In Search of Coherence: The Charter & Administrative Law

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Intersections

- Distinctive content of administrative law rights and Charter rights?
- Distinctive methodology of administrative law rights and Charter rights?
- Distinctive approach to the Charter and tribunals?
- Distinctive relationship between administrative law and Charter principles?
Case Studies: Blencoe

- *Blencoe v. B.C. (2000)* (administrative law principles vs. section 7 of the *Charter*)
- (5-4) Majority establishes that independent tribunal decisions are subject to the Charter.
- Majority set out different standards for delay under *Charter* and administrative law principles, and found neither were breached.
- Minority found the delay breached administrative law fairness and there was no need to consider the *Charter.*
Case Studies: Blencoe con’t

- Blencoe per Lebel J. (dissenting)
  - “The parties have fought this case mainly on Charter issues. In the end, this approach turned into a constitutional problem, something that it was not. The important and determinative issue should have been the role of judicial review and administrative law principles in the control of undue delay in administrative tribunal proceedings. Given that human rights commissions are administrative law creations, the first place we should look for solutions to problems in their processes is in the realm of administrative law. If the relevant administrative law remedy had been applied, the trial judge should have found that there had been undue delay in the process of the British Columbia Human Rights Commission (formerly the British Columbia Council of Human Rights), that this delay was abusive, and that some form of remedy should have been granted to the respondent Blencoe.”
Case Studies: Suresh

- *Suresh v. Canada* (2002) (Court found the process used to deport a suspected terrorist violated s.7 of the *Charter* – the Court adopted *Baker* framework for section 7)

- From the Court: “We therefore find it appropriate to look to the factors discussed in *Baker* in determining not only whether the common law duty of fairness has been met, but also in deciding whether the safeguards provided satisfy the demands of s. 7. In saying this, we emphasize that, as is the case for the substantive aspects of s. 7 in connection with deportation to torture, we look to the common law factors not as an end in themselves, but to inform the s. 7 procedural analysis. At the end of the day, the common law is not constitutionalized; it is used to inform the constitutional principles that apply to this case.”
Case Studies: Martin & Paul


- The power to decide questions of law will be presumed to have the power to decide on the constitutional validity of that law.

- Dissent of McLachlin J. (as she then was) in *Cooper* adopted by Court in *Martin*:
  - “The *Charter* is not some holy grail which only judicial initiates of the superior courts may touch. The *Charter* belongs to the people. All law and law-makers that touch the people must conform to it. Tribunals and commissions charged with deciding legal issues are no exception. Many more citizens have their rights determined by these tribunals than by the courts. If the *Charter* is to be meaningful to ordinary people, then it must find its expression in the decisions of these tribunals.”
Case Studies: Multani

- Multani v. Commission scolaire Marguerite-Bourgeoys (2006) (relationship between s.1 test and administrative law principles)

- Majority hold that an administrative law standard of review analysis is inappropriate where the issue is an administrative decision-maker’s compliance with the Charter.

- Abella J., writing for the minority (concurring) “Simply put, it is difficult to conceive of an administrative decision being permitted to stand if it violates the Canadian Charter. The administrative body’s decisions can, indeed must, be judicially reviewed in accordance with the principles of administrative law where they do not have the normative import usually associated with a law. For the reasons that follow, we accordingly believe that it is preferable to adhere to an administrative law analysis where resorting to constitutional justification is neither necessary nor appropriate.”

- Reconciling majority approach in Multani with Court’s analysis in Chamberlain (2002) and Trinity Western (2001)
Conclusions

- To what extent are the goals of the Charter and administrative law distinct? Was Charron J. right to distinguish “fundamental rights” with “mere administrative law principles”?

- To what extent should there be a “unity of public law” principles between the Charter and administrative law?

- To what extent does it matter whether a Court applies administrative law or Charter analysis?