ONTARIO BAR ASSOCIATION
A Branch of the Canadian Bar Association

ADMINISTRATIVE LAW

Volume 19, No. 2 – June 2011 **Administrative Law Section**

ADMINISTRATIVE LAW SECTION DINNER PROGRAM: "Clustering of Administrative Tribunals in Ontario"

Arghavan Gerami

On May 18, 2011 the OBA Administrative Law Section held a session entitled "Administrative Law: Clustering of Administrative Tribunals in Ontario, from Act to Implementation". The Speakers were Michael Gottheil, Executive Chair of the Social Justice Tribunals Cluster and Honourable Kevin Whitaker, of the Superior Court of Justice of Ontario. This article provides some of the highlights from the presentation and the discussion at this session.

What is "Clustering"?

"Clustering" does not yet have a precise definition; it is somewhat of an "empty vessel" and very much context dependent. The underlying goals of the concept, however, are to allow for greater accountability, consistency and efficiency, while at the same time preserving expertise.

History of Clustering

The clustering idea initially arose in the labour relations and employment area, aimed at rationalizing the work of tribunals, boards and commissions in that sector. While the motives of merging tribunals and creating a super tribunal were at first considered suspicious by some, the government nonetheless administratively merged two labour tribunals, and on the whole this was considered a success. This was followed by cross-appointments in the collective bargaining context, and greater interest generally in mergers to reduce duplication and enhance efficiency.

Clustering also emerged from an international trend toward structural reform, driven by the goals of accountability in the delivery of public services and the development of best practices. In the tribunals sector, this meant raising the standards and improving the quality of the tribunals' work.

The Challenge of Articulating the Clustering Vision and the Fear of Bringing Change to Existing System

One of the challenges which arose in operationalizing the clustering idea is what often is the reaction to introducing an organizational change – that it may be a response to a shortcoming in the current system. This was especially sensitive in the case of administrative tribunals, as they have often had their own expertise and had a special pride in their history.

In addition, there was sense that clustering concept is an "empty vessel"; it was challenging to get buy-in of the concept because of the lack of clarity and a defined path. Internally, there was also the fear from staff and adjudicators that clustering may result in the loss of jobs, cutting budgets, etc. And externally, the external stakeholders were concerned by the potential impact of the change for access to justice.

Addressing the Challenges

With respect to specialization, what made clustering unique compared to other international structural reforms was that while tribunals were brought together under one organization, and there were some cross-appointments, their statutory mandate and membership was kept distinct. Thus, there was a recognition of the need to leverage commonalities, while at the same time ensuring that rules and procedures remained suitable for the specific disputes, tribunals could retain their expertise and maintain the quality of their decisions.

Moving Forward: Maintaining the Momentum for Making Improvements

Over time, it has been recognized that such a change initiative also creates a momentum to make improvements, to enhance access to justice and opportunities for innovation. Finally, clustering can facilitate advancement, professional development and encourage broader approaches to adjudicative models, as well as facilitate strategic sharing of expertise and recruitment of top quality adjudicators.

Thus, it seems that moving forward, there is much to be gained by further expanding the clustering concept in the administrative law and in particular in the context of Tribunals in Ontario and elsewhere in Canada. The speakers in this session provided a great deal of insight based on their own knowledge and expertise in this area, which made for a very interesting and educational session.

** Arghavan Gerami is a Law Clerk to the Honourable Justice John Maxwell Evans at the Federal Court of Appeal. She may contacted by telephone: (613) 947- 0057 or email: arghavan.gerami@cas-satj.gc.ca*