SOME CONSEQUENCES OF PROCEDURAL ERROR

MR. HILLEL DAVID

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A. Void or Voidable

A decision or order made without jurisdiction is one which may logically be said to be void, or a nullity. There is no shortage of authority to support that proposition, both in the Supreme Court of Canada[1], and in the House of Lords[2]. A succinct statement in this regard was made by Pigeon, J.:

> "...there can be no doubt that what is done without jurisdiction is a nullity."[3]

Errors which are characterized as jurisdictional, such that the resulting decision is a nullity, furthermore include any error of law which can be shown to have been made by a tribunal in the course of reaching its decision, on matters of fact or administrative policy which resulted in its having asked itself the wrong question.[4]

The meaning of the word "void" was explained, with his usual clarity and brevity, by Lord Denning, M.R.:[5]

> "I have always understood the word 'void' to mean that the transaction in question is absolutely void - a nullity incapable of any legal consequences - not only but incurably bad - so much so that all the world can ignore it and that nothing can be founded on it ...".

There is, equally, no shortage of authority to the effect that procedural error may be characterized as jurisdictional, and, as such, the resulting decision or order is

void[6], or words to that effect, such as "fatal" to the decision's legality[7], or "annulling" the decision.[8] Examples of wide-ranging statements in this particular were made by two Law Lords in Malloch v Aberdeen Corporation,[9], a case involving dismissal of a teacher. Lord Reid said:[10]

> "Then it was said that the proper remedy would be damages. But in my view, if an employer fails to take the preliminary steps which the law regards as essential, he has no power to dismiss and any purported dismissal is a nullity. We were not referred to any case where a dismissal after a failure to afford a hearing which the law required to be afforded was held to be anything but null and void."

Lord Simon of Glaisdale included in his speech the following:[11]

> "It is unnecessary to determine whether the normal effect of a failure to proceed in accordance with natural justice by according a hearing before dismissal - namely that the proceedings are a nullity - might be obviated were it shown that such hearing could only be a useless formality ...".

The jurisdictional defect caused by procedural error is not, however, of the same kind as that caused by error related to vires, nor does each have the same consequences. Beetz, J. made a clear distinction between lack of jurisdiction on the one hand, and excess or abuse of jurisdiction on the other, stating that cases involving a breach of natural justice fall within the latter category.[12] He referred to:[13]

> "...the more than dubious assumption that cases involving a denial of natural justice could be equated with those involving a lack of jurisdiction ...",

and went on to say that in the case at bar:[14]

> "There was no want of jurisdiction. In the exercise of this jurisdiction, the committee of the council erred in failing to observe the rules of natural justice. While it can be said in a manner of speaking that such an error is 'akin' to a jurisdictional error, it does not in my view entail the same type of nullity as if there had been a lack of jurisdiction in the committee. It simply renders the decision of the committee voidable at the instance of the aggrieved party and the decision remains appealable until quashed by a Superior Court or set aside by the senate."

Jackett, C.J., in an earlier decision, distinguished between the cases of a tribunal acting in contravention of the principles of natural justice, and its acting completely outside its limited statutory authority.[15] In another Federal Court of Appeal decision, however, a decision made unfairly was stated to have been made "without jurisdiction".[16] Undoubtedly this was merely a regrettable choice of words, as was the case in each of the cited decisions in which procedural error was baldly stated to have resulted in a decision or order which was void. Reference may be made to one further authority on the distinction between errors of vires and procedure. Estey, J. pointed out in the Inuit Tapirisat case[17] that the contention being made was not that there had been a failure to observe a condition precedent, but rather that there had been a failure to comply with the duty of fairness.

One of the consequences of the error being procedural is that the error must be of a certain quality, both in

terms of degree and visibility, in order that the Court will consider itself justified in interfering with the tribunal's decision. Vide the words of Spence, J. in King v University of Saskatchewan:[18]

> "If this Court is of the opinion that there existed such a denial of natural justice as would nullify the decisions ...",

and Hetherington, J. in Groeneveld v Calgary Power Ltd.:[19]

> "In my view, the denial of natural justice complained of is not so fundamental or so flagrant that it should render the decision of the Energy Resources Conservation Board void."

In a recent decision of the Ontario Divisional Court,[20] Reid, J. expressed the view that the decisions in Paine v University of Toronto,[21] and Harelkin & University of Regina,[22] had established that, at least in so far as judicial review of university proceedings are concerned, there must be something more than a finding of unfairness before the Court will intervene; there must in fact be manifest unfairness in light of the applicable procedures, or a flagrant case of injustice.

Lord Wilberforce, delivering the decision of the Privy Council in Calvin v Carr,[23] set out three types of situations as to which some general principle can be stated on the matter of curing of procedural error by means of reconsideration or appeal (about which more will be said later). The two extremes were those in which the rules provide for a re-hearing or appeal, and those in which, after examination of the whole hearing

structure, the conclusion is reached that a complainant has the right to nothing less than a fair hearing both at the original and at the appeal stages. In respect of those which he identified as the "intermediate" cases, Lord Wilberforce said:[24]

> "Whether these intermediate cases are to be regarded as exceptions from a general rule, as stated by Megarry, J. [in Leary v National Union of Vehicle Builders,[25]] or as a parallel category covered by a rule of equal status, is not in their Lordships' judgment necessary to state, or indeed a matter of great importance. What is important is recognition that such cases exist, and that it is undesirable in many cases of domestic disputes, particularly in which an inquiry and appeal process has been established, to introduce too great a measure of formal judicialisation. While flagrant cases of injustice, including corruption or bias, must always be firmly dealt with by the Courts, the tendency in their Lordships' opinion in matters of domestic disputes should be to leave these to be settled by the agreed methods without requiring the formalities of judicial processes to be introduced."

Apart from those instances in which there is a reconsideration or appeal process which may cure the procedural error, this tendency to restrict the availability of a judicial remedy to cases of manifest or flagrant error is disheartening. Where unfairness exists, whether of the type that leaps out from the record or of the type that emerges only after careful consideration of all the circumstances, and where there has been no curing of that error, a remedy ought to lie. The argument in support of the contrary view, that the complainant had agreed

to the unfair, as it turned out, manner in which the decision was made, is not realistic. In virtually all cases there is no bargaining power to seek any different rules governing the method by which the decision is to be taken, so that any such agreement would not be the result of a voluntary consent. Furthermore, a person surely would not contemplate, much less agree to beforehand, an unfair method of arriving at a decision which would affect his rights or privileges. We are in the area of administrative law, not ordinary contract law, where the concept of procedural fairness has no application outside extremities such as fraud, duress, and the like. The application of principles of contract law to the availability of remedies for procedural error is unfortunate. The justification that the governing statute sends a clear signal of restraint,[26] similarly ought to be used with some hesitation, as it effectively transforms into a privative clause that which was not enacted as such, and runs contrary to the view that the Court will supply the omission of the legislature in recognizing the existence of, and enforcing, the principles of natural justice and fairness. The remedy ought not to be available unless the error is one of a certain magnitude, which cannot be defined with any precision, but which will commend itself to the Court in any given set of circumstances[27], but there is no cause to require additionally that the error be manifest or flagrant.

A second consequence of procedural error is that the decision or order is not "void" in the meaning given to that

term by Lord Denning; or, as elsewhere put, it is not an "absolute", or "complete" nullity,[28] "utterly void",[29] or "totally void."[30] Statements seemingly to the contrary by Lords Reid,[31] Morris[32] and Hodson[33] in Ridge v Baldwin,[34] have not been followed. Our own High Court in the Harelkin decision[35] adopted the reasoning of Lord Devlin in the Ridge v Baldwin case. Lord Devlin held that the decision in that case was voidable rather than null and void ab initio,[36] stating that:[37]

> "To make it void ab initio there must be some condition precedent to the conferment of authority on the committee which has not been fulfilled.
>
> ...
>
> It is necessary always to bear in mind the distinction so clearly drawn by Lord Sumner in R. v Nat Bell Liquors Ltd.,[38] between a wrong exercise of a jurisdiction which a judge has and a usurpation of a jurisdiction which he has not. If there is no jurisdiction, the decision is a nullity whether the Court quashes or not. If there is jurisdiction but there has been a miscarriage of natural justice, the decision stands good until quashed."

Although preference was given to the term "void", Lord Wilberforce arrived at a similar conclusion in Calvin v Carr[39]. He expressed the view, in fact, that a better description of a decision tainted by procedural error would be that it is invalid or vitiated.[40]

The consequences of a decision or order being voidable rather than void have been considered by Lord Denning,[41] and in a number of other decisions. Apart from what already has

been said about a voidable decision continuing to have force and effect until quashed, such a decision may be attacked only by a person aggrieved[42]; it is, when quashed, void as against that person only[43]; and it is not void in the sense that the Rules of Court which restrict the availability of a remedy, as by requiring preliminary leave, may be circumvented.[44]

On the other hand, the decision is voidable ab initio,[45] although, as stated by Jackett, C.J., this:[46]

> "...does not completely nullify the invalid judgment ab initio. Such a judgment must retain its pre-existing validity in so far as officers of the Court or others have bona fide acted upon it when it was not stayed. Supplementary orders may be necessary to put the appellant back in the position in which he should have been."

The distinction between void and voidable was, in a recent English Court of Appeal decision[47], considered to be of little significance. Buckley, L.J. said:[48]

> "Should the Court determine that the decision [to dismiss a person from a union office] is vitiated by disregard of some basic requirement of justice, it cannot, as it seems to us, do otherwise than proceed on the footing that the decision should be treated as being and as always having been ineffective."

The decision was held to be a nullity ab initio, although, as will be set out later, this did not have the effect of reinstating the person in his office.

Although a decision tainted by procedural error is not void in the complete sense of that word, certain beneficial consequences, in so far as the complainant is concerned,

accrue from its being voidable. Conversely, the fact that it is not completely void deprives the complainant of other advantages. Several only of these consequences will be touched on here - the matter is more fully and ably dealt with by Associate Dean Evans in the fourth edition of De Smith[49], and the articles referred to therein.

There is, firstly, the matter of the Court's discretion on an application for judicial review. Will the order issue ex debito justitiae if the decision is a nullity as a result of absence, rather than abuse, of jurisdiction? There have been statements answering that question in the affirmative, such as that by Lord Devlin in Ridge v Baldwin:[50] "The Court would have no discretion to quash or not to quash". The better view, however, appears to be that the Court retains discretion even in those cases where the decision is a nullity[51], and it certainly has that discretion in those cases in which the complaint is that of procedural error[52]. The general tone of the reasons given in the leading Harelkin[53] decision, however, indicate that there is less likelihood of the Court exercising its discretion against an applicant where the error is that of absence, rather than abuse, of jurisdiction, and this is only logical, in view of what has already been said about the differences between these two types of error.

A further distinction occurs in the matter of "curing" the error. Can a decision made unfairly or in breach of the principles of natural justice be cured on appeal to a higher

tribunal or by means of a re-hearing? A nullity caused by an absence of jurisdiction cannot be cured unless jurisdiction is by some means acquired, so that it cannot be cured on appeal,[54] nor can it be transformed[55] or act as a base for other actions,[56] although in one case the complainant, by his action, was estopped from raising this argument.[57] Where, however, the error is an abuse of jurisdiction, the decision can act as a foundation for further actions, at least until quashed[58] (at which time it becomes a nullity[59]), and it can be cured. In those decisions which held that procedural error resulted in nullity, the natural consequence was that the nullity could not be brought to life by means of an appeal.[60] A refinement of this argument was that a tribunal which exercised appellate jurisdiction only, could not cure the error,[61] because, as stated by Dickson, J.:[62]

> "...an appeal is simply not a sufficient remedy for the failure to do justice in the first place."

That remark, however, was made in the dissenting opinion in Harelkin, and the majority opinion, as well as the decision of the Privy Council in Calvin v Carr,[63] make it clear that an appellate tribunal not only has jurisdiction to consider an appeal from a decision made unfairly, but that it can cure that error, provided, in the judgment of Beetz, J., the appeal constitutes a remedy which is an adequate alternative to that of judicial review.[64] Lord Wilberforce, on the other hand, in his judgment in Calvin v Carr,[65] was more ready to

find curative power in appeals. It was only in the category, of the three into which he divided cases in this matter, where after examination of all the circumstances the conclusion is reached that a complainant has the right to nothing less than a fair hearing both at the original and the appeal stages, that he considered that an appeal would not cure the error. In the intermediate cases, and in those belonging in the category at the other extreme, an appeal would be sufficient, other than in flagrant cases of injustice, including those involving corruption or bias. Lord Wilberforce also emphasized, however, that the complainant must, in the end, be said to have had fair treatment and consideration of his case on its merits. As already indicated, it is the particular consideration given by Lord Wilberforce to the "fair deal of the kind that (the complainant) bargained for"[66] which gives, myself at least, some pause.

Another decision which indicates a reluctance to interfere with administrative appeals is one in which the appellate body determined that there had, in fact, been no procedural error below, and it was stated that the court would not substitute its own view on this matter unless that conclusion was so erroneous that a failure to interfere would amount to a substantial miscarriage of justice.[67] The decision was based upon the implied agreement of the parties, and I respectfully demur from this rationale, for reasons already given. A privative clause to prevent judicial review of procedural error ought not to be lightly created or given effect.

The error may also be cured by reconsideration or re-hearing. The leading Canadian decision is Posluns v Toronto Stock Exchange,[68] in which Gale, J., as he then was, explained the statement by Lord Reid in Ridge v Baldwin,[69] concerning the annulment of the decision being reconsidered. After careful consideration, Gale, J. came to the conclusion that Lord Reid had not intended that the verb "annul" be literally and strictly interpreted. Rather, "...if the members of a tribunal engaged upon a re-hearing resolve conscientiously and honestly to reconsider the matter without being influenced by the effect or terms of their earlier decision, there has been a sufficient disavowal of that decision to permit them to do justice ...".[70] This view has been followed in similar and analogous situations,[71] although Lord Wilberforce, in Calvin v Carr,[72] again adds a contractual gloss, saying:

> "...there are cases where the rules provide for a re-hearing by the original body, or some fuller or enlarged form of it. This situation may be found in relation to social clubs. It is not difficult in such cases to reach the conclusion that the first hearing is superseded by the second, or, putting it in contractual terms, the parties are taken to have agreed to accept the decision of the hearing body, whether original or adjourned."

Reference may be made at this point to the following question put by Dickson, J. in his dissenting reasons in Harelkin:[73]

> "Who could possibly pretend that a student starts the day with as fair a chance in a hearing before the university senate, or its committee, faced with adverse decisions from the faculty studies committee and a council committee, both made with no hearing, as he would have before the first body to have considered the matter?"

The same question may equally be put in the context of reconsideration - who could possibly pretend that a person will receive as fair a hearing, from a body which has already demonstrated unfairness, whether consciously or unconsciously, as he would before a tribunal which would have dealt fairly with his case from the start? If we are to assume good faith and an honest intention on the part of the tribunal to carry out its duties properly, as we must, then these qualms can be set aside. Those of us who are in practice, however, will have substantial difficulty in persuading our clients that they will get anything more than the trappings of a fair shake the second time around, not having received it on the first. To our clients, at least, there would exist an appearance of bias, or, if that is too strong a word, then unfairness. In his majority opinion, Beetz, J. alluded to this problem in saying:[74]

> "It is also arguable that fresh consideration of the issues involved by another body of superior jurisdiction may be preferable to a re-hearing by the tribunal which had previously ruled against appellant."

The same problem arises when a decision or order is quashed for procedural error, and the matter is remitted to the same tribunal.[75] Lacourciere, J.A. recently gave some

consideration to this problem, and concluded that he would not have remitted the matter because of apprehension of bias and the possible perception of partiality.[76] If the matter is not remitted, then who will make the decision? It is quite clear that the Court, on an application for judicial review, does not sit in appeal from the tribunal's decision,[77] and that it will substitute its decision for that of the tribunal, rather than remit, only when it is virtually inevitable that that is the decision to which the tribunal would have arrived had it proceeded properly,[78] although in one case the matter was not remitted because it would have been manifestly unjust to do so.[79] The necessity for a decision, among other considerations,[80] such as the type and degree of procedural error which was made, may override the reluctance to remit to a body which has already committed an error.

In some cases the Court merely quashes for procedural error, without remitting or substituting its own decision. Is the tribunal then entitled to entertain a fresh proceeding in regard to the same matter? Lacourciere, J.A. in the same case, implied that the answer would be no.[81]

Several other consequences of the decision being voidable rather than void are not dealt with here, due to limitation of time, and some of the relevant cases are cited by way of footnote. These issues are: whether a failure to appeal will bar, or be a consideration on, judicial review[82];

whether the decision will be quashed if the error is seen to be irrelevant to the result[83]; whether assuming nothing has been done in reliance upon the impugned order while it retained validity prior to being quashed[84], there will be a restoration to the status quo ante.[85]

B. Remedies for Wrongful Dismissal

One area in which administrative law and the law of contract overlap is that relating to dismissal of employees or office-holders. Megarry, V.-C. has stated that:[86]

> "At least one thing is plain, and that is that the authorities on the point are in a far from satisfactory state."

and it has also been referred to as a "vexed area of the common law."[87]

Apart from the dismissal of persons who hold office at pleasure[88], it has long been held that those who hold office, or otherwise have the benefit of statutory provisions which regulate the procedure by which dismissals are to be carried out, are entitled to demand compliance with those provisions, which furthermore may bring into play the principles of natural justice.[89] The landmark Nicholson[90] decision extended a form of procedural protection to office-holders who are not entitled to rely on statutory provisions, by imposing a duty of fairness in dismissal proceedings. What of those which have been termed "pure master-servant relationships"? Do the

servants in those cases have any procedural protection, and, if so, are their remedies any different?

The traditional rule was stated by Lord Reid in Malloch v Aberdeen Corporation:[91]

> "At common law a master is not bound to hear his servant before he dismisses him. He can act unreasonably or capriciously if he so chooses but the dismissal is valid. The servant has no remedy unless the dismissal is in breach of contract and then the servant's only remedy is damages for breach of contract."

Laskin, C.J.C., referring to the reasons given by the Ontario Divisional Court in Nicholson,[92] said:

> "A master-servant relationship would not, per se, give rise to any legal requirement of observance of any of the principles of natural justice."

Notwithstanding these remarks, albeit obiter, by high authority, there are a number of cases which have held that a dismissal in which an employer fails to provide to the employee an opportunity to present his side of the case, or otherwise acts unfairly, is wrongful.[93] The question then is, what remedies are available when the dismissal is wrongful as a result of procedural error? In particular, is the employee able to seek reinstatement, or is his remedy restricted to that of damages?

While it is not yet clear whether a wrongful dismissal, which is not accepted by the employee as a repudiatory breach causing determination of the contract, is sufficient without such acceptance to cause the immediate termination of the

contract[94], it is clear that the remedy of an employee in a pure master-servant relationship lies in damages only. Several of the decisions proceed simply on that assumption[95], whereas other decisions expressly state that the employee cannot seek reinstatement, because the Court will not decree specific performance of a contract of personal service[96], even where a "strong statutory flavour" attaches to that contract.[97]

