of State for Trade[99] concerning ministerial documents relating to the formulation of government economic policy. The Court of Appeal there unanimously overruled a decision by Brightman J. overriding the claim of immunity, and Lord Denning (in rejecting the claim for "open government" by the "airlines of the world") said "that the true administration of justice did not always mean ascertaining the truth of what had happened."[100] It is perhaps significant that the Government, accounting to Counsel for the Minister, saw the case as "the most important" since Conway v Rimmer; and its implications may be recognised well outside the ambit of public interest immunity.

A discussion of the scope of judicial review could not be attempted without at least a passing reference to the Anisminic issue as to whether errors of law invariably go to jurisdiction. The judicial view is anything but unanimous,[2] but for must practical purposes it is difficult to disagree with Lord Denning's view in Pearlman that the distinction between errors within and without jurisdiction is so fine "that in truth this High Court has a choice before it whether to interfere with an inferior court on a point of law."[3] As for another source of controversy in administrative law - the distinction between "void" and "voidable" - Lord Hailsham LC has rejected "the use of rigid legal classifications" and Lord Keith, with regard to the employment of the distinction in the area of procedural requirements, said that "use of the expressions 'void' and 'voidable', which have a recognised significance and importance in certain fields of the law of contract, is to be avoided as inappropriate and apt to confuse."[5] Similar warnings have been expressed in the past, of course, and one suspects

that the void-voidable distinction - on which Professor Wade wrote so effectively several years ago[6] - will, like the judicial-administrative distinction, emerge from time to time in the case-law of administrative law.

The Remedies in Judicial Review

The procedural aspects of judicial review have achieved a new prominence since the adoption in England and Wales of the new "application for judicial review"[7] For a time it seemed as if remedies were likely to be overshadowed by problems about the scope of review; but it now appears that a silent revolution has taken place, not least through judicial initiative, in securing a much more expeditious and less expensive means of securing redress through the courts of law.[8] The changes involved are part and parcel of what Lord Hailsham LC has called "the rapidly developing jurisprudence of administrative law;"[9] and they have contributed significantly to that progress towards, in Lord Diplock's words, "a comprehensive system of administrative law that I regard as having been the greatest achievement of the English courts in my judicial lifetime."[10]

One of the threshold problems of seeking a remedy is whether judicial review is excluded or not by legislation. Exclusion of review was, of course, the underlying problem in the Anisminic case, and some years ago there was considerable discussion about time-limit clauses (in the context of purported exclusion) assessed against the background of Anisminic;[11] and one writer has recently offered a comparative analysis of the manner in which courts in Canada, Australia and New Zealand approach privative clauses designed to exclude or restrict judicial review.[12] Not surprisingly it is difficult, especially on a comparative basis, to identify consistent themes - other than the well-known

reluctance of the courts to be excluded.

Another threshold problem of the first importance is that of locus standi.[13] In orthodox proceedings for injunctions and declarations it is evident that the courts are not yet prepared to widen the older rules on standing: the judgement of Warner J. in Barrs v Bethell[14] confirms, on the basis of authorities considered, "that a ratepayer, leaving aside proceedings for prohibition, certiorari and mandamus, or now for judicial review, and leaving aside the audit procedure under the Local Government Act 1972, cannot sue a local authority or its members without the consent of the Attorney General unless he can show either an interference with some private right of his or an interference with a public right from which he has suffered damage peculiar to himself."[15]

In the context of applications for judicial review the outstanding case is Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd.,[16] the so-called Fleet Street Casuals (or Mickey Mouse) decision. Those seeking "overall symmetry" in the judgements of their Lordships should, we are assured, "be warned that they may find the experience as frustrating and perplexing as grappling with the Rubik Cube."[17] There was unanimity on some matters, including "the tying of standing to legality"[18] with the corollary that only in the clearest of cases should leave to apply be refused on grounds of lack of standing. There was less agreement on the question as to whether there is now a uniform test of standing for all the remedies (certiorari, prohibition, mandamus, injunctions and declarations) available on an application for judicial review. The effect of the decision may well be to widen the criteria of standing in cases that matter or in cases where (for reasons of justiciability

or otherwise) the courts feel at ease; but there is ample room for disagreement on a case-by-case basis.

As for the general implementation of the new application for judicial review, there is also a measure of judicial disagreement on the availability of the private remedies as an alternative to the application procedures. In Irlam Brick Co. Ltd. v Warrington Borough Council[19] in February 1982, Woolf J. said that when declarations were sought against the conduct of a public body, so that persons beyond the immediate parties were affected, proceedings should be brought by way of the application for judicial review rather than by writ: the Order 53 procedure "led to more judicious disposal of the case, it saved costs, and it had the safeguard that from the time of the application for leave to bring the proceedings until their conclusion, they were under the supervision of a judge." This view was echoed by Dillon J. in Bousfield v North Yorkshire County Council[20] early in March; but later in the same month Peter Pain J. in Derbyshire v Mackman[21] took a rather more guarded view, holding that to sue by writ or originating summons for a declaration when the alternative of Order 53 was available was not of itself an abuse of the process of the court. In this ruling the learned judge declined to follow either the decision of the Court of Appeal in Uppal v Home Office[22] or the ruling of Goulding J. in Heywood v Hull Prison Board of Visitors,[23] drawing support instead from the Court of Appeal's views in Falco v Crawley Borough Council.[24] But in the Court of Appeal,[25] in allowing an appeal from Peter Pain J.'s judgement, it has been more recently stated (in Lord Denning's words) that the application for judicial review had "important safeguards" not available in ordinary actions and that it should be the normal recourse in all cases of public law where a private person was challenging the conduct of a public authority or

a public body, or of anyone acting in the exercise of a public duty." Lord Denning's two colleagues in the Court of Appeal were less convinced; and the issue remains open.[26]

Irrespective of the exclusive nature or otherwise of the new application for judicial review, however, the opportunity has (so it seems) been taken to mould the remedy into a much more effective avenue of judicial control than was originally expected, so much so that "the judicial review of administrative action has perceptibly taken on altogether an entirely new shape and meaning."[27] The procedures, both at the ex parte and the inter partes stages, have been streamlined (largely through changes of which only practitioners were initially aware) and a "new framework has been construed in which a new jurisprudence on administrative law can flourish."[28] It is perhaps too early to assess the full significance of the changes, but to have made judicial review both speedier and less expensive may have profound implications for the future extent of judicial control of the administration.

Some changes have not taken place. Despite the views of the Law Commission[29] and of Lord Diplock,[30] no provision has been made to allow for "interim declarations" within the application for judicial review. Likewise there is no possibility of claiming damages for ultra vires action, unless there has been a tort or other wrong onto which a claim for damages could be attached.[31] Progress in either area would require legislative action.

Meanwhile, in the ordinary course of judicial review, the courts are obliged to made numerous rulings: on the duty of applicants to make full disclosure of matters likely to effect the court's discretion in granting leave,[32] on the need for promptness in applying for judicial

review,[33] and on the general factors influencing the discretion of the court.[34]

Conclusions

In 1968 - the year of Padfield, Conway v Rimmer, and Anisminic - Professor Wade delivered a lecture entitled "Crossroads in Administrative Law."[35] Many lawyers might accept that the courts took the right turning at that stage, but the new road has been winding and often treacherous. English lawyers, however, have been encouraged by and have benefited from the experience of other jurisdictions within the Commonwealth; and the likely problems stemming from membership of the European Community suggest that the experience needs to be drawn from civil law as well as common law jurisdictions.[36]

Despite apparent reluctance on the part of legislators and officials to seek major legislative changes in administrative law the English courts have made significant progress in adapting older concepts to new circumstances. Since the Second World War the courts have at various stages extended the concept of jurisdiction in the supervision of administrative tribunals; revised and adapted the idea of error of law on the face of the record; insisted on maintaining access to the courts even in the face of powerful exclusionary clauses; introduced a measure of judicial control over claims of public interest immunity; explored the possibilities of investigating all errors of law under the guise of review; vigorously denied assertions of unfettered discretionary power under statute; restored the older ambit of natural justice and given natural justice a new vitality through concepts of fairness; gradually relaxed the rules of standing; shown a distaste for rigid classifications in administrative law; been prepared to venture into

unfamiliar areas of administrative action; blown hot and cold on estoppel; and (as we have seen) been more than ready to extend and entrench the new application for judicial review.

Is the time now ripe, then, for an itemisation in statute of the various grounds of review? This would seem to be particularly attractive, since it would balance the recent legislation on remedies and possibly provide an opportunity for completing a process of reform and change in matters of procedure and access. Nevertheless, there are those who might feel that it would risk unnecessarily restricting the courts if the grounds of review (even with open-ended headings) were to be enumerated in statutory form. The policy considerations behind any attempt to legislate on damages or estoppel or the Attorney-General's role in relator actions would in any event militate against speedy legislation. Moreover it is questionable whether the case-law as yet allows a secure enough base for legislation purporting to adopt or exclude such concepts as the alleged "fiduciary duty" owed to ratepayers or the competence of the courts to question the exercise of prerogative discretions; and the hesitation shown by the courts in, for instance, applying natural justice to public local inquiries or in applying the familiar mandatory-directory distinction as to express procedural requirements or in considering delegated legislation indicates that a bland enumeration of headings of review would do little to resolve the difficulties in actual cases or to ease the task of lawyers advising their clients.

The courts are also, it could be argued, in the process of coming to terms with particular problems ; such as the scope of control (through appeal and review) over tribunals and inquiries; the overlapping jurisdiction of ombudsmen; the emergence of new or expanded areas of concern such as environmental law and social security law; and the

underlying constitutional problem of seeking to reconcile judicial remedies through the courts with political remedies through Parliament and local authorities. There are so many uncertainties in constitutional law - including membership of the European Community, adherence to the European Convention on Human Rights, problems and possibilities of devolution within the United Kingdom, and the role of a second chamber in Parliament - that it would be unusually difficult to erect a systematic scheme of administrative law on secure foundations. However, there are those who argue strongly that, precisely because of that difficulty, it is desirable to adopt a careful statutory enumeration of headings of judicial review - first to confirm what has been achieved in the past and, secondly, to settle one way or another some current areas of judicial disagreement. Statutory enumeration, in other words, would have a symbolic and a practical purpose. It remains to be seen which view prevails, but in the meantime there is every scope for continued imaginative and innovative developments in judicial review of administrative action.

D.G.T. Williams

September 1982

FOOTNOTES

1. On the different legal systems for England and Wales, Scotland, and Northern Ireland respectively, see Report of the Royal Commission on the Constitution, Cmnd. 5460 of 1973. The House of Lords acts as the supreme court in civil litigation arising in all three systems.

2. See Manuel v Attorney-General, Times Law Report, 4 August 1982, dismissing an appeal from the decision of Sir Robert Megarry V-C (Times Law Report, 14 May 1982). On earlier litigation concerning the Canada Act, see R v Secretary of State for Foreign and Commonwealth Affairs, Ex. P. Indian Association of Alberta, [1982] 2 All ER 118, C.A.

3. Lord Devlin, "The courts and the abuse of power," The Times, 27 October 1976, an article written in the wake of the House of Lords decision in Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014, HL.

4. [1968] AC 997, HL.

5. [1976] QB 629, CA.

6. [1977] AC 1014, HL.

7. [1982] 1 All ER 129, HL.

8. The protection of Human Rights in Northern Ireland (Standing Advisory Commission on Human Rights), Cmnd. 7009 of 1977, at 6.04. See also, Report of the Royal Commission on the Constitution, Cmnd. 5460 of 1973, para. 308.

9. See Cmnd. 5460, para. 529; Our Changing Democracy: Devolution to Scotland and Wales, Cmnd. 6348 of 1975, paras. 63-64 and the Supplementary Statement, Cmnd. 6348 of 1976, para. 14.

10. See Northern Ireland Constitutional Proposals, Cmnd. 5259 of 1973, para. 55. Judicial review of Stormont legislation had been possible under the Government of Ireland Act 1920.

11. Recommendations of the Select Committee on Parliamentary Privilege: Third Report from the Committee of Privileges, Session 1976-77, House of Commons 417 (14 June 1977), para. 8.

12. Open Government, Cmnd. 7520 of 1979, para. 55. For a discussion of the role of the judiciary in matters of official information, see M.L. Friedland, National Security: The Legal Dimensions (A Study prepared for the McDonald Commission of Inquiry into certain activities of the Royal Canadian Mounted Police) (1979), at 117-21.

13. Review of the Public Order Act 1936 and related legislation, Cmnd. 7891 of 1980, para. 57.

14. [1981] 1 All ER 93, 119-20. This so-called Fleet Street Casuals (or Mickey Mouse) case is concerned with standing.

15. [1982] 1 All ER 129, 149.

16. |1982| 1 All ER 129, 159.

17. |1982| 1 WLR 1155, 1160.

18. Ibid, at 1174.

19. Congreve v Home Office |1976| QB 629. Counsel later apologised for his remarks (see The Times, 9 December 1975). An exchange between judge and counsel occurred during arguments in Merricks v Heathcoat-Amory |1955| Ch. 567: see The Times, 30 April 1955, cited in R.F.V. Heuston, Essays in Constitutional Law (2nd Edn., 1964) at 55.

20. See J.A.G. Griffith, The Politics of the Judiciary (London: Fontana, 2nd Edn., 1981).

21. See Review of Appeals under the Immigration Act 1971 (a discussion document), Home Office (1981).

22. See David Hughes, Public Sector Housing Law (London: Butterworths, 1981), ch. 6 ("Homelessness").

23. For a recent example, see R v Folkstone and Hythe Juvenile Court, Ex p. R (a juvenile) |1981 3 All ER 840, QBD.

24. |1980| 2 All ER 7. The deceased person had died during a demonstration in Southall in April 1979.

25. Times Law Report for 31 July 1982. The Court of Appeal overruled the Divisional Court decision at |1982| 2 All ER 801. Other recent cases on coroners include R v HM Coroner for the County of London, Ex p. Rubinstein, Times Law Report for 24 February 1982, Glidewell J, and R v South London Coroner, Ex p. Thompson, Times Law Report for 9 July 1982. The latter concerned the deaths of 13 young people in a fire at Deptford.

26. R v Commission for Racial Equality, Ex p. Hillingdon London Borough Council, Times Law Report for 18 June 1982, HL, affirming the Court of Appeal at |1981| 3 WLR 520.

27. Kent v Metropolitan Police Commissioner, Times Law Report for 14 May 1981; R v Chief Constable of the Devon and Cornwall Constabulary |1981| 3 All ER 826.

28. See The Times, 7 August 1982; 21 August 1982; 27 August 1982 (article by David Butler); and 1 September 1982 (leading article on "Boundaries of the Law").

29. See Daily Telegraph, 28 July 1982, for a report of proceedings before Woolf J. It was alleged that the Authority had acted unreasonably in putting "national considerations above everything else".

30. See John Griffiths, "Legislative Reform of Judicial Review of Commonwealth Administration Action" (1978) Federal Law Review 42, which refers (at 42-43) to the Report of the Commonwealth Administrative Review Committee (the Kerr Report), to the Interim and Final Reports of the Committee on Administration Discretions (the Bland Reports), and to the Report of the Committee of Review of Prerogative Writ Procedures (the Ellicott Report). See also a series of articles in (1981) Federal Law Review 1-186.

31. K.J. Keith, "Judicial Control of the Ombudsman?" (1982) 12 Victoria University of Wellington Law Review (VUWLR) 299, 323. This article looks at experience in Australia, Canada and the United Kingdom.

32. S.A. de Smith, Judicial Review of Administrative Action (4th Edn., Ed. J.M. Evans) (London: Stevens 1980) at 59-60.

33. K.J. Keith, supra note 31, at 313-14.

34. |1976| QB 629, CA. See Note, |1976| 35 Cambridge Law Journal 193-96.

35. A.W. Bradley, "The Role of the Ombudsman in Relation to the Protection of Citizens' Rights" (1980) 39 Cambridge Law Journal 304, 381-82.

36. Report of the (Donoughmore) Committee on Ministers' Powers, Cmd. 4060 of 1932; Report of the (Franks) Committee on Administrative Tribunals and Enquiries, Cmnd. 218 of 1957. See D.G.T. Williams, "The Donoughmore Report in Retrospect" (1982) 60 Public Administration 273.

37. Report of the Royal Commission on Legal Services, Cmnd. 7648 of 1979, para. 15.1. Judicial recognition of the bewildering range of tribunals can be found in Attorney-General v British Broadcasting Corporation |1981| AC 303, an interesting case on contempt of court.

38. See D.G.T. Williams "Public Local Inquiries - Formal Administrative Adjudication" (1980) International and Comparative Law Quarterly 701.

39. |1915| AC 120.

