The Development of the Canadian Human Rights Act: A Case Study of The Legislative Process

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Abstract

The Canadian Human Rights Act was enacted by the Parliament of Canada in 1977. This event was a culmination of significant pressures on the Government to bring federal anti-discrimination policy at least up to the standards established by provincial initiatives; the federal Government was the last of Canada's jurisdictions to enact comprehensive, consolidated anti-discrimination law establishing a central enforcement agency.

This study attempts to analyse the development of the Act, with an emphasis on the anti-discriminatioin parts of the legislation. An insight into general patterns of federal policy development, the legislative process and anti-discrimination policy is offered. It is shown that legislators' understanding of the dynamics of discrimination and its control has been slow to develop, that regulation against discrimination has been extraordinarily incremental in its progression toward instituting the principle of absolute non discrimination and, also, that The Canadian Human Rights Act, in particular, was slow to develop because there were other rights-related provisions appended to the legislation. The varying effects of parliamentarians, interest groups and officials on developing law and the instrumental role of the enforcement agency is commented on. Furthermore, the curative emphasis of the regulation of discrimination is criticized.

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CHAPTER I

INTRODUCTION

The Honourable Mark MacGuigan (Liberal-Windsor-Walkerville), agreeing with a quote by a late President of the Philippines which states, "He who has less in life should have more in law," commented, "The difficulty arises over the proportion of compensatory action by the state." He concluded, " ... the state can aim at no more than equality of opportunity."[1] This opinion is apparently widely shared in varying degrees by most Canadian public policy-makers; visions of equality are not comprised of quests for equality of condition. The state, it is held, should only go so far as to facilitate an individual's equal start in the race of life and allow ability to determine the rest, albeit above a minimum standard of living. Progresssive taxation, social services, financial support for education and regional development funding have become acceptable mechanisms for achieving equal opportunity. Similarly, anti-discrimination legislation enacted by all Canadian governments establishing human rights commissions is aimed at this objective. Unlike many of the other programmes, however, anti-discrimination policies may ameliorate not only the ecomonic disadvantages suffered by citizens but also threats to human dignity.

For those who seem assured of their own ability to ensure dignity, interventions by human rights commissions are unwelcome. Milton Friedman states that anti-discrimination legislation "...clearly involves interference with the freedom of individuals to enter into voluntary contracts with one another."[2] Alfred Avins believes that

"fairhousing, open occupancy, and equality cannot substitute for the denial of the right of freedom of association. Infringement of this right makes anti-discrimination legislation in housing violative of fundamental liberties."[3] Dr. Morris Schumiatcher has said that "The greatest human right of all is the right to be let alone, to be one's own man. If a stranger were to drop into our planet... and read the rules the Human Rights Commission has published, I am sure he would believe we are a wanton and depraved lot to require that so many strictures be placed by a public authority upon our behavior..."[4] Nonetheless, in the balance, egalitarian rights have been judged to be paramount to absolute liberty.

The term "discrimination" has been endlessly defined by academics, lawyers and judges. One of the most practical definitions to date is offered in a decision of a British Columbia Board of Inquiry under the B.C. Human Rights Code.[5] The Board stated:

> ...discrimination occurs ... when the following factors exist: (1) an individual is treated more harshly than other individuals; (2) this harsh treatment does not flow from an assessment of the individual's merits; (3) rather it is based on the individual's possession of a general class characteristic; (4) this class characteristic is one which is irrelevant in relation to the employment (or provision of service, housing etc.) the individual is seeking. In other words, an employer discriminates when he refuses to hire a person based on a prior assumption that a person cannot perform the work because of his possession of a class characteristic provided that this assumption is not correct.

It should be evident from this conceptualization that anti-discrimination law is not aimed at changing attitudes and beliefs but merely actions. However, as Gordon Allport [6] asserts,

> Law is intended only to control the outward expression of intolerance. But outward action, psychology knows, has an eventual effect upon inner habits of thought and feeling.

> And for this reason we list legislative action as one of the major methods of reducing not only public discrimination, but private prejudice as well.

Chapter I builds on this brief perspective of the objective of anti-discrimination law and the nature of discrimination by offering a background to the emergence of anti-discrimination legislation. The scope and purpose of this study is then presented.

(a) Background

The development of anti-discrimination legislation, or "human rights legislation" as it is generously labelled, is characterized by relative recency and incremental growth in Canada. The value that individuals should be free from certain discriminatory actions was not reflected in public policy until after the mid 1900's. Contrarily, federal and provincial laws regarding immigration, employment, business and property ownership previously prescribed discrimination, notably against women, Chinese, Japanese and Native Indians. The only notable exception to this general observation was legislative prohibition against slavery enacted by the legislature of Upper Canada in 1793[7] and some limited court decisions outlawing some discriminatory actions by common carriers and innkeepers.

Although The British North America Act of 1867 did allude to certain legal, political and economic rights of British common law [8] and did define cultural rights to safeguard language and religion, particularly of French Canadians, the Act excluded any reference to egalitarian rights. Subsequently, discrimination was rarely declared

unlawful by the courts; as late as 1940 the Supreme Court of Canada allowed a tavernkeeper to refuse service to a Black because the general principle of freedom of commerce prevailed. The Court said in Christie v. York Corporation [9] that "Any merchant is free to deal as he may choose with any individual member of the public."

A perceptible change in principles of social conduct occurred after World War II. By 1950, many discriminatory laws had been removed from the statutes. This was not enough in itself to ensure egalitarian rights, however. Legislation was necessary to prohibit discrimination. Adverse treatment of individuals on the grounds of race, colour, religion and sex, for example, was so common and entrenched in Canadian society, and stereotypic attitudes so rooted in previously unchallenged beliefs, that positive efforts were essential.

Evidence of emerging principles of non-discrimination could be found in only a very few heterogeneous Canadian laws in the 1930's.[10] Most legislative activity was instead destined to follow events in the United States. Prior to 1945, several Northern, Eastern and Western American states and the U.S. federal government had some limited anti-discrimination provisions in law. The general pattern was one of illegal discrimination based on race, colour or religion in government and government-related employment but absolute non-regulation in the area of private employment.[11] Enforcement procedures provided in the early statutes were criminal prosecutions or provision for civil actions. These methods of redress were unsatisfactory and incompatible with the dynamics of discrimination. No cases are known to have been reported

under any of those mechanisms.[12] Inherently, those methods of settling disputes were a deterrent to the victim of discrimination seeking redress. The methods were costly, time consuming and an onerous burden of proof made conviction difficult because the courts thought it was necessary to determine the motives of an alleged discriminator, and fact-finding is often difficult. Furthermore, it is generally accepted that those people most likely to be discriminated against are those who have neither the resources nor knowledge of available legal remedies, conferred rights, nor confidence in the legal system. Even if criminal prosecution or a civil suit is successful, a victim is still without the job or admittance initially sought, and nothing prevents the discriminator from continuing the practise.

Discrimination in the United States is inextricably bound to the white majority's negative attitude toward the Black community. Although the NAACP and the National Urban League were formed early in the century, their efforts to gain equal opportunity for Blacks were generally ineffective. But World War II brought great changes to American society; by 1941 there arose a significant re-evaluation of American attitudes and laws. The labour market demanded workers for defense production as a result of the United States' indirect involvement in the War. One observer noted, "As defense manufacturers and government agencies put unemployed whites in their localities back to work and sent to other areas for more, Negroes wondered when the depression would end for them too."[13] This wondering was short-lived; Black leaders quickly realized that challenge was urgent and rallied attention to the injustice. The support of diverse labour, professional

and religious groups and white liberals was solicited and obtained. Resulting demonstrations, conferences and letters were particularly distasteful to governments. James E. Jones [14] explains:

> Then (the United States) was preparing for the War to Make the World Safe for Democracy, and its employment practices, as well as other aspects of life in America, revealed a most embarrassing contradiction. The government's use of democratic symbols in its efforts to unify the country and to wage psychological warfare upon the axis nations sharply illuminated the contrast between ideals and reality.

These noticeable "inconsistencies between American pretensions and practices with respect to human rights"[15] ultimately led to an Executive Order initially establishing the federal Fair Employment Practice Committee (FEPC) which was empowered to accept and settle complaints of employment discrimination on the grounds of race, creed, colour or national origin in defense contracts and federal government employment. No enforcement powers were specified and the FEPC had to rely solely on the threat of publicity by way of public hearings, however. While the FEPC lasted only five years, it is judged to have been mildly successful in reducing discriminatory practices and in bringing national attention to the problem in employment practices.[16] It was also a probable factor influencing states to consider their own anti-discrimination law.

The State of New York had earlier taken more significant steps to establish a permanent agency to deal with discrimination. In March of 1945, the State enacted the New York State Law Against Discrimination. The law placed the functions of public education, the acceptance of complaints of discrimination, investigation, conciliation and enforcement in an agency with the sole purpose of securing equal opportunity. The procedures resembled those of the National Labour Relations Board,

already proven effective in dealing with labour disputes. Instead of placing the entire onus on an aggrieved to stand up for entitled rights, the new law made discrimination a community responsibility. The State Commission Against Discrimination (SCAD) was composed of five persons appointed by the Governor for five year terms to formulate policies, make appropriate recommendations to other state officials and ensure enforcement of the law. Discrimination on the basis of one's race, creed, colour or national origin was prohibited by employers, labour organizations or employment agencies. Social and fraternal clubs, non-profit charitable, religious or educational associations and establishments with less than six employees were exempt. In its duties of receiving, investigating and settling complaints, the Commission could "hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, require the production for examination of any books or papers related to any matter under investigation."[17] After receiving a complaint of discrimination an investigation would determine its validity. If it appeared that the practice was unlawful, settlement would be pursued by conference, persuasion and conciliation. If that failed, a hearing before three Commissioners could result in a cease and desist order. As well, the respondent could be ordered to hire, reinstate, promote or perform any affirmative action. Any Commission decision was subject to judical review and a court order could be obtained for an enforcement. Any person wilfully impeding the Commission or violating an order would be subject to a jail sentence of up to a year and a maximum fine of $500.

W. S. Tarnopolsky [18] ably explains:

> ...it is not only bigots who discriminate, but fine "upright" members of society as well. Most people discriminate not so much out of hatred as out of discomfort or inconvenience, or out of fear of loss of business. The philosophy underlying the new approach is that these people should be given an opportunity to reassess their attitudes and to reform themselves after seeing how much more severe is the injury to the dignity and economic well-being of others than is their own loss of comfort or convenience. However, if persuasion and conciliation fail, then the law must be upheld, and the law requires equality of access and of opportunity. This is "the iron hand in the velvet glove."

It was at first feared that business would leave the New York State if the law was enacted, that it was merely an attempt to legislate morals as the Prohibition laws had unsuccessfully attempted, that religious and racial hatred would intensify and that riots would result. These fears all proved unfounded. The Commission was the most successful attempt thus far to battle discrimination. SCAD was a model and precedent for future legislation; by the end of 1959, 16 states had similar fair employment laws.[19] Soon laws also prohibited discrimination in housing, contracts, and the provision of goods and services, and on the basis of sex and age. The trend of adopting anti-discrimination legislation then spread into Canada.

The first contemporary anti-discrimination statute in Canada was passed in Ontario in 1944 as a result of pressures from union and religious organizations.[20] The Racial Discrimination Act[21] prohibited the public display of signs, symbols or other representations that expressed racial or religious intolerance. Then in 1947, Saskatchewan enacted a more comprehensive statute entitled The Saskatchewan Bill of Rights[22]. It prohibited discrimination with respect to

accommodation, employment, land sales, education and business on the basis of race, creed, religion, colour, ethnic or national origin. These statutes were enforced by penal sanctions through the police and the courts in the absence of administrative agencies. Similar to the early criminal statutes that prohibited discrimination in the United States, the protection offered by these laws was negligible.[23] The Acts were nonetheless significant in that they were the first explicit contemporary statements acknowledging that discrimination was contrary to public policy.

In subsequent legislative developments, Ontario again took the lead as the first Canadian province to pass a Fair Employment Practices Act[24] in 1951 along with a Female Employees Fair Remuneration Act.[25] Then in 1954 Ontario enacted the first Fair Accommodation Practices Act[26]. These laws were copied on the New York State progenitor except that no permanent administration was charged with the sole responsibility for enforcement. Most other provinces followed Ontario's lead by enacting similar legislation. Tarnopolsky notes that while the legislation was "...an improvement over the quasi-criminal approach, they still continued to place the whole emphasis in promoting anti-discrimination legislation on the victims.... The result was that very few complaints were made and very little enforcement was achieved."[27]

The shortcomings of the legislation were soon addressed when, in 1958, Ontario passed The Anti-discrimination Commission Act.[28] This created a Commission with the following functions: a) to advise the

Minister of Labour on matters relating to the administration of anti-discrimination legislation; b) to recommend any needed improvements; and c) to develop and conduct educational programmes to promote awareness of the anti-discrimiation acts and to eliminate discrimination. The name of the agency was changed in 1961 to the "Ontario Human Rights Commission" in order to give it "...a more positive and aggressive image than was implied by the earlier name."[29] The Commission was then given full executive duties when, on March 12, 1962, 17 years after New York's lead, all provincial anti-discrimination legislation was consolidated in one act - The Ontario Human Rights Code.[30] Again, the other provinces followed; by 1975 every Canadian province had Human Rights Commissions administering comprehensive, consolidated legislation, except Saskatchewan which did not consolidate its several anti-discrimination acts until 1979.

While it is not the purpose here to provide an inter-provincial comparative study, it can be said that all the provincial anti-discrimination laws and administrations are generally similar and still resemble the New York model. The coverage of the laws include prohibitions of discrimination in the provision of employment, rental dwellings, commercial accommodation, goods or services customarily available to the public, contracts, and the display of notices, signs and symbols. Discrimination is variably prohibited on the grounds of "race", "colour", "national origin" or "nationality" as well as "age", "sex", "sexual orientation", "maritial", "family" or "civil status", "political affiliation or belief", "language", "social condition", "source of income", "criminal conviction" and "physical handicap." Two provinces

prohibit certain acts of discrimination "unless reasonable cause exists" which appears to prohibit discrimination on any ground.

Provincial enactments of anti-discrimination laws appear to be constitutionally sound. Tarnopolsky [31] states:

> The prohibition of discrimination is a "matter" concerning primarily "property and civil rights" or "matters of a merely local and private nature" or "local works and undertaking" - all three being "classes of subjects" listed in section 92 of the B.N.A. Act as coming within the exclusive legislative authority of the provinces .... Where, however, ... employment, service, facility, accommodation, or publication ... is integrally bound up with a federal work, undertaking, service or business, it will be within the jurisdiction of Parliament, because it is then a "matter" coming within section 91 of the B.N.A. Act.

Furthermore, if a matter is decided by the courts to come within federal jurisdiction by virtue of the "Peace, Order and Good Government" clause of section 91, the provinces could lose some areas of jurisdiction to the authority of Parliament. Federal concerns would therefore generally include communications, the postal service, grain operations and milling, uranium mining, the military, railways, airlines, banks and other employment and services provided by the federal government, for example. It has been estimated that about 11.6 percent of the Canadian labour force comes under federal regulation.[32]

(b) Scope and Purpose

The enactment of The Canadian Human Rights Act in 1977 came fifteen years after Canada's first comprehensive and consolidated anti-discrimination statute and it was the last of Canada's governments to pass this kind of legislation. Discrimination is a complex problem

and legislatures have taken many years to devise workable solutions, having relied more on experience than on logic or theory. By 1977, a great deal of experimentation had been done, either in the United States or in the provinces yet, despite federal legislation being overdue and policy options apparent, the legislative history of The Canadian Human Rights Act reveals much indecision and compromise on the part of the government.

This study examines federal anti-discrimination policy by focussing on the development of the Act. Federal anti-discrimination policy before the Act was passed is first enumerated. The several influences leading up to the drafting of the first human rights bill and its introduction are then examined. The provisions and debate surrounding the successful, second human rights bill are also presented, followed by a general overview of the implementation of the legislation.

Several questions need to be answered: what difficulties did the Government have supporting the principle of equal opportunity with legislative action; what factors are inherent in the legislative process which hinder the passage of this kind of legislation; to what limits will the Government allow equal opportunity; does the implementation of the Act ensure the fulfilment of Parliament's intent; and, what patterns and problems are emerging in the statutory control of discrimination?

Notes

1. "Equality of Opportunity - A Legislator's Perspective," Executive Bulletin(The Conference Board in Canada, 4 March, 1978): 6.

2. Capitalism and Freedom (Chicago: University of Chicago Press, 1972), p. 111.

3. "Anti-discrimination legislation as an infringement of freedom of choice," New York Law Forum 6 (1960): 37.

4. See Ontario Human Rights Commission, Life Together: A Report on Human Rights in Ontario (Toronto: Queen's Printer, 1977), p. 15.

5. S.B.C. 1973, c. 119; J.L. Foster v. B. C. Forest Products Ltd., 1978, unreported Board of Inquiry.

6. The Nature of Prejudice (New York: Doubleday Anchor Books, 1958), p. 442.

7. An Act to prevent the further introduction of slaves and to limit the terms of Enforced Servitude within the Province, S.U.C. 1793, c.7.

8. According to the Preamble of The British North America Act, Canada was to have "a constitution similar in principle to that of the United Kingdom". The principles of the British Constitution are generally thought to entail rights recognized in Magna Carta (1215), the Petition of Right (1629), the Bill of Rights (1689), the Habeas Corpus Act (1679) and judical precedent.

9. (1940) S.C.R. 142.

10. The Insurance Act, S.O. 1932, c. 24, s. 4; The British Columbia Unemployment Relief Act, S.B.C. 1931, c. 65, s. 8 / S.B.C. 1932, c. 58, s. 15; The Defamation Act, S.M. 1934, c. 23, s. 13a.

11. See Milton R. Konvitz, A Century of Civil Rights (New York: Columbia University Press, 1961); Harry T. Zuick, "Public Accomodations: A Justification of Title II of the Civil Rights Act of 1964" in De Facto Segregation and Civil Rights, ed. Oliver Schroeder (Buffalo: Hein & Co., 1965); Arthur Earl Bonfield, "The Origin and Development of American Fair Employment Legislation," Iowa Law Review 52 (1967).

12. Bonfield, p. 1051

13. Michael J. Sovern, Legal Restraints on Racial Discrimination in Employment(New York: Twentieth Century Fund, 1966), p. 9.

14. "The Development of Modern Equal Employment Opportunity and Affirmative Action Law: A Brief Chronological Overview," Harvard Law Journal 20 (1977): 4975.

15. Jay Anders Higbee, Development and Administration of the New York State Law Against Discrimination (University of Alabama Press, 1966), p. 1.

16. For an expose of the problems the FEPC met in Congress, see Will Maslow, "FEPC - A Case History in Parliamentary Manoeuver," University of Chicago Law Review 13 (1946): 407-444.

17. Morroe Berger, "The New York State Law Against Discrimination: Operation and Administration," Cornell Law Quarterly 35 (1950): 751)

18. "The Control of Racial Discrimination," in The Practice of Freedom, ed. R. St. J. Macdonald and John P. Humphrey (Toronto: Butterworths, 1979) p. 298.

19. Bonfield, p. 1073. One may wonder why New York State was a leader in the legislative development of anti-discrimination legislation. The State was a key area of defense production and perhaps labour shortages were acute. Higbee at p. 4 suggests that "In the state of New York, where an ever-increasing proportion of the electorate consisted of people belonging to minority groups, neither political party could well afford to let the other sieze the initiative for long in matters involving legislation or programmes beneficial to such groups." For other factors that may be responsible, see Duane Lockard, "The Politics of Anti-Discrimination Legislation," Harvard Journal on Legislation 3 (1965): 3-61.

20. See Arnold Bruner, "The Genesis of Ontario Human Rights Legislation: A Study in Law Reform," University of Toronto Faculty Law Review 37 (1979): 236-253.

21. S.O. 1944, c. 51.

22. R.S.S. 1965, c. 378.

23. See W. S. Tarnopolsky, "The Iron Hand in The Velvet Glove: Administration and Enforcement of Human Rights Legislation in Canada," Canadian Bar Review XLVI (1968): 568-9; W. S. Tarnopolsky, "The Control of Racial Discrimination," and Ian A. Hunter, "The Origins, Development and Interpretation of Human Rights Legislation," in The Practice of Freedom, ed. R. St. J. Macdonald and John P. Humphrey, (Toronto: Butterworths, 1979).

24. S.O. 1951, c. 24.

25. S.O. 1951, c. 26

26. S.O. 1954, c. 28.

27. Tarnopolsky, "The Control of Racial Discrimination," p. 297.

28. S.O. 2958, c. 70.

29. Philip C. Stenning, "From Conciliation to Judgement: The Role of Boards of Inquiry Under the Ontario Human Rights Code 1962-1974," (Thesis, Master of Law, Osgood Hall Law School, September, 1974), p. 41.

30. S.O. 1961-62, c. 93.

31. "Legislative Jurisdiction with respect to Anti-Discrimination Legislation in Canada," Ottawa Law Review 12 (1980): 45.

32. Canadian Human Rights Commission, Research Branch. 1978.

CHAPTER II

Federal Anti-Discrimination Policy
Before The Canadian Human Rights Act

Federal anti-discrimination policy before the enactment of The Canadian Human Rights Act finds expression in several post-1942 statutory instruments, legislation, and departmental programmes. This chapter examines aspects of, and the evolution of, the array of provisions. It will be shown that the disjointed provisions were neither satisfactorily comprehensive nor generally capable of offering necessary protection from discrimination.

Part (a) discusses the relevant provisions found in the Department of Labour. Most activity was related to employment matters under federal jurisdiction. Anti-discrimination provisions administered by the Public Service Commission and the Department of the Secretary of State are examined in parts (b) and (c). Part (d) comments on other anti-discrimination provisions affecting broadcasting, housing, immigration, and unemployment insurance. A summary of the protections of the pre-Canadian Human Rights Act era is offered part (e).

(a) The Department of Labour

The earliest federal anti-discrimination initiatives were specifically related to equal pay in the war industries. An order-in-council in 1918

declared it was government policy that females doing work ordinarily performed by males should be given equal pay for equal work. Again, in 1941 a Wartime Wages Control Order stated that no wage distinctions were to be made on the basis of sex.[1] These limited provisions were followed by an administrative directive issued on November 7, 1942, by Mr. Elliot Little, director of the wartime National Selective Service, to regional superintendents and managers of the Department of Labour. The directive stated:

> Some employees continue to discriminate against certain classes of persons on grounds of citizenship, race, language, name, creed or colour. Such discrimination impairs the war effort. No official of the selective service should do anything to encourage or faciliate any such discrimination. No such official should make any remark or ask any questions of any applicant or employer that could be interpreted as condoning or suggesting discrimination in employment.
>
> Local and regional offices will withdraw from use of any employment or selective service forms or questionaires which contain any questions or indication of a person's race, creed, colour, and no form with any such questions shall be put into use without head office approval.
>
> If it comes to the attention of a national selective service officer that any employer is unreasonably refusing to engage otherwise qualified persons referred to him by the office principally on the gounds of these instructions, the national selective service officer shall notify such employer that, in view of the evidence of discrimination, he is required to refer to the matter to head office, at Ottawa, and that the result may be directions to grant no more permits until such time as it is satisfactorily established that such discrimination has stopped.
>
> No advertisement shall be approved under the provisions of part V of the national selective service regulations if it contains any expression such as "Gentiles preferred", "Protestants only" or any other expression which is indicative of any employer's intention to discriminate against any class of person.[2]

Ten years later the Government took a futher step as the result

of representations made by several religious and labour organizations.[3] On September 24, 1952, Order in Council P.C. 4138[4] amended the existing Fair Wages Policy[5] to include a section stipulating that all contracts entered into on behalf of the Government after January 1, 1953, for construction, remodelling, repair or demolition of public buildings or other works, or for the manufacture and supply of equipment, materials and supplies must contain a caveat that the contractor "... shall not refuse to employ or otherwise discriminate against any person in regard to employment because of that person's race, national origion, colour or religion, nor because the person has made a complaint or given information with respect to an alleged failure to comply with (the caveat)." A person could complain of a breach to the Minister, Deputy Minister or another appointee and an inquiry would then decide the matter. The contractor was obligated to provide any relevant information. If discrimination was found, the contract was considered breached. The contractor could appeal any decision made by the Department to a judge of a superior, county, or district court, whose decision would be final. On May 29, 1973, age, sex and marital status were added to the Policy as grounds of discrimination.[6] The Policy was supplemented in 1967 when similar provisions were placed in the Fair Wages and Hours of Labour Regulations.[7] In 1973, The Regulations were also extended to prohibit discrimination because of age, sex and marital status.[8]

Since the Federal government is the largest single buyer of goods and services in Canada,[9] the regulatory authority excercised by P.C. 4138 and the subsequent regulations is significant. However, in the

absence of public awareness of the provisions, the enforcement of the regulations relied mainly on inspections by industrial relations officers and the posting of notices citing the anti-discrimination provisions at the work places. Aside from a few reports of discriminatory job advertisements and employment application forms, the effect of the regulations has apparently been negligible.[10] The failure is largely due to the fact that industrial relations officers have many concerns to tend to other than employment discrimination and are not trained to investigate, or even detect, discriminatory practices.

Measures to prohibit discrimination in all federal private sector and Crown corporation employment were not formulated until January 13, 1953. As promised in the Liberal Government's Speech from the Throne of November 20, 1952,[11] the Honourable Milton Gregg (Liberal-York-Sunbury), Minister of Labour, introduced Bill 100, "a bill to enact an act to prevent discrimination in regard to employment and membership in trade unions by reason of race, national origin, colour or religion".[12] This was to be commonly cited as The Canada Fair Employment Practices Act.[13]

During the subsequent debate on Bill 100, organized labour and two Members of Parliament, Mr. David Croll (Liberal-Spadina) and Mrs. Ellen Fairclough (P.C. Hamilton-West) were hailed as the main parliamentary proponents of such a measure.[14] The model for the drafting was mainly the Ontario Fair Employment Practices Act,[15] passed two years earlier, and the New York State Law Against Discrimination of 1945.[16] The Industrial Relations and Disputes

Investigation Act[17] also served as a general model for investigating and conciliating procedure already tested in complaints of unfair labour practices.

The Bill applied to all employers of five or more employees within the legislative authority of the Parliament of Canada, such as the banks, railways, airlines and broadcasting companies. Employment in the Public Service and in most nonprofit organizations was excluded.[18] Also exempt were actions necessary for the safety and security of Canada and her allies.[19]

Employers, employment agencies and trade unions were prohibited from discriminating against anyone because of a person's race, national origin, colour or religion or because a person assisted in or gave evidence regarding a complaint of discrimination. Advertisements which suggested a preference or limitation according to the above prohibited grounds of discrimination were also proscribed.[20]

Persons claiming to be aggrieved under the Act could complain in writing to a designated official in the Department of Labour.[21] The official would impartially inquire into the matter and attempt to effect a settlement.[22] There was no expressed time limit within which a complaint would have to be made. Also lacking were powers allowing an official to secure relevant documents or other information in the course of an investigation.

If an official was unsuccessful at obtaining a voluntary settlement

of a complaint the Minister could allow the Industrial Inquiry Commission, created by The Industrial Relations and Disputes Investigation Act, to further inquire and allow the parties to present evidence and make representations. If the complaint was substantiated, a recommended settlement was to be forwarded to the Minister.[23] The Minister could then make an order regarding the recommendation. This would not be subject to appeal.[24] Although any prosecution for an offence under the Act required the written consent of the Minister,[25] an aggrieved person could initiate proceedings before a court, judge or magistrate against any person for an alleged contravention of the Act.[26]

A refusal or neglect to comply with the Act or an order may have resulted in a fine of up to one hundred dollars for an individual to five hundred dollars for a corporation, trade union, employers' organization or employment agency.[27] There could also be an order upon summary conviction to compensate for lost wages or reinstate an employee.[28]

It should be noted that clause 10 of the Bill stated: "The Minister where he deems it expedient may undertake or cause to be undertaken such inquires and other measures as appear to him to promote the purposes of the Act." This gave the Minister the power to approve educational and research programmes and allow Department-initiated complaints.

During the debate on Second Reading several changes to the Bill were suggested. It was urged that the establishment of a permanent body to administer the legislation be provided for with powers to

promote an understanding of the Act.[29] Prohibited discrimination on the additional grounds of sex,[30] age,[31] political affiliation[32] and physical disability[33] were proposed and, furthermore, it was expressed that application for employment forms should exclude inquires concerning race, national origin and religion.[34]

The Bill was referred to the Standing Committee on Industrial Relations which considered it on April 22, and 27, 1953. Of the several briefs and appearances that were made to the Committee, all favoured the legislation and several suggested expanding the scope of the Bill. The Canadian Chamber of Commerce was notably wary of the Bill, however, and stated that, although the organization was in accord with the principle of non-discrimination, it did not favour the imposition of the principle by legislation. It was argued that "Education and moral persuasion would prove much more effective and would eliminate the evil of adding to the Statutes a piece of legislation which might prove to be unworkable and/or observed only in the breach."[35] One member of the Committee (Mr. Pouliot - Liberal - Temescouata) was also opposed to the Bill, apparently until someone could convince him that discrimination actually occurred in Canada.

Although it appeared at Second Reading that several Members would be proposing amendments to the Bill, only five amendments were moved in Committee. Ms. Ellen Fairclough moved the only two significant amendments which were both adopted. "Nationality" was added as a prohibited ground of discrimination and a provision was added whereby employment application forms and other written or oral

pre-employment inquires could not suggest that race, national origin, colour, or religion were limitations, specifications or preferences for employment.[36] The content of these amendments were already embodied in Ontario's legislation. They were also the most commonly suggested amendments favoured by the groups which appeared and were supported by the Government members of the Committee.

Several Members expressed their hope at Third Reading that, although Federal authority in employment matters was limited, The Canada Fair Employment Practices Act would serve as a guide for, and progenitor of, provincial action. Only Ontario[37] and Manitoba[38] had similar legislation at the time. On May 4, 1953, the House then adopted the Bill without a recorded vote[39] and, after Senate approval, the Act came into effect July 1, 1953.

The administration of the Act was accorded to the Industrial Relations Branch where required duties were shared among the existing staff. During the first year, copies of the Act, explanatory letters and descriptive pamphlets were sent out to employers under federal jurisdiction and display boards were exhibited at three major labour conventions in 1954.[40]

In September, 1954, the Women's Bureau was established, modelled on the United States' federal organization, created in 1920. The stated aims of the Bureau were "to promote a wider understanding of the particular problems of women workers and of the employment of women" and "to advance their opportunities in employment and enable them to

make a more effective contribution to the labour force."[41] The Bureau embarked upon a programme of data analysis and data collection concerning women in the work force, publishing relevant documents, and served as an interchange for information between the Department and concerned groups and individuals.[42]

On July 30, 1956, the Government introduced Bill 445, "a bill to enact an act to promote equal pay for female employees" to be commonly cited as The Female Emoloyees Equal Pay Act.[43] Similar legislation was already in effect in Ontario, Saskatchewan, and British Columbia.[44] Bill 445 closely resembled its forerunners.

Bill 445 provided that no employers under federal jurisdiction could pay a female employee less than a male employee if they did a job, duty or service that was "identical or substantially identical."[45] As well, no employer could discharge or discriminate against anyone who assisted in any way with a complaint.[46] An aggrieved person wishing to make a complaint, and who was not covered by a collective agreement containing an equal pay clause and grievance settlement provision,[47] could write to the Minister who may instruct a Fair Wage Officer to investigate and try to effect a voluntary settlement of the matter.[48] If no settlement could be secured, the Officer would report the facts and make a recommendation to the Minister.[49] The matter could then be referred to a Referee if the complaint appeared to have merit.[50] The Referee would further inquire into the complaint and, if the compliant was substantiated by the facts, make any order deemed necessary. This could include payment of lost wages to the employee

for up to a six month period before the date of the complaint.[51] Any individual, who by refusal or neglect, violated any provision of the Act could be liable upon summary conviction to a fine of up to one hundred dollars or up to five hundred dollars if a corporation.[52] A court could also order a payment for lost wages.[53]An aggrieved person could also initiate proceedings before a court, judge or magistrate for an alleged contravention except where a matter had already been referred to a Referee.[54] The Bill also provided that "The Minister may, where he deems it expedient, undertake or cause to be undertaken such inquires and other measures which appear to him to promote the purposes of the Act."[55] This allowed positive programmes, similar to those possible under section 10 fo The Canada Fair Employment Practices Act.

