the Concept of *Mens Rea*", is one of the most useful sections. His Honour covers the principles of criminal responsibility and the capacity to commit crimes. He also deals with volitional incapacity, including provocation, necessity, duress and irresistible impulse. The decision in *R. v. Rabey*,[30] both in the Ontario Court of Appeal and the Supreme Court of Canada, are covered at length in the context of automatism and non-volitional behaviour.

In general, this volume, like its contributors, covers a wide range. Some sections will obviously be of more interest to certain readers than others, but in a real sense it offers something for everyone concerned with the administration of justice in this country.

*Alan D. Gold**

DISCRIMINATION AND THE LAW IN CANADA. By Walter S. Tarnopolsky. DeBoo, 1982. Pp. vii, 595. ($65.00)

In October 1900 Mr. T. Homma, a naturalized Canadian, applied to be placed upon the register of voters for the electoral district of Vancouver City. The Collector of Voters refused to do so, relying on section 8 of the Provincial Elections Act, which provided:

> No Chinaman, Japanese or Indian shall have his name placed on the Register of Voters of any Electoral District, or be entitled to vote at any election.[1]

Mr. Homma was a naturalized Canadian of Japanese origin; and the definition of "Japanese" in the Act included "any person of Japanese race, naturalized or not".[2] In *Cunningham and Attorney-General for British Columbia v. Homma and Attorney-General for Canada*,[3] the Privy Council decided that the legislation was *intra vires* the provincial legislature. Japanese, Chinese and East Indian Canadians did not gain the provincial federal vote in British Columbia until 1947-48.

In May 1912, Mr. Quong-Wing, the owner of the "CER Restaurant" in Moose Jaw, Saskatchewan, was convicted of having employed Mabel Hopham and Nellie Lane as waitresses. Mr. Wing was a Chinese Canadian, and Ms. Hopham and Ms. Lane were white Canadians. Section 1 of An Act to Amend An Act to Prevent the Employment of Female Labour in Certain Capacities provided:

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[30] [1980] 2 S.C.R. 513, 54 C.C.C. (2d) 1, *aff'g* 17 O.R. (2d) 1, 79 D.L.R. (3d) 144 (C.A. 1977).

* Of the Bar of Ontario.

[1] R.S.B.C. 1897, c. 67.
[2] R.S.B.C. 1897, c. 67, s. 3.
[3] [1903] A.C. 151 (P.C. 1902).

> No person shall employ in any capacity any white woman or girl or permit any white woman or girl to reside or lodge in or work in or, save as a *bona fide* customer in a public apartment thereof only, to frequent any restaurant, laundry or other place of business or amusement owned, kept or managed by any Chinaman.[4]

Mr. Quong-Wing's conviction was upheld by the Supreme Court of Canada in 1914.[5]

An analysis and discussion of these cases is found in the first chapter of *Discrimination and the Law in Canada* by Walter Tarnopolsky.[6] Walter Tarnopolsky is known to every lawyer and law student in Canada as the author of the book *The Canadian Bill of Rights*.[7] Since the first edition was published in 1966, that book has remained the standard work on the Bill of Rights. Mr. Justice Tarnopolsky has taught Constitutional Law and Human Rights Law at the University of Windsor Law School, Osgoode Hall Law School and the University of Ottawa Law School. He has been Chairman of numerous Human Rights Boards of Inquiry, past president of the Canadian Civil Liberties Union and is presently a Justice of the Ontario Court of Appeal.

It is only with diffidence that one can review a book by Mr. Justice Tarnopolsky on the subject of discrimination. The book is the culmination of some eight years work. Before 1980, the Board of Inquiry decisions were not published. The author had begun collecting board decisions in 1968 and by 1979 had compiled the most complete set in existence. An analysis, discussion and organization of these decisions, and court decisions reviewing them, comprise the main body of the book.

Although the book focuses on Canadian human rights law, the reader is left with a thorough understanding of human rights law in the United States and Britain as well.

