



The Adjudicator Has No Clothes...

A review of *Unjust By Design* by Ron Ellis (UBC Press, 2013)

By Voy T. Stelmaszynski*

Ron Ellis has written a thoughtful, provocative and eminently readable examination of the state of tribunal justice in Canada. *Unjust By Design* is at once an autobiography, an anecdotal history, a scholarly critique and a challenge.

First a disclaimer: I have known the author for twenty years of our professional lives. We met for the first time when there was talk of his tribunal (the Workers' Compensation Appeals Tribunal – "WCAT") swallowing up the Ministry of Labour agency where I was counsel—the Office of Adjudication (ruling on employment standards and health and safety appeals). The term "cluster" had not entered the nomenclature as yet. Ron and my then Chair, Bob Blair, met once or twice to discuss the ramifications of such an amalgamation (takeover). For various reasons, including the funding formula of both agencies, the merger did not take place.

In the book, Ellis tells a bit about his life before WCAT, then describes at some length the building of the new agency, a tri-partite model, with independently appointed, neutral and professional decision-makers. The inception, rise and efficient operation of WCAT for the next ten-year period is described, followed by a depiction of the circumstances surrounding the author's own removal as head of the institution. The appointment process, there and elsewhere, serves as a prime example of the *injustices* that permeate the *design* of the agency model.

Of course, Ellis' professional life didn't end with his "retirement" from WCAT. In many ways, it proved to be the catalyst for his future endeavours. As a thinker, advocate and burgeoning academic, he got wind of the professional plight of one Mary McKenzie, erstwhile British Columbia Residential Tenancy Arbitrator. Her story, superbly woven with his, becomes a *cause célèbre* in our adjudicative community, fits conveniently (and seamlessly) into Ellis' PhD program in law at Osgoode, which culminates in the degree and subsequent publication of the book.

Unjust By Design is an anecdotal history too—and this is what makes it such a remarkable read—because it is chock full of those personal stories of appointments and dis-appointments (de-appointments? un-appointments?) of administrative justice decision-makers and colleagues that we know, have worked with, admire and respect. There but for the grace of God (or government?), go you and I.

Which leads to the doctoral dissertation, the critical look at the system, the challenge for meaningful reform.

In my life, when representatives from foreign countries (management and union personnel, government officials) visit the Ontario Labour Relations Board to learn about our structure and processes, one of the hardest points to explain is what I call the convention that administrative tribunals, an extension of the executive branch of government, operate at arm's length from that government, and indeed rule on issues in dispute where that very government is sometimes a party appearing before the Board. My explication comes across as a “wink-wink, nudge-nudge” apology for what, to my audience, is a fictional divide.

And that, in a nutshell, is Ellis' point: we need to stop pretending here in Canada that the administrative justice system is a stand-alone independent, impartial body of professional decision-makers. It is not. There are so many strings attached to our mannequin appointees and our agencies, it's a wonder we get away with making any rulings at all.

Ellis is calling us—our governments—on this sham, and calling out for a dramatic, relevant and efficacious overhaul of the agency system.

Ellis' academic perspective offers a functional look at terminology and context that lays the foundation for his criticisms and the springboard for his discussion of reforms. In addition, he draws from the international world of agency experience to ground his proposals in reality. His vision is a bold one, and includes an administrative justice “Bill of Rights” as well as a proposal for a school of applied studies in adjudication (would that be arts? or science?) The author invites readers to dialogue with him and establishes his own e-forum to continue the discussion.

It is a timely, apposite, outstanding piece of writing.

Would that his sequel be called: “Just, and Deliberate.”



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