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From: [REDACTED]
Sent: 26 October 2020 15:16
To: IRAL
Subject: JR Review

Categories: Moved to CfE(S)

Dear Sirs,

I write as a retired solicitor who spent almost all of my career in the public service: first as a senior lawyer in a major executive agency, secondly as the head of an administrative tribunal deciding appeals as between citizens and local authorities. In the course of that 30+ years I was on the receiving end of many a judicial review, both from citizens and in the latter office from local authorities. I can thus claim to have considerable practical experience of the JR jurisdiction.

I do not intend commenting in detail on the questions posed in your questionnaire. Rather, I wish to make a brief comment on the broader picture.

Let us not forget what the role of JR is. It is to provide a vehicle for the legality of the actions of public bodies to be challenged. I stress, the legality, not the wisdom. The grounds of challenge are in fact quite limited, but that is its fundamental role. As such it is a vital bulwark of the rule of law; for, without it, what incentive would there be for public authorities to act in a lawful manner, other than their own conscience? Of course, to be on the receiving end of an obviously ill-conceived JR can be frustrating, and I confess to having felt that frustration myself on more than one occasion. But I never once forgot that I was a public servant and that it was entirely right and essential that my actions had to be susceptible to challenge through the legal process. Oliver Wendell Holmes said: "Taxes are what we pay for a civilised society". Well, one might adapt that to say that "JR is what we pay for a society founded on the rule of law".

As to whether the spectre of JR inhibited my doing my job, certainly not. Indeed, quite the contrary; it ensured I paid close attention to being meticulous in carrying out my duties in a lawful manner. It was a powerful incentive to proper performance and therefore enhanced the quality of decision making.

Once one accepts the need for JR, it is difficult to see how its application could be restricted without undermining its fundamental purpose, since doing so would inevitably amount to prohibiting challenge to the legality of certain decisions and so undermine the rule of law itself.

It appears that this review has been initiated because of the Prime Minister's resentment of the Supreme Court's decision in the prorogation case. His view seems to be that certain matters are matters of politics that should not be subject to challenge in the courts. In other words, that the conduct of at least some political activity is not subject to the rule of law. I am afraid that seems to me to be an entirely unacceptable stance to take for the 21st century. And certainly the Supreme Court's decision on prorogation was in my view entirely correct, since the Prime Minister's attempt to sideline Parliament by prorogation for an unprecedentedly length of time plainly seriously undermined that most fundamental tenet of our constitution: the supremacy of Parliament. Public servants have to learn to take such decisions on the chin and gracefully accept them, acknowledging that it is the courts' role to hold them to account.

No, we are all - even the Prime Minister - subject to the rule of law all of the time and whatever we are doing, and must remain so. I see no case for limiting the scope of JR as to do so would be to render the rule of law toothless.

Yours faithfully,

[REDACTED]

