

CIPL Seminar

Against Public Interest Standing in Administrative Law: exploring a non-individualist constitutional argument

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Thursday 17 May 2007, 1.00pm (Sandwiches served from 12.45pm)

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Standing to apply for judicial review of executive or administrative action has been greatly liberalised in many jurisdictions, such as the UK, NZ, and Canada, to the point where generally any citizen can go to court to challenge government action, regardless of any special interest. That is what I call public interest standing. In Australia, by contrast, a special interest test still applies, so that public interest standing is not generally available. But there are signs this may be changing. There are a number of Federal Court decisions where no more than lip service was paid to the special interest test, and at least three members of the High Court have indicated that they are generally in favour of public interest standing.

In this seminar, my focus will be on the basic question whether public interest standing is compatible with the proper constitutional role of courts in public law (using the small 'c' for constitutional law, as I am referring to general constitutional principles rather than a particular constitution). My question is whether opposition to public interest standing on this basis can only be based on an unreconstructed liberal individualist position. My argument is that to the contrary, an alternative non-individualist argument is available and is worth exploring.

Since 2004, I have been a lecturer at the University of Auckland, teaching Public Law and the negligence part of the Torts course. My research interests include Administrative Law (with a constitutional and theoretical bent), public authority liability and the Treaty of Waitangi. I received my legal education at the Universities of Otago (NZ) and Oxford, and have previously worked as an Associate (known in NZ as Judge's Clerk) at the NZ Court of Appeal and as counsel at the Crown Law Office, as well as lecturing for a year at Southampton University.