In those cases, however, where there is a sufficient statutory connection to the contract, procedural error which vitiates the dismissal can lead to a quashing of the dismissal and to reinstatement, either by way of order or by reason merely of the quashing of the dismissal.[98] Reinstatement, however, is by no means assured merely because there has been a procedural error sufficient to vitiate the dismissal. Factors such as lapse of time,[99] conflicts and difficulties which might arise, causing injury to third persons[100], poor personal relations and misconduct on the part of the complainant,[101] and other employment taken by the complainant since his dismissal,[102] have all been held to be grounds for refusing reinstatement.[103] The taking of other employment may be seen to signify an acceptance of the repudiatory breach,[104] but, on the other hand, the reality of an unemployed person seeking other employment pending resolution of his claim for reinstatement has been recognized.[105] Furthermore, the doctrine of mitigation of damage would require the seeking of other employment, and the complainant ought not to be penalized

for complying with this obligation. The factor of lapse of time should be viewed in the same light. If there is any right to reinstatement, it ought not to be extinguished by reason of anything not caused by the fault of the complainant.[106]

Assuming the dismissal is quashed without remittal, can a fresh dismissal proceeding based on the same ground be undertaken, such that, if conducted in a procedurally proper manner, it will result in a proper and effective dismissal? The answer is in the affirmative,[107] but this leads to the further question whether the complainant is entitled, in the fresh proceeding, to rely upon anything new which has arisen during the interim in contesting the dismissal. The classic example would be that of a probationary police constable who would no longer be on probation by the time the second proceeding is instituted. While it is clear that the constable would be entitled to receive back pay for the interim period, subject to the principle of mitigation,[108] it is not so clear whether he would be entitled to claim at the second proceeding that he had graduated from the status of probationary constable during that interim period. The Ontario Divisional Court and Court of Appeal, in the latest in the series of Nicholson decisions,[109] held that the constable would retain the status of probationary, while in another police decision, Re Proctor & Board of Commissioners of Police of the City of Sarnia,[110] Laskin, C.J.C. stated that the constable, who had been probationary, was "entitled to such status as he would have gained had he not been unlawfully dismissed." It may be

noted that these decisions were rendered only eight days apart, and that the error in Proctor may be characterized more as an error of vires rather than as a procedural error.

In closing, may I borrow the words of Shaw, L.J.,[111] and apply them to the subject matter at hand. The consequences of procedural error constitute a "dubious field", in which there is an "ebb and flow of the tide of judicial opinion", and "in the end one is left in the slack water of first principles".

HILLEL DAVID

FOOTNOTES

1. Attorney-General of Canada v Inuit Tapirisat of Canada, (1980) 115 D.L.R. (3d) 1 at p. 11

2. Bromley London Borough Council v Greater London Council, [1982] 1 All E.R. 129 at p. 166

3. Quebec-Telephone v Bell Telephone Co., (1971) 22 D.L.R. (3d) 69 at p. 79. Other recent cases include Re Revie & St. Vital Community Committee, (1978) 85 D.L.R. (3d) 381 at p. 384 (Man. Q.B.); Tippett v International Typographical Union, (1975) 63 D.L.R. (3d) 522 at p. 534 (B.C.S.C.); Re Clauson & Superintendent of Motor-Vehicles, (1977) 82 D.L.R. (3d) 656 at p. 667 (B.C.Co.Ct)

4. Re Racal Communications Limited, [1980] 2 All E.R. 634 at pp. 638-639 (H.L.), explaining Anisminic Ltd. v Foreign Compensation Commission, [1969] 1 All E.R. 208 (H.L.). See also Steel Brothers Canada Ltd. v General Teamsters Local Union No. 362 (1982) 35 A.R. 297 at p. 303 (Q.B.)

5. Secretary of State for Trade and Industry v F. Hoffman-La Roche and Co. A.G., [1973] 3 All E.R. 945 at p. 953, affirmed [1974] 2 All E.R. 1128

6. Re Davis & Newfoundland Pharmaceutical Association, (1977) 86 D.L.R. (3d) 375 at p. 378 (Nfld.S.C.); Pollock v Alberta Union of Provincial Employees, (1978) 90 D.L.R. (3d) 506 at p. 520 (Alta.S.C.); Abouna v Foothills Provincial General Hospital Board (No. 2), (1977) 77 D.L.R. (3d) 220 at p. 236 (Alta.S.C.), reversed in part on other grounds 83 D.L.R. (3d) 333; Ritchie v City of Edmonton, (1980) 35 A.R. 1 at p. 21 (Q.B.), referring to Harvie v Calgary Regional Planning Commission, (1978) 8 Alta.L.R. (2d) 166 (C.A.) but without noting that the question of void v voidable was expressly left open there; Re Brown & Patterson, (1974) 53 D.L.R. (3d) 64 at pp. 69-70 (Ont. Div.Ct.); Tippett v International Typographical Union, (1975) 63 D.L.R. (3d) 522 at pp. 540, 544 (B.C.S.C.); Re Zadravec & Town of Brampton, (1973) 37 D.L.R. (3d) 326 at p. 335 (Ont.C.A.); Re Nicholson & Haldimand-Norfolk Regional Board of Commissioners of Police, (1980) 117 D.L.R. (3d) 604 at p. 608 (Ont.Div.Ct.); Wetaskiwin Municipal District No. 74 v Kaiser [1947] 4 D.L.R. 461 at p. 468 (Alta.S.C.).

7. Re Rosenfeld & College of Physicians & Surgeons, (1969) 11 D.L.R. (3d) 148 at p. 164 (Ont.H.C.)

8. Corporation de L'Hopital Bellechasse v Pilotte, (1974) 56 D.L.R. (3d) 702 at p.707 (S.C.C.)

9. [1971] 2 All E.R. 1278

10. ibid, at p. 1284

11. ibid, at p. 1298

12. Re Harelkin & University of Regina, (1979) 96 D.L.R. (3d) 14 at p. 41. See also Re Deware Enterprises Ltd. & Local 1065, Retail, Wholesale & Department Store Union, (1979) 106 D.L.R. (3d) 238 at p. 242 (N.B.C.A.) Limerick, J.A. making reference to an abuse of jurisdiction by denying natural justice.

13. Harelkin, supra

14. ibid, at p. 48

15. Re Wilby & Minister of Manpower & Immigration, (1975) 59 D.L.R. (3d) 146 at p. 150, affirmed 80 D.L.R. (3d) 607

16. Morgan v National Parole Board, (1982) 40 N.R. 471 at p. 480

17. Attorney-General of Canada v Inuit Tapirisat of Canada, (1980) 115 D.L.R. (3d) 1 at p. 13

18. (1969) 6 D.L.R. (3d) 120 at p. 125

19. (1980) 109 D.L.R. (3d) 99 at p. 107

20. Bezeau v Ontario Institute for Studies in Education, (1982) 36 O.R. (2d) 577

21. (1981) 34 O.R. (2d) 770 (C.A.)

22. 96 D.L.R. (3d) 14 (S.C.C.)

