

Act (for example, a criminal law or a law in relation to Indians) is invalid if it infringes a human right or fundamental freedom guaranteed by the Bill of Rights. Because the bill speaks in general terms, it has no precise meaning until its terms are defined. And because these terms are defined by the court, the court will, in effect, supervise Parliament and so be able to play a broader role in the political life of Canada than it has in the past.

Until the time of the *Drybones* decision, the court had power under the Canadian version of Parliamentary supremacy, to invalidate a federal act only if it held that in passing the act Parliament exercised legislative authority assigned by the B.N.A. Act to the provincial legislatures.

Similarly, the court could invalidate a provincial act only if passing of the act involved the exercise of legislative authority assigned to Parliament. However, it could not invalidate an act on the basis of the act's policy content.

Honourable senators, we all know that the Supreme Court of the United States has on many occasions determined policy by its interpretation of the American Constitution and the application of those interpretations to laws passed by the U.S. Congress. I do not think that such a practice is compatible with our Parliamentary system and traditions. Neither do I think it would be a good thing to have such a practice implanted in our system. This is a matter which I think should be considered by our Senate Committee on Legal and Constitutional Affairs.

It is very timely, therefore, that Parliament should begin to take a look at delegated powers and the adequacy of present safeguards to protect the rights, liberties and interests of the individual citizen.

I agree with Senator Phillips (Rigaud), Senator Fergusson and others that this is a role the Senate is uniquely qualified to perform, particularly through the Senate Standing Committee on Legal and Constitutional Affairs. However, there is some doubt in my mind whether the terms of reference embodied in the resolution before us are sufficiently broad to do the kind of job that needs to be done.

I agree with Senator Fergusson that we should not only examine the delegated powers and regulations made under those powers, but also the procedures used by the

various tribunals in the exercise of those powers. Indeed, I would go a great deal further than that. I would like to see each agency taken separately and its powers and functions classified and separated, as far as possible, as to whether they be executive, judicial or administrative. Then I should like to see them examined in the light of Montesquieu's principle to see if they were further removed from that principle than necessity required. I should like to see the same done with powers delegated by the tribunals themselves, which are twice removed from parliamentary control. I would like to see judicial functions clarified and defined to the fullest possible extent.

I would like the committee to examine the procedures of these tribunals with respect to fact-finding and matters of evidence. This would include the rules of evidence used, the type of evidence permitted, the weight and sufficiency of evidence in relation to the decision-making process and what their position is with respect to material facts not appearing in evidence.

I should like the committee also to take a look at the adequacy of the safeguards in the light of the philosophy of the recent amendments to the Expropriation Act, that is, the publication of public notices, including notices to other parties concerned with the evidence being heard; what opportunities there are to register objections; what consultation there is with the persons affected; what opportunities there are for negotiations, if necessary, and for the right to appeal; what provisions are made for the publication of a reasoned decision and the facts on which it was based.

An article appearing in last Friday's *Ottawa Citizen* by Charles King implies that the Canadian Radio-Television Commission transgressed on at least two of these counts in a decision handed down in connection with radio station CKPM. According to Mr. King's article, the manager of CKPM, having failed through a misunderstanding to attend the public hearing personally, was refused any further opportunity to tell his side of the story, and no evidence or logical reason was given for the commission's decision and action.

I would like the Senate committee to study and make comparisons with similar tribunals exercising comparable delegated powers in other countries, particularly in the United States.

Roger C. Carter, Dean of the College of Law at the University of Saskatchewan, carried out a comparison study of the delegated