The first chapter of the book is fascinating reading, even for the general reader. It is a compact, yet comprehensive legal history of discrimination in Canada from slavery in the 1700's to 1961 (the Ontario Human Rights Code[8] was passed in 1962). The cases discussed reveal a part of Canadian history with which many readers will be unfamiliar. For example, *Union Colliery Co. of B.C. Ltd. v. Bryden*[9] concerned section 4 of British Columbia's Coal Mines Regulation Act which provided:

> No boy under the age of twelve years, and no woman or girl of any age, and no Chinaman, shall be employed in or allowed to be for the purpose of employment in any mine to which the Act applies below ground.[10]

Readers may be surprised to find that legislation such as this was not at all unusual.

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[4] S.S. 1912-13, c. 18.
[5] Quong-Wing v. The King, 49 S.C.R. 440, 18 D.L.R. 121 (1914).
[6] P. 1.
[7] W. TARNOPOLSKY, THE CANADIAN BILL OF RIGHTS (1966).
[8] S.O. 1961-62, c. 93.
[9] [1899] A.C. 580, 1 M.M.C. 337 (P.C.).
[10] R.S.B.C. 1897, c. 138.

Mr. Justice Tarnopolsky's criticism of the judgments is devastating. He so successfully demolishes the reasons for judgment in the *Quong-Wing* case that he cannot resist mocking the decision:

> Perhaps the Chief Justice, unlike Duff, J., did not come from a part of Canada where Orientals constituted a significant portion of the population, or he might have known, as no doubt Duff, J. did, that if a Chinese restaurant owner could not employ white females, there were no Chinese females for him to employ, because they were not permitted to immigrate to Canada! In view of the kind of mentality which led to the enactment of this kind of legislation, could one seriously expect that the Chinese could employ white men? One presumes that the legislative and judicial establishment reasoned that, since employment opportunities of Chinese were being restricted anyway, the Chinese restaurant or laundry owner could easily have found a surplus of Chinese male labourers, and obviously did not need to hire white females! If he did hire them, he must have other purposes in mind![11]

The only two cases that might have been included in the chapter, but were not, are *Brooks-Bidlake and Whittall Ltd. v. Attorney General for British Columbia*[12] and *Co-operative Committee on Japanese Canadians v. Attorney General for Canada.*[13]

In the first case, Brooks-Bidlake and Whittall Limited held special timber licences granted by the Minister of Lands of British Columbia which contained the following stipulation:

> N.B. — This licence is issued and accepted on the understanding that no Chinese or Japanese shall be employed in connection therewith.[14]

The company employed both Chinese and Japanese labour and was successful in having the provision declared invalid by the British Columbia Court of Appeal in 1920.[15] Immediately after, in 1921, the legislature responded to the Court decision by passing the Oriental Orders in Council Validation Act[16] that gave the licence stipulation the force of law. The company sued for a declaration that the Act was beyond the powers of the provincial legislature. The Privy Council decided the legislation was *intra vires* the province under subsection 92(5) of the British North America Act.[17]

In *Co-operative Committee on Japanese Canadians*,[18] the Privy Council decided that Orders in Council passed under the War Measures Act[19] could authorize the making of orders for deportation of Japanese persons, whatever their nationality and the deprivation of their status as British subjects or Canadian nationals.

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[11] P. 15.
[12] [1923] A.C. 450, [1923] 2 D.L.R. 189 (P.C.).
[13] [1947] A.C. 87, [1947] 1 D.L.R. 577 (P.C. 1946).
[14] *Supra* note 12, at 454, [1923] 2 D.L.R. at 190.
[15] *In re* The Japanese Treaty Act, 1913, 29 B.C.R. 136, 56 D.L.R. 69 (C.A. 1920).
[16] S.B.C. 1921, c. 49.
[17] *Now* Constitution Act, 1867. Section 92(5) provides:
(5) The Management and Sale of Public Lands belonging to the Province and of the Timber and Wood thereon.
[18] *Supra* note 13.
[19] R.S.C. 1927, c. 206.

The most recent case discussed in Tarnopolsky's legal history is *King v. Barclay and Barclay's Motel*.[20] A black man had been refused accommodation by a motel because of his race. In 1961, the Alberta Court of Appeal decided his action for damages could not succeed since a motel that did not serve food was not an inn at common law and the plaintiff was not a traveller.

