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ADMINISTRATIVE PROCEDURE REFORM:
THE EXPERIENCE OF THE AMERICAS

AGUSTÍN GORDILLO*

1. Scope of the Analysis

INSATISFACTION with administrative procedures and organizations has always been a matter of concern in most countries, either developed or underdeveloped. Various alternatives have been used to approach this problem, both in the EU, the US, Canada, Latin America and also in other countries and continents.

The purpose of this article is to try to evaluate which way the EU countries - such as, in this case, Greece - might consider now to go, confronting different experiences in the world.

The proposals we are going to suggest discussing are really not presently applicable, even as talking points, to less developed countries such as those of Latin America¹. In all probability our own limitations in history and culture would probably mean that to be too great a leap of faith. We shall explain that later.

So really the title should perhaps be more elaborate, stating that this is a reflection of the experience of the Americas (North, Central and South) which is *not* meant to provide arguments for a change in Latin America (now too soon) but for one country in the EU.

To put things bluntly, I am going to suggest the adoption or adaptation of the Canadian system of hundreds or thousands of administrative tribu-

* Professor Emeritus, University of Buenos Aires. The author would like to acknowledge the help of assistant researcher ERICA GORBAK, Esq.

¹ Although there are some cases where administrative tribunals make the first decision, for instance in Argentina in anti-monopoly commissions (Decree-Law 22.262, 1980), maritime boards (Decree-Law 18.870, 1971), consumer disputes (created by Decree 276/98; they are voluntary), etc. The experience has been certainly better than old administrative procedure, even though it does not have the level of efficiency and swiftness, etc., of developed countries.

nals for administrative adjudication, basically stripping the classic administration of those powers².

This idea may sound too bold until one considers the delicate ambiguity of Article II-47 of the Draft EU Constitution, which is nothing but a compromise between opposing systems and will require further mutual adaptation of national systems of administration and control³.

2. Approaches to the Problem

There are broadly three or perhaps four ways to try to achieve simplification and restructuring of administrative procedures: the first one is direct and straightforward, through regulation of the administrative process (transparency, participation, negotiation, dialogue, deliberation, professionalization, etc.)⁴; all three others are more structural and complex, mainly changing the subject that makes decisions and only by the way also introducing proper modes of action.

Broadly speaking, while the first approach has not been remarkably successful in practice, the second group of primarily organizational reform, on the contrary, has attained its objectives of efficiency and swiftness with

² The Canadian system has close parallels with the UK and US systems, but it has gained a strength that we find especially interesting. See <http://www.simgroup.com/adminsearch.htm> for further details, links, etc. Also www.ccatctac.org and many other related sites. We include an overview of some of these various tribunals, boards, etc., in Annex II. A more comprehensive list of reasons why to establish these tribunals in MACAULAY, R.W. / SPRAGUE, J.L.H., *Practice and Procedure Before Administrative Tribunals*, Scarborough, Carswell Thomson, 1997, and also 1990, release 1, footnote 1, pp. 2-30 to 2-31, quoted at length in BRAVERMAN, L. S., *Administrative Tribunals: A Legal Handbook*, Aurora, Ontario, Canada Law Books, 2002, p. 22.

³ "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law". We have dealt with this problem in: El control jurisdiccional en el mundo contemporáneo. La creación del derecho en los tribunales administrativos, *Memorias del Primer Congreso Internacional de Tribunales de lo Contencioso Administrativo Locales de la República Mexicana*, Toluca, Estado de México, México, 2003, pp. 19-32; later in: Los tribunales administrativos como alternativa a la organización administrativa, Universidad Austral, *Organización administrativa, función pública y dominio público*, Buenos Aires, RAP, 2005, pp. 955-962.

⁴ See for instance BRAIBANT, G., Le passé et l'avenir de l'administration publique, in: *Revue Internationale des Sciences Administratives*, vol. 68, number 3, Bruxelles, IISA, 2002, pp. 386-7, 390-391.

specialization, impartiality and fairness. So, even though it may challenge old concepts in some countries and even continents, it surely merits analysis. It is, once again, the inevitable rapprochement between common law and continental law that we explained elsewhere⁵.

2.1 A Law - or Executive Decree - Regulating Procedure

The traditional way is to create a law that establishes which are the rules that the administration has to comply with in its operation. It looks deceptively simple: just tell the administration, by law, how it has to do business and it will comply⁶.

Its leading examples are those of some western European democracies such as Austria⁷, Germany⁸, Portugal⁹, Spain¹⁰, and also some former socialist east European countries: Hungary¹¹, Poland¹², and others. This European tradition has been followed by several Latin American countries,

⁵ *An Introduction to Law*, also in French as *Une introduction au droit*, in both cases London, Esperia, 2003, with a Preface by SPYRIDON FLOGAITIS, Director of the European Public Law Center. It is also the similar attitudes of judges in any system that prevail. As WADE says in a British context, "Here again there is perhaps a divergence between the judicial and the academic attitudes. Categorical rules, based on analysis, are congenial to the academic mind, but may be distrusted by judges whose instinct is to preserve, by the exercise of discretion, a way to escape when the categorical rules produce what they feel to be the wrong answer": WADE, H.W. / FORSYTH, C.F., *Administrative Law*, Oxford, Clarendon Press, 1994, 7th edition, Preface, p. vii.

⁶ A summary with a view to change through participation in SANDULLI, M. A. (ed.), *Il procedimento amministrativo fra semplificazione e partecipazione. Modelli europei a confronto*, Milan, Giuffrè, 2000. The book refers to the Italian, German, British and Spanish experience with administrative procedure in modern times.

⁷ The first General Administrative Procedure Law was passed in 1917. The current one is Law 172/1950, amended by Law 51/1991.

⁸ The German Law dates from 1976 and was last modified in 1998.

⁹ The Administrative Procedure Code 442/91, amended by Decree-Law 6/96.

¹⁰ In Spain, the first Law was enacted in 1958, later substituted by Law 30/92, reformed by Law 4/1999 (see GONZÁLEZ PÉREZ, J., *Manual de procedimiento administrativo*, 2^a ed., Madrid, Cívitas, 2002).

¹¹ General Rules of Administrative Proceedings, Act IV of 1957, amended in 1981.

¹² Code of Administrative Procedure, Act of June 14, 1960, amended in 1980.

either by law¹³ or Executive Decree¹⁴, both at national and local levels¹⁵, although in general with dubious success¹⁶.

Why? Because even though laws may and do include all modern principles of transparency, easy access to public documents, public hearings, participation, etc., they are not always really complied with¹⁷. It needs the teeth of judicial implementation, which then unnecessarily clogs the judiciary with cases relating to administrative unfulfilment of the principles that the law upholds.

¹³ Brazil (Law 9784, 1999), Bolivia (2341, 2002), Costa Rica (1978), Chile (19.880, 2003), Mexico (1994), Peru (27.444, 2001), Venezuela (2818, 1981).

¹⁴ Argentina chose the pattern of an "Executive Decree-Law" from a military government (19.549, 1972), later amended by another (21.686, 1977). Other countries also employ executive decrees instead of laws: Colombia (1984), Honduras (1987), Uruguay (1991), and the Anden Community (1997). In Argentina my colleagues would prefer to say that the military Decree-Law should be called simply a "Law" - more than twenty years after their departure from power.

¹⁵ Most Argentine provinces, for example, have laws or executive decrees regulating administrative procedure in much the same way as the national one, and they also interinfluence each other. Thus the so-called Autonomous City of Buenos Aires (Law 189, year 1999), and the Provinces of Buenos Aires (12.008, 1997), Catamarca (2403, 1971), Chaco (848, 1967), Córdoba (7182, 1984), Corrientes (4106, 1986), Entre Ríos (7061, 1983), Formosa (584, 1978), Jujuy (1388, 1948), La Pampa (952, 1979), La Rioja (1005, 1946), Mendoza (3918, 1973), Misiones (3064, 1993), Neuquén (1305, 1981), Salta (6569; 1908), San Juan (3784, 1973), Santa Cruz (2600, 2001), Santa Fe (11.330, 1995), Santiago del Estero (2297, 1951), Tierra del Fuego (133, 1994), Tucumán (6205, 1991).

¹⁶ For a general overview see BREWER CARÍAS, A. R., *Principios del procedimiento administrativo en América Latina*, Bogotá, Legis, 2003; our *El procedimiento administrativo*, vol. 4 of our *Tratado de Derecho administrativo*, Buenos Aires, FDA, 2008, 9th ed., and also editions in Colombia, (FDA and Díké, 1998), Brazil (Del Rey and FDA, 2003), Peru (ARA and FDA, 2003); Mexico (Porrúa, UNAM and FDA, 2004), Venezuela (FUNEDA and FDA, 2001). Available at www.gordillo.com

¹⁷ That is a very general problem with all legislation, rules or regulations, from colonial times until the present. For an explanation and further references and bibliography see GORDILLO, A., *The Future of Latin America: Can the EU Help?*, London, Esperia, 2003, with a Preface by SPYRIDON FLOGAITIS, Director of the European Public Law Center. A summary of these reasons is provided in our article *Civilizations and Public Law: A View from Latin America*, in: VENIZELOS, E. / FLOGAITIS, S. (eds.), *Civilisations and Public Law*, European Public Law Series, Vol. LXXIX, London, Esperia, 2005.

Another problem that these attempts have, is that judicial review is later sometimes limited or at least complicated with the theoretical problem of the distinction between what it is to adjudicate administratively and what it is to adjudicate judicially¹⁸. The boundaries are never clear and the debate is always too intellectual, charged with traditionalism preferring to favor the Executive Power, and in the end being rather futile as simplification and reform goes¹⁹.

3. A Law for the Administration, and Creating Independent and Impartial Administrative Agencies for Adjudication

The second approach is to have both a law for the administration, as in the first case, but also to partially change the administration itself into independent agencies which regulate certain activities or sectors of the economy and then adjudicate its problems, subject to judicial control.

In the US, where the Federal Administrative Procedure of 1946 also did what the Europeans had done first, there has been, at the same time, a different converging approach to the problems posed by administrative procedure everywhere: change the organization so that its procedures will result naturally better.

¹⁸ See for instance TIMSIT, G., *Gouverner où Juger: Blasons de la Legalité*, Paris, PUF, 1995. It is the kind of problem with which continental law and Latin American law are familiar: see FERNÁNDEZ, T. R., *De la arbitrariedad de la administración*, Madrid, Civitas, 1997, 2nd edition, which is his reply to PAREJO ALFONSO, L., *Administrar y juzgar: dos funciones constitucionales distintas y complementarias*, Madrid, Tecnos, 1993. An indirect mention may be found in our reference to "concepts" in the field of law, in *An Introduction to Law*, op. cit., chapter II. This is without entering into rather more intricate aspects of judicial adjudication, such as those analyzed by KENNEDY, D., *A Critique of Adjudication (fin de siècle)*, Cambridge, Massachusetts, Harvard University Press, 1997. Other approaches, from the complex to the simple in NIETO, A. / GORDILLO, A., *Las limitaciones del conocimiento jurídico*, Madrid, Trotta, 2003 and its further references.

¹⁹ For a Latin American discussion see the various editions of our *Tratado de derecho administrativo*, vol. 2, *La defensa del usuario y del administrado*, chapters XIII and following; also vol. 4, *El procedimiento administrativo*; our book *Después de la Reforma del Estado*, Buenos Aires, FDA, 1999, 2nd edition. The Canadian discussion is rather one of nuances: see MACAULAY / SPRAGUE, *Practice and Procedure Before Administrative Tribunals*, op. cit., pp. 1-6 to 1-8 (1991, release 2 and 1994, release 1), summarized in BRAVERMAN, *Administrative Tribunals: A Legal Handbook*, op. cit., p. 25-6.

That was done initially with independent regulatory agencies which deal with specific problems in an independent and impartial way, much like a tribunal, but also with rule-making capabilities²⁰. The system was developed in the US and has later on, in turn, been adopted in Europe and seems to function reasonably well²¹.

In Latin America the independency of such agencies comes always under pressure from the Executive Power, their stability is frequently attacked and consequently their procedures and methods of rule-making and adjudication do not suffice to produce an attractive result. That does not happen in Europe or the US, where the social, legal and political culture help to guarantee their stability, impartiality and independence. The coherence of the EU surely helps that, too.

It would thus seem that today's first established approach to administrative procedures reforms should at the very least be two-pronged: to have a law regulating administrative procedures in the traditional public administration, and also to give birth to impartial and independent regulatory agencies, preferably with citizen participation, and transfer functions of rule-making and adjudication, or just adjudication, to them. These bodies function reasonably well if their independence and impartiality is not chal-

²⁰ The Interstate Commerce Act of 1882 created the Interstate Commerce Commission. Others followed, mainly the Federal Trade Commission (1914), Federal Energy Regulatory Commission (1930), Federal Communications Commission (1934), Securities and Exchange Commission (1934), National Labor Relations Board (1935), etc. Classical and quite well-known is of course the Federal Reserve Board. Another more recent breed are social regulatory agencies, such as the Environment Protection Agency, the Occupational Safety and Health Administration, the Consumer Products Safety Administration, the Social Security Administration, Food and Drug Administration, etc.: SCHWARTZ, B., *Administrative Law*, Little, Boston, Brown and Co., 1991, 3rd edition, pp. 18-18 and following. All are granted judicial deference if they act consistently, based on the expertise in their own specialized fields: SCHWARTZ, *op. cit.*, pp. 708-9; but the enactment of the Federal Administrative Procedure Act put an important limit to that: "The friendliness of the Court toward administrative authority [of the independent agency, not the Executive Power] gave way to the doctrine of deference toward the legislator": SCHWARTZ, *op. cit.*, p. 32. The emphasis today is on their administrative procedure: SCHWARTZ, *op. cit.*, p. 33. That means independence, impartiality, fairness, public hearings, due process of law, etc. Also, "the judges, like the citizenry generally, have become increasingly disenchanted with the claims of administrative expertise" (p. 39).

²¹ See, for instance, in Annex I, a list of European agencies dealing with telecommunications. It is to be noted that these agencies are independent from the administration but of course subject to judicial control.

lenged by the administration or, if challenged, regular courts protect their independence.

4. Substantially Substitute the Administration with Administrative Tribunals

The third system - which can coexist with the second - is to supplant most of administrative bodies and entities with independent and impartial *administrative tribunals* which adjudicate cases, subject to judicial review. In essence the administration is reduced in its size, and a very big number of administrative tribunals are created instead to adjudicate cases, from scratch²², with the benefits of impartiality and independence. It has been developed by Canada. It is a derivation of the British experience²³ which has independent administrative boards, committees and commissions, "as well as tribunals,"²⁴ with a great emphasis on specialization²⁵ and reason-

²² This is emphasized as regards the fourth approach, that of administrative law judges, by BRUFF, H., *Specialized Courts in Administrative Law*, in: SHUCK, P. H., *Foundations of Administrative Law*, New York, Foundation Press, 1994, pp. 218-228, especially p. 222: "Not surprisingly, agencies that do not use ALJs [administrative law judges] to make initial decisions endure criticism regarding the fairness of their processes."

²³ The British experience began with the Welfare State and the need to administer its big numbers in an efficient and just way, for instance, the Old Age Pension Act of 1908, and the National Insurance Act of 1911. A compromise was thus made between the old administration and the best standards of justice. Or, in other words, the compromise was between "the best possible article," and "the best article that is consistent with efficient administration." WADE / FORSYTH, *Administrative Law*, *op. cit.*, chapter 23, p. 907.

²⁴ CRAIG, P.P., *Administrative Law*, London, Sweet & Maxwell, 1999, 4th edition, chapter 9, p. 252. There are about 2.000 such bodies encompassed under the generic name of administrative tribunals. They may have lay members and are in general independent and also have several procedural safeguards. Currently the system is under the Tribunals and Inquiries Act 1992, which replaced the Tribunals and Inquiries Act 1958. In France the *Conseil d'Etat* and other French administrative tribunals exercise jurisdiction on administrative matters; but the English tribunals have a larger and more specialized workload and they are also subject to judicial control. For a more comprehensive comparison see WILSON, J. Q., *National Differences*, in: SHUCK, P. H., *Foundations of Administrative Law*, *op. cit.*, pp. 327-343, especially p. 330.

²⁵ WADE / FORSYTH, *Administrative Law*, *op. cit.*, chapter 23, p. 907. "Specialised tribunals can deal both more expertly and more rapidly with special classes of

able success: it seems to be the ablest to produce the desired changes. There are several thousands of such tribunals in all of Canada²⁶, hundreds in some Provinces. The original reasons to create these kinds of tribunals in the UK has always been to deal efficiently with a number of cases which would otherwise clog the courts, and "to provide simpler, speedier, cheaper and more accessible justice than do the ordinary courts"²⁷ or, indeed, the administration. So these tribunals in a sense "have the character of courts, even though they are enmeshed in the administrative machinery of the state."²⁸

Due process of law is thus passed from being a requirement that the administration does not always fulfill, or is too complicated and inefficient, to a requirement for the administrative tribunal to adjudicate cases. The truly classic administrative action loses some of its importance; its patronage power, so important in Latin America²⁹, almost disappears with administrative tribunals. The democratic system is well served, because it is generally accepted that the modern version of division of powers or checks and balances is really not just to make a few grand divisions but really to parcel or fracture power in as many small pieces as possible. That is what prevents abuse of power: to make it smaller in size, in myriad small entities under social and judicial control³⁰.

It is not necessarily an increase in the number of permanent posts, because all or part of the members of these tribunals are convened when the tribunal meets, which according to each case may be four or five times a

cases;" "a specialised tribunal quickly builds up expertise in its own field:". They add that "Tribunals are subject to a law of evolution which fosters diversity of species" (p. 908). Some believe specialization is the key to their success.

²⁶ 2,000 in the UK.

²⁷ WADE / FORSYTH, *Administrative Law*, *op. cit.*, chapter 23, p. 905.

²⁸ WADE / FORSYTH, *Administrative Law*, *op. cit.*, chapter 23, p. 909 and note 16.

²⁹ That happens most notably with the administration of the Welfare State: it is dealt with by the old administrative machinery, full of corruption, graft and extreme inefficiency. In Argentina half of the national budget is formally dedicated to social services, but the system is full of holes and crannies and the beneficiaries end up with very little of that important slice. Normal judicial control is tried through specialized but very much underfunded and understaffed courts. Their job has always been a nightmarish impossibility.

³⁰ We have developed this view in *The Draft EU Constitution and the World Order*, *European Review of Public Law*, vol. 16, No 1, 2004, London, Esperia, section 5.2: "Fracture or Fragmentation of Power"; also, our *Tratado de derecho administrativo*, vol. 1, *Parte general*, Buenos Aires, FDA, 2003, 8th edition, chapter III, section I.

year³¹. This reminds us of the system of international administrative tribunals, which meet once or twice a year³², and not always with all members³³. Payment in all those cases, of course, is on a *per diem* basis.

Other interesting innovations are to share employees between different tribunals³⁴, to make cross-appointments where one member serves in two or more different boards³⁵, etc. Here again, some judges in international administrative tribunals serve in different tribunals, with different appointments; the practice is quite frequent.

5. The US Alternative of Including Administrative Law Judges and Procedures into the Administration

In the US there is an intermediate way to do this, which also sums up all other experiences³⁶. The idea is to introduce "administrative law judges"

³¹ For instance in the Human Rights Commission, which kindly provided us with that information [humanrights@gov.nl.ca]. In a slightly different vein, the Canadian Artists and Producers Professional Relations Tribunal has six part-time members, including the Chairperson and Chief Executive Officer, appointed at the Tribunal and there are 10 employees working at the Tribunal, including the Executive Director and General Counsel of the Tribunal. Information kindly provided, years ago, by Diane Chartrand, Senior Legal Counsel, Chartrand.Diane@capprt-terpap.gc.ca, to whom we extend our heartfelt thanks. These two examples are meant merely to show the great variety of experiences, according to the workload of the tribunal.

³² We explained that in our *An Introduction to Law*, *op. cit.*, chapter II.

³³ The OASAT, for example, originally convened by panels of three judges in each session, out of a total number of six. The IMFAT, three judges out of a total of five, and so on.

³⁴ For instance the Pay Equity Hearings Tribunal of Ontario shares its employees with the Human Rights Tribunal of Ontario. Information kindly provided, a long time ago, by the Chair of the Pay Equity Hearings Tribunal of Ontario, Mary Ellen Cummings, MaryEllen.Cummings@mol.gov.on.ca, to whom we extend our very special thanks. She also kindly directed us to <http://www.gov.on.ca/lab/pec/peht/index.html> for more information.

³⁵ For instance, we were kindly informed, in 2003, by the Chair of Pay Equity Hearings Tribunal of Ontario that "I count myself as a member of the Board, but I am cross-appointed to the Ontario Labour Relations Board, my full-time job. The Pay Equity Hearings Tribunal has a small caseload, so it makes sense to share resources": Mary Ellen Cummings, MaryEllen.Cummings@mol.gov.on.ca

³⁶ Also, that of the US itself. Before 1946 the administration used "trial judges" that not always satisfied substantial guarantees of independence. After 1946, with

into the administrative structure and proceedings for rule-making and adjudication. These "administrative law judges" are seemingly just a part of the administration, but in fact they are endowed with the judicial characteristics of independence, impartiality, duty to hold fair trials and public hearing, etc.³⁷. However, their visibility is not as high in the US as administrative tribunals in Canada.

The Federal Administrative Procedure Act³⁸ provides that both administrative rule-making³⁹ and adjudication⁴⁰ are to be conducted in a quasi-judicial manner⁴¹, with administrative law judges⁴² who have to act impartially⁴³. "Administrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges."⁴⁴ They cannot be separated without cause and due process of law.

6. Initial Conjectures

The British, Canadian and US approaches seem to function better than the simple law for administrative procedure by public officials who do not have any judicial or quasi-judicial independence, impartiality, or duty and tradition to act with full fair trial, due process of law, etc. The system is improved with big independent regulatory agencies for certain public ser-

the creation of "administrative law judges" we see "statutory tenure protections that justify their loftier title[...]" : BRUFF, H., *Specialized Courts in Administrative Law*, in: SHUCK, P. H., *Foundations of Administrative Law*, op. cit., p. 222.

³⁷ It is to be noted that these are precisely the characteristics which Art. II-47 of the Draft EU Constitution ascribes to tribunals: "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law." US laws have thus gone quite a step further ahead, providing for those guarantees to be respected not only by judicial independent tribunals or courts, but also extending them to "administrative law judges" working in the administration, whose decisions are then subject to judicial control.

³⁸ 1946, variously amended in 1966, 1967, 1974, 1976, 1978.

³⁹ § 553.

⁴⁰ § 554.

⁴¹ § 556, sec. 7 b).

⁴² § 3105 and various others.

⁴³ § 556, sec. 7 a).

⁴⁴ § 3105, sec. 11, 1st sentence.

vices or sectors of the economy⁴⁵, in general, but they do not mean real change for the rest of the public administration and its procedures.

The very best seems to me to be the Canadian experience of completely independent administrative tribunals. The US alternative comes a close second best, with administrative law judges who hold hearings and adjudication within the administration structure and organization⁴⁶. Even if they are individuals who are a part of the administration, they objectively are placed in such a position that they are bound to act independently, impartially, through a fair trial and public hearings; specialization is almost a given in these cases, either by previous experience or on-the-job expertise.

No further judicial intervention is necessary to make these principles functional and alive in the administration. Justice is then needed only to review the substance of administrative decisions.

7. Further Evaluation of the Alternatives

If I were to recommend something for *my* own continent, I would rather lack faith in the eventual real working of the US system of placing administrative law judges within the administration. In our societies, I imagine that they would be subject to too strong an influence from the administration⁴⁷. They would therefore not act impartially and independently, and further would not provide a fair trial, due process of law, transparency, public hearings. Experience shows quite clearly that these principles, though admitted as part of public law, are not really a part of the social consensus on these matters in Latin America.

A larger usage of independent and impartial administrative tribunals, on the other hand, might work reasonably well. Their very large numbers, as in the Canadian model, would make them individually smaller than the public administration as a whole. Therefore, it would also make it easier for civil society to control their actions, and harder for the administration

⁴⁵ Which of course also function in Europe. We add a list of such independent agencies in one sector, telecommunications, as Annex I. For further details of this experience see: COLLIARD, C.-A. / TMSIT, G. (dir.), *Les autorités administratives indépendantes*, Paris, PUF, 1988; GENTOT, M., *Les autorités administratives indépendantes*, Paris, 1994.

⁴⁶ Both systems have in a sense evolved from the British experience.

⁴⁷ Those are the political tendencies that we have inherited from ancient times, and have been neither able nor willing to change. For an overview of the matter see GORDILLO, *The Future of Latin America: Can the EU Help?*, op. cit., and *Civilizations and Public Law: A View from Latin America*, op. cit.

to exert any undue influence on them. They would be able to hold oral public hearings, and adjudicate matters expeditiously, without any of the pressures for secrecy and patronage that so easily plague any administration. That should foster a culture against corruption⁴⁸.

Naturally enough, their decisions should be open to challenge before the courts both by the administration and the other interested parties.

A different but interesting comparison may be made with the NAFTA panels for dispute resolution, which are said to function as administrative law courts, although at a binational level⁴⁹.

8. *Some Practical Considerations*

In my view, and I do not claim to know the Canadian experience all too well, what is interesting in their experience is setting few standards but clear objectives, and staff the tribunal with the adequate number of adjudicators. It is interesting to note that Canada passed Bill C-25, an Act to modernize the public service, which will nearly double the staff of some Boards, and also include added responsibilities⁵⁰.

⁴⁸ Although in Canada no connection is made between the existence of administrative tribunals and the perceived little reason for concern about corruption: KERNAGHAN, K., *Corruption and Public Service in Canada: Conceptual and Practical Dimensions*, in: TIHONEN, S. (ed.), *The History of Corruption in Central Government*, Amsterdam, IOS Press, 2003, pp. 83-98. However, it is clear that political institutions and the basic structure of administration do matter: TIHONEN, P., *Good Governance and Corruption in Finland*, in the same book, pp. 99 and 108.

⁴⁹ LEMIEUX, D. / STUHEC, A., *Review of Administrative Action Under NAFTA*, Ontario, Carswell, 1999, pp. 2-3 and 55-7. The authors point out that binational panels are composed of judges, lawyers and international trade experts with different legal traditions; procedural rules are only slightly different (p. 55). After the decision is taken, though, the parties frequently continue bargaining: "It appears that the United States is unable to accept any loss of sovereignty or control to the binational panel process" (p. 56).

