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Full Issue

Articles

Challenging Electorial Boundaries Under The Charter: Judicial Deference and Burden of Proof
Ronald E. Fritz

The right to vote is foundational in any democratic society. In Canada, this right, as enumerated in section 3 of the Charter, has spawned litigation primarily revolving around issues of electoral boundaries and variations in constituency size. Here, the author examines some major Canadian cases concerning the right to vote as it pertains to those issues. Differing approaches to matters of deference and onus of proof for justifying particular electoral boundaries and constituency sizes are raised and discussed. The author suggests that courts must develop a coherent approach to both these matters to ensure the consistent and effective application of section 3.

The Civil Society and Its Enemies: The Case of Israel
Michael Keren

This study discusses the difficulties faced by Israel's civil society in its attempts to maintain a "bourgeois public sphere," as defined by Habermas, in which public concerns exceeding both the demands of the market and the guidelines of the state are expressed. With the loosening of socialist political and cultural hegemony in the 1970s and 1980s, a civil society, previously suppressed by the socialist state, attempted to reassert itself, especially by bringing civil rights issues to the courts. In doing so, it encountered new social forces constraining the public sphere, notably nationalism, populism and bureaucracy. The implications of these constraints to the "civil society project," advocated throughout the world, are then discussed.

Just Words and Social Justice
Keith Ewing

The need and desirability of entrenching a social charter has been greatly debated in Canada, especially since the failed Charlottetown Accord. The author makes a case for entrenching a social charter on policy grounds – protecting the rights and welfare scheme we already have – since the law is one of the best tools we have to "transform social relations." The author believes that constitutionally protected explicitly social rights can lead to a "socially just and progressive society" even if courts find protected liberal rights to be paramount when the two conflict. The author uses examples from several American states' and European constitutions, as well as Joel Bakan's critique of the Charter, to illustrate that a social charter can address the causes of social inequality if it takes a "broad approach to the social conditions of citizens," while acknowledging the inherent

enforcement problems that have plagued Charter rights since 1982.

Review Essay

Equality Jurisprudence: The Origin of Doctrine in The South African Consitutional Court

Justice Albie Sachs

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