On August 6, 1956, the Bill was considered by a Committee of the Whole House. A major criticism was the small amount of the fine,[56] even though the Equal Pay Acts of Ontario, Saskatchewan and British Columbia allowed for only a one hundred dollar fine for both individuals and corporations. The Minister, Mr. Gregg, responded by arguing that the main deterrent to violations of the Act would be the "social stigma" which would follow a complaint. He added that "... we are breaking new ground and I should like to do it quietly without great threats at the start."[57] The House and the Senate passed The Billwithout amendment and it took effect October 1, 1956.[58] The Industrial Relations Branch was then given the mandate to administer the Female Employees Equal Pay Act until 1966 when it was inherited by the Labour Standards Branch, established in August, 1965.[59]

Early in 1967 the Department created the Fair Employment Practices Branch to adminster both The Female Employees Equal Pay Act and The Canada Fair Employment Practices Act.[60] The responsibility for equal pay was delegated back to the Labour (Industrial) Relations Branch a year later, however.[61]

Further legislative activities were taking place by the late 1970's. In 1967, the Canada Fair Employment Practice Act and The Female Employees Equal Pay Act were consolidated, unaltered, into The Canada Labour Code[62] as Parts I and II respectively. The equal pay provisions were amended as of July 1, 1971 and incorporated into Part III of the Code.[63] The requirement that employees must perform "identical or substantially identical work" for a complaint to be made was loosened to provide that "No employer shall establish or maintain differences in wages between male and female employees, employed in the same industrial establishment, who are performing, under the same or similar working conditions, the same or similar work or jobs requiring the same or similar skill, effort and responsibility." Furthermore, powers of investigation were set out, the fines for offenses were increased, and actions were allowed to be initiated by persons other than just an aggrieved.[64]

The amendments were an unsuccessful attempt to make equal pay law more effective. As of July, 1971, only nineteen equal pay complaints had been made and none was received until 1970. Furthermore, no complaints were settled in favour of the comlainent. The average case had also taken 23 weeks to dispose of while the

lengthiest time to deal with a complaint was 51 weeks.[65] The fair employment practices provisions were only slightly more effective, however. For the first fourteen years of legislation, only about forty complaints were received, an average of about 2.5 complaints per year.[66] After the Fair Employment Practices Branch was established, the number of complaints received multiplied to over forty in one year.[67] For the first time a permanent director and staff devoted all their energies to the purpose of the legislation. An increasing budget aided the cause. By 1971, the Branch had a staff of fourteen which was involved, not only in the receipt and settlement of complaints, but with research into improving complaint handling, publishing relevant materials, constructing an affirmative action programme, advertising, and liaising with the commmunity and other government departments.[68] Complaints of discrimination made against the Public Service Commission were also accepted for investigation after 1972.[69] Although progress was noticeable, former staff members have candidly speculated that proposals for greater initiatives were quashed by Deputy Ministers who appeared unsympathetic to educational and research endeavours.

It should be noted that in 1972, Bill C-206 was introduced to add "sex", "age", and "maritial status" as prohibited grounds of discrimination to Part I of The Canada Labour Code. The Bill was not enacted because the House was disolved for the 1972 General Election and a similar bill was never reintroduced in anticipation of a comprehensive anti-discrimination bill.[70]

In October, 1975, the Department of Labour was reorganized and

decentralized. The Women's Bureau and the Fair Employment Practices Branch were combined to form the Rights in Employment Branch and five regional directors were delegated to receive and deal with complaints of discrimination. A National Human Rights Information Centre was established in the same year thereby giving the public access to a wide range of materials on women's and human rights issues.[71] This arrangement continued until the passage of The Canadian Human Rights Act.

In conclusion, by 1977 the Department of Labour became responsible for several anti-discrimination mechanisms regarding employment: the Fair Wages Policy Order, the Fair Wages and Hours of Labour Regulations, the Women's Bureau, and the Fair Employment Practices and Equal Pay provisions of The Canada Labour Code. All of the prohibitive provisions relied on different enforcement procedures and their administration was carried on by different branches of the Department.

(b) The Public Service Commission

The Public Service Commission is generally responsible for the appointment of qualified persons to positions in the federal public service. This represents considerable authority, since the federal Government is the largest single employer in Canada.[72]

This first appearance of a policy of non-discrimination in the public service can be found in The Civil Service Act of 1961.[73] Section

33 gave the Civil Service Commission the mandate not to discriminate against any person by reason of race, national origin, colour or religion when establishing qualifications for positions in the public service.

In 1967 The Civil Service Act was repealed by The Public Service Employment Act.[74] Therein section 10 stipulated that appointments to or within the public service must be based on merit. Further, section 12 prescribed that the Public Service Commission could not discriminate against any person by reason of sex, race, national origin, colour or religion when hiring or promoting.

Despite the anti-discrimination provisions, no person nor agency was permanently provided for to give recourse to anyone alleging discrimination. This oversight was corrected by an Order-in-Council in November, 1972[75] which directed the Commission to investigate complaints of discrimination. Accordingly, the Commission immediately established the Anti-Discrimination Branch with a staff of investigators, conciliators and support staff.[76] The Commission further introduced, at its own discretion, a policy of anti-discrimination on the grounds of age, physical disability, criminal record and marital status and the Branch was also instructed to investigate complaints made on these additional grounds.[77] Any complaints of retaliation against someone who complained to the Branch would also be a basis for an investigation.[78] All complaints made against the Commission itself, however, would be referred for investigation to another independent and impartial body, such as a provincial human rights commission, a university professor, or the Fair Employment Practices Branch of the Department of Labour.

The Branch, located in Ottawa, operates similarly to provincial human rights commissions. With an aim to resolving problems, rather than imposing sanctions,[79] the Branch accepts all complaints for investigation which are made against federal government employment action. It is a policy that all complaints are kept confidential to the parties involved.[80] Section 7 of The Public Service Employment Act allows investigators to have access to relevant documents and other information relative to a complaint. If the allegation is not substantiated by the facts, a complaint would be dismissed. If it is substantiated, redress is sought for the complainant. The Branch's authority to enforce a settlement is limited to recommending to the Commission that an inquiry be established. The Commission nonetheless has negligible enforcement powers;[81] it may withdraw a department's employing authority, or point out a department's unwillingness to cooperate in the Commission's annual report to Parliament. There has always been voluntary acceptance of Branch settlements, however.[82]

The prohibited grounds of discrimination in The Public Service Employment Act were expanded in July, 1975, by The Statute Law (Status of Women) Amendment Act[83] when "marital status" and "age" were added.

Positive programmes to promote equal opportunity in government employment have also been created. The Commission's Office of Native Employment and the Office of Equal Opportunities for Women, created in1971, have attempted to promote employment prospects for Natives and

women by reviewing staffing criteria and providing advice to individuals and staff of the Public Service Commission and other departments. The Office of Native Employment has conducted a Northern Career Program to provide training and career opportunities since 1974. The office has also been the resource base for an Interdepartmental Committee on Native Employment set up to further Native employment opportunities. Similarly, an Interdepartmental Committee on Equal Opportunities for Women has been coordinated by the Office of Equal Opportunities for Women.[84]

(c) The Department of The Secretary of State

As World War II escalated, officials of the Federal Government were becoming concerned about securing a maximum war effort from ethnic groups and devising methods to "... eliminate the discrimination which was sometimes shown against non-British Canadians who were not infrequently called 'foreigners' by their fellow citizens...."[85]

After interdepartmental discussions in the fall of 1941, twelve Canadians were appointed to a part-time national advisory committee, known as the Committee on Cooperation in Canadian Citizenship. Its duty was to advise the Minister of National War Services of the problems of ethnic groups. The Committee defined its purpose as follows:

> To help to create among Canadians of French and British origin a better understanding of Canadians of recent European origin, and to foster among the latter a wider knowledge and appreciation of the best traditions of Canadians life.[86]

Concern for the plight of Japanese Canadians was noticeably absent,

however.

In Decemeber, 1943, the Committee further recommended that a "Canadian Citizenship Divison" be permanently established within the National War Services Department to further to Committee's goals. By January, 1945, the Division was adequately staffed and a public education programme had been developed.[87]

The Government maintained that, after the War, the problems encountered by ethnic groups during wartime would endure, especially in light of increased immigration.[88] Accordingly, on November 1, 1945, the Canadian Citizenship Division was transferred to the Department of the Secretary of State. This complemented the Department's assigned responsibility relating to citizenship registration.[89] After The Canadian Citizenship Act[90] came into force in January, 1947, the Division (renamed the "Branch") received authority from section 37 which directed that applicants for Canadian citizenship should "...receive instruction in the responsiblities and privileges of Canadian Citizenship."

The Canadian Citizenship Branch (and the Citizenship Registration Branch) was transferred to the newly created Department of Citizenship and Immigration in January, 1950. It was a stated policy of the St. Laurent Government to promote "... unity among all racial groups; to awaken in every Canadian, regardless of race or creed, a deep conviction of the worth of the individual and the principles of democracy."[91] To help achieve this, the Branch liaised with provincial

department of education and national organizations to coordinate citizenship training programmes. It published citizenship training manuals and data relating to ethnic groups and as well published and distributed materials to the foreign language presses.[92]

Then, with the coming into force of The Government Organization Act[93] in October, 1966, The Department of State Act was amended to give the Secretary of State explicit legislative authority to deal with citizenship concerns.

In 1967 the Department reconfirmed that "The continuing role of the (Citizenship) branch is the development of intergroup and interregional understanding throughout Canada and encouragement, at the local level, of fuller participation by all ethnic groups in community activities."[94] The development of an awareness and observance of egalitarian rights among Canadians and soon-to-be Canadians was an important focus of the Branch. This was particularly evident when the United Nations declared 1968 the International Year for Human Rights. A committee was initially established in 1966 from representatives of several federal departments to coordinate Canada's observance. The committee proposed that "... the Citizenship Branch ... would develop and help to promote an extensive and diversified programme of public education and encourage involvement in human rights activities. The Branch would provide the financial support required for the 1968 Canadian Conference on Human rights and any national secretariat...."[95]

The result of the adoption of this proposal was a more active role for the Branch in the area of human rights from 1967 to 1975, especially with regard to the distribution of publications on human rights issues and extension of grants and services to interested groups. As well, the Branch became the centre point of reference for the Government's domestic interest in human rights matters.

In 1975 the Department was restructured and the human rights functions were assumed by a "Group Understanding and Human Rights Programme" within a "Citizenship and Corporate Management" section. The Programme's announced objective is "to promote the understanding and practical enjoyment of generally recognized and emerging human rights and fundamental freedoms."[96] Much of the resources of the Programme spent on fulfilling Canada's obligation to prepare reports to the United Nations according to signed conventions. The Programme's activities that relate to anti-discriminatinon concerns, however, could be grouped into three main areas: coordination, funding, and promotion.

The Programme, because it is the focal point within the federal government for all matters relating to human rights, provides secretariat services to the federal Interdepartmental Committee on Human Rights, established in 1975 to ensure liaison and cooperation in the area of human rights. As well, the Group Understanding and Human Rights Programme provides secretariat services to the Continuing Federal-Provincial Committee of Officials Responsible for Human Rights. Although this body provides coordination to meet Canada's

responsibilities for implementing the United Nations' Convenants, it also provides a forum for a federal-provincial exchange of ideas and information relating to anti-discrimination policies.

Financial assistance in the form of grants to voluntary human rights and civil liberties associations also emanates from the programme. This is an indirect although valuable method of promoting an understanding of equality of opportunity and combatting discrimination.

The Programme's promotional activities form its most recognizable function. Pamphlets, audio-visual aids and other educational materials on racial discrimiation are provided for schools, libraries, organization, departmental field staff, and the general public. The materials are usually United Nations' publications, departmental documents secured by contract arrangement, or Canadian books published on the topic of human rights.[97]

The director of the Programme has accurately stressed that, although the Department does not administer legislation directed against discriminatory practices, it does play a role developing public opinion to raise awareness of the dynamics of prejudice and discrimination. This, the director has stated, may be essential for anti-discrimination laws to work and may even be a prerequisite to their passage.[98]

(d) Other Provisions

Other anti-discrimination provisions can be found in broadcasting

regulations, national housing loan regulations, The Immigration Act[99] and the Unemployment Insurance Act.[100]

Regulations affecting the standards of communications programming were first proclaimed pursuant to The Canadian Broadcasting Act[101] of 1936. A stipulation was included in the regulations[102] stating that, inter alia, "No one shall broadcast ... abusive comment on any race, religion or creed." This provision remained in subsequent regulations affecting A.M. and F.M. radio broadcasting. Similarly, television broadcasting regulations developed with a clause stating that "No station or network operator shall broadcast ... any abusive comment or abusive pictorial representation on any race, religion or creed."[103]

The enforcement of the provisions relied upon the threat of revocation of a broadcasting license.[104] A complaint could be made to the Canadian Radio and Television Commission, or its predecessor, regarding a breach of the regulations.[105] A public hearing would then most likely be held to examine the allegation.[106]

In November, 1960, National Housing Loan Regulations,[107] made under The National Housing Act[108] of 1954, were amended to extend anti-discrimination policy by the means of federal spending power. Section 57 B stated: "It is a condition of every loan made by approved lender to a borrower and insured by the (Central Mortgage and Housing) Corporation that the borrower will not, in the sale or leasing of any house or any unit in a multiple-family dwelling constructed with

the aid of that loan, discriminate against any person by reason of race, colour, religion or origin." In August, 1971, "sex" and "marital status" were added.[109]

Anyone alleging that a borrower has discriminated, contrary to the regulations, could complain to the Corporation, noting the particulars of the incident.[110] A copy of the complaint would then be forwarded to the accused and a rebuttal would be invited.[111] If a denial is recieved, the Minister responsible for housing could appoint a lawyer to further examine and decide the matter.[112] If the allegation is substantiated, the Corporation considers the condition of the loan to have been breached and will refuse to further insure loans to the borrower for three years from the date of the breach.[113]

In August, 1977, a new Immigration Act[114] was assented to. Although lacking enforcement, the Government included in the Act a statement regarding a policy of anti-discrimination. It stated in section 3:

> It is hereby declared that Canadian immigration policy and the rules and regulations made under this Act shall be designed and administered in such a manner as to promote the domestic and internatioinal interest of Canada recognizing the need ...
>
> f) to ensure that any person who seeks admission to Canada in either a permanent or temporary basis is subject to standards of admission that do not discriminate on grounds of race, national or ethnic origin, colour, religion or sex.

The Unemployment Insurance Act[115] of 1940 was amended in 1952[116] to state:

> It shall be the duty of the (Unemployment Insurance) Commission to ensure that there shall be no discrimination

in referring any worker seeking employment, either in favour of, or against any such worker, by reason of his racial origin, colour, religious belief or political affiliation.

The provision was slightly altered in 1955[117] when it became policy not to discriminate "because of race, national origin, colour, religion or political affiliation, but nothing ... shall be construed to prohibit the national employment service from giving effect to any limitation, specification or preference based upon a bona fide occupational qualification." In 1971, "sex", "marital status" and "age" were added.[118] It was made the duty of the Minister to ensure the safeguards. Consequently, disciplinary action could be taken against any employee of the national employment service who discriminated.

Mention should also be made of The Canadian Bill of Rights.[119] This legislation is designed, not to curb the actions of individuals per se, but those actions of the Parliament of Canada as are embodied in legislation. As Peter W. Hogg notes however, "The real threat to egalitarian civil liberties in Canada comes not from legislative and official action, but from discrimination ... by private persons - employers, trade unions, landlords, realtors, restaurateurs and other suppliers of goods or services."[120]

Section 1 (b) of The Canadian Bill of Rights provides:

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely, ...

b) the right of the individual to equality before the law and the protection of the law....

Of the substantial number of cases of discrimination decided by the Supreme Court under section 1 (b), only the 1970 case of Regina V. Drybones was successful. Eight years after Drybones, Walter Tarnopolsky lamented, "The overwhelming, although obviously not totally, favourable response to the 1970 decision in Regina v. Drybones should have emboldened the Court to continue on the same Olympian plane. Instead, Drybones seemed to have frightened the majority of the members of the Court into treading with excessive caution."121

(e) Summary

Federal anti-discrimination policy before the passage of The Canadian Human Rights Act is characterized by disjointed, often vague and weak protection from discrimination Gaps in the statutes were very evident; many of the standards established by provincial anti-discrimination legislation were not accompanied by federal initiatives. Coverage varied. Many aspects of housing, services and facilities, government employment, and signs and notices were not protected. The equal pay provisions were found ineffective. Grounds of discrimination emerging in other provinces and American states were generally found wanting. The enforcement procedures in prohibitive statutes were either completely lacking or so vaguely constructed that investigation powers were limited, redress was not provided for victims, and the onus for proving an allegation was sometimes left to the complainant. Enforcement was also very discretionary; the responsible Ministers had power to allow pursuit of the avenues of redress.

The absence of a centralized administration of the anti-discrimination provisions meant that educational and community relations programmes could not be pursued efficiently and no one could speak with authority on all areas where discrimination strikes. The multiplicity of protections and agencies would have also meant confusion to the public. By 1977, prohibitive provisions could be found in eleven statutes and there were at least nine departmental agencies designed to deal with anti-discrimination matters. Furthermore, only the Department of Labour and the Public Service Commission had agencies named specifically to handle complaints of discrimination. Therefore, in many matters, persons were designated to accept complaints only on an ad hoc basis.

In conclusion, the procedures for combatting discrimination that had been established and proven effective in every other Canadian province and most American states by 1977 had not been implemented at the federal level. While the Government began its anti-discrimination programmes no later than most provincial governments, it had the least progressive and comprehensive policy by 1977.

NOTES

1. Canada, Department of Labour, Women's Bureau, "Federal Equal Pay Laws" in Women's Bureau '74 (Ottawa, 1975) p. 534. ,

2. _____, Parliament, House of Commons, Debates, Seventh Session, Twenty-First Parliament, May 4, 1953, p. 4750-1 (Regulation 81, 1942).

3. _____, _____, _____, Standing Committee on Industrial Relations, Minutes of Proceedings and Evidence, No. 1, April 22, 1953, p. 88.

4. _____, _____, Canada Gazette Part II, Volume 86, October 8, 1952, SOR/52-426, p.908.

5. Ibid., Volume 83, November 23, 1949, SOR/49-447, p. 2364.

6. _____, _____, Consolidated Regulations of Canada 1978, Volume 18, C. 1621, p. 14403.

7. _____, _____, Canada Gazette Part II, Volume 101, March 8, 1967, SOR/67-95, p. 329.

8. Ibid., Volume 107, May 10, 1973, SOR/73-278, p. 1206.

9. See, for example, Gross National Expenditure figures for 1974-77 Canada Year Book (Ottawa: Statistics Canada, 1978), p. 859-860.

10. Minutes, p.87-8.

11. Debates, November 20, 1952, p. 2.

12. Ibid., p. 931.

13. S.C. 1952-53, c. 19, p. 69.

14. Debates, April 13, 1953, pp. 3761-62, 3763-64, 3766.

15. S.O. 1951, c. 24.

16. New York Sessional Laws, 19045, c. 118.

17. S.C. 1948, c. 54.

18. Bill 100, clause 2 (d) 3.

19. Ibid., clause 11.

20. Ibid., clause 4.

21. Ibid., clause 5 (1).

22. Ibid., clause 5 (2).

23. Ibid., clause 5 (3), (4).

24. Ibid., clause 5 (8).

25. Ibid., clause 9 (1).

26. Ibid., clause 5 (12).

27. Ibid., clause 6.

28. Ibid., clause 7.

29. Debates, Volume IV, p. 3765, (Ellen Fairclough).

30. Ibid., pp. 3766, 3776 (Alistair Stewart - Winnipeg North - CCF; C.E. Johnston - Bow River - Social Credit; Stanley Knowles - Winnipeg North Centre - CCF).

31. Ibid., p. 3767 (C.E. Johnston).

32. Ibid., pp. 3777, 3778 (Clarence Gillis - Cape Breton South - CCF; W. J. Browne - St. John's West - Progressive Conservative).

33. Ibid., p. 3778 (Clarence Gillis).

34. Ibid., p. 3766-7 (Alistair Stewart).

35. Minutes, p. 117.

36. Minutes, pp. 151-9.

37. S.O. 1951, c. 24.

38. R.S.M. 1954, c. 81.

39. Canada, Parliament, House of Commons, Journals, Seventh Session, Twenty-First Parliament, p. 610.

40. _____, Department of Labour, Annual Report 1954, p. 20.

41. Ibid., Annual Report 1955, p. 68.

42. Ibid.

43. Debates, July 30, 1956, pp. 6659-73 (S.C. 1956, c. 38).

44. S.O. 1951, c. 26; S.S. 1952, c. 104; S.B.C. 1953, c. 6.

45. Bill 445, clause 4.

46. Ibid., clause 5.

47. Ibid., clause 13.

48. Ibid., clause 6 (1).

49. Ibid., clause 6 (2).

50. Ibid., clause 6 (3).

51. Ibid., clause 6 (4).

52. Ibid., clause 7.

53. Ibid., clause 8.

54. Ibid., clause 6 (11).

55. Ibid., clause 11.

56. Debates, pp. 7080-3.

57. Ibid., P. 7081.

58. Canada, Parliament, Canada Gazette, Volume 90, September 22, 1956, p. 3246.

59. _____, Department of Labour, Annual Report 1956 and Annual Report 1966.

60. Ibid. Annual Report 1967.

61. Ibid., Annual Report 1968.

62. S.C. 1966-67, c. 62, s 30.

63. S.C. 1970-71-72, c. 50, s 8.

64. R.S.C. 1970, c.l. - 1 amended by S.C. 1970-71-72, c. 50, s. 63, 69 and 70.

65. Debates, Third Session, Twenty-Eighth Parliament, May 5, 1971, p. 5520 and December 27, 1971, p. 10810.

66. Canada, Department of Labour, Annual Report 1966.

67. Ibid., Annual Report 1968 to Annual Report 1977.

68. Ibid., Annual Report 1971.

69. Ibid., Annual Report 1972.

70. Debates, May 10, 1972, p. 2129.

71. Canada, Department of Labour, Annual Report 1976.

(b) Public Service Commission

72. See Blue Book of Canadian Business 1979 (Toronto: Hunter-Rose, 1979) and Canada, Public Service Commission, Annual Report 1980. Comparison reveals that the federal government employs approximately 268,000 (excluding Crown corporations) versus 90,000 employed by Bell Canada, the largest private employer.

73. S.C. 1960-61, c. 57.

74. S.C. 1966-67, c. 71.

75. P.C. 1972-2569, unpublished made pursuant to The Public Service Employment Act, s. 4 (f).

76. There have always been less than six investigators and four support staff (interview with P.D. Fitzmaurice, Director, Anti-Discrimination Directorate, Appeals and Investigation Branch, Public Service Commission, Ottawa, September 3, 1980).

77. Canada, Public Service Commission Annual Report 1975, p. 23. The legal authority for this policy would appear to be s. 10 which proscribes unmeritorious conduct.

78. Ibid., Annual Report 1973, p. 31.

79. Ibid., Annual Report 1974, p. 30.

80. Fitzmaurice.

81. s. 7 (2).

82. Fitzmaurice.

83. S.C. 1974-75-76, c. 66, s. 10.

84. For a more detailed summary of the activites of these offices, see the Annual Reports of the Public Service Commission.

85. Canada Department of National War Services, Annual Report 1943, p. 8.

86. Ibid., Annual Report 1945, p. 20.

87. Ibid.

88. _____, Secretary of State, Annual Report 1949, p. 78.

89. Pursuant to The Department of State Act, S.C. 1868, c. 42, s. 3 (and R.S.C. 1942, c. 77, s. 4).

90. S.C. 1946, c. 15.

91. Canada, Department of Citizenship and Immigration, Annual Report 1950, p. 9.

92. Ibid., Annual Reports 1950-65.

93. S.C. 1966-67, c. 25, s. 34.

94. Canada Secretary of State, Annual Report 1967, p.7.

95. United Nations Canadian Secretariat, International Year of Human Rights in Canada, 1968, Report of Proceedings, p. 6.

96. Canada Secretary of State, Group Understanding and Human Rights Programmes, "Statement of Purpose," xeroxed outline, p. 26.

97. Ibid., p. 35.

98. Interview with Guy Voisin, Director, Group Understanding and Human Rights Programme, November 7, 1978.

99. S.C. 1976-77, c. 52.

100. S.C. 1955, c. 50.

101. S.C. 1936, c. 24, s. 22 (1).

102. CBC Regulations for Broadcasting Stations: se P.C. 252, January 22, 1941, Statutory Orders and Regulations Consolidation 1949, Volume 1, 3.7, p. 220.

103. Television Broadcasting Regulations, Consolidated Regulations of Canada 1978, Volume IV, c. 381, s. 6 (1), p. 2603.

104. The Broadcasting Act, S.C. 1967-68, c. 25, s. 16 (2).

105. Ibid., s. 19. Also see CRTC Rules of Procedure, Consolidated Regulations of Canada 1978, Volume IV, c. 375, p. 2539.

106. Ibid.

107. Canada, Parliament, Canada Gazette Part II, Volume 89, 1955, SOR/54-700, p. 368.

108. S.C. 1953-54, c. 23 and R.S.C. 1970, Volume V, c. N-10.

109. Canada, Parliament, Canada Gazette Part II, Volume 105, SOR/71-435, p. 1418.

110. Ibid., s. 57 D.

111. Ibid., s. 57 E, F.

112. Ibid., s. 57 H, I, J, K.

113. Ibid., s. 57 C.

114. S.C. 1976-77, c. 52.

115. S.C. 1940, c. 44.

116. S.c. 1952, c. 51, s. 16.

117. S.c. 1955, c. 50, s. 22.

118. S.C. 1970-71-72, c. 48, s. 140 (2) (b).

119. S.C. 1960, c. 44.

120. Constitutional Law of Canada (Toronto: Carswell, 1977), p. 424.

121. "Just Deserts or Cruel and Unusual Treatment or Punishment? Where do we look for guidance" Ottawa Law Review 10 (1978): 2.

CHAPTER III

TOWARD COMPREHENSIVE LEGISLATION

The initial step in the public policy-making process is the articulation of political demands which either subtly or overtly guides a Government's construction of policy priorities.[1] The articulators of a demand for a Canadian Human Rights Act came from several quarters in the political system; they had an interdependent effect and no impetus can be held solely responsible for new policy. This chapter examines the sources of the political demands.

There were forces upon Parliament, such as the international commitment of the United Nations and national interest groups. The role of the United Nations is diagnosed in part (a). Forces within Parliament, such as political parties, the effects of constitutional debate, and the Report and recommendations of the Royal Commission on the Status of Women, are explored in parts (b), (c), and (d), respectively. Part (e) looks at major interest groups of the labour movement, the legal profession, and the women's rights movement and a summary is provided.

(a) The Influence of the United Nations

The shock of the world community from the terrifying violations of human rights preceding and during World War II was largely responsible for the establishment of the United Nations. It is not

surprising that human rights' protection became a major goal of the organization.

Professor John P. Humphrey has validly stated that "... every article (in the Charter of the United Nations) which refers to the purposes of the United Nations also refers, in incorporation, to human rights."[2] Therefore, when Canada became a signator to the United Nations Charter a commitment was made to comply with certain international legal and moral obligations. Subsequent United Nations studies, conferences, publications and documents as well as Canada's ratification of conventions and covenants, further established the body's potential influence on Canadian values and law. The actual effect of the United Nations on Canada's protection of human rights is difficult to measure and has merely been speculated upon by observers. At the very least, it has been held that United Nations' expressions of human rights values have lent support to legislators who have pressed for legislated safeguards.[3]

A more overt pressure from the United Nations may have led to legislative action in the area of anti-discrimination. One of the earliest calls for the creation of a federal human rights commission emanated from activities surrounding the celebration of the twentieth anniversary of the Universal Declaration of Human Rights. Member states were asked in 1963 to devote 1968 to activities, ceremonies and observances relating to human rights. More particularly, members were urged in 1965 to take immediate action to extend human rights protection in many areas and emphasize the urgent need to elminate discrimination. The

needs and achievement were to be reviewed in 1968.[4]

Co-ordinated by an Interdepartmental Committee of the federal Government, a "National Consultation" of voluntary groups and federal and provincial governments met in September, 1966. Among 18 proposals, the delegates stated:

> By 1968 there should be human rights legislation and full-time adminstration of that legislation in all provinces;
>
> Before or during 1968 there should be established a National Council for Human Rights;
>
> Before 1968 an Ombudsman should be instituted;
>
> A Commission should put teeth in the Bill of Rights.[5]

A continuing provisional committee, established to refine the proposals, recommended in February, 1967, that there be an "extension of human rights legislation and enforcement methods throughout Canada."[6] This recommendation was one of thirteen that formed a basis for discussion and national observance in 1968.

To end International Year for Human Rights, a National Conference was held in Ottawa on December 1, 2, and 3, 1968. More than 500 delegates representing hundreds of groups interested in extending human rights protection attended. The declared purpose of the Conference was as follows:

> To assess the current Human Rights situation in Canada in light of the United Nations Universal Declaration; to provide a national forum for consideration of reports from provincial committees and national organizations interested in Human Rights; to establish and develop a structure for a continuing programme to promote Human Rights in Canada after International Year for Human Rights.

In particular, delegates were to determine "What still needs to be

done?" and "What specific recommendations should be made to the government ...?"[7]

To respond to the latter question, ten topical seminars made several recommendations to government. The "Human Rights Commission" seminar recommended that:

> All jurisdictions in Canada should review the adequacy of their human rights legislation with respect to the Universal Declaration and those jurisdictions which have no effective administration to deal with problems of minority groups and individuals should immediately take steps to establish full-time administrations and staff to secure the rights of minority groups and individuals.[8]

From the "Labour and Economic Rights" seminar the following was recommended:

> Provinces and the federal government should be encouraged to follow the example of Ontario by establishing full-time human rights commissions for enlightened enforcement of legislation and to institute government-sponsored programmes designed to disseminate information on our laws and the services available to citizens who have reason to complain of discrimination.[9]

Whether the Anniversary year had a direct effect upon the Government or not is unclear but it should be noted that when Grace MacInnis (NDP - Vancouver-Kingsway) introduced a Private Members' bill to Parliament in 1969 to consolidate human rights legislation, and further recommended the establishment of a human rights commission, she stated, "This act is designed to further, in Canada, the Declaration of Human Rights determined by the United Nations and marked by Human Rights Year in 1968."[10] As well, Canadians were surely given a greater insight into human rights and gaps in current legislation. Furthermore, the United Nations spurred several national groups to hold their own sessions to study human rights and recommend

improvements to legislation, as noted below. In an adversary political system these results have a significant value. Good ideas emanating from increased awareness of an issue can be advanced as "selling points" in political platforms or by interest groups.

(b) The Influence of Political Parties

It has been generally accepted that the influence of political parties on policy-making is not as great as might be expected. This seems borne out in the case of anti-discrimination policy. The topic has seldom been raised as an election campaign issue. During the 1972 General Election, Otto Lang (Liberal - Saskatoon-Humboldt) announced the Liberal Party's committment to the establishment of a "Commission on Rights and Interests."[11] During the 1972 and 1974 General Elections the NDP proposed strengthened laws to ensure men and women equal pay for work of a comparable nature and non-discrimination on the basis of sex and marital status. The 1972 party programme included advocating an agency to administer anti-discrimination law with "... broad powers of investigation and enforcement, ... able to guarantee protection against, discriminatory action."[12] Unfortunately, media and opponent attention did not allow the statements much potential for discussion. Partisan pronouncements, especially during elections, dwell more on economic issues and records of government management. The apparent absence of an ideological dimension to anti-discrimination policy further diminishes the possibility for significant partisan debate.

The limited partisanship over the issue has been evident in Parliament as well as on the election hustings. Pressure on the Government to extend legislation was evident during the passage of The Canada Fair Employment Practices Actand The Female Employees Equal Pay Act but were absent from the assent of the latter in 1956 until 1960.

The introduction of Private Members' bills is a vehicle opposition parties and individual Members use to bring matters to the attention of Parliament and the public. Due to a restrictive time limit for dealing with Private Members' bills and an attitude of indifference to these bills by the Government, the bills rarely even reach Second Reading. One study has shown that from the 5th Session of the 24th Parliament to the 4th Session of the 28th Parliament, only 28 out of hundreds of Private Members' public bills were enacted; 21 merely readjusted electoral boundaries of particular electoral divisions.[13]

Private Members' bills have been the most visible method of advocating strengthened anti-discrimination law. Except for two Private Members' bills sponsored by a Progressive Conservative, all anti-discrimination bills were introduced by Members of the CCF/NDP (See Appendix I). Most bills proposed amending The Canada Fair Employment Practices Act to include "age" and "sex" as prohibited grounds of discrimination, or proposed extending the Act to bind the Crown. On four occasions, however, Grace MacInnis introduced bills to enact a "Canadian Human Rights Code." The first introduction was in January, 1969, and her subsequent bills were identical. The last

appearance of a bill of this kind was in February, 1972.

The wording of the bills was taken from two Parts of The Ontario Human Rights Code excepting the addition that federal works and undertakings were to be bound, which was taken from The Canada Fair Employment Practices Act, and that the Government of Canada was also bound. There was to be no discrimination because of a person's race, creed, colour, sex, nationality, ancestry or place of origin in notices, signs, symbols, emblems or other representations, in accomodation, commercial units, employment (employment agencies, advertising, and application forms), or trade unions. Penalties were prescribed to a maximum of $1,000 and two years' imprisonment for individuals and $10,000 for corporations, trade unions, employers' organizations, and employment agencies. It was an oversight on the part of the bill's drafters to include a provision stating there shall be no prosecutions without the written consent "of the Attorney General." As well, enforcement was to be made an order of the Supreme Court, which appears to mean the Supreme Court of Ontario.

