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Administrative Law

Cases, Text, and Materials

FOURTH EDITION

by

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obliged it to consider. Whether a particular factor was one that the agency had to take into account in exercising its discretion should be determined by reference to its importance to the discharge of its statutory mandate.

If an agency is found to have taken into consideration a factor that is irrelevant to the exercise of its discretion, or has acted for some improper purpose, this is normally because the reviewing court has rejected the agency's interpretation of its statutory power. However, an allegation that an agency has failed to consider something it ought to have considered sometimes means, not that it has misinterpreted its statute, but that it has overlooked evidence that would establish whether or not a legally relevant fact existed.

For example, in *Oakwood Developments Ltd. v. Rural Municipality of St. François Xavier* [1985] 2 SCR 164 (Man.), a municipality had refused a developer permission to subdivide land for residential development because of the danger of flooding. However, the council had refused to read an engineer's report which described measures that could be taken to avoid the problem. Delivering the judgment of the Court, Wilson J said that, since the process of regulating the division of land into smaller lots curtailed the common law rights of land owners, it must be specifically authorized by statute. She concluded that, while flood control and soil erosion were relevant to the exercise of the power to refuse permission, the refusal of permission in this case was *ultra vires* because the municipality had failed to consider evidence that was highly material to its legitimate concerns. Although not mentioned in the judgment, the municipality's error presumably could also have been described as a breach of the duty of procedural fairness, because it denied the developer an opportunity to tender evidence in support of its claim. Alternatively, the refusal of permission could be said to be irrational, because it was based on a finding of fact for which there was no evidence.

Multiple Purposes and Considerations

What if an agency exercises a statutory discretion to achieve a number of purposes, only one of which is improper? Or if the irrelevant factor that it has taken into account is only one of several relevant considerations that shaped its decision? While judicial support can be found for a wide range of tests, the prevailing view appears to be that the court will only hold such decisions to be *ultra vires* if the unlawful purpose or consideration played a dominant or material role in the exercise of discretion: see, for example, *Canadian Assn. of Regulated Importers v. Canada (Attorney General)* [1994] 2 FC 247, 260 (CA) (decision based entirely or predominantly on irrelevant factors liable to be set aside).

Purpose and Proof

How does an applicant for judicial review prove for what purpose an administrative agency exercised a statutory discretion? When reasons are given for the decision, these will normally be conclusive. In the absence of any explanation by the agency for its decision, a reviewing court may infer from a decision that seems suspiciously unlawful that the agency was pursuing some unauthorized purpose. When an agency exercises its statutory discretion after receiving a report from a senior official or committee, the court may attribute to the agency any statement of purpose contained in that report: see, for example, *La Rush v. Metropolitan Toronto and Region Conservation Authority* (1967) 66 DLR (3d) 310 (Ont. CA).