23. [1979] 2 All E.R. 440 at pp. 448 - 449

24. ibid at p. 449

25. [1970] 2 All E.R. 713

26. Re Harelkin & University of Regina, (1979) 96 D.L.R. (3d) 14 at p. 57

27. See, for example, the reference by Lord Morris of Borth - Y-Gest to "different considerations" that might have applied to "some minor procedural failure", in Ridge v Baldwin, [1963] 2 All E.R. 66 at p. 102

28. Harelkin, supra, at pp. 44, 46; Re Wilby & Minister of Manpower & Immigration, (1975) 59 D.L.R. (3d) 146 at p. 150 (Fed.C.A.), affirmed 80 D.L.R. 607; Durayappah v Fernando, [1967] 2 All E.R. 152 at p. 158 (J.C.P.C.)

29. Re Melanson & Board of School Commissioners of the City of Halifax, (1977) 75 D.L.R. (3d) 641 at p. 647 (N.S.C.A.), referring to Mahoney v Newcastle Board of School Trustees, (1966) 61 D.L.R. (2d) 77 (N.B.C.A.)

30. Calvin v Carr, [1979] 2 All E.R. 441 at p. 445 (J.C.P.C.)

31. Ridge v Baldwin, [1963] 2 All E.R. 66 at p. 81: "Time and again in the cases I have cited it has been stated that a decision given without regard to the principles of natural justice is void ...". See also page 82 of the report.

32. ibid, at p. 104: "...in as much as the decision was arrived at in complete disregard of the regulations it must be regarded as void and of no effect." See also page 106 of the report, and page 110: "When the appellant in fact at once repudiated and challenged the decision,

so claiming that it was invalid, and when in fact the watch committee adhered to their decision, so claiming that it was valid, only the Court could decide who was right. If in that situation it was said that the decision was voidable, that was only to say that the decision of the Court was awaited. But if and when the Court decides that the appellant was right, the Court is deciding that the decision of the watch committee was invalid and of no effect and null and void. The word 'voidable' is, therefore, apposite in the sense that it became necessary for the appellant to take his stand: he was obliged to take action for unless he did the view of the watch committee, who were in authority, would prevail. In that sense the decision of the watch committee could be said to be voidable."

33. ibid, at p. 116: "In all the cases where the Courts have held that the principles of natural justice have been flouted I can find none where the language does not indicate the opinion held that the decision impugned was void. It is true that the distinction between void and voidable is not drawn explicitly in the cases, but the language used shows that where there is a want of jurisdiction, as opposed to a failure to follow a procedural requirement, the result is a nullity."

34. ibid

35. Re Harelkin & University of Regina, (1979) 96 D.L.R. (3d) 14

36. op cit., at p. 120

37. ibid, at pp. 118, 119

38. [1922] 2 A.C. 128

39. [1979] 2 All E.R. 441 at pp. 445 - 446: "This argument led necessarily into the difficult area of what is void and what is voidable, as to which some confusion exists in the authorities. Their Lordships' opinion would be, if it became necessary to fix on one or other of these expressions, that a decision made contrary to natural justice is void, but that, until it is so declared by a competent body or court, it may have some effect, or

existence, in law. This condition might be better expressed by saying that the decision is invalid or vitiated. In the present context, where the question is whether an appeal lies, the impugned decision cannot be considered as totally void, in the sense of being legally non-existent. So to hold would be wholly unreal." Followed in London & Clydesdale Estates Ltd. v Aberdeen District Council, [1979] 3 All E.R. 876 (H.L.)

40. ibid

41. Secretary of State for Trade & Industry v F. Hoffman-La Roche & Co. A.G., [1973] 3 All E.R. 945 at pp. 953-954, affirmed [1974] 2 All E.R. 1128

42. Durayappah v Fernando, [1967] 2 All E.R. 152 (J.C.P.C.); Re Medi-Data Inc. & Attorney-General of Canada, (1972) 26 D.L.R. (3d) 1 at pp. 12-13 (Fed.C.A.); Re Wilby & Minister of Manpower & Immigration, (1975) 59 D.L.R. (3d) 146 at p. 150 (Fed. C.A.), affirmed 80 D.L.R.(3d) 607; Re North Coast Air Services Ltd. & Air Transport Committee, (1972) 32 D.L.R. (3d) 695 at p. 712 (Fed.C.A.).

43. Re J.A. Wotherspoon & Son Ltd. & International Union, U.A.A., Local 1256, (1972) 25 D.L.R. (3d) 70 at p. 76 (Ont.H.C.)

44. Heywood v Hull Prison Board of Visitors, [1980] 3 All E.R. 594 (Ch.D.)

45. See cases in n. 41; In Re Daigle & C.T.C., [1975] F.C. 8 at p. 10 (C.A.); Re J.A. Wotherspoon & Son Ltd., supra, at p. 76.

46. Re Wilby & Minister of Manpower & Immigration, supra, at p. 151, n. 5

47. Stevenson v United Road Transport Union, [1977] 2 All E.R. 941

48. ibid, at p. 951

49. De Smith, Judicial Review of Administrative Action, 4th Ed.

50. op cit., at p. 118. See also Morgan v National Parole Board, (1982) 40 N.R. 471 at p. 480.

51. Re Harelkin & University of Regina, supra; R. v Beaupre, (1981) 12 Man. R. (2d) 238 (C.A.), not an administrative law case

52. Among many decisions, see Re City of Toronto & C.U.P.E., Local 77, (1982) 35 O.R. (2d) 545 (C.A.); Bezeau v Ontario Institute for Studies in Education, (1982) 36 O.R. (2d) 577 (Ont. Div.Ct.); Stevenson v United Road Transport Union, [1977] 2 All E.R. 941 (C.A.); Secretary of State for Trade & Industry v F. Hoffman-La Roche & Co. A.G., supra; Re T.E. Quinn Truck Lines Ltd. & Snow, (1981) 129 D.L.R. (3d) 513 (S.C.C.); Fry v Doucette, (1980) 115 D.L.R. (3d) 274 (N.S.C.A.). See also The Judicial Review Procedure Act, R.S.B.C. 1979, c. 209, ss. 8 and 9

53. (1979) 96 D.L.R. (3d) 14

54. Sommers v City of Edmonton, (1978) 88 D.L.R. (3d) 204 at p. 221 (Alta.C.A.)

55. Re Wright & Public Service Staff Relations Board, (1973) 40 D.L.R. (3d) 698 at p. 712 (Fed.C.A.), distinguished in Vachon v Government of Canada, see below

56. Re Medi-Data Inc. & Attorney-General of Canada, (1972) 26 D.L.R. (3d) 1 at p. 9 (Fed.C.A.); Seafarer's International Union of N.A. v Stern, (1961) 29 D.L.R. (2d) 29 at pp. 31, 34 (S.C.C.); Re Davis & Newfoundland Pharmaceutical Association, (1977) 86 D.L.R. (3d) 375 at p. 381 (Nfld.S.C.); Sommers v City of Edmonton, (1978) 88 D.L.R. (3d) 204 at p. 221 (Alta.C.A.); Re Rosenfeld & College of Physicians & Surgeons, (1969) 11 D.L.R. (3d) 148 at p. 164 (Ont.H.C.); Ritchie v City of Edmonton, (1980) 35 A.R. 1 at p. 21 (Q.B.)