Mr. Justice Tarnopolsky's historical analysis makes irresistible the proposition that left on their own, the courts did not, and were not about to, protect individuals from discrimination. He closes his first chapter with the telling observation:

> It is no wonder, then, that the legislatures, with no aid from the judiciary, had to move into the field and start to enact anti-discrimination legislation, the administration and application of which have largely been taken out of the courts.[21]

In Chapter II, Mr. Justice Tarnopolsky traces the history of the enactment of anti-discrimination legislation in each province, and federally. The only matter worth noting here is that on 15 June 1982, Ontario proclaimed a new Human Rights Code.[22]

Chapter III is entitled "Jurisdiction with Respect to Anti-Discrimination Laws". The split in federal/provincial jurisdiction in this area is similar to labour relations matters and the author includes a complete and readable exposition of the case law.

Mr. Justice Tarnopolsky also considers whether provincial anti-discrimination legislation, being legislation of general application in the province, would apply on an Indian reserve. After an analysis of the cases he concludes that provincial fair employment practices legislation would apply to Indians, even working on a reserve, as long as the business undertaking was not related to Indians and as long as Parliament had not "occupied the field". He also concludes that provincial fair accommodation practices would not apply on a reserve, as these affect Indian lands. He suggests that subsection 63(2) of the Canadian Human Rights Act[23] excludes reserves from the application of even federal fair accommodation provisions:

> As a result, provincial fair employment practices provisions might apply to Indians, at least in the absence of preclusive federal legislation, but provincial fair accommodation practices provisions would not. However, even federal provisions would not appear to apply, because subsection 63(2) of the Canadian Human Rights Act provides:
>
> > (2) Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act.[24]

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[20] 35 W.W.R. 240 (Alta. C.A. 1961), *aff'g* 31 W.W.R. 451, 24 D.L.R. (2d) 418 (Alta. Dist. C. 1960).

[21] P. 24.

[22] Human Rights Code, 1981, S.O. 1981, c. 53.

[23] S.C. 1976-77 (2d sess.), c. 33.

[24] P. 76.

I do not agree with the view that subsection 63(2) of the Canadian Human Rights Act has such a wide application. In my opinion subsection 63(2) does not apply to the discriminatory exercise of administrative discretion granted by the Indian Act.[25]

The word "provision" has been interpreted to mean a "clause or defined part of a written instrument".[26] In *Dobush v. Greater Winnipeg Water Dist.*,[27] the Court contrasted acts done "by reason of" the relevant statute with those done "in pursuance" of it. The former phrase was held permissive, the latter obligatory. In *Bradford Co. v. Myers*,[28] the House of Lords had to determine the meaning of the phrase "any act done in pursuance, or execution, or intended execution of an Act of Parliament. . .". These words appeared in the English Public Authorities Protection Act, 1893[29] and operated as a limitation upon the commencement of actions against public authorities. Lord Buckmaster stated that:

> [T]he words of the section themselves limit the class of action, and show that [the limitation] was not intended to cover every act which a local authority had power to perform.
>
> [I]t is not because the act out of which an action arises is within their power that a public authority enjoy the benefit of the statute. It is because the act is one which is. . . in direct execution of a statute. . . .[30]

If the words "provision" and "pursuant to" are interpreted as suggested by these cases, it can be seen that subsection 63(2) of the Canadian Human Rights Act[31] excepts only discrimination which is in direct execution of the Indian Act,[32] or of a discriminatory subordinate legislation obliged by the Indian Act. For example, it would be a discriminatory practice for a band council to allocate certificates of possession for housing on its reserve only to households headed by men. Further, if a band council passed a by-law under section 81 of the Indian Act stipulating that only households headed by men could be alloted housing units,[33] such a by-law would not be beyond the ambit of the Human Rights Act as it is not made "under or pursuant to" (*i.e.*, in direct execution of) the Indian Act.

Subsection 63(2) is intended to except only matters such as paragraph 12(1)(b) of the Indian Act which requires discriminatory treatment of Indian women who marry white men.

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[25] R.S.C. 1970, c. I-6.

