

RIGHTS IN THE AGE OF PROTEST:
A HISTORY OF THE HUMAN RIGHTS AND
CIVIL LIBERTIES MOVEMENT IN
CANADA, 1962-1982

DOMINIQUE CLÉMENT



RIGHTS IN THE AGE OF PROTEST:
A HISTORY OF THE HUMAN RIGHTS AND CIVIL LIBERTIES
MOVEMENT IN CANADA, 1962-1982

by

© Dominique Clément

A thesis submitted to the
School of Graduate Studies
in partial fulfilment of the
requirements for the degree of
Doctor of Philosophy

Department of History, Faculty of Arts
Memorial University of Newfoundland

December 2005

St. John's

Newfoundland



Library and
Archives Canada

Bibliothèque et
Archives Canada

Published Heritage
Branch

Direction du
Patrimoine de l'édition

395 Wellington Street
Ottawa ON K1A 0N4
Canada

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file Votre référence

ISBN: 978-0-494-30630-7

Our file Notre référence

ISBN: 978-0-494-30630-7

NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.


Canada

Abstract

The emergence of the human rights paradigm has been the most profound development in redefining the relationship between citizens and the state in Canada. In the sixties an explosion of new and vibrant social movements rocked Canada, from gay liberationism to feminism. Among these social activists was a new generation of civil liberties and human rights associations, dedicated to the defence of individual freedoms and rights irrespective of individuals' background and beliefs. These 'rights associations' emerged in every province in Canada and came to be the dominant advocates for individual rights after they eclipsed the work of organized labour with the decline of the Jewish Labour Committee in the 1970s. Despite a unity of purpose, bitter debates raged within and among rights associations over questions of ideology, the validity of state funding, and how to form a national rights association. Many of these debates were characteristic of the obstacles facing all social movement organizations in Canada in the sixties and seventies. This thesis explores the early history of the four oldest surviving rights associations in Canada: The British Columbia Civil Liberties Association, Ligue des droits de l'homme, The Canadian Civil Liberties Association, and The Newfoundland-Labrador Human Rights Association. Among the issues mobilizing these activists in the 1960s and 1970s were censorship, drug laws, denominational education, police brutality, the October crisis of 1970, and the rights of prisoners, natives and welfare recipients. These four

case studies provide insights into both the development of a uniquely twentieth century social movement and several controversial public debates during this period, and demonstrate the power, and the limitations, of human rights activism.

Acknowledgements

No dissertation can be completed without the generosity of a committee willing to take the time to provide extensive feedback. My desire to share with the world every detail of my research combined with a propensity to indulge in writing no doubt taxed the patience of my committee which bore the brunt of this deluge with fortitude. Greg Kealey, as the principal supervisor, provided invaluable feedback combined with a stream of precious advice on the vagaries of academic life. Without his support over the past four years this work would never have seen the light of day (or the shadows of the archival shelf where this work no doubt merrily sits alongside its brethren). Christopher English and James Overton not only offered their insights into the final draft, but took the time to review and comment on various articles along the way, a service for which I am truly indebted to them. Greg Patmore at the University of Sydney (Australia), and Robert MacDonald and George Egerton at the University of British Columbia, also provided support for my work throughout my program. I have benefited from their support and ideas and the responsibility for any shortcomings in this work remains, of course, with myself.

This work would not have been possible without support from the Social Sciences and Humanities Research Council, the Association for Canadian Studies, the Smallwood Foundation, the Association of Rhodes Scholars in Australia, the Osgoode Society for Canadian Legal History and Memorial University's F.A. Aldrich Fellowship. I am particularly indebted to the support of Bernice Chong at the Law

Society of British Columbia Archives and Bert Riggs at Memorial University's Centre for Newfoundland Studies. Finally, I must thank Danielle McLaughlin who worked diligently to ensure my access to the Canadian Civil Liberties Association papers and to Ivan Morgan who answered my torrent of questions about the Newfoundland-Labrador Human Rights Association and other groups across Canada.

Table of Contents

Abstract	ii
Acknowledgments	iv
List of Tables	viii
List of Abbreviations	ix
List of Appendices	xi
Introduction	1
<i>Part I: Social Movements and the Age of Rights</i>	
Chapter 1: What are Human Rights?	10
Chapter 2: Social Movement Organizations and Human Rights Activism	20
<i>Part II: Canada's Human Rights Movement</i>	
Chapter 3: The First Generation Rights Associations	43
Chapter 4: The Rights Revolution	72
Chapter 5: The October Crisis	117
Chapter 6: A National Rights Association	130
Chapter 7: State Funding	151
<i>Part III: Case Studies</i>	
Chapter 8: British Columbia Civil Liberties Association	165
Chapter 9: Ligue des droits et libertés	226
Chapter 10: Canadian Civil Liberties Association	298
Chapter 11: Newfoundland-Labrador Human Rights Association	365

Conclusion	395
Endnotes	416
Bibliography	508
Appendix A	532

List of Tables

Table 1:

Funding for native organizations and friendship centres, 1967 - 1981 157

Table 2:

Group Understanding and Human Rights Branch, Secretary of State, Grants for 1968-1981 158

Table 3:

Funding to rights organizations by the Secretary of State for 1969-1970 159

Table 4:

Individual Paid Memberships in Civil Liberties and Human Rights Associations for 1971-6 160

Table 5:

