The other two Appendices are The Interpretation Act and The Canadian Bill of Rights.

The book is a very worthwhile investment for any one interested in law since it is clear that no matter what legal area is involved statutes will inevitably crop up and questions will undoubtedly be raised about their construction. The book goes a long way in teaching its reader how to do this construction.

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THE CANADIAN BILL OF RIGHTS: By Walter S. Tarnopolsky, B.A., A.M., LL.B., LL.M., Professor of Law, Osgoode Hall Law School of York University, McClelland and Stewart Ltd. 1975. Pp. ix and 436. $4.95.

To the legal profession in 1960, it appeared that the enactment of the Canadian Bill of Rights[1] heralded in a new era in the development of the law of civil liberties in Canada. To the legal profession in 1975, however, the 1960 enactment does not assume the importance that many thought it would. However, during this fifteen year period, not only has there been significant jurisprudence arising out of the Canadian Bill of Rights, but also there have been other developments in the law of civil liberties. Virtually every province has enacted anti-discrimination legislation and there is presently before Parliament a proposal for a national human rights commission. In addition, the office of ombudsman has now been established in several provinces. So, the law of civil liberties in Canada has received important legislative and judicial attention during the past fifteen years.

This dynamic era, unfortunately, has not received the attention it should have received from legal academicians, at least not in the form of comprehensive treatises relating to the law of civil liberties in Canada. In fact, prior to the publication of Professor Tarnopolsky's revised second edition, there were only two volumes upon which teachers and students could rely. The first was Dean Douglas Schmeiser's 1964 text on *Civil Liberties in Canada.* Secondly, there was Professor Tarnopolsky's first volume of *The Canadian Bill of Rights* published in 1966.[2] While there have been numerous articles on this and related topics, a new volume of the nature of the text presently under review is certainly welcome.

Professor Tarnopolsky's second revised edition of *The Canadian Bill of Rights* has now been published as part of The Carleton Library series by McClelland and Stewart Limited. As such, it is available in paperback at a reasonable price of $4.95. This makes it accessible to both teachers and students without regard to the excessive costs which characterize many modern texts. In addition, the volume is being distributed through most regular book stores, and as such, is available to the general public who are interested in this vital topic. Any treatise, as authors certainly appreciate, can become quickly out of date as the courts decide new cases in a particular area. This text, written as of December 31, 1973, is comprehensive and up to date, but it of course lacks

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[1] The Canadian Bill of Rights, S.C. 1960, c. 44; R.S.C. 1970, Appendix III.

[2] In addition, since the publication of this book, Carswell has released a new and revised 4th edition of *Laskin's Canadian Constitutional Law* by Albert Abel and revised by John Laskin, and Butterworths has released a volume of cases, notes, and materials also entitled *Canadian Constitutional Law* by John Whyte and William Lederman. Both of these volumes contain a substantial section on the law of civil liberties.

some recent cases, including in particular, the *Hogan*[3] case and the important Supreme Court of Canada decision in the *Canard*[4] case.

The status of the Canadian Bill of Rights in 1975 is not entirely clear. Most lawyers cannot reconcile the decisions of the Supreme Court of Canada in *Drybones*,[5] *Lavell*,[6] and *Canard*.[7] One thing is clear, though. And that is that the spirit, if not the substance, of *Drybones*[8] has been significantly whittled down over a five year period. Some experts do not regard this as the death of the Canadian Bill of Rights as a viable instrument in insuring the preservation of the political, egalitarian, and legal civil liberties of Canadians, but rather regard recent cases as merely growing pains in the development of the law of civil liberties in Canada. Many experts continually point to the American experience, arguing that it took the American judiciary almost two hundred years to develop the law of civil liberties, whereas the Canadian experience is limited to merely fifteen years and we are perhaps expecting too much to happen too quickly. Recently, a former Justice of the Supreme Court of Canada, the Honourable Emmett M. Hall, Q.C., in an address delivered last March to the graduates of the Bar Admission course of the Law Society of Upper Canada, made these remarks:[9]

> [The *Drybones*] decision of the Supreme Court of Canada brought the concept of freedom and equality before the law to all citizens alive again and there was rejoicing throughout the law profession, the law schools, in Parliament and amongst those who had hailed the Bill of Rights as a landmark in the elimination of discrimination when it was first made law. The rejoicing proved to be short lived, only until the *Lavell* decision in 1973. In the space of three years from *Drybones* to *Lavell* the Bill of Rights went from a high point of great expectancy down a short steep slope to near oblivion. Can the high idealism visualized in 1960 and hallowed in *Drybones* be resurrected? *Drybones* and *Lavell* were decided by the same court. The two decisions are incompatible. The discrimination was even more pronounced in *Lavell* as it was based on the sex of those affected — Indian women. The recent unreported decision in *Attorney General of Canada* v. *Canard* seems to indicate that the court has opted to bury *Drybones*, but perhaps it has only been put in cold storage. The same court is free to change its direction again. *Stare Decisis* is no longer the road block it was. Let us hope so . . .

Indeed, Professor Tarnopolsky himself refers to a 1960 decision of Mr. Justice Hall in which the former Chief Justice of Saskatchewan stated that:[10]

> The Courts . . . must be vigilant in seeing that the provisions of the Canadian Bill of Rights are not breached, ignored or whittled away.

In addition, Professor Tarnopolsky himself recently made these comments, in a paper on *The Supreme Court and Civil Liberties*, delivered to a meeting of the Canadian Association of Law Teachers in Edmonton last June:

> One might have expected that with this new legislative encouragement the Supreme Court would have expanded upon the civil libertarian tradition so firmly established during the 1950's, and thereby provide an answer to those critics of a written Bill of Rights who suggested that the attitudes and traditions of our Supreme Court justices were not such as to justify placing in their hands the ultimate decision-making with respect to certain categories of civil liberties. Instead, the Supreme Court seems to have lived up to the negative expectations of those critics.
>
> Let me state at the outset that I am not yet totally pessimistic because, as I hope to show, none of the decisions were such as to irrevocably relegate the Bill of Rights to an ineffectual instrument. Moreover, some of the reasons given by recent majorities for coming to their conclusions are either sufficiently ambiguous, or obscure, or even non-

[3] *Hogan* v. *The Queen* (1974) 48 D.L.R. (3d) 427.
[4] *A.-G. of Canada* v. *Canard* (1975) 3 W.W.R. 1.
[5] *R.* v. *Drybones* [1970] S.C.R. 282.
[6] *A.-G. of Canada* v. *Lavell* (1973) 38 D.L.R. (3d) 481.
[7] *Supra*, n. 4.
[8] *Supra*, n. 5.
[9] Emmett M. Hall, Q.C., *Freedom Under the Law*, 1975. The Law Society Gazette 102.
[10] *Shumiatcher* v. *A.-G. for Sask. et al.* (1962) 133 C.C.C. 69 (Sask. C.A.).

> existent, that a future majority, cognizant of the expectations of the public, and prepared to face up to its task as one of the major opinion-moulders of the country, will be able, with little difficulty, to overcome these decisions.

Finally, he concludes his address emphasizing the importance of a clear statement by the Supreme Court on issues regarding civil liberties:

> What I do want to emphasize in conclusion is that judgments of the Supreme Court justices are not solely a determination of the rights and obligations of the particular litigants. They should, at the same time, provide guidance for all citizens, and especially lawyers, judges and public officials. For the sake of citizens one would expect expositions of the issues at stake, and elaboration of the principles being applied. These should not only be readily understood, but also, if at all possible, expressed in classic, enduring terms. For the sake of those involved in the administration of justice it should provide clear guidelines. Yet how is one to satisfy the need of the citizen or the need of public officials (including lawyers, civil servants, and judges), when in cases such as *Hogan* the majority judgment does not really come to grips with the issues raised in the minority judgment of the Chief Justice? What we need is the kind of dialogue which would provide guidance not only for law teachers and law students, but for lawyers, judges and public officials, and the rest of the country as well. What we need are the Olympian views and memorable phrases of a Holmes, a Sankey, or a Rand, especially with respect to civil liberties and the Canadian Bill of Rights. In *Drybones* the Supreme Court justices have shown that they could have been, like Martin Luther King, to the top of the mountain, but unlike him, they have not yet seen the promised land. Let us hope they do.

Professor Tarnopolsky is, of course, one of the leading Canadian scholars in the law of civil liberties. He has published numerous articles as well as the present volume, which has been substantially revised and expanded in its second edition.[11] In addition, the author is one of the senior law teachers in Canada and has served in the university community as a law professor, as a Dean of Law, and as a university administrator. He is presently on the faculty at Osgoode Hall Law School of York University. Through his expertise in the law of civil liberties, Professor Tarnopolsky has served as an advisor to governments and on Boards of Inquiry established under the Ontario Human Rights Code.

The organization of this book is quite similar to the first edition, published by Carswell in 1966. The second, revised edition of *The Canadian Bill of Rights* runs 436 pages and consists of nine chapters, four appendices, and a thoroughly well organized table of statutes and table of cases. In addition, the book is well indexed containing various alternative entries for many topics which are cross-referenced for easy usage. More significantly, the book contains an extremely comprehensive bibliography which, in itself, is worth the price of purchase.