[26] *See In Re* Jorgenson, [1923] 2 W.W.R. 600, at 604, 17 Sask. L.R. 52, at 56 (K.B.); R. v. Crow, [1970] 3 C.C.C. 300, 10 D.L.R. (3d) 618 (N.S.S.C.); MacGillivray v. Hume's Transport Ltd., 3 C.H.R.R. 732 (C.H.R.C. 1982).

[27] [1945] 2 W.W.R. 371, [1946] 3 D.L.R. 427 (Man. K.B. 1946).

[28] [1916] 1 A.C. 242, 114 L.T. 83 (H.L. 1915).

[29] 56 & 57 Vict., c. 61, s. 1 (1893).

[30] *Supra* note 28, at 247, 114 L.T. at 84.

[31] S.C. 1976-77 (2d sess.), c. 33.

[32] R.S.C. 1970, c. I-6.

[33] Section 81 of the Indian Act provides the council of a band may make by-laws "for any of the following purposes, namely: (i) the survey and allotment of reserve lands among the members of the band. . .".

The fourth chapter, "Definitions of Discrimination and Affirmative Action", contains the heart of the book. Readers who still believe that discrimination must be motivated by prejudice will find current concepts of discrimination explained clearly and simply. Conceptually, the author examines discrimination through three distinct categories:

(1) acts motivated by prejudice ("evil motive")
(2) acts resulting in unequal or differential treatment
(3) acts having a negative "impact" or adverse effect.[34]

The development of discrimination is then traced from "evil motive" to "differential treatment" and "adverse effect".

The notion of "adverse effect" discrimination was born in *Griggs v. Duke Power Co.*,[35] a decision which some analysts consider as important as *Brown v. Board of Education of Topeka*[36] in the civil rights area. Under *Griggs*, a neutral policy or practice applied equally to all individuals may nevertheless be discriminatory if it operates to exclude members of a particular group disproportionately, in the absence of justification. In *Griggs*, entrance to service requirements were applied to all applicants, but disqualified blacks disproportionately. The Court found the requirements to be discriminatory when the employer was unable to show they were related to ability to perform the employment. This was the beginning of "systemic discrimination" — a neutral system, absent of intent or prejudice, yet illegal because it had the consequence of excluding blacks from employment while not being justifiable as a matter of business necessity. *Griggs* and the important American cases that developed the concept further are discussed in the book.

Mr. Justice Tarnopolsky goes on to show how the *Griggs* decision has influenced the law in the United Kingdom and Canada. The British in their inimitable fashion have passed legislation[37] that is the clearest exposition of the *Griggs* principle. For example, the Race Relations Act, 1976,[38] paragraph 1(1)(b), includes in its definition of discrimination the following:

1. Racial discrimination
   (1) A person discriminates against another in any circumstances relevant for the purposes of any provision of this Act if
   . . .
   (b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but
   (i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and

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[34] P. 108.
[35] 401 U.S. 424, 91 S. Ct. 849 (1971).
[36] 347 U.S. 483, 74 S. Ct. 686 (1954).
[37] Sex Discrimination Act, 1975, U.K. 1975, c. 65; Race Relations Act, 1976, U.K. 1976, c. 74.
[38] U.K. 1976, c. 74.

(ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and
(iii) which is to the detriment of that other because he cannot comply with it.

Despite the truly revolutionary insight of *Griggs* that equal treatment of all individuals can still be discriminatory if there is a disparate impact on one group, no Canadian court has ever clearly approved of a disparate impact or adverse effect test for discrimination. Although Mr. Justice Tarnopolsky reviews several board of inquiry and tribunal decisions, he is only able to offer *Rocco Ltd. v. Muise*[39] as a Canadian court decision that has approved of the disparate impact test. *Rocco* does cite *Griggs* and decisions of Canadian boards[40] that used the test, but on my reading it holds only that "intent to discriminate need not be shown to establish discrimination".[41]

Section 10 of the new Ontario Human Rights Code, 1981[42] also codifies *Griggs* but without the elegance of the British provisions.

