BC COUNCIL OF ADMINISTRATIVE TRIBUNALS

BCCAT NEWS

BOARD OF DIRECTORS 2004-2005

The Attorney General of B.C., Geoff Plant, was one of the keynote speakers at BCCAT's successful Annual Conference, October 24 & 25, 2004. He is seen with (from left) Cheryl Vickers, President of BCCAT, and conference organizers, Walter Pylypchuk and Janice Leroy.

PRESIDENT'S MESSAGE

The Board met in February for its annual retreat. It seems much of our energy for the last few years has been spent responding to the Administrative Justice Project. Now we have the opportunity to focus again on our own core activities like education and member services and determine some priorities for the coming year. New membership on the Board of Directors has brought some new energy and ideas which is most welcome.

The Board discussed various ideas for building on and improving our education programs and various ideas for enhancing member services and providing better communication and information to members. Course content is being reviewed and we are looking into the feasibility of other educational programs. In addition to the bi-annual newsletter, we intend to develop a monthly electronic bulletin to keep in touch with members and provide more frequent news on items of interest to the tribunal community.

If you would like to contribute articles to the newsletter, please contact Simmi Sandhu. If you have short news items to contribute to a monthly bulletin, pass them on to Najeeb Hassan.

Plans are well underway for the Fall Education Conference to be held October 23 and 24, 2005. Mark your calendars now and plan to attend. This year's conference will be the 10th Annual Education Conference - a milestone to be celebrated! Many thanks to the hardworking members of the Conference Committee and its co-chairs for the many hours they put into making the conference a high quality, successful event.

If you have ideas for how BCCAT can better meet your needs as a member of the administrative justice community, please don't hesitate to be in touch.

Cheryl Vickers, President

THE ADMINISTRATIVE JUSTICE OFFICE: AN UPDATE ON RECENT ACTIVITIES

The Administrative Justice Office (AJO) reports the following highlights of its work since the last BCCAT newsletter.

Strategic Plan

With the Attorney General's Service Plan 2005/06-2007/08 now posted on the Ministry's website (http://www.bcbudget.gov.bc.ca/sp/ag/), the AJO's own Strategic Plan will soon be posted on its website (http://www.gov.bc.ca/ajo/). The AJO's Plan reflects the Ministry's vision, mission, culture and values and supports the Ministry goals of law reform and innovative justice processes and an effective civil justice system. The AJO's Plan includes a proposed three year work plan but notes that some flexibility will be necessary to ensure effective consultation and collaboration with stakeholders and to reflect any new priorities that might be identified. A copy of the Plan has been shared with the Circle of Chairs.

To support delivery on its Plan, the AJO recently became part of the Ministry's Justice Services Branch and looks forward to benefiting from a shared common interest in law reform and additional operational support.

Updated AJO Web Site

The AJO is almost finished updating its web site (http://www.gov.bc.ca/ajo/) to provide easy access for tribunal members and staff, members of the public and other stakeholders to current information about administrative justice reform. The new "Tribunal Tool Kit", which will include model generic documents such as rules, practice directives and operating agreements, is expected to be of particular interest to BCCAT members. More information about work on these documents is set out below.

Administrative Justice Reforms in Other Jurisdictions

As part of its work in support of BC's administrative justice system, the AJO monitors administrative justice reforms in other jurisdictions, and notes Alberta's recently introduced Bill 23, which proposes to limit tribunals' constitutional jurisdiction, and the UK's broad current reform agenda, as being of particular interest:

Alberta's Bill 23

On March 14, 2005, Alberta's Attorney General introduced the Administrative Procedures Amendment Act, 2005 which, similar to BC's Administrative Tribunals Act, clarifies tribunals' jurisdiction to consider constitutional questions. The Alberta Bill proposes that constitutional jurisdiction will be exercisable only if permitted by regulation. The extent of the limitation is as yet unknown as the Bill has only been given second reading and, until Royal Assent is given, no regulation will be enacted. A copy of the Bill is available at: http://www.assembly.ab.ca/adr/adr_template.aspx?type=bills_bill&selectbill=023