Additional Rights Groups Receiving Government Funding, 1970-1982 161

List of Abbreviations

BCCLA	British Columbia Civil Liberties Association
CBC	Canadian Broadcasting Union
CCF	Co-Operative Commonwealth Federation
CCLA	Canadian Civil Liberties Association
CCLU	Canadian Civil Liberties Union
CJC	Canadian Jewish Congress
CLAT	Civil Liberties Association of Toronto
CLAW	Civil Liberties Association of Winnipeg
CLC	Canadian Labour Congress
CLDL	Canadian Labour Defence League
CPC	Communist Party of Canada
ECCR	Emergency Committee for Civil Rights
FLQ	Front de libération du Québec
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
JLC	Jewish Labour Committee
LDH	Ligue des droits de l'homme
MCLA	Montreal Civil Liberties Association
MDPPQ	Mouvement des prisonniers politiques

NAC	National Action Committee on the Status of Women
NCHR	National Committee for Human Rights
NDP	New Democratic Party
NGO	Non-Governmental Organization
NLHRA	Newfoundland Labrador Human Rights Association
OCLA	Ottawa Civil Liberties Association
ODD	Office des droits des détenu-e-s
RCMP	Royal Canadian Mounted Police
RIN	Rassemblement pour l'indépendance nationale
SMO	Social Movement Organization
SOS	Secretary of State
SUPA	Student Union for Peace Action
TLC	Trades and Labour Council
UCHR	United Council for Human Rights
UDHR	Universal Declaration of Human Rights

List of Appendices

Appendix A	533
------------------	-----

Introduction

Two events, separated by time and geography, symbolize the central themes of this dissertation. In 1946 a royal commission was instituted by the federal government to investigate allegations by Igor Gouzenko, a Russian cypher clerk defecting from the Soviet Union, of a spy ring operating in Canada. In October 1970 the Front de libération du Québec (FLQ) kidnapped James Cross, the British High Commission's senior Trade Commissioner in Montreal, and Pierre Laporte, a Quebec cabinet minister, in an effort to promote Quebec independence. These are the only two moments in Canadian history when wartime powers, under the War Measures Act, were employed during peacetime to suppress a perceived threat to the state. Habeas corpus was suspended, people were arrested and interrogated by the police without access to legal counsel, and reputations were sullied as a result of the stigma attached to being associated with an act of treason. A less appreciated consequence of these events was their impact in stimulating the creation of organizations dedicated to the defence of individual freedoms. Since the 1930s, with a short period of inactivity in the late 1950s, an amalgam of organizations have existed across the country with the express purpose of defending the rights of all Canadians irrespective of any distinctions such as race or political belief. The espionage commission and the October crisis were met with profound opposition from rights activists, and led to the formation of new rights associations across the country.

Since the sixties a host of new social movements have emerged. William K. Carroll, a sociologist specializing in Canadian social movements, has characterized the 1960s and 1970s as “the climax of a period of social movement activism in Canada.”¹ One manifestation of these movements were social movement organizations: groups dedicated to realizing the goals of a particular movement. Gay men in Vancouver and Toronto met in their homes to form the country’s first gay rights groups; women came together in their basements or community centres to develop a program of action to raise awareness of such issues as abortion and equal pay; students congregated outside classrooms in universities to organize campus demonstrations to demand a say in the governance of the university; and in Vancouver, men and women concerned about the impact of nuclear testing on the environment united to form what would become one of the most recognized advocacy groups in the world. These patterns were repeated time and time again in the homes, offices, and street corners of cities and towns in Canada, bringing together people concerned about children, prisoners, welfare recipients, lesbians, natives and a host of other constituents and issues. Social movement activism defined the sixties and seventies.

Many of these activists clothed their demands in the language of human rights. These activists, and the beliefs they promulgated, constituted a veritable human rights movement in which they all shared a common desire for liberty and equality. One manifestation of the human rights movement, virtually absent from the historical

record, was the rise of 'rights associations.' Rights associations, in the context of this study, are narrowly defined. Laurie S. Wiseberg and Burns H. Weston offer a useful definition for understanding the distinction between rights associations and other social movement organizations employing human rights discourse:

[A rights association is] a voluntary organization which is independent of both government and all groups which seek direct political power, and that does not itself seek such power. ... [A rights association] monitors government behavior and tries to hold the government accountable to human rights standards. ... What distinguishes a [rights association] from other political actors is that the latter, typically, seek to protect the rights of their members or constituents only; a [rights association] seeks to secure the rights for all members of society. ... On the whole, [rights associations] are not mass-based organizations"²

These 'rights associations' distinguished themselves within the human rights movement in that they did not serve any specific constituency, they were non-partisan, and they were self-identified 'civil liberties' or 'human rights' associations.³ Prior to the sixties, there had only been a sprinkling of such organizations across Canada, barely a dozen organizations active at one point in time. However, by the 1980s, more than forty rights associations had emerged across the country since 1962. The history of these 'rights associations' is the subject of this work.

The following dissertation charts the history of the human rights movement in Canada as embodied in a network of associations created in the sixties and seventies. Rights associations offer us a window into how people have sought to define and apply ideas about human rights. Movements are defined by the beliefs they

propagate, but they are composed of the people who articulate and shape, sometimes imperfectly, those beliefs. Although rights associations do not constitute the human rights movement, to isolate them from the movement is to deny the very purpose for which these organizations existed. A history of rights associations is a history of a small but integral manifestation of the human rights movement.

Canadian historians have only recently begun to probe the evolution of the rights paradigm through the eyes of social activists. Ross Lambertson (*Repression and Resistance*, 2004) and Christopher MacLennan (*Toward the Charter*, 2003) have written about the early history of the human rights movement. Similar work by Carmela Patrias, Ruth Frager and James Walker on Jewish activists and racial minorities; George Egerton on the impact of religious doctrine on human rights discourse; and William Schabas on the Universal Declaration of Human Rights are evidence of increasing interest among historians in this field of study.⁴ With the exception of Lucie Laurin's 1985 history of the Ