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Speech

Ethics: The Duty of Lawyers Vis-À-Vis Tribunals

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My topic this afternoon, as the program tells you, is the ethical duty of lawyers vis-à-vis tribunals--or in other words the ethical duty of lawyers in their *relations with* tribunals and tribunal members.

However, the word "tribunal" in the program title is overbroad for the topic of the ethical duties of lawyers, as a lawyer's professional ethical obligations respecting tribunals are principally present with respect to a special category of tribunals--that is, those tribunals exercising judicial functions; tribunals which are now commonly referred to as "adjudicative" tribunals but which I prefer to call "judicial tribunals"--the tribunals that are now recognized to be an integral and major component of our justice system. I will not be talking about the profession's ethical obligations respecting tribunals that are regulatory agencies, as that is a different and more problematic topic.

Of the total number of so-called "administrative tribunals" across the country, the majority are judicial tribunals. These are the tribunals that exercise judicial functions--that determine individual rights by adjudicating justiciable issues--hearing evidence, making findings of fact, interpreting the law, and applying the law to those findings in the course of coming to a judgment about people's legal rights that is frequently in some measure life-altering for one or more of the parties. (The Province of Ontario has recently officially identified 37 tribunals as "adjudicative tribunals", or as I call them, judicial tribunals.)

And it is no longer contentious to say that these tribunals are part of our justice system. (As we know, the Supreme Court of Canada itself has said so-- in *Paul v. British Columbia (Forest Appeals Commission)*.[1] Indeed, we must now concede, what Ontario's then Attorney General, Roy McMurtry, suggested many years ago: that our justice system is in fact comprised of two divisions: the judicial justice division and the administrative justice division. And the awkward truth is that it is to the latter division--the administrative justice division of our justice system--that Canadians must look for the resolution of the majority of their legal-rights disputes.

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The professional obligations of the legal profession and its members respecting the *judicial* part of our justice system are well understood, and for the most part we are responsive to those obligations, both as a group and individually. Should someone publish an unjustified rant against one of our judge's decisions, some lawyer ***40** familiar with the decision will shortly be found speaking in public in his or her defence, and should a government's tinkering with the court's administration be seen to have created a rule of law problem with the structures of the judicial division of the justice system, we can be sure the bar will be heard from. The Canadian Bar Association's public-interest litigation in which it attempted to establish legal aid as a constitutional requirement was a recent example of the bar doing its duty in that tradition. The constant talk amongst lawyers and judges about the problems of access to the civil justice system--by which is meant the court system--is another example.

But how do we as a profession measure up when it is the administrative justice division of our justice system or its members that are under attack? Are lawyers and their professional organizations alert to the need for defending adjudicators in that part of our justice system? Do we feel ethically responsible for the structures of administrative justice? Do we understand, for instance, or do we not agree, that we are as much officers of the judicial tribunals as we are officers of the courts?

What if, standing here this afternoon, I were to tell you that in my opinion British Columbia's Chief Justice is a dangerous human rights extremist, a demagogue who hates Canada's tradition of liberty, and a domestic terrorist? If I were to say that, what would happen? Well, you know what would happen: I would not be able to continue, you would shout me down, I would be asked to leave, and lucky to get out without bodily damage, and subsequently I might well face a charge of contempt. And if I *published* such a rant? You and your law society and the bar association President would be all over the media with outraged protests and strong expressions of support for the Chief Justice, with contempt charges being laid amid, no doubt, calls for my arrest.

So, when the Chief Justice of British Columbia's Human Rights Tribunal, Heather MacNaughton was indeed called--in the media--a dangerous human rights extremist, a demagogue who hates Canada's tradition of liberty, and a domestic terrorist, and much more as well, what did the British Columbia profession do?

And if British Columbia lawyers had read a report in Maclean's in which a named judge of the British Columbia Supreme Court was lampooned for outrageously holding that persons employed in restaurant kitchens have a legal right to refuse to wash their hands, what would they have done?

First of all, of course, they would not believe that any judge would have been so foolish. They would go and read the decision and, as they would have expected, they would find that the media report was an egregious misrepresentation of what the judge had in fact decided, and, as officers of the court with the ethical obligation to defend the courts and judges against unfair criticism,

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British Columbia lawyers would be vigorously lobbying their organizations to take a public stance against this slandering of a judge and his or her decision. That's what you would do, isn't it? Or at least that's what you hope some of your colleagues would do, or at least that's what your code of conduct would require them or you to do. Your Professional Conduct Handbook specifically provides that Judges, not being free to ***41** defend themselves, are entitled to receive the support of the legal profession against unjust criticism and complaint. [2]

And, yet, when the British Columbia Human Rights Tribunal decision in the *Datt v. McDonald's Restaurant* [3] case, a decision issued by Judy Parrack, a senior and respected member of the British Columbia Human Rights Tribunal, was criticized publicly--in Maclean's and elsewhere--in exactly those terms, what did British Columbia lawyers do? What did their professional organizations do?

If you had gone to the Human Rights Tribunal's website and read member Parrack's decision, you would have found that it was by no means the "crazy" decision described in Maclean's; you would have found in that decision a well-reasoned, perfectly rational application of Human Rights law in which member Parrack never questioned, indeed explicitly confirmed, the validity of the McDonald's hand-washing policy. What she found the employer liable for was its blank refusal to make any attempt whatsoever to accommodate the hand-washing related disability of an employee of some 23 years standing, even though, as the evidence clearly showed, there were possible opportunities for assigning that employee to jobs in the restaurant that did not involve handling food. And the professional excellence of member Parrack's understanding of the law relating to an employer's obligation to accommodate a disability may be seen confirmed when a passage from her judgment in *Datt v. McDonald's* relating to the procedural aspect of an employer's duty to accommodate was subsequently quoted with approval by Madam Justice Gray of the British Columbia Supreme Court in her 2011 decision in *Cassidy v. British Columbia (Emergency & Health Services Commission*). [4]

Member Parrack, who made the *McDonald's* decision in the exercise of her duty as a statutory adjudicator, was publically mocked for that decision on numerous occasions and held accountable on the national stage on the basis of an egregious misrepresentation of her perfectly sensible decision, all the while having no right or opportunity to defend herself, and, as far as I have been able to discover, having no one from this learned profession standing up in her defence.

Now, British Columbia lawyers might want to point out that there was no professional obligation to defend member Parrack and her decision or Chair McNaughton and her decisions because neither of them were judges and British Columbia's Professional Conduct Handbook makes reference only to a lawyer's obligation to defend judges. [5] I would respectfully, respond, however, that the obligation to defend both Tribunal chair MacNaughton and member Parrack was implicit in the Handbook's recognition of lawyers as "ministers of justice" and in its instruction to British Columbia lawyers to "serve the cause of justice". [6] But, fortunately, this debate is now redundant

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because in the new Code of Professional Conduct ***42** for British Columbia, which, as of January 1, 2013, replaces the current Handbook, your obligations in this respect have now been made perfectly clear.

In Chapter 4 of that new code, the Chapter that deals with a lawyer's "Relationship to the Administration of Justice", rule 4.06 (1) requires a lawyer to "encourage public respect for and try to improve the administration of justice" and, under the heading "Criticizing Tribunals", the Commentary on that rule reads as follows:

> ... Proceedings and decisions of *courts and tribunals* are properly subject to scrutiny and criticism by all members of the public, including lawyers, but *judges and members of tribunals* are often prohibited by law or custom from defending themselves. Their inability to do so imposes special responsibilities upon lawyers. First, a lawyer should avoid criticism that is petty, intemperate or unsupported by a bona fide belief in its real merit, since, in the eyes of the public, professional knowledge lends weight to the lawyer's judgments or criticism. Second, if a lawyer has been involved in the proceedings, there is the risk that any criticism may be, or may appear to be, partisan rather than objective. Third, when *a tribunal* is the object of unjust criticism, a lawyer, as a participant in the administration of justice, is uniquely able to, and should, support the tribunal, both because *its members* cannot defend themselves and because, in doing so, the lawyer contributes to greater public understanding of, and therefore respect for, the legal system. (Emphasis added.)

