Institutions — Human Rights Protectors — Efficacy

Gordon FAIRWEATHER*

It is a great privilege for me to chair a panel consisting of Mr. Justice Mark MacGuigan and Mr. Russell Juriansz with whom I marched and tented, first in 1977 during discussion of the parliamentary bill which became the *Canadian Human Rights Act* [1]. Mark MacGuigan was Chairman of the Committee on Justice and Legal Affairs to which the legislation was referred and I was critic for the official opposition. Later when the Canadian Human Rights Commission was formed, Mr. Juriansz was recruited to join the legal department. Mr. Juriansz ably served the Commission for ten years before moving on to private practice. Mr. Juriansz established an enviable record before the courts, including the Supreme Court of Canada, based on his skill as an advocate and his professionalism.

As the Canadian Institute for the Administration of Justice Conference is being held in Halifax near Dalhousie University, and its Faculty of law, my thoughts turn to Professor John Willis, surely the preeminent expert in the field of administrative law. Professor Willis was able to ensure that law students and the legal profession took seriously this developing branch of the law. The turf battles between those who believed that the courts were the natural repository for all remedies and legislators who accurately forecast the need for administrative tribunals to provide speedy adjudication of complaints against government departments and agencies were shown to belong to yesterday. Professor Willis was able to instill some objectivity into the debate and invite us to come to terms with what the organizers of this conference have termed Human Rights in the 21st Century : Prospects, Institutions and Processes.

I leave you with two possible impediments to the efficacy of tribunals. The first arises from an erosion of the principle of the independence of tribunals from ministers and their political staffs. The scheme of most legislation establishing tribunals, and obviously endorsed by Parliament, seeks to ensure that tribunals will be free from pressure and interference by the political branch. If tribunals stray from their jurisdiction or are in breach of the rules of natural justice, the Federal Court of Canada is the appropriate reviewing authority. I see growing evidence that independence is now under siege.

The second impediment concerns the way members are appointed to boards and commissions. Patronage is not in itself an impediment. After all, patronage is the route followed wherever the preferment of the Governor-in-Council is involved. It is when

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1. *Canadian Human Rights Act*, S.C. 1976-77, c. 33.

litmus tests are applied to determine one's political allegiance that the process of getting the best candidate is flawed. The public interest is thus ill-served.

Mark MacGuigan put the case for human rights protectors this way :

> *In short, courts have treated human rights tribunals not as competitors, but as compatriots in the ceaseless quest for human dignity*.

Professor Willis will approve of that eloquent summary and so do I.

I invite you to pay attention to Mr. Justice Mark MacGuigan and Mr. Russell Juriansz.