Kangaroo-ism

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Document considered: Wildrose Platform on Justice, Policing and Human Rights

My colleague, Jennifer Koshan, has written a serious ABlawg post on "The Alberta Election and Human Rights," pointing out numerous problems with the Wildrose platform on Justice, Policing and Human Rights. The purpose of this post is much narrower and less serious, and that is to follow up on the "kangaroo courts" insult in the Wildrose policy statement.

Like with Professor Koshan, I think that calling the Alberta Human Rights Commission and the tribunals "something akin to 'kangaroo courts'" is inflammatory rhetoric. According to Webster's New International Dictionary (2d. ed)), the phrase is most commonly used to refer to "an irresponsible, unauthorized, or irregular tribunal, or one in which, although conducted under some authorization, the principles of law and justice are disregarded or perverted." The Alberta Human Rights tribunals are decision-making bodies and "kangaroo court" is never used to say something nice about how a decision-making individual or institution goes about its business.

But what exactly does the Wildrose allegation of "akin to 'kangaroo courts'" mean? Why "kangaroo courts"?

Writing on the metaphor's etymology, Marvin J. Garbis, in "Aussie Inspired Musings on Technological Issues - Of Kangaroo Courts, Tutorials & Hot Tub Cross-Examination" (2003) 6 Green Bag 2d 141, 142 n.8, tells us that the term "kangaroo court" is not disparaging of the Australian judicial process but rather arose in the American West in the 1850's to refer to informal tribunals that dispensed instant "justice." Garbis believes that the marsupial analogy may have been a sardonic comparison between the hopping gait of a kangaroo and the ad hoc and unpredictable leaps of logic and procedures of the American frontier tribunals. While western frontier justice is something detractors of the Wildrose might expect the party to be in favour of, it is reassuring to see that the party has taken a firm stand against it.

In the American context, Parker B. Potter, Jr., has looked at both founded and unfounded claims of kangaroo-ism brought by both judges and litigants and found 375 state and federal judicial opinions discussing the allegation. See Potter's "Antipodal Invective: A Field Guide to Kangaroos in American Courtrooms" (2006) 39 Akron Law Rev. 73 at 73, and his companion articles, "The Good, the Bad, the Ugly, and More: A Survey of Litigation Arising from the Operation of Kangaroo Courts" (2005) 1 International Journal of Punishment & Sentencing 121; "Dropping the K-Bomb: A Compendium of Kangaroo Tales from American Judicial Opinions" (2006) 11 Suffolk Journal of Trial and Appellate Advocacy 9; and, most recently, "Marsupial Justice" (2008-2009) 35 Litigation 20.

In the United States, according to Potter's research, juvenile justice is by far the most hospitable habitat for alleged or real marsupial decision-makers. And interestingly, although Potter

catalogues a wide variety of habitats where kangaroo-ism allegations can be found — including at the police station, in schools, in labour unions, up and down the halls of government, and in hospitals — in the United States, no adjudicatory kangaroos have been spotted in human rights habitats.

I spent five minutes on a Quicklaw search for "kangaroo courts" in all Canadian jurisdictions and turned up 56 cases **—** proportionately a far greater number of marsupial sightings than in the United States. The Alberta Human Rights Commission and tribunals are keeping company with the likes of the Attorney General of British Columbia (*Randall v. Weich*, [1982] BCJ No. 862 at para 4), the British Columbia Provincial Court (Criminal Division) (*R. v. Clark*, [1997] BCJ No. 715 at para 23), and the federal Minister of Natural Resources (*R. v. Buchanan Forest Products Ltd*., [2005] OJ No 5927 at para 36), to name but three. I did note that it seems to be minsters of provincial and federal governments that are often charged with kangaroo-ism but, as the Wildrose party does not (yet) have any minsters, perhaps they are unaware that the charge may boomerang on them.

As part of his empirical study of kangaroo-ism, Potter presents (at 148-49), in ascending order of popularity, the top twelve decision-making behaviours that have inspired American judges and litigants to hurl the kangaroo invective at another tribunal:

- depriving a person of property based upon false charges;
- employing procedural rules that unfairly favour one side over the other;
- conducting an inadequate investigation;
- basing a decision on insufficient evidence;
- denying an accused person the opportunity to cross-examine witnesses;
- acting out of an improper motivation;
- exhibiting bias;
- denying an accused person the opportunity to confront his or her accusers;
- delaying excessively the decision-making process;
- denying an accused person the opportunity to present witnesses;
- denying an accused person access to counsel;
- providing an accused person with inadequate notice of the charges against him or her.

The Wildrose platform on Justice, Policing and Human Rights is quite vague about what behaviour inspired their allegation of kangaroo-ism, unless it is equating kangaroo-ism with "bringing the administration of justice into disrepute" **—** normally a different idea. The statement mentions unfairness in dealing with human rights complaints but that is so general as to be meaningless. The only specific behaviour listed is their allegation that rights are "interpreted by individuals who are often unqualified to make judgments on the most foundational of protected rights in society." That behaviour did not make Potter's top twelve so perhaps we have a different species of the marsupial class here in Canada.