The only time MacInnis spoke on one of the bills was in 1969. She stated:

> A human rights commission should be set up to administer the act. It should consist of two divisions, one to consider complaints and studies on the basis of sex, the second on the basis of the other listed headings. However, as it is not within the rights of a private member to propose measures involving government expenditures, such a proposal cannot be included in this act.[14]

Subsequent discussions in the House revolved around the introduction and passage of the two Government bills to enact the

Canadian Human Rights Act. Representatives from all parties urged the Government to implement legislation and all took part in debate. This is further discussed in Chapters V and VI.

(c) Constitutional Reform

Pierre Trudeau (Liberal - Mount Royal) became Minister of Justice at a time when demands for consitutional change were emanating from Quebec. Ottawa was pressed to act when the Province of Ontario convened a meeting of provincial Premiers, called the "Confederation of Tomorrow Conference" in November, 1967. This not only brought problems of federalism to public attention, but also threatened Ottawa's traditional role as the initiator of such conferences.

As a response, the federal Government invited the Premiers to a Constitutional Conference in February, 1968, and Trudeau prepared a discussion paper entitled "A Canadian Charter of Human Rights."[15] This articulated his personal dedication to an entrenched Bill of Rights. The paper proposed that egalitarian rights should be included in a Bill of Rights. Trudeau stated that

> Federal legislation and legislation in eight provinces and both territories prohibit discrimination in employment. Seven provinces and the two territories also prohibit discrimination in public accommodation. The greater number of these statutory provisions, however, are designed to affect only private conduct. A constitutional bill of rights would serve to limit discriminatory activities on the part of governments as well.[16]

Accordingly, it was proposed that there should be no discrimination on the grounds of race, national origin, colour, religion, and sex in (i) voting for, or the holding of, public office; (ii)

employment; (iii) admission to professions where admission is controlled by professional bodies acting under legislative authority; (iv) education; (v) public accomodations, facilities and services; (vi) contracting with public agencies; and (vii) acquiring of property and interest in property. It was recommended that legislation would also be necessary to make these rights effective.[17]

At the time, no immediate consideration was being given to the establishment of a federal human rights commission and consolidated legislation. The limited federal jurisdiction over anti-discrimination policy was cited as a reason by Pierre Trudeau in October, 1967. However,he stated in the House that"... I will give further consideration to the question in view of the fact that we intend to have a conference on the bill of rights which would put the question of discrimination above both federal and provincial jurisdiction."[18]

At the First Constitutional Conference, and at the two Constitutional Conferences which followed, it was increasingly evident that the provinces did not share the federal Government's enthusiasm for a constitutional Bill of Rights. The provinces were generally concerned about more pragmatic solutions to immediate concerns. Quebec also disputed whether human rights was a federal matter and declared that the subject should be examined only after the other contents of a new constitution had been agreed upon.

The Consitutional Conferences served as the groundwork for a Conference at Victoria in June 1971 when a final bargaining session for

a new constitution was held. At Victoria a proposed constitution, known as the "Victoria Charter", was drawn up as a package and presented to the provinces for total acceptance or rejection. Part I contained a provision that:

> No citizen shall by reason of race, ethnic or national origin, colour, religion or sex, be denied the right to vote in an election of members to the House of Commons or the Legislative Assembly of a Province, or be disqualified from membership therein.[19]

This protection hardly compared with the suggestions of Mr. Trudeau in 1968. The federal Government's hopes to extend anti-discrimination provisions was further dashed when the Quebec Government rejected the Victoria Charter on the grounds that it did not appease Quebec demands for more provincial control of social policy.[20]

Discussions in the Privy Council Office and Department of Justice in favour of furthering rights, initiated by Trudeau when he was Justice Minister, were heightened after the failure of the consitutional reform process. Ways were looked for that would enable an extension of rights as far as federal jurisdiction allowed. This was reinforced when The Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada reported in March, 1972. After two years of study, the Committee stated its recommendation that:

> The Constitution should prohibit discrimination by reason of sex, race, national origin, colour or religion by proclaiming the right of the individual to equal treatment by law.

and

> Discrimination in employment, or in membership in professional, trade or other occupational associations, or in obtaining public accomodation and services, or in owning, renting or holding property should also be declared contrary to the Bill of Rights.[21]

The Committee accurately added that "The full control of discrimination practised by private citizens would necessitate the supplementing of such constitutional provisions with ordinary legislation at both Federal and Provincial levels."[22] It is in fact questionable whether constitutional anti-discrimination provisions would affect discrimination practised by governments as effectively as ordinary legislation. Nonetheless, the Committee outlined ambitions in the area of federal human rights policy.

(d) The Report and Recommendations of the Royal Commission on the Status of Women

Mounting lobbying pressures from notably the National Action Committee on the Status of Women convinced the Government to name seven persons to a "Royal Commission on the Status of Women" by February, 1967. The purpose was "... to inquire into and report upon the status of women in Canada, and to recommend what steps might be taken by the Federal Government to ensure for women equal opportunities with men in all aspects of Canadian society...."[23] On September 28, 1970, the Commission submitted its report to Cabinet. Included were 167 recommendations for change to government statutes, regulations, policies and practices. 122 of these recommendations affected matters within federal jurisdiction.

Four recommendations were directly aimed at amending existing federal anti-discrimination laws.[24] The report stated that The Canada

Fair Employment Practices Act and The Female Employees Equal Pay Actshould apply to all employees of the Government.[25] Furthermore, the latter Act and The Fair Wages and Hours of Labour Regulations should require that:

(a) the concept of skill, effort and responsiblity be used as objective factors in determining what is equal work, with the understanding that pay rates thus established will be subject to such factors as seniority provisions;
(b) an employee who feels aggrieved as a result of an alleged violation of the relevant legislation, or a party acting on her behalf, be able to refer the grievance to the agency designated for that purpose by the government administering the legislation;
(c) the onus of investigating violations of the legislation be placed in the hands of the agency administering the equal pay legislation which will be free to investigate, whether or not complaints have been laid;
(d) to the extent possible, the anonymity of the complainant be maintained;
(e) provision be made for authority to render a decision on whether or not the terms of the legislation have been violated, to specify action to be taken and to prosecute if the orders are not followed;
(f) where someone has presented the aggrieved employee's case on her behalf and the aggrieved employee is unsatisfied with the decision, she have the opportunity to present her case herself to the person or persons rendering the decision who may change the decision;
(g) the employee's employment status be in no way adversely affected by application of the law to her case;
(h) where the law has been violated, the employee be compensated for any losses in pay, vacation and other fringe benefits;
(i) unions and employee organizations, as well as employers and employer organizations, be subject to this law;
(j) penalties be sufficiently heavy to be an effective deterrent; and
(k) the legislation specify that it is applicable to part-time as well as to full-time workers.[26]

It was also recommended that The Canada Fair Employment Practices Act, and Fair Wages and Hours of Labour Regulations, and The Unemployment Insurance Act be amended to include "sex" and "marital status" as prohibited grounds of discrimination.[27]

Of greatest significance was one of the final recommendations of

the Royal Commission. While recognizing that most of the Report's recommendations answered immediate needs, it was stressed that "... the larger issues of custom and belief which have given rise to discrimination against women..." could not be ignored.[28] Therefore, to keep a continuing watch on the rights of women, a federal Human Rights Commission was recommended that would:

> a) be directly responsible to Parliament; b) have power to investigate the administration of human rights legislation as well as the power to enforce the law by laying charges and prosecuting offenders; c) include within the organization for a period of seven to ten years a division dealing specifically with the protection of women's rights legislation and promote widespread respect for human rights.[29]

This recommendation did not make it clear if the proposed commission should be similar to that of Ontario where complaints made under a consolidated code are received, investigated and conciliated, or whether the commission should oversee the separate administrations of the several existing statutes. The recommendation that a separate agency be established to administer a revised Female Employees Equal Pay Act and The Fair Wages and Hours of Labour Regulations suggests the latter.

The second significant recommendation of the Royal Commission was that a Status of Women Council be established which would be directly responsible to Parliament and would:

> a) advise on matters pertaining to women and report annually to Parliament on the progress being made in improving the status of women in Canada; b) undertake research on matters relevant to the status of women and suggest research topics that can be carried out by governments, private business, universities and voluntary associations; c) establish programmes to correct attitudes and prejudice adversely affecting the status of women; d) propose legislation, policies and practices to improve the status of women; and e) systematically consult with women's

bureaux or similar provincial organizations and with voluntary associations particularly concerned with the problems of women.[30]

It has been a recurring theme of writers exploring the role of royal commissions that the final reports are almost always banished to the bowels of federal libraries because they have been "...left to the tender mercies of the executive with no continuing pressure group remaining behind to urge decision and action."[31] However, on May 31, 1973, John Munro (Liberal - Hamilton East), the Minister Responsible for the Status of Women, announced the creation of the Advisory Council on the Status of Women (ACSW). The body was to perform the functions recommended in the Report. Thirty members were appointed from across Canada to meet periodically and a small support staff was provided.

The appointment of the ACSW was unique in two ways. First, its mere appointment deviated from the norm of political practice. Second, the Council was made independent in its reporting mechanism. Annual reports to Parliament could not be amended and refined by a Deputy Minister nor a Minister. Consequently, the ACSW could behave more like a pressure group than a government department. Indeed, if the Government had not adopted the recommendation favouring a permanent body, the other recommendations may have had more limited success.

During its first year the ACSW met five times to establish priorities. At its first meeting the establishment of a federal human rights commission was the top priority; the second was amendment to The Canada Labour Code to ensure equal access to job opportunities.

These priorities were confirmed at the subsequent meetings of the ACSW. The Council's first Annual Report to Parliament explained that "Human rights is a crucial issue and it was not accident that priority has been placed on the establishment of a federal human rights commission. Equal access to employment opportunities is a key issue in the participation by women in the economic and social life of the country."[32]

In March, 1974, the ACSW published a booklet entitled What's Been Done? to publicize the Government's efforts in dealing with the recommendations of the Royal Commission Report. The booklet stated that legislation to establish a commission should be introduced immediately. It was then explained that:

> ...The Human Rights Commission should have powers to prosecute, impose fines, issue injunctions, order payment of damages, hear complaints dealing with legislation which prohibits discrimination, investigate suspected cases of discrimination and act as a regulatory body. It should report directly to Parliament.
>
> Provisions should be made in the Human Rights Commission legislation enabling class action and supporting affirmative action by government. The protection of the individual should be assured through providing for the submission of anonymous complaints. Appeal of decisions made by the Human Rights Commission should exist and be clearly defined.
>
> The Human Rights Commission should consist of an uneven number of appointees, not necessarily lawyers, and no less than five. These appointees should realisitically represent the male-female population distribution in Canada.[33]

In the ACSW's Annual Report 1974-75, criticism was centered on the Government's inaction to establish a human rights commission. Noting that "The federal Government remains the laggard in this field," and that "action ought by now to have been taken," the Annual Report

recognized that women still had no legal recourse when they are denied access to employment opportunities in areas under federal jurisdiction.[34] In 1976, the ACSW reaffirmed its main commitment to the establishment of a human rights commission and in the Annual Report that year the Chairman stated: "The delay in establishing a federal human rights commission is a dismal monument to the perpetuation of a status quo in which women are less equal than men."[35] Each statement received widespread media attention.

(e) Other Influences and Summary

Three major interest groups urged Government action on anti-discrimination policy. Mostly because of their prestige and resources, the Canadian Labour Congress (CLC), the Canadian Bar Association, and the National Action Committee on the Status of Women (NACSW) were likely influential when making recommendations to Parliament. It is perhaps interesting to note that while visible racial and ethnic minority groups significantly pressed for legislation in the United States, their role was noticeably negligible in Canada. This may be due in part to the unorganized activities of Native Canadians and the relatively low percentage of blacks in the total Canadian population.

Since World War II, religious organizations, notably Jewish interests, and the Canadian labour movement have lobbied governments to enact anti-discrimination legislation and hold partial credit for the passage of early Fair Employment and Fair Accomodation Practices Acts in Canada. As well, the Canadian Labour Congress has made several

representations to the federal Government urging improvements to existing anti-discrimination provisions.[36] In November, 1968, the CLC held a National Conference on Human Rights. Five of twenty-six recommendations of the Conference concerned the betterment of federal anti-discrimination statutes and programmes. From these recommendations the CLC made a representation to the Government in February, 1969, urging "... the establishment of a permanent Human Rights Commission fully staffed and able to engage in a comprehensive programme concerning human rights within the federal domain." It was also specifically urged that educational and research endeavours be conducted and that legislation be extended to cover housing accommodation.[37] The CLC eventually continued to support the establishment of a human rights commission in its annual formal representations to the Government until The Canadian Human Rights Act was passed.

The Canadian Bar Association also recognized the anniversary of the Universal Declaration of Human Rights when it adopted a resolution at its 1967 annual meeting endorsing the principle "... of the establishment of a Canadian National Commission on Human Rights whose function will include such activities as may assist in the struggle to eliminate discrimination in all its forms."[38] The Association envisioned that the Commission would conduct research and educational programmes and perhaps would "... take responsiblity for law enforcement in the human rights area wherever and whenever the Commission is constitutionally capable of acting; that is to say, to serve as a federal human rights agency."[39] The contents of the resolution were brought to the floor of the House of Commons a month later by Barry Mather (NDP - Surrey-White Rock) who urged Pierre Trudeau, then

JusticeMinister, to act.[40]

Another interest group that played a role leading to the development of The Canadian Human Rights Act was the National Action Committee on the Status of Women (NACSW), a national federation of women's organizations. The NACSW grew out of the Committee for the Equality of Women in Canada (1966) which had mounted a national lobby leading to the establishment of the Royal Commission on the Status of Women. After the Commission report, the NACSW made the implementation of the Report's recommendations its main objective. Since 1972, its major policy has been to press the federal Government to promptly establish a human rights commission, although it has never advocated a consolidation of anti-discrimination legislation. Repeated representations to Cabinet Minsters have been made on the issue.[41]

Literature on the bureaucracy suggests that its influence on policy-making is significant. In the case of the development of The Canadian Human Rights Act, however, the bureaucrats appear to have played a minimal role, if one excludes the ACSW. It is commonly known that administrators of The Canada Fair Employment Practices Act were dissatisifed with their governing legislation and that The Female Employees Equal Pay Act was ineffective.[42] There is no evidence of suggestions that legislation should be consolidated, nor that a human rights commission should be established, however. Of course there was a fairly small number of bureaucrats or experts involved in administering anti-discrimination programmes and so there were few resources available for inside lobbying. Perhaps the segregation of anti-discrimination responsiblities also prevented bureaucrats from envisioning

an entirely new structure; change could only be envisioned within existing legislation and agencies.

It has been shown that most policies are formulated incrementally.[43] In other words, "what is most feasible is what is purely incremental, or can be made to appear so."[44] Given that new policy would mean the centralization and coordination of federal anti-discrimination provisions, many departmental agencies could be affected. In the early 1970's these disruptions were perceived as numerous. "Little empires" cannot destroy themselves. It is therefore suggested that change could only be initiated "from above."

Gordon Fairweather has stated that the Report of the Royal Commission on the Status of Women "... provided the necessary catalyst to the formation of a Human Rights Commission."[45] From histories of the fate of royal commission reports it cannot be easily assumed that the Report, by itself, would have been a catalyst if not for the Advisory Council on the Status of Women and National Action Committee. Although the ACSW was a vocal intra-Parliamentary pressure, the effect of its efforts should not be overstated. The Council did not formulate new legislative goals within the parliamentary system - a function normally accorded to advisory councils. It was not allowed to work with Ministers, the Privy Council Office or even the bureaucracy;[46] it relied on annual reporting to Parliament and press coverage to achieve its goal. It must be conceded that the Government knew when it appointed the Council that the ACSW would press for a human rights commission and perhaps comprehensive legislation. The ACSW was therefore more of a policy output than a policy input. The Government had committed

itself to the idea of the establishment of a human rights agency in October, 1972, before the ACSW was formed anyway.

The failure of constitutional reform negotiations to entrench significant protections of human rights would appear to have been the real catalyst. Any alteration of the political infrastructure by way of constitutional change would certainly not be regarded as incremental change. Extending desired human rights protection by way of legislative and administrative change would be. In other words, on the bureaucratic level, a reorganization of several programmes would appear dramatic while on the constitutional level, a change to legislation and the bureaucracy would appear to be a relatively piecemeal substitution in the movement toward a constitutional Bill of Rights.

Change was definitely aided by indications of widespread support. Although there were no intense pressures on the Government, and interest groups and the parties all expressed slightly different and sometimes vague ideas, the general consensus by 1974 was for consolidation of legislation and a human rights agency.

Notes

1. Richard J. VanLoon and Michael S. Whittington, The Canadian Political System (Toronto: McGraw-Hill Ryerson Ltd., 1976), p. 20-4.

2. John P. Humphrey, "The U.N. Charter and the Universal Declaration of Human Rights, "The International Protection of Human Rights ed. Evan Luard (London, 1967), p.46.

3. See Walter Tarnopolsky, "The Impact of United Nations Achievements on Canadian Law and Practices," Human Rights, Federalism and Minorities ed. Allan Gotlieb (Canadian Institute of International Affairs, 1970).

4. United Nations Canadian Secretariat, International Year for Human Rights in Canada, Report of Proceedings, p. 1-2.

5. Ibid., p. 10.

6. Ibid., p. 14.

7. Ibid., p. 101.

8. Ibid., p. 125.

9. Ibid., p. 136.

10. Canada, Parliament, House of Commons, Debates, First Session, Twenty-Eighth Parliament, p. 4813.

11. _____, Office of the Minister of Justice, "Lang to Establish a Permanent Commission on Rights and Interests", Press Release, October 21, 1972.

12. New Democratic Party, Program (Ottawa, 1972); People Matter More(Ottawa, 1974), p. 11. It should be noted that the CCF has always advocated equal reward and opportunity of advancement for equal services irrespective of sex and equal treatment before the law irrespective of race, nationality or religious or political beliefs. See the "Regina Manifesto," July 1933 in Walter D. Young, The Anatomy of a Party : The National CCF 1932-61 (Toronto: University of Toronto Press, 1969), p. 307, 311.

13. Marie Cordeau, "Private Members' Hours, "The Canadian House of Commons Observed ed. Jean-Pierre Gaboury and James Ross Hurley (Ottawa: University of Ottawa Press, 1979), p. 61. Also see R. V. Stewart Hyson, "The Role of the Backbencher - An Analysis of Private Members' Bills in the Canadian House of Commons," Parliamentary Affairs 27 (1973-74), pp. 262-72.

14. Debates, January 27, 1969, p. 4813.

15. Canada, Department of Justice, A Canadian Charter of Human Rights (Ottawa, 1968).

16. Ibid., pp. 25-6, 29-30.

18. Debates, Second Session, Twenty-Seventh Parliament, October 6, 1967, p. 2875.

19. Canada, Parliament, Sepcial Joint Committee of the Senate and the House of Commons on the Constitution of Canada, Final Report, March 1972, p. 106, article 5.

20. See Richard Simeon, Federal - Provincial Diplomacy. The Making of Recent Policy in Canada (Toronto: University of Toronto Press, 1973).

21. Final Report, p. 96.

22. Ibid., p. 20.

23. P.C. 1967-312, February 16, 1967.

24. It should also be noted that recommendation 16 pressed for amendment to The Canada Fair Employment Practices Act to provide for maternity leave rights.

25. Canada, Royal Commission on the Status of Women in Canada, Report(Ottawa, 1970), recommendation 2.

26. Ibid., recommendation 8.

27. Ibid., recommendation 24 and 25.

28. Ibid., p. 387.

29. Ibid., recommendation 165.

30. Ibid., recommendation 166.

31. J.E. Hodgetts, "Public Power and Ivory Power", Agenda 1970: Proposals for a Creative Politics ed. T. Lloyd and J. McLeod (Toronto: University of Toronto Press, 1968) p. 276.

32. Canada, Advisory Council on the Status of Women, Annual Report 1973-74(Ottawa, 1974).

33. What's Been Done? (Ottawa, 1974) p. 29.

34. Ibid., Annual Report 1974-75 (Ottawa, 1975).

35. Ibid., Annual Report 1975-76 (Ottawa, 1976), p. 5.

36. See Arnold Bruner, "The Genesis of Ontario's Human Rights Legislation: A Study in Law Reform," University of Toronto Faculty Law Review 37 (1979): 236--53. As early as 1956, the CLC passed resolutions at its Annual Conventions urging the government to ensure equal pay regardless of sex and institute more effective enforcement of fair employment practice law.

37. Canadian Labour Congress, Memorandum to Government 1969, p. 27.

38. Canadian Bar Association, 1967 Year Book and Minutes of Proceedings of its Forty-Ninth Annual Meeting, September 4 - 9, 1967 (Ottawa National Printers Ltd. 1967), p. 134.

39. Ibid., p. 59.

40. Debates, Second Session, Twenty-Seventh Parliament, October 6, 1967, p. 2875.

41. National Action Committee on the Status of Women, Status of Women News, various editions.

42. See Ray Traversy, "FEP Legislation. How Far Have We Come? How Far Yet to Go?" Labour Gazette 75 (1975): 625 Interview with G. Berkel, Counsel, Canadian Human Rights Commission, Ottawa, June, 1978.

43. See D. Braybrooke and C. Lindblom, A Study of Decision Policy - Making Process (Englewood Cliffs, N.J.: Prentice Hall, 1968).

44. Ralph Huitt, "Political Feasibility," Policy Analysis in Political Science ed, Ira Sharkansky (Chicago: Markham, 1970), p. 410.

45. Gordon Fairweather, "The Canadian Human Rights Commission," The Practice of Freedom ed. R. St. J. Macdonald and John P. Humphrey (Toronto: Butterworths 1979), p. 310.

46. Doris Shackleton, Powertown (Toronto: McClelland and Stewart, 1977), p. 102.

CHAPTER IV

THE GENESIS OF A BILL

The formulation and adoption of new anti-discrimination policy and the drafting of legislation spanned almost three years. While the gestation period for new legislation is often lengthly, in this case some of the delay was due to the ambitious nature of the policy contemplated at several stages. At different times the legislative proposal contained not only anti-discrimination provisions but also included an ombudsman feature with provision for an authority to receive and deal with complaints about both public and private organizations and a mechanism for allowing individuals to inspect and correct personal information in government data banks. In this developmental period, from October 1972 to July 1975, a General Election and a legislative agenda packed with pressing economic matters further slowed the introduction of a new bill. Parts (a), (b) and (c) examine this period. Part (d) summarizes Bill C-72 and comments on some of its important aspects. Part (e) then examines the reasons for the death of the Bill and part (f) offers a summary of the chapter.

(a) Government Commitment

The first indication that the Government was committed to a new direction in anti-discrimination policy surfaced during the 1972 federal General Election. Justice Minister Otto Lang announced on October 20 that a "Commission on Rights and Interests" would be established to

serve as "... an important further step in the Trudeau administration's program of protecting more effectively those who cannot protect themselves, and of fairness and equality in fact and in law."[1] The proposed Commission blended well with Trudeau's "Just Society" theme, which had been reflected in law reform measures passed during the previous parliamentary session.

Lang proposed that the Commission would be established by the Department of Justice but it would have the required independence to protect citizens from excesses of the federal government. The body would have one chief commissioner with a staff of commissioners and researchers. Anti-discrimination functions including equal status for women were envisioned for the Commission, and it was intended that the Commission would also serve an ombudsman function. In this capacity, the agency would deal with complaints from citizens regarding maladministration of not merely governments but also businesses, unions, and social agencies. Lang said, "I hope to see it with power to protect against the power of intimidation by large bodies like corporations and unions and to assist individuals against the inertia of someone big who does not care. To the extent possible, I should like to see it protect individual rights and freedoms, including political freedoms against all governments including the provinces, so far as the constitution may allow."[2] Lang's press release concluded that solutions by the Commission would flow from moral persuasion and leadership, although penalties would be provided where conciliation failed. He also added that the necessary legislation would be ready in 1973 with the Commission established and operating within one year.[3]

In 1980, reflecting back on those events, Mr. Lang indicated that the announcement was necessary in order for him to gain media attention, something that was becoming increasingly difficult for Ministers to secure during elections. As far he could recall, his proposal had not gone to Cabinet for approval, but it had obtained the consent of the Prime Minister. The matter was internal to the Department otherwise and had only surfaced previously in very general terms.[4] Some basic materials on human rights legislation had been collected by the Legal Research and Planning section of the Department going back several years.

Proposals to establish a federal ombudsman had been discussed for about twelve years in Parliament. The matter was examined by the Privileges and Elections Committee of the House of Commons in 1964 and by the Department of Justice before 1966, but no positive action was ever taken.[5] Never before though had consideration been given to a federal ombudsman plan with the broad powers envisioned by Lang.

The proposal did not become an issue in the election and the matter probably went unnoticed by the majority of Canadians. Nevertheless the statement signalled an interest in the concept and obliged the Government to further consider the plan when the Liberals were returned to power with a minority Government on October 30, 1972.

Robert Stanfield, Leader of the Progressive Conservative Party

(Halifax), endorsed Lang's proposal in part in February 1973. In a speech to a Montreal audience, Stanfield called for a national human rights commission "... to deal with the whole range of individual rights in every field - be it labour, housing, the status of women or any other - under federal jurisdiction."[6] With this general support from the Official Opposition it was apparent that legislative proposals might be welcomed in the House of Commons.

In October, 1972, H.A. McLearn, a retired Armed Forces official, was contracted by the Department of Justice and soon after was assigned to collect further information and serve as a central resource person for the development of new anti-discrimination policy.[7] McLearn worked under the close supervision of Dr. Barry L. Strayer who was previously a constitutional advisor to the Privy Council Office and the Director of the Constitutional Law Section in the Department of Justice.[8] Strayer, as well as Lang, was personally committed to the project and this resulted in a high priority for the study within the Department.[9]

In the spring of 1973 Professor Walter Tarnopolsky, a recognized expert in the area of human rights and a former colleague of Lang and Strayer, was also contracted as a consultant. In the absence of any experts on anti-discrimination law within the federal government, his advice was relied upon to develop the basic framework of an anti-discrimination policy proposal for Cabinet. Much of his advice consisted of an elaboration and refinement of the views he had expressed earlier in an article, "The Iron Hand in the Velvet Glove: Administration and Enforcement of Human Rights Legislation in

Canada."[10]

Regular meetings attended by McLearn, Strayer, other departmental officials and the Minister were held, but most of the early discussions centered on the ombudsman idea. Policy formulation on this topic proved to be the most difficult task. There were concerns about reconciling the authority of an ombudsman with that of the Member of Parliament. Other ombudsman mechanisms, such as that of Sweden, were also examined. On the other hand, the anti-discrimination aspect of the policy proposal was more straight forward; there already existed a pattern of administration and legislation and so the policy options were evident.[11] Meetings were also initiated with representatives of other departments such as Labour and Secretary of State and there were informal consultations with provincial human rights commissions.

The introduction of legislation was seemingly imminent when proposed amendments to Part I of The Canada Labour Code that would have added "sex", "age", and "marital status" as prohibited grounds of discrimination were dropped early in 1973 pending the introduction of comprehensive anti-discrimination legislation.[12]

(b) Cabinet Approval

Contrary to Lang's election promise of new legislation in 1973, Cabinet did not receive a policy recommendation until October. According to Lang, the item lay on the agenda for about six to eight weeks before action was taken. When Cabinet approved Lang's

proposal, it was with expressed reservation about the need and effectiveness of the ombudsman feature.[13]

On December 10, 1973, on the occasion of the 25th anniversary of the United Nation's Declaration of Human Rights, Lang announced Cabinet's approval of the creation of a "federal commission for the protection of egalitarian rights."[14] Although the press release from Lang's office stated that the proposed commission would be a combination ombudsman/anti-discrimination tribunal, his speech to the House of Commons referred only to an anti-discrimination agency.

Lang promised legislation for the next session of Parliament. A bill would include the proposals originally intended for Part I of The Canada Labour Code. Lang stated that:

> The bill will contain provision for the principles and procedures under which the Commission would operate and establish the necessary powers of enforcement. In addition to being charged with administering the Act, the Commission would have an important role in promoting research and public education in relation to its purposes and functions. It would maintain close liaison with its equivalents in the provinces in order to foster common and improved policies and practices and to avoid conflict in cases of common jurisdiction. It would also keep abreast of developments respecting human rights at the United Nations and in other countries.[15]

The announcement was welcomed by the representatives of the three opposition parties.[16] On behalf of the Progressive Conservative Party, Gordon Fairweather (Fundy-Royal) expressed the hope that the commission would be given a simpler title than "Federal Commission for the Protection of Egalitarian Rights" and that the agency would be directly responsible to Parliament.

Pursuant to Lang's announcement, the Speech from the Throne opening the following session of Parliament on February 27, 1974, confirmed that legislation would be introduced creating a "Federal Commission on Human Rights and Interests."[17] During the Throne Speech Debate, Lang did not expand upon his department's plans. However, Monique Begin, then a Liberal backbench MP (Saint Michel) and the former Executive Secretary to the Royal Commission on the Status of Women, added that "... it is about time our country established a federal human rights commission, after at least six years of argument among departments as to who is the most discriminated against ... and through which department the commission would report." Begin also argued that the commission should have jurisdiction in the Yukon and the Northwest Territories, should be directly responsible to Parliament, and should have a distinct division to deal with women's rights.[18]

Following the Throne Speech Debate, Mrs. Grace MacInnis unsuccessfully attempted to have the House adopt a resolution urging the Minister Responsible for the Status of Women to immediately introduce the appropriate legislation.[19] Again, on April 9, 1974, in response to prodding from MacInnis, Lang stated the Government's intention to introduce the legislation "later in the session."[20] Such intentions were never fulfilled, however, because on May 3, 1974, the minority Liberal Government was defeated in the House and there was dissolution for a General Election.

(c) Developing Legislation

The designing of a bill was underway before the Election was called. Instructions had been submitted to Departmental drafters but the work was not complete.[21] The anti-discrimination provisions of the bill were generally drawn from the provincial human rights acts, which are modelled on The Ontario Human Rights Code. To a lesser extent the Uniform Law Commissioners' Model Anti-discrimination Act, drafted by the National Conference of Commissioners on Uniform State Laws, was also consulted. This Act was suggested legislation based on more than twenty years of experience with American human rights commissions and embodies what is thought to be the best features of existing laws. It was felt that the detailed provisions of the United States' law did not complement Canadian requirements, however.[22]

Other than Tarnopolsky whose influence was great, advice was solicited from Dr. Daniel Hill, former Director of the Ontario Human Rights Commission, who put light on the developing role of education and research for commissions and Professor Ian A. Hunter, legal advisor and author of studies on human rights legislation, whose experience with Ontario's legislation lent insight.[23] Despite the interest of many groups, such as the Advisory Council on the Status of Women, their advice as not sought.[24]

On July 8, 1974, the Liberals were re-elected to Parliament with a majority of seats and the Throne Speech of September 30 again noted

the Government's intention to introduce human rights legislation.

On November 6, the Government of British Columbia convened a Conference of Provincial Human Rights Ministers. The federal government was not invited to take part in the discussions because there was not a Minister yet designated to be responsible for human rights, although five observers from various departments, most notably Mr. McLearn from the federal Department of Justice, attended.[25]

The Conference discussions centered around a need for establishing a strong national coordinating body on human rights. However, near the end of the Conference another concern had emerged. Ron Ghitter, a Member of the Alberta Legislature stated:

> I can see some very critical times ahead in the human rights field as the federal presence will now come upon us, as there's the potential of duplication of services, as there's the potential of who will deliver the services; will we have a minimum standard, will there be federal enforcement provincially, will there be provincial enforcement, and I can see that unless we come to grips with these problems, that we can end up in a real mess....[26]

Similarly, Howard Pawley, Attorney General of Manitoba, stated, "I trust that there will not be a duplicate enforcement procedure developed across Canada, that the implementation of the federal law pertaining to human rights can be done through the provincial agencies.... I do think we have many, many areas that we have to research and to discuss with the federal people."[27] The Conference ended on that note.

Shortly afterward, Lang announced that the scope of the proposed human rights legislation was being broadened "... to protect persons

against the misuse of personal information." He cited the spring of 1975 when a commission might be in operation.[28]

The concern for the protection of personal information developed from a joint Task Force Report on Privacy and Computers of the Departments of Justice and Communications in 1971. In its report to Cabinet, the Task Force foresaw increasing potential danger as computers were used to store and retrieve personal information. Accordingly, it was suggested that measures should be taken by the Government to prevent any problems. On December 7, 1972, the Ministers of Justice and Communications announced the acceptance of the Task Force's suggestion and established an inter-departmental committee "... to draft specific rules and to develop mechanisms to implement and enforce these rules."[29] Although the committee had not made any recommendations at the time of Lang's announcement, the Cabinet decided that statutory authority should at least be sought for the Governor-in-Council to make regulations which would embody the recommendations of the committee after it reported.[30] It was also thought that this type of law should be incorporated with ombudsman-type legislation and so it was added to the developing human rights bill.