⁵⁰ Such is the case of the Public Service Staff Relations Board. This Board comprises at present a Chairman, a Vice-Chair, three Deputy Chairs, five full-time members and four part-time members. Bill B-25 added knowledge or experience as a prerequisite to being appointed an adjudicator of this Board. Prior to Bill C-25, there was no such requirement, although in practice only people with experience in the area were appointed. While Bill C-25 adds no new adjudicators to this Board, it does add staff in that this Board will now be responsible for the creation and running of the Pay Research Bureau, an organism that will provide statistics and data to both unions and employers regarding pay and benefits. Also, the Board is

Their members can be lawyers or laymen⁵¹, or specialists in other fields of knowledge, but the trend is towards specialization and expertise. They generally have a goal, to make a decision within a fixed period of time: that may be either imposed by statute or contained in the internal rules and policies⁵². The decision, of course, must be sound as to withstand judicial control. Of course, it must fulfill minimal requirements of due process so as not to be deemed null and void for procedural reasons. The adjudicator must hear the parties, be independent, be impartial, conduct public hearings, receive and evaluate the proof, and produce a reasoned and sound decision that is not contrary to the legal principles that apply in the matter or the own body of case law of the tribunal.

The law does not purport to give the adjudicator any fixed guidelines or partial time limits (so many days for this, so many days for that, and so on) of how to act on the day-to-day administration of the case. As long as he or she, acting independently and impartially, hears both parties and hears evidence and does this in a public hearing and then produces a reasoned decision, then nothing more is really asked of him or her. It is not then that only "results" are asked, because as we have seen at least some procedural requirements must also be met. But these are not laid out in the special detail to which most codes of judicial procedure or laws of administrative procedure have accustomed us to. That is the main lesson to be learnt from this experience: independence, impartiality, fair trial, due process of law, specialization, swiftness, flexibility, and finally a reasoned and valid decision within a certain time frame, that does not contradict the rest of the case law of the tribunal, etc.: how he or she does it is his or her own problem.

For that, I would end with the advice one of their members gave recently at a Conference held in Mexico: Experiment, always experiment. If the experiment goes wrong, do not repeat it; if it goes right, follow it; if it goes more or less, then change it again until you attain both the pertinent results and the working details of procedure that produce such results.

being given jurisdiction over human rights as it relates to federal government employees, an area over which it did not previously have jurisdiction. This and other information were kindly transmitted, some time ago, by Anne Clark McMunagle, Senior Legal Counsel, anne.clark@pssrb-crtfp.gc.ca

⁵¹ So much so that there are even good books to help in the training of non-lawyers for these functions: BRAVERMAN, *Administrative Tribunals: A Legal Handbook*, op. cit.

⁵² The latter is the case of the Public Service Staff Relations Board.

Not each tribunal or each adjudicator within a tribunal has to act according to a single model: they may each prefer oral proceedings or favor written proceedings or combine both; they may tend to try to lead the parties to an agreement, or even subtly push them to it, or they may try to keep a distance. And they may decide that they prefer to choose the way they are going to go in each instant case, not as matter of general procedure in all cases. Of course, they are always bound by the general principles we have already mentioned⁵³.

9. Another Structural Trend: Tiered, Fixed Term Appointments, Renewable only Once

There is a striking structural common trend between independent regulatory agencies, Canadian administrative tribunals and international administrative tribunals⁵⁴. It is not an absolute rule and varies with each agency or tribunal, but it is clear to be seen and should not be overlooked. It strikes a successful middle ground between our old traditional concepts of judicial stability (life appointment, even if sometimes with an age limit), administrative stability (also with an age limit), and democratic periodicity and renewal of elected public positions.

The principle is that only fixed term appointments are made (generally for three or four years, maybe even six years), which are renewable only once. They are also tiered, if necessary by lottery, so that each year or every other year one or two members definitively leave the tribunal and an equal number of new appointees enter.

This provides for both stability of the tribunal and innovation. New members are not so strongly bound by tradition as those leaving the tribu-

⁵³ This, again, proves that the law should be about principles, not about small rules and regulations: these are but tools, it is the principles of law that really need to be upheld, as we explained in *An Introduction to Law, or Une introduction au droit*. If we may repeat our previous quote of Wade, "Here again there is perhaps a divergence between the judicial and the academic attitudes. Categorical rules, based on analysis, are congenial to the academic mind, but may be distrusted by judges whose instinct is to preserve, by the exercise of discretion, a way to escape when the categorical rules produce what they feel to be the wrong answer": WADE, H.W. / FORSYTH, C.F., *Administrative Law*, Oxford, Clarendon Press, 1994, 7th edition, Preface, p. vii.

⁵⁴ We have explained the case of international administrative tribunals in our *An Introduction to Law*, also published as *Une introduction au droit, op. cit.*, chapter II.

nal, and they may challenge established practices, but naturally enough a new balance is soon obtained. We thus have stability with innovation.

The fact that any new member knows from the start that he or she will have a fixed term appointment, renewable only once, gives him or her a very strong perception of his or her role. The added fact that he or she quickly perceives how unbecoming and unwelcome any new professional approach to the tribunal would be (it may even be legally barred for a certain period of time), makes for an independence and impartiality which is built into the system. When you are thus appointed, you know from the beginning that some day soon you will have to leave. Not soon enough for you not to try to learn about the specifics of the tribunal and do your best possible work⁵⁵, and not long enough to become too entrenched in the post, or too involved with the kind of parties that come before the tribunal.

I have frequently found a certain sense of longing in former judges or adjudicators. They accept as a fact of life that they cannot be reappointed and they are not at all tempted to approach the tribunal except to meet old friends. That certain future destiny gives the new appointee a sense of equilibrium and detachment which seems to be quite what impartiality and independence are about, mixed as we have seen with innovation and stability. If you add to that specialization, you have reached the point where you can obtain flexibility, simplicity and efficiency. Maybe my perception is askew. Certainly it is not possible for a foreigner to become too familiar with so many nuances in so many tribunals, but I do believe that the objectives sought for are obtained in this way.

10. Alternate Dispute Resolution Mechanisms

All tribunals have varying experiences in this matter. Some cases may need a push to conciliation; others will need conciliation only on minor points of procedure or proof. Some Boards⁵⁶ have moved to embrace mediation and other forms of alternate dispute resolution⁵⁷: all cases are of-

⁵⁵ Since most people find this a pleasurable position, they naturally want to be nominated for a second term in office: that requires a performance good enough to withstand reasonable criticism. There are many more reasons, of course; social control is probably the best.

⁵⁶ We refer again to the Federal Public Service Staff Relations Board of Canada and thank the same gracious source of information.

⁵⁷ This also compares to the experience of at least one international administrative tribunal, that of the OAS, to which the General Assembly directed to encourage such alternative dispute resolution mechanisms.

ferred mediation, which is normally done by trained mediators who are not adjudicators, but some mediations are done by adjudicators as well⁵⁸.

