

DISCRIMINATION AND THE LAW IN CANADA, by Walter S. Tarnopolsky, Richard De Boo Limited, Toronto, 1982, pp. vii and 595.

Professor Tarnopolsky's book was completed prior to the adoption of the new Canadian Charter of Rights and Freedoms. However, this poses no difficulty in his portrayal and analysis of human rights legislation. The value of this book lies primarily in its developmental framework. A separate reading of the Charter assures us that an historical and evolutionary treatment of anti-discrimination laws and rights codes is necessary to evaluate the Charter's effect and impact – particularly in light of provincial-federal relations. This book is a useful reference tool for all students of human and civil rights, and is more detailed in law than Justice Thomas Berger's *Fragile Freedoms*.

The book begins (Part I) with a description of slavery in pre-confederation Canada, and its persistence in the British North American colonies until the passing of the 1833 Act for the Abolition of Slavery (short title) by the Imperial Parliament. Prior to the enactment of various rights codes after World War II, legislation in Canada consistently discriminated on the bases of race, national origin and sex. It was not until after World War I that women were granted the right to vote: Alberta led the provinces in 1916 and Quebec, the last province to confer electoral franchise, followed twenty-four years later. The Judicial Committee of the Privy Council and the Supreme Court of Canada were, during the early part of this century, the sole interpreters of the BNA Act in matters of racial and sexual discrimination. The fact that the BNA Act made no reference to egalitarian human rights created interpretation, jurisdiction, and paramouncy problems.

By the late 1940's it became clear that issues involving egalitarian civil liberties could no longer be satisfactorily resolved by interpreting the meaning of constitutional safeguards. Legislation expressly forbidding discrimination was required. In 1944 Ontario enacted the Racial Discrimination Act, and in 1947 the Saskatchewan Bill of Rights Act appeared. These were essentially quasi-criminal statutes prohibiting discrimination in matters of employment, education, and business and providing sanctions. Fair Employment/Accommodation Practices Acts and Equal Pay Acts were enacted by all the provinces during the 1950's. The following two decades saw the appearance of comprehensive human rights codes in most provinces; the Canadian Bill of Rights (1970) and the Canadian Human Rights Act (1977) followed next. The latter made provisions for the establishment of a federal Human Rights Commission. By 1975, all ten provinces had commissions which were charged with the administration of anti-discrimination legislation.

The existence of provincial as well as federal acts and commissions precipitated, again, questions of paramouncy. Though jurisdiction is formally divided between "local works and undertakings" and "federal work, undertaking, service or business", we have only to look at the issues raised by the Indian Act, as a good example, to see that the division is not always clear-cut. Tarnopolsky presents succinct discussions of legislative jurisdiction in many spheres of activity.

After the history of rights legislation is presented, the reader is treated to definitions of discrimination in Canada, the United States, and the

United Kingdom. A thorough and extensive treatment of the case law illustrates the application of techniques used by courts when faced with definition problems. This involves discussion of (a) evil motive, or *animus*, (b) differential treatment, and (c) consequence, or effect.

Parts II and III of the book discuss the prohibited grounds of discrimination (race, color, national or ethnic origin, religion or creed, age, and sex). Professor Tarnopolsky reviews judicial definition of terms, legislation and cases.

The discussion extends to activities for which sanctions are provided: activities including the posting of discriminatory signs, notices, advertisements; denying access to services, facilities; discriminatory practices in employment and in renting and purchase of real property.

In presenting these, Professor Tarnopolsky draws out important differences between Canada, the United States, and Great Britain. Quebec, Canada's only civil law province, is also discussed in context.

*Discrimination and the Law* closes with two chapters (Part IV) on the administration and enforcement of human and civil rights legislation. Here, the complaint-to-settlement process is reviewed. This comprises the investigation, the hearing (which involve rules of justice, venue, public hearings, *in camera* hearings, procedures of evidence, burden of proof), and the settlement with its remedies. Tarnopolsky includes, finally, what he believes is the only complete set of board of inquiry decisions in Canada (to 1981). These are listed chronologically, by jurisdiction, and include style of cause, citation, and subject matter for each decision.

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