United Kingdom

The UK government's broad program for reform of the whole "end to end" administrative justice system is set out in its White Paper "Transforming Public Services: Complaints, Redress and Tribunals", available at: www.dca.gov.uk/pubs/adminjust/adminjust.htm

Key program elements include:

- A new unified tribunal under a Senior President, with jurisdictional Presidents responsible for particular areas, and appointments to be made by the Judicial Appointments Commission to ensure independence.
- A commitment for a new Courts and Tribunals Bill, to be introduced in spring, 2005 (not yet tabled), to provide the legislative framework, which is to be implemented in 2006 on a roll-out basis.

Details on these initiatives and reports on reform activities in other jurisdictions will be posted on the AJO's web site shortly.

New Model Documents

To support tribunals to implement the ATA, the AJO is developing generic model precedents for various documents that may be common to a number of tribunals so that, if a tribunal chooses, the model can be adapted to suit the tribunal's unique needs and specific statutory provisions. The first of those documents, model practice directives, have been circulated to tribunal chairs, and collaboration with tribunals and sponsoring ministries on a model memorandum of understanding is also well underway.

Posting of these documents on the AJO's web site is anticipated in the near future.

Continuing Legal Education Society Program

The March 3, 2005 CLE program, "The New Administrative Tribunals Act", attracted 87 participants, illustrating a high level of interest by legal practitioners in the new legislation. With participation from the AJO, various tribunal chairs, tribunal counsel, AG's lawyers and private practitioners, various aspects of the Act were highlighted and discussed. Copies of the program papers are available through the CLE customer service department at 604-893-2121 or at custserv@cle.bc.ca.

Some of the Other AJO Activities

The AJO has continued its meetings with the Circle of Chairs, and with various tribunals and ministry representatives in its ongoing support and liaison roles, and the AJO is currently exploring whether there is sufficient interest in it hosting a workshop for senior tribunal staff to share information and ideas. The AJO is also looking forward to a scheduled meeting with the BCCAT board of directors in April.

* * *

The AJO welcomes comments and suggestions
Contact information is available at http://www.gov.bc.ca/ajo/ or by calling 250-387-0058.

THE ADMINISTRATIVE TRIBUNALS ACT: ONE STEP FORWARD, TWO STEPS BACK?

T. Murray Rankin, Q.C.*

* This is an abbreviated version of a longer paper delivered at a CLE course devoted to the *Administrative Tribunals Act* which took place on March 3, 2005.

INTRODUCTION

Last year, the *Administrative Tribunals Act*[1] was largely proclaimed. It addressed the vexing issue of standard of review for the decisions of most but not all BC administrative tribunals and also addressed the their ability to consider constitutional issues. This short paper will focus upon the latter issue. For reasons that will be set out below, this writer is generally not enthusiastic about this "reform" initiative. A threshold question is the merits of a statute of this kind, which sets out a number of general powers and responsibilities for administrative tribunals and their members in a sort of smorgasbord format. It then confers these powers selectively upon individual tribunals, by means of consequential amendments to their constituent statutes. In a great number of instances, perhaps the majority, these provisions cannot accurately be termed "reforms" as has been asserted in most of the government's accompanying background materials. Rather, most of the provisions merely codify the common law; the first forty sections or so are largely of this kind. Some would argue that such codification is helpful in providing certainty to tribunals and the public, thus avoiding the costs of litigating purely procedural matters. However, for those tribunals not subject to this codification there remains the danger that by not being mentioned, a reviewing court could conclude that they were intended not to have these powers, surely not a positive development.

