

Administrative Tribunals — Rough Justice or Realistic Justice?

Beth BILSON*

One of the most prominent features of our society in this century has been the entrusting of an increasing range of public decisions, which affect significant interests of all citizens, to administrative agencies. It has indeed been observed that most citizens encounter this kind of decision-making with more frequencies, and at more points in their lives, than they are likely to experience the process of the civil courts.

The courts have acknowledged the clear intention of democratic legislative institutions to confide the implementation of statutory programs and regulatory systems to agencies which are independent of executive government, with a specialized mandate and members recruited for their specialized expertise. These courts have enunciated a standard of judicial review that is highly sensitive to these legislative intentions and to the importance of the values of specialization, accessibility and efficiency which these agencies embody.

At the same time, the courts have expressed some unease about the extent to which judicial deference to administrative decision-making is justified, and have begun to articulate criteria which suggest that different degrees of deference are appropriate for different kinds of tribunals. In some instances, these criteria are based on an assessment of the expertise possessed by tribunals, and on the sufficiency of that expertise to confront certain kinds of issues. In other cases, such as those in which the question concerns the role of an administrative tribunal in interpreting constitutional provisions, the courts have discriminated on the basis of the proper function of an administrative tribunal in comparison to that of a court of civil jurisdiction.

The panelists in this session have been asked to explore both of these themes, that of the rationale for deference to administrative decision-making, and that of the limits which should be placed on the scope of activity of administrative agencies. In this context, they will be taking a fresh look at the justifications which are offered for continuing to accord generous extent to the activities of administrative agencies, and at the legitimacy of the concerns which lead to arguments in favour of more careful scrutiny of administrative decision-making by the courts.

* Professor, College of Law, University of Saskatchewan, Saskatoon.