INTRODUCTION TO

ADMINISTRATIVE LAW

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Introduction to Administrative Law

ATSSC Communications Community of Practice

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DISCLAIMER

THIS PRESENTATION HAS BEEN PRODUCED FOR TRAINING PURPOSES ONLY. IT SHOULD NOT BE TAKEN TO REFLECT A DEFINITIVE SOURCE OF INFORMATION OR AS REPRESENTING VIEWS OF THE CIRB AND/OR THE ATSSC.

BACKGROUND

The ATSSC Communications Community of Practice provided us with the following questions:

- Why do administrative tribunals exist?
- Why are they called “administrative”?
- What can and can’t an administrative tribunal do compared to other types of courts/tribunals?
- Where do ATSSC’s tribunals fit in the big picture of Canada’s tribunal/court system?
- Do you have any websites that explain administrative law for a layperson? Any TedTalks or easy-to follow YouTube videos for the non-lawyer?
- What are de novo hearings?
- What do natural justice and procedural fairness mean?
- Can you explain judicial review?
- Details on independent decision-making principles (“soft law”)

BACKGROUND

- Our presentation will provide answers to these questions.

- The presentation also include a few videos, prepared by other organizations, so we could introduce you to the beautiful journey of Administrative Law and Administrative Tribunals, generally speaking.

WHAT IS AN ADMINISTRATIVE TRIBUNAL?

Administrative Tribunals, also recognized as "Expert Tribunals", were born to supply specific expertise and knowledge not found in other areas.

WHY DO ADMINISTRATIVE TRIBUNALS EXIST?

- They were intended to take workload away from the courts and move it to a body where decision-makers have knowledge and experience in the specific area of law over which the tribunal presides.

- It was thought that tribunals could hear and decide these matters more quickly and efficiently than the courts would, and they would reserve the courts, and the courts, which are more expensive to operate would be reserved for other matters.

WHY ARE THEY CALLED ADMINISTRATIVE?

" Administrative tribunals are a type of tribunal. They were created to provide justice between citizens and the government. Many bodies act as administrative tribunals. But there are differences between them. Every administrative tribunal specializes in an area. For example: labour relations, alcohol permits, employment insurance, human rights. There are many of them."

Administrative Tribunals in Canada – Plain Language Guide, page 6

Council of Canadian Administrative Tribunals

http://www.ccat-ctac.org/CMFiles/Publication/SimpifiedGuideEngABT.pdf

WHAT CAN AND CAN'T THEY DO?

- They get their powers from a statute and can only decide those matters over which they have jurisdiction under the statute.
- Courts have inherent jurisdiction over all disputes.
- In order to be more efficient and dispense justice quickly, tribunals set their own procedures – subject to procedural fairness.
- Courts have lengthy rules of procedures and rules of evidentiary practice that must be rigorously followed.

WHERE DO ATSSC'S TRIBUNALS FIT IN?

- They are a few of the several hundreds of tribunals at the provincial and federal level.

- ATSSC Tribunals, with their distinguished natures and mandates, would be placed in different positions of that spectrum, that is, some administrative tribunals are closer to the executive end of the spectrum (their primary purpose is to develop, or supervise the implementation of, particular government policies; such tribunals may require little by way of procedural protections) or closer to the judicial end of the spectrum (their primary purpose is to adjudicate disputes through some form of hearing; these tribunals may possess court-like powers and procedures).

- The majority are quasi-judicial in nature (court-like), and not quasi-executive (purely administrative); for example, the CIRB, the TATC, the CITT, the SST, the CART, the EPTC, the CHRT, to mention a few, are quasi-judicial bodies.

WHAT DOES NATURAL JUSTICE AND PROCEDURAL FAIRNESS MEAN?

- Natural justice and procedural fairness are procedures that decision-makers must follow to act fairly.
- Initially, natural justice meant procedural rights that courts must apply, whereas procedural fairness was associated with different types of procedural rights.
- Now, these two terms are used together.

Macaulay, Robert & Sprague, James. Hearings Before Administrative Tribunals, 4th edition, Carswell, 2010 (pages 9-20.1 – 9-20.3).