In Halifax in March, 1975, the Provincial Ministers Responsible for Human Rights met again. This time they gathered to discuss the federal human rights proposals with Lang. The Minister was unable to attend, however, and Strayer was sent in his place.

Strayer made it clear that there would be no discussion on the specifics of the human rights bill until it was introduced in Parliament.[31] He only spoke in general terms about the principles in the proposed bill. Mention was made of some of the unique problems faced when developing legislation of this kind at the federal level. The geographical demands upon a single commission, the provisions of The Indian Act which prescribe that Indians should be treated differently, and applying anti-discrimination legislation to operations in the immigration area were mentioned.

The proposed legislation would establish a Human Rights Commission with responsibility to exercise anti-discrimination and ombudsman powers, which would include protection of privacy of information. Strayer said:

> As a result of the combination of these two functions ... we will ... provide one stop shopping that the citizen, if he's not quite sure where his complaint ought to go, ... can submit the claim to the commission and the commission may have to decide which of its hats it's wearing when it deals with it. Also by combining these functions, we think that we can perhaps then have regional offices which can deal with both kinds of complaints....[32]

Strayer stated that the anti-discrimination provisions would be carried further than now existed at the federal level by covering accommodations and services. Government contracts would also be included. Enforcement would be a process of investigation, conciliation, and possibly the establishment of a "tribunal" when conciliation failed. Exceptions for affirmative action programmes would also be allowed. The ombudsman feature was compared to the provincial offices already functioning with the exception of its added privacy function.

The provincial delegates questioned the wisdom of including the ombudsman feature under the aegis of a human rights commission insofar as the independence and impartiality of the ombudsman may be affected.[33] There was also concern about federal-provincial cooperation, uniformity of protection, and duplication of services. It was suggested that there could be some delegation of authority to provincial agencies.[34] As a result, it was the unanimous opinion of the Conference delegates that, after the federal bill was introduced, there should be a federal-provincial meeting called for a full dialogue.[35]

By the spring of 1975 there was pressure from within the House of Commons and from the Advisory Council on the Status of Women for the Government to introduce the long awaited bill. In response to a question from Gordon Fairweather, Lang stated on March 6, that the Government was not sure whether the bill should be introduced before or after the Easter recess. Lang added, "We are taking advantage of the fact that the House is so occupied with other matters to look at some final details which we want to have in the best possible form."[36] Fairweather supplemented his first question and asked:

> Has the draft bill undergone at least a dozen revisions to meet objections ... that the Human Rights Commission will have access to a good deal more information than the government or its servants are now ready to disclose? Is that the holdup?[37]

Lang responded, "No it is not. There have been many drafts of this bill, of course, and further discussions within the Governement on many subjects but that has not been a particularly sore point."[38]

The Progressive Conservatives then challenged the Government on

March 19 when Dan McKenzie (Winnipeg South Centre) stated in the House that:

> A Progressive Conservative government would establish an independent national human rights commission. The function of this commission would be to deal with the whole range of individual rights in every field under the jurisdiction of the federal government, including the federal public service.[39]

Fairweather's comment that there were great internal concerns about disclosing government-held information were substantiated by Strayer, who in 1978, stated that, because legislation would affect every government department, there were many questions in Cabinet. However, the ombudsman section also created significant dissent in the Social Committee of Cabinet even though the idea of giving the ombudsman power to deal with complaints against private companies, unions, and social agencies had been tentatively dropped. According to Lang, Cabinet as a whole devoted a few hours to the proposed Bill's content. Members had serious doubts about the role of an ombudsman vis-a-vis a Member of Parliament and how the two could operate. A specific division of duties was suggested. Lang has stated that the Prime Minister gave him the choice or re-doing the ombudsman section of else dividing the Bill in two, with the ombudsman section to be introduced later.[40] There were also some difficulties with the Departments of Labour and the Public Service Commission who wanted assurances about who would administer the legislation since both Departments would feel the effect of a centralized anti-discrimination bureaucracy.[41]

On April 17, Lang advised the Standing Committee on Justice and Legal Affairs, in response to queries from Fairweather, that the bill

would be presented well before the end of June.[42] On May 1, Ed Broadbent, Leader of the N.D.P. (Oshawa-Whitby), asked Mitchell Sharp, the Acting Prime Minister (Liberal - Eglington), the reason for the bill's delay. Sharp replied that "the bill in draft form is now before Cabinet. It is proving to be an extremely complicated measure, and this is the reason for the delay, not because the government is not anxious to introduce the legislation."[43] Fairweather further pressed the Government on May 22, and again on July 8.[44] Finally, on July 21, 1975, Lang tabled Bill C-72, a bill to establish a Canadian Human Rights Act. The ombudsman feature was absent, having been dropped only a few weeks earlier much to Lang's regret.[45]

(d) Bill C-72

Bill C-72 was divided into five parts. Part I enumerated prohibited discriminatory practices and set out certain exceptions to discrimination. One could not discriminate on the basis of race, national or ethnic origin, colour, religion, age, sex, marital status, or conviction for which a pardon had been granted.[46] This applied to the provision of services, facilities or accommodations customarily available to the general public,[47] the provision of commercial premises or residential accommodation,[48] and to employment.[49] An employer could also not use or circulate any application for employment form, publish an advertisement or make any written or oral inquiry that expressed any limitation, specification or preference based on a prohibited ground of discrimination.[50]

Employee organizations, or trade unions were prohibited from discriminating in their membership unless an individual had "... reached the normal age of retirement for individuals working in positions similar...."[51] Employers and trade unions could not establish or pursue a policy or practice, or enter into an agreement that would discriminate.[52] It was also made a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who were performing, under similar conditions, similar work requiring similar skill, effort and responsibility.[53] This section was transposed from The Canada Labour Code.

Part I also recognized several exceptions relating to employment. Any employment practices based on bona fide occupational requirements would not constitute discrimination.[54] Age limits for commencing or retiring from employment could be maintained by law or regulation[55] and compulsory retirement was allowed where an individual had reached the normal age or retirement for employees working in similar positions.[56] Also, pension contributions at a place of employment could be locked-in at a certain age.[57]

An exception for special programmes designed to prevent, reduce or eliminate disadvantages based on the race, national or ethnic origin, colour, religion, age, sex, or marital status of groups was provided. The Canadian Human Rights Commission could determine the validity of any such programme after an application was made and therefore exclude a programme from the prohibited provisions of the law.[58]

Some pension plan provisions were allowed for after a determination by the Commission. Pension rights in place at the time Part I would come into force were protected. Differential benefits based on actuarial costs, and survivor's benefits not based on sex or marital status for spouses or children were exempt.[59] Separate pension funds for different groups were deemed to be non-discriminatory so long as the persons were not grouped into funds according to age, sex, or marital status.[60] Provision was also made for the Governor-in-Council to make regulations respecting exceptions in pension insurance plans.[61] The last clause of Part I allowed for regulations to be made respecting anti-discrimination provisions and complaint resolution in government contracts, licenses and grants.[62]

Part II established and structured the Canadian Human Rights Commission. A Chief Commissioner and Deputy Chief Commissioner were to be full-time members and not less than three nor more than six other part-time or full-time members were to be appointed by the Governor in Council.[63] Full-time members could be appointed for a term not exceeding seven years while part-time members could be appointed for up to three years during good behaviour, although any member could be removed at any time with the consent of the Senate and House of Commons.[64] Any member could be re-appointed.[65]

The Bill outlined some of the duties and functions of the Commission as

a) developing and conducting information programmes to foster public

understanding of the legislation and the Commission;

b) undertaking or sponsoring research programmes related to the duties and functions;

c) maintaining close liaison with provincial rights bodies to foster common policies and practices and to avoid jurisdictional conflicts when dealing with complaints, and;

d) including any recommendations, suggestions and requests regarding rights that it deemed appropriate in an annual report.[66]

Other powers, duties and functions could be authorized by regulation.[67]

Provision was made for the remuneration of Commission members as well.[68] The Chief Commissioiner was to supervise and direct the Commission and its staff and preside at Commission meetings.[69] If absent, the Deputy Chief Commissioner was to assume the position, or else the Commissioner with the most seniority.[70] Staff was to be appointed in accordance with The Public Service Employment Act and the engagement of temporary assistance from persons was specifically allowed for.[71] Security requirements for Commissioners and staff were prescribed and disclosure of matters injurious to international or federal-provincial relations, national defence, or likely to assist in the pursuit of or prevention, detection, or prosecution of unlawful acts was prohibited.[72]

The National Capital Region was to be the site of the Commission's head office and up to twelve regional offices were allowed for.[73] The

Chief Commissioner was given the authority to call meetings whenever necessary or desirable and divisions of duties and powers could be established.[74] By-laws could govern the conduct of its affairs.[75]

The procedures for complaint handling were generally set out in Part III. Any person or group having reasonable grounds to believe another had engaged ina discriminatory practice as outlined in Part I could file a complaint with the Commission.[76] If a complaint was made by someone other than an aggrieved, consent of the aggrieved person may be necessary.[77] As well, the Commission could initiate a complaint.[78] Complaints would not be accepted from persons with no established connection with Canada, or where a person in a pension fund may be deprived of rights acquired under a plan before Part III came into effect.[79] As well, when a complaint could better be pursued by other available review procedures, a matter may not be accepted. Furthermore, if a matter was "... beyond the jurisdiction of the Commission," or was "... trivial, frivolous, vexatious or made in bad faith..." or if the matter occurred more than one year before receipt of a complaint, a complaint may not be dealt with.[80] Written notice of any decision to not deal with a complaint would be sent to a complainant.[81]

Part III allowed the Commission to designate an investigator to enter any premises, require the production of documents and conduct inquires relevant to the investigation of a complaint.[82] After the conclusion of an investigation, a report of the findings would be considered by the Commission. The complaint could be referred to a more appropriate authority, substantiated or dismissed according to the

reasons noted in the paragraph above. The decision of the Commission would be conveyed in writing to the involved parties.[83]

If a complaint was not settled during an investigation or after notice was received of the Commission's decision, or if if was not dismissed or referred to another body, a conciliator (who had not been the investigator) would be appointed to attempt a settlement.[84] The agreed terms of a settlement would be referred to the Commission where they would be approved or rejected and the parties would then be notified.[85]

At any time after the filing of a complaint, a "Human Rights Tribunal" could be appointed to inquire into a complaint.[86] The Bill set out that Tribunal members could not be members or employees of the Commission.[87] All Tribunal member selections were to be made from a list established by the Governor-in-Council.[88] Remuneration for the performance of duties as a member of a Tribunal was also allowed for.[89]

The duty of Tribunal was to "... give all parties to whom notices has been given a full and ample opportunity, in person or through counsel, of appearing before the Tribunal, presenting evidence and making representations to it."[90] Accordingly, the Tribunal could summon and enforce the attendance of witnesses, compel all evidence, administer oaths, and consider evidence otherwise not admissible in a court of law.[91] A conciliator was deemed to not be a compellable nor competent witness. While the Tribunal was to be public, members of the public could be excluded for the whole or parts of a hearing if it

was considered to be in the public interest. Fees for witnesses were also allowed for.[92]

At the conclusion of any inquiry a complaint would be dismissed if it was not substantiated. Where a complaint was substantiated, an order against a respondent could be made which may include several terms of redress including compensation for wages lost and expenses incurred, compensation up to five thousand dollars where an act was committed willfully or recklessly or where a victim suffered in respect of feelings of self-respect, and payment of costs relative to a Tribunal's hearing.[93] No Tribunal could order the removal of a person from employment or accomodation where a person had accepted the employment or accomodation in good faith.[94] The order of a Tribunal could be enforceable as an order of the Federal Court of Canada.[95]

Finally, Part III allowed the Commission to apply to the Federal Court of Canada for a court order to obtain a document relevant to an investigation or a Tribunal.[96] As well, any act of reprisal against a complainant, witness or any other person associated with a proceeding under this Part was prohibited.[97]

Part IV of Bill C-72 was entitled "Protection of Personal Information." Further to Lang's earlier announcement, this Part generally allowed the Governor-in-Council, on the recommendation of the Ministers of Justice and Communications, to make regulation "... respecting protection of the privacy of individuals in relation to records of any government institution ...."[98] This would cover such matters

as informing a person that personal information was held in a government data bank and was being used for a specific purpose, informing a person as to how access to the information may be arranged, and allowing alterations to inaccurate information. Provision was also made for regulations to exempt data banks in the interest of national security or federal-provincial relations.

Part V established offences on summary conviction and upon consent of the Attorney General of not more than ten thousand dollars for an employer or employee association and not more than one thousand dollars in any other case. Offences could result from failure to comply with the terms of a settlement certified after conciliation, obstructing an investigation or a Human Rights Tribunal, retaliating against any person who made or assisted in the disposition of a complaint, or reducing wages in order to eliminate discriminatory wages between men and women.[99] Provision was also made for annual reporting to Parliament and for the report to be referred to a Committee of Parliament.[100] Lastly, the Bill stated that it would not apply to any superannuation or pension plan established by an act of Parliament.[101] Neither would it apply to actions in the Territories that would not also be the subject of a complaint had it occurred in a province.[102] The Crown was to be bound.[103] The provisions of The Indian Act were specifically exempted.[104] Amendments were also made to The Canada Labour Code and The Unemployment Insurance Act to make relevant portions consistent with the proposed Canadian Human Rights Act.[105]

The Bill was an obvious attempt to simplify the layout and

wording of Canadian anti-discrimination legislation although overall simplicity was constricted by the appearance in Parts II and III of more detailed procedural provisions than existed in the provincial statutes. The prohibited grounds of discrimination were those already tested in other North American jurisdictions except that of "conviction of which a pardon has been granted." A similar ground only existed in the employment section of the British Columbia Human Rights Code.[106] Other unique provisions were the attempt to establish the Commission's independence by direct reporting to Parliament through the Minister of Justice and the provision for a full-time Chief and Deputy Chief Commissioner. The separation of the functions of investigation and conciliation reflected Walter Tarnopolsky's conviction that

> The process of investigation will almost inevitably arouse a certain amount of hostility on the part of the Respondent towards the investigator. It is unlikely that he would be as prepared to discuss possible terms of settlement with investigator as he might be with someone else, even though that someone else is from the same agency. Besides, the skills required in order to be a successful investigator are different from those required for effective negotiator.[107]

Although there could be a settlement during an investigation, the legislation clearly intended to set the functions apart. Another noteworthy provision of the Bill was the explicit saving of The Indian Act. While it is legally argued that general legislation such as human rights law cannot override provisions of specific legislation such as The Indian Act, the Government did not want to take a chance. In particular, it was intent on leaving Section 17 (1) (b) of The Indian Act undisturbed. That section dictates that Native women lose their treaty rights upon marrying a nonstatus male, while Native men can marry nonstatus females with no loss of treaty rights. Without any doubt, however, the Privacy Part of the Bill was the most strikingly

unusual appendage to anti-discrimination legislation.

(e) The Death of Bill C-72

Within a few days after its introduction, Bill C-72 became a target for attack by several interests. Owing to a ten week summer adjournment of the House of Commons soon after its First Reading, discussions began outside of Parliament. John Diefenbaker (PC - Prince Albert), the recognized father of The Canadian Bill of Rights, stated that the new bill deceived women. Without giving specific examples, he said it was "so full of loopholes" that it was mere "eyewash."[108] The Toronto Globe and Mail made the novel criticism that the Bill should protect companies as well as individuals. An editorial on July 26 stated:

> There is no federal legislation that polices the use and accuracy of information that Government has collected concerning companies. There is nothing to prevent discrimination against a company because of the race, nationality, colour, religion, sex, marital status of any of the company's officials or employees.[109]

On August 2, 1975, The Financial Post reported that "Women activists and other minority groups are skeptical about how much clout the commission will have...."[110] The failure of the Bill to clearly allow for class action complaints, whereby not only a complainant but also all other victims of an act of discrimination could receive compensation, and the absence of the wording "equal pay for work of equal value" regardless of sex were contentious issues. In the article Lang responded to the demand for class action complaints by stating, "I don't see a real need for that. Why not ask all those who feel they've been

wronged to come forward and make their complaints to the Commission. There's no gap that needs to filled by class actions." With regard to "equal pay for work of equal value," Lang stated that "At this stage it would be wrong to give that difficult a question to a commission to settle. But if the jurisprudence develops and we can find some other words instead of "equal value," we might be prepared to go further."

Lang further commented that, as a follow-up to Bill C-72, he intended to introduce two-phase ombudsman legislation before the year's end. The first phase would allow the handling of complaints about poor service or unfair treatment by government. The second phase would empower the ombudsman to probe grievances against private corporations and unions.[111] Obviously Lang was still intent on establishing a federal ombudsman.

Shortly before the Members returned to Ottawa from adjournment, Trudeau re-organized the Cabinet. On September 26, Justice Minister Lang was replaced by Ron Basford (Liberal - Vancouver-Centre). The new Minister was immediately faced with the task of ameliorating growing disenchantment with Bill C-72. There was expressed hope that a new Minister would feel freer to accept recommended changes to the Bill.[112] It is worth noting that a senior departmental official expressed the belief that, while Lang was more cerebral and philosophical, Basford liked the legislative process and dealing with Parliamentarians. He was perceived as sensitive to concerns and quick to compromise if it meant "getting legislation through" and avoiding crises.[113]

Back in the House of Commons, the first question regarding Bill C-72 came from Hal Herbert (Liberal - Vaudreuil), on October 14, 1975. He asked if the Government had considered including "health standards and/or physical deformities" as a prohibited ground of discrimination in Bill C-72. Basford ably defended the Bill by replying:

> It is desired that the proposed Commission at the outset mainly confine its work to grounds of discrimination in relation to which other commissions have acquired experience. Only one province, Nova Scotia, has by a recent amendment to its Human Rights Act provided for the ground of physical handicap.[114]

On November 6, 1975, Perrin Beatty (PC - Wellington-Grey-Dufferin-Waterloo), launched an attack on the broad exemptions allowed for in the privacy part of the Bill and asked if the Government would withdraw Part IV. Basford responded, "I have not had a chance to read the bill simply because it is not coming before the House in the immediate future."[115] This quashed any ideas that the new Minister had either suddenly grasped the contents of the Bill or that the Government was prepared to push the Bill through Parliament. Basford confirmed a week later that the Government's recent introduction of wage and price controls on October 16 took priority for Parliamentary time and also announced that Second Reading would be stalled pending discussion of the Bill with provincial government representatives at a Federal-Provincial Conference on Human Rights to be held December 11 and 12.[116]

Extensive discussion at the Conference was expected. Previously, on October 20, 1975, Harvey Moats, the Executive Director of the Manitoba Human Rights Commission, forwarded a letter to all Conference delegates announcing that Howard Pawley, Manitoba's

Attorney General, was planning to advance a proposal at the Conference that the Provinces be designated to administer certain aspects of the federal Human Rights Act. This would include the receipt, investigationa and conciliation of complaints, conducting educational programmes, and any administration of affirmative action projects. The given rationale of the proposal was the following:

a) to avoid confusion amongst the public relative to what is the appropriate authority where a complaint might be lodged;

b) to forestall problems arising when a complainant simultaneously requests investigation from both Federal and Provincial Human Rights Commissions;

c) to avoid duplication of effort, staff, and budget resources;

d) to recognize the experience and expertise the Provincial Human Rights Commissions have built up in the pioneering stage of human rights concerns, and to make use of that experience in an expanded way in areas under Federal jurisdiction;

e) to forestall the type of Federal/Provincial confusion, chaos, and duplication that has arisen in such areas as consumers affairs;

f) to further the principle currently under Federal/Provincial discussion relative to the designation of the Provinces as the administrative authority in the area of prosection under the Departments of Attorneys General.[117]

Ontario also had a concern. Roy McMurtry, the province's Attorney General, had corresponded with Basford hoping to curtail racist hate messages that were transmitted by telephone in Toronto by the Western Guard organization. Since Bell Canada is under federal jurisdiction, the Ontario Human Rights Code could not stop the messages. The problem had initially been raised in Parliament in 1969 and at that time it was thought that proposed amendments to The Criminal Coderegarding hate propaganda would deal with the matter. It was later found that Code could not deal adequately with the issue

mainly because the standards of proof were too stringent, making prosecutions impossible.[118] McMurtry therefore sought to have the topic included in the Human Rights Conference agenda to explore the possibility of dealing with the problem under federal human rights legislation.

The December Conference discussions began with Basford welcoming suggestions on Bill C-72 but he stressed that, because the Human Rights Commission was to be an independent agency, he could not make detailed commitments about the way the Act would be administered; no one could tie the hands of the Commission since it had been given power over its own administration.[119] Pawley's proposal was therefore rejected although Basford clearly supported the principle of federal-provincial cooperation and coordination. He defended the Bill's current provisions by pointing out two sections, one directing the Commission to maintain close liaison, foster common policies and avoid conflicts with provincial agencies, and the other which allowed the Commission to temporarily engage persons with specialized knowledge. These, he stated, would "... adequately direct and authorize the Commission to cooperate with provinces in receiving and investigating complaints and in research and information programs."[120] Perhaps he expressed his real concern when he added that there may be a problem of "... provincial commissions investigating the labour practices of departments of the federal government and then reporting to provincial commissions in that area." Basford concluded, "I think that, obviously, would create difficulties for the federal government."[121] With the provinces apparently backing Manitoba's proposal, Basford at

least agreed to consider whether change in the Bill's wording was necessary in order to secure more than "a pious hope" for cooperation and coordination. He suggested this could be done by changing the legislation specifically to allow the Commission the "use of staff" of the provincial agencies.[122]

In response to Ontario's concern about telephone hate messages, Basford said that, despite immense legal difficulties, he was sympathetic with trying to do something and stated that Departmental officials were currently working on the issue to see if something could be done.[123]

Three other major concerns were also raised at the Conference. Francois Cloutier, the Quebec Minister of Intergovernmnental Affairs, disapproved of the Bill's provision allowing for regulations respecting company compliance with non-discrimination provisions in federal government's contract, grants and licenses. This was perceived as an encroachment on provincial powers since contractors would otherwise be solely under provincial jurisdiction.[124] Basford rejected this thesis on the grounds that regulations already existed in this area pursuant to The Fair Wages and Hours of Labour Act and The National Housing Act. Citing the effectiveness of the contract compliance programmme in the United States, Basford claimed that it was essential to retain this power because it could prevent discrimination rather than simply provide redress after the fact. Furthermore, Health and Welfare Minister Marc Lalonde (Liberal - Outremont) had just stated on October 15 that several federal departments were

> ...undertaking a feasibility study on the means to encourage companies entering into contracts with the

> government to take positive action to improve the status of their women employees. The government is determined that companies with which it does business should act responsibly in the provision of equal employment opportunity and wages for their women employees.[125]

George McCurdy, the Director of the Nova Scotia Human Rights Commission pressed that the provision for affirmative action programmes was too weak because it was merely an enabling section; additional strength was necessary to encourage or even order affirmative programmes.[126] The Saskatchewan Commission's Director, Carol Fogel, expressed concern that the Bill omitted prohibitions of discrimination in notices, signs, and symbols, an area included in all provincial human rights acts. She believed that a federal law was necessary because of Ottawa's powers over radio and television broadcasting. Sexist advertisements and programming were offered as examples of areas requiring regulation. Basford replied that covering notices, signs, and symbols "... was rejected in earlier drafts of the Bill first because it would raise civil liberties problems in the area of freedom of speech and fredom of the press, and, also (because of the Government's) understanding that such provisions have not been used by provincial Human Rights Commissions...."[127]

At the conclusion of the Conference discussions, Basford stated:

> I have a number of aspects of the Bill to consider ... which I have not considered until this meeting was held and I (had) your comments. I now want to go through the bill and through all the comments that have been made and the representations from various groups and see what, if any, amendments I should take to my colleagues before it proceeds further in Parliament.[128]

A few days later Basford claimed that perhaps the House could proceed with Bill C-72 in the session following Christmas,[129] however there was strong lobbying for changes from several other vocal interests. As a result, further policy reformulation and drafting chores stalled the tabling of amendments. It was to be almost another year before a revised bill was presented to Parliament.

The most visible lobby and the first to speak out on Bill C-72 was the ACSW. A detailed discussion paper on aspects of the Bill was prepared for the Council in August 1975, only a month after the Bill's introduction. The paper listed some recommendations for consideration by the whole Council. Before the paper was examined, however, a conference of federal and provincial Advisory Councils convened and delegates agreed that action had to be taken to prevent a Second Reading until a detailed review was completed. There was a clear indication of a pending battle when a provincial chairperson called the Bill a "mockery" because it appeared discriminatory.[130] The ACSW was likely spurred to look hard at the Bill when a legal advisor stated in a letter to the national chairperson on October 3 that "the Bill is weak, uncertain, ambiguous and in fact raises the question whether the drafters had any serious intent in preparation of the Bill .... this Bill

must be the worst ever presented to Parliament."[131]

The Council took two early steps in reviewing the Bill. At its October 6 - 8 meeting, specific recommendations were drawn from the August paper and were submitted to the Government on October 23. Then on November 27 a working group examined the broader role and functions of a federal commission as to how it should affect women. That analysis was forwarded to the Government on December 11.[132]

In the first set of recommendations, the chief concerns were that there was no explicit reference in the preamble to the principles of The Canadian Bill of Rights, that there was no protection for Native women, that there was no clear right to file class action complaints, that affirmative action was not explicitly encouraged, and that appeals of Commission rulings were not clearly permitted. It was also argued that the Bill's French title, "Loi canadienne des Droits de l'homme" should be neutralized to "Loi canadienne des Droits de la personne." With regard to the equal pay section, the incorporation of the principles of equal remuneration for work of equal value was recommended, as was the deletion of the words "employed in the same establishment" because it was too restrictive. The ACSW also wanted a provision empowering the Commission to set enforceable guidelines aimed at setting clear standards for an objective job evaluation. It was also recommended that "bona fide occupational requirement" be defined.[133]

Among the Council's general recommendations were the following:

1) that revised human rights legislation be immediately tabled;

2) that Part I of The Canada Labour Code be immediately amended to include prohibition of discrimination on the grounds of sex, age, and marital status;

3) that the location of employment anti-discrimination legislation in federal Acts be reviewed in two years; and

4) that consideration be given to including an ombudsman role among the Commission's responsibilities.

In its plans for 1976 the Council again made the passage of federal human rights legislation its top concern and the Government was publicly urged to get the legislation moving with the Council's amendments.[134]

The National Action Committee on the Status of Women was also a vocal opponent of aspects of Bill C-72. The first concern raised by the NACSW was that matters relating to discrimination in employment should be left in The Canada Labour Code. In a brief to the Minister of Finance in December 1975, it was stated:

> To place employment legislation in separate statutes creates confusion. Other jurisdictions have tried this approach and found it unsatisfactory. We question, for example, whether a further dispersal of the enforcement mechanism can assist women seeking equity in the labour force. In our view, the trend, in both legislation and enforcement, should be towards integration.[135]

The NACSW established a subcommittee of lawyers, trade unionists and NACSW board members to deal with the Bill. At its Annual Meeting in May 1976, the NACSW condemned the Bill as "a bit of legislative hocus-pocus" mainly because of the absence of the "equal value" formula, because Native women were not protected and because the Bill was full of too many loopholes especially with regard to pensions and benefits.[136] Between December 1975 and November 1976, the NACSW

made repeated representations on these positions to Basford, other Cabinet Ministers and officials of the Department of Justice.[137]

Concerns about Bill C-72 came from representatives of the handicapped community who pressed for the inclusion of protection for the disabled.[138] As well, several Members of Parliament strongly urged the "equal value" approach to the equal pay section .[139] Monique Begin, Minister of National Revenue, was the leading proponent of the equal value wording. Her position in the Cabinet made her a respected ally of women's groups. Aideen Nicholson (Liberal-Trinity) also actively persuaded the Government.[140]

There was ominous opposition to the provisions of Part IV of the Bill from Members of Parliament especially on the Progessive Conservative benches. As a result, a reason for continued delay in proceeding with the Bill was the Government's recognition that it could not go back to Parliament without a more developed scheme for the protection of personal information.[141] This was addressed when, after First Reading, the Interdepartmental Committee on Privacy finally reported its recommendations to Cabinet regarding federally-stored personal information. The report was used to develop specific legislation for Part IV and most of the departmental and Cabinet discussions throughout 1976 were devoted to the privacy aspect.

By May 1976, it was foreseen that developing amendments to the Bill would cause it to die on the Order Paper of the current session.[142] As a result, the Bill was held up until the following Session which

began October 12, 1976. Then, on November 29, a new bill, Bill C-25 was introduced for First Reading.

(f) Summary

The genesis of the first comprehensive human rights bill, Bill C-72, was a long, difficult and, eventually, frustrating exercise. Dates promised for the bill's introduction repeatedly went by. The grandiose ideas of Otto Lang who, for some reason, perceived that anti-discrimination measures should be appended to other rights-related legislation, confused and delayed the development of outstanding law. A bill including only anti-discrimination provisions would have been enough of a policy initiative in itself. Despite general support of the Official Opposition for the principles of the pending legislation, a general election and a legislative agenda comprised of pressing economic matters further detracted from the concerted and timely development of the Bill.

The delayed introduction perhaps heightened public and parliamenterian expectations of a monumental bill. When it appeared, it was obvious that the federal government was not prepared to foster a truly progressive anti-discrimination policy. The proposed anti-discrimination legislation was not bad law although it was mediocre. It could be argued that Part IV, dealing with protection of personal information, was bad law, however. The Bill may have gone through Parliament if not for Part IV. It was too heavy an anchor for an already unseaworthy vessel. A resulting benefit of Bill C-72wasthat it

was like a "white paper," however Government policy was tested and comment was forthcoming from M.P.'s, the provinces and interest groups on specific provisions.

NOTES

1. Canada, Office of the Minister of Justice, "Lang to Establish a Permanent Commission on Rights and Interests", Press Release, October 21, 1972.

2. Ibid.

3. "Liberals plan permanent agency to deal with federal injustices," Globe and Mail, October 21, 1972.

4. Interview with Otto Lang, July, 1980.

5. Canada, Department of Justice, "The Ombudsman," by Peter S. Haskins, 1966. Also see Donald C. Rowat, The Ombudsman (Toronto: University of Toronto Press, 1968).

6. "Conference on Fair Hiring, Stanfield Ask," Globe and Mail, February 15, 1973.

7. Interview with H.A. McLearn, November 29, 1978.

8. Interview with Barry Strayer, June 15, 1978.

9. McLearn; Interview with Mark MacGuigan, June 19, 1978.

10. Canadian Bar Review 46 (1968): 565.

11. Lang.

12. See Bill C-206, May 10, 1972.

13. Lang.

14. Canada, Parliament, Debates, First Session, Twnety-Ninth Parliament,
p. 8547.

15. Ibid.

16. Ibid., p. 8548.

17. Ibid., Second Session, Twenty-Ninth Parliament, March 8, 1974, p. 326.

18. Ibid., March 4, 1974, p. 142.

19. Ibid., March 12, 1974, p. 407.

20. Ibid., p. 1274.

21. Strayer.

22. McLearn.

23. Strayer; Interview with W. S. Tarnopolosky, June 1978.

24. Doris hackleton, Powertown (Toronto: McClelland and Stewart, 1977), p. 102.

25. Canada, Parliament, Secretarial of the Conference of Human Rights Ministers, Report, November 6 - 8, 1976, p. 189.

26. Ibid., p. 169.

27. Ibid., p. 171.

28. "Rights Action promised," Winnipeg Tribune, November 26, 1974.

29. Canada, Parliament, Joint Statement of the Ministers of Justice and Communications, December 7, 1972.

30. Strayer.

31. Canadian Intergovernmental Conference Secretariat, Conference of Human Rights Ministers, Verbatim Report, March 6 & 7, 1975, p. 19.

32. Ibid., p. 23.

33. Ibid., p. 31.

34. Ibid., p. 40, 42.

35. Ibid., Press Communique.

36. Debates, First Session, Thirtieth Parliament, 1974-75, p. 3834.

37. Ibid.

38. Ibid.

39. Ibid., p. 4299.

40. Lang.

41. Strayer.

42. Canada, Parliament, House of Commons, Minister of Proceedings and Evidence of the Standing Committee On Justice and Legal Affairs, First Session, Thirtieth Parliament, 1974-75, 19:23.

43. Debates p. 5359.

44. Ibid., pp. 6000, 7338.

45. Lang.

46. Bill C-72, clause 3.

47. Ibid., clause 4.

48. Ibid., clause 6.

49. Ibid., clause 7.

50. Ibid., clause 7.

51. Ibid., clause 8.

52. Ibid., clause 9.

53. Ibid., clause 10.

54. Ibid., clause 11 (a).

55. Ibid., clause 11 (b).

56. Ibid., clause 11 (c).

57. Ibid., clause 11 (d).

58. Ibid., clause 12.

59. Ibid., clause 13.

60. Ibid., clause 14.

61. Ibid., clause 15.

62. Ibid., clause 17 (1), (2).

63. Ibid., clause 17 (3), (4).

64. Ibid., clause 17 (5).

65. Ibid., clause 18.

66. Ibid., clause 19.

67. Ibid., clause 20.

68. Ibid., clause 21 (1).

70. Ibid., clause 21 (2), (3).

71. Ibid., clause 22.

72. Ibid., clause 23.

73. Ibid., clause 24 (1), (2).

74. Ibid., clause 24 (3), (4), (5).

75. Ibid., clause 25.

76. Ibid., clause 28 (1).

77. Ibid., clause 28 (2).

78. Ibid., clause 28 (3).

79. Ibid., clause 28 (6).

80. Ibid., clause 29.

81. Ibid., clause 30 (1).

82. Ibid., clause 31.

83. Ibid., clause 32.

84. Ibid., clause 33.

85. Ibid., clause 34.

86. Ibid., clause 35 (1), (2); s. 36 (1).

87. Ibid., clause 35 (3).

88. Ibid., clause 35 (5).

89. Ibid., clause 35 (4).

90. Ibid., clause 36 (1).

91. Ibid., clause 36 (2).

92. Ibid., clause 36 (3), (4), (5).

93. Ibid., clause 37.

94. Ibid., clause 38.

95. Ibid., clause 39.

96. Ibid., clause 40.

97. Ibid., clause 41.

98. Ibid., clause 42 (2).

99. Ibid., clause 43.

100. Ibid., clause 44.

101. Ibid., clause 45.

102. Ibid., clause 46.

103. Ibid., clause 47.

104. Ibid., clause 49..

105. Ibid., clause 52, 53.

106. S.b.C. 1973, s. 8 (2) (c).

107. W.S. Tarnopolsky, p. 577.

108. Globe and Mail, July 23, 1975, p. 10.

109. Ibid., July 26, 1975, p. 6.

110. Financial Post, August 2, 1975, p. 21.

111. Ibid.

112. Correspondence, M. Ritchie, Counsel to K. Cooke, Chairperson, ACSW, October 3, 1975.

113. Strayer.

114. Debates, Ibid., p. 8176.

115. Ibid., November 6, 1975, p. 8909.

116. Ibid., November 13, 1975, p. 9013.

117. Correspondence, Notes to Conference Delegates, October 20, 1975.

118. Strayer. Also see Jeanne Hutson, "Group Defamation in Canada", Carleton Journalism Review 3 (No. 1, Winter 1980), p. 14. Hutson claims that there were so many safeguards included in the Criminal Code provisions to prevent encroachment on the right to free speech that telephone hate messages were placed outside the ambit of the law.

119. Canada, Parliament, Secretariat of the Federal-Provincial Conference on Human Rights, Report, December 11, 13, 1975, p. 68, 82.

120. Ibid., p. 82.

121. Ibid.

122. Ibid., p. 90-1.

123. Ibid., p. 109.

124. Ibid., p. 75, 83.

125. Canadian Council on Social Development Canadian Welfare 52 (Ottawa, 1976):25.

126. Federal-Provincial Conference, p. 99.

127. Ibid., p. 102.

128. Ibid., p. 110.

129. Debates, December 11, 1975, p. 10093.

130. "Rights bill called discriminatory," Winnipeg Tribune September 10, 1975.

131. Correspondence, Ibid., at note 112.

132. Canada, Advisory Council on the Status of Women, "Further Recommendations of the ACSW," December 11, 1975, p. 1.

133. Ibid., "Recommendations of the ACSW in Respect of Human Rights Bill C-72," October 23, 1975.

134. Ibid., Annual Report 1975-76 (Ottawa, 1976).

135. Brief presented to Donald McDonald.

136. NCSW, Status of Women News 2, #4, February, 1976.

137. Ibid., Volume 2, #5, May 1976.

138. Mark MacGuigan, "Equal Opportunity: A Legislator's Perspective," in Executive Bulletin, The Conference Board in Canada, No. 4, March, 1978.

139. Debates, February 11, 1977, p. 2977; Val Ross, "Getting Clout," Chatelaine, May 1978, p. 66.

140. Strayer.

141. Canada, Advisory Council on the Status of Women, Annual Report 1975-76(Ottawa, 1976).

142. Strayer.

CHAPTER V

BILL C-25

This chapter follows Bill C-25 through Parliament and comments on its passage. Part (a) examines those sections of the Bill which differed from Bill C-72. Part (b) is a survey of initial public reaction to the Bill and examines the debate at Second Reading in the House of Commons. Part (c) is a synopsis of the main issues discussed and the decisions of the Standing Committee on Justice and Legal Affairs to which the Bill was referred after Second Reading. Parts (d) and (e) then follow the Bill through Report Stage Third Reading and the Senate.

(a) Bill C-25

The provisions of Bill C-25 reflected a response by the Government to pressures from those who were dissatisfied with Bill C-72. The greatest difference between the two bills was Part IV. Instead of the general provision for regulations found in C-72, Part IV of the new Bill set out specific legislation providing for the protection of personal information. While there was merely one clause under Part IV in Bill C-72, Bill C-25 contained thirteen clauses prescribing the right of individuals to gain access to information government-held data banks and to correct any of the information albeit within certain constrictions.[1] Furthermore, a Privacy Commissioner was established as a member of the Human Rights Commission to deal with the problems of

persons who were unable to obtain access to personal information.[2]

Other than neutralizing the proposed act's French title, several noteworthy changes were made to the Bill's anti-discrimination provisions. Four major policy changes were evident in Part I. First, "physical handicap" was added as a prohibited ground of discrimination but only in matters related to employment. "Physical handicap" was defined as:

> ...a physical disability, informity, malformation or disfigurement that is caused by 'bodily injury' birth defect or illness and includes epilepsy and, without limiting the generality of the foregoing, "physical handicap" includes any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness, or hearing impediment, muteness or speech impediment, and physical reliance on a seeing eye dog or on a wheelchair or other remedial appliance or device.[3]

Second, in response to pressures largely from women's organizations, it was provided that no employer could "... establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value."[4] The criteria to be used in assessing the value of work were "... the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed."[5] Third, a clause was added making it a discriminatory practice to publish or display before the public any notice, sign, symbol, emblem or other representation which would express, imply or intend to discriminate, or incite others to disciminate in the provision of services, accommodation, or in employment.[6] This went at least part way to meet the demands from Saskatchewan voiced at the last Federal-Provincial Conference on Human Rights. Fourth, persons were prohibited from

communicating hate messages by telephone if the subjects of the hatred were identifiable on the basis of a prohibited ground of discrimination.[7]

There were other changes to the Bill that deserve mention. The Human Rights Commission was allowed a more active role in giving advice and assistance to persons wishing to adopt or carry out affirmative action programmes.[8] The powers and duties of the Commission were extended to include reviewing and reporting on federal regulations, rules, orders or by-laws which may be inconsistent with the principles of the proposed Act, endeavouring to reduce discrimination by persuasion and publicity, and encouraging the development and improvement of access to services, facilities and accommodations for physically handicapped persons.[9] In response to concerns from within the federal and provincial governments, two subclauses allowed Cabinet to assign duties and functions of the Commission to the Department of Labour and to enter into agreements with "similar bodies or authorities in the provinces."[10] As well, a clause was added to Part III allowing the Commission to deal with several complaints together if the complaints involved substantially the same issues of fact and law.[11]

Although Bill C-25 was similar to Bill C-72 in most respects, the changes appeared to be aimed at countering pressure groups opposition to parts of theBill. Thus, by the time the Bill appeared before the House of Commons, much of the political wrangling had expired. The Government avoided appearing weak, however, by refusing to give in to all demands. There was still room for debate over important, albeit

less substantive, matters.

It is also evident that almost all of the overt pressures on the Government to change Bill C-72 were in favour of expanding the prohibitions of discrimination. Nowhere, except perhaps in the back rooms, was there lobbying by groups that were soon to be regulated, pressing for mild application of federal anti-discrimination policy. Federally regulated employers including the banks, airlines and railways, and department of the federal government that would be significantly affected, such as the Department of National Defence and the R.C.M.P. were surprisingly silent. While Bell Canada later kept close watch on the Bill's progress, only the Canadian Chamber of Commerce made minor suggestions to the Government.[12]

(b) Initial Reaction

Comment on Bill C-25 outside of Parliament was limited and most discussions took place later during the sittings of the Standing Committee on Justice and Legal Affairs. Newspaper reports were generally rewrites of the Department of Justice press release and notations from discussions at a news conference held by the Honourable Mr. Basford, Minister of Justice. Some contents of the Bill had been leaked to the Press by Basford up to a month before it was introducted so there were few surprises by the time the Bill emerged.[13] However, during the week following the Bill's introduction, Don McGillivray, National Economics Editor of Southam News Service, wrote a column deploring the Bill's endorsement of compulsory retirement when an "...

individual has reached the normal age of retirement for employees working positions similar to the psotion of that individual."[14] McGillivray stated that the Bill therefore sanctified the most widespread and systemic type of discrimination. He added, "The essence of prejudical discrimination is that people are classified and treated according to some arbitrary test. We are not used to thinking of forced retirement as discrimination. But think of the uproar if the sections of the Human Rights bill applying to age were about race instead." Implicit in McGillivray's denouncement was a recognition that compulsory retirement was not yet percieved by the public as discrimination. The Government's maintenance of compulsory retirement clearly reflected this public attitude.

During the same week of the McGillivray column, Canadian Press released an article noting the opposition of the National Council of Women, an 83 - year - old federation of women's organizations, to the absence of an initiative for affirmative action programmes in Bill C-25. In defense of the Bill, Basford was reported as saying that it would be wrong for the Human Rights Commission to create affirmative action programmes because "They are discriminatory by nature." The Council also critized the Government for exempting the provisions of The Indian Act from the Bill's coverage.[15]

On February 11, 1977, Mr. Basford moved in the House that the Bill be read a Second Time and referred to the Standing Committee on Justice and Legal Affairs. This motion seeks approval-in-principle of the Bill and its referral to Committee for detailed study. Basford

accurately declared that this stage in the Bill's progress represented "... the end of a period of frustration..."[16] for himself and other supporters of the Bill. He argued that the Bill should be passed as expeditiously as possible and, while welcoming non-partisan suggestions from Members of Parliament and community groups, June 30 was set as the target date for the passage of the new law.[17]

In his introductory statement, Basford pointed out the gaps in anti-discrimination law at the federal level and declared that:

> In a free society like ours, in a multi-cultural and open society like ours, in a country made up of two founding peoples but which has also been built and peopled by those who have come from all over the world, and of all races and colours, to build their lives and their families, it is essential that we put into law and into practice within the federal jurisdiction a clear commitment to equality of opportunity and to protection from discrimination. The Canadian Human Rights Bill is designed to provide that clear commitment and to provide, at long last, the comprehensive body of law now lacking at the federal level....[18]

Basford defended the limited grounds of discrimination by stating that "... we have concentrated on major issues which have already been the subject of human right legislation in Canada and the United States, on which a substantial body of law has emerged and upon which the proposed human rights commission can build." He also defended the provisions of Part IV as more effective than those found in United States' privacy legislation.[19] Basford recognized that "... the real test of this legislation and of our commitment to act against discriminatory practices is whether the commission will have the personnel and the budget to carry out its mandate effectively."[20] He promised that the question of resources and a proposed budget, although already planned with the Treasury Board, would be examined at the committee stage.

It is interesting to note that Basford reserved a role for the Department of Labour in the administration of the proposed statute. In a news release it was stated that:

> The Department of Labour will continue to have a role regarding discrimination in employment in the federally-regulated private sector. Labour officers, in the course of inspections of places of employment for various purposes, will continue to look for equal pay problems. As for other anti-discrimination matters, the government intends to assign to the Department of Labour certain responsiblities of the Commission in respect of private sector employment....[21]

The Progressive Conservative Justice Critic at the time of the Bill's introduction was Eldon Woolliams (Calgary North). It is evident that Joe Clark, Leader of the Official Opposition, was concerned that Woolliams, known for his "law and order" stance and his wariness of regulatory authority, was ill suited for the role of chief critic of the Bill. Gordon Fairweather was more in tune with the nature of the legislation before the House and was critic on the Status of Women. Consequently, Fairweather was made chief critic.[22]

On behalf of the Progressive Conservatives, Fairweather responded that his Party welcomed the Bill and assured Basford that the June 30 target was reasonable, although amendments, particularly to Part IV, would be proposed in the Committee. In fact, Fairweather later stated that Basford had negotiated with the PC Caucus, through Fairweather, for an allocation of time to deal with the Bill. The Caucus consequently agreed to try to pass the Bill within Basford's suggested time frame and the Caucus assigned Fairweather the responsibility of getting the Bill through the Committee. According to Fairweather,

Basford was successful in this negotiation for two reasons. First, the idea of the Bill, "... had jelled in the Parliamentary mind" and, second, the PC Caucus respected Basford's frank dealing with the Official Opposition.[23] Nonethless, it was with substantial insight into the law of the human rights and the nature of discrimination that Fairweather pressed for a broadening of the Bill's coverage.

Similarly, Andrew Brewin (NDP - Greenwood), pledged his party's support for the Bill and assured that the NDP did not want to slow the Bill's progress. He added that while those parts of the Bill which proscribed discrimination had been supported by the NDP for a long time, Part IV was labelled "a farce" because of its broad "exemptions and exceptions."[24] The Social Credit Party did not comment.

Twenty-one Members, other than Basford, spoke on the motion for Second Reading of Bill C-25. Of the six Liberals, ten Progressive Conservatives and five New Democrats, all supported the Bill in principle. Only one Member, Eldon Woolliams stated that, although "... in favour, of course, of human rights - like motherhood" he was apprehensive of protecting rights by means of statute law. He explained:

> The common law of Canada .. may in some cases, with some reason, guarantee all those freeedoms outlined in the bill much more effectively than a statute can do. For what a statute gives by guaranteeing freedom and equality may sometimes subtract from others the same amount of freedom and equality. I pause there. That is the one weakness of this bill.[25]

One of the main reasons for Woolliam's apprehension appeared to be a fear that an administrative body would be enforcing the legislation.

Seven Members praised the Government for including the wording "equal pay for work of equal value."[26]. Many of the Members who spoke favoured expanding the prohibited grounds of discrimination, however. Four Members wanted "political opinion"[27] included as well as "language."[28] Three Members wanted "sexual orientation" added.[29] Both Fairweather and Brewin briefly questioned why the Bill allowed compulsory retirement in employment.

The main focus of the Second Reading discussions was not the anti-discriminatinon sections of the Bill but the provisions of Part IV relating to the protection of personal information. Criticism was launched by half of the Members who spoke, including a Member of the Government Caucus.[30] Labelled as "... what good legislation should not be,"[31] and "... vague, weak and limited,"[32] Members alleged that the privacy Part was riddled with dangerous gaps and that too much of the Part's application and administration was left to discretion. Perrin Beatty stated:

> Bill C-25 is a hybrid of two reports - the report of the Royal Commission on the Status of Women and the 1972 report on Privacy and Computers. The forced marriage between those two reports has resulted in a piece of legislation which in many ways is grossly inadequate. It is an unhappy marriage between poorly matched partners.[33]

He and others agreed that the privacy Part was better matched with freedom of information legislation. Beatty perhaps summed up the opinions of his colleagues when he stated:

> The fact (Bill C-72) is not longer on the Order Paper is testimony to the government's belated recognition that the public would not stand for such poor legislation. If the government had resurrected Bill C-72 in different form and brought it before the House, my recommendation would have been to vote against it. It was so poor that it would have been worse than no legislation at all. The legislation before

us is flawed in many respects but it is better than nothing in my judgement, and deserves to go to committee.[34]

On February 24, the House adopted the motion for Second Reading without a recorded division and referred Bill C-25 to the Standing Committee on Justice and Legal Affairs.[35] It was now evident that the Government's inclusion of anti-discrimination provisions and privacy provisions in one bill would help ensure the speedier passage of privacy legislation than if Part IV had been a bill unto itself. The discussion at Second Reading, however, indicated that the Bill's overall progress could possibly be hampered because of the construction of Part IV.

(c) The Standing Committee on Justice and Legal Affairs

The Standing Committee on Justice and Legal Affairs has been a permanent institution of the House of Commons since 1968. It is comprised of twenty M.P.'s, reflecting the distribution of party seats in the House. Most Members are lawyers. The general purpose of the Committee, like the other Standing Committees of the House, is to make the legislative process more efficient and allow the backbencher a greater role in legislative developments. While the Committee has had varying degrees of success influencing government policy,[36] its independence of action from the executive and the opportunity for the Committee to develop policy initiatives is nonetheless circumscribed by the firm maintenance of party discipline. Successful amendments by opposition Members are usually defeated unless a bill is of minor importance, or there is substantial public support.[37] As one observer notes, "... most of the successful amendements originate with the

government. They are introduced because the minister or his bureacratic advisors have had second thoughts, perhaps as the result of late representations from pressure groups; because the bill was incomplete at the time of introduction or; as often happens, because desirable technical changes or drafting mistakes are discovered."[38] These generalizations were largely borne out in the case of Bill C-25.

The Committee considered the Bill during nine sittings between March 10 and May 25, 1977. Departmental officials, including Strayer, and Tarnopolsky attended several sittings to answer questions requiring technical knowledge. At the initial sitting, Mike Landers (Liberal - Saint John-Lancaster), Parliamentary Secretary to the Minister of Justice, provided and commented on a statement by the Minister. Therein the Minister discussed the concerns expressed by Members during Second Reading and responded to representations made to him and the department on specific clauses in the Bill. It was his stated intention to amend seven anti-discrimination clauses and one clause in Part IV. The amendments would only change a few words and not substantially alter policy originally expressed in the Bill. The only significant change would be to empower the Commission, not only to give advice and assistance with regard to affirmative action programmes, but also to propose programmes on its own initiative.[39] This was a further attempt to appease lobbying efforts by women.

Before a clause-by-clause examination of the Bill, the Committee listened to and questioned representatives of seven organizations over the course of four sittings. Appearing before the Committee to present

written briefs were the Canadian Bar Association, the Canadian Labour Congress (CLC), the Canadian Brotherhood of Railway, Transport and General Workers, the Civil Liberties and Human Rights Associations Federation, the Canadian Civil Liberties Association (CCLA), the Advisory Council on the Status of Women (ACSW) and the National Action Committee on the Status of Women (NACSW).

The CLC, while believing that human rights were better protected in a constitution, argued that several changes to Bill C-25 were necessary. The Bill should ban compulsory retirement, The Indian Act should not be exempt, and the Human Rights Commission should be empowered to prescribe affirmative action programmes. The Congress perceived Part IV as "... the most unsatisfactory part of the whole Bill," and reasoned that its discretionary application must be diminished.[40] The need for effective privacy legislation was then highlighted by a case study of an individual from the Canadian Brotherhood of Railway, Transport and General Workers.[41]

The Canadian Bar Association explained its rationale for presenting a brief as follows:

> Lawyers have a special responsibility to be concerned about the way in which legislation will operate in practice. They have good reason for wanting laws to be clear, in order to reduce delays and minimize costly litigation. As a profession we have a vested interest in wanting legislation to be effective and respected.[42]

The Association went far beyond asking for merely "clear laws" in its presentation, however. The addition of several prohibited grounds of discrimination was suggested, and it was recommended that the Government should add the provision of "goods" to the services and

facilities section, remove the caveat from the equal pay clause that employees must be "employed in the same establishment," and limit The Indian Actexemption "... to any provison made under or pursuant to that Act that constitutes a preference or advantage to Indian people and is not discriminatory in any other respect." Furthermore, the Association wanted a definition of "bona fide occupational requirement," clear provision for appeal from tribunal decisions on questions of fact and law and, as well, the exemptions of Part IV were condemned as too broad.[43]

The ACSW had little criticism of the Bill other than that "bona fide occupational requirement" should be defined, the provisions of The Indian Act should not be exempted, and that appeal procedures be more clearly stated.[44] The NACSW, while also denouncing the exemption of The Indian Act, wanted more. The Committee reiterated the stand it made in 1976 that prohibitions of discrimination in employment were better left in labour legislation because "... a comprehensive labour code is more readily available to and more easily understood by the lay person..."[45] and because employment discrimination needed a deterrent approach while discrimination in other areas needed conciliatory settlement.[46] The NACSW also wanted "sexual orientation" and "political affiliation" added as prohibited grounds of discrimination. With regard to the equal pay clause, the Committee thought that the exceptions should be specified, that pension benefits be included in the definition of equal pay, and that the words "employed in the same establishment" be deleted. As well, it was argued that the Bill should enable tribunals to order the establishment of affirmative action

programmes.[47]

The Civil Liberties and Human Rights Association Federation wanted a re-orientation of the law, contending that the Bill should emphasize enforcement rather than conciliation. Furthermore, the Bill should go further, prohibiting more grounds of discrimination, banning discrimination in the provision of credit and loans, by defining "bona fide occupational requirement," emphasizing affirmative action programmes and allowing for their prescription in government contracts. Similar to the demands of the other representations, the Federation wanted the Bill to apply to The Indian Act. As well, Part IV was criticized for its exemptions and it was suggested that the Part be re-drafted and placed in a Freedom of Information bill.[48]

The recommendations of the Canadian Civil Liberties Association were not as broad. The Association concentrated on a condemnation of the hate messages clause, reasoning that it may infringe upon freedom of speech. The brief argued that, "The dividing line between creative tension and destructive hate will often be very difficult to draw. Like the hate propaganda section of The Criminal Code this kind of legislation creates a risk of catching within its orbit a wide variety of utterances well beyond its intended targets."[49] If the Government did not delete the clause, it was urged to make the prohibitions no wider nor the defences narrower than those in the hate propaganda section of the Code.

The CCLA further pressed the Government to fall in line with the

provinces by, not only precluding employers from using certain pre-employment inquiries to discriminate, but also prohibiting employers from making pre-employment inquiries related to prohibited grounds of discrimination. The equal pay clause should explicitly include pensions within equal pay obligations and the wording, "in the same establishment" should be deleted it was argued. Finally, Part IV was described as "... little more than a legal mirage";[50] the Government should tighten the exemptions, all information banks should be identified and an independent court or tribunal should be empowered to overrule Government claims to exceptions.[51]

There was also some representations made to the Committee by way of correspondence. The United Church of Canada asked that a prohibition of discrimination because of "physical handicap"[52] be added to all areas covered by the Bill as well as "mental and emotional handicap." The Canadian Association of University Teachers wanted more definitions of phrases and words in the Bill and the addition of "political values," "family relationships," and "sexual orientation."[53] The Law Union also pressed for the addition of "sexual orientation," as well as the power for Tribunals to order affirmative action programmes. It criticized the equal pay section for having too many "escape clauses" and was concerned that there could be problems if the Commission was left entirely with the discretionary power to appoint tribunals.[54] Finally, the Canadian Association for the Mentally Retarded strongly urged the inclusion of "mental handicap" as a ground of discrimination.[55]

Similar to the representations to the Government regarding Bill C-72, the representations to the Standing Committee on Justice and Legal Affairs lacked pleas for less progressive anti-discrimination legislation. Every group favoured extending the application of Bill C-25, excepting the CCLA's condemnation of the hate messages clause, albeit the Association's rationale was based on concern for principles of traditional civil liberty and not on non-regulation per se. It also appears that all representations were by well-established, large organizations whose legitimacy were acknowledged on Parliament Hill.

Clause-by-clause consideration of Bill C-25 took place during four sittings from May 17 to 19. In Basford's presentation to the Standing Committee, he emphasized that he did not want to initially overburden the Human Rights Commission adding more prohibited grounds of discrimination to the Bill, especially where there were no guiding precedents.[56] Nonetheless, the addition of grounds was the most contentious topic in the committee. Two Members, Fairweather and Stuart Leggatt (NDP - New Westminster), pressed for the addition of "sexual orientation." This position was supported by all but two organizations that made representations to the Committee and was also requested by the National Gay Rights Coalition, an umbrella organization representing 33 homosexual groups in Canada, in a letter to Basford in October and in a written representation to the Committee on May 12, 1976.[57] Despite strong argument from the two Members, Basford attempted to reject any idea that the Government had concerns about security in the Public Service if gays were given equal rights. He stuck to his contention that "sexual orientation" should not be added

because it was an untested ground.[58] The Committee was further assured that the Human Rights Commission could always study the issue and recommend amendments later. The Committee Chairman, Mark MacGuigan, stated later, however, that he sensed a fear on the part of the Government of including protection for groups where general social consensus had not yet developed.[59] A motion by Fairweather to add "sexual orientation" to section 3 was subsequently negatived, four to two.[60]

Similarly , Leggatt argued that there should be no discrimination because of "political affiliation." This position was also supported by the majority of those groups that appeared, however the motion was defeated, six to one.[61] Basford convinced several Committee Members that including "political affiliation" would override policy regarding the right of public servants to participate in the political process as expressed in The Public Service Staff Relations Act and could override federal national security policy. Although he generally felt that political affiliation should not bar individuals from employment so long as they were loyal to the Canadian political system, Basford implied that more thought should be given to the matter.[62]

A motion by the Opposition to extend protection for the physically handicapped to the areas of services and accommodations was also defeated, four to two.[63] While several Members and three organizations strongly supported the extension, the Government contended that it was impractical to have the Commission order that buildings be redesigned and special facilities built. Basford stated that this "... would place

an immense burden on the private sector. It would be chaotic."[64] Basford further argued that positive action was being taken by the Departments of Public Works, Transport, Health and Welfare and Urban Affairs to improve facilities for the handicapped.[65] As well, mention was made of section 22 (1)(h) of the Bill which provided that the Commission "shall encourage the development and improvement, to the extent practical and within the legislative authority of Parliament, of arrangements for physically handicapped persons to have access to goods, services, facilities and accommodations that are customarily available to other persons."

There was noticeably no support from Committee Members for prohibiting compulsory retirement and only the CLC pressed for this change.[66] There were suggestions that the Government consider adding the prohibited grounds of "language," "citizenship," "mental disability," and "source of income," however there was little support for these additions and no motions were subsequently made to include them.

Several organizations and Members, including Simma Holt (Liberal - Vancouver- Kingsway), expressed concern about 63(2) of the Bill which exempted The Indian Act from the provisions of the proposed Act, thereby allowing discrimination against Indian women. The Government argued that, although it did not endorse this discrimination, the National Indian Brotherhood had asked that no changes be made to The Indian Act until there had been full consultation with them. The Government agreed to this and held that

on-going consultations would be compromised if subclause 63 (2) was removed.[67] By a vote of five to three, the section was left intact, although all Members of the Committee and the Minister appeared troubled by the unique status of The Indian Act.[68]

As noted in the above chapter, The Canadian Human Rights Act may not apply to The Indian Act, regardless of subclause 63 (2), without a clause stating that The Canadian Human Rights Act had primacy over other legislation. Insofar as other acts of Parliament would be affected by the proposed Act, Basford rejected calls for the inclusion of a primacy clause because "The legislation as drawn obviously supercedes any previous federal legislation in this area. If you add a primacy clause you can pass another act that is paramount to it," Basford stated. He concluded, "Legally and in terms of Parliament I do not think it adds anything."[69]

The addition of the "equal pay for work of equal value" concept in Bill C-25 was a great step toward meeting the demands of women's organizations wanting an effective non-sexist remuneration policy in Canada and yet the wording of the equal pay section was still criticized by the ACSW and the NACSW. Basford countered some of the criticism by proposing an amendment to the clause that prescribed equal pay for work of equal value in the same establishment by clarifying that "Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be a single establishment."[70]

There was still criticism. The Bill stated that "... it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a reasonable factor that justifies the difference."[71] While accepting that there could be justifiable differences, the women's groups demanded a definition of "reasonable factor." Since the Commission could define the term in guidelines at a later date, the Minister refused to put a definition into the legislation. He claimed, "It is impossible to devise an exhaustive list forseeing all possible reasonable factors. In addition, it is possible that in attempting to develop an exhaustive list, some factors may be included which are not intended."[72] A similar argument was advanced by Basford for not defining what would constitute a "bona fide occupational qualification" for employment.[73] A definition was sought by Leggatt in particular. The Canadian Chamber of Commerce, the only employer body on record to have made suggestions to the Government, wanted a definition of what constituted "equal value." This concern was expressed in a letter to the Minister on April 30, 1977.

The ominous warnings from the Opposition at Second Reading of a pending attack on Part IV were noticeably absent in Committee. Perhaps it was Basford's careful explanation of each section of Part IV and the introduction of a number of relatively minor amendments that subdued criticism. As well, when the Government responded to the request of Committee Members to provide a comparison of the provisions of Bill C-25 and U.S. legislation, and it was evident that the Canadian law could be as effective as the U.S. Privacy Act,[74] Members may have

backed off. There was limited discussion of Part IV and only one amendment was proposed but it was ruled out of order.[75]

During the clause-by-clause study of the Bill many minor changes were made by the Government and several amendments were also sought by the Opposition. All 33 government sponsored amendments passed. The 7 Progressive Conservative amendments were defeated, although 3 of the 7 NDP amendments passed. Two of the latter augmented the fine for violating provisions of the proposed Act from a maximum of $1,000 to $5,000 for individuals and from a maximum of $10,000 to $50,000 for employers, employer associations, or trade unions.[76] The significance of this amendment is questionable since there was still no minimum penalty and there had never been a prosecution in Canada under similar sections in provincial or federal human rights statutes. The other amendment, although put by Leggatt, was strongly recommended by the Chairman. The amendment removed the power of the Governor-in-Council to assign duties and functions to the Department of Labour and instead allowed this only "... on the recommendation of the Commission." All Members perceived that this was crucial to the intent of the Bill.[77]

The most contentiously debated Opposition amendment was a proposal by Woolliams. He maintained, as did the Canadian Bar Association, that the Bill did not contain an adequate appeal mechanism. Although appeals from Tribunal decisions could be made to the Federal Court, Woolliams believed that the experience of appeals under Section 28 of The Federal Court Act confirmed that appeals were not allowed on

questions of fact. More time was consumed on this topic than on any other. Basford rejected Woolliams' thesis, arguing that the Federal Court had heard appeals on questions of fact on numerous occasions. He further emphasized that if there were problems with The Federal Court Act, several federal agencies would be affected and so the matter should be deferred until a pending re-examination of The Federal Court Act had been completed.[78]

The matter was raised again at the following Committee sitting. In hopes of subduing Woolliams and perhaps some other Members, Basford introduced an amendment to establish a review tribunal. In support of his compromise, Basford stated:

> (The amendment) would avoid, I think, the serious criticism Mr. Woolliams has made, that one man could make a decision that could have a quite considerable impact on individuals, and that there would be no right of appeal for that individual except to the Court of Appeal via Section 28. I think I would like to suggest a remedy to the Committee: that for purposes of The Human Rights Act, we provide a special appeal review tribunal for tribunals of fewer than three, and that if we are going to change The Federal Court Act we do that when the whole Act is under review....[79]

This review mechanism was unique to human rights law and obviously surfaced due to the singular events in Committee. Since Woolliams' contention largely emanated from his distrust of adminstrative tribunals, Basford's proposed amendment did not appease him. He responded:

> ...what you are saying, Mr. Minister, is: because one man made a decision you can have a trial de nova with three others. Well, they are all in the same club, they all have lunch together, they talk about this thing; I know what goes on. That really is not an appeal to some distinct separate body.[80]

Nonethelesss, Basford's amendment passed.

Of the many Government amendments to the anti-discrimination parts, in addition to those proposed earlier by Basford, only four conceded to major interest group demands and these were the only significant amendments. The controversial wording in the equal pay section that persons had to be "employed in the same establishment" to be protected was qualified so that separate establishments maintained or established in order to maintain or establish differences in wages were deemed to be a single establishment. As well, pension plans were added to the scope of the equal pay section. Finally, affirmative action programmes could be ordered by Tribunals and the provision of "goods" was added to the services and facilities section.

The Government met demands of the Opposition and interest groups part way within the Committee forum. The changes were generally of minor importance, however. The calls for significant change to such items as the prohibited grounds of discrimination, went unheeded although a more important concession was evident with regard to affirmative action programmes. Basford initially proposed an amendment giving the Commission "... the power to propose such programmes on its own initiative," but the actual amendment merely allowed the Commission to encourage and promote programmes by making "general recommendations concerning desirable objectives...." Since Tribunals were empowered to order the adoption of affirmative programmes it appears that the Government had more faith in discretion exercised by Tribunals than by the Commission.

(d) Report Stage and Third Reading

The report of the Standing Committee on Justice and Legal Affairs was considered by the House on May 31 and June 2, 1977.[81] The tone of the debate was set when Woolliams moved an amendment to the Bill to specifically set out the right of appeal from a Tribunal to the Federal Court on a question of law, mixed fact and law, or fact. He reiterated his opinion that, although section 28 of The Federal Court Act generally allowed appeal from a Tribunal, the wording of that clause did not allow an appeal involving a question of fact.[82] Six Progressive Conservatives and an Independent, Leonard Jones (Moncton), spoke in favour of the proposed amendment.

