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INTERNATIONAL YEAR FOR HUMAN RIGHTS 1968 ANNÉE INTERNATIONALE DES DROITS DE L'HOMME

In a world confronted by the competing forces of violence and human dignity, the protection of human rights on the national and international levels appears to be the only solid foundation for the establishment of peaceful relations between states. As Dag Hammarskjöld once said, "without the recognition of Human Rights, we shall never have peace".¹

Twenty years ago the United Nations adopted the Universal Declaration of Human Rights. Even though the Déclaration is not a binding treaty, its influence in the world has been immense as it enumerates certain minimum standards of behaviour by governments towards their subjects that are demanded by reasonable people in all countries irrespective of the culture to which they belong. To commemorate the anniversary of this most significant event in the history of humanity, the General Assembly of the United Nations has proclaimed 1968 International Year for Human Rights. 1968 also marks the fifteenth anniversary of the coming into force on the third of September 1953 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The primary responsibility for ensuring the enjoyment and respect of human rights and freedoms rests with the individual

¹ Quoted in Report of the Committee on Human Rights of the National Citizens Commission on International Co-operation (Washington, D.C., Nov. 28th-Dec. 1st, 1965), p. 6.

states who are members of the international community. Their legislative bodies must recognize in the individual the rights that reflect his central place in society. Unfortunately, history shows that state bills or declarations of rights, even though sometimes enshrined in the constitution and theoretically binding on the courts, have not always proved to be very effective. Furthermore, the full enjoyment of civil and political rights is almost impossible without the parallel enjoyment of economic, social and cultural rights.

What is needed today is hard commitment and action, not lip service.

In this special issue of the *Canadian Bar Review*, the authors of the various articles have attempted to examine a number of problems affecting human rights on the national scene.

What progress has been made in the promotion and protection of human rights and fundamental freedoms in Canada since the adoption of the Universal Declaration by the United Nations?

Canada has not stood aside from the vast movement for the protection of human rights that characterizes our times. As the constitution contains few guarantees of specific liberties, many steps have been taken to develop and protect human rights and fundamental freedoms. Undoubtedly, they are a sign of national maturity. Yet these rights and freedoms are too limited in scope and the procedures for their enforcement are not fully adequate.

In 1960, the Canadian Bill of Rights² was passed which proclaims the right of the individual to life, liberty, security of the person and enjoyment of property as well as the freedoms of religion, speech, assembly and association, and of the press. However, these provisions "shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada". The Bill emphasizes political freedoms and legal rights only. It is for the provincial legislatures to adopt laws designed to protect those human rights that come within their exclusive competence under the British North America Act.³

² S.C., 1960, c. 44, s. 5(3).

³ (1867), 30 & 31 Vict., c. 3, as am., ss 91-95. In Canada, authority to legislate with respect to some of the rights regarded as fundamental lies with the provinces, authority to legislate with respect to others of these rights lies with Parliament and, authority with respect to the balance is shared by the two.

Under the British North America Act "Canadians are not afforded any guarantees of fundamental rights which (a) limit governmental power and (b) possess a large measure of permanence because of the requirement that it be amended not by ordinary legislative process but only by the more rigorous means of constitutional amendment". Trudeau, *A Canadian Char-*

As indicated in the Appendix, Parliament and the provincial legislatures have passed many specific laws dealing with human rights and fundamental freedoms. Federal or provincial statutes prohibit discrimination on the following grounds: race,⁴ colour,⁵ creed,⁶ belief,⁷ religion,⁸ religious creed,⁹ or belief,¹⁰ nationality,¹¹ national extraction,¹² national origin,¹³ place of birth,¹⁴ place of origin,¹⁵ ancestry,¹⁶ ethnic origin,¹⁷ social origin,¹⁸ age¹⁹ and sex.²⁰ Employment discrimination is also prohibited.²¹ Trade unions²² and employers' associations²³ must not discriminate in regard to *inter alia* the admission of members and their expulsion or suspension. There can be no discrimination in all accommodations, services and facilities customarily open to the public.²⁴ This includes for instance hotels,²⁵ restaurants,²⁶ camping grounds,²⁷ rentals of commercial space,²⁸ and all housing rentals.²⁹

It is a pity that these statutes are often narrow and quite ineffectual. Furthermore, Canadian courts have tended to emasculate the federal Bill of Rights and to consider civil liberties as a constitutional division of powers issue only. There has been a strong judicial tendency to assume that Parliament did not intend by the Bill of Rights to alter specific pre-existing inconsistent

ter of Human Rights (1968), p. 13. In general see Tarnopolsky, *The Canadian Bill of Rights* (1966), esp. ch. II, p. 18.

⁴ Canada Fair Employment Practices Act, S.C., 1952-53, c. 19, as am. S.C., 1966-67, c. 62, s. 30.

⁵ Alta Human Rights Act, S.A., 1966, c. 39.

⁶ N.W.T. Fair Practices Ordinance, 1966 (2nd Sess.), c. 5.

⁷ Que. Hotels Act, R.S.Q., 1964, c. 205.

⁸ Que. Employment Discrimination Act, R.S.Q., 1964, c. 142.

⁹ Man. Fair Accommodation Practices Act, S.M., 1960, c. 14.

¹⁰ Alta Human Rights Act, *supra*, footnote 5.

¹¹ N.B. Human Rights Act, S.N.B., 1967, c. 13.

¹² Que. Employment Discrimination Act, *supra*, footnote 8.

¹³ Canada Fair Employment Practices Act, *supra*, footnote 4.

¹⁴ Que. Hotels Act, *supra*, footnote 7.

¹⁵ Alta Human Rights Act, *supra*, footnote 5.

¹⁶ B.C. Fair Employment Practices Act, R.S.B.C., 1960, c. 137, as am. S.B.C., 1964, c. 19.

¹⁷ N.S. Human Rights Act, S.N.S., 1963, c. 5, as am. S.N.S., 1967, c. 91, now R.S.N.S., 1967, c. 130.

¹⁸ Que. Hotels Act, *supra*, footnote 7.

¹⁹ B.C. Fair Employment Practices Act, *supra*, footnote 16.

²⁰ Que. Employment Discrimination Act, *supra*, footnote 8.

²¹ Canada Fair Employment Practices Act, *supra*, footnote 4.

²² Ont. Human Rights Code, S.O. 1961-62, c. 93, as am. S.O., 1965, c. 85, S.O., 1967, c. 66, S.O., 1968, c. 85.

²³ Que. Employment Discrimination Act, *supra*, footnote 8.

²⁴ N.S. Human Rights Act, *supra*, footnote 17.

²⁵ Que. Hotels Act, *supra*, footnote 7.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Ont. Human Rights Code, *supra*, footnote 22.

²⁹ *Ibid.*

federal statutory provisions. Taking this into account, Professor Molot in his article indicates how the judiciary can play a less arid role in defining the duty of business to serve the public and thereby he gives us a far less confining perspective of what may be accomplished in this area of civil rights.

In Quebec the civil law has a long tradition of protection of individual rights through the interpretation of the articles of the Civil Code devoted to delicts and quasi delicts.³⁰ This protection is completed by special statutes dealing with more specific problems raised by racial and other forms of discrimination.

Recently, the Committee on Civil Rights of the Office of Revision of the Civil Code has proposed to include in the Code a declaration of civil rights. In conformity with the civilian tradition the draft declaration is concerned with the human rights involved in relationships between individuals. There is no attempt to incorporate into the Civil Code rules governing relationships between the state and individuals or political, social or economic rights. Thus, the draft is not a comprehensive charter of human rights.³¹

Finally, last year the Royal Commission on Bilingualism and Biculturalism recommended a new status for the official languages of Canada.³²

In general it must be recognized that at the present time, in the implementation of the United Nations conventions and covenants, the national or even provincial framework is probably an ideal one, since it enables local authorities, without any modification of established structures, to take into account the local human, religious, economic, social and technological factors.