Generally speaking, the treatise may be divided into five major parts. Professor Tarnopolsky obviously subscribes to the categorization of civil liberties into a four-fold classification scheme. This classification scheme was originally set out by Professor Bora Laskin (as he then was), and was subsequently adopted by Pierre Trudeau (as Minister of Justice) in his White Paper on the proposed Canadian Charter of Human Rights published in 1968. (The proposed Charter, however, added a fifth category of civil liberties relating to linguistic rights.) The first major portion of the book (chapter 2) is concerned with the distribution of legislative authority with respect to each of the four major types of civil liberties — political civil liberties, economic civil liberties, legal civil liberties, and egalitarian civil liberties. The second major portion (chapter 3) is concerned with the issue of entrenching the Canadian Bill of Rights, including a major discussion on the doctrine of parliamentary sovereignty. The third portion of the book (chapter 4) is concerned with a study of the terms of and juris-

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[11] Professor Tarnopolsky is also the editor of a volume entitled: *Some Civil Liberties Issues of the Seventies*, which is published by Carswell and is a compilation of the various addresses and commentaries given at the Annual Lecture Series at Osgoode Hall Law School during 1973-74.

prudence to date on the Canadian Bill of Rights. Following this, chapters five through eight each deal with an examination of the Canadian Bill of Rights as it applies to each of the four categories of civil liberties. Finally, chapter nine deals with the specific issue of the War Measures Act and the Canadian Bill of Rights.

Professor Tarnopolsky thoroughly surveys the recent developments since the publication of the first edition in 1966. For example, he discusses two changes in the text of the Canadian Bill of Rights. He traces chronologically the legislative development from the proposed Ontario Bill 99 to the McRuer Royal Commission of Inquiry into Civil Rights to the eventual enactment, among others, of the Statutory Powers Procedure Act and the Judicial Review Procedure Act. He discusses the development of the office of ombudsman, which has now spread across Canada and exists in the provinces of Alberta, New Brunswick, Manitoba, Newfoundland, Nova Scotia, Saskatchewan (and since the publication of this book, in Ontario). There is also a discussion of the proliferation of anti-discrimination statutes across Canada, including a reference,[12] that, in December of 1973, the then Minister of Justice, the Honorable Otto Lang, "announced that the government would submit legislation in the new year to establish an Egalitarian Rights Commission". As of the date of this printing, a proposal for a Canada Human Rights Commission has in fact been introduced into the House of Commons and will probably be passed in the Spring of 1976.

Professor Tarnopolsky makes use of foreign constitutions and legislative enactments in various jurisdictions in order to make a comparative analysis. For example, there is of course significant reference to the U.S. Constitution, but in addition there is also reference, among others, to the Nigerian Bill of Rights and Constitution, the Constitution of the Fifth French Republic, and the Indian Constitution. With respect to the latter, it would be interesting to read Professor Tarnopolsky's analysis of the current constitutional crisis in India as it relates to the law of civil liberties; however, this will probably have to wait for the publication of a third edition of this text.

The book contains a thorough discussion of the recent cases, namely, *Drybones*,[13] *Lavell*,[14] *Curr*,[15] *Smythe*,[16] *Appleby*,[17] *Lowry and Lepper*,[18] *Duke* and *Brownridge*.[19] Unfortunately, as I indicated earlier, there is no discussion of the *Hogan*[20] case (excepting a brief mention in a footnote) nor the *Canard*[21] case at the Supreme Court of Canada level for reason that the book was published in advance of these decisions. However, there is a good discussion of *Canard*[22] in respect of the judgment of Mr. Justice Dickson in the Manitoba Court of Appeal.

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[12] Tarnopolsky, W. S., *The Canadian Bill of Rights*, McClelland and Stewart, 1973 at 76.

[13] *Supra*, n. 5.

[14] *Supra*, n. 6.

[15] *Curr* v. *R.* (1972) 7 C.C.C. (2d) 181 (S.C.C.).

[16] *R.* v. *Smythe* (1971) 3 C.C.C. (2d) 366.

[17] *R.* v. *Appleby* [1972] S.C.R. 303.

[18] *Lowry and Lepper* v. *The Queen* (1972) 26 D.L.R. (3d) 224.

[19] *Duke* v. *The Queen* [1972] S.C.R. 917; *Brownridge* v. *The Queen* (1972) S.C.R. 926.

[20] *Supra*, n. 3.