40. |1981| AC 75. The immense difficulties faced in any inquiry into major projects affecting the environment are visibly shown in the Report (by Mr Justice Thomas R. Berger of British Columbia) of the Mackenzie Valley Pipeline Inquiry (entitled Northern Frontier, Northern Homeland CP32-25/1977)

41. The jurisdiction, revived or established in R v Northumberland Compensation Appeal Tribunal, Ex P. Shaw |1952| 1 KB 338, CA, remained important in the area of social security until very recently: see e.g. R v Preston Supplementary Benefit Appeal Tribunal, Ex p. Moore |1975| 2 All ER 807, CA.

42. |1981| 3 All ER 417, QBD. The case was concerned with the extent of the "record," but there are interesting comments on (a) what would have happened if the judge in the Crown Court had refused to state his reasons (see 423) and (b) whether error of law alone (whether or not on the record) would have taken the inferior court outside its jurisdiction (see 426-27).

43. See ACT Construction Ltd. v Customs and Excise Commissioners |1982| 1 All ER 84, HL, affirming the Court of Appeal at |1981| 1 All ER 324 and Drake J. at |1979| 2 All ER 691.

44. See R v Secretary of State for the Environment, Ex p. Ostler

44. (contd)
|1977| QB 122 and articles by Gravells, (1978) 41 Modern Law Review 383; Alder (1980) 43 Modern Law Review 670; Leigh, |1980| Public Law 34.

45. See H.W.R. Wade, Administrative Law (4th Edn; Oxford: Clarendon Press, 1977) at 577 ff.; S.H. Bailey, C.A. Cross, J.F. Garner, Cases and Materials in Administrative Law (London: Sweet & Maxwell, 1977) at 460 ff.

46. See Williams, supra note 38.

47. See Sir Leslie Scarman, English Law: The New Dimension (London: Stevens, 1974; the Hamlyn Lectures for 1974), Part III.

48. See R v Oxfordshire Local Valuation Panel, Ex p. Oxford City Council, Times Law Report for 19 January 1981, QBD (with regard to local valuation courts); Fairmount Investments Ltd. v Secretary of State for the Environment |1976| 1 WLR 1255, HL (with regard to a public local inquiry in a case of compulsory acquisition of land).

49. See generally the Franks Report, Cmnd. 218 of 1957 and, in the specific context of highway inquiries, Report of the Review of Highway Inquiry Procedures, Cmnd. 7133 of 1978.

50. See The Functions of the Council on Tribunals (Special Report by the Council), Cmnd. 7805 of 1980.

51. Ibid, Appendix 6.

52. There appear to be rather more in the context of public local inquiries.

53. See generally, D.C. Pearce, Delegated Legislation in Australia and New Zealand (Butterworths, 1977). For a striking indication of the concern still felt about subordinate legislation in the United Kingdom, see First Special Report from the Joint Committee on Statutory Instruments, Session 1977-78, House of Lords 51, House of Commons 169 (18 January 1978). The Joint Committee was set up after the Report from the Joint Committee on Delegated Legislation, Session 1971-72, HL 184, HC 475 (3 August 1972).

54. See J.F. Garner, Administrative Law (London: Butterworths, 1979) at 85-92. A recent case on the validity of a byelaw (with an added and important element of natural justice) is Cinnamond v British Airports Authority |1980| 2 All ER 368. See also, R v British Airports Authority, Ex p. Wheatley, Times Law Report for 24 May 1982, QBD.

55. Hoffman-La Roche v Secretary of State for Trade |1975| AC 295.

56. See HL 51, HC 169 (Session 1977-78), supra note 53, para. 21. Recent cases touching on the validity of regulations include R v London Committee of deputies of British Jews, Ex p. Helmcourt Ltd., Times Law Report for 16 July 1981, CA.

57. Chief Constable of the North Wales Police v Evans |1982| 1 WLR 1155, 1160.

58. Manchester City Council v Greater Manchester Metropolitan County Council, Times LR for 10 July 1980, HL, affirming CA at (1980) 78 Local Government Reports 71. The "reasonably incidental" rule was applied to the formation of a trust.

59. Jim Evans, "Mandatory and directory rules" 1 Legal Studies 227, (1981) Recent cases include R v Croydon Justice, Ex p. Lefore Holdings Ltd. |1981| 1 All ER 520, 524-25; but see especially London & Clydeside Estates Ltd. v Aberdeen District Council |1979| 3 All ER 876, HL; A.J. Burr Ltd. v Borough of Blenheim |1980| 2 NZLR 1.

60. These areas are considered in de Smith, op. cit., note 32, at 298-322.

61. R v Secretary of State for the Environment, Ex p. Brent London Borough Council |1982| 2 WLR 693. On "policy" issues, see also Attorney-General Ex rel. Tilley v Wandsworth London Borough Council |1981| 1 All ER 1211, and Docherty v South Tyneside Borough, Times Law Report for 3 July 1982 (taxi licence policy).

62. See A.W. Bradley, "Administrative Justice and the Binding Effect of Official Acts" in Current Legal Problems 1981 (Ed. Lord Lloyd of Hampstead and Roger Rideout) (London: Stevens, 1981), ch. 1. at 1.

63. |1981| 2 All ER 204.

64. Reference was made (|1981| 2 All ER at 221) to Maritime Electric Co. Ltd v General Dairies Ltd, a decision of the Judicial Committee of the Privy Council on appeal from the Supreme Court of Canada.

65. |1981| 2 All ER 227.

66. Ibid, at 234. See Note, |1981| 40 Cambridge Law Journal 198 .

67. Supra, note 62, at 20-21.

68. See e.g. Steven Churches, "Justice and Executive Discretion in Australia" |1980| Public Law 397; G.D.S. Taylor, "Fairness and Natural Justice" (1977) 2 Monash Law Review 191: D.J. Mullan, "Natural Justice and Fairness ; Substantive as well as Procedural Standards for the Review of Administrative Decision-Making?" (1982) 27 McGill LJ 250.

69. See e.g. Payne v Lord Harris of Greenwich |1981| 2 All ER 842, 845, CA (concerned in part with reasons as an aspect of natural justice) and especially the judgement of Cooke J. in Daganayasi v Minister of Immigration |1980| 2 NZLR 130, 141.

70. Daganayasi v Minister of Immigration |1980| 2 NZLR at 149, per Cooke J. But see the words of Lord Brightman in Chief Constable of the North Wales Police v Evans |1981| 1 WLR 1155, 1174.

71. Coalition for Rational Economic and Environmental Development in New Zealand (CREEDNZ) Inc. v Governor-General |1981| 1 NZLR 172; Re Erebus Royal Commission (No. 2) |1981| 1 NZLR 618. See also the decision of the Court of Appeal in New Zealand (dated 30 July 1982) into the Commission of Inquiry into the Thomas case.

72. Recent cases on bias include Re S (a barrister) |1981| 2 All ER 952, Visitors of the Inner Temple; R v Sandwich JJ, Ex p. Berry, Times Law Report for 20 October 1981; and J.J. Steeples v Derbyshire County Council |1981| Journal of Planning Law 582.

73. R v Greater London Council, Ex p. Royal Borough of Kensington and Chelsea, Times Law Report for 7 April 1982, QBD.

74. Times Law Report for 30 April 1982. See leading article in The Times, 30 April 1982, commenting that "an atmosphere in local affairs when so many people are prepared to go to the constitutional limits, or to challenge such brinkmanship, is not an entirely healthy one."

75. Times Law Report for 18 February 1982. Woolf J. in this case indicated that he would in any event have refused to exercise his discretion to grant a remedy.

76. |1982| 1 All ER 129.

77. Frequent reference was made to Roberts v Hopwood |1925| AC 578 and Prescott v Birmingham Corporation |1955| Ch. 210, CA. See generally, D.G.T. Williams "The Control of Local Authorities" in Welsh Studies in Public Law (Ed. J.A. Andrews; Cardiff: University of Wales Press, 1970), ch. 8. References to the "fiduciary" duty are made in the Camden case.

78. |1982| 1 All ER at 149.

79. Ibid, at 182.

80. |1898| 2 QB 91, 99.

81. |1948| 1 KB 223, 230. See comments in the GLC fares case and in the Camden case (especially in the judgement of Ormrod LJ); see also, Chief Constable of the North Wales Police v Evans |1982| 1 WLR 1155, HL.

82. See R v Secretary of State for the Environment Ex p. Brent London Borough Council |1982| 2 WLR 693.

83. |1982| 1 All ER 737.

84. Ibid, at 747-48, per Kerr L.J.

85. (1980) 38 ALR 439.