The issue was clouded. Many Members apparently unfamiliar with the legal argument, seemed to interpret Woolliams' argument to mean that there was no right of judicial appeal in the Bill at all. Walter Baker (PC - Grenville-Carleton), asked "What is so wrong with acceding to what (Woolliams) has asked,... the right which has been granted historically, as it ought to have been granted - that is access to the courts?"[83] Likewise, Bill Jarvis (PC - Perth - Wilmot), stated:

> The minister must feel that there is some basis for an appeal, otherwise he would not have agreed in committee to an appeal to a board of three members. If he agrees in principle with an appeal, I would earnestly hope that he would agree, or at least consider, a judicial appeal under which this bill in particular makes much more sense than an appeal to three fellow board members....[84]

On the actual issue, however, Marcel Lambert (PC - West Edmonton), stated, "We have seen many cases where the federal court has denied its jurisdiction because an appeal purported to be on a matter of fact."[85] He concluded, "One should not have to wait for some federal court which... might say, 'Oh, but this is just an appeal as to facts, and there lies no jurisdiction in this court to review it.' Just that one potential case would be sufficient to justify this direct and unambiguous amendment...."[86]

Andrew Brewin, on behalf of the NDP, also seemed a little unaware of the intricacies of the argument. He held that "Certainly there are some matters that ought to be reviewed by the courts, but there are others which administrative tribunals are far better suited to deal with than are the courts themselves."[87] Brewin based his agrument for limiting the right of appeal on the grounds of expense and delay. The NDP, he said, would vote against the amendment because it would "... frustrate and delay the healthy operation of the legislation."[88]

The only lively debate on the Bill was triggered when Basford spoke on Woolliams' motion. Speaking of Mssrs. Woolliams, Nowlan and Baker, Basford chided:

> They said what a terribly important bill this is and what an important initiative by the government it was to put before Parliament a bill dealing with the human rights of Canadians. What a contrast! I am delighted that honorable members opposite have, in the course of debating this bill and listening in committee, learned something about the bill, because at Second Reading, if one wants to look at the record, this bill was pooh-poohed as being unneccessary.[89]

Although there is no record of Mssrs. Nowlan and Baker

expressing this opinion, Mr. Woolliams' statements implied that The Canadian Bill of Rights may be sufficient to protect human rights. When Basford quoted Woolliams from the Committee proceedings, Woolliams replied that quotes were taken out of context and he added that "...my only criticism of the bill is what they will do by order-in-council."[90]

Basford defended the Bill from Committee declaring that statements to the effect that there is no right of appeal were "utter nonsense."[91] Furthermore he reiterated that the right of appeal on questions of fact is clearly set out in Section 28 of The Federal Court Act. He added, "There is a whole line of cases dealing with questions of fact and how the Federal Court has exercised its jurisdiction under the section." In response Woolliams rose on a point of privilege to say "we have been good friends over the years, but tonight I am shocked that (the Minister) would mislead or try to mislead the press and the House as Attorney General and Minister of Justice of the country."[92]

The House, however, voted along party lines, 111 to 56 to defeat the motion. The Social Credit Party voted with the Progressive Conservatives; the NDP voted with Government.[93]

During the ensuing debate on Third Reading, Basford expressed appreciation for the support given to the Bill by Members from all corners of the House. He highlighted the "equal value" provisions and expressed hope that the measure would deal with the serious problem of low-paying female jobs ghettos.[94] He defended the absence of

"physically handicap in the services section and "language" as a prohibited ground.[95] With regard to Part IV, Basford emphasized the uniqueness of the legislation in a parliamentary system. He expressed his hope that a similar scheme would be extended to the federally regulated private sector as rapidly as possible and that the provinces would also take similar action.[96]

Fairweather spoke of the need for the administrators of the legislation to cooperate with the provincial commissions and lamented the Government's refusal to include "sexual orientation" as a ground of discrimination.[97] He spoke enthusiastically of Canada's new challenge to develop jurisdiction with regard to equal pay for work of equal value and added, "If I interpret the Minister's remarks correctly, in his anwser to the Indian people he gave them a signal to get on with the matter of making suggestions to Parliament for an Indian Act which would not continue what is one of the outrages of modern society, namely, the blatant, legislated discrimination against women who are Indian."[98]

For the NDP, Leggatt gave credit to Fairweather for his fight to have protection for homosexuals added to the Bill. He stated that "This group of people is unpopular and it is not a popular move to bring forward legislation to protect that group. Nevertheless, sometimes there is a difference between what is right and what is popular."[99] He made notice of the absence of protection for Indian women and the inclusion of "political affiliation." When summarizing the NDP's concerns during the Committee discussions, Leggatt also

expressed his reservation about the possibility of an employer hiding behind the "bona fide occupational requirement" exception. In conclusion, Leggatt announced:

> The bill goes some distance in providing protection to some groups. I wish we could say "all groups" and I wish we could say that the Minister had the courage to protect the unpopular under this legislation. I must say that neither he nor his govenment has had that courage. There are times in this House when playing politics with a bill as important as this one is wrong. Our party will support it because it does go some distance in protecting people....But we should have seen a little more forthrightness by the Minister in the bill.[100]

The remaining speakers generally supported the Bill as amended and, on division, Bill C-25 agreed to the motion for Third Reading unanimously, June 2, 1977.

(e) Senate and Royal Assent

It is generally accepted that the Senate has increasingly played "...a relatively insignificant role in the legislative process."[101] It has been found that the Senate amended only 3.5 percent and rejected 1.2 percent of bills from the House of Commons between 1963 and 1974.[102] It is not unusual then that Bill C-25 would go untouched.

First Reading of Bill C-25 took place on June 6, 1977. Two days later the debate on the motion for Second Reading began when Carl Goldenberg (Liberal - Quebec), also Chairman of the Senate Committee on Legal and Constitutional Affairs, provided a general introduction and description of the Bill and defended its current provisions. Subsequently, on June 13 and 14, a few Senators criticized the Bill. Paul Yuzyk (PC - Manitoba), while assuring that, "Mindful of some of

its shortcomings, we, Her Majesty's loyal opposition in the Senate, approve Bill C-25 in principle and warmly welcome it," stated that among several matters to be examined in Committee was the right of appeal, the addition of "language," "political affiliation," "sexual orientation," and "physical handicap" to the grounds of discrimination, and the exemption of the Indian Act.[103] Eugene Forsey (Liberal - Ontario) directed the bulk of his criticism at Part IV. He described it as "riddled with exclusions, exceptions and booby traps...." He added that, "Unless the part can be thoroughly cleaned, purged, reformed, I think it would be better dropped from the bill altogether."[104] George Smith (PC - Nova Scotia) stated that too much power of regulation was given to the Governor-in-Council throughout and he wanted "political belief" added as a prohibited ground of discrimination.[105]

When the Bill passed Second Reading on June 14, it was referred to the Committee on Legal and Constitutional Affairs. The Committee considered the Bill at sittings June 21, 28 and July 5. Members questioned Strayer and an official, who was knowledgeable on Part IV, about several aspects of the proposed legislation. Basford also answered questions at the last sitting. Although the questions were on significant points, no amendments were sought. The whole endeavour was nothing more than an educational exercise for Committee Members.

The public's perception of the Senate as an impotent body has perhaps become a dynamic factor threatening the potential for a more informed and active Upper House. No interest groups bothered to appear before the Committee. Only Gerald Baldwin (PC - Peace River),

submitted a brief relating to Part IV (which subsequently raised questions of the propriety of Members of the House of Commons appealing to the Senate).[106] Furthermore, Bill C-25 came to the Senate without explanatory notes nor any indication of the amendments that passed in the House. It appears that this practice was quite common.[107]

On July 7 the Senate received the Committee Report and debated the motion for Third Reading. Jacques Flynn (PC - Quebec) spoke for some Members when he expressed concern regarding ministerial discretion, appeal, and the exemptions under Part IV but stated that he preferred to pass the Bill, considering the Part IV as experimental. The Senate then voted unanimously in favour of the Bill.

Colin Campbell contends that Senate Members perform a function as "business reviewers"; "... they manoeuvre, bargain, and use subtle tactics to accommodate legislation to the business viewpoint,"[108] thereby giving "... an undemocratice advantage to business interests."[109] During the development of Bill C-25, business interests never exerted overt pressure on the Government yet there certainly was opportunity for an expression of business concerns in the Senate. The only indication that Senators were sensitive to business was the raising of a concern, expressed in a letter to Basford from the Canadian Chamber of Commerce, that there should be a clear definition of "equal pay." Weight had never been given to the Chamber's position in the House of Commons but even the Senate did not press for the Chamber's cause. In conclusion, the Senate played an insignificant role in the

development of anti-discrimination policy.

The passage of Bill C-25 was complete when the Bill received Royal Assent on July 14, 1977.

(f) Summary

Throughout Parliament, Bill C-25 did not encounter significant partisan debate, although vestiges of party discipline appeared when there were differences of opinion between Members. The Bill's passaage was relatively rapid, facilitated by the absence of ideological confrontation and an evident spirit of compromise on the part of Basford and Fairweather, the chief actors. The absence of competing interest groups was also a contributing factor. The parliamentary stage of the development of The Canadian Human Rights Act was finally complete.

Notes

1. There are limits to access. Information cannot be released if it is injurious to international relations, federal-provincial relations, or national defence, for example. See Bill C-25, 2nd Session, 30th Parliament, clause 54.
2. Ibid., clauses 52, 53, 54, 57, 58.
3. Ibid., clauses 3 and 20.
4. Ibid., clause 11 (1).
5. Ibid., clause 11 (2).
6. Ibid., clause 12.
7. Ibid., clause 13.
8. Ibid., clause 15 (2).
9. Ibid., clause 22 (1).

10. Ibid., clause 22 (3), (4).

11. Ibid., clause 32 (4).

12. Interview with Gordon Fairweather, March 26, 1981.

13. It appears that Basford hoped to introduce Bill C-25 earlier. Both the Montreal Star and Canadian Press carried reports that the Bill was expected either November 3 or 26.

14. Winnipeg Tribune, December 6, 1976.

15. Ottawa Journal, December 7, 1976.

16. Canada, Parliament, House of Commons, Debates Second Session, Thirtieth Parliament, p. 2975.

17. Ibid., p. 2978.

18. Ibid., p. 2976.

19. Ibid.

20. Ibid., p. 2977.

21. Canada, Office of the Minister of Justice and Attorney General of Canada, News Release, November 29, 1976.

22. Correspondence, Eldon Woolliams to Joe Clark, January 27, 1977; Fairweather, February 22, 1982.

23. Debates, p. 2978 and 2982; Fairweather.

24. Debates, p. 2982.

25. Ibid., p. 3169.

26. Fairweather, Nicholson, Knowles, Johnston, Orlikow, Philbrook and Malone.

27. Fairweather, DeBane, Masnmiuk and Malone.

28. Lachance, DeBane, Philbrook and Malone.

29. Fairweather, DeBane and Masniuk.

30. DeBane; also five PC; five NDP.

31. Debates, p. 2983 (Brewin).

32. Ibid., p. 3148 (Alexander).

33. Ibid., p. 3174.

34. Ibid.

35. Canada, Parliament, House of Commons, Journals, Second Session, Thirtieth Parliament, p. 510.

36. See Mark MacGuigan, "The Role of the Stading Committee on Justice and Legal Affairs of the Canadian House of Commons: 1968-78," (1968-78) Decade of Adjustment ed. J. Menezes (Toronto: Butterworths, 1980).

37. Paul G. Thomas, "The Influence of Standing Committees of Parliament on Government Legislation," Legislative Studies Quarterly 3 (November, 1978): 698.

38. Ibid., p. 699.

39. Canada, Parliament, House of Commons, Standing Committee on Justice and Legal Affairs, Minutes of Proceedings and Evidence, Second Session, Thirtieth Parliament, 6A:8.

40. Ibid., 7A:13.

41. Ibid., 7A:19.

42. Ibid., 7A:27.

43. Ibid., 7A:61.

44. Ibid., 7A:28.

45. Ibid., 8:4.

46. Ibid., 9:6.

47. Ibid., 9A:27.

48. Ibid., 10A:40, 41.

49. Ibid., 10A:6.

50. Ibid., 10A:4.

51. Ibid., 10A:13.

52. Correspondence, Rev. W. Clarke MacDonald, Deputy Secretary, Department of Church in Society, United Church of Canada to Members of the Standing Committee on Justice and Legal Affairs, April 6, 1977.

53. PC Caucus summary of criticisms regarding Bill C-25.

54. Correspondence, Paul Trollope, The Law Union, to Mark MacGuigan, Chairperson, Standing Committee on Justice and Legal

Affairs, May 10, 1977.

55. Correspondence, Margot Scott, President, Canadian Associaton for the Mentally Retarded to Mark MacGuigan, Chairman, Standing Committee on Justice and Legal Affairs, May 26, 1977.

56. Minutes, 6A:4.

57. Ibid., First Session, Thirtieth Parliament, 48:48; Globe and Mail, October 7, 1976.

58. Minutes, 13:39.

59. Mark MacGuigan, "Equality of Opportunity - A Legislator's Perspective," Executive Bulletin (The Conference Board in Canada) 4 (March 1978).

60. Minutes, 13:5.

61. Ibid., 13:6.

62. Ibid., 13:45.

63. Ibid., 13:6.

64. Ibid., 13:47.

65. Ibid.

66. Ibid., 7:6-7.

67. Ibid., 15:43.

68. Ibid., 15:10.

69. Ibid., 11:48.

70. Ibid., 9:39-41; 11:46-8.

71. Bill C-25, s. 11(3).

72. Minutes, 6A:6.

73. Ibid., 6A:7.

74. Privacy Act, 1974, Public Law 93-579, s. 552a, Title 5.

75. Minutes, 15:5; Leggatt proposal the deletion of Part IV.

76. Ibid., 14:31-5.

77. Ibid., 14:6-10.

78. Ibid., 14:37-47.

79. Ibid., 15:21.

80. Ibid., 15:23.

81. Debates, May 31, 1977, p. 6143.

82. Ibid., p. 6144.

83. Ibid., p. 6147.

84. Ibid., p. 6150.

85. Ibid., p. 6155.

86. Ibid., p. 6156.

87. Ibid., p. 6196.

88. Ibid.

89. Ibid., p. 6151.

90. Ibid.

91. Ibid.

92. Ibid., p. 6155.

93. Canada, Parliament, House of Commons, Journals, Second Session, Thirtieth Parliament, p. 896-7.

94. Minutes, p. 6198.

95. Ibid.

96. Ibid., p. 6199.

97. Ibid., p. 6200.

98. Ibid., p. 6201.

99. Ibid.

100. Ibid., p. 6202.

101. Richard J. VanLoon and Michael S. Whittington, The Canadian Political System, (Toronto: McGraw-Hill, 1976), p.447.

102. Colin Campbell, The Canadian Senate. A Lobby from Within (Toronto: Macmillan of Canada, 1978) p. 199; (figures also from Robert A. MacKay, The Unreformed Senate of Canada, Toronto, 1963), pp. 9-11.

103. Canada, Parliament, Senate, Debates , Second Session, Thirtieth Parliament, June 13, 1977, p. 878.

104. Ibid., p. 887.

105. Ibid., p. 890.

106. Canada, Parliament, Senate, Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, Second Session, Thirtieth Parliament, 5:6.

107. Ibid., 7:9.

108. Campbell, P. 11.

109. Ibid., p. 1.

CHAPTER VI

The Formative Years

To suggest that the policy process is complete at the end of the parliamentary stage is to ignore the reality of public policy. The passage of Bill C-25 was not an end in itself but merely represented policy direction while the establishment of the CHRC represented a step toward the addition of flesh to the "skeletal" form of the law.

There is growing recognition that the implementation phase of policy-making is crucial to the success of legislation. It is the real world test. Consequently, Richard Simeon[1] perceives that literature on the public policy process is often characterized by incomplete analyses. He states that, "The work on the environment has tended to ignore the "black box" of the political process, while work on the process has tended to ignore the setting within which it operates." Simeon also asserts that policy is comprised of "output," or what is done, and "outcome," or what the consequences are for society.[2] "Output" is policy-making while "outcome" is bound to policy implementation. It is crucial, then, to study the policy implementation stage to determine whether the many variables of private behaviour are able to fulfill the intent of policy-makers. Policy-making cannot, by itself, preclude the fulfillment of intent. Richard F. Elmore[3] warns that "The notion that policy-makers exercise - or ought to exercise - some kind of direct and determinant control over policy implementation might be called the "noble lie" of conventional public administration and policy analysis."

In the areas of anti-discrimination legislation, the need to analyse policy implementation is acute. Implementing the law is not merely an exercise in administration, it is also an important political exercise. As evident throughout the development of Bills C-72 and C-25, many terms in the legislation, such as "equal value," "reasonable factor," and "bona fide occupational requirement," were undefined, those terms having been left to the Canadian Human Rights Commission (CHRC) to define over time. As well, the CHRC was empowered with significant investigative, organizational and other decision-making authority. For example, the Commission had the power to decide on the internal allocation of funding amongst the functions of the CHRC, it could devise rules for implementing equal pay, pension and pre-employment inquiry provisions. It could even determine the merits of all complaints filed with the CHRC by accepting or rejecting cases at the intake level, by conciliating or dismissing cases after investigation, and by allowing or disallowing cases to proceed to Tribunals. William E. Conklin has commented on the discretionary powers in a recent review of The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms by MacDonald and Humphrey.[4] He states:

> There is one final question which the book forces us to seriously to contemplate. Many of the leading practitioners of human rights in Canada have written essays for this volume. A close look at their essays finds their adherence to the claim that there is a great deal of 'discretion' and 'subjectivity' in the actual adminstration of human rights institutions and human rights laws in Canada and in the international arena. Decision-makers, administrators, advisors and lawyers are continually required to make judgement calls. If these authors are correct in their claim, then it would seem that the most realistic foundation for a discussion of the 'practice of freedom' as well as for the formation of public policy with respect to human rights would be critical examination of the normative assumptions

held by decision-makers in Canadian institutions. That is to say, the most realistic and practical approach towards human rights in Canada would be one which is normative in its nature.

This chapter attempts to consider the environment and the institutionalization of the CHRC by examining the implementation stage. Organizational arrangements of the CHRC and its policies are analysed in parts a) and b). Part c) looks at the record of the Commission while part d) attempts to measure the agency's effect on the environment.

(a) Organizational Arrangements

On May 25, 1977, during the proceedings of the Standing Committee on Justice and Legal Affairs, Basford indicated he wanted the Human Rights Commission functioning "... as quickly as possible."[5] He stated he had been searching out names to fill Commission positions and did not want to proclaim the proposed Act until there was a Chairman and Commission.[6]

The implementation of the new legislation had actually begun by April 4, 1977, when an administrator, Lloyd Stanford, was loaned to the Department of Justice from the Federal-Provincial Relations Office to work under Dr. Barry Strayer, handling preliminary duties related to organization, budget, staffing, financial arrangements and supplies.[7] Shortly after Stanford's arrival, Martha Hynna was loaned by the Privy Council Office to deal with preliminary policy-related matters. Hynna was previously involved with the Royal Commission on the Status of Women as a member of the Secretariat and had been an advisor to the

Minister responsible for the Status of Women.

By late May, Stanford had drafted a proposed organizational chart, drawing on the advice of Walter Tarnopolsky, Dr. Daniel Hill, Strayer and officials of the Nova Scotia and Ontario Human Rights Commissions. By early July, the proposed Commission was tentatively structured, pending the approval by the yet-to-be appointed Commissioners. An integral part of the structure was a Research and Special Studies Branch and a Liaison and Community Relations Branch, in addition to the investigation, conciliation and enforcement divisions.[8] Because there was a lack of well-trained, experienced human rights personnel in Canada, Hill had suggested a training and staff development branch but this recommendation was not adopted.[9] Although Hill also wanted emphasis on conciliation and enforcement functions, the input of the others resulted in a higher priority for research and public education. It was also envisioned that affirmative action initiatives could emanate from the education branch. From all indications, the planners had ambitious ideas about a positive role for the new Commission.

Proposed requests for funding and staff were also being formulated before the Bill was passed. Stanford had compiled caseload statistics from the Ontario and Quebec Human Rights Commissions, Statistics Canada and the Department of Labour to estimate the required resources.[10] The early consultations led to a belief that responsibilities should not be delegated to Labour nor the provinces if at all necessary. Based on this decision, it was estimated that 179 people would have to

be hired by the end of 1979.[11] Hill, in a letter to Strayer on June 25, urged that "... the proposed number of staff in the first and second years is a little "heavy" and that a smaller figure should be considered." He stressed that, "A small, multifunctional, intensely trained cadre should be developed that would fan out later, giving direction and guidance to the branches and regional offices, all of which will undoubtedly need close supervision and guidance during the Commission's formative years." He further warned that 179 "top-flight" people could not be found. "The rush to commissions by idealogues, zealots and do-gooders having all the paper qualifications was, in my time, a major problem in terms of developing a competent, objective and dedicated staff," Hill added.

At a meeting on July 4, attended by Stanford, Hynna, Strayer, McLearn and representatives of the Treasury Board Secretariat and the Public Service Commission, a Treasury Board official suggested that Hill's comments be heeded. Stanford's reply was the first indication of a developing struggle with Treasury Board Secretariat. He held that, "... Dr. Hill, though wise and experienced in the field, had adopted a gradualist approach, probably because he was working within the (Ontario) Department of Labour. He was able to draw on the department's infra-structure. In contrast the Federal Commission will be independent of the executive and needs the resources concomitant with its autonomy."[12] Stanford was perhaps acting on advice offered by a Nova Scotia Human Rights Officer, who had warned that sufficient resources should be requested initially because it would be difficult to get more later on.[13]

There were also discussions about the importance of recruiting personnel from outside of the Public Service, contrary to Public Service Commission policy. It was felt by some that it was necessary to have minority group representation and secure the most qualified personnel available. At the July 4 meeting this approach was discouraged by a representative of Treasury Board Secretariat because there was a tight employment situation created by the situation of no-growth in the Public Service. He indicated that the Human Rights Commission would have to demonstrate that there was an absence of qualified personnel within the Public Service first.[14] In this regard, another difficulty was emerging.

Earlier, in June, Gordon Fairweather had received a telephone call from the Prime Minister asking if he would consider accepting the appointment as Chief Commissioner. Bill C-25 had not yet been approved by the Senate. Due to the Bill's current status, Fairweather advised Trudeau that, although he was interested he felt uncomfortable discussing the matter and told him he would prefer to see the Bill pass first.[15]

Fairweather did not hear from Trudeau on the matter again until the first week of August, after the passage of Bill C-25. It was Fairweather's choice to accept the position. Consequently, in a letter sent on August 4 to each member of the Progressive Conservative Caucus, he stated that although the decision was a difficult one, "The challenge of a new career and the opportunity to help mould the direction of human rights policy for the Public Service and Crown

Agencies at the initial stage of the new legislation are ones I cannot lightly turn aside." He also cited his desire "... to lessen the overly long family separations and disruptions which have been relentless during 25 years in politics." Furthermore, he assured his colleagues that his leaving was in no way related to the leadership of Joe Clark.

Section 69 of The Canadian Human Rights Act allows for the proclamantion of the Act by section. Accordingly, Part I was proclaimed on August 10. The following day the Prime Minister publicly announced Fairweather's appointment, to take effect on September 1, 1977.[16] Fairweather remarked, "I do not know what was in the Prime Minister's mind when he asked me to be Chief Commissioner. I was told that the fact I had 10 years in the provincial legislature, two of which were as a minister and then 15 years (in Parliament) gave me some understanding of the jurisdictional pressures."[17]

It is doubtful that this was the Prime Minister's sole consideration. The appointment indicated that the Government did not perceive the Commission posting as a mere reward for party faithful. Fairweather's installment also meant that the Commission would begin its duties with an air of independence from the Government and, given Fairweather's concerns for human rights as expressed while he was a critic of Bill C-25, it appeared that the Government was intent on pursuing a high profile and an active battle against discrimination.

So, too, Fairweather's battle would likely be waged having a clear conception of the issues and intent of the Government in passing the legislation.

At the time of Fairweather's installment, the Prime Minister appointed Rita Cadieux as Deputy Chief Commissioner, thereby complimenting the Commission executive with competent female and bilingual representation. Cadieux was Director of the CBC's Office of Equal Opportunity. She had a history of dedication to the concerns of women's rights and was a former social worker. Inger Hansen, a lawyer who had served as a Penitentiaries Ombudsman since 1973 in the Ministry of the Solicitor General, was also appointed as the Privacy Commissioner to be effective October 1.[18]

Before Fairweather assumed his position, a briefing was held with Stanford to obtain a background on developments to date. By this time, major implementation problems were evolving and the new full-time Commissioners had to deal quickly with these issues; January 1 had been proposed as the start-up date for operations. Stanford, Hynna and the other planners had already begun to develop organizational policies for the new Commission which could significantly define the direction of the agency. For example, there was the pursuit of "open" competitions for staffing, plans for a relatively large staff and request for resources from the outset rather than a gradual buildup, prominent public education and research divisions, and a general policy plan of non-delegation of duties to the provinces and the Department of Labour. While it was Fairweather and Cadieux's prerogative to change any of

these directions, they chose not to and in fact reinforced the initiatives after their appointments became effective.

Following his appointment, Fairweather warned Basford that from time to time he would have to create waves in the Government. Basford replied favourably, stating that, to do the job, waves would have to be created.[19] Given this support from the Minister, Fairweather also made it clear that waves would not be needlessly created. First, he expressed his belief that Commission decisions would be collegial and that the Chief Commissioner would not simply be issuing orders for people to follow.[20] Second, he stated he would not embark upon "empire-building" but rather would co-operate and co-ordinate whenever possible.[21]

From the day of their appointment, Fairweather and Cadieux haunted Basford to appoint the part-time Commissioners. Although Trudeau guarded the appointments of the full-time Commissioners, Basford was delegated to find the others.[22] Upon the swearing in of Fairweather and Cadieux, Basford promised he would have the appointments completed no later than the end of October. Repeated urgings for action were forthcoming. By December 19 he admitted that he was embarrassed about the delay. Consequently, Basford finally announced his choices and issued an Order-in-Council on February 8, 1978. The five individuals were Malcolm MacDonell, President of St. Francis Xavier University in Nova Scotia, Martin Aster, a Montreal lawyer, Walter Tarnopolsky, Ellen Schmeiser, an associate professor of law from Saskatchewan, and Gloria George, a Native from British

Columbia, known for her active concern regarding people of her race. The choices reflected geographic, ethnic and professional concerns. There was no apparent partisan prerequisite.

Due to the tardiness of the appointments, the January 1 start-up date was out of the question. It was not until Feburary 20 that the first Commission meeting was held. However, while this delay stalled the development of anti-discrimination policies, progress in establishing organizational arrangements were previously stalled by other factors. Most of the organizational arrangements had been completed or planned before the appointments of the part-time Commissioners. These can now be chronologically examined from the time of Fairweather's appointment.

Fairweather and Cadieux took an early and basic decision to recruit personnel by means of open competition. The struggle with the Public Service Commission for this spanned almost three months. Finally simultaneous competitions for positions were approved both within and outside of the Public Service. While the exercise unfortunately caused delay in staffing, open competition was percieved as essential to a public perception of independence and to securing the most capable and representative staff.[23] Open recruiting was rarely allowed; it was perhaps helpful that the Official Languages Commission had earlier won this right using similar arguments, thereby adding weight to the position of the CHRC.

The issue of a representative staff was supported and reinforced by Tarnopolsky in particular, who, at the first Commission meeting,

stressed the importance of recruiting visible minorities. Furthermore, at the May 20 commission meeting, it was formally resolved that active recruitment of visible minorities was favoured, keeping in mind the aspirations of the francophone community and women.[24]

Shortly after Fairweather and Cadieux's appointment, Basford explained to them the difficulty encountered reconciling the responsiblities of the Human Rights Commission and the Department of Labour before Cabinet between 1975 and 1977.[25] While the Act removed the dispute from Cabinet by allowing a delegation of responsibilities to Labour, the matter was not resolved by the legislation. After the Bill's passage, a Labour official implied to Hynna that the Department did not want ad hoc assignments from the CHRC which would be difficult to plan for. Either a "package," a "piece of the action" or nothing was desired. As well, Labour did not want to deal with "equal pay for work of equal value" if it did not receive the rest of employment-related duties.[26] It was apparent that if the CHRC was to delegate responsibilities, it would have to give up a significant share on a permanent basis.

As already noted, there was a propensity by the Commission's planners to avoid delegation to Labour long before Bill C-25 was passed. The inclination was adopted early by Fairweather. During the preliminary briefing session with Stanford it was suggested there should be no discussion with Labour about partially delegating private sector regulation based on "the excuse" that it was necessary to avoid duplication. The real concern was that the Human Rights Commission

should not be crippled at the outset with regard to employment which was an important part of the mandate. It was also perceived that delegated functions would be difficult to regain.[27]

Treasury Board Ministers were anxious to have anti-discrimination initiatives consolidated.[28] By December it was decided that the matter could be resolved if the Commission offered to give preference in staffing positions to the staff of about 12 of the Rights in Employment Branch of Labour who met qualifications for the positions established by the Commission. Subsequently, a series of interviews were held in December to consider the qualifications of Labour's personnel. Several were chosen. The explanation offered to those who were not chosen was that the Commission had an obligation to be open, independent and had relatively few staff years so that equivalent positions could not be created.[29] Basford subsequently expressed pleasure at the resolution of the previous stand-off.[30]

Plans were laid to organize the Commission into four branches: Administration, Personnel and Finance, Complaints and Compliance, Community Liaison, and Research and Special Studies. In anticipation of the introduction and passage of legislation establishing an Ombudsman, plans were initiated to share the premises and services of the Administration, Personnel and Finance Branch.[31] However, when it was apparent by year's end that the legislation would not be introduced before the Commission was operating, the plans were dropped.[32] Under the Complaints and Compliance Branch, regional offices were intially planned for Halifax, Montreal, Toronto, Winnipeg and Vancouver,

although a total of 12 was envisioned for the future.[33] As well, Equal Pay Specialists and Legal Counsel would report to the Secretary General, who was to be responsible for the management of all Commission staff. The Privacy section was separate except that it shared the services of the Administration, Personnel and Finance Branch. It is worthwhile noting here that Martha Hynna was selected as the Secretary-General, effective November 1. A certain contuniuity of personnel was therefore maintained during the development of the Commission.

One of the most pressing tasks faced by Fairweather and Cadieux was to request adequate resources from the Treasury Board Secretariat based on the assertion that, to be effective, the staff should be well paid and salaries competitive with provincial levels. Fairweather felt further justified with this position because he perceived that Information Canada had failed in part due to the low classification levels of employees.[34]

From late October until January, 1978, a battle ensued with the Treasury Board Secretariat. The main argument was over the classification of the Directors of Complaints and Compliance, Community Liaison, and Research. Despite the prolonged battle and appeals to the Minister of Justice, the Secretariat recommended to the Treasury Board Ministers operative levels one level below what was thought as necessary.[35] Treasury Board accepted this recommendation. On the other hand, although the amount of money and allocation of staff years granted was much less than desired, both disbursements were increases

over the Secretariat's recommendations. Eventually the Commission received $3,000,000 for the fiscal year 1978/79 and 106 positions represented by 84 staff-years.[36]

Relations with the provinces were initially expected to be somewhat difficult in light of Manitoba's earlier objection to a federal administration.[37] Fairweather confirmed his belief in "co-operative federalism" upon becoming Chief Commissioner and stated that certain responsibilities may be delegated to the provinces so that there would not be "... a huge apparatus trailing around, following, second guessing the provinces."[38] Consultation with the provinces were held as Fairweather and Cadieux visited all ten provincial commissions by December 16. Fairweather commented that, "We have been flattered by the response we have received from the provinces who have 'said welcome aboard' and 'we want ideas, action and policies: It is pretty good to have that message."[39]

Formal, permanent delegation of responsibilities was not proceeded with, however. Again, the Commission was conscious that its mandate should not be reduced. At its May, 1980 meeting, the Commission passed a resolution that it would pay the cost of a provincial employee's salary, out-of-pocket expenses and travelling expenses for investigating a complaint on the Commission's behalf. Each contract with a province would be dealt with individually as the need arose.[40] Because regional offices were only operative in Vancouver, Toronto and Montreal throughout 1978, provincial officers were appointed to federal cases from Saskatchewan, Manitoba, Prince Edward Island, New Brunswick

and Newfoundland.[41] Subsequently, this contract option has dwindled. Co-operation with the provinces has more frequently been in the form of referrals. In Halifax and Winnipeg, this has been facilitated by locating the federal and provincial offices in the same buildings. So far, the anticipated problem of duality and overlapping has not been pronounced, however.