However, eventually, the enforcement of human rights and fundamental freedoms should not remain a matter solely for each nation individually. The basic minimum standards that all have the right to enjoy should become enforceable internationally. The ultimate sanction of human rights must be more than national or international public opinion. The United Nations should go beyond the promotion stage and create a Commission and an International Court of Human Rights, similar to the ones created by the European Convention for the Protection of Human Rights and Fundamental Freedoms³³ to apply and interpret the terms of the various covenants and assure their effective observance. State

³⁰ Arts 1053-1054.

³¹ Report on Civil Rights (1968).

³² (1967), book 1, ch. V, p. 90 *et seq.*

³³ See articles 19 to 56. For a step in this direction see arts 28 *et seq.* of the International Covenant on Civil and Political Rights (1966), which

sovereignty must not stand in the way. The judgments and decisions of these international bodies would in turn contribute to the development of more specific and detailed standards.

Of course few governments may be prepared to accept that the United Nations intervene in such a manner in their internal affairs. Yet, this has already been done in Europe, pursuant to the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is comforting to note that the Canadian Government, in constant search of new and fresh approaches, is supporting the creation of a United Nations High Commissioner on Human Rights recommended by the United Nations Commission on Human Rights.³⁴ However, this recommendation does not go far enough.

Although much progress has been made in assuring the respect and enforcement of human rights, much remains to be done. It is time to intensify our efforts to ensure the complete enjoyment of human rights and fundamental freedoms for all of the Canadian people. The federal Government must take a lead in this respect. How can our society progress if the personality of each ethnic or linguistic group that lives in Canada, and its right to decide its own destiny, is not respected? How can a world of peace and freedom be achieved if we do not place a high value upon the

establishes a Human Rights Committee with certain powers designed to insure the implementation of the provisions of the Covenant. Article 42 also provides for the appointment of a Conciliation Commission.

The International Convention on the Elimination of All Forms of Racial Discrimination, in article 8 *et seq.*, states that "There shall be established a Committee on the Elimination of Racial Discrimination . . .".

The Optional Protocol to the International Covenant on Civil and Political Rights goes one step further since it enables the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

³⁴ See (1968), 20 External Affairs 369. The High Commissioner will have four distinct functions: (1) If requested to do so, he will give advice and assistance to any of the organs of the United Nations or its Specialized Agencies which are concerned with human rights, and he will be required to maintain close relations with such organs. (2) If requested to do so, he will render assistance and services to any member state and, with the consent of the state concerned, submit a report on such assistance and services. (3) He will have access to communications concerning human rights addressed to the United Nations. When deemed appropriate, he could bring such a communication to the attention of the government to which it refers. (4) Finally, he will be required to "report to the General Assembly, through the Economic and Social Council, on development in the field of human rights including his observations on the implementation of the relevant declarations and instruments adopted by the United Nations and the Specialized Agencies, and on his evaluation of the significant progress and problems".

Note that the Proclamation of Teheran which was adopted by the International Conference on Human Rights (April 22nd-May 13th, 1968) does not mention methods of enforcement: (1968), 20 External Affairs 256.

rights of individuals? A Canadian Charter of Human Rights³⁵ to entrench firmly in our constitution fundamental rights and liberties would constitute an important step in assuring that all Canadians in every part of Canada have equal rights. However to state rights, to clearly identify them, is not sufficient even if they are to be constitutionally protected from either federal or provincial encroachment. The enumerated rights must become a practical reality.³⁶ In this respect Dean Tarnopolsky's detailed assessment of the administration and enforcement of the most advanced and sophisticated human rights schemes is of great interest. A person who has a right must be able to enforce it. The machinery for the effective enforcement of human rights must constantly be improved. On the national scene this may call for the appointment of a federal ombudsman with powers as wide as possible. The provinces should also follow the example of Alberta, Quebec and New Brunswick and appoint provincial ombudsmen. The creation of a Federal Commission of Human Rights and more provincial bodies similar to the Ontario Human Rights Commission is another possibility. A special effort must also be made to eliminate from Canadian statute law those provisions that are incompatible with human rights and fundamental freedoms.