86. Secretary of State for Education and Science v Tameside Metropolitan Borough Council |1977| AC 1014. HL.

87. (1980) 38 ALR at 457-58. See also Stephen J. at 465-66, Mason J. at 482, Aickin J. at 491 and Wilson J. at 529. See also CREEDNZ v Governor-General |1981| 1 NZLR 172, supra note 71.

88. (1980) 38 ALR at 479.

89. Ibid, at 480.

90. This view was expressed by Lord Denning MR in Laker Airways Ltd. v Department of Trade |1977| QB 643, see Note, |1977| 36

90. (contd)
Cambridge Law Journal 201, 204.

91. (1980) 38 ALR at 529.

92. The term "Crown privilege" was abandoned as a consequence of judicial comments in Rogers v Home Secretary |1973| AC 388, HL, on which see (1973) Annual Survey of Commonwealth Law (London: Butterworths, 1974) at 120-22.

93. |1980| AC 1090. See Note, |1980| 39 Cambridge Law Journal 1.

94. |1968| AC 910, HL.

95. |1981| 1 All ER 1151. This case was followed by Williams v Home Office (No.2) |1981| 1 All ER 1211, QBD, which in its turn led to the contempt proceedings culminating in Home Office v Harman |1982| 1 All ER 532, HL. See also, Williams v Home Office (No.2) |1982| 2 All ER 564. CA, where an appeal against the decision at first instance ||1981| 1 All ER 1211| was dismissed on procedural grounds.

96. See e.g., Neilson v Laugharne |1981| QB 736 (police documents); Hehir v Commissioners of Police of the Metropolis |1982| 2 All ER 335, CA (police documents); Buttes Gas and Oil Co. v Hammer (No.3), Occidental Petroleum Corp. v Buttes Gas and Oil Co. (No.2) |1981| QB 223, CA (the public interest and international comity); Campbell v Tameside Metropolitan Borough Council |1982| 2 All ER 791, CA (documents sought in litigation involving an attack on a teacher by a schoolchild); Inland Revenue Commissioners v Rossminster Ltd. |1980| AC 952 (investigations).

97. |1980| AC at 1145 . Lord Scarman referred to Nixon v United States 418 US 683 (1975) and Sankey v Whitlam (1978) 21 ALR 505 in the Supreme Court of the United States and the High Court of Australia respectively.

98. |1981| NZLR 153 . See Note, |1982| 41 Cambridge Law Journal 11. In the New Zealand case, Cooke J. noted (at 156) that the court had "not previously had to decide a question relating to Cabinet or Executive Council papers."

99. Times Law Report for 25 September 1982, CA. See also, Daily Telegraph, 25 September 1982.

100. Lord Denning referred particularly to the aftermath of Williams v Home Office |1981| 1 All ER 1151, supra note 95.

1. Anisminic Ltd. v Foreign Compensation Commission |1969| 2 AC 147. In "Administrative Law: Judicial Review Revisited" |1974| 33 Cambridge Law Journal 233, 243, Lord Diplock suggested that the decision of the House of Lords in Anisminic (reversing a "timorous Court of Appeal" which included Diplock LJ) had rendered "obsolete" the "technical distinction" between errors of law which go to "jurisdiction" and errors of law which do not.

2. See Pearlman v Keepers and Governors of Harrow School |1979| QB 56, CA; Re Racal Communications Ltd. |1981| AC 374; and South East Asia Fine Bricks Sdn. Bhd. v Non-Metallic Mineral Products

2. (contd)
Manufacturing Employees Union |1981| AC 363, PC.

3. |1979| QB at 70 . See R v Surrey Coroner Ex p. Campbell |1982| 2 WLR 626, QBD.

4. London & Clydeside Estates Ltd. v Aberdeen District Council |1979| 3 All ER 876, 883.

5. Ibid, at 894.

6. H.W.R. Wade "Unlawful Administrative Action: Void or Voidable" (1967) 83 Law Quarterly Review 499, (1968) 84 LQR 95.

7. See de Smith, op.cit. note 32 , ch. 12; and, for more recent developments, see Note on the Supreme Court Act 1981, |1981| Public Law 452 (s. 31 of the Supreme Court Act puts into statutory form much of R.S.C. Ord. 53 on the application for judicial review). The 'application for judicial review' was originally introduced as a result of the Law Commission's Report on Remedies in Administrative Law, Cmnd. 6407 of 1976.