The federal anti-discrimination arrangements existing in the several federal deparments were variably affected by the establishment of the CHRC. The most affected was the Department of Labour as noted above. The Anti-Discrimination Branch of the Public Service Commission continued to exist, handling complaints of discrimination from public servants. Cases lodged with the Branch would be settled at that level or they could be transferred to the CHRC, especially if enforcement was necessary. Under an agreement made between the two bodies in March, 1978, if a complaint was first lodged with the CHRC but it appeared that the Public Service Commission had jurisdiction, the case would be transferred when the CHRC thought it appropriate.[42] The duality of service has remained for several reasons. The Anti-Discrimination Branch operates much like an ombudsman, dealing with many problems and discrimination on some grounds not listed in The Canadian Human Rights Act. It is also an immediate remedy to many problems and is familiar with internal workings of the federal government.

At the June 20, 1978 meeting of the CHRC, it was recommended that the Group Understanding and Human Rights Programme of the

Department of the Secretary of State should continue its involvement in the field of public education and information "... as long as the mechanisms of communication and co-ordination are established." It was recommended, however, that the CHRC, while not responsible for the final report, should prepare those aspects of the report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and the International Decade that deal with anti-discrimination legislation and enforcement. The agreement to this recommendation by the Department of the Secretary of State established the co-existence of the two agencies. It should be noted though that the Commission's own educational programme differed from the Group Understanding and Human Rights Programme in that the latter continued to disseminate mostly United Nations material and not CHRC brochures and reports. The above arrangements were proceeded with in line with Fairweather's belief that the ultimate control and responsibility for anti-discrimination matters should rest with the CHRC.[44]

(b) Policy Development

The Canadian Human Rights Commission has attempted to actively and rigorously combat the discrimination proscribed by The Canadian Human Rights Act. To this end, the Act has generally been interpreted broadly as evidenced by an examination of several key Commission policies.

At the initial CHRC meeting, the Chief Commissioner, Mr.

Fairweather, suggested the Commissioners adopt a policy of "Recourse, Awareness and Advocacy."[45] Here was an emphasis, not merely on complaint handling (recourse), but on education, information programmes, advice and review of federal legislation as allowed in the Act. With regard to "advocacy", the CHRC hoped to "discuss human rights issues in the context of Canada's social problems and make suggestions for their resolution."[46] Accordingly, Commissioners were encouraged to actively seek out and accept speaking engagements. The CHRC also agreed that the agency should use its good offices, where time permitted, to deal with problems affecting the human rights of complainants where the issues are not within the scope of the legislation.[47]

The commission's two earliest and immediate objectives were to establish its independence from the executive and to become widely known to Canadians.[48] The quest for independence comprised of a desire to be independent and to appear independent. This cause was aided by the Minister and officials of the Department of Justice who anxiously encouraged the CHRC to get out from under the Department's wings.[49] The agency symbolically adopted a distinct logo, following Elections Canada's example, which contrasted with the otherwise uniform logos of other federal departments, agencies and offices. As well, the Commission shyed away from locating its offices in buildings already occupied by the federal government. The most significant action has been the CHRC's open demands on the executive, however. This was facilitated in part by the Commission's structural independence but it has greatly strengthened its appearance of independence.

Recommendations have been made to the Government which are relatively radical in light of past Canadian initiatives to expand the scope of anti-discrimination law. Following the recommendation of a "National Conference - Human Rights in Canada ... The Years Ahead," attended by 170 delegates from diverse interest groups, the CHRC published a summary of wide ranging recommendations to improve human rights and social conditions of Canadians and submitted the report to Parliament in January, 1979. Later in the year, the Commission devoted 15 pages in its Annual Report to recommendations for expanding and improving The Canadian Human Rights Act. Among the recommendations were calls for prohibiting discrimination on the grounds of "physical handicap" in areas other than just employment, prohibiting compulsory retirement, and recommending that discrimination on the ground of "sex" be defined to include "pregnancy" and "sexual harassment." It was proposed that "sexual orientation," "political belief," "mental handicap," and "mental illness" be added as prohibited grounds. Removal of the discriminatory status assigned to Native Indian females by section 12 (1)(b) of The Indian Act was also urged. These recommendations, and more, were also published in the 1980 Annual Report.[50]

Speeches by Commissioners, new releases by the CHRC and media interest have further pressed the Government for action in the area of anti-discrimination initiatives. As well, several representations have been made to the Government on issues such as the constitution, the merit principle, retirement age, the handicapped and the application of

income tax. By virtue of the powers, duties and functions given to the CHRC by section 22 of the Act, the Commission is empowered to conduct reviews of federal laws and policies and make recommendations regarding human rights and freedoms. It has taken that legislation seriously and applied it to the fullest extent. The CHRC is now a federal pressure group.

The efforts to attain independence must be applauded. There have been varying attempts by human rights commissions and governments to establish an appearance of independence for the commissions. Ontario's agency, for example, has not been very successful in this regard. A study of discrimination against blacks in Toronto found that "the most serious criticism leveled against the (Ontario) Commission is its status as a government agency."[51] As the Ontario Commission's Report on Human Rights stresses, "The Commission has a special role to play as the guardian of the human rights of the people ... against the abuses from any quarter, whether in the public or private sector. For this reason, it should not be tied to any particular department or ministry and it should be responsible for its own administration."[52] Although there has not yet been a survey of public perception, the CHRC should be satisfied that it has achieved relative independence rivalled only by such offices as Elections Canada or the Auditor General, despite its channel to Parliament through a Minister and not the Speaker. Nonetheless,the administrative policies of Treasury Board, the Public Service Commission, the Department of Supply and Services and other executive decisions constrict, as has been shown earlier, the CHRC to the realities of government. Even

more important to this reality is the total dependence for staff-years and budget upon the executive. The Commission faced this frustration in the formative year. It is interesting to note that observers of American human rights commissions state that if commissions become powerful, legislators react by suppressing the agencies. The Fair Employment Practices Commission (FEPC), for example, found that "its most serious problem -- the opposition in Congress -- stemmed from the very success of its efforts."[53] Perhaps in this light it can be deduced that the commission's success at establishing its current degree of independence has so far been the government's willingness to allow for it.

The CHRC must be perceived as the most visible and provocative of the Canadian governmental anti-discrimination agencies. This is not due merely to its federal, and therefore national presence, but because it adminsters a highly self-publicized mission and has taken the law into previously untouched areas of regulation. Since the Commission began its operations, half a million copies of over 30 different bilingual publications have been distributed. A leaflet generally outlining the Act and a pamphlet on how to file a complaint have also been distributed in Chinese, Italian, Portugese and Ukrainian. Three public service announcements were aired 681 times during 1980 and five audio visual presentations are available.[54] The 15 employees of the recently created Education, Information and Co-operation Branch are also instrumental in advancing the principles and application of the Act. The branch focuses on the preventative aspect of discrimination. Regular speech-making activities of Commissioners are also important.

The visibility of the CHRC has been augmented by an "open door" policy whereby the Commission holds its meetings in public, except when individual cases are being discussed, and distributes summaries of major decisions made at Commission meetings. As well, CHRC files are open to public scrutiny, again excepting individual case files. These are not common actions of Canadian human rights commissions.

The extension of anti-discrimination law in Canada brought about by the proclamation of The Canadian Human Rights Act has, by itself, also heightened public awareness of the Commission. For the first time in Canada, discriminatory practices related to the application of income tax, discretionary powers of immigration officials, employment practices and services offered by the banks, railways and airlines, the traditions of the armed forces and recorded hate messages have been brought into question and widespread social comment has resulted. The equal pay mandate is also attracting interest. Furthermore, many settlements have been noteworthy and substantial. The latter is due, in part, to the very nature of employment and services under federal jurisdiction, where employers or services are large and national. Government departments, agencies and Crown corporations comprise the bulk of these cases. This is reflected by Commission statistics which reveal that about 40% of complaints investigated in a year are dealt with in Ottawa.[55]

Two major discretionary powers given to the commission were in

the areas of equal pay and pensions. More specifically, the CHRC had authority to construct regulations for Cabinet approval, defining how the agency would apply the policy direction of sections 11, 17 and 18 of the Act. In both areas the Commission cautiously developed guidelines. Affected groups were consulted and attempts were made to calculate both respondent and complainant needs in order to clarify policy options.

An Equal Pay Task Force, headed by the Deputy Chief Commissioner, began work in December, 1977 on the recommendation of a preliminary report prepared largely by Hynna.[56] The Task Force comprised of eight representatives from private industry, unions, women's groups and government. In its report of February 21, 1978, the Task Force made several suggestions. It reasoned that a definition of the "value" of work should be based on the employer's judgment of value. "The mandate of the Commissioner," it was argued, "is to ensure the employer's judgments are free from proscribed bias, not to impose its own set of judgments."[57] The Task Force stated that a definition of "establishment" must take regional economic disparities into account since it was not the Commission's mandate to eliminate the intra-national differences of Canada's economy. "Reasonable factors" justifying wage differences should be kept to a minimum and definitions of "skill," "effort," "responsibility" and "conditions" were offered. For the implementation of any recommendations, however, the Task Force stressed that co-operation and consultation with employers and employees was essential. Accordingly, written briefs were invited and received and meetings were held with concerned groups to get reaction

to the Task Force report. This lead to the finalization of the Equal Wages Guidelines which were published in the Canada Gazette on September 27, 1978.[58] Seven factors justifying wage differences were listed. These were: different performance ratings, seniority, red circling, rehabilitation assignments, demotion pay procedures, phased-in wage reductions and temporary training positions. The Guidelines interpreted the phrase "in the same establishment" to mean "all the buildings, works or other installations of an employer's business that are located within the limits of a municipality, a municipal district, a metropolitan area, a county or the national capital region, whichever is the largest, or such larger geographic limits that may be established by the employer or jointly by the employer and the union."

After their publication, ongoing consultations with interested parties have confirmed there are differing opinions regarding the necessity of enumerating justifiable factors which allow for wage differences for jobs of equal value. Unions and women's organizations perceive the listing of factors as "an unneccessary and unreasonable erosion of the Equal Pay Principle."[59] A current Commission proposal for adding two more justifiable factors to the list in the Guidelines has incited the National Action Committee on the Status of Women to declare that this would be a "... shift back to and acceptance of the traditional definition of market value of labour" which is only a concession to employers."[60] The Commission has reacted by further exploring additional definitions of words for inclusion in the Guidelines which could clarify the non-discriminatory intent of additions. The CHRC maintains that the Guidelines are a strict extension of the principles in

the Act and that reasonable exceptions which still do not allow for sex discrimination are necessary for fair and consistent application of the legislation. The Commission stresses that every complaint of wage discrimination is investigated anyway so that employer defences under the Guidelines are thoroughly tested.

The Canadian Human Rights Act lists certain exceptions to the general rule that pension and insurance plans should not be discriminatory. Provision is also made under section 18 for the Governor-in-Council to make regulations allowing for necessary discriminatory provisions in plans. It is commonly accepted that differentiations resulting from actuarial factors related to age, sex, marital status and physical handicap may be desriable. Section 65 of the Act states that no complaint regarding pension and insurance plans could be dealt with by the Commission until the expiry of two years after the commencement of the enforcement part of the Act. This allowed the Commission sufficient time to construct regulations setting out circumstances where the Commission would not accept complaints.

In September, 1978, draft Pensions and Insurance Regulations were widely circulated. After consultations and comments on the draft from underwriters of benefit plans, employers, employee groups and other experts, proposed regulations were forwarded to Cabinet and approved in January, 1980.[61] Wording generally followed that of similar regulations passed in the Province of Ontario and took into consideration the report of the "Federal-Provincial Working Group on Human Rights Legislation and Employee Benefits." Consequently some

some degree of uniformity among Canadian jurisdictions was secured.

The most contentious decision made by the Commission regarded "money purchase" pension plans or plans where employers pay the pensions of fixed amounts for the life of the retired employee. After receiving strong arguments for and against the proposal, it was decided that annuity payments should be equally made on retirement to both males and females of the same age and salary. The effect of this policy is that employers have to contribute more for females because they generally live longer than males. It was argued that this was apparently contrary to the letter of the equal wages section of the Act which states, in effect, that employer contributions to plans must be the same regardless of sex and that the benefits may vary.[62]

This difficulty was recognized by the Commission and in the 1979 Annual Report it recommended that section 11(6), which defines what constitutes equal wages, be clarified to avoid problems with section 18. This was reiterated in the 1980 Annual Report.[63] The Standing Joint Committee on Regulations and other Statutory Instruments in January, 1981 did not react positively to the Commission's initiative, however. The Joint Chairman, Senator John Godfrey (Liberal - Ontario), referring to the pension regulations, accused the CHRC of assuming to know more than Parliament and stated, "I think (the Commission) have their bloody nerve ... to just fly in the face of what seems to be very clear."[64] The Commission later made representations to the Committee arguing that "... section 18 qualifies all of the previous sections. Section 18 says that you may pass regulations with respect to pensions

and insurance that qualify sections 5 to 11."[65] After repeated arguements by the Commission the Committee consequently did not further its objections.

In October, 1978 a regulation was recommended to Cabinet and enacted the following month which stated:

> Where adverse differentiation in relation to any individual in the provision of goods, services, facilities or accommodation customarily available to the general public is based only on a reduction or absence of rates, fares or charges with respect to children, youths or senior citizens, such adverse differentiation in reasonable and is not, in the opinion of the Commission, a discriminatory practice within the meaning of section 5 of the Act.[66]

Although some may perceive that the regulations noted above dilute the intent and application of the Act, the exceptions actually constitute many of the "common sense clauses" of the law. An examination of the exceptions clearly demonstrates general situations where absolute non-discrimination may be harmful and where non-discriminatory factors may result in merely apparent discrimination on prohibited grounds.

Ever since the introduction of the first human rights bill, individuals and groups have lobbied for more detailed legislation to prescribe how the Commission should deal with complaints. For instance, as late as the February, 1981 report of the Special Committee on the Disabled and the Handicapped there have been demands for a definition of "bona fide occupational requirement" and insistence that The Canadian Humam Rights Act set out that the onus is on the employer to jusitfy his or her actions. These demands are based on the perception that human rights agencies are more arbitrary in their

application of the law than in fact. From the earliest development of anti-discrimination law, procedural techniques have evolved as the result of legally necessary steps in the investigation and conciliation of complaints. Furthermore, a vast body of case law is available for everyday guidance in dealing with cases. Commissions have, in attempts to be consistent and fair, followed precedent established by themselves, the courts and the other agencies in North America. The discretion left to the individual agency is therefore constricted. Apprehension about Commission discretion should be substituted by demands for legal guarantees of complainant appeal, a right that is presently wanting.

The most apparent single variable affecting Commission policy development was the injection of the personal philosophy of the Chief Commissioner, Gordon Fairweather. As an elected politician, Fairweather felt it was a duty to practise his belief that a Member of Parliament must represent those without a strong voice.[68] His contention that government must actively protect those who are unable to help themselves compliments his belief in the efficacy of anti-discrimination legislation. Fairweather has furthermore commented that, "It is easy to be progressive in terms of anti-discrimination law because the legislation is remedial."[69] His progressivity is measured in part by his often-cited quote, borrowed from Kurt Vonnegut, that the Commission must "be at the edge" -- the agency must take the law as far as it can, he insists. This attitude, he asserts, is not founded in partisan ideology.

Apparently the Deputy, Rita Cadieux, and the part-time Commissioners have shared this belief. They were chosen in the first place largely because of their commitment to human rights objectives. The consolidation of their views and the direction of policy was guided by Fairweather, however, and the tone of the Commission was set by him before the first part-time Commissioners were appointed. Consequently, the Commission as a whole formally chose to interpret The Canadian Human Rights Act as broadly as possible.[70] This is very significant, given the discretionary powers bequeathed by the Act. In other words, where there may be a question of jurisdiction regarding a complaint, the Commission will be inclined to deal with it rather than reject it. As well, an emphasis on public education and substanttial conciliation proposals are likely under a broad interpretation. Also affected are most working arrangements, from enlarging the intake load to increasing the number of test cases, and thereby expanding the recognized scope of the law, and better defining the law.

The "vanguard approach" of the CHRC contrasts with what could be labelled the "representative approach" taken by many North American human rights agencies. The latter tends to believe it must represent the general citizenry, albeit within the confines of the legislation. Decisions are made according to the officials' perception of public norms and expectations or the interests of groups they represent. Consequently, since the traditional views of the majority are articulated, the legislation may be interpreted narrowly, if not regressively. For example, a "representative" agency would not advocate rights for homosexuals because that would not reflect the

perceived attitude of the general public whereas a "vanguard" agency would do otherwise; the latter would not only represent minority and unpopular interests but attempt to mould public opinion.

(c) The Impact of the Canadian Human Rights Act

The impact of the Act is assessed below in two stages. First, a brief overview of the implementation of some key provisions of the legislation offers a comment on the Act's ability to fulfil the intent of Parliament. Second, the general performance of the CHRC is evaluated relative to recognized policy objectives thereby serving as a summary to the chapter.

The concept of equal pay for work of equal value in section 11 was perceived as the most challenging provision to implement. An equal pay specialist has been designated to act as a resource person to apply the policy. By the end of 1981, about 40 equal pay complaints had been received and six were settled.[71] The number of complaints received was not expected to be as low but the Commission is satisfied that a complaint can affect a large number of individuals. One complaint, for example, affected the pay rates of over 400 nurses. The Commission has found that, while the equal pay concept has been practically applicable, the investigations are complex and serve to prolong the disposition of complaints. The most significant lesson gained from implementing section 11 has so far been the realization that pay scales of a few employee classifications in an establishment cannot be tinkered with without affecting the whole group. Predictably there

has been some expressed apprehension from the private sector in response to CHRC encouragement to review entire pay scales.[72] Most complaints have so far been directed at the public sector so the significant test of the equal pay concept is still forthcoming.

The aim of the hate messages section of the Act was to prohibit recorded telephone speeches transmitted in Toronto by the Western Guard Party. In 1979, a Human Rights Tribunal ordered the group to desist after finding they had contravened the legislation. The respondents nonetheless persisted which led to a successful action by the CHRC to have the Western Guard convicted of contempt. The Commission requested that the charge be dropped if the Guard would simply cease its practice. The sentence was eventually enforced when the messages continued. The messages are no longer transmitted, however, and the leader of the group is now in prison following an unsuccessful appeal by the Guard.[73] This was the first conviction under federal anti-discrimination law.

Difficulties with the Western Guard prompted the CHRC to recommend to Parliament that a more effective order could be made by a Tribunal if changes were made to the Act. The Commission stated in 1978 that the Guard continued to communicate messages only slightly different from those on which the complaints were based. Parliament was urged to address the problem that "... the Tribunal order touched only on the subject and content of the messages entered in evidence, and not on the use of the telephone for this purpose."[74]

No Tribunal has yet ordered the imposition of a special programme, or affirmative action programme, as allowed by section 41 (2)(b). The only initiative in this area is performed under section 15 which simply enables employers to institute special programmes. The CHRC is also given authority to recommend programme objectives and offer related advice. Three officers presently comprise the special programmes unit. Criteria has been developed to determine whether an employer's plan would constitute a special programme and this has been published and distributed in a booklet. Requests for advice are regularly received, mostly regarding recruitment methods and accommodating the physically handicapped. Ongoing consultations are also conducted with 14 federally regulated employers.[75]

Section 19 of the Act states that the government may make regulations requiring organizations receiving a contract, grant or license from the government to comply with provisions of the Act. The Commission has so far submitted a proposal for regulations to the Department of Justice for consideration. With regard to appeals to the Federal Court on matters of fact, the Commission has had no difficulty despite the concern of Mr. Woolliams during the passage of Bill C-25.[76] The provision for a Review Tribunal has been resorted to once as a result of an appeal by the CHRC.[77]

It should be briefly noted that the earlier demands from women's groups for better protection against sex discrimination have been vindicated. As of the end of 1980, almost a third of all complaints accepted by the Commission are allegations of sex discrimination. "Race,

colour, national or ethnic origin" as a group as well as "physical handicapped" tie as the second most common grounds of complaint. Most complaints are directed at employment matters. On the other hand, the inclusion of a prohibition of discrimination in notices and signs in the Act as espoused earlier by Saskatchewan has attracted only two complaints.[78]

The Act appears to be capable of fulfilling the intent of Parliament satisfactorily. There have been no significant technical flaws in the legislation and the CHRC has willingly implemented the Act. Much of the success of the law has yet to face the test of institutionalization, however.

In order to generally assess the impact of any policy it is essential to clarify the policy objectives and to then refer to appropriate standards of measurement. The Canadian Human Rights Act states its purpose in section 2 as follows:

> ... every individual should have an equal opportunity with other individuals to make for himself or herself the life that he or she is able and wishes to have, consistent with his or her duties and obligations as a member of society, without being hindered in or prevented from doing so by discriminartory practices based on race, national or ethnic origin, colour, religion, age, sex or marital status, or conviction for an offence for which a pardon has been granted or by discriminatory employment practices based on physical handicap.

This is the long-term objective. The short-term objectives are the pre-conditions for the long-term objective. They would include public awareness of the spirit and letter of the Act and of the Commission, the Commission's appearance of and ability to be independent, fair application of discretionary powers, effective

complaint handling and effective enforcement. The practical difficulty is finding standards of measurement for the long-term objective. The only indicator of an attainment of equal opportunity would be the complete diminution of complaints of discrimination on prohibited grounds. However, a decrease in complaints could also indicate the CHRC may have lost its visibility, that people have lost confidence in the agency or are unaware of their rights, or that discrimination has become more covert. Fluctuations in the national economy may also temporarily affect the incidence of discrimination.[79] As well, it must be agreed that the social engineering attempted by the CHRC is a very challenging task especially when it is attempting to alter long-standing beliefs. It is therefore almost useless to correlate the number of complaints of discrimination to any single variable. The only meaningful exercise is to empirically examine the short-term objectives and then attempt to predict whether the long-term objective can possibly be attained.

As already noted, Commission policy has favoured a strong mandate for public awareness and independence. The implementation of these policies have been relatively successful, however public education programmes and research could be enhanced. The Commission also appears to have applied its discretionary powers fairly. The CHRC's effectiveness in dealing with complaints is sometimes questionable, however. In 1978, the Commission set an objective of seven weeks to complete an investigation.[80] That would be a rare instance today. The CHRC is now accepting almost as many cases in a year as are left outstanding.[81] The Commission appears to have fallen into the pattern

of what several American commissions experienced in the 1970's where large backlogs accumulated and cases took one year or more to investigate. It is recognized, both inside and outside of the CHRC, that a problem exists. This is the combination of large and sometimes generous complaint intakes, staff shortages, burdening paper work, large geographic areas to cover as well as occasional fact-finding difficulties and respondent intransigence, the latter three being beyond the sole control of the Commission.

It is essential that complaints of discrimination are dealt with quickly and effectively. Redress may not be secured for a victim of discrimination if, during the investigation or conciliation, a vacancy becomes filled, facts are obscured or destroyed, or the complainant abandons the case. Even time delay in reporting discrimination to the Commission may be crucial. One American author has found that housing discrimination could be proven in 71 percent of cases reported within ten days of an alleged act, but proven cases declined to 43 percent if reported after ten days.[82] If investigations are lengthy, respondents may lose respect for the Commission and the public will also lose faith in the agency's ability to fulfill its mandate. A positive aspect to the CHRC's complaint handling has been the fortitude to refer almost twenty cases to be heard by Tribunal, however. This is important because of the publicity, settlements and defined law that emanates from these hearings.

The enforcement of anti-discrimination policy by emphasizing individual complaint handling may not be the most effective method of

reducing discrimination. British observer, Mark Carter, states:

> (Individual complaint handling) identifies an area of discrimination. It opens up an area for investigation .... This is the "ripple effect" whereby one successful case based on an individual complaint can have widespread consequences. In this sense it is a most useful weapon though admittedly not enough in itself to win the battle.[83]

The CHRC has recognized the necessity of broad corrective action in addition to complaint handling but has limited its application, largely due to the complaint load. Positive, preventative programmes require a large staff. The CHRC is nontheless concerned about systemic discrimination - discrimination resulting from often long-established, facially neutral employment standards which indirectly result in adverse group distinctions. A recent review of the policies and procedures of the Canada Employment and Immigration Commission and the personnel policies of several companies affecting the physical handicapped are promising.[84] The need for a shift from "Recourse" to "Awareness" and "Advocacy" remains, however. Correspondingly, it seems more pressing to reduce the lag in case handling and to secure more staff years to attend to positive programmes than seek more prohibitions in the Act. The latter will only accentuate the curative or "Recourse" emphasis of federal anti-discrimination policy.

NOTES

1. Richard Simeon, "Studying Public Policy," Canadian Journal of Political Science (No. 4, December, 1976): 556.

2. Ibid., p. 557.

3. Richard F. Elmore, "Backward Mapping: Implementation Research and Policy Decisions," Political Science Quarterly 94 (No. 4, Winter 1979-80): 603.

4. Canadian Public Policy VI (4 Autumn, 1980).

5. Canada, Parliament, House of Commons, Standing Committee on

Justice and Legal Affairs, Minutes of Proceedings and Evidence, Second Session, Thirtieth Parliament, 15:47.

6. Ibid.

7. Memorandum, Steeves to Fairweather, M.P., August 26, 1977.

8. Memorandum, Stanford to Department of Justice, file no. 6230-16, May 12, 1977.

9. Correspondence, Hill to Strayer, June 25, 1977.

10. Memorandum, Stanford to Department of Justice, file no. 6230-16, op. cit.

11. Correspondence, Hill to Strayer, op. cit.

12. Memorandum, Strayer to Department of Justice, file no. 6230-16, July 7, 1977.

13. Ibid., May 12, 1977.

14. Ibid., July 7, 1977, p. 3.

15. Interivew with Gordon Fairweather, March 26, 1981.

16. Office of the Prime Minister, Press Release, August 11, 1977.

17. Canada, Department of Labour, Rights in Employment Newsletter, November, 1977, p. 2.

18. Office of the Prime Minister, Press Release.

19. Fairweather.

20. Rights in Employment Newsletter, p. 1.

21. Ibid., p. 2, 5.

22. Fairweather.

23. Memorandum, Fairweather to Basford, December 5, 1977.

24. Canadian Human Rights Commission, Minutes, may 25-26, 1978, p. 5.

25. Memorandum, Fairweather to Cadieux, Hansen, Stanford, Hynna and Steeves, October 3, 1977 and December 19, 1977.

26. Memorandum, Stanford to Department of Justice, file no. 6230-16, July 7, 1977, p. 4.

27. Memorandum, Steeves to Fairweather, M.P., op. cit.

28. Memorandum, Fairweather to Basford, op. cit., p. 2.

29. Ibid., p. 2, 3; Correspondence, Hynna to author, August 25, 1981.

30. Memorandum, Fairweather to Cadieux, Hansen, Hynna, Stanford and Steeves, December 19, 1977.

31. Memorandum, Stanford to Hynna, November 23, 1977.

32. Canada, Parliament, House of Commons, Report of Committee on the Concept of Ombudsman, tabled December 19, 1977; Bill C-43, First Reading, April 5, 1978

33. Rights in Employment Newsletter, op, cit., p. 2.

34. Fairweather.

35. Memorandum, Fairweather to Basford, op. cit.

36. Canada, Canadian Human Rights Commission, Annual Report 1978, p.8.

37. Memorandum, Steeves to Fairweather, op. cit.

38. Rights in Employment Newsletter, op. cit., p. 3.

39. Ibid.

40. Canada, Canadian Human Rights Commission, Minutes, May 25-26, 1978, p. 6.

41. Annual Report 1978, p. 4.

42. Canada, Canadian Human Rights Commission, Minutes, March 20-21, 1978, p. 8.

43. Ibid., Minutes, June 20-21, 1978, p. 3.

44. Rights in Employment Newsletter, op. cit., p. 2.

45. Canada, Canadian Human Rights Commission, Minutes, February 20-22, 1978, p. 4.

46. Ibid., Annual Report 1977-78, p. 2.

47. Ibid., Minutes, March 20-21, 1978, p. 4.

48. Interview with Gordon Fiarweather, March 26, 1981.

49. Ibid.

50. Canada, Canadian Human Rights Commission, Annual Report, 1979, pp. xiii-15 and Annual Report 1980, pp. 1-12.

51. Ontario, Ontario Human Rights Commission, Life Together: A Report on Human Rights in Ontario, Queen's Printer for Ontario, 1977, p. 27.

52. Ibid., p. 29.

53. L. Ruchames, Race, Jobs and Politics (New York: Columbia, 1953), p.163.

54. Annual Report 1980, pp. 97-100.

55. Ibid., p. 85.

56. Canada, Canadian Human Rights Commission, Equal Pay for Work of Equal Value - A Preliminary Review, 1977.

57. Ibid., Equal Pay for Work of Equal Value - Report of the Task Force, March, 1978.

58. Part II, Volume 112, No. 18.

59. Memorandum, T.N. Ulch to Commissioners, September 28, 1981.

60. Ibid.

61. Canada, Canada Gazette, Part II, Volume 114, No. 2.

62. Section 11 (6).

63. Annual Report 1979, p. 14 and Annual Report 1980, p. 3.

64. Canada, Parliament, Senate and House of Commons, Standing Joint Committee on Regulations and other Statutory Instruments, January 22, 1981, No. 19, p. 12.

65. Ibid., June 18, 1981, No. 35. p. 24.

66. Canada Gazette, Part II, Volume 112, No. 20. p. 3871.

67. Canada, Parliament, House of Commons, Special Committee on the Disabled and the Handicapped, Obstacles, 1981, pp. 19-21.

68. Interview with Gordon Fairweather, May 31, 1978.

69. Ibid., March 26, 1981.

70. Annual Report 1978, p. 1.

71. Conversation with Ted N. Ulch, Equal Pay Specialist, November 26, 1981.

72. Conversation with Ted N. Ulch. op. cit.

73. Annual Report, 1980, p. 35.

74. Annual Report, 1978, p. 13.

75. Conversation with Catherine Burr, Special Programmes, November 26, 1981.

76. Conversation with Russell Juriansz, Legal Counsel, November 24, 1981.

77. Foreman et al v. Via Rail, Canadian Human Rights Reporter, December 20, 1980, p. 233.

78. Annual Report 1980, p.86.

79. For example, during economic prosperity there may be less competition for jobs; where vacancy rates are high, there is less competition for rental accomodation.

80. Canadian Human Rights Commission, Time frame chart, training programme, July 24-28, 1978.

81. Annual Report 1980, p.85, Annual Report 1979, p.81.

82. Leon H. Mayhew, Law and Equal Opportunity (Cambridge: Harvard University Press, 1968), p. 244.

83. Mark Bonham Carter, "Measures Against Discrimination: The North American Scene" Race 9 (No. 1, July, 1967) :10.

84. Annual Report 1980, p. 48.

CHAPTER VII

Conclusion

(a) Summary and Comment

The Canadian Human Rights Act and Commission are the products of about forty years of social and incremental legislative activity directed at ensuring equal opportunity. The development of federal anti-discrimination policy is nonetheless relatively recent and still in the infant stage.

Contemporary anti-discrimination policy began to emerge after the demise of discriminatory laws in Canada by the late 1940's. Subsequent sporadic passages of limited penal anti-discrimination measures were soon overshadowed by more significant measures enacted in the United States. American blacks and their allies had rallied sufficient support for equal employment opportunity initiatives by the federal and New York State governments. These new laws counteracted skepticism about the efficacy of anti-discrimination agencies which enforced egalitarian law and educated the public. Two developments then became evident: 1) prohibitions of discrimination spread to cover areas other than just employment, such as housing and services and; 2) increasingly, other jurisdictions in North America enacted comprehensive anti-discrimination legislation providing for full-time enforcement agencies.

The earliest initiatives in Canada following this trend occurred in

1951 in Ontario when The Fair Employment Practices Act prohibited certain discrimination in employment. The full-time, comprehensive administration of anti-discrimination legislation was not effected by Ontario until 1962, however. But, by 1976, all provinces in Canada had enacted comprehensive, consolidated legislation with full-time human rights commissions administering the legislation, except Saskatchewan which consolidated its several anti-discrimination statutes in 1979. The federal government noticeably offered neither comprehensive protection from discrimination, consolidated legislation, nor a central anti-discrimination agency. Weak, ad hoc and dispersed anti-discrimination provisions existed in numerous laws and departmental administrations. It was perhaps this confusion and the existence of several "little empires" that served as a built-in retardant for the wholesale reform of federal anti-discrimination policy.

As in the provinces, pressure on the federal government to improve its attack on discrimination had mounted since the early 1960's. Forces such as the United Nations, Members of Parliament, especially of the NDP, women's organizations, organized labour and an internal awareness of a need for protection of rights, resulting from the failure of constitutional reform measures, heightened the Government's recognition that existing anti-discrimination policy was inadequate. The reaction to the pressures was nonetheless sluggish. The Honourable Otto Lang, Minister of Justice, who personally favoured new legislation, first promised an initiative in October, 1972. It was not until July, 1975 when a bill was finally introduced.

The delay was largely due to Lang's ambitious scheme to join anti-discrimination legislation with other rights-related provisions regarding access to and protection of personal information in government data banks, and an ombudsman plan to handle complaints against government and even private sector organizations. The anti-discrimination provisions were bogged down in the mire of these untested and overly zealous appendages. There would have been challege enough developing a good anti-discrimination bill. Bill C-72, introduced in July, 1975, was disappointingly weak in its anti-discrimination parts and, in particular, in its provision for the protection of personal information. An expectant Parliament and public expressed rejection of the Bill.