The variations are infinite according to the case, the parties, and the practical creativity and ingenuity of the adjudicator. Specific rules for all cases will not obtain that result.

11. One Example of the Criterion of Flexibility

We feel that one description of the alternatives offered by one such tribunal can provide a good example of the diversity and flexibility of these tribunals, and of how it is sometimes best not to be too specific in creating them, except for the very general guidelines we are referring to in this article⁵⁹. Detailed regulation would defeat the whole purpose of specialization according to the subject matter under discussion.

To that end, we would like to further refer to the official information of the Metis Settlements Appeal Tribunal in Alberta, Canada⁶⁰.

⁵⁸ In the case of the Canada Industrial Relations Board, its web site informs that "Before adjudication, it plays an active role in helping parties to resolve their disputes through mediation and alternative dispute resolution approaches." Further information at www.cirb-ccri.gc.ca

⁵⁹ The Metis Settlements Appeal Tribunal in Alberta, Canada in its official information: "Legislation has given specific jurisdiction and powers to the Tribunal; however, the development of rules and procedures is left with the Tribunal. In this regard, the Tribunal has developed this Operations Manual. The Operations Manual is designed to set policies of procedure for its administrative and judicial operation within the parameter of the legislative authority given to it. It also serves as a general reference guide for the use of Tribunal members and staff when conducting Tribunal business. If there are discrepancies in the interpretation of this Operations Manual and the Metis Settlements Act, the *Act* takes precedence. The Tribunal is not responsible for any misinterpretation of this document for a purpose other than what was intended by the Metis Settlements Appeal Tribunal."

⁶⁰ There are 8 Tribunal members (Metis, Native Peoples) who make the decisions in committees of three. They are appointed one each by the Metis Settlements in Alberta. This and further information were most kindly provided to us in 2003 by its Executive Director Vince Paniak [Vince.Paniak@gov.ab.ca]. The Tribunal further informs: "The Metis Settlements Appeal Tribunal (MSAT) is a quasi-judicial body with jurisdiction to make decisions to settle disputes which affect the interests of settlement members, the Metis Settlements and their governing bodies in relation to membership, land dealings, surface rights and any other matter if the parties involved agree to submit to the jurisdiction of the Tribunal. Because the credibility of the Tribunal as a quasi-judicial body depends on its perceived in-

"Once an appeal or dispute is referred to the Tribunal, Tribunal staff gather information to see if the Tribunal has authority (jurisdiction) to help resolve the issues. Then the Tribunal decides whether the matter should go to mediation or a hearing."

"Mediation is used when all of the people involved in the dispute are willing to sit down and try to resolve the issues together. (Before mediation is used, all of the people involved must agree in writing to mediate.) The Tribunal appoints a neutral, objective mediator (or sometimes two co-mediators). The mediator does not make the decision about how the dispute should be resolved. Rather, the mediator helps the parties to come to their own decisions and make an agreement that all parties are happy with."

"In mediation, the mediator helps the parties to: speak and be heard, clarify what is important to them, identify common ground (things that are important to both parties), explore possible solutions, and come to an agreement. Normally, mediations are private; only the parties involved and the mediators are present. Before beginning the mediation, all participants agree to keep discussions during the mediation confidential."

Hearings: "Appeals go to hearings when they have merit, when the Tribunal has the jurisdiction, and when mediation is not appropriate. For many kinds of appeals, all parties do not have to consent in order for the Tribunal to hear and decide the matter. The Tribunal Chairperson appoints a Panel of Tribunal members as the neutral, objective, decision-makers. Before the hearing, the Tribunal sends a package of documents gathered during the investigation to all of the people involved in the appeal. (This is referred to as the hearing package.)"

"This is normally what happens at a hearing: A Tribunal staff person introduces all of the participants. The Panel Chairperson sets out basic guidelines for the hearing (such as allowing each person to speak without interruption). The Panel Chairperson asks each party to pre-

tegrity and impartiality, the Tribunal must base their decisions on the interpretation of relevant legislation and application of facts and arguments placed before them. The decisions of the Tribunal must be fair and impartial, and free of irrelevant and inappropriate influences."

sent their views and evidence, usually beginning with the applicant/appellant. The Panel hears from other witnesses and asks questions. The Panel gives the parties an opportunity to respond to what others have said."

"Hearings are normally open to the public. Documents used at a hearing and the Panel's decision become public documents. Normally the Panel does not make a decision right at the hearing. The Panel issues a written, binding decision in the form of an Order. In making its decision, the Panel takes into account the information from the hearing and all relevant laws, regulations, policies, and bylaws. The Tribunal requests that all Orders be posted in Settlement offices."⁶¹

12. Itinerant Hearings

There are many more examples of flexibility and creativity in dealing with adjudication. Just one of them is provided by the Appeals Tribunal of the Workplace Health, Safety and Compensation Commission (WHSCC) of New Brunswick⁶². As we are kindly informed by the tribunal, there are currently "12 full-time staff members in the Appeals Tribunal, including the Chairperson who also sits as a hearing chair. The staff is responsible for the review of applications of appeal, research and preparation of Appeal Records, scheduling of appeals, typing and review of decisions, and various other administrative functions. All of these functions are handled at the Tribunal in Saint John, NB *although hearings are held throughout the province in the location (usually the largest city) closest to the appellant's residence*" (italics added).

⁶¹ As we stated before, this information was kindly provided to us in 2003 by Executive Director Mr. Vince Paniak [Vince.Paniak@gov.ab.ca].

⁶² "The Appeals Tribunal has a full-time Chairperson and 4 part-time Vice-Chairpersons. We also have 20 part-time Panel members, of which 10 are nominated from the worker community and 10 are nominated from the employer community. Our legislation provides for Panels to be established which are tripartite in structure. A Panel will consist of a hearing chairperson, one member from the worker community and one member from the employer community, but they must act in an impartial manner. The WHSCC is governed by a Board of Directors which has a Chairperson, 4 members from the worker community, 4 members from the employer community and 1 member representing the general public." This and other information were provided in 2003 by Ms Louise McCaie, Manager, Appeals Services, Appeals Tribunal (WHSCC) [McCaieL@whscc.nb.ca].

13. How Do You Introduce the Innovation?

It is not necessary to create innumerable new posts. The same professionals who currently work at the administration can just keep their own offices and start working not as part of the traditional administration but start acting as part of the newly created administrative tribunals⁶³. From now on they would have independence, either stability (not to be separated without cause and a fair hearing) or periodicity⁶⁴, impartiality, and would have the responsibility to adjudicate cases with absolute flexibility except for a few rigid guidelines: a certain time frame to decide, the duty to hear both parties, to act impartially and independently, to hear the evidence, to produce a reasoned decision consistent with the other decisions by the same tribunal.