This is language that is identical to what one now finds in the Federation of Law Societies' 2011, model code of conduct, and so it seems now to be official: judicial tribunals and their chairs and members now stand on equal footing with courts and their judges respecting the legal profession's obligation to defend them against unjust criticism. Perhaps now we will do better in that respect than we have in the past.

And, now, to go on to a different subject--the security of tenure of members of judicial tribunals and a lawyer's professional obligations concerning that topic.

Most Canadian lawyers think the quintessential example of bad, security-of-tenure policy for judges is to be found in the United States where the judges of many American State courts have to periodically stand for re-election. We Canadian lawyers have always taken a very dim view of this--how, we ask, can judges possibly make, or be seen to be making, independent and impartial decisions if they know that in two or three years these decisions will be the targets of their opponents in their forthcoming re-election campaign? We naturally think: What a bizarre system.

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And some of you may have read John Grisham's book "The Appeal" which tells the story of a State in the United States in which the members of the State Appeals Court had to periodically stand for re-election, and when a large corporation got hit with a multi-million dollar jury award for negligently polluting the water of a small community, the corporation appealed, delayed the appeal process until one of the "liberal" Justices of Appeal came up for re-election, then ran its own candidate for the position, poured millions of dollars into the campaign and got its candidate elected, which candidate, as expected, became the swing vote on a five-person panel that allowed the appeal 3-2. It was just a good story until it actually happened. In West Virginia, the State Court of Appeal overturned a $50 million jury verdict against the nation's 4th largest coal mining company in the circumstances where the deciding vote in the Appeal Court's 3-2 decision was cast by ***43** a judge who had won an election contest over an incumbent judge with the assistance of millions of dollars of campaign funds from the CEO of the coal company. Fortunately, this decision was overturned in the United States Supreme Court on the ground of bias, but only on a 5-4 decision. [7]

Now, the impact of these American retention elections on the perceived independence and impartiality of State judges is bad enough, as the West Virginia case illustrates, but there is a state where the situation is even worse, a state where it is not necessary to rid oneself of a judge by defeating him or her in a retention election; it is a state where the governor herself is legally authorized to dismiss any judge at any time for any reason, or no reason, and replace him or her with a person of the governor's own choosing, at the cost of no more than one year of the judge's salary. Are you surprised to hear that? Probably not, for as you are likely to know, that "state" is in fact the Province of British Columbia. In this Province, the government is authorized by statute to terminate the appointment of any adjudicative member of a judicial tribunal at any time at the cost of no more than a year's salary and to replace them with a person of the government's choice.

I refer to section 14.9(3) of the *Public Sector Employers Act*, [8] which reads:

> (3) The appointment of [any tribunal] member may be terminated without notice before the end of the term of their appointment on payment of the lesser of
>
> (a) 12 months' compensation, or

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> (b) the compensation in an amount equal to the remuneration otherwise owing until the end of the term.

I have no information as to how often your government exercises this power; I personally know of only the one case--the mid-term termination of Mary McKenzie's appointment as a Residential Tenancy Arbitrator in 2005. (In the interest of full disclosure I should mention that I was one of Mary McKenzie's counsel when she successfully judicially reviewed that decision.) I suspect that that power has never again been used, but the fact that it is still on British Columbia's legislative books is surprising given its implications for the independence of your judicial tribunals.

But, some may want to argue that my comparison of British Columbia with the West Virginia situation is not apt because there they were talking about real judges. And judicial tribunal members are not real judges, they are just tribunal members-- order-in-council appointees.

