From the publishers

The Promotion of Administrative Justice Act Benchbook

By Iain Currie and Jonathan Klaaren

Siber Ink (2001)
xiii and 242 pp
Soft cover

This is a truly excellent book. Whether or not it becomes the judicial officer's guide to the implementation of the Promotion of Administrative Justice Act 3 of 2000 (the goal of its conception as a project under the auspices of Justice College), it is a splendid first (and often sufficient) port of call for the practitioner dealing with judicial review of public power in the era of the Act.

If the packaging suggests an absence of scholarly credibility to you, look again (just don't start with the "plain English" Administrator's Guide at the end). The authors, both serious scholars of constitutional and administrative law, know what they are doing, and do it well. "Accessibility," so often a euphemism for over-simplification, with its attendant dangers of serious distortion, is in this case the product of craftsmanship. The very real conceptual and jurisprudential difficulties (particularly in the relationship between the common law, the Constitution and the Act) could easily have justified evasion in the name of pragmatic methodology. This would have left the practitioner with the uneasy feeling of the science student who understands equations of motion only because they assume a world without friction. Conversely, the book could have indulged in explorative polemics and ended up sighing 'so many questions, so few answers'. This book avoids both these pitfalls very skilfully. It manages to grasp nettles whilst always setting a tendentious tone, never forgetting its project of providing meaningful guidance to those who do not have endless time for reflection at their disposal. It does this without being dogmatic, indicating where alternative roads might be taken, and why. It cannot be criticised as simplistic by the most pedantic and ethereal scholar. Yet it gets on with its job with the minimum degree of fuss.

In a few short pages, the book offers a convincing thesis for the continued relationship between common law, Constitution and Act. If it's administrative action as defined, use the Act. If there's scope in challenging the Act, or if some other Act makes it difficult to use the Act or creates conflict, turn to the Constitution. If you are dealing with the fully private sphere, (try to) use the common law. This avoids the inevitable bypassing of the Act entailed by direct application of section 33 of the Constitution within the sphere of operation of the Act.

The book reminds one that the Act does not regulate the judicial review of public power, but regulates the judicial review only of administrative action as defined. Problems with other acts of public power? Try legitimacy (and cite *Pharmaceutical Manufacturers Association of South Africa: In re: ex parte President of the Republic of South Africa* 2000 (2) SA 674 (CC)).

The nature of the Act as a code makes for an easy structure as a commentary. Since the definition of 'administrative action' is the pivot of the application of the Act, it attracts the most urgent attention. The book deals with the definition in addressing its constituent elements, as one would have expected it to do. It leads one on a short and meaningful journey through the concepts of 'decision' (and the use and dangers of free recourse to its source, the Australian Administrative Decisions (Judicial Review) Act of 1977), of 'conduct of an administrative nature', of action taken in terms of an empowering provision, and of the German import of 'direct external legal effect'. It captures the essence (or 'core aspect') of administrative action as the implementation of legislation, while immediately pointing out that use of this core concept as a shibboleth does not always distinguish clearly between executive action and administrative action. It then opts for an overbroad definition as a starting point from which to move inwards – 'decisions of an administrative nature are decisions connected with the daily or ordinary business of government' – since 'it is more useful... to start with a broad definition and then to narrow that definition down through the constitutional distinctions than to begin with a limited essentialist and overly formalist definition' (page 51).

In dealing with the express exclusions listed under the definition, the book provides amongst other things a very useful table of the executive powers or functions listed as excluded (pages 61 to 63). An example of elegant economy is the few pages devoted to the 'unreasonableness' ground of review (pages 169 to 173). A case for a proportionality assessment is made out almost by a mere hint (page 173), with recognition of the fact that the term is studiously avoided in the Act. The treatment of the very problematic residual review ground 'otherwise unconstitutional or unlawful action' at pages 173 to 174 is a further typical example of the sort of economy that can be achieved only with much knowledge and skill.

The book can be digested, with a bit of effort, in a day. That would be a good way to start preparation of any matter requiring full engagement with the provisions of the Act as well as undergoing a crash course on a piece of legislation very few practitioners will not need to confront one way or another.

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Disability at the Bar

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complete work-out for your eye muscles and giving you great eye tone. I am not sure if judicial notice can be taken of that, but I am sure an eye surgeon or optometrist can testify to that.

The purpose of this article, as mentioned at the outset, is to impart my personal experiences and opinions on being at the Bar. The challenge is not just mine – it is all of ours. Like so many things in this wonderful country of ours, we have come so far but still have far to go. But as the saying goes: every voyage began by leaving the shore. A belief that the physically challenged are equally able to succeed in the professional world is no pipe dream – it can be a successful voyage but only if we all, challenged and not challenged, *just do it*!