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Articles

Anti-Terrorism Laws and Human Rights
George Williams

A perennial question for lawmakers is how to protect the community from terrorism, while also respecting fundamental human rights. This issue is important because laws combating terrorism can pose a risk that rights such as freedom of speech and association will be compromised, thereby undermining the very democratic freedoms that need to be safeguarded. This lecture examines these issues, with a particular focus on the anti-terrorism laws enacted in Australia. That nation is a good case study for these questions because it lacks a national Bill of Rights. It provides a stark example of how the absence of human rights safeguards can affect the making of such laws.

Language Rights Remedies in the Supreme Court of Canada: Invisible, Gentle, or Stern Hand?
Dianne Pothier

The Supreme Court of Canada has used the context of language rights to establish significant contours of constitutional remedies. Language rights cases, both pre and post *Charter*, have engaged the full range of judicial intervention, from an invisible to a stern hand. Initially, the Supreme Court of Canada took a very passive stance in the context of bilingual language obligations of legislatures and courts. Despite lack of express remedial direction from the Court, Quebec pulled out all the stops in its efforts to comply with the ruling with breakneck speed. In contrast, Manitoba adopted a leisurely pace in a half-hearted attempt to respond. As a consequence, the Supreme Court of Canada resorted to a stern hand. As minority language education issues under s. 23 of the *Charter* came before it, the Supreme Court of Canada felt its way forward, mostly applying a gentle hand. Throughout, the Court has attempted to identify the minimum needed to uphold constitutional supremacy. Whether expressly or by implication, assumptions about whether good faith compliance could be expected have shaped the remedial response. Ultimately, push from the Court has not led to push back from governments.

Adverse Impact: The Supreme Court's Approach to Adverse Effects Discrimination under Section 15 of the *Charter*
Jonnette Watson Hamilton and Jennifer Koshan

The recognition and remedying of adverse effects discrimination is crucial to the realization of substantive equality. However, the Supreme Court of Canada's analytical approach to the Charter's equality guarantee has made it difficult for equality claimants to mount successful claims of this type. Based on a comprehensive review of the Supreme Court's section 15(1) adverse effects discrimination jurisprudence, we identify the following barriers: more burdensome evidentiary and causation requirements; assumptions about choice; reliance on

a comparative analysis; acceptance of government arguments based on the “neutrality” of their policy choices; narrow focusing on discrimination as prejudice and stereotyping; and failing to “see” adverse effects discrimination, often because of the size or relative vulnerability of the claimant sub-group. We also examine two adverse effects claims heard by the Supreme Court in the fall of 2014, Taypotat and Carter, to analyze theapplication and resolutionof those problem areas.

Is Originalism Bad for Women? The Curious Case of Canada's "Equal Rights Amendment"
Kerri A. Froc

Originalism is a body of theories about constitutional interpretation that gained popularity in the United States in the 1980s. These theories maintain that the meaning of constitutional provisions is fixed at the time of framing and ratification and that the popularly understood meaning of the words at that time (or the original intentions of the drafters) is authoritative. While originalism purports to have a positivist orientation, some American scholars have argued that it is mere subterfuge for conservative judicial activism and is better understood as a populist rhetorical practice that has invigorated radical, conservative political movements. This article argues that feminist theorists should reconsider their outright dismissal of originalist theories as deleterious for women’s rights, and instead conduct a deeper analysis that weighs their as-yet unexplored potential benefits against the well-documented risks, using the example of section 28 of the Canadian Charter of Rights and Freedoms is a case in point. The application of originalist principles, at least for the interpretation of section 28, is critical step in moving women towards having truly equal access to Charter rights.

Case Comment: Missing the Forest for the Trees in *Canada (Attorney General) v Bedford*

David W.-L. Wu

This case comment on Canada (Attorney General) v Bedford examines the doctrinal developments of section 7 of the Canadian Charter of Rights and Freedoms. Specifically, Bedford discussed three critical aspects of section 7: 1) the role of stare decisis, 2) the issue of causation, and 3) the substantive principles of procedural fairness analysis. The author identifies access to section 7 as the Supreme Court of Canada’s predominant concern in the development of section 7 doctrine in Bedford. Unfortunately, this concern has not made for a necessarily more workable or more coherent doctrine. This paper attempts to show how the doctrinal developments in Bedford, especially those relating to the substantive principles of fundamental justice analysis, may 1) do little to benefit a marginalized claimant’s opportunity to succeed, and 2) be inappropriate to resolve the complex systemic issues that section 7 readily attracts.

Book Reviews

Book Review of Sébastien Grammond
Terms of Coexistence: Indigenous Peoples and Canadian Law
Marilyn Poitras

Book Notes

Dwight Newman