In the section on "effects discrimination" there are several cases that might have been more appropriately put into the "differential treatment" section. They seem to have been placed in the "effects" section simply because, like *Rocco*,[43] they held that intention is not a necessary part of discrimination; but not requiring intention simply moves us away from the first category where a finding of an "evil motive" is required. In the second category of cases, acts resulting in unequal or differential treatment, proof of intention is not required; proof of the fact of differential treatment is sufficient. Therefore mandatory retirement cases, where those of retirement age are treated differently from those of other ages in that they alone are required to retire, are examples of differential treatment and not "effects discrimination", notwithstanding that intention need not be established. So too with *Re*

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[39] 22 Nfld. & P.E.I.R. 1, 102 D.L.R. (3d) 529 (P.E.I.C.A. 1979).

[40] Singh v. Security and Investigation Serv. Ltd. (unreported, Ont. Human Rights Code Bd. of Inquiry, 31 May 1977); Colfer v. Ottawa Bd. of Comm'rs of Police (unreported, Ont. Human Rights Code Bd. of Inquiry, 12 Jan. 1979). *See* Bhinder v. C.N.R., 2 C.H.R.R. 546 (Fed. H.R. Comm'n 1981).

[41] *Supra* note 39, at 8, 102 D.L.R. (3d) at 533.

[42] S.O. 1981, c. 53. Section 10 provides:

10. A right of a person under Part 1 is infringed where a requirement, qualification or consideration is imposed that is not discrimination on a prohibited ground but that would result in the exclusion, qualification or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
(a) the requirement, qualification or consideration is a reasonable and *bona fide* one in the circumstances; or
(b) it is declared in this Act that to discriminate because of such ground is not an infringement of a right.

[43] *Supra* note 39.

*Attorney General for Alberta and Gares*,[44] an equal pay case where women were treated differently from men in that they were paid less for the same work, and with *B.C. Human Rights Commission and College of Physicians and Surgeons*[45] where non-Canadian doctors were required to practice for a time in a remote area while Canadian doctors were not. Since there was "differential treatment" in these cases, they are not examples of "adverse effect" discrimination.

Since the publication of Mr. Justice Tarnopolsky's book the Canadian courts have expressly refused to follow *Griggs* and have gone so far as to rule that intention is an essential element of discrimination. Thus distinguishing between "differential treatment" and "adverse effects" becomes important. The latter was not recognized in *Ontario Human Rights Commission v. Simpson-Sears Ltd.*[46] Mr. Justice Southey, of the Ontario Divisional Court, writing for the majority, said of *Griggs*:

> I am of the view that the interpretation given to similar legislation in that case, and later American decisions that follow it, can only be justified by the history of racial discrimination in the United States from which most of the cases arose.[47]

Mr. Justice Smith wrote a strong dissent. The decision has been confirmed by the Ontario Court of Appeal[48] and leave to appeal to the Supreme Court of Canada has been granted. As well, the Federal Court of Appeal in *C.N.R. v. Bhinder*[48a] held that the Canadian Human Rights Act[48b] was not sufficiently comprehensive to include adverse effect discrimination.

Also provided in this chapter is an excellent discussion of affirmative action and a painstaking analysis of the *Bakke*[49] and *Weber*[50] decisions of the U.S. Supreme Court. The author offers the insight that these decisions are based not on the Equal Protection Clause but on the terms of the Civil Rights Act.[51] He also discusses the only Canadian case on affirmative action, the decision of the Alberta Court of Appeal in the *Athabasca Tribal Council v. Amoco Canada Petroleum Co.*[52] In that case Mr. Justice Laycraft, writing for the majority, acknowledged finding assistance in an advance copy of Mr. Justice Tarnopolsky's chapter on affirmative action.

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[44] *Re* A.G. for Alta. and Gares, 76 C.L.L.C. 14, 016, 67 D.L.R. (3d) 635 (Alta. S.C. 1976).

[45] (Unreported, B.C. Human Rights Code Bd. of Inquiry, Chairperson Getz, 27 May 1976).

[46] 36 O.R. (2d) 59, 133 D.L.R. (3d) 611 (Div'l Ct. 1982).

