

Court Governance in an Evolving World

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Key literature on court governance:

1981:

Masters in Their Own House (The Deschênes Report)

Perry Millar and Carl Baar, *Judicial Administration in Canada*,
espec. chap. 3

1991:

Tom Church and Peter Sallmann, *Governing Australia's Courts*

2004:

Alford, Gustavson and Williams, *The Governance of Australia's Courts:
A Managerial Perspective*

2006:

Canadian Judicial Council, *Alternative Models of Court Administration*

Background of the Models report:

- A generation of deadlock
- Incremental steps toward autonomy of judicial administration
 - Federal courts
 - Ontario MOU
- Judicial conservatism

Recasting the debate:

- Is it judicial independence vs. executive intrusion?
- Is it cabinet and parliamentary government vs. irresponsible judges?
- Or is it neither of the above?

Recasting the debate: (Cont'd)

- The principle of responsible government does not require executive control of court administration
- Furthermore, responsible and accountable court administration is in fact undermined by the traditional narrowly-understood definition of cabinet responsibility

Recasting the debate: (Cont'd)

- The principle of judicial independence can co-exist with a system of executive control over court administration
- However, the tension between the two undermines the effectiveness of court managers and the improvement of court performance

Observations about Canadian court administration:

Perspectives designed to open Canadian court administration to change:

1. The current executive model is not as inevitable and entrenched as its proponents believe
 - Current model is historically quite recent
 - Examples of autonomous arrangements are increasing
2. Judicial demands for control of court administration are relatively narrow and limited in scope
 - Cf. the “limited autonomy” model and Deschênes’ “phase 3”—parliamentary control replaces executive arrangements

Observations about Canadian court administration: (Cont'd)

3. Court administrative decision-making should be seen in terms of key areas and stages
4. Court administration no longer derives the traditional benefits of being under the wing of the Attorney-General or Minister of Justice. The “law officer of the crown” must share managerial controls with many other agencies
5. There has been substantial expansion of international soft-law requirements for independent court administration

Observations about Canadian court administration: (Cont'd)

6. A wide range of alternative models are available to enhance the effectiveness of court governance and reflect the values and preferences of diverse states and provinces:
 - The executive model
 - The independent commission model
 - The partnership model
 - The executive/guardian model
 - The limited autonomy model
 - The limited autonomy & commission model
 - The judicial model

Key lessons:

1. Under any model, defining and enforcing the boundaries of court administration are essential activities
 - Ireland: the key to administrative effectiveness
 - Pakistan: budgetary control under challenging conditions
2. Benefits emerge over time
 - South Australia
 - U.S. federal courts

Key lessons: (Cont'd)

3. Internal governance issues must be addressed in order to enhance confidence in a future with greater judicial control
 - Limits on centralization of court administration
 - Horizontal integration (e.g. Canada, Australia) preferable to vertical integration (e.g. India, Pakistan, United States)
 - Collegial governance and the role of chief justices

Cf. Two books by Canadian judges:

- T. David Marshall, *Judicial Conduct and Accountability* (1995)
- John C. Bouck, *Exploding the Myths: An Insider's Look at Canada's Justice System* (2006), espec. p. 37-40