Well, it is true that we don't call them judges. But they make judicial decisions and, in lots of places they *are* called judges--administrative law judges--places that include the United Kingdom, Quebec, the United States, Australia, and New Zealand. In those jurisdictions, they call judicial tribunal members judges because those members do what judges do and they are what judges are--people whom the state has entrusted with an exclusive power to adjudicate disputes about other people's legal rights. And a lawyer's professional ethical obligations to them and their institutions are shaped and determined by the same ethical principles and ***44** logic that shape and determine our professional obligations to adjudicators who *are* called judges and to tribunals that *are* called courts. These ethical obligations arise from the nature of the function that judicial tribunal members are authorized to exercise and the state sanction of that function, and from a lawyer's state-sanctioned official role in the exercise of that function; they are not derived from the way in which the judicial function is formatted. We owe a duty to judges not because they are called “judges” but because of their function and our role in that function, and there is no difference in principle in that respect between the function of, say, a family court judge, and the function of a member of, say, the Human Rights Tribunal.

But the power to dismiss at any time without cause is not the worst of British Columbia's security of tenure problems respecting the members of its judicial tribunals concerning which the British Columbia profession now has an ethical obligation to try to reform. It is in principle the most shocking because it is a power that can be exercised at any time, but the exercise of that power obviously presents a potential political cost to a government because of the inherent “wow” factor when such a decision becomes known, and so one can be confident that it is not a power that will be exercised very often. No, the most shocking aspect of the security of tenure structure for British Columbia's judicial tribunal members--and, indeed, for the members of all judicial tribunals

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across the country except in part in Quebec--is the accepted view in Canada that governments have an untrammeled discretion to refuse to re-appoint any judicial tribunal members--without notice, without reasons or explanations, and without compensation-- whenever their typically three- or five-year terms of appointment expire.

With this unprincipled re-appointments regime for judicial tribunal members firmly entrenched in Canada's conventional practice, we have this situation. When judicial tribunal members are asked to make a judicial decision that will inconvenience or upset the government or its influential friends--as they are routinely asked to do--both they and the parties that appear before them know that if the member makes that decision he or she is running a significant risk of being fired--fired without cause, without a hearing, without notice or compensation, and without even the political inconvenience to a government of having to give an explanation. It won't, of course, happen the next day, but everyone knows that it will be under consideration by the government when the time comes for that member to petition the government to exercise its untrammeled discretion to renew his or her appointment at the end of his or her current term.

You are all likely to be aware of one high-profile arbitrary dismissal of a judicial tribunal member at the end of her term here in British Columbia. I am, of course, referring to the government's refusal to renew Judy Parrack's appointment to the Human Rights Tribunal in July 2010. You will be aware of it because of the rare combination of circumstances that brought the facts of that case before the British Columbia's Supreme Court in *Brar v. Veterinary Medical Assn. (British Columbia)*.[9] This case came to the public's and profession's notice because the dismissal of member Parrack occurred when she was deeply engaged in the adjudication of a particularly high-profile human rights complaint.

***45** I mention this particular instance of an idiosyncratic removal of a judicial tribunal member only because it is one of the two cases I know of in which there is a public record of what occurred, and the only case in which the professional reaction of a party's lawyers to the outrage of having the adjudicator in their case dismissed mid-hearing without cause or notice is on the public record. That record appears in a letter written by the complainants' lawyers, Mr. A.S. Bharmal and Ms. Clea Parfitt, to the British Columbia Attorney General on July 14, 2010, quoted in full by The Honourable Mr. Justice Davies in paragraph 21 of his judgment in *Brar*. It is a long letter, and Justice Davies ultimately criticized the complainants for the content and extent of their intervention in the appointments process following the government's refusal to renew member Parrack's appointment, but the paragraph in counsels' letter to the Attorney General that is of particular relevance to the topic of a lawyer's ethical obligations vis-‘a-vis tribunals could not, I would respectfully suggest, itself be criticized and it reads as follows:

> ... the failure to re-appoint Member Parrack in the midst of one of the most significant human rights hearings in British Columbian history is a deep affront to

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> the decision-making independence of this Tribunal member, to the integrity and independence of this Tribunal, and to the independence, integrity, authority and esteem of all administrative decision making bodies in this province. It undermines the fundamental role of the rule of law in our system of government. This failure to re-appoint has shocked and dismayed our clients and shaken their confidence in the legal structures of our province. It has also deeply troubled and dismayed us, both as counsel *and as officers of the Tribunal*. ...