[47] *Id.* at 69, 133 D.L.R. (3d) at 622.

[48] 38 O.R. (2d) 423, 138 D.L.R. (3d) 133 (C.A.).

[48a] 4 C.H.R.R. 1404 (C.H.R.C. 1983).

[48b] S.C. 1976-77, c. 33 *as amended by* S.C. 1977-78, c. 22.

[49] Regents of the Univ. of California v. Bakke, 438 U.S. 265, 98 S. Ct. 2733 (1978).

[50] United Steelworkers of America v. Weber, 443 U.S. 193, 99 S. Ct. 2721 (1979).

[51] 42 U.S.C.S. / 2000e.

[52] 12 Alta. L.R. (2d) 54, 112 D.L.R. (3d) 200 (C.A. 1980), *aff'd* [1981] 1 S.C.R. 699, 124 D.L.R. (3d) 1.

Chapters five through thirteen contain an exhaustive analysis of the case law by prohibited grounds, such as "race" and "sex" and by context, such as "employment" or "goods and services". One marvels at the volume of information provided. Every board of inquiry, tribunal and court decision is noted and comparisons are made to British and American law. It is obvious that the book will be the starting point for any future research in anti-discrimination law. It will be indispensable to all human rights specialists and private practitioners representing clients involved with Human Rights Commissions. The basic concepts are explained and one can easily find the law relevant to a particular problem without reading the whole book.

Occasional digressions prevent the digest of case law from becoming monotonous. For example, the chapter on Race is enhanced by a discussion of the anthropology of race.

In these middle chapters there are perhaps only two issues on which the American law might have been explored further. For example, in the section on equal pay law in the chapter on employment, Mr. Justice Tarnopolsky notes that Canadian equal pay legislation falls into two major categories. Canada and Quebec provide for "equal pay for work of equal value" while all other jurisdictions provide for "equal pay for the same or similar or substantially similar work".[53] Both types of provisions have regard to the "skill, effort and responsibility" required, the "working conditions" and apply to employees in the "same establishment".[54] The author reviews the American cases which discuss "equality of the work" and "skill, effort and responsibility" and "similar working conditions".[55] He omits discussion of the American cases regarding the meaning of the term "establishment", some of which are helpful.[56] The issue is of fundamental importance because comparison of the other matters cannot be made if the employees are not employed in the same establishment.

In Canada only one case discusses the meaning of the term "establishment": *Filiatrault v. Ontario Dept. of Health*.[57] Mr. Justice Tarnopolsky criticizes the decision for the conclusion that nurses' aides (women) and attendants (men) were not performing the same work at one of two hospitals. The ultimate importance of the case may turn out to be its conclusion that the hospitals were separate establishments. His Honour Judge D.C. Anderson, sitting as the Board rejected the argument that the approximately 20 hospitals operated by the Ontario Department of

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[53] P. 405.

[54] Pp. 403-21.

[55] Pp. 406-09.

[56] Phillips Inc. v. Walling, 324 U.S. 490, 65 S. Ct. 807 (1945); Hardson, Secretary of Labour, United States Dept. of Labour v. Waynebury College, 3 Empl. Prac. Dec. (CCH) / 8343; Brennan v. Goose Green Consol. Independent School Dist., 519 F. 2d 53 (5th Cir. 1975); Gerlach v. Michigan Bell Tel. Co., 17 Empl. Prac. Dec. (CCH)/8474.

[57] (Unreported, Ont. Human Rights Code Bd. of Inquiry, Chairperson Anderson J., 1967), *see* pp. 413-14. *See also* Jarvis v. Oshawa Hospital, [1931] O.R. 482, [1931] 4 D.L.R. 914 (S.C.).

Health, all of which were governed by the same collective bargaining and compensation system, were one establishment.

