Judicial Restraints on Administrative Action : Effective or Illusory ?

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I - Introduction

The title of this morning's session reminds me of one of those examination questions that I never answered, unless forced to, when a student and now seldom set as a teacher. My philosophy was that, if you really do not understand a question, avoid it like the plague and, anyway, someone almost certainly has already said it all that much better than you possibly could. It is therefore with interest that I note that Peter Hogg's paper, presented to you this morning by Bill Angus, does not really answer the question posed. Now, I know that Peter was instructed explicitly by Don Carter to deal with the issue of whether judicial review of administrative action was protected constitutionally in Canada under the *B.N.A. Act*, but that does not help me too much. My first difficulty remains one of really understanding and defining the limits of the question fully.

I am also plagued by the second difficulty, however — many people have already said it that much better than I can and, indeed, quite recently. My exceptional colleague, Professor John Willis, has distilled his amassed knowledge on the role of judicial review of administrative action in his 1973 Cecil A. Wright Memorial Lecture at the University of Toronto.[1] Even more recently, Paul Weiler has unleashed on the Canadian public his work on the Supreme Court of Canada, *In the Last Resort*,[2] and followed this up with a further sceptical view on the need for and effectiveness of judicial review of administrative action in his paper, *The Administrative Tribunal: A View from the Inside*, delivered at the University of Toronto Conference on Law and Contemporary Affairs, held in February, 1976.[3]

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1. Published in (1974) 24 *U.T.L.J.* 225.
2. Toronto, Carswell-Methuen, 1974.
3. Now published in revised form in (1976) 26 U.T.L.J. 193.