Note that Mr. Bharmal and Ms. Parfitt instinctively felt that they were officers of the Human Rights Tribunal, even though neither British Columbia's current Handbook of Professional responsibility nor its new code make that point explicit. The Handbook's statement of the Canons of Legal Ethics refers to a lawyer only as an "officer of the courts" and the new Code makes no change in that respect, notwithstanding the new professional obligation to defend tribunals and their members.

It is, of course, not my intention to engage with you this afternoon on the merits of the *Brar* case; I refer to it, as I said, only because of the unique public record it provides of the professional response of two particular lawyers confronted with the egregiously flawed rubber of our woeful administrative justice re-appointments regime hitting the road in their case. Of course, the letter to the Attorney General quoted by Mr. Justice Davies was a partisan letter but in the paragraph I just quoted one finds, I would respectfully suggest, the expression of a truly nonpartisan professional outrage that in my opinion should be provoked in the breasts of all lawyers, not just by what happened in the *Brar* case, or by what may happen in a case of one's own in the future, but by the nature of the re-appointments regime generally.

If one looks with a clear eye at this system in which the persons who are judging a majority of disputes about legal rights in this country all know that if they make a decision that seriously inconveniences the government or any of its friends they can expect in due course to be fired, then we should all see that system as--to paraphrase Mr. Bharmal and Ms. Parfitt--a deep affront to the decision-making independence of judicial tribunal members, and to the independence, integrity, authority and esteem of all administrative decision making bodies in this province and ***46** elsewhere in Canada, and as undermining the fundamental role of the rule of law in our system of government.

And the deepness of the affront that lawyers should be feeling in this respect may be measured by the fact that, British Columbia's re-appointments regime being what it is, none of British Columbia's judicial tribunals or their members are in law impartial. Quebec's Court of Appeal has said so. Quebec's Court of Appeal has held that any judicial tribunal whose members are appointed to renewable fixed terms and whose re-appointments are not protected by a fair, objective and independent re-appointments process (which is in fact every judicial tribunal in this country with

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the exception now of the members of Quebec's Administrative Tribunal) is in breach of the *Valente* principles of judicial independence and impartiality. [10]

Ah well, you say, that is lamentable, no doubt, but what has that to do with a lawyer's ethical obligations vis-à-vis tribunals?

Well, there is the assertion in the Canons of Legal Ethics in both the existing Handbook and the new Code that a lawyer is "a minister of justice" and has a "duty to promote the interests of the state [and] serve the cause of justice" ... But now, more importantly, there is the previously mentioned Rule 4.06 of the new British Columbia Code dealing with a lawyer's obligation to "encourage public respect for and try to improve the administration of justice". In the Commentary under that rule where one finds the requirement referred to earlier for lawyers to defend tribunals and their members one also finds this:

> Admission to and continuance in the practice of law implies, on the part of a lawyer, a basic commitment to the concept of equal justice for all within an open, ordered *and impartial system*. However, *judicial institutions* will not function effectively unless they command the respect of the public, and, because of changes in human affairs and imperfections in human institutions, *constant efforts* must be made *to improve the administration of justice* and thereby, to maintain public respect for it. (Emphasis added.)

Regrettably, we live in a country where the lawyers in every province and territory, including British Columbia, have allowed themselves to be co-opted into accepting a system of justice--the system of administrative justice--that is not impartial and not compatible with the rule of law. And the question I put to you this afternoon is this: now that the profession has explicitly recognized the ethical duties of lawyers to be committed to a justice system that is impartial and to be engaged in constant efforts to improve the administration of justice, what does the BC part of the profession now propose to do about this non-rule-of-law-compliant, reappointments regime for members of its judicial tribunals?