The critical importance of how "establishment" is defined is illustrated by a recent settlement approved by the Canadian Human Rights Commission. In *Public Service Alliance of Canada v. Treasury Board*,[58] female dominated subgroups of the General Services Group were paid less than male dominated subgroups performing work of equal value. The case was settled in March, 1982 with a new wage structure for the General Services Group and approximately seventeen million dollars in back pay for the female dominated subgroups. Employees in the General Services Group are located in most, if not all, departments and agencies for whom the Treasury Board is the employer, and are situated geographically across Canada. The "establishment" was accepted as being a national one and national figures were used in determining which subgroups were female dominated and for wage comparisons. The case would have become hopelessly complicated had the employer argued that each army base, federal hospital or government office was a separate "establishment". The government undoubtedly had political considerations in not advancing the argument, however, large private employers or crown corporations which have national operations have no such concerns. It is certain this area of law will develop further and the American cases will be examined by the courts.

It is worth noting that the Canadian Labour Code[59] is also concerned with the meaning of "establishment". Section 60 provides that an employer who terminates a group of fifty or more employees "employed by him within a particular industrial establishment" give notice to the Minister. The purpose of this section is to allow the Minister time to make efforts to relocate the laid off workers. Section 27 of the Canada Labour Standard Regulations[60] has schedules that set out divisions of large employers such as Canadian Pacific Railway which constitute separate establishments. The Canadian Pacific Railway in the schedule has fifty different establishments beginning with the corporate offices in Montreal and ending with the Canadian Pacific Telecommunications office in Vancouver. This approach to "establishment" may influence future decisions of boards in equal pay cases.

In his discussion of the prohibited ground "marital status",[61] Mr. Justice Tarnopolsky reviews what little case law there is in Canada after noting that little guidance can be obtained from the experience of either the United States or the United Kingdom. As he states, in the United States, discrimination on the basis of "marital status" is not unlawful under Title 7 of the Civil Rights Act of 1964[62] which prohibits

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[58] (Unreported, Can. Human Rights Comm'n, March 1982).
[59] R.S.C. 1970, c. L-1.
[60] C.R.C. 1978, c. 986.
[61] P. 294.
[62] *Supra* note 51.

discrimination on the basis of sex but not marital status. While this is true federally, the Human Rights Acts of some states include marital status as a prohibited ground of discrimination and the meaning of the term has been considered by a number of state Supreme Courts.[63]

These observations are picayune in the face of the wealth of the information and insightful criticism included in the book.

The two concluding chapters examine Human Rights Commissions as organizations and describe the administration and enforcement of human rights legislation. The chapter on enforcement is particularly valuable from a practical point of view. Here can be found the case law on such matters as the right to an adjournment, the production and discovery of documents, as well as surveys of damage awards and non-pecuniary remedies that have been ordered.

There is a helpful appendix of all board of inquiry decisions listed chronologically by province followed by federal tribunal decisions. The subject matter of each decision is indicated by abbreviated notations.

As one can gather from the preceding comments, *Discrimination and the Law in Canada* is an immense contribution to the field of human rights law and will take its place with Mr. Justice Tarnopolsky's earlier work[64] as a standard text in that area.

*Russell Juriansz**

NATIONAL LAWS AND INTERNATIONAL COMMERCE — THE PROBLEM OF EXTRATERRITORIALITY. By Douglas E. Rosenthal and William M. Knighton. The Royal Institute of International Affairs, Chatham House Papers 17, Routledge and Kegan Paul Ltd., 1982. Pp. xi, 96 ($11.50)

This very short book is jointly authored by a former United States Department of Justice official, Douglas E. Rosenthal, and a senior civil servant in the United Kingdom Department of Trade, William M. Knighton. The product, however, has a distinctly American flavour and is predominantly an explanation and defence of the American position of extraterritoriality. This orientation is not particularly surprising since the problem is primarily an American one and since Mr. Knighton had to represent world interests. The apologia for the American position is found throughout the book. Whether the various reasons advanced constitute justification, explanation or rationalization will be a matter for each reader to decide for himself. The effects doctrine, for example, to which reference is made by the authors, obviously constitutes justification if it is indeed a principle of international law. However, the

[63] *See* Kraft Inc. v. State of Minnesota, 264 N.R. 2d 386; Washington Water Power Co. v. Washington State Human Rights Comm'n, 91 Wash. 2d 62, 586 P. 2d 1149 (1978).

[64] *Supra* note 7.

* Canadian Human Rights Commission.