8. See especially Louis Blom-Cooper, "The New Face of Judicial Review: Administrative Changes in Order 53" |1982| Public Law 250.

9. London & Clydeside Estates Ltd v Aberdeen District Council |1979| 3 All ER 876, 883.

10. Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd. |1981| 2 All ER 93, 104.

11. See articles in (1978) 41 Modern Law Review 383; (1980) 43 MLR 173, 670; |1980| Public Law 34.

12. G.L. Peiris, "Statutory Exclusion of Judicial Review in Australian, Canadian, and New Zealand Law" |1982| Public Law 451.

13. See Peter Cane, "The Function of Standing Rules in Administrative Law" |1980| Public Law 303; Justice-All Souls Discussion Paper, Review of Administrative Law in the United Kingdom (April 1981) at 52-58, where there is an "instructive" account of the position in Scots law (paras. 162-63) as well as English law.

14. |1982| 1 All ER 106.

15. Ibid, at 114. The case is interesting because of its careful consideration of cases on the alleged "fiduciary duty" owed to ratepayers and because of Warner J's distinction (at 119-20) between an action of the kind before him and an application for judicial review. The Attorney-General did, after Warner J's judgement, give his fiat for relator proceedings to begin: see The Times, 17 July 1981. Reports of other attempts, in different circumstances, to secure the Attorney-General's name are reported in The Times, 11 July 1981 (at 3) and 8 June 1981 (at 4). A case to be considered along with Barrs v Bethell is J.J. Steeples v Derbyshire County Council |1981| Journal of Planning Law 582.

16. |1981| 2 All ER 93, HL. See Peter Cane, "Standing, Legality and the limits of Public Law (The Fleet Street Casuals Case)" |1981|

16. (contd)
Public Law 322; Susan M. Nott, "Locus Standi and Order 53" (1981) New Law Journal 1104; Note in |1982| 41 Cambridge Law Journal 6.

17. Note, (1982) 41 Cambridge Law Journal at 7 (J.E. Griffiths).

18. |1981| Public Law at 339 (Peter Cane). In the Justice-All Souls Report, supra note 13, it is said (para. 157) that the effect of the decision "appears to be that in many cases the court will give leave to apply for judicial review so that a matter may be investigated in enough depth to determine whether the applicant has a sufficient interest in relation to the substantive merits of the case."

19. Times Law Report for 5 February 1982. The case concerned the validity of planning notices.

20. Times Law Report for 4 March 1982. The case incidentally raised issues of error of law on the face of the record and the use of declarations: on which topic see Peter Cane, "A Fresh Look at Punton's Case" (1980) 43 Modern Law Review 266.

21. Times Law Report for 16 March 1982.

22. Times Law Report for 11 November 1978.

23. |1980| 3 All ER 594.

24. |1980| QB 460, 476.

25. O'Reilly v Mackman, Times Law Report for 1 July 1982. The safeguards are (a) the applicant needed leave to apply; (b) it was necessary to have a special order for discovery; and (c) the use of cross-examination was kept within strict bounds.

26. Ackner L.J. denied that Order 53 provided an exclusion remedy in the control of the exercise of administrative power; and O'Connor L.J. could not accede to the submission that judicial review was the only way of challenge. See also, R v British Broadcasting Corporation Ex p. Lavelle, Times Law Report for 8 July 1982, where Woolf J. held that the application for judicial review was not appropriate for challenging domestic tribunals.

27. Blom-Cooper, supra note, at 250.

28. Ibid, at 260.

29. Cmnd. 6407 of 1976, para. 15.

30. See Lord Diplock's judgement in Inland Revenue Commissioners v Rossminster Ltd. |1980| AC 952.

31. See, most recently, Dunlop v Woollahra Municipal Council |1981| 1 All ER 1202, PC.

32. R v Greenwich Justices, Ex p. Aikens, Times Law Report for 3 July 1982.

33. R v Swansea City Council, Ex p. Main, Times Law Report for 23 December 1981.

34. Goordin v Secretary of State for the Home Department, Times Law Report for 10 August 1981.

35. (1968) 21 Current Legal Problems 75.

36. See T.C. Hartley and J.A.G. Griffith, Government and Law (London: Weidenfeld and Nicolson, 2nd Edn. 1981) at 398-400. See also, Comment on "Administrative Law and the European Convention on Human Rights" |1982| Public Law 218 (Alan Boyle).