On the international scene, as noted previously, the creation of a permanent International Court of Human Rights along the lines of the European Court of Human Rights should be given priority, provided that the two Covenants on human rights adopted by the General Assembly of the United Nations in December 1966 become obligatory.

Let us hope that this special issue of the *Canadian Bar Review* devoted to the International Year for Human Rights will strengthen our belief that the protection of human rights is essential to the establishment of conditions favouring international and national peace for which there is such a need. As Dean Cohen writes in his very thoughtful article: "Human Rights connects with the past and also leads to the future."

THE EDITOR*

³⁵ For a proposed constitutionally entrenched charter of human rights which would declare invalid any existing or future statute in conflict with it, see Trudeau, *op. cit.*, *supra*, footnote 3.

³⁶ Of course rights which are expressed in terms of restrictions on the power of Parliament and the legislatures do not usually require enabling or implementing legislation to become effective. Other rights in order to be fully effective must rely on the support of enabling or implementing legislation because they either anticipate sanctions for their enforcement or require positive government assistance (*e.g.* linguistic rights), see Trudeau, *op. cit.*, *ibid.*, p. 29.

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APPENDIX

Internationally Protected Human Rights

<i>Entitlement to</i>	<i>Protection against</i>
General human dignity and respect	Crime of genocide
Political rights	Mistreatment during war or armed conflict
Religious rights	
Civil rights	Slavery, slave trade and forced labour
Social rights	Racial discrimination
Cultural and linguistic rights	Employment and occupational discrimination
Economic rights	
Educational and intellectual rights	Educational discrimination
Special rights for children, refugees, stateless persons	Property misappropriation
Freedom of information	
Women's rights	

*I. International Charters, Declarations, Covenants and Conventions**Charter*

United Nations: Preamble, Articles 1, 55, 56, 57, 62, 68, 76. 1945 Can. T.S. No. 7

Declaration

United Nations: Universal Declaration of Human Rights, December 10th, 1968.

*Conventions**A) In Force 1968**a) Universal Human Rights Conventions 1968*

Title	Entry into force	Reference
On Freedom of Association and Protection of the Right to Organize (ILO) ¹	1950	(1950), 68 UNTS 17
On the Prevention and Punishment of the Crime of Genocide	1951	(1951), 78 UNTS 277 1949 Can. T.S. No. 27
On Equal Remuneration for Men and Women Workers for Work of Equal Value (ILO)	1953	(1953), 165 UNTS 303
On the Status of Refugees	1954	(1954), 189 UNTS 137
On the Political Rights of Women	1954	(1954), 193 UNTS 135 1957 Can. T.S. No. 3
1926 Slavery Convention	1927	(1927), 60 LNTS 253 1928 Can. T.S. No. 5
1953 Protocol Amending 1926 Slavery Convention	1955	(1955), 212 UNTS 17 1953 Can. T.S. No. 26

¹ There are 123 additional conventions prepared by the International Labor Organization between 1919 and 1966. Most of them are now in force.