And, of course, the re-appointments regime is not the only structural aspect of British Columbia's administrative justice system that is incompatible with the rule of law, and which your new Code also calls upon your constant efforts to change. Most prominent amongst the other rule-of-law deviant structural components of the ***47** administrative justice system is the egregious conflicts of interest inherent in the integration of judicial tribunals with their host ministries.

About ten years ago, the Federal Court of Appeal had occasion to hold that there was a reasonable apprehension of bias when an adjudicative member of the Immigrant and Refugee Board ("IRB")

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assigned to the adjudication of a refugee claim was a person on secondment from her public service employment with the Immigration Department, where she had worked as an appeals officer. The apprehension arose, the court said, in part, because it was far from fanciful to think that, as an appeals officer on temporary leave from the branch of the Department that advises the Minister on whether an intervention is appropriate in a given case, and represents the Minister when the Minister does intervene, the adjudicative member might well be mindful of how her colleagues were likely to view her decisions as an IRB member and what effect that her decisions might have on her career prospects or opportunities when she returned to [the Immigration Department]. [11]

That is not, I think, a conclusion with which many would want to quarrel. But that IRB member's conflict of interest as identified by the Federal Court of Appeal in that case pales to insignificance when it is compared with the conflict of interest that afflicts any British Columbia judicial tribunal. Take, for example, a labour relations board. And to avoid the pitfalls lurking in my lack of intimate knowledge of the British Columbia Board, I will speak here of a hypothetical board; a labour board that relies on its province's ministry of labour for its annual budget, for the compensation level of its chairs and members, for the appointment and re-appointment of its chairs and members, and for the administrative support it needs to perform its duties. Frequently parties come to this highly dependent institutional environment to have their rights determined in a dispute where if they get the decision they want from the board, that decision will negatively impact on the government's interests--either its interests as an employer itself, perhaps even as a party to that very dispute, or its interests as the body politically responsible for peace and good order, the maintenance of public services and of a viable economic environment. In those circumstances, that labour board and its chair and members have a conflict of interest that is so deep and obvious that in any other setting lawyers would not tolerate it for a moment.

Identifying the fulsome administrative justice reform agenda that will be necessary for a legal profession newly committed to an impartial justice system and whose ethical obligation to make constant efforts to reform that justice system has now been explicitly acknowledged in the new British Columbia Code is really not very difficult, so I will not belabor the point. But I cannot close without referencing one more, particularly egregious British Columbia justice system train wreck. This is another wreck that has been allowed to occur without, as far as one can tell, any serious protest from the profession, and which presumably will be high on the profession's agenda as it begins to pursue its new ethical reform obligations. I refer to the British Columbia Legislature's assignment to government employees of the jurisdiction to issue final eviction orders and grant mandatory injunctions in residential tenancy disputes.

***48** To be clear, I am referring to the assignment of that jurisdiction to employees of the Residential Tenancy Branch of the Office of Housing and Construction Standards in the Ministry of Energy and Mines. [12] These are prototypical judicial functions; they were originally exercised only by provincial superior courts; and now they are exercised by Ministry of Energy and Mines employees. I expect that those employees do their work efficiently; and I have no reason to doubt

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their competence or fairness; moreover, I expect that any cost/benefit analysis would strongly support retaining those functions in the hands of government employees. But allowing people to be removed from their homes by nothing more than a final order from a government employee?!? What were you thinking of!? Where was the British Columbia legal profession when this was allowed to happen about five years ago.

If the making or withholding of eviction orders and the granting or refusal of mandatory injunctions can be so delegated without political controversy, it is difficult to imagine any judicial function that a legislature could not now contemplate handing to a government employee without fear of informed opposition.

The fact is that we have an administrative justice system in Canada in which the rule of law is, in truth, a stranger, and it is past time that Canada's legal profession began to respond to its compelling ethical obligation to get it fixed. And, perhaps the recent renewed recognition of that obligation in the forthcoming Code of Professional Conduct for British Columbia, and in the Federation of Law Societies' new model code, will prove to have marked the beginnings of a new day.

