

THE CONCEPT OF LEGITIMATE EXPECTATION IN COMMONWEALTH ADMINISTRATIVE LAW

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I. INTRODUCTION

The frontiers of legitimate expectation in administrative law have been greatly expanded in recent years, particularly in the Commonwealth.¹ Traditionally, the concept of legitimate expectation was regarded as a corollary of natural justice.² As a ground for judicial review, it was originally regarded as an aspect of procedural propriety;³ today however, the doctrine seems to have evolved so significantly as to admit of a substantive content.

Commenting on the nature of legitimate expectation - particularly in relation to natural justice and fairness - Dawson J. in *Attorney General for New South Wales v. Quin*⁴ said:

It is when the expectation is of a fair procedure itself that the concept of a legitimate expectation is superfluous and confusing. That is not to say that where the legitimate expectation is of an ultimate benefit the concept is not a useful one to assist in establishing whether a particular procedure is in fairness required. But whenever a duty is imposed to accord a particular procedure, it is because the circumstances make it fair to do so and for no other reason. No doubt people

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¹ See for e.g. P.P. Craig, "Legitimate Expectations: A Conceptual Analysis" [1992] 108 P.L. 79; Baldwin and Horne, "Expectations in a Joyless Landscape" [1986] 49 M.L.R. 685; Patrick Elias, "Legitimate Expectation and Judicial Review" in "New Directions In Judicial Review" [Ed. Jowell and Oliver 1988] at pp. 37-50.

² See for e.g. David Foulkes, "Administrative Law" [Eighth Edition] [1995] at p. 290.

³ For the classification of the grounds of judicial review see for e.g. Lord Diplock, in *Council of Civil Service Unions v. Minister for the Civil Service* 1985 A.C. 374 at pp. 410-411.

⁴ [1990] 170 C.L.R. 1.