

The Place of Estoppel in Public Law

Sir Anthony Mason, AC KBE

Introduction

Although recent developments appear to suggest that estoppel has a limited role to play in public law, the place of estoppel in public law has neither been authoritatively defined nor delineated. There are various reasons for this state of affairs, not the least of them being the uncertainties and complexities which pervade the role and effect of estoppel in private law. Enid Campbell made this point very clearly in her article "Estoppel in Pais and Public Authorities"¹ where she stated:

[I]t makes no sense to maintain the distinction between the effects of estoppel in pais in equity and at common law. If the distinction is eliminated, courts will have the means to accommodate those cases in which estoppel requirements have been satisfied but in which to compel adherence to the assumption generated by a public body would be to sanction the appropriate remedy will be compensatory.

At the same time, Professor Campbell recognised that it could sometimes be appropriate to hold the public body to the assumption which its conduct had generated. In other cases where cash benefits were paid as a result of administrative error and were received in good faith, she thought that the solution was to be found in the enactment of a statutory provision which precludes recovery of the money paid and received.

Campbell's approach drew upon the trend of the High Court's apparent move towards the acceptance of a unified principle of estoppel. That apparent trend could be discerned from several decisions delivered before Campbell's article, but more recent decisions have cast doubt on whether that trend will continue. The High Court has sounded a strong note of caution about the development of over-arching principles, with

¹ (1998) 5 AJAL 157 at 167. Professor Campbell expressed similar views in "Ostensible Authority in Public Law" (1999) 27 FL Rev 1 at 6.

This is a preview. Not all pages are shown.