



The Role of the Courts in Canadian Criminal Justice

In our last Issue (Fall, 2004) of *The Reporter*, we talked about the meaning of the term “justice” and the place of justice in our legal system. *Justice*, as it is understood and applied by Canadian Courts is objective – bereft of emotional or subjective considerations. And amongst large segments of the citizenry, the misunderstanding of *justice* and how it is applied in our Courts, is exacerbated by an even more fundamental misunderstanding of the role of the Courts in our democratic society.

The recent decision in the *Air India* Trial in British Columbia has been the subject of much public attention and media scrutiny. The public, some politicians, and some elements of the mass media have been in full cry about the “injustice” of the result.

It does seem somewhat curious that all those who, one might safely surmise, did not spend one minute in the Court during the Trial, are absolutely confident in the guilt of the accused, and that the justice system or, more particularly, the Courts, have “failed” us - once again. Especially curious when one considers that it was one of Canada’s most experienced and respected Trial Judges that heard every minute of testimony over the course of a two year Trial, and painstakingly reviewed mountains of evidence, before coming to the conclusion that guilt had not been established beyond a reasonable doubt.

It is submitted that those who are outraged at this outcome fail to apprehend the basis of our Canadian criminal justice system, and the role of the Courts within that system. Those condemning the result would have it that the role of the Court is to do no more than visit the full punitive power and authority of the state on those who appear before it; in essence, *if someone has been charged with an offence, they must be guilty, and the Court’s job is to affirm that guilt and punish the offender*. Apparently these critics of the Courts live in a world in which the police and other agents of the state cannot err – tell that to David Milgaard and numerous others.

In 1968, Professor Herbert Packer published *The Limits of the Criminal Sanction*. In his book, Prof. Packer discusses the attributes of the two conflicting models of a criminal justice system. The first model is the **Crime Control Model**, the purpose of which is to “reduce the number of criminals on the street”. This is accomplished by “increasing the number of police, increasing the number of correctional facilities (and filling them up), increasing the length of sentences meted out by the Courts, giving criminal justice agencies more legal powers (investigative, coercive, and repressive), and proceeding on the basis of trial of ‘guilty until proven innocent’”. The outcomes of this model are ostensibly that “it reduces crime, protects citizens and the community, punishes offenders, and provides ‘efficient’ justice”.

Role of the Courts... con't.

The second model is the **Due Process Model**, the purpose of which is to “ensure that the rights of the defendant are protected”. This model achieves this by “limiting and controlling the powers of the police, limiting and controlling the powers of the police, limiting the discretion and the activities of Crown Prosecutors and Judges so that all accused are treated fairly, and ensuring that the powers of all [government] agencies are controlled.” The outcomes of this model are ostensibly that “it protects citizens from the powers of the state, enhances the legal rights of the accused, and provides fairness, equality, and justice for all.”¹

Those critical of the *Air India* outcome and of our Courts and Judges in general are, in essence, advocating for the Crime Control Model, and blaming all our woes on the Due Process Model. And they certainly are correct that the Due Process Model is the one in operation in the criminal justice system in Canada today. The Due Process Model evolved over centuries in British jurisprudence, and is enshrined in our common law, the *Canadian Bill of Rights*, and the *Canadian Charter of Rights and Freedoms*.

The Due Process Model is fundamental to our Canadian way of life, and it is the primary function of our Courts and Judges to ensure that it is given effect.

One only needs to look at the course of human history to see how the lives of individuals have been abused by the exercise of state power, ostensibly under the Crime Control Model, to see why we should be grateful that we live in a country that values the rights of individuals above all else within the context of the criminal justice system. But one need not even go to the history books to see this; one only needs to scan the reports from Amnesty International or the mass media to gain a sense of how wide-spread, and horrific, such abuses are today in a significant portion of the world – virtually all arising under regimes that are, in essence, based on the Crime Control Model.

Ironically, when one studies “crime”, and “crime rates” around the world, one finds that there tends to be far more “crime”, and a much higher “crime rate” in those jurisdictions that have adopted the Crime Control Model (or elements of it) than there is in those that have adopted the Due Process Model.

The Crime Control Model does not, in fact, reduce crime; what it does do is criminalize significant segments of the population and terrorize the rest, fill up jails, almost inevitably lead to appalling abuses of the citizenry, and cost far more to operate and administer than does the Due Process Model.

With the deepest respect for the families of the victims, the outcome of the *Air India* trial is, or should be, a cause for satisfaction with the Canadian criminal justice system, because it clearly demonstrates how one courageous Judge upheld the principals of Due Process, in the face of overwhelming pressure from the state and agents of the state, the public, and the mass media.



¹ Goff, Colin, *Criminal Justice in Canada*, 3d Ed., Thomson-Nelson, Scarborough, 2004, at pages 20 & 21.