1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	1957	(1957), 266 UNTS 3 1963 Can. T. S. No. 7
On the Nationality of Married Women	1958	(1958), 309 UNTS 65 1960 Can. T.S. No. 2
On the Abolition of Forced Labour (ILO)	1959	(1959), 320 UNTS 291 1960 Can. T. S. No. 21
On Discrimination in Employment and Occupation	1960	(1960), 362 UNTS 31
On the Status of Stateless Persons	1960	(1960), 360 UNTS 117
Against Discrimination in Education (UNESCO)	1962	(1962), 429 UNTS 93
On the International Right of Correction (Freedom of Information)	1962	(1962), 435 UNTS 191
On Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	1964	(1964), 521 UNTS 231
<i>b) Special</i>		
Convention for the Creation of an International Union for the Protection of Literary and Artistic Works, Berne, 1886,		(1886), 77 Br. and For. St. Papers 22
Universal Copyright Convention, Geneva, 1952,		(1955), 216 UNTS 132
with		
Protocol 1		(1955), 216 UNTS 176
Protocol 2		(1955), 216 UNTS 190
Protocol 3		(1955), 216 UNTS 204 1966 Can. T.S. No. 13
Convention for the Protection of Industrial Property, Lisbon, 1958 (Revision of Paris Convention of March 20, 1883)		(1958), 13 UST 1, TIAS 4931
Treaty of Peace with Italy	1947	(1947), 49-50 UNTS 1947 Can T.S. No. 4
Treaty of Peace with Hungary	1947	(1947), 41 UNTS 21 1947 Can. T.S. No. 5
Treaty of Peace with Roumania	1947	(1947), 42 UNTS 3 1947 Can. T.S. No. 6
Treaty of Peace with Finland	1947	(1947), 41 UNTS 135 1947 Can. T.S. No. 7
Treaty of Peace with Japan	1952	(1952), 136 UNTS 45 (1952), 138 UNTS 183 1952 Can. T.S. No. 4
Hague Convention (IV) Respecting the Laws and Customs of War on Land, 1907		(1910), 2 Malloy 2269

Geneva Convention for the Amelioration of the Condition of the Wounded, and Sick in Armed Forces in the Field, 1949	(1950), 75 UNTS 31 1965 Can. T.S. No. 20
Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Ship- wrecked Members of the Armed Forces at Sea, 1949	(1950), 75 UNTS 85 1965 Can. T.S. No. 20
Geneva Convention Relative to the Treatment of Prisoners of War, 1949	(1950), 75 UNTS 135 1965 Can. T.S. No. 20
Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949	(1950), 75 UNTS 287 1965 Can. T.S. No. 20

c) *Regional*

The European Convention for the Protection of Human Rights and Fundamental Freedoms	1953	(1953), 213 UNTS 221
Protocol 1	1954	(1954), 213 UNTS 262
Protocols 2 (1963), 3 (1963), 4 (1963), 5 (1966) not in force		
The American Declaration of Rights and Duties of Man, Bogota, 1948		Res. XXX, 9th International Conference of American States (1948)

B) *Not in Force, 1968*

Title	Date Proposed	Reference
International Covenant on Economic, Social and Cultural Rights	Dec. 16, 1966	(1966), U.N. Doc. A/6316, p. 49
International Covenant on Civil and Political Rights	Dec. 16, 1966	(1966), U.N. Doc. A/6316, p. 52
Optional Protocol to the International Covenant on Civil and Political Rights	Dec. 16, 1966	(1966), U.N. Doc. A/6316, p. 59
Conciliation and Good Offices Protocol to Convention Against Discrimination in Education	Dec. 10, 1962	(1962), UNESCO, Records of the Gen. Conf., 12th Sess., Resolutions 125
Convention on the Elimination of All Forms of Racial Discrimination	Mar. 7, 1966	(1966), U.N. Doc. A/6014, p. 47
Protocol to the Convention Relating to the Status of Refugees	Jan. 31, 1967	(1967), U.N. Doc. A/6311/Rev. 1, Add. 1
Convention on the Reduction of Statelessness	Aug. 28, 1961	(1963), U.N. Year- book for Human Rights for 1961, p. 427

Title	Date Proposed	Reference
Draft Convention on the Elimination of All forms of Religious Intolerance	Mar. 9, 1967	(1967), U.N. Doc. E/CN. 4/L. 919/Add. 1

II. *Principal Canadian Statutes*

A) *Federal*

Canada

Canadian Bill of Rights, S.C., 1960, c. 44.

Canada Fair Employment Practices Act, S.C., 1952-53, c. 19, as am. S.C., 1966-67, c. 62, s. 30.