And, finally, should the British Columbia profession be in fact now inclined to turn its attention to fixing the gaping rule-of-law omissions in the structures of British Columbia's administrative justice system, it might want to have a look at the “Framework for Tribunal Excellence” adopted in 2012 by the Council of Australasia Tribunals (Australia and New Zealand Tribunals), and particularly that Framework's definition of Tribunal Core Values. The Framework may be found on the Council's website at: http://www.coat.gov.au/. The British Columbia profession might also contemplate the Ontario Bar Association's (“OBA”) leadership in taking public exception to the degree of control over the administration of tribunals that Ontario's new judicial tribunal legislation placed in the hands of the tribunals' host ministries. In August 2010 the OBA released a Commentary on the Act[13] in which it expressed its concerns about the impact of the host ministries' pervasive control-mandate on the independence of Ontario's adjudicative tribunals.

That Commentary concludes in part with this:

> It seems to us to not be overstating the matter to observe that by the provisions of this new Act the legislature has effectively converted adjudicative tribunals to ministerial departments. If this degree of control is deemed to be necessary, why, one is moved to ask, do we have “tribunals” at all. If the facades [of independence] were torn down and the reality displayed, the issue ***49** of governments exercising judicial functions could then be addressed directly.[14]

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And, of course, in British Columbia, at least for residential tenants and their landlords, the facades of judicial independence have in fact been torn down and the issue of governments exercising judicial functions is now, in that particular area, indeed plain for all to see.

The question is this: in light of the fact that one of the major divisions of British Columbia's justice system is demonstrably not in law impartial, and the British Columbia profession is committed under the new British Columbia Code to an impartial justice system and instructed to make "constant efforts" to improve that system, what does the British Columbia bar now plan to do?

Footnotes

a1 Speech presented to The Continuing Legal Education Society of British Columbia's Annual Administrative Law Conference, Vancouver, October 2012.

1 *Paul v. British Columbia (Forest Appeals Commission)*, [2003] 2 S.C.R. 585, 2003 CarswellBC 2432, 2003 CarswellBC 2433 (S.C.C.) at para. 22 [*Paul*].

2 Professional Conduct Handbook, Chapter 1, Canons Legal Ethics, para 1(2).

3 *Datt v. McDonald's Restaurants of Canada Ltd.*, 2007 BCHRT 324, 2007 CarswellBC 3418 (B.C. Human Rights Trib.).

4 2011 BCSC 1003, 2011 CarswellBC 1994 (B.C. S.C.) at para. 38; additional reasons 2011 CarswellBC 3006 (B.C. S.C. [In Chambers]).

5 Professional Conduct Handbook, Chapter 1, article 2(b).

6 *Ibid.*, Chapter 1, Canons of Legal Ethics, recitals.

7 See *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2252 (2009).

8 R.S.B.C. 1996, c. 384 (as amended).

9 2011 BCSC 486, 2011 CarswellBC 922 (B.C. S.C. [In Chambers]).

10 *Barreau (Montréal) c. Québec (Procureur général)*, [2001] J.Q. No. 3882, 2001 CarswellQue 1950 (Que. C.A.); leave to appeal refused 2002 CarswellQue 2078, 2002 CarswellQue 2079 (S.C.C.); reconsideration / rehearing refused 2002 CarswellQue 2683, 2002 CarswellQue 2684 (S.C.C.).

11 *Ahumada v. Canada (Minister of Citizenship & Immigration)*, 2001 CarswellNat 699, 2001 CarswellNat 2627, 199 D.L.R. (4th) 103 (Fed. C.A).

12 *Residential Tenancy Act*, S.B.C. 2002, c. 78 (as amended).

13 Ontario Bar Association, "Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009--Cause for Concern--The Tribunal Independence Issue" (2011) 24 Can J Admin L & Prac 225.

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14 *Ibid.* at 228--"Provisions that give us Concern", para. 9.

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