

powers of the National Energy Board of Canada and the American Administrative Procedure Act under which a similar tribunal would have to operate in the United States. This study was published in the Saskatchewan Law Review, Volume 34, 1969.

Mr. Carter began his article by pointing out the differences between the Congressional system of the United States and the parliamentary system of Canada. He also emphasized that Canada has no Bill of Rights entrenched in the Constitution. Consequently, unlike his American counterpart, the Canadian citizen cannot insist upon a constitutional right to a hearing before an agency; neither can he claim that an Act of Parliament is void because it offends his fundamental rights. This latter statement is now open to question in light of the recent *Drybones* decision by the Supreme Court of Canada, to which I have just referred.

With respect to safeguards and remedies available to citizens whose rights or interests have been affected by Government action, Mr. Carter observed that although the National Energy Board has judicial and administrative functions, section 19(3) of the National Energy Board Act prohibits the application of *certiorari*, prohibition, *Mandamus*, injunction, etcetera; while, on the other hand, the statute declares that all orders and decisions of the agency shall be "final and conclusive," subject only to a limited right of appeal to the Supreme Court of Canada. The appeal lies on "a question of law or a question of jurisdiction".

This study showed that the only point of superiority of Canada's Regulations Act over the American Administrative Procedure Act was its requirement that all "legislative rules or regulations must be laid before Parliament within fifteen days after it is published." In all other respects the Regulations Act is inferior and does not provide the Canadian citizen with safeguards equal to those which the Administrative Procedure Act provides to the citizen of the United States.

The article contains a point-by-point comparison of the National Energy Board Act with the Administrative Procedure Act. That comparison is made under the following headings: Notice; Pleadings; Time and Place of Hearing; Pre-Trial Conference; Presiding Officers; Impartiality; Separation of Functions; Hearing Powers; Evidence; Record, Reasoned Decision.

[Hon. Mr. Carter.]

Then he went on to state that there are four provisions in the Administrative Procedure Act which are entirely lacking in the National Energy Board Act. He said:

They concern (a) the use of hearing examiners, (b) the evidence which may be received and acted on, (c) separation of functions and, (d) reasoned decisions. There is no other Canadian federal legislation dealing with any of those matters.

In his comparison he also pointed out that in the statute or rules there is no provision for impartiality, for separation of functions, for evidence, for a written record or a reasoned decision.

Honourable senators, I was going to request that this table be inserted in the *Debates of the Senate* at this point, but I understand that there are certain technical difficulties with regard to that procedure. However, with your permission, I request that this material be appended to the official report of this evening's proceedings.

The Hon. the Speaker: Is it agreed, honourable senators?

Hon. Senators: Agreed.

[For text of comparison, see Appendix "B", pp. 849-50.]

Hon. Mr. Carter: The article of which this is merely a brief extract is extremely pertinent to the type of inquiry envisaged in the resolution before us, and I strongly recommend that the Standing Senate Committee on Legal and Constitutional Affairs use it for comparative studies of the Regulations Act itself as well as for studies of subordinate legislation.

Finally, I would hope that in carrying out its inquiry, the committee would also give consideration to the need for an ombudsman at the federal level. As society becomes more complex, so will the administrative machinery of government. As delegated powers and tribunals to exercise them multiply, so will the need for federal ombudsmen increase.

The *Globe and Mail* of April 8 carried an article by Hugh A. Halliday entitled "A Case for More Canadian Ombudsmen". The article reads, in part, as follows:

Is there a credibility gap between government and citizens? The answer would seem to be yes. It is not entirely the fault of elected representatives, however. What has happened is that modern government has created modern bureaucracies.