



THE  
CANADIAN  
BILL OF RIGHTS

by

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## PREFACE

On August 10th, 1960, the Canadian Bill of Rights became law. This event was preceded and followed by controversy over the state of civil liberties in Canada, and the most effective measures for promoting and protecting them. The controversy is largely between those who favour the traditional English method of relying upon the common law to protect the citizen, and those who support a bill of rights as being the most effective. The question of promotion and protection of civil liberties in Canada is inextricably bound up with the issue of federal-provincial jurisdiction, and the meaning and applicability of the doctrine of Parliamentary sovereignty. Thus, the first four chapters are concerned with these matters—controversies over means, federal-provincial jurisdiction, Parliamentary sovereignty, and the Canadian Bill of Rights as an example of the issues involved, and as legislation which does or could affect them.

The next four chapters deal with the civil liberties within federal jurisdiction, and attempt to indicate how these may be affected by the Bill of Rights. The final chapter deals with the overriding power of Parliament and the Government of Canada during "emergency" situations, and with the War Measures Act and its effect on the Bill of Rights.

Because the Bill of Rights is only six years old, and because judicial pronouncements on civil liberties in Canada have been few, considerable attention has been given to the experience of other countries with similar legal and constitutional experience.

In the course of writing this book I have become indebted to a large number of people. Professor S. A. de Smith and Miss Olive M. Stone of the London School of Economics and Political Science read the manuscript in its early stages. Professor (now Mr. Justice) Bora Laskin and Professor Edward McWhinney of the University of Toronto, read various parts of the manuscript. My colleagues at the University of Saskatchewan, Professors D. A. Schmeiser and B. L. Strayer read parts of the manuscript, and Dean O. E. Lang read the whole. My wife helped on the original draft, and made pertinent suggestions on style, particularly in minimizing jargon. The University of Saskatchewan helped me with research grants. George W. Baynton and Michael B. Phillips were my research assistants. Miss Ostapowich, Miss Eberle, Mrs. King, Miss Simonson, Mrs. Brown and Mrs. Sandison typed the manuscript. Despite all this help, it must be obvious to any reader of prefaces that any mistakes still to be found are my responsibility, as are, to the best of my knowledge, the conclusions reached and the propositions advanced.

Walter S. Tarnopolsky  
April, 1966.

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## LIST OF ABBREVIATIONS USED

- A. 2d.—Atlantic Reporter Second Series (U.S.)
- A.C.—Appeal Cases (Law Reports)
- Ad. & E.—Adolphus and Ellis.
- A.E.R.—All England Reports
- A.L.J.—Australian Law Journal*
- Alta. L.R.—Alberta Law Reports
- App. Cas.—Appeal Cases
- Austl.L.J.—Australian Law Journal*
- B. & C.—Barnewall and Cresswell
- B.N.A. Act—British North America Act
- Calif. L.Rev.—California Law Review*
- C.B.A. Papers—Papers Presented to the Canadian Bar Association*
- Can. Bar J.—Canadian Bar Journal*
- Can. Bar Rev.—Canadian Bar Review*
- C.C.C.—Canadian Criminal Cases
- Ch.—Chancery (Law Reports)
- C.J.E.P.S.—Canadian Journal of Economics and Political Science*
- Cl. & Fin.—Clark and Finnely
- C.L.J.—Cambridge Law Journal*
- C.L.R.—Commonwealth Law Reports
- Cmd.—Command Papers (U.K.)
- Col. Law Rev.—Columbia Law Review*
- Co. Rep.—Coke Reports
- Cornell Law Q.—Cornell Law Quarterly*
- Cox C.C.—Cox's Criminal Cases
- C.P.—Common Pleas Cases
- C.R.—Criminal Reports (Canadian)
- Cr. App. R.—Criminal Appeal Reports (U.K.)
- D.L.R.—Dominion Law Reports
- D.L.R. (2d)—Dominion Law Reports (Second Series)
- E.R.—English Reports
- Ex.—Exchequer (Law Reports)
- H.L.R.—Harvard Law Review*
- H.L.C.—House of Lords Cases
- I.C.L.Q.—International and Comparative Law Quarterly*
- Indian L. Rev.—Indian Law Review*
- Ir. C.L.R.—Irish Common Law Reports
- K.B.—King's Bench (Law Reports)
- L.J.K.B.—Law Journal King's Bench
- L.Q.R.—Law Quarterly Review*
- McGill L.J.—McGill Law Journal*
- Mich. Law Rev.—Michigan Law Review*
- M.L.R.—Modern Law Review*
- Mod. Rep.—Modern Reports
- M.P.R.—Maritime Provinces Reports
- N.E. 2d.—North Eastern Reporter Second Series (U.S.)
- N.Z.L.R.—New Zealand Law Reports
- O.H.L.J.—Osgoode Hall Law Journal*

- O.L.R.—Ontario Law Reports  
O.R.—Ontario Reports  
O.W.N.—Ontario Weekly Notes  
P. 2d.—Pacific Reporter Second Series (U.S.)  
P.C.—Privy Council Appeal Cases  
Pet.—Peters (U.S.)  
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S.O.—Statutes of Ontario  
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S.Q.—Statutes of Quebec  
S.S.—Statutes of Saskatchewan  
Str.—Strange  
Sup. Ct. J.—Supreme Court Journal (India)  
T.L.R.—Times Law Reports  
*Tasmanian U.L.Rev.*—*Tasmanian University Law Review*  
*U.B.C. L. Rev.*—*University of British Columbia Law Review*  
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*U. of Chi. Law Rev.*—*University of Chicago Law Review*  
*U. of Tor. L.J.*—*University of Toronto Law Journal*  
*U. of Tor. Fac. of Law R.*—*University of Toronto Faculty of Law Review*  
U.S.—United States Supreme Court Reports  
V.L.R.—Victorian Law Reports  
W.L.R.—Weekly Law Reports  
W.W.R.—Western Weekly Reports  
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