

panel is not represented, nor are the more formal lectures on the topics of "Administrative Tribunals and Inquiries" by D.G.T. Williams, Reader in Public Law at the University of Cambridge and "Judicial Review of Administrative Action" by Professor H.W.R. Wade, Q.C., F.B.A., Rouse Ball, Professor of English Law at the University of Cambridge.

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***How To Fight For What's Right: The Citizen's Guide to Public Interest Law*, John Swaigen, Toronto: James Lorimer & Company 1981, Pp. xxi 150. \$15.95 (cloth) \$8.95 (paperback).**

Neither the lords nor the shogun can be depended upon, and so our only hope lies in grassroots heroes.

Yoshida Shoin<sup>1</sup>.

"How To . . ." books seen all the fad these days. In fact, Books in Print 1981-82<sup>2</sup> lists twenty-nine pages of "How To . . ." books covering the complete spectrum from mere personal self-improvement and desire gratification to the more public spirited community action manuals. It is this latter category with which we are presently concerned.

Obviously, individuals or groups of citizens cannot leave it to others in the normal course of affairs to vindicate or even respect their interests. We are a society in which competing interests are constantly in a pitched duel for ascendancy. One cannot rely on the inherent decency of whatever is the competing interest group to not fully and selfishly promote their cause. Nor can one rely on government departments or agencies whether municipal, provincial or federal, as many government employees no longer seem to pay anything more than even lip service to the term "public servant" which is perhaps passe in any event. Instead, as many

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<sup>1</sup>Quoted in "Bartlett's Familiar Quotations" (14th Ed) (Boston: Little Brown & Co., 1968), p. 740.

<sup>2</sup>"Books in Print 1981-1982": Vol. 3 (New York: R.R. Bowker Company, 1981) pp. 2022-2050.

of us can attest, some government employees of rank would have us believe that they rule by personal fiat and do so, at times, in wilful disregard of statutory protection granted individual citizens. It is therefore up to individuals or groups of citizens to defend and protect themselves and their community of interest.

The ammunition in the citizen's arsenal is knowledge. [*Nam et ipsa scientia protestas est.* Francis Bacon]. Knowledge of rights. Knowledge of the system. Most citizens have neither and therefore are defenceless against those who do. It is this basic educative purpose which lies behind John Swaigen's *How to Fight For What's Right: The Citizen's Guide to Public Interest Law*, the second in a series of projects of the Canadian Environmental Law Research Foundation. Their first effort, *Poisons in Public* by Ross Howard was Published in 1980.<sup>3</sup>

The book is divided logically into three parts: Getting into Court, Before the Courts and Tribunals, and Keeping Out of Court and Out of Trouble.

Part One reviews the problems of standing before courts and tribunals, the function of an *amicus curiae*, references, and the establishment of test cases. Getting before the proper forum is in many instances half the battle.

In Part Two, one finds a brief discussion of what is always a major factor in any decision to "Fight For What's Right"—the costs. It is perhaps somewhat surprising that in a text directed to the general public (because of which one is more willing to allow for slight error on technical points) the author spends half of his chapter entitled "Who Pays?" discussing the role of the lawyer, especially in having costs awarded against him personally. Additionally, it would seem to have been appropriate in a citizen's guide to have made reference to the taxing of costs, surely something of interest to the payor. Also, the reader is left with the distinct impression that costs consist of the party and party variety. Would not the dire possibility of solicitor-client costs also have been relevant? Part Two continues with an introduction to the contempt power of courts followed by a caveat on the subject of maintenance and champerty and then the tactical aspects of seeking an adjournment.

Part Three provides the citizen a sort of battle manual for staying out of trouble. The "Do's and Don'ts" of demonstrations and picketing are reviewed with an actual list of "Do's and Don'ts" provided. The strategy lesson continues with a review of the law of conspiracy and defamation. The volume concludes with mention of the practical aspects of protecting the charitable status of public interest groups engaged in activist endeavours.

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<sup>3</sup>Reviewed: (1981), 30 U. N. B. L. J. 252 by John W. Reynolds.

If I may be so bold, one of the problems of this work seems to be attitudinal. Notwithstanding that in his introduction, on page XXI, the author clearly states that neither he nor his clients were ever subjected to any harassment during his years as a public interest advocate because "most opponents play fair most of the time", the author continually portrays the public interest advocate or citizen as a white knight constantly subject to unfair advantage by both opponents and the system. More particularly, there seems to be lacking a balanced viewpoint. For example, on page VII the ordinary lawyer is portrayed as a businessman who sells his services regardless of principle while the lawyer in a public interest case acts only to "further a particular set of goals"; having clearly stated that costs may be awarded against a lawyer personally in the event of misconduct, the author on page 44 proceeds to counsel lawyers in public interest litigation to "consider whether you will have to use the kinds of tactics that will tempt the court to award costs against you personally"; in discussing contempt, the author having widely defined the power, in part, to include activity "likely to lessen the authority or dignity of the courts", proceeds to question whether labelling New Brunswick courts as "tools of the corporate elite"<sup>4</sup> might not have been an over-extension of that power and later at page 61 refers to avoiding contempt by discussing with counsel statements that might "upset a judge".

Cases referred to in the text are end-noted at the back of the book. I agree with the reviewer<sup>5</sup> of the first volume in this series that footnoting is preferable. As well, the text relies heavily upon uncited anecdotal material, for example, on page 29 that a particular judge who decided a particular matter had earlier been involved in a somewhat related dispute.

As an additional aid the author provides a brief glossary (which probably should have been expanded considering the potential readership) and references for further reading. It would have been of great assistance if the author had also included a brief description of the sources of law more particularly where at his public library the citizen may find statutory materials and how to use them. It is difficult to assert rights when no clue is given as to how to ascertain what those rights are.

Bearing in mind that this book is entitled "How to Fight . . ." and directed to a public readership it serves its purpose well and should be a valuable insight to those intended readers. As to lawyers, the author himself notes on page XIX "it is no substitute for thorough research . . .".

**J.P. McEVOY\***

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<sup>4</sup>*R. v. Murphy* (1969), 1 N.B.R. (2d) 297 (NBSCAD), and not *R. v. Larue-Langlois* as cited.

<sup>5</sup>*Supra*, footnote 3, at 255.

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