

Saskatchewan Threatens to Send All Complaints to Court

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On April 16, 2010, the *Globe and Mail* wrote about David Arnot's recent recommendation that the Saskatchewan Human Rights Tribunal be eliminated and all human rights complaints be sent to the Court of Queen's Bench.

According to the *Globe and Mail*, Arnot, Saskatchewan's Chief Commissioner and a judge himself, "raises legitimate concerns about the resources and abilities of the tribunals. Tribunal members tend to be political appointees without the security of tenure. This, combined with an accompanying lack of legal resources and expertise, shortchanges the system and erodes public confidence ... Putting cases directly in the hands of experienced judges would immediately boost the credibility of the human rights process in all provinces".

These arguments do not stand up to scrutiny. Tribunal members, of course, are political appointees, as are chief commissioners, judges, ombudspersons, and auditors-general. Do tribunal members have adequate security of tenure to be considered independent? The requirements for considering a Tribunal independent and impartial were thoroughly canvassed in *Bell Canada v. C.T.E.A.* (46 C.H.R.R. D/495). In 2003, the Supreme Court of Canada found that the Canadian Human Rights Tribunal was independent because its members had fixed terms and their remuneration was not determined by their performance on the Tribunal. What is necessary to ensure that a Tribunal is independent and impartial is settled law.

Saskatchewan's

system complies with the criteria set out by the Supreme Court of Canada.

If it is true that the Tribunal lacks legal resources or expertise, who is responsible? The Government of Saskatchewan controls the appointments and allocates the resources. If Saskatchewan does not have an effective Tribunal right now, and this claim may be spurious, the Government has only itself to blame. At different times, governments of different political stripes have sabotaged their own human rights institutions – by starving them of resources, by appointing people to commission or tribunal positions who lack courage or commitment. It is an old political trick of governments to turn on watch-dog institutions that they have themselves deliberately undermined, declare them dysfunctional, and eliminate them.

Putting cases directly in the hands of "experienced" judges is a bad idea, for a number of reasons. First, as University of Saskatchewan professor Ken Norman has pointed out in his op ed piece in the *Saskatoon Star Phoenix*, compared with a Tribunal member who hears only human rights cases, a judge will simply never acquire the same level of specialized expertise. Thus, "experienced" is a misnomer.

Second, how are human rights complainants going to deal with courts? At this point the Saskatchewan Human Rights Commission represents complainants at adjudication. The B.C. experience is that going to adjudication without legal representation means losing. The 2006–07 Annual Report of the B.C. Human Rights Tribunal noted that in every case where the respondent had legal representation and the complainant did not, the complainant lost. That is, before a tribunal. How much more difficult will it be for complainants to take human rights cases to court without legal representation?

Saskatchewan Justice Minister Don Morgan is dealing with this as though it is a minor, not a central issue. But access to justice for human rights complainants is at risk all over Canada, and now certainly in Saskatchewan.