57. Vachon v Government of Canada, (1981) 129 D.L.R. (3d) 460 (Fed.C.A.)

58. Secretary of State for Trade & Industry v F. Hoffman-La Roche & Co. A.G., [1973] 3 All E.R. 945 at p. 954

(C.A.), affirmed [1974] 2 All E.R. 1128; Re Wilby & Minister of Manpower & Immigration, (1975) 59 D.L.R. (3d) 146 at p. 151, n. 5 (Fed. C.A.), affirmed 80 D.L.R. (3d) 607

59. Re Browning Harvey Ltd. & Canadian Union of United Brewery Etc. Workers, Local 353, (1981) 35 N.& P.E.I.R. 60 at p. 75 (S.C.)

60. Barnard v National Dock Labour Board, [1953] 1 All E.R. 1113 at pp. 1115, 1120 (C.A.); Ridge v Baldwin, [1963] 2 All E.R. 66 at p. 116; Tippett v International Typographical Union, (1975) 63 D.L.R. (3d) 522 at p. 544 (B.C.S.C.). See also Abouna v Foothills Provincial General Hospital Board (No. 2), (1978) 83 D.L.R. (3d) 333 at p. 341 (Alta.C.A.); Re George, (1974) 9 N.B.R. (2d) 28 at p. 29 (C.A.)

61. Pollock v Alberta Union of Provincial Employees, (1978) 90 D.L.R. (3d) 506 at p. 515-516 (Alta.S.C.), referring to King v University of Saskatchewan, (1969) 6 D.L.R. (3d) 120 (S.C.C.); Fry v Doucette, (1980) 115 D.L.R. (3d) 274 at pp. 278-279 (N.S.C.A.); Re Chromex Nickel Mines Ltd., (1970) 16 D.L.R. (3d) 273 at pp. 284-285 (B.C.C.A.), appeal quashed 19 D.L.R. (3d) 1; Re Harelkin & University of Regina, (1979) 96 D.L.R. (3d) 14, Dickson, J. dissenting at pp. 28-29.

62. Dissenting in Re Harelkin & University of Regina, supra, p. 31

63. [1979] 2 All E.R. 440, followed in London & Clydesdale Estates Ltd. v Aberdeen District Council, [1979] 3 All E.R. 876 (H.L.)

64. Harelkin, supra, at pp. 51-54. See also Edith Lake Services Inc. v City of Edmonton, (1981) 132 D.L.R. (3d) 612 (Alta. C.A.)

65. supra

66. Calvin v Carr, supra, at p. 449

67. McWhirter v Governors of the University of Alberta (No. 2), (1979) 103 D.L.R. (3d) 255 at p. 266 (Alta.C.A.)

68. (1964) 46 D.L.R. (2d) 210 (Ont.H.C.), affirmed 53 D.L.R. (2d) 193, 67 D.L.R. (2d) 165

69. [1963] 2 All E.R. 66 at p. 80

70. Posluns, supra at p. 331

71. Clarke v Attorney-General of Ontario, [1966] 1 O.R. 539 (C.A.); Re Putnoki & Public Service Grievance Board, (1975) 56 D.L.R. (3d) 197 at pp. 210-211 (Ont.Div.Ct.); Re O'Byrne & Bazley, (1971) 20 D.L.R. (3d) 269 at p. 281 (Ont.H.C.); Re Westbrook Construction Ltd. & B.C. Provincial Council of Carpenters, (1979) 104 D.L.R. (3d) 414 at p. 417 (B.C.S.C.); Woldu v Minister of Manpower & Immigration, [1978] 2 F.C. 216 at p. 219 (C.A.); Re McKenna & The Grievance Settlement Board, (Ont.Div.Ct.), June 25, 1982, unreported as yet.

72. [1979] 2 All E.R. 440 at p. 448

73. 96 D.L.R. (3d) 14 at p. 32

74. ibid at pp. 55-56

75. As in Re French & Law Society of Upper Canada, (1972) 25 D.L.R. (3d) 692 (Ont.H.C.), reversed ultimately on other grounds, 49 D.L.R. (3d) 1 (S.C.C.); Re Walker & West Hants Municipal School Board, (1973) 42 D.L.R. (3d) 105 at p. 115 (N.S.C.A.); Re North Coast Air Services Limited & Air Transport Committee, (1972) 32 D.L.R. (3d) 695 at p. 712 (Fed.C.A.). In B.C., see The Judicial Review Procedure Act, R.S.B.C. 1979, c. 209, ss. 5 and 6; Bailey v Langley Local Board of Health, [1982] 2 W.W.R. 76 (B.C.S.C.)

76. Re Brown & Waterloo Regional Board of Commissioners of Police, (1980) 119 D.L.R. (3d) 206. See also Western Memorial Hospital v C.U.P.E., Local 488, (1980) 32 N. & P.E.I.R. 410 (Nfld.S.C.), a case not involving procedural error, and Wetaskiwin Municipal District No. 74 v Kaiser, [1947] 4 D.L.R. 461 (Alta.S.C.)

77. Re Wakil & Medical Review Committee, (1977) 75 D.L.R. (3d) 173 at p. 188 (Ont.Div.Ct.); Re Brown & Patterson,

(1974) 53 D.L.R. (3d) 64 at pp. 68, 70 (Ont.Div.Ct.); Celebrity Enterprises Ltd. v City of Vancouver, (1978) 7 B.C.L.R. 20 at p. 29 (S.C.)

78. Barty-King v Ministry of Defence, [1979] 2 All E.R. 80 (Q.B.D.); Earth Sciences Inc. v Council of the City of Calgary, (1978) 5 Alta.L.R. (2d) 124 (C.A.); Re Trans-West Developments Ltd. & City of Nanaimo, (1980) 116 D.L.R. (3d) 420 (B.C.S.C.)