The Charitable Dilemma – Part 3

[In this, the third of a series of commentaries, Brad Odsen, Executive Director of the John Howard Society of Alberta continues his examination of issues impacting charitable organizations across Canada, with particular relevance to those in the human services business, including the John Howard Societies in Alberta.]

Imagine Canada, in partnership with Johns Hopkins University and the Government of Canada's Voluntary Sector Initiative, has recently published a detailed analysis of the voluntary sector in Canada entitled *The Canadian Nonprofit and Voluntary Sector in Comparative Perspective*².

Here are some of the things that this most recent research has revealed:

The nonprofit and voluntary sector is an economic force in Canada. It accounts for 6.8 percent of the nation's gross domestic product (GDP) and, when the value of volunteer work is incorporated, contributes 8.5 percent of the GDP sector. If one sets aside the one percent of organizations that are hospitals, universities, and colleges, the remaining organizations contribute 4.0 percent of the nation's GDP.

*Nonprofit and voluntary organizations employ 12 percent of Canada's economically active population and provide 13 percent of its non-agricultural employment. Excluding the one-third of paid employees working for hospitals, colleges, and universities, the sector still employs nine percent of the economically active population and provides 10 percent of the non-agricultural employment. **The entire nonprofit and voluntary sector engages nearly as many full-time equivalent workers as all branches of manufacturing in the country***

*....
Despite its significant role in Canadian life, the nonprofit and voluntary sector faces a number of issues that may affect its future vitality. **Many organizations report difficulties fulfilling their missions because of problems planning for the future, recruiting volunteers and board members, and obtaining funding from governments and private philanthropy.** Most of those that rely on external funding from governments, corporations, and foundations report serious problems. Much of this can be attributed to the challenges they have had adjusting to changes arising from the substantial retrenchment of the Canadian state that occurred in the 1990s.*

Organizations report that government funding has become more short-term, more competitive, and less predictable with support being targeted to programs and projects and little funding available to support overall organizational capacity. At the same time, the administrative burden associated with acquiring funding, reporting on funding, and mandated collaborations is increasing. As a result, organizations and the people who work and volunteer with them are under considerable strain. Moreover, the ability of organizations to identify and respond to needs earlier, more quickly, and often more innovatively than government appears to be eroding.

At the same time, Canadians may have reached the limits of their willingness to support nonprofit and voluntary organizations with the donations of their time and money. Although charities enjoy a high level of public trust and credibility, the number of volunteers appears to be declining and the number of donors is not growing.

*....
Taking the broad view, the lack of a coherent policy framework in Canada for its nonprofit and voluntary sector may be one of the biggest constraints to its future development. Compared to the many initiatives that have been developed to support Canadian business, little has been done to improve the capacity of the nonprofit and voluntary sector to deliver social and economic benefits.*

I am, and have been a volunteer for almost 4 decades. The common understanding in this sector in the 70s and 80s was what was called the "80/20 Rule" – 80% of the volunteer work was done by 20% of the population, and 80% of the funding came from 20% of the potential funders. But I had come to the conclusion over the last decade that this Rule no longer applies; it is now the "90/10 Rule". Regrettably, what I have observed in the sector has been substantiated by the research cited herein.

There are two critical questions that have to be answered:

- 1. Do we want our community-based voluntary organizations to die an agonizingly slow death, or do we want them to thrive? And**
- 2. If we want them to thrive and grow, what needs to be done to reverse the course we are presently on?**

I hope to provide some suggestions that address these questions in the next issue of *The Reporter*, due out in the Fall of 2005.

² Hall, Michael H. et. Al., Toronto, 2005, www.imaginecanada.ca, ISBN:1-55401-103-5, pp.iv & v.
Emphasis added.

The John Howard Society of Alberta

Annual General Meeting 2005

The Society's Annual General Meeting will be held Saturday, June 25th, 2004
at the Edmonton John Howard Society located at:
10010 – 105th Street, Edmonton, AB
from 3:30 p.m. to 5:00 p.m.

We welcome everyone to attend.
Hope to see you there!

RSVP Bev Tweedle @ (780) 423-4878 by June 11th, 2005

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The Reporter, a publication of the John Howard Society of Alberta, is distributed free of charge to a wide audience of citizens, educators, agencies, and criminal justice staff. Our goal is to provide information and commentary on timely criminal justice issues. We welcome and encourage your feedback on The Reporter.

The John Howard Society of Alberta is an agency composed of citizens in Alberta who are interested in criminal justice reform and preventing crime in our communities. We recognize that dealing with crime is the responsibility of the community as well as public agencies.

We gratefully accept donations to help offset the costs of our efforts in criminal justice reform and crime prevention. Donations are income tax deductible.

To make a donation or provide feedback please contact us at the address on this page.

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