The Ministers would in a sense lose power and authority: people would not ask things of them but of the tribunals instead. Democracy and justice, and more efficient administration, would be better served. And history cannot but judge with thanks and admiration any Minister than can produce such results. Those results would not come from his personal and direct actions, but of his personal and direct initiative and broad direction in making those things happen.

14. Administrative Tribunals as a Means toward Improving the Legitimacy of the Administration

It has been often pointed out that the legitimacy of the head of the Executive Power does not translate into the legitimacy of all public servants within the administration.

To improve that situation many paths have been tried: more citizen participation in the administration's decisions, independent regulatory agencies as we have seen before, public hearings before important decisions are

⁶³ The idea of a lifetime job is not necessarily good, nor is short-term stability necessarily menacing. Some may agree, some may not. Those who do not can just as easily choose not to take this kind of position.

⁶⁴ As we have seen, fixed time limits of appointment, renewable just once, seem to be the norm in international administrative tribunals. In some Canadian Boards and tribunals this is the case, too. Adjudicators may be appointed for a term of between 3 to 4 years, sometimes less, and they have no job security as such as they hold office "during good behaviour." Again, our thanks to Anne Clark McMunagle, Senior Legal Counsel, Public Service Staff Relations Board, anne.clark@pssrb-crtfp.gc.ca

taken, and so on. Yet they have not been enough, for various reasons that have been explored elsewhere⁶⁵. The problem of insufficient administrative legitimacy perhaps might be corrected or at least improved by changing the administration itself into independent administrative tribunals.

The social controls which judges and tribunals are subject to are indeed greater than the social controls (of every single public official within the deep crevices of the administration) can possibly be.

I definitively think this alternative justifies at least a try.

15. *The Case of Greece*

If I were to extend this reasoning to a country such as Greece, with a view to simplification of administrative procedures and restructuring of the administration, I would also definitively adopt the Canadian system. That is, I would pass the center of gravity of administrative power from the lower echelons of the administration to the lower echelons of new administrative tribunals.

From then on the existing system for review of administrative action would continue to be the same with administrative courts and the rest of the judiciary, only the object of its decisions would have shifted from the administration to these new quasi-judicial bodies to adjudicate cases from scratch. The administration would be thus reduced and the judiciary in a sense enlarged with quasi-judicial bodies doing the work of the administration in a more efficient, swift, impartial, independent and fair way.

Since these new tribunals with administrative powers of adjudication would substract power from the administration, it might be asked if it does not infringe in any way on the Constitution. I would think not, for the constitutional definition of the country as a "presidential parliamentary democracy" admits to the shift of power from the executive to new independent bodies created and regulated by parliament, and the evolution of Greek administrative tribunals⁶⁶ would seem to prepare the way for this eventual further step. Article II-47 of the Draft EU Constitution can also

⁶⁵ KATROUGALOS, G., *La crise de légitimité de l'administration. Le cas de la Grèce. Etude constitutionnelle, administrative et interdisciplinaire du système administratif*, Athens, Sakkoulas, 1993.

⁶⁶ As related by EFSTRATIOU, P.-M. E. / SAKELLARIOU, N. I., in: SPILIOPOULOS, E. (ed.), *Towards a Unified Judicial Protection of Citizens in Europe (?)*, European Public Law Series, vol. XIII, London, Esperia, 2000, Greece, pp. 340-437, especially I-c), "The Case of Administrative Tribunals", pp. 352-3.

be read as indicating a necessary rapprochement of the systems, which has in fact been envisioned before⁶⁷.

To sum things up, in order to obtain a simple and expeditious procedure with respect for the rule of law, I would not place my bet on direct administrative procedure reform, but on structural reform of the administration, substantially giving its powers to independent agencies and tribunals, subject to judicial control.

⁶⁷ Although not without reservations: PRÉVÉDOUROU, E., *L'évolution de l'autonomie procédurale des Etats membres de l'Union Européenne*, European Public Law Series, vol. XII, London, Esperia, 1999, with a Preface by GÉRARD TIMSIT.

ANNEX I

TELECOMMUNICATIONS AGENCIES IN EUROPE

| | | |
|----------------|---|----------|
| Austria | Rundfunk und Telekom Regulierungs-GmbH | RTR |
| Belgium | Institut Belge des Services Postaux et de Télécommunications | BIPT |
| Cyprus | Office of the Commissioner for Telecommunications and Postal Regulation | OCTPR |
| Czech Republic | Český telekomunikační úřad | CTU |
| Denmark | Telestyrelsen - National Telecom Agency | NTA |
| Estonia | Sideamet | SIDEAMET |
| Finland | Finnish Communications Regulatory Authority | FICORA |
| France | Autorité de Régulation de Télécommunications | ART |
| Germany | Regulierungsbehörde für Telekommunikation und Post | REGTP |
| Greece | National Telecommunications and Post Commission | EETT |
| Hungary | Hírközlési Felügyelet | HIF |
| Iceland | Post and Telecom Administration | PTA |
| Ireland | Commission for Communications Regulation | COMREG |
| Italy | Autorità per le Garanzie nelle Comunicazioni | AGC |
| Latvia | Sabiedrisko pakalpojumu regulēšanas komisija | SPRK |
| Liechtenstein | Office for Communications | AK |
| Lithuania | Rysiu reguliavimo tarnybos | RRT |
| Luxembourg | Institut Luxembourgeois des Télécommunications | ILT |
| Malta | Malta Communications Authority | MCA |

| | | |
|-----------------|--|--------|
| Netherlands | Onafhankelijke Post en Telecommunicatie Autoriteit | OPTA |
| Norway | Norwegian Post and Telecommunications Authority | NPT |
| Poland | Urząd Regulacji Telekomunikacji i Poczty | URTIP |
| Portugal | Autoridade Nacional de Comunicações | ANACOM |
| Slovak Republic | Telekomunikačný úrad Slovenskej republiky | TO |
| Slovenia | Agencija za telekomunikacije, radiodifuzijo in posto | ATRP |
| Spain | Comisión del Mercado de las Telecomunicaciones | CMT |
| Sweden | Post & Telestyrelsen (National Telecoms Agency) | PTS |
| Switzerland | Office Fédéral de la Communication | OFCOM |
| United Kingdom | Office of Telecommunications | OFTTEL |

ANNEX II**

FEDERAL ADMINISTRATIVE TRIBUNALS
(ALSO AGENCIES, BOARDS, COMMISSIONS, ETC.) IN CANADA⁶⁸

| <i>Name of the Tribunal</i> | <i>Year when was established</i> | <i>Composition of the Tribunal</i> |
|--|----------------------------------|---|
| Canada Industrial Relations Board | 1999 | 1 Chairperson, 6 Vice-Chairs, 5 full-time members, 6 part-time members and 90 employees |
| Canadian Artists and Producers Professional Relations Tribunal | 1995 | 6 part-time Board members and 10 employees |
| Canadian Forces Grievance Board | 2000 | 6 Board members 50 employees |
| Canadian International Trade Tribunal | 1988 | 7 Board members and 87 staff |
| Canadian Radio-television and Telecommunications Commission | 1968 | 13 full-time and 6 part-time commissioners and 400 employees |
| Canadian Transportation Agency | 1996 | 7 Board members 1 temporary member 270 employees |
| Immigration and Refugee Board | 1989 | 240 members (in all three divisions) 1200 employees |