Umbrella statutes like the ATA have not always proven successful. Over thirty years ago, Ontario enacted its *Statutory Powers Procedure Act*[2] , which resulted from the celebrated McRuer Commission. Shortly afterward, the BC Law Reform Commission considered a similar reform for this province[3] and was only able to conclude that an inquiry body be set up under the *Public Inquiries Act* " to identify agencies within the Province with adjudicative, rulemaking and investigative powers under statute, and to consider their purposes and functions with a view to evaluating the effect on those purposes and functions of compliance with the rules of procedural fairness". No such inquiry ever took place; the reform effort was rejected. Many have argued that the Ontario reform proved to be misguided. In many ways, the Ontario statute led to greater confusion. For example, it was enacted before the "procedural fairness revolution" that was ushered in after the *Nicholson* case[4] and so, for example, it did not apply to investigative bodies or other bodies that had been characterized previously as "administrative" rather than "quasi-judicial" in nature. The common law proved to be more expansive; the Act was far less a vehicle for reform than the common law. Its codification of procedures turned out to be ossification. It remains to be seen whether a similar fate awaits the ATA.

JURISDICTION OVER CONSTITUTIONAL ISSUES

The ability of administrative tribunals to consider *Charter* issues was first addressed by the Supreme Court of Canada in the 'trilogy' of *Douglas/Kwantlen Faculty Assn. v. Douglas College, Tétreault-Gadoury v. Canada (Employment and Immigration Commission),* and *Cuddy Chicks v. Ontario (Labour Relations Board)*). The key legal propositions emerging from the trilogy can be summarized by reference to three principles.

Firstly, the Court established that the jurisdiction of administrative decision-makers to consider and apply the *Charter* is not derived from s.52 of the *Constitution Act, 1982*; rather, it must flow from the body's enabling statute itself. Secondly, in order to determine whether the administrative decision-maker has jurisdiction to consider *Charter* issues, the Court will consider whether the tribunal has expressly or implicitly been empowered to interpret and apply any law necessary to reaching its findings. Such jurisdiction may be implied from factors including the tribunal's expertise, its procedures and functions, and the relative advantages and disadvantages of having the administrative decision-maker hear such issues. Thirdly, a tribunal's determination concerning the *Charter* compliance of any given provision will be reviewed on the standard of correctness. This appeared to be a satisfactory response to the division of powers issue; namely, whether allowing administrative decision-makers to assume jurisdiction over *Charter* issues would upset, or be incongruent with, the division of powers doctrine.

The illusory nature of the consensus forged in this trilogy, however, was brought to light by the Court's subsequent decision in *Cooper v. Canada (Human Rights Commission).* There, the Supreme Court of Canada had to determine whether the Canadian Human Rights Commission could assume jurisdiction over a question concerning the constitutionality of a section of the federal

*See **Two Steps**, page 4*

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Human Rights Act that provided that it was not a discriminatory practice to terminate someone's employment because the individual had reached the normal age of retirement. Since that Act did not expressly empower the Commission to determine questions of law, the Court was required to consider whether such a power could be implied from the Act. Ultimately, the Court split three ways. Lamer, CJC questioned the law as stated in the trilogy, and queried whether administrative decision-makers should ever assume jurisdiction over constitutional and *Charter* issues. For her part, McLachlin J., as she then was, emphasized the importance of promoting and protecting *Charter* rights within administrative tribunals and in her dissent found that the Act implicitly conferred upon the Commission the jurisdiction to determine *Charter* questions.

The *Cooper* decision created considerable uncertainty in this context. However, the Supreme Court of Canada subsequently clarified the relevant law, primarily in their judgment in *Nova Scotia (Workers' Compensation Board) v. Martin*[5] . One of the issues involved in *Martin* was whether the Nova Scotia Workers' Compensation Board had jurisdiction in respect of a constitutional challenge to a provision of the *Workers' Compensation Act* that precluded statutory compensation for chronic pain injuries. The Court determined that jurisdiction would be evaluated through a two-stage approach: firstly, the Court would assess whether the administrative tribunal had express or implied jurisdiction to decide questions of law arising under the challenged provision. An affirmative answer at this stage would raise a presumption that the board was able to hear constitutional issues; this presumption could be rebutted by clear legislative language to the contrary.