With the ascent of Ron Basford to the position of Minister of Justice, a new initiative was undertaken while Parliament dealt with more pressing matters. Basford listened to the criticisms of Bill C-72, notably those of women's groups and the Provinces, incorporated many suggestions into revised legislation, strengthened the Privacy Part, and frankly negotiated for the speedy passage of improved legislation with the Opposition. Bill C-25 was introduced in November 1976 and received Royal Assent in July, 1978.

The Bill's course through Parliament was marked by a cooperation on the part of the opposition parties. The only Members who appeared to truly understand the legislation and its significance, other than the Minister, however, were Gordon Fairweather and Stuart Leggatt, the chief critics of the Bill. Their input was constructive and

well-informed. Several minor amendments were made but the substantial expansion of the law urged by some Members and the interest groups which made representations were rejected.

Although The Canadian Human Rights Act was not as progressive as it could have been, given the present state of development of Canadian anti-discrimination legislation, it did represent a significant step forward, particularly in regulating discrimination against the physically handicapped, persons convicted of an offence for which a pardon has been granted, instituting a policy of equal pay for work of equal value, and prohibiting hate messages. The legislation also recognized the need for educational programmes, independence from the Executive and, to a degree, affirmative action endeavours. However, the Government did not agree that discrimination on the basis of sexual orientation, political belief or family status should be prohibited, nor on the basis of physical handicap in areas other than just employment. The Act also perpetuated compulsory retirement from employment and discrimination against female treaty Indians as set out in The Indian Act.

The development of anti-discrimination policy has shown that legislation prohibiting discrimination is not enough in itself to combat the injustice. An effective agency is the necesary instrument. The parliamentary stage, then, was only a first step in the policy process. The policy's success was dependent on the implementation stage, characterized by the institutionalization of the Canadian Human Rights Commission. Since it opened its doors, the CHRC has been buoyed by

the guidance of Gordon Fairweather, the Chief Commissioner, as well as a dedicated Commission and staff which has assumed a role as a vanguard. The necessary emphasis on individual complaint handling has unfortunately required the bulk of the agency's resources while preventative measures such as affirmative action projects, educational endeavours, contract compliance, and positive reviews of federally regulated employment policies are subordinate. Given the fixed resources of the CHRC, budgets and staff years given to preventative programmes have resulted in a significant backlog of individual complaints. The Commission is still in the formative years, however, and its recognition of the value of public awareness and advocacy is a hopeful indication that the CHRC will press for a preventative approach with regard to federal anti-discrimination policy while pressuring the Government to enhance the legislation in this direction and substantially increase allocated funding and staff years. This will be a challenging task; federal anti-discrimination policy is not a great priority to the Government and few legislators appear to understand the dynamics of its development, focus, and operation.

The development of federal anti-discrimination policy, as diagnosed chiefly through the examination of the emergence of The Canadian Human Rights Act, indicates that Parliament has been cautious in its application and never willing to enact provisions which, despite the argument for their effectiveness, do not appear to have overwhelming support in the community and in Parliament. Equal opportunity policy lacks ammunition. First, it is only curative in nature and, second, only curative of certain discriminatory actions.

The principle of non-discrimination is not applied absolutely. Therefore, in two general and important ways, federal anti-discrimination policy is inadequate. Understandably, the total implementation of the principle would require a radical assault on many traditional, yet ill-founded beliefs of Canadians. A climate of widespread support by Canadians for the principle of equal opportunity is a prerequisite for a more active regulatory approach by the federal governemnt or else the public will reject initiatives as unwanted and unnecessary interferences. An aggresive educational role for the CHRC is therefore immediately necessary, in concert with the provincial commissions.

The investigation and conciliation of the individual complaint is an expensive and time consuming method of reducing a ubiquitous social wrong. Unless the Government now attempts to prevent discrimination, the hand slaps of the CHRC will have to continue forever.

Appendix I

Private Members' Anti-Discrimination Bills

Date	Subject	Bill #	Sponsor	Party
Jan. 18, 1960	age to FEP Act	C-11	Frank Howard	C.C.F.
"	crown bound by FEP Act	C-19	"	"
Nov. 21, 1960	"	C-9	"	"
"	age to FEP Act	C-25	"	"
Jan. 22, 1962	"	C-29	"	"
Oct. 1, 1982	"	C-43	Barry Mather	"
May 20, 1963	"	C-38	"	"
Feb. 20, 1964	"	C-28	"	N.D.P.
Apr. 8, 1965	"	C-41	"	"
Feb. 25, 1966	"	C-131	Max Saltsman	"
May 11, 1967	"	C-41	"	"
Sept. 20, 1968	"	C-73	"	"
Jan. 27, 1969	Human Rights Bill	C-161	Grace MacInnis	"
Oct. 30, 1969	age to FEP Act	C-15	Max Saltsman	"
"	age + sex to FEP Act	C-49	John Forrestall	P.C.
"	Human Rights Bill	C-85	Grace MacInnis	N.D.P.
Oct. 20, 1970	"	C-76	"	"
"	age + sex to FEP Act	C-101	John Forrestall	P.C.
Feb. 25, 1972	Human Rights Bill	C-105	Grace MacInnis	N.D.P.

Table of Abbreviations Used

N.Y. Sess.Laws	- New York Sessional Laws
R.O.N.W.T.	- Revised Ordinances of the Northwest Territories
R.O.Y.T.	- Revised Ordinances of the Yukon Territory
R.S.C.	- Revised Statutes of Canada
R.S.M.	- Revised Statutes of Manitoba
R.S.N.	- Revised Statutes of Newfoundland
R.S.N.B.	- Revised Statutes of New Brunswick
R.S.O.	- Revised Statutes of Ontario
R.S.S.	- Revised Statutes of Saskatchewan
S.A.	- Statutes of Alberta
S.B.C.	- Statutes of British Columbia
S.C.	- Statutes of Canada
S.C.R.	- Supreme Court Reports
S.M.	- Statutes of Manitoba
S.N.	- Statutes of Newfoundland
S.N.B.	- Statutes of New Brunswick
S.N.S.	- Statutes of Nova Scotia
S.O.	- Statutes of Ontario
S.P.E.I.	- Statutes of Prince Edward Island
S.Q.	- Statutes of Quebec
S.U.C.	- Statutes of Upper Canada

Table of Statutes

Canada

The Broadcasting Act, S.C. 1967-68, c. 25.
The Canada Fair Employment Practices Act, S.C. 1952-53, c. 19.
The Canada Labour Code, S.C. 1966-67, c. 62; R.S.C. 1970, c. L-1, amended by S.C. 1970-71-72, c. 50.
The Canadian Bill of Rights, S.C. 1960, c. 44.
The Canadian Broadcasting Act, S.C. 1936, c. 24.
The Canadian Citizenship Act, S.C 1946, c. 15.
The Canadian Human Rights Act, S.C. 1976-77, c. 33.
The Civil Service Act, S.C. 1960-61, c. 57.
The Criminal Code, R.S.C. 1970, c. C-34; S.C. 1974-75-76, c. 105.
The Department of State Act, S.C. 1868, c. 42; R.S.C. 1952, c. 77.
The Female Employees Equal Pay Act, S.C. 1956, c. 38.
The Government Organization Act, S.C. 1966-67, c. 25.
The Immigration Act, S.C. 1976-77, c. 52.
The Indian Act, S.C. 1970- c. I-6.
The Industrial Relations and Disputes Investigation Act, S.C. 1948, c. 54.
The National Housing Act, S.C. 1953-54, c. 23; R.S.C. 1970, c. N-10.
The Public Service Employment Act, S.C. 1966-67, c. 71.
The Statute Law (Status of Women) Amendment Act, S.C. 1974-75-76, c. 66.
The Unemployment Insurance Act, S.C. 1940, c. 44; S.C. 1952, c. 51; S.C. 1955, c. 50; S.C. 1970-71-72, c. 48.

PROVINCES

British Columbia

The British Columbia Unemployment Relief Act, S.B.C. 1931, c. 65; S.B.C. 1932, c. 58.
The Equal Pay Act, S.B.C. 1953, c. 6.
The Human Rights Code, S.B.C., c. 119 as amended 1974, c. 87, s. 18; 1974, c. 114, s. 6.

Alberta

The Individual's Rights Protection Act, S.A. 1972, c. 2 as amended 1973, c. 61.

Saskatchewan

The Saskatchewan Bill of Rights, R.S.S. 1965, c. 378.
The Equal Pay Act, S.S. 1952, c. 104.
The Saskatchewan Human Rights Code, S.S. 1979, c. S-24.1.

Manitoba

The Defamation Act, S.M. 1934, c. 23.
The Fair Employment Practices Act, S.M. 1953 (2nd Sess.), c. 18.

The Human Rights Act, S.M. 1974, c. 65 as amended 1975, c. 42; 1976, c. 48; 1977, c. 46; 1978, c. 43.

Ontario

An Act to Prevent the Further Introduction of Salves and to Limit the Terms of Enforced Servitude Within the Province, S.U.C. 1793, c. 7.
The Fair Accomodation Practices Act, S.O. 1954, c. 28.
The Fair Employment Practices Act, S.O. 1951, c. 24.
The Female Employees Fair Remuneration Act, S.O. 1951, c. 26.
The Insurance Act, S.O. 1932, c. 24.
The Ontario Anti-discrimination Act, S.O. 1958, c. 70.
The Ontario Human Rights Code, R.S.O. 1970, c. 318 as amended 1971, c. 50, s. 63; 1972, c. 119; 1974, c. 73.
The Ontario Human Rights Commission Act, S.O. 1960-66, c. 63.
The Racial Discrimination Act, S.O. 1944, c.51

Quebec

The Charter of Human Rights and Freedoms, S.Q. 1975, c. 6; s. 97 replaced by 1976, c. 5, s. 1; as amended 1977, c. 6; 1978, bill 9 ss. 112-113.

New Brunswick

The Human Rights Code, R.S.N.B. 1973, c. H-11 as amended 1976, c. 31; 1979, c. 41, c. 63.

Nova Scotia

The Human Rights Act, S.N.S. 1969, c. 11 as amended 1970, c. 85; 1971, c. 69; 1972, c. 65; 1974, c. 46; 1977, c. 18, ss. 16 and 17 and c. 58.

Prince Edward Island

The Human Rights Act, S.P.E.I. 1975, c. 72 as amended 1977, c. 39.

Newfoundland

The Newfoundland Human Rights Code, F.S.N. 1970, c. 262 as amended 1973, Act No. 34; 1974, Act No. 114; 1978, c. 35, s. 18.

Northwest Territories

The Fair Practices Ordinance, R.O.N.W.T. 1974, c. F-2.

Yukon

The Fair Practices Ordinance, R.O.Y.T. 1971, c. F-2.

Great Britain

The British North America Act, 30 and 31 Victoria, c. 3; 3 and 4 George IV, c. 36; 14-15 George VI, c. 32.

United States

Law Against Discrimination, N.Y. Sess. Laws 1945, c. 118.
Privacy Act 1974 Public Law 93-579 Title 5.

Table of Cases

Canadian Human Rights Commission v. Western Guard Party and John Ross Taylor, 1979, Tribunal pursuant to the Canadian Human Rights Act.
Christie v. York Corporation (1940) S.C.R. 139.
J.L. Foster v. B.C. Forest Products Ltd. 1978 unreported Board of Inquiry pursuant to the B.C. Human Rights Code.
Regina v. Drybones (1970) S.C.R. 282.

Bibliography

Books

Allport, Gordon. The Nature of Prejudice. New York: Doubleday Anchor Books, 1958.

Bell, Derrick A. Race, Racism and American Law. Boston: Little, Brown and Company, 1972.

Benjamin, Gerald. Race Relations and the New York City Commission on Human Rights. Ithaca: Cornell University Press, 1972.

Blue Book of Canadian Businesses. Toronto: Canadian Newspaper Services International Ltd. 1979.

Blumrosen, Alfred W. Black Employment and the Law. New Brunswick, N.J.: Rutgers University Press, 1971.

Braybrooke, D. and Lindblom, C. A Study of Decision. London: Free Press, 1963.

Campbell, Colin. The Canadian Senate: A Lobby From Within. Toronto: Macmillan, 1978.

Canadian Bar Association. 1967 Year Book and Minutes of Proceedings of its Forty-Ninth Annual Meeting. September 4-9, 1967. Ottawa: National Printers Ltd., 1967.

Canadian Council on Social Development. Canadian Welfare, Volume 52, Ottawa, 1976.

Canadian Labour Congress. Memorandum to Government 1969.

Casstevens, Thomas W. and Eley, Lynn W. (eds.). The Politics of Fair Housing Legislation. San Francisco: Chandler Publishing, 1968.

Countryman, Vern (ed.). Discrimination and the Law. Chicago: University of Chicago Press, 1963.

Davis, Kenneth Culp. Discretionary Justice. Baton Rouge, Louisiana State University Press, 1969.

Doern, G. Bruce and Aucoin, Peter. The Structures of Policy - Making in Canada. Toronto: Macmillan, 1971.

Dulles, Foster Rhea. The Civil Rights Commission : 1957-65. Michigan State University Press, 1968.

French, Richard D. How Ottawa Decides. Toronto: James Lorimer and Co., 1980.

Friedman, Milton. Capitalism and Freedom. Chicago: University of Chicago Press, 1972.

Gaboury, Jean-Pierre and Hurley, James Ross. The Canadian House of Commons Observed. Ottawa: University of Ottawa Press, 1979.

Hartle, Douglas G. The Expenditure Budget Process in the Government of Canada. Toronto: Canadian Tax Foundation, 1978.

Higbee, Jay Anders. Development and Administration of the New York State Law Against Discrimination. University of Alabama Press, 1966.

Hill, Daniel G. Human Rights in Canada. A Focus on Racism. Ottawa: CLC, 1977.

Hockin, Thomas A. Apex of Power. Scarborough: Prentice-Hall, 1971.

Hogg, Peter W. Contitutional Law of Canada. Toronto: Carswell, 1977.

Jackson, Robert J. and Atkinson, Michael M. The Canadian Legislative System. Toronto: Macmillan, 1974.

Kerr, Robert William. Legislation Against Discrimination in Canada. Fredricton: New Brunswick Human Rights Commission, 1973.

Kinsella, Noel. The Canadian Model for the Protection From Discrimination. Fredricton: New Brunswick Human Rights Commission, 1971.

Konvitz, Milton R. A Century of Civil Rights. New York: Columbia University Press, 1961.

Lester, Anthony and Bindman, Geoffrey. Race and Law. London: Layman Group Ltd., 1972.

Lindblom, C. The Policy - Making Process. Englewood Cliffs N. J.: Prentice - Hall, 1968.

Lloyd, T. and McLeod, J. Agenda 1970: Proposals for a Creative Politics. Toronto: Unversity of Toronto Press, 1968.

Macdonald, R. St. J. and Humphrey, John P. The Practice of Freedom. Toronto: Butterworths, 1979.

MacKay, Robert A. The Unreformed Senate of Canada. Toronto: McClelland and Stewart, 1963.

Matheson, W. A. The Prime Minister and the Cabinet. Toronto: Methuen, 1976.

Mayhew, Leon H. Law and Equal Opportunity. Cambridge: Harvard University Press, 1968.

New Democratic Party. People Matter More. Ottawa, 1974.

_____. Program. Ottawa, 1972.

Ontario. Ontario Human Rights Commission. Life Together: A Report on Human Rights in Ontario. Toronto: Queen's Printer, 1977.

Progressive Conservative Federal Caucus. Summary of Criticisms re: Bill C-25. 1977.

Pross, Paul. Pressure Group Behaviour in Canadian Politics. Toronto: McGraw - Hill Ryerson, 1975.

Rowat, Donald C. The Ombudsman. Toronto: University of Toronto Press, 1968.

Ruchames, L. Race, Jobs and Politics. New York: Columbia, 1953.

Schmeiser, D. A. Civil Liberties in Canada. London: Oxford University Press, 1964.

Scott, R. F. Civil Liberties and Canadian Federalism Toronto: University of Toronto Press, 1959.

Shackleton, Doris. Powertown. Toronto: McClelland and Stewart, 1977.

Simeon, Richard. Federal-Provincial Diplomacy. The Making of Recent Policy in Canada. Toronto: University of Toronto Press, 1973.

Sovern, Michael J. Legal Restraints on Racial Discrimination in Employment. New York: Twentieth Century Fund, 1966.

Tarnopolsky, Walter S. The Canadian Bill of Rights. Toronto: McClelland and Stewart, 1975.

United Nations Canadian Secretariat, International Year of Human Rights in Canada. Report of Proceedings, 1968.

Van Loon, Richard J. and Whittington, Michael S. The Canadian Political System. Toronto: McGraw-Hill Ryerson Ltd., 1976.

Wade, H.W.R. Administrative Law. Oxford: Clarendon Press, 1971.

White, W. L. and Strick, J. C. Policy, Politics and the Treasury Board in Canadian Government. Don Mills: Science Research Associates, 1970.

Young, Walter D. The Anatomy of a Party: The National CCF 1932-61. Toronto: University of Toronto Press, 1969.

Articles

Atkinson, Michael M. and Nossal, Kim Richard. "Executive Power and Committee Autonomy in the Canadian House of Commons: Leadership Selection; 1968-1979." Canadian Journal of Political Science 13 (1980): 287.

Avins, Alfred. "Anti-discrimination Legislation as an Infringement of Freedom of Choice." New York Law Forum 6 (1960): 13.

Berger, Morroe. "The New York State Law Against Discrimination: Operation and Administration." Cornell Law Quarterly 35 (1950): 747.

Blache, Pierre. "Les Aspects Proceduraux de la Lutte Administrative Contre la Discrimination, et la Charte des Droits et Liberties de la Personne." Cahiers de Droit 17 (1976): 875.

Blumrosen, Alfred W. "Toward Effective Administration of New Regulatory Statutes." Administrative Law Review 29 (1977): 87.

Bonfield, Arthur Earl. "The Origin and Development of American Fair Employment Legislation." Iowa Law Review 52)1967): 1043.

Bruner, Arnold. "The Genises of Ontario's Human Rights Legislation: A Study in Law Reform." Univeristy of Toronto Law Review 37 (1979): 236.

Carter, Mark Bonham. "Measures Against Discrimination: The North American Scene." Race 9 (1967): 1.

Cordeau, Marie. "Private Members' Hours." The Canadian House of Commons Observed. edited by Jean-Pierre Gaboury and James Ross Hurley. Ottawa: University of Ottawa Press, 1979.

Conklin, William E. "Book Review: The Practice of Freedom." Canadian Public Policy 6 (1980): 690.

Doern, G. Bruce, Hunter, Ian A., Swartz, Donald, Wilson, V. Seymour. "The Structure and Behaviour of Canadian Regulatory Boards and Commissions." Canadian Public Administration 18 (1975): 189.

Eckstein, Harry. "Case Study and Theory in Political Science." Handbook of Political Science edited by Fred I. Greenstein and Nelson W. Polsly. Don Mills: Addison Wesley, 1975.

Elmore, Richard F. "Backward Mapping: Implementation Research and Policy Decision." Political Science Quarterly 94 (1979-80): 603.

Fairweather, Gordon. "The Canadian Human Rights Commission." The Practice of Freedom edited by R. St. J. Macdonald and John P. Humphrey. Toronto: Butterworths, 1979.

Hill, Daniel G. "The Role of a Human Rights Commission. The Ontario Experience." University of Toronto Law Journal 19 (1969): 390.

Hodgetts, J. E. " Public Power and Ivory Power." Agenda 1970: Proposals for a Creative Politics edited by T. Lloyd and J. McLeod. Toronto: University of Toronto Press, 1968.

Huitt, Ralph. "Political Feasibility." Policy Analysis in Political Science edited by Ira Sharkansky. Chicago: Markham, 1970.

Humphrey, John P. "The U.N. Charter and the Universal Declaration of Human Rights." The International Protection of Human Rights edited by Evan Luard. London, 1967.

Hunter, Ian A. "Civil Actions for Discrimination." Canadian Bar Review 55 (1977): 106.

_____. "The Development of the Ontario Human Rights Commission. A Decade in Retrospect." University of Toronto Law Journal 22 (1972): 237.

_____. "The Origin, Development and Interpretation of Human Rights Legislation." The Practice of Freedom edited by R. St. J. Macdonald and John P. Humphrey. Toronto: Butterworths, 1979.

Hutson, Jean. "Group Defamation in Canada." Carleton Journalism Review 3 (Winter, 1980): 12.

Hyson, R. V. Stewart "The Role of the Backbencher - an Analysis of Private Members' Bills in the Canadian House of Commons." Parliamentary Affairs 27 (1973-74): 262.

Jeffrey, Brooke and Rosen, Philip. "The Protection of Human Rights in Canada." Canadian Regional Review. Commonwealth Parliamentary Association. 2 (1979): 37.

Jones, James E. "The Development of Modern Equal Employment Opportunity and Affirmative Action Law: A Brief Chronological Overview." Harvard Law Journal 20 (1977): 74.

Lamontangue, Maurice. "The Influence of the Politician." Canadian Public Administration 11 (1968): 358.

Lockard, Duane. The Politics of Anti-Discrimination Legislation." Harvard Journal on Legislation 3 (1965)3.

MacGuigan, Mark. "Equal Opportunity: A Legislator's Perspective." Executive Bulletin. The Conference Board in Canada. No. 4, 1978.

_____. "The Role of the Standing Committee on Justice and Legal Affairs of the Canadian House of Commons: 1968-1978." Decade of Adjustment. edited by Julio Menezes. Toronto: Butterworths, 1980.

Maslow, Will. "FEPC - A Case History in Parliamentary Maneuver." University of Chicago Law Review 13 (1946): 407.

MacLean's. "Justice: The Arm to Bear Rights." May 1, 1978.

Monk, Harry. A Profile of the New Canadian Human Rights Commission." Rehabilitation Digest, 1979, p. 2.

National Action Committee the Status of Women. Status of Women News. 1976.

Peck, Cornelius J. "The Equal Employment Opportunity Commission: Developments in the Administrative Process 1965 - 75." Washington Law Review 51 (1976): 831.

Pitfield, P.M. "The Shape of Government in the 1980's." Canadian Public Administration 19 (1971): 8.

Powles, Guy. "Ombudsmen and Human Rights Commissions." The Review. International Commission of Jurists. No. 21 (1978), p. 31.

Roberts, Lance W. "Some Unanticipated Consequences of Affirmative Action Policies." Canadian Public Policy 5 (1979): 90.

Robertson, Gordon. "The Changing Role of the Privy Council Office." Canadian Public Administration 14 (1976): 487.

Ross, Val. "Getting Clout." Chatelaine, May, 1978, p. 45.

Sharp, Mitchell. "Decision - Making in the Federal Cabinet." Canadian Public Administration 19 (1976): 1.

Simeon, Richard. "Studying Public Policy." Canadian Journal of Political Science 9 (1976): 556.

Spitz, Henry. "The New York State Law Against Discrimination." New

York State Bar Association Bulletin, February, 1948.

Tarnopolsky, Walter S. "The Control of Racial Discrimination." The Practice of Freedom. edited by R. St. J. Macdonald and John P. Humphrey. Toronto: Butterworths, 1979.

_____. "The Impact of United Nations Achievements on Canadian Laws and Practices." Human Rights, Federalism and Minorities. edited by Allan Gotlieb. Canadian Institute of International Affairs, 1970.

_____. "The Iron Hand in the Velvet Glove: Administration and Enforcement of Human Rights Legislation in Canada." Canadian Bar Review 46 (1968): 565.

_____. "Just Deserts on Cruel and Unusual Treatment or Punishment? Where Do We Look for Guidance?" Ottawa Law Review 10 (1978): 1.

_____. "Legislative Jurisdiction with Respect to Anti-discrimination Legislation in Canada." Ottawa Law Review 12 (1980): 1.

Thomas, Paul G. "The Influence of Standing Committees of Parliament on Government Legislation." Legislative Studies Quarterly 3 (1978): 698.

Traversy, Ray. "FEP Legislation. How Far Have we Come? How Far Yet To Go?" Labour Gazette 75 (1975): 625.

Zuck, Harry T. "Public Accomodations: A Justification of Title II of the Civil Rights Act of 1964." De Facto Segregation and Civil Rights. edited by Oliver Schroeder. Buffalo: Hein and Company, 1965.

Canadian Government Documents

Advisory Council on the Status of Women. Annual Report. 1973-74; 1974-75; 1975-76.

_____. Further Recommendations of the ACSW. December 11, 1975.

_____. Recommendations of the ACSW in Respect of Human Rights Bill C-72. October 23, 1975.

_____. What's Been Done. Ottawa, 1974.

Canadian Human Rights Commission. Annual Report. 1977-78; 1978, 1979, 1980.

_____. Discrimination in Canada. September, 1979.

_____. Employer Guide. 1981.

_____. Equal Pay for Work of Equal Value : A Preliminary Review. 1977.

_____. Equal Pay for Work of Equal Value : Report of the Task Force. March, 1978.

_____. Methodology and Principles for Applying Section 11 of the Canadian Human Rights Act.

_____. Minutes. February 20-22, 1978; March 20-21, 1978; May 25-26, 1978; June 20-21, 1978.

_____. Sexual Orientation. A Policy Planning Report. August 1979.

_____. Special Programms in Employment : Criteria for Compliance.

Canadian Intergovernmental Conference Secretariat. Conference of Human Rights Ministers. Report. March 6 and 7, 1975.

_____. Federal Provincial Conference on Human Rights. Report. December 11 and 13, 1975.

_____. Conference of Human Rights Ministers. Report. November 6-8, 1976.

Department of Citizenship and Immigration. Annual Report. 1950 to 1965.

Department of Justice. Bill C-25. The Canadian Human Rights Act and Comparable Legislation in the United States. May 1977.

_____. A Canadian Charter of Human Rights, 1968.

_____. News Release. "Lang to Establish a Permanent Commission on Rights and Interests." October 20, 1972.

_____. News Release. "Lang tells Commons of Cabinet Approval for Commission." December 10, 1973.

_____. News Release. "Basford Introduces New Human Rights Legislation". November 29, 1976.

_____. The Canadian Human Rights Bill. Background Notes. 1976.

_____. The Ombudsman. Peter S. Haskins, 1966.

_____. Joint Statements of the Minister of Justice and Communications. December 7, 1972.

Department of Labour. Annual Report. 1954-1977.

_____. Fair Employment Laws in Canada Prohibiting Discrimination in Employment. August 1, 1973.

_____. Rights in Employment. November 1977.

_____. Women's Bureau. Women's Bureau '74. 1975.

Department of National War Services. Annual Report. 1943, 1944, 1945.

Department of the Secretary of State. Annual Report. 1949 to 1977.

_____. Group Understanding and Human Rights Programme. Statement of Purpose. 1978.

Library of Parliament. Research Branch. A Comparative Study of Bill C-25 and U.S. Legislation : Relevant Statutory Provisions. Walter Mather, April, 1977.

Office of the Prime Minister. New Release. Human Rights Commission Appointments. August 11, 1977.

Parliament. Canada Gazette Part II. Volume 86 to 114.

_____. Consolidated Regulations of Canada. 1978.

_____. Statutes of Canada. See Statutes.

_____. Statutory Orders and Regulations Consolidation. 1949, Volume I.

_____. Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada. Final Report. March, 1972.

_____. House of Commons. Debates 1942 to 1972.

_____. _____. Journals. Seventh Session, Twenty-First Parliament; Second Session, Thirtieth Parliament.

_____. _____. Special Committee on the Disabled and the Handicapped. Obstacles. 1981.

_____. _____. Standing Committee on Industrial Relations. Minutes of Proceedings and Evidence. April 22, 1953.

_____. _____. Standing Committee on Justice and Evidence. Second Session, Thirtieth Parliament, 1976-77.

_____. Senate. Debates. Second Session, Thirtieth Parliament, 1977.

_____. _____. Standing Senate Committee on Legal and Constitutional Affairs. Proceedings. Second Session, Thirtieth Parliament, 1977.

_____. Senate and House of Commons. Standing Joint Committee on Regulations and other Statutory Instruments. Minutes of Proceedings and Evidence. January 22 and August 7, 1981.

Public Service Commission. Annual Report. 1972 to 1981.

Royal Commission on the Status of Women. Report. 1970.

Statistics Canada. Canada Year Book. 1978.

Thesis

Birch, George Alexander. "The Cabinet and Its Secretariat; The Evolution, Organization of Workings of the Canadian Cabinet System." Master of Arts, Carleton Univeristy, 1969.

Eberts, Mary. "Discrimination on the Basis of Sex and Marital Status under The Canadian Human Rights Act." Faculty of Law, University of Toronto, 1978.

Heppenstall, L. "Some Observations on the Constitutionality of the Fair Accomodations Practice Act". Osgoode Hall, York University, 1957.

Sohn, Herbert Alvin. "Human Rights Legislation in Ontario: A Study of Social Action." Master of Social Work, University of Toronto, 1975.

Stenning, Philip C. "From Conciliation to Judgement: The Role of Boards of Inquiry Under the Ontario Human Rights Code 1962 - 74." Master of Laws, Osgoode Hall, York University, 1974.

Vallelunga, Bruno B. "Executive-Arena Organizations : The PMO, PCO, and the Cabinet Committee System." Master of Arts, Carleton University, 1972.

Newspapers

Financial Post. August 2, 1975.

Globe and Mail. October 21, 1972; February 15, 1973; July 23, 1975, July 26, 1975; October 7, 1976.

Montreal Gazette. November 25, 1976, November 30, 1976.

Montreal Star. December 7, 1976.

Ottawa Citizen. November 25, 1976.

Ottawa Journal. December 7, 1976.

Winnipeg Tribune. November 26, 1974; September 10, 1975; December 6, 1976.

Correspondence and Memorandums

Fairweather, Gordon. Chief Commissioner, CHRC, to Basford, Ron. Minister of Justice. December 5, 1977.

_____to, Cadieux, Rita. Deputy Chief Commissioner, CHRC et al. October 3, 1977; December 19, 1977.

_____, to Progressive Conservative Caucus August 4, 1977.

Hill, Daniel G. Human Rights Consultant to Strayer, Dr. Barry, Assistant Deputy Minister, Department of Justice. June 25, 1977.

Hynna, Martha. Secretary General, CHRC, to author. August 25, 1981.

MacDonald, Rev. W. Clark. Deputy Secretary, Department of Church in Society, United Church of Canada to Members of the Standing Committee on Justice and Legal Affairs. April 6, 1977.

Moats, Harvey. Executive Director, Manitoba Human Rights Commission to Human Rights Deputy Ministers Conference Delegates. October 20, 1975.

Ritchie, M. Consultant to Cooke, K., Chairperson Advisory Council on the Status of Women. October 3, 1975.

Scott, Margot. President of the Canadian Association for the Mentally Retarded, to MacGuigan, Mark. Chairman of the Standing Committee on Justice and Legal Affairs. May 26, 1977.

Stanford, Lloyd. Administrator, to Department of Justice file no. 6230-16. May 12, 1977.

_____. to Hynna, Martha. November 23, 1977.

Steeves, Ann. Assistant to G. Fairweather, to G. Fairweather, Member of Parliament. August 26, 1977.

Strayer, Dr. Barry. Assistant Deputy Minister, Department of Justice, to Department of Justice file no. 6230-16. May 12, 1977; July 7, 1977.

_____. to author. December 9, 1980.

Trollope, Paul. The Law Union, to MacGuigan, Mark. May 10, 1977.

Ulch, T.N. Equal Pay Specialist, to Commissioners, CHRC. September 28, 1981.

Woolliams, Eldon. Member of Parliament, to Clark, Joe, Leader of the Official Opposition. January 27, 1977.

Interviews

Burr, Catherine. Special Programmes, CHRC. November 26 1981.

Fairweather, Gordon. Chief Commissioner CHRC. May 31, 1978; March 26, 1981.

Fitzmaurice, P.D. Director, Anti-discrimination Directorate, Appeals and Investigation Branch, Public Service Commission. September 3, 1980.

Hynna, Martha. Secretary General, CHRC. June 8, 1978.

Juriansz, Russell. Legal Counsel. CHRC. November 24, 1981.

Lang, Otto. Former Minister of Justice. July 23, 1980.

MacGuigan, Mark. Former Chairman, Standing Committee on Justice and Legal Affairs. June 19, 1978.

McLearn, H.A. Former Co-ordinator for the Human Rights Bills. November 29, 1978.

Strayer, Dr. Barry. Assistant Deputy Minister, Department of Justice. June 15, 1978.

Tarnopolsky, Walter S. Consultant on the Human Rights Bills and Member of the CHRC. June 14, 1978.

Ulch, Ted. Equal Pay Specialist, CHRC. November 26, 1981.

Van Berkal. G. Legal Counsel. CHRC. June, 1978.

Voisin, Guy. Director of Group Understanding and Human Rights Programme, Department of the Secretary of State. November 7, 1978.