

**Paper for the Bills Committee on
Broadcasting Bill**

**Judicial Review of Decisions made by
the Chief Executive in Council**

This is an information paper on whether decisions made by the Chief Executive in Council are subject to judicial review and the nature of judicial review if the decisions are reviewable in order to assist members of the Bills Committee in their consideration of clauses 33 and 34 of the Broadcasting Bill.

Whether judicially reviewable

2. Where the Chief Executive in Council exercises a power conferred on him by legislation, decisions made by him in the exercise of the power are susceptible to judicial review. Judicial review has been sought against the Chief Executive in Council in respect of his decision to authorize road works under the Roads (Works, Use and Compensation) Ordinance (Cap. 370)¹.

3. The Broadcasting Bill seeks to confer a power on the Chief Executive in Council to hear and determine appeals against the Broadcasting Authority's decisions. In exercising this power, it would appear that the Chief Executive in Council will be carrying out quasi-judicial functions. As such, his decisions are susceptible to judicial review.

Nature of judicial review

4. Judicial review is concerned with reviewing not the merits of the decision but the decision-making process itself. The purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected: it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question.

¹ *Ma Wan Farming Ltd. v Chief Executive in Council* [1998] 2 HKC 190, CA

5. The grounds upon which an administrative action is subject to control by judicial review have been classified as threefold²:

(a) Illegality

The court, when hearing an application for judicial review, will consider whether the decision-maker has acted without jurisdiction or exceeded his jurisdiction.

(b) Irrationality

Decisions of persons or bodies which perform public duties or functions will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no such person or body properly directing itself on the relevant law and acting reasonably could have reached that decision³. Categories of unreasonableness or irrationality include illegitimate motives and purposes, irrelevant considerations, self-misdirection on the part of the decision-maker and addressing oneself to the wrong question in making the decision.

(c) Procedural impropriety or failure to comply with the rules of natural justice

The rules of natural justice require an administrative power to be exercised in a manner which is fair in all the circumstances. Fairness would very often require that a person who might be adversely affected by the decision would have the opportunity to make representations on his own behalf before the decision is made. Since the person affected usually cannot make worthwhile representations without knowing what factors might weigh against his interests, fairness would very often require that he is informed of the gist of the case he has to answer.

6. No application for judicial review may be made unless leave to apply for judicial review has been obtained. The court may not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates. An application for leave must be made promptly and in any event within three months from the

² *Council of Civil Service v Minister for the Civil Service* [1985] AC 374 HL

³ *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1947] 2 All ER 680

date when grounds for the application first arose unless the court considers that there is good reason for extending the period within which the application shall be made.

7. On an application for judicial review the court has power to grant an order of certiorari, prohibition or mandamus, but in addition, the court has power, in specified circumstances, to grant a declaration or an injunction⁴, or to award damages⁵.

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4 May 2000

⁴ The court may grant a declaration or injunction if the court considers that, having regard to all the circumstances of the case, it would be just and convenient for such relief to be granted on an application for judicial review.

⁵ The court has power to award damages to the applicant, provided he has included in his statement in support of the application for leave, a claim for damages, and the court is satisfied that, if the claim had been made in an action commenced by writ by the applicant, he could have been awarded damages.