The Court laid out the this framework in clear, unequivocal terms and stated that, "(t)o the extent that the majority reasons in *Cooper* (...) are inconsistent with this approach, I am of the view that they should no longer be relied upon."[6]

The law concerning the jurisdiction of administrative tribunals to determine other constitutional questions, such as division of powers and aboriginal rights issues, has been the subject of considerably less litigation than as regards their jurisdiction to hear *Charter* issues. Indeed, the early jurisprudence in this area appeared to proceed on the basis of the assumption that administrative decision-makers had jurisdiction to determine division of powers issues, for instance.[7] Nevertheless, this issue was canvassed exhaustively by the Supreme Court of Canada in another decision issued concurrently with their decision in *Martin*; namely: *Paul v. Forest Appeals Commission*.[8]

The *Paul* case involved a number of constitutional issues, one of which was whether the Forest Appeals Commission had jurisdiction to consider whether s.96 of the *Forest Practices Code of British Columbia Act* infringed upon the appellant's aboriginal rights set out in s.35(1). In a unanimous judgment authored by Bastarache J., the Supreme Court of Canada determined that it was within the Forest Appeals Commission's jurisdiction to consider the s.35(1) issue raised in this case. The Court further determined that jurisdiction in such cases should be determined according to the framework set out in *Martin*.[9]

In sum, the Supreme Court of Canada has very recently clarified and consolidated the law in this area established that if an administrative body had expressly or implicitly been granted the authority to interpret or decide any question of law, they would presumptively be empowered to interpret or decide any constitutional question, including those relating to the *Charter*. Further, that presumption could be rebutted by an express statement to that effect in the enabling statute at issue.

Less than a year after the Supreme Court of Canada issued its landmark judgments in *Martin* and *Paul*, the B.C. Legislature enacted two provisions dramatically altering boards' jurisdiction to address constitutional issues in this province. In particular, ss.43 of the *Administrative Tribunals Act* gives a tribunal jurisdiction to determine all questions of fact, law or discretion that arise in any matter before it, including constitutional questions, while sections 44 & 45 do not confer constitutional and Charter jurisdiction on those tribunals.

Consequential amendments to the enabling statutes of various BC administrative tribunals have made either s.43, 44 or 45 applicable to the various tribunals. In particular, s.43 applies to the Labour Relations Board, and will soon be applicable to the Securities Commission. In turn, section 45 applies to the Employment Standards Tribunal, the Farm Industry Review Board and the Human Rights Tribunal. Section 44 applies to the remaining administrative tribunals that are subject to the Act.

These legislative amendments will significantly curb the ability of British Columbia tribunals to consider and apply the Constitution in their decision-making processes. In particular, as a result of ss. 43 to 45 of the ATA, the Labour Relations Board and the Securities Commission are the only administrative bodies subject to the Act that may consider *Charter* issues. Further, the Employment Standards Tribunal, the Farm Industry Review Board, the Human Rights Tribunal, the Labour Relations Board and the Securities Commission are the only administrative bodies subject to the ATA that may consider constitutional issues such as those pertaining to division of powers and aboriginal rights issues. Presumably, the eight remaining administrative bodies that are not subject to the Act, such as

*See **Two Steps**, page 5*

the Environmental Appeal Board and the Forest Appeals Commission, would be able to assume jurisdiction over *Charter* and other constitutional questions if they satisfy the two-pronged test articulated in *Martin*.

Attorney General Plant has conceded that the Act's provisions regarding constitutional and *Charter* jurisdiction set out "admittedly a fairly restrictive approach," and offered the following justifications for promoting this result:

1) the complexity and cost of constitutional litigation.

2) the expertise required to decide constitutional issues often goes beyond the specialized expertise of most tribunals.

3) the extensive commitment of public resources that constitutional law issues inevitably involve and the non-binding nature of tribunals' decisions, resulting in little value gained from the resources expended.

> The concerns I have outlined illustrate why, in many ways, it is fundamentally inconsistent with the basic objectives of an administrative justice system for significant amounts of resources, time and effort to be expended — often at the expense of the parties — on tribunals' consideration of complex questions of constitutional law.
>
> What we really want tribunals to do is problem-solve within their areas of subject matter expertise. If there are complex constitutional law questions raised, most often those are questions best left to the courts to decide.[10]

I am of the view that the costs and benefit analysis attendant upon administrative tribunals assuming jurisdiction over constitutional questions in certain circumstances actually favours an expansive view of their jurisdiction. I believe that the legislative amendments in this area, as outlined in ss.44 and 45 of the *Administrative Tribunals Act*, are unduly restrictive. The arguments against allowing administrative tribunals to assume jurisdiction over such issues may be grouped into three main headings; namely, that it would compromise the efficiency of the board process, undermine natural justice, and be contrary to the division of powers doctrine.

As to the first argument, it has been argued that administrative tribunals do not possess the resources or expertise necessary to adequately resolve constitutional questions, such that the timeliness and efficiency of their decision-making processes would be compromised were they to assume jurisdiction over such issues. La Forest J. articulated this concern in his decision in *Cooper*, where he stated:

> ...one of the aims of the Commission, to deal with human right complaints in an accessible, efficient and timely manner, would be disrupted and interfered with by allowing the parties to raise constitutional issues before the Commission. Such issues would of necessity require a more involved and lengthy process than is presently the case. In my view, it was not the intention of Parliament that the Commission's screening function become entangled in this manner.[11]

At the outset, I question the notion that such tribunals are inherently ill-equipped to consider constitutional questions. Indeed, their informal procedures and knowledge of their constituent statute may actually enhance the quality of their constitutional decisions.[12] As stated by La Forest in *Douglas*,

> There are, as well, clear advantages for the decision_making process in allowing the simple speedy, and inexpensive processes of arbitration and administrative agencies to sift the facts and compile a record for the benefit of a reviewing court. It is important, in this as in other issues, to have the advantage of the expertise of the arbitrator or agency. That specialized competence can be of invaluable assistance in constitutional interpretation.[13]

Further, I am of the opinion that these efficiency arguments are only persuasive under a narrow, artificial view of the issue. In particular, I acknowledge that at the tribunal level, the decision-making processes would be slowed down if the tribunal were required or allowed to consider constitutional issues; nevertheless, doing so would undoubtedly enhance the efficiency of the adjudicative system as a whole. In particular, it would avoid the situation in which an individual would have to split their case and litigate the same dispute in two different forums. Further, it would likely enhance the efficiency of any resultant appeals. The reviewing court would undoubtedly be assisted by having a full factual record of all the issues before it.

Finally, it may be argued that in any event, efficiency arguments should be entirely subordinate in this area. As stated by Margot Priest:

> It is unseemly to accept an arrangement in which a lack of jurisdiction to deal with Charter rights is premised primarily on an organization's insufficient expertise or resources to deal with a complex matter, but at the same time to require that tribunal to determine important matters affecting people's lives.
>
> Neither the tribunals nor the courts should confuse need for training in a new legal matter or need for resources or access to advice with a predetermined lack of jurisdiction. In the same sense that the Court has identified the benefit to a tribunal of considering Charter values, the necessity of making Charter determinations can be an impetus to improving the expertise and reputation of a tribunal.[14]

Turning to the second concern relating to boards' jurisdiction over constitutional questions, it has been argued by some that allowing boards to have such jurisdiction would be contrary to the principles of natural justice. Such arguments emphasize the high incidence of unrepresented parties in such forums, and the importance of such to natural justice in the context of constitutional litigation. Again this argument is refuted by Margot Priest in the following terms:

> Most tribunals do not require that parties be represented by counsel. There may be no counsel present or, what may be even more complicated from the tribunal's point of view, there may be experienced counsel on one side and a party representing himself on the other side. The difficulties of ensuring that a hearing is perceived as fair can be increased when the case leaves the facts of the matter at hand and moves into the realm of constitutional analysis.[15]

*See **Two Steps**, page 6*

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Finally, it has been argued that allowing boards to assume jurisdiction over constitutional issues would be contrary to the division of powers doctrine. In particular, it is argued that such a policy would invert the hierarchy between the executive and legislature, and undermine the division of powers by which it is said that the legislature and judiciary make law and the executive administers the law in accordance with the statutes created by the legislature and the common law principles established by the judiciary. As argued by Lamer CJC in *Cooper*,

> Instead of putting the intent of the legislature into effect, the case law of this Court enables tribunals to challenge the decisions of the democratically elected legislature "by the assertion of overriding constitutional norm" (...). Instead of being subject to the laws of the legislature, the executive can defeat the laws of the legislature. On each occasion that this occurs, a tribunal has disrupted the proper constitutional relationship between it and the legislature. Indeed, I would go so far as to say that a tribunal has, in these circumstances, unconstitutionally usurped power which it did not have.[16]

In response to such arguments, I note that the common law did introduce a number of measures promoting and protecting the division of powers doctrine in relation to boards and their jurisdiction over constitutional questions. In particular, the trilogy established that a reviewing court would review the tribunal's decision on constitutional matters on a correctness standard, and that tribunals could make no formal declarations of invalidity.

In sum, I acknowledge that various commentators have raised valid practical and policy concerns in relation to boards' assumption of jurisdiction over constitutional issues. Nevertheless, many of these are also subject to strong counter-arguments. The final portion of this paper highlights some of the further benefits associated with allowing tribunals to assume jurisdiction over constitutional issues.

BENEFITS

The main benefits associated with allowing boards to determine constitutional questions in certain circumstances is that this may avoid a bifurcated, two-tiered system justice, enhances the accessibility of *Charter* remedies, and is in accordance with the dictates of the Constitution. The first of those issues was canvassed in the previous portion of this paper, and will not be repeated here.

The relationship between the jurisdiction issue and the issue of accessibility of *Charter* remedies was canvassed at length by McLachlin J., as she then was, in *Cooper*. McLachlin J. there penned the now famous statement that: "The *Charter* is not some holy grail which only judicial initiates of the superior courts may touch. The *Charter* belongs to the people."[17] Ultimately, her desire to enhance the "people's" access to *Charter* remedies was instrumental in her decision that the Human Rights Commission should have jurisdiction to consider constitutional issues, including *Charter* issues in that case. In particular, McLachlin J. noted that if the Commission were precluded from considering the constitutionality of its enabling statute, the complainants would effectively be required to first go through the "useless pro forma step" of bringing their complaint to the Commission before they could have their challenge decided by the Federal Court. Further to that, McLachlin J. noted that "The requirement of this pro forma step can only serve to discourage complainants from challenging the constitutionality of a provision of the *Canadian Human Rights Act*".[18]

Arguably, allowing boards to assume jurisdiction over constitutional issues may not be merely desirable from the point of view of promoting access to Charter remedies - it may be a constitutional requirement. In particular, it may be argued that precluding individuals from asserting their rights in the "people's courts" - administrative tribunals - could be contrary to s.15 of the *Charter*. Gonthier J. touched briefly on this issue in *Martin*, stating:

> I refrain, however, from expressing any opinion as to the constitutionality of a provision that would place procedural barriers in the way of claimants seeking to assert their rights in a timely and effective manner, for instance by removing *Charter* jurisdiction from a tribunal without providing an effective alternative administrative route for Charter claims.[19]

In addition to these benefits vis-à-vis increasing the accessibility to *Charter* remedies, allowing boards to assume jurisdiction over constitutional questions may also promote the rule of law. In particular, such a view of the jurisdiction of tribunals is conceptually congruent with the requirement, set out in s.52, that all laws must comply with the Constitution. In *Cooper*, McLachlin J. stated:

> ...a tribunal's ruling that a law is inconsistent with the *Charter* is nothing more, in the final analysis, than a case of applying the law of the land __ including the most fundamental law of the land, the Constitution....My point is not that this is not an important and powerful role, but rather that we fall into error if we think of the *Charter* as a document that empowers some decision_making bodies to decide *Charter* questions to the exclusion of others. The *Constitution Act, 1982* does not speak in terms of bodies possessing power to

*See **Two Steps**, page 7*

invalidate laws. Rather, it pronounces the laws invalid, to the extent of their inconsistency with the *Charter*. The only reference in the *Charter* to decision_making bodies deals not with the invalidity of the laws that conflict with the *Charter*, but with enforcement. Section 24(1) provides that a person whose rights are infringed or denied "may apply to a court of competent jurisdiction" for a remedy, and s. 24(2) permits a court to exclude evidence taken in violation of the *Charter*. The fact that invalidation of laws under the *Charter* is linked to inconsistency rather than the action of a particular court, undercuts the suggestion that striking down laws under the *Charter* is the prerogative of a particular court.[20]

I will conclude by referring to a recent article by Madam Justice Lynn Smith in which she examines both the common law in this context and the statutory reform introduced by the ATA.[21] Among the points listed in her summary of the *Martin* and *Paul* cases appear the following:

> "The Court has also firmly rejected the concerns expressed by some judges in previous cases about the constitutionality of bodies other than superior courts making constitutional determinations. (...)
>
> The Court left open the possibility that there are limits on what legislatures may do (through procedural rules) to limit citizens' ability to raise *Charter* issues before such tribunals."[22]

In March 2005, the Legislative Assembly of Alberta considered Bill 23, the *Administrative Procedures Amendment Act, 2005*. The amendment specifies that as a general rule no board has the jurisdiction to determine questions of constitutional law unless jurisdiction is given by regulation. A regulation will be finalized in the coming months listing the various boards that need constitutional jurisdiction and what type of constitutional jurisdiction is required. As in BC, it remains to be seen whether the statutory reforms in this context represent either good policy or good law.

[1] SBC 2004, c. 45, as amended by *Attorney General Statutes Amendment Act*, SBC 2004, c. 57.

[2] SO 1971, c. 47.

[3] See *Procedure Before Statutory Bodies*, Report No. 17 (November, 1974).

[4] *Nicholson v. Haldimand-Norfolk (Regional Municipality) Commissioners of Police* (1979) 1 SCR 311.

[5] *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur*, [2003] 2 S.C.R. 54 ["*Martin*"].

[6] At para. 3.

[7] *Northern Telecom Ltd. v. Communications Workers of Canada*, [1980] 1 SCR 115; see also *Four B. Manufacturing Ltd. v. United Garment Workers of America*, [1980] 1 S.C.R. 1031.

[8] [2003] 2 S.C.R. 585.

[9] para. 39

[10] Hon. Geoff Plant, Keynote Address (9th Annual Conference of the BC Council of Administrative Tribunals, 25 October 2004).

[11] At para. 60.

[12] Debra McAllister, "The Role of Tribunals in Constitutional Adjudication" (1991-1992) 1 NJCL 25 at 74.

[13] *Douglas*, at para.59.

[14] Priest, "Charter Procedure in Administrative Cases: The Tribunal's Perspective" (1994) 7 CJALP 151 at 158-159.

[15] *Ibid*. at 162-163.

[16] At para. 25.

[17] At para. 70.

[18] At para. 74.

[19] At para. 44.

[20] At para. 83.

[21] L. Smith, "Administrative Tribunals as Constitutional Decision-Makers" (2004) 17 C.J.L.P 112.

[22] *Ibid*, p. 136-37.

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