Female Employees Equal Pay Act, S.C., 1956, c. 38, as am. S.C., 1966-67, c. 62, s. 30.

Industrial Relations and Disputes Investigation Act, R.S.C., 1952, c. 152 as am. S.C., 1966-67, c. 62, s. 30.

Canadian Citizenship Act, R.S.C., 1952, c. 33, as am., ss 24-25.

B) *Provincial*

Alberta

The Human Rights Act, S.A., 1966, c. 39.

The Ombudsman Act, S.A., 1967, c. 59.

The Sex Disqualification Removal Act, R.S.A., 1955, c. 310.

The Alberta Labour Act, R.S.S., 1955, c. 167, as am. S.A., 1957, c. 38, s. 41 (equal pay).

British Columbia

Fair Employment Practices Act, R.S.B.C., 1960, c. 137, as am. S.B.C., 1964, c. 19.

Privacy Act, S.B.C., 1968, c. 39.

Public Accommodation Practices Act, S.B.C., 1961, c. 50.

Equal Pay Act, R.S.B.C., 1960, c. 131.

The Sex Disqualification Removal Act, R.S.B.C., 1960, c. 352.

Aliens Act, R.S.B.C., 1960, c. 8.

Manitoba

The Fair Accommodation Practices Act, S.M., 1960, c. 14.

The Fair Employment Practices Act, R.S.M., 1954, c. 81, as am. S.M., 1956, c. 20.

The Equal Pay Act, S.M., 1956, c. 18, as am. S.M. 1962, c. 66, s. 8.

New Brunswick

Human Rights Act, S.N.B., 1967, c. 13.

Ombudsman Act, S.N.B., 1967, c. 18, as am. S.N.B., 1968, c. 44.

Female Employees Fair Remuneration Act, S.N.B., 1960-61, c. 7.

Fair Wages and Hours of Labour Act, S.N.B., 1953, c. 8, as am. S.N.B., 1960-61, c. 41, S.N.B., 1963, c. 8.

Nova Scotia

Human Rights Act, S.N.S., 1963, c. 5, as am. S.N.S., 1967, c. 91, now R.S.N.S., 1967, c. 130.

Human Rights Commission Act, S.N.S., 1967, c. 12.

Prince Edward Island

Human Rights Act, S.P.E.I., 1968, c. 24.

The Equal Pay Act, S.P.E.I., 1959, c. 11, as am. S.P.E.I., 1962, c. 14, as am. S.P.E.I., 1967, c. 15.

Quebec

Public Protector Act (Bill 13), passed Nov. 1968.

Freedom of Worship Act, R.S.Q., 1964, c. 301.

Employment Discrimination Act, R.S.Q., 1964, c. 142.

Hotels Act, R.S.Q., 1964, c. 205.

Labour Code, R.S.Q., 1964, c. 141, as am. S.Q., 1965, c. 50.

Civil Code, arts 18-28, 177.

Ontario

The Ontario Human Rights Code, 1961-62, S.O., 1961-62, c. 93, as am. S.O. 1965, c. 85, S.O., 1967, c. 66, S.O., 1968, c. 85.

The Freedom of Worship Act, 14-15 Vict., c. 175 (Province of Canada).

The Age Discrimination Act, 1966, S.O., 1966, c. 3, as am. S.O., 1968, c. 2.

The Employment Standards Act, S.O., 1968, c. 35.

The Property and Civil Rights Act, R.S.O., 1960, c. 310.

The Aliens Real Property Act, R.S.O., 1960, c. 13.

Saskatchewan

The Fair Accommodation Practices Act, R.S.S., 1965, c. 379.

The Fair Employment Practices Act, R.S.S., 1965, c. 293.

The Saskatchewan Bill of Rights Act, R.S.S., 1965, c. 378.

The Equal Pay Act, R.S.S., 1965, c. 294.

Northwest Territories

Fair Practices Ordinance, 1966 (2nd Sess.), c. 5.

Yukon Territory

Fair Practices Ordinance, 1963 (2nd), c. 3.
