

THE MEDIA, THE COURTS AND THE CHARTER, edited by Philip Ainsman and Allen M. Linden, Carswell, Toronto, (1986) pp. xiv and 521.

It is interesting to compare textbooks written before proclamation of the Canadian Charter of Rights and Freedoms¹ with later works.² From necessity those earlier works considered the whole of the Charter and many of the issues one could expect to see addressed in post Charter litigation. We now have *The Media, The Courts and The Charter* addressing Charter issues related to the print and the electronic media. In the three years preceeding its publication, a plethora of judicial decisions dealing with media related Charter issues has generated sufficient material to fuel an entire textbook. One can only anticipate that there will be a similar explosion of textbooks dealing with other aspects of Canadian society and which involve specific Charter issues.

The Media, The Courts and The Charter, which contains a number of papers and comments from a number of distinguished Judges, academics and practitioners, was originally presented as the Osgoode Hall Law School Annual Lecture Series in March 1985. The editors have updated the various papers to March 1986, and the updating appears to be fairly inclusive.

In the Preface the editors state that “. . . this book is intended to provide an intensive consideration of the implications of the ‘freedom of the press and other media of communication’, for the media themselves, for the judicial process and for Canada generally”.³ This is certainly an ambitious project for any text to attempt especially, as the editors note, since publication occurs at a relatively early stage in the Charter’s development. To achieve its stated intention, the book draws extensively upon Canadian and American jurisprudence, and contains comments from members of the media on many of the topics discussed. What is a particular strength of the book is the combination of its careful review of decided cases together with its attempt to focus upon presently unresolved media related issues which might possibly attract protection under s. 2(b) of the Charter. That this has been a success is clear from comparing the discussion in Chapter 2 of the book with the majority judgment of the Supreme Court of Canada in *Retail, Wholesale and Department Store Union, Local 580, Al Peterson and Donna Alexander v. Dolphin Delivery Ltd.*⁴

The general order of the text is logical and coherent. Rather than rush into specific media related issues, the editors have included two chapters which first deal with general principles of Charter freedoms, the approach

1. Hogg, *Constitutional Law of Canada* (2nd ed., 1985); Manning, *Rights, Freedoms, and the Courts* (1983); McDonald, *Legal Rights in the Canadian Charter of Rights and Freedoms* (1982); Tarnopolsky & Beaudoin, *The Canadian Charter of Rights and Freedoms* (1982).
2. Ainsman and Linden, *The Media, The Courts and The Charter* (1986); Bayefsky and Eberts, *Equality Rights and the Canadian Charter of Rights and Freedoms* (1985).
3. Ainsman and Linden, *supra* n. 2 at v.
4. Compare Ainsman and Linden, *supra* n. 2 at 39-61 to *Retail, Wholesale and Department Store Union, Local 580, Al Peterson and Donna Alexander v. Dolphin Delivery Ltd.*, unreported, December 18, 1986, S.C.C. #18720 at 9-14 (per McIntyre J.); and compare Ainsman and Linden, *supra* n. 2 at 227 et seq. to *Moysa v. Labour Relations Board, Alberta Food and Commercial Workers, Local 401 and Hudson Bay Company* (1986) 45 Alta. L.R. (2d) 37 (Alta. Q.B.), (presently under appeal to the Court of Appeal of Alberta).

to such freedoms, and the role of s. 1 in such freedoms. This seems to set the stage well for the detailed considerations in the chapters which follow.

Without exception the chapters are well written and easy to follow. Through ample use of footnotes to both judicial decisions and articles, the reader is given a wealth of source material for any further study intended. The table of contents lays out the chapters by first stating the main topic and then listing a number of sub-topics. For most readers familiar with media related issues, only a short time with the table of contents will be required to obtain the necessary reference to that part of the text dealing with the matter under review. The index as well seems fairly inclusive for most matters discussed in the text.

The use of American reference material is particularly helpful. As we observe the Supreme Court of Canada considering American authorities in many of its Charter decision,⁵ it is a positive feature to have a ready cross reference to those authorities when considering a problem, so as to be both aware of the American position on the matter and to consider application of American principles in the Canadian context.

Let me use but one example which will hopefully demonstrate the ease of use of both the table of contents and the index. Consider the question of whether commercial speech is protected by the Charter, or to put it another way, does the public have a right of access to the media for commercial purposes? A very short browse through the table of contents would see one pause at Chapter 6, review the sub-headings and determine that the topic is discussed in this chapter. If one by-passed the table of contents to start at the index, one would readily find commercial speech listed under the main heading Freedom of Expression, and be directed to the appropriate page in the text.

This text is in the main most useful for those persons who are involved with media related issues, to note where those issues are today, and where those issues may be going tomorrow. Practitioners will find some of the comments in the book written by laymen as less than helpful from a lawyer's perspective. That being said, one should not dismiss those comments totally out of hand, as the commentators are persons from the media who have been involved in the front line of the courts and media related issues both before and after the Charter. These individuals have a particular perspective which the lawyer would do well to consider.

In conclusion, *The Media, The Courts and The Charter* is a well written text which both reviews the current law and points the direction in which media related issues may proceed. It is a well researched and well written text which should be in the library of any lawyer either involved in media related matters or who wishes to have a complete library of Charter texts.

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5. *Hunter v. Southam Inc* [1984] 2 S.C.R. 145; *R. v. Big M Drug Mart Ltd* [1985] 1 S.C.R. 295; *R. v. Oakes* [1986] 1 S.C.R. 103; *Retail, Wholesale and Department Store Union, Local 580, Al Peterson and Donna Alexander v. Dolphin Delivery Ltd*, *supra* n. 4.