[21] *Id.*

[22] *Id.*

The discussion and analysis of the cases are logically set out, with each case discussed in the context of a particular line of cases. Both in his recent address to the Canadian Association of Law Teachers and in his book, Professor Tarnopolsky always describes the facts of particular cases in some detail, which, together with his explanation and analysis of the decisions rendered, make the cases readily understandable to his readers. In short, he has constructed a comprehensive and coherent analysis of the cases, often with a broad insight as to the significance of the cases in their historical context. For example, he states:[23]

> The problem in discussing the *Lavell* case is that so great a part of the judgments of the majority is devoted to setting up shibboleths and then elaborately and repeatedly striking them down. Excessively broad declarations are made, sometimes far beyond the requirements of the case, and then dismissed or reinterpreted without concise and sufficiently detailed analysis. In one sense, the effect of the decision could be very narrowly confined without great and irrevocable damage to the Canadian Bill of Rights by distinguishing between those comments which bear directly on the issue before the Supreme Court and the large number of obiter statements which were not necessary for this determination.
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> These are serious allegations, and are advanced with the greatest reluctance, coupled with great sympathy for the difficulty faced in the first few years by our judiciary with this somewhat new and greatly increased responsibility placed upon them by the Canadian Bill of Rights. As Mr. Justice Abbott observed in his final statement in this case:
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> > Ritchie J., said in his reasons for judgment in *Drybones* that the implementation of the Bill of Rights by the Courts can give rise to great difficulties and that statement has been borne out in subsequent litigation. Of one thing I am certain; the Bill will continue to supply ample grist to the judicial mills for some time to come.
>
> The Supreme Court is venturing into new areas, and with a Bill of Rights that could have been more precisely drafted. In our case the task of the judiciary in Canada could have been greatly facilitated had the legislative draftsmen considered at least some of the "modern" Bills of Rights in which draftsmen in the United Kingdom, as well as those in Europe and in the United Nations, had achieved some experience. . .
>
> Nevertheless, a commentator cannot shrink from his responsibility to assess the validity of reasoning in judicial decision-making. It is the duty of the Supreme Court to decide. It is the duty of an academic lawyer to suggest possible alternatives when they seem preferable.

Economic civil liberties are not specifically covered by the Canadian Bill of Rights, although section 1 (a) of the Act does make mention of the right of the individual to enjoy property and the right not to be deprived of property except by due process of the law. In all other respects, the Canadian Bill of Rights is silent with respect to the economic civil liberties. Similarly, the White Paper on a proposed Charter of Human Rights issued in 1968 also remains silent in respect of economic civil liberties. As a result, the discussion of the economic civil liberties in Chapter 6 is limited to four pages in length. As to the meaning of the "due process" provision in section 1 (a), Professor Tarnopolsky has reserved this discussion to the chapter on the legal civil liberties and the Canadian Bill of Rights. However, given that, as Professor Tarnopolsky says,[24] "[p]erhaps the greatest change in the scope and nature of civil liberties from the past century to this has been in the economic field", it is unfortunate that the author could not have expanded somewhat on this theme. Also, there is no discussion of the need for and advisability of provincial bills of rights. For example, the Alberta Bill of Rights, enacted in 1971, is very similar, but not exactly in the same terms as the Canadian Bill of Rights. There has been very little, if any, litigation in which the provisions of the Alberta Bill of Rights have been invoked and certainly none, to my knowledge, in which the provisions have been invoked successfully to render inoperative a particular statutory provision.

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[23] *Supra*, n. 12 at 149-150.

[24] *Id.* at 218.

It would have been desirable if there had been a comparative discussion between the terms of, for example, the Alberta Bill of Rights and the Canadian Bill of Rights and the desirability of having Bills of Rights at the provincial level.

The book ends with a summary of the October Crisis of 1970. This summary is concise, pinpointing key events in the drama. After outlining the facts and the relevant law, Professor Tarnopolsky makes probably the most provocative observation of all:[25]

> In retrospect, those who criticize the government's action will recall the shock to the country of the proclamation of the War Measures Act, plus the disruption of the lives, jobs and families of over 450 people who were either never charged or were acquitted. They will recall that an insurrection was apprehended, a War Measures Act was invoked, civil liberties were suspended, and a whole country was agitated, and in the end, two murderers and two accomplices were convicted, and four other kidnappers were permitted to go into exile. Those who support the government action will claim it was justified in that only two lives were lost, in one case a murder for which the perpetrators were caught and sentenced. Also, they may point to the fact that for at least a few years the terrorism of the F.L.Q. was brought to an end.
>
> But one fact remains to haunt anyone concerned with the operation of the Canadian Bill of Rights: it is the cabinet and not a court of law, which decides what constitutes "war, invasion, or insurrection, real or apprehended" sufficient to invoke the War Measures Act, which overrides the Bill of Rights.

It is this sensitivity to civil liberties in Canada, blended with an impressive mastery of all aspects of this area of the law by one of Canada's leading constitutional scholars, that makes this an important and valuable treatise. Throughout, Professor Tarnopolsky tempers this unique sensitivity with cold, hard legal analysis. Indeed, as a teacher of the law of civil liberties, the book will be of great benefit in my work. More importantly, I feel that all lawyers and law students and members of the public at large would stand to benefit by a full and logically presented understanding of a developing and vitally important area of the law. This book provides that understanding and, as such, is highly recommended to all who are interested.

— Gerald L. Gall*

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[25] *Id.* at 347-348.