79. Re Rosenfeld & College of Physicians & Surgeons, (1969) 11 D.L.R. (3d) 148 at pp. 167-168 (Ont.H.C.)

80. In Harvie v Calgary Regional Planning Commission, (1978) 8 Alta.L.R. (2d) 166 at pp. 178-179 (Alta.C.A.), the fact that monies had been expended in reliance upon the initial decision was not a factor sufficient to prevent the subsequent decision being declared void. The cases dealing with contractual rights as a factor in the determination whether to reconsider may also be helpful by analogy: Re Davisville Co. Ltd. & City of Toronto, (1977) 76 D.L.R. (3d) 218 (Ont.C.A.); Re Merrens & Municipality of Metropolitan Toronto, (1973) 33 D.L.R. (3d) 513 (Ont.Div.Ct.); Re Laidlaw Transport Ltd. & Bulk Carriers Ltd., (1979) 97 D.L.R. (3d) 373 (Ont. Div.Ct.)

81. Re Brown & Waterloo Regional Board of Commissioners of Police, (1980) 119 D.L.R. (3d) 206 at p. 219; but see Hayes v Saskatchewan Housing Corporation, [1982] 3 W.W.R. 468 at pp. 476-477 (Sask.Q.B.) and Re T.E. Quinn Truck Lines Limited & Snow, (1981) 129 D.L.R. (3d) 513 at p. 521 (S.C.C.)

82. Re Harelkin & University of Regina, (1979) 96 D.L.R. (3d) 14; Tippett v International Typographical Union, (1975) 63 D.L.R. (3d) 522 at pp. 543-544 (B.C.S.C.)

83. Ridge v Baldwin, [1963] 2 All E.R. 66 at pp. 73, 111; Re Scott & Rent Review Commission, (1977) 81 D.L.R. (3d) 530 at p. 542 (N.S.C.A.); Re J.A. Wotherspoon & Son Ltd. & International Union, U.A.A., Local 1256, (1972) 25 D.L.R. (3d) 70 at p. 76 (Ont.H.C.); Malloch v Aberdeen Corporation, [1971] 2 All E.R. 1278 at p. 1298 (H.L.); Corporation de l'Hopital Bellechasse v Pilotte, (1974) 56 D.L.R. (3d) 702 at p. 707 (S.C.C.);

Abouna v Foothills Provincial General Hospital Board (No. 2), (1978) 83 D.L.R. (3d) 333 at pp. 342-343 (Alta.C.A.); Richards v Athabasca School Trustees, [1931] 1 D.L.R. 443 (S.C.C.). Cases not involving procedural error are Canadian Kellogg Co. Ltd. v Alberta Board of Industrial Relations, [1976] 2 W.W.R. 67 at pp. 74-75 (Alta.S.C.); Re Douglas Aircraft Company of Canada Ltd. & International Union, U.A.A., (1974) 48 D.L.R. (3d) 481 at p. 489 (Ont.H.C.); Swist v Alberta Assessment Appeal Board, [1976] 1 W.W.R. 204 at p. 211 (Alta.S.C.). In B.C. see The Judicial Review Procedure Act, R.S.B.C. 1979 c. 209, s. 9

84. See Secretary of State for Trade & Industry v F. Hoffman-La Roche & Co. A.G., [1973] 3 All E.R. 945 at p. 954 (C.A.), affirmed [1974] 2 All E.R. 1128; Re Wilby & Minister of Manpower & Immigration, (1975) 59 D.L.R. (3d) 146 at p. 151, n. 5 (Fed.C.A.), affirmed 80 D.L.R. (3d) 607

85. Re Reid & Wigle, (1980) 114 D.L.R. 669 at p. 683 (Ont.Div.Ct.); Re Barik & Broadview Union Hospital Board, (1973) 41 D.L.R. (3d) 757 at p. 760 (Sask.Q.B.); Re T.E. Quinn Truck Lines Ltd. & Snow, (1981) 129 D.L.R. (3d) 513 at p. 521 (S.C.C.); Re Davis & Newfoundland Pharmaceutical Association, (1977) 86 D.L.R. (3d) 375 at p. 382 (Nfld.S.C.); Re Clauson & Superintendent of Motor-Vehicles, (1977) 82 D.L.R. (3d) 656 at p. 670-671 (B.C.Co.Ct.)

86. Thomas Marshall (Exports) Ltd. v Guinle, [1978] 3 All E.R. 193 at p. 202

87. Gunton v London Borough of Richmond upon Thames, [1980] 3 All E.R. 577, Shaw, L.J. at p. 582. See also Brightman, L.J. at p. 593

88. Re Melsness & Minister of Social Services and Community Health, (1982) 132 D.L.R. (3d) 715 (Alta.C.A.) ; Ridge v Baldwin, [1963] 2 All E.R. 66 at pp. 71-72; but see Re Nicholson & Haldimand-Norfolk Regional Board of Commissioners of Police, (1978) 88 D.L.R. (3d) 671 at p. 679 (S.C.C.)

89. Ridge v Baldwin, supra; Vine v National Dock Labour Board, [1956] 3 All E.R. 939 (H.L.)

90. Re Nicholson & Haldimand-Norfolk Regional Board of Commissioners of Police, (1978) 88 D.L.R. (3d) 671 (S.C.C.)

91. [1971] 2 All E.R. 1278 at p. 1282. See also Lord Wilberforce at p. 1294, and Calvin v Carr, [1979] 2 All E.R. 440 at p. 449, referring with approval to Pillai v Singapore City Council, [1968] 1 W.L.R. 1278 (J.C.P.C.)

92. supra, at p. 675. See also p. 683, implying that protection is warranted only for those who hold office.

93. Stevenson v United Road Transport Union, [1977] 2 All E.R. 941 (C.A.); Pulsifer v GTE Sylvania Canada Ltd., (1982) 51 N.S.R. (2d) 298 (S.C.); Reilly v Steelcase Canada Ltd., (1979) 103 D.L.R. (3d) 704 (Ont.H.C.); Ritchie v Intercontinental Packers Ltd., (1982) 14 Sask.R. 206 (Q.B.); Bell v Cessna Aircraft Co., (1982) 33 B.C.L.R. 181 (C.A.); Pollock v Alberta Union of Provincial Employees, (1978) 90 D.L.R. (3d) 506 (Alta.S.C.), suspension from union membership. An earlier decision which appears to take the same position is Hopital Sainte-Jeanne D'Arc de Montreal v Garneau, [1961] S.C.R. 426. See also Taylor v National Union of Seamen, [1967] 1 All E.R. 767 (Ch.D.); McWhirter v Governors of the University of Alberta (No. 2), (1977) 80 D.L.R. (3d) 609 (Alta.S.C.), reversed on other grounds 103 D.L.R. (3d) 255

94. See Gunton v London Borough of Richmond upon Thames, [1980] 3 All E.R. 577 (C.A.)

95. Bell v Cessna Aircraft Co., (1982) 33 B.C.L.R. 181 (C.A.); Pulsifer v GTE Sylvania Canada Ltd., (1982) 51 N.S.R. (2d) 298 (S.C.); Reilly v Steelcase Canada Ltd., (1979) 103 D.L.R. (3d) 704 (Ont.H.C.)

