

**“Source: *Administrative Law, The Legal Status of the Federal Administration, Working Paper 40*, 1985.
Department of Justice Canada.
Reproduced with the permission of the Minister of Public
Works and Government Services Canada, 2007.”**

Table of Contents

INTRODUCTION	1
CHAPTER ONE: Absence of a Modern and Coherent Status	5
I. Origins of the Current Situation	5
A. The Weight of Historical Tradition	6
1. The Existence of a Paradox	6
(a) Survival of the Unitary Principle	6
(b) Consequences of Relational Dependence with the Crown	7
2. Transfer of Special Pre-Eminence	10
B. Complexity of Canadian Institutions	12
1. The Impact of Federalism	13
2. Fragmentation of the Federal Administration	16
(a) Independent Administrative Agencies	16
(b) Public Enterprises	20
II. Continuing Misconceptions	23
A. Terminological Confusion	24
1. Uncertainty As to the True Identity of the Crown	24
2. Toward a Distinctive Meaning for Administrative Law	26
B. Obfuscating Contemporary Reality	28
1. The Absence of Doctrine	29
2. The Existence of Subjective Factors	30
III. Conclusion	31

CHAPTER TWO: Toward a Methodology of Change	33
I. Conditions Favourable to Strengthening Rights of Individuals.....	34
A. Contemporary Requirements of the Rule of Law	35
1. Exclusion of Autonomous Powers	35
2. Search for a Balance.....	38
(a) The Idea of Complementarity	38
(b) The Idea of Reasonable Limit	40
B. Paramountcy of Liberal Concepts	42
1. Primacy of the Rights of Individuals.....	42
2. Quest for Equality of Treatment	45
(a) The Concept of Equality in Canadian Public Law	45
(b) Application of the Principle of Equality to Law Affecting the Administration	48
C. The Vulnerability of the Individual.....	52
1. Rapid Growth of the Benefit-Granting Function	52
2. Changes in the Individual's Status in Relation to the State	53
D. Deficiencies of Judicial Review	55
II. The Special Nature of Administrative Action.....	59
A. Problems in Making Administrative Action Subject to General Rules	60
1. The Existence of Special Functions	61
(a) The Administrative Police Function	61
(b) The Power to Act Unilaterally.....	64
2. The Special Nature of the Benefit-Granting Relationship between the Administration and the Individual.....	65
B. The Advantages of Special Legal Regimes	68
1. The Benefits of More Suitable Rules of Tortious Liability.....	69
2. Uncertainty Regarding the Execution of Judgments.....	74
3. The Need for Non-Curial Safeguards	77
III. Conclusion	78

CHAPTER THREE: General Conclusion and Recommendations	81
BIBLIOGRAPHY	89
TABLE OF CASES	101
TABLE OF STATUTES	103