PRINCIPLES OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS

- **Notice**: The applicant must be given adequate notice of the nature of the proceedings and of the issue to be decided.
- **Disclosure**: Depending on the nature of the case, all evidence to be used against an applicant must be disclosed.
- **Opportunity to present one's case and to respond**: The applicant must be provided with an opportunity to present whatever evidence they wish to be considered. While the right to be heard generally implies a hearing, it does not always mean an oral hearing. Submissions can be made in writing.

PRINCIPLES OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS (CONT'D)

- Right to impartial decision maker and freedom of bias
- Institutional independence and the person who hears the case must decide
- Duty to consider all the evidence

WHAT IS JUDICIAL REVIEW ?

Judicial Review (JR) refers to the oversight role that courts play in relation to administrative actions:

- It is the procedure by which courts will examine the decision of an administrative tribunal to check for things like whether the decision was one the tribunal was authorized to make and/or whether it was procedurally fair.

WHAT IS JUDICIAL REVIEW ?

- JR is a review of a decision made by an administrative tribunal. Courts decisions are appealed. Administrative tribunal decisions can be subject to judicial review.

WHAT ARE *DE NOVO* HEARINGS?

- Generally, an appellate court would order a *de novo* hearing when the original hearing made an error ("de novo" is a Latin expression that means "new" or "fresh start").
- At the "new hearing", the decision-maker will then reach a decision by disregarding the previous decision or previous findings made by the original tribunal.
- In other words, the *de novo* Panel will decide the matter on the basis of what they hear and what they see at the hearing itself, without taking into account the decision.
- In *de novo* hearings, parties may present new evidence that was not before the original panel.

WHAT ARE *DE NOVO* HEARINGS?

In Administrative Law context, there are certain differences about a "de novo" hearing:

Quantitatively, the most significant avenue of recourse to those ordinary courts is by way of right of appeal provided for in the legislation creating the statutory power in question or some related or connected statue…. Within the administrative world of statutory appeals, there are enormous variations, ranging from de novo or completely from-scratch hearings to those carefully limited to questions of law and jurisdiction…

Mullan, David J. *Administrative Law*. Irwin Law, 2001 (pages 11-12).

WHAT ARE *DE NOVO* HEARINGS?

And, in Administrative Law context, a "de novo" hearing would be defined as follows:

A hearing in which the decision-making authority deals completely afresh with a matter that has already been heard once before either by that or another authority.

Mullan, David J. *Administrative Law*. Irwin Law, 2001 (pages 11-12) (page 542).

INDEPENDENT DECISION-MAKING PRINCIPLES ("SOFT LAW?")

Administrative Tribunals may independently use certain tools knowns as "soft law", for guidance, such as decision-making policies, guidelines or principles, as affirmed in a recent Federal Court of Appeal decision.

(see Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship), 2020 FCA 196, at paragraph 45)

INDEPENDENT DECISION-MAKING PRINCIPLES ("SOFT LAW?")

[A]dministrative agencies do not require an express grant of statutory authority in order to use "soft law" such as policy statements, guidelines, manuals and handbooks to structure the exercise of their discretion. As this Court found in *Thamotharem* (at para. 56):

- "Through the use of "soft law" an agency can communicate prospectively its thinking on an issue to agency members and staff, as well as to the public at large and to the agency's "stakeholders" in particular.

- Because "soft law" instruments may be put in place relatively easily and adjusted in the light of day-to-day experience, they may be preferable to formal rules requiring external approval and, possibly, drafting appropriate for legislation. Indeed, an administrative agency does not require an express grant of statutory authority in order to issue guidelines and policies to structure the exercise of its discretion or the interpretation of its enabling legislation..."

ANNEX: SUPPLEMENTAL RESOURCES

Types of Administrative Law Tribunals (Video)

Prepared by: Justice Education Society of BC

https://youtu.be/hkT3MTDBASA

What is Trial De Novo? (video)

Prepared by: Plain Law

https://www.youtube.com/watch?v=MSIx1nQAZps

**These videos are only available in English*

THANK YOU!

QUESTIONS AND COMMENTS?