96. Gunton, supra; Francis v Municipal Councillors of Kuala Lumpur, [1962] 3 All E.R. 633 at p. 638 (J.C.P.C.); Vidyodaya University of Ceylon v Silva, [1964] 3 All E.R. 865 (J.C.P.C.); McWhirter v Governors of the University of Alberta (No. 2), (1977) 80 D.L.R. (3d) 609 (Alta.S.C.), reversed on other grounds 103 D.L.R. (3d) 255. See also Stevenson v United Road Transport Union, [1977] 2 All E.R. 941 at p. 952 (C.A.)

97. Barber v Manchester Regional Hospital Board, [1958] 1 All E.R. 322 (Q.B.D.). See also Francis v Municipal Councillors of Kuala Lumpur, [1962] 3 All E.R. 633 at p. 638 (J.C.P.C.)

98. Crompton v General Medical Council, [1982] 1 All E.R. 35 (J.C.P.C.); Ridge v Baldwin, [1963] 2 All E.R. 66 at p. 119; Re Nicholson & Haldimand-Norfolk Regional Board of Commissioners of Police, (1980) 117 D.L.R. (3d) 604 at p. 610 (Ont.C.A.); Taylor v National Union of Seaman, [1967] 1 All E.R. 767 at p. 777 (Ch.D.); Knight v Board of Yorkton School Unit No. 36, (1972) 34 D.L.R. (3d) 592 (Sask.C.A.); McCarthy v Calgary Roman Catholic Separate School District No. 1, [1980] 4 W.W.R. 738 at pp. 751-752 (Alt.Q.B.); Re Ruiperez & Board of Governors of Lakehead University, (1981) 130 D.L.R. (3d) 427 (Ont.Div.Ct.); Re Brown & Waterloo Regional Board of Commissioners of Police, (1979) 103 D.L.R. (3d) 748 (Ont.Div.Ct.), 119 D.L.R. (3d) 206 (Ont.C.A.), 125 D.L.R. (3d) 464 (Ont.C.A.). Cases involving error not clearly procedural include Re Proctor & Board of Commissioners of Police of the City of Sarnia, (1980) 116 D.L.R. (3d) 577 (S.C.C.); Kelso v The Queen, (1981) 120 D.L.R. (3d) 1 (S.C.C.); Vine v National Dock Labour Board, [1956] 3 All E.R. 939 (H.L.); Seafarer's International Union of N.A. v Stern, (1961) 29 D.L.R. (2d) 29 (S.C.C.), re-instatement to union membership. See, however, Abouna v Foothills Provincial General Hospital Board (No. 2), (1977) 77 D.L.R. (3d) 220 at p. 240 (Alta. S.C.), reversed in part on other grounds 83 D.L.R. (3d) 333; R. v Board of Trustees of the Estevan Collegiate Institute, (1970) 16 D.L.R. (3d) 570 (Sask.C.A.). See also Re Melanson & Board of School Commissioners of the City of Halifax, (1977) 75 D.L.R. (3d) 641 (N.S.C.A.), and cases cited therein.

99. Tippett v International Typographical Union, (1975) 63 D.L.R. (3d) 522 at p. 547 (B.C.S.C.); Francis v Municipal Councillors of Kuala Lumpur, [1962] 3 All E.R. 633 at p. 637 (J.C.P.C.)

100 Corporation de l'Hopital Bellechasse v Pilotte, (1974) 56 D.L.R. (3d) 702 (S.C.C.). See also Hopital Sainte-Jeanne D'Arc de Montreal v Garneau, [1961] S.C.R. 426.

101 Stevenson v United Road Transport Union, [1977] 2 All E.R. 941 at p. 952 (C.A.)

102 Taylor v National Union of Seamen, [1967] 1 All E.R. 767 at p. 778 (Ch.D.); Emms v The Queen, (1979) 102 D.L.R. (3d) 193 (S.C.C.)

103. See generally Ouimet v The Queen, [1979] 1 F.C. 55 (C.A.)

104 Gunton v London Borough of Richmond upon Thames, [1980] 3 All E.R. 577 at p. 589 (C.A.)

105 Vine v National Dock Labour Board, [1956] 3 All E.R. 939 at p. 948 (H.L.); McCarthy v Calgary Roman Catholic Separate School District No. 1, [1980] 4 W.W.R. 738 at p. 751 (Alta.Q.B.)

106 The reasoning in Kelso v The Queen, (1981) 120 D.L.R. (3d) 1 (S.C.C.) may be analogous.

107 Re Nicholson & Haldimand-Norfolk Regional Board of Commissioners of Police, (1980) 117 D.L.R. (3d) 604 (Ont.Div.Ct., Ont.C.A.); McCarthy v Calgary Roman Catholic Separate School District No. 1, [1980] 4 W.W.R. 738 at pp. 753-754 (Alta.Q.B.); Crompton v General Medical Council, [1982] 1 All E.R. 35 at pp. 40-41 (J.C.P.C.); McCarthy v Board of Trustees of Calgary Roman Catholic Separate School District No. 1 (No. 2), (1979) 101 D.L.R. (3d) 48 at p. 60 (Alta.S.C.); Malloch v Aberdeen Corporation, [1971] 2 All E.R. 1278 at p. 1284 (H.L.). See also Ridge v Baldwin, [1963] 2 All E.R. 66 at p. 106; Re Brown & Waterloo Regional Board of Commissioners of Police, (1980) 119 D.L.R. (3d) 206 at p. 225 (Ont.C.A.)

108 Re Nicholson & Haldimand-Norfolk Regional Board of Commissioners of Police, (1980) 117 D.L.R. (3d) 604 (Ont.Div.Ct., Ont.C.A.); Ridge v Baldwin, [1963] 2 All E.R. 66 at p. 119; Knight v Board of Yorkton School Unit No. 36, (1972) 34 D.L.R. (3d) 592 (Sask.C.A.). As to mitigation, see also Wheaton v Flin Flon School Division No. 46, (1981) 131 D.L.R. (3d) 393 (Man.Q.B.); Emms v R., [1979] 2 S.C.R. 1148; Stevenson v United Road Transport Union, [1977] 2 All E.R. 941 at p. 952 (C.A.)

109 supra

110 (1980) 116 D.L.R. (3d) 577 at p. 581. See also Re T.E. Quinn Truck Lines Ltd. & Snow, (1981) 129 D.L.R. (3d) 513 at p. 521 (S.C.C.) for a statement which may be considered analogous.

111 Gunton v London Borough of Richmond upon Thames, [1980] 3 All E.R. 577 at p. 583