** Provisional list.

⁶⁸ An attempt at classification in eight groups has been made by MACAULAY / SPRAGUE, *Practice and Procedure before Administrative Tribunals, op. cit.*, pp. 2-7 to 2-11, 1988 and 1992, release I, summarized in BRAVERMAN, *Administrative Tribunals: A Legal Handbook, op. cit.*, p. 24.

| | | |
|--|------|---|
| National Energy Board | 1959 | 8 Board members 1 temporary member 280 staff |
| Patented Medicine Prices Review Board | 1987 | 5 part-time members of the Board |
| Privacy Commissioner of Canada | 1983 | Ombudsman style office plus 100 staff |
| Canadian Human Rights Commission | 1977 | Chief Commissioner supported by the Secretary General and seven operational and administrative branches |
| Public Service Staff Relations Board (PSSRB) | 1967 | Chairman, Vice-Chair, 3 Deputy Chairs, 5 full-time members, 4 part-time members and 40 staff |
| National Parole Board | 1959 | 84 among full- and part-time Board members by region |
| Competition Tribunal | 1986 | 6 judicial members 8 lay members |
| RCMP Public Complaints Commission | 1988 | Chair, Vice-Chair, 29 members, 44 employees |
| Transportation Safety Board | 1990 | 5 Board members |

PROVINCIAL ADMINISTRATIVE TRIBUNALS
(ALSO AGENCIES, BOARDS, COMMISSIONS, ETC.)

| | | | |
|---------|--|------|---|
| Alberta | Workers' Compensation Board | 1918 | 10 Board members and 1700 staff |
| Alberta | Appeals Commission for the Workers' Compensation Board | 1988 | 34 appointed commissioners (1 Chief Appeals Commissioner in Edmonton), 1 Vice-Chair, 1 Pre-Hearing Chair and 31 commissioners and hearing chairs (11 in Calgary, 20 in Edmonton) and 41 employees |
| Alberta | Environmental Appeal Board of Alberta | 1993 | 9 Board members, 7 staff |
| Alberta | Alberta Labour Relations Board | 1947 | 37 Board members 25 Employees |
| Alberta | Alberta Energy and Utilities Board (EUB) | 1995 | Chairman and Board members, EUB's Chief Operating Officer, Executive Committee and 700 staff |
| Alberta | Alberta Human Rights and Citizenship Commission | 1996 | 7 Commissioners |
| Alberta | Gamming and Liquor Commission | 1924 | 1, 2 or 3 Board members and 650 employees |
| Alberta | Metis Settlements Appeal Tribunal | 1990 | 8 Tribunal members 7 staff |

| | | | |
|------------------|--|------|---|
| Alberta | Natural Resources Conservation Board | 1990 | 5 full-time Board members 11 members of the two advisory committees |
| British Columbia | B.C. Securities Commission | 1987 | 10 commissioners 206 employees |
| British Columbia | Commercial Appeals Commission | 1984 | 8 members, 1 chair, 2 full-time positions staff |
| British Columbia | Information and Privacy Commissioner | 1993 | 15 staff members |
| Manitoba | Workers' Compensation Board | 1917 | 10 Board members |
| New Brunswick | N.B. Humans Right Commission | 1967 | 9 commissioners and 12 staff |
| New Brunswick | Appeals Tribunal of the Workplace Health, Safety and Compensation Commission (WHSCC) | 1994 | 12 full-time staff members (including the Chair person sitting as a hearing chair), 4 recording-secretaries, a Board (Chair, 4 part-time Vice-Chairs, 20 part-time Panel members) and a Board of Directors (Chair, 4 workers community representatives, 4 employers community representatives and 1 member representing the general public) |
| Ontario | Energy Board | 1998 | Chair, 4 full-time members, 2 part-time members |
| Ontario | Financial Services Commission | 1998 | 5 Board members and 12 members |

| | | | |
|---------|---|------|--|
| Ontario | Municipal Board | 1990 | Chair, 6 Vice-Chairs, 19 members, 2 part-time members and staff |
| Ontario | Rental Housing Tribunal | 1998 | Chair, 6 Vice-Chairs, 33 members and 10 part-time members |
| Ontario | Workplace Safety & Insurance Board | 1915 | 8 Board members and 4390 employees |
| Ontario | Workplace Safety and Insurance Appeals Tribunal | 1997 | Chair, 9 full-time Vice-Chairs, 30 part-time Vice-Chairs, and 28 staff |
| Ontario | Pay Equity Hearings | 1987 | 7 members of the tribunal and 6 employees |
| Ontario | Human Rights Commission | 1962 | 13 Commissioners, 1 Chief Commissioner and 135 employees |
| Québec | Human Rights Tribunal | 1976 | 7 Board members |
| Québec | Tribunal Administratif du Québec | 1996 | 87 full-time members, 31 part-time members and 178 employees |

ABSTRACTS / RÉSUMÉS

The author reflects on the experience of the Americas (North, Central and South) in confronting shortcomings of administrative procedures and institutions. He does so, not with the aim of putting forward concrete suggestions for change in the Americas, as he clarifies that such changes - for historical and cultural reasons - are not presently applicable, but for members of the EU. Indeed, the purpose of this article is to try to evaluate which way the EU Member States might consider achieving simplification and restructuring of administrative procedures. In short, the author suggests the adoption or adaptation of the Canadian system of hundreds or thousands of administrative tribunals for administrative adjudication, complemented by innovative administrative procedures, stripping, thus, the classic administration of those powers.

A. Pottakis

L'auteur examine l'expérience des Amériques (du Nord, Centre et Sud) en confrontant les points faibles des procédures et des institutions administratives. Il le fait,

non pas dans le but d'avancer des suggestions concrètes pour des changements aux Amériques, puisqu'il explique que de tels changements - pour des raisons historiques et culturelles - ne sont pas applicables à présent, mais pour des membres de l'UE. En effet, le but de cet article est d'essayer d'évaluer la manière dont les États membres de l'UE pourraient envisager d'obtenir la simplification et la réforme des procédures administratives. En bref, l'auteur recommande l'adoption ou l'adaptation du système canadien de centaines ou de milliers de tribunaux administratifs pour adjudication administrative, accompagné par des procédures administratives innovantes, en dépouillant de cette manière l'administration classique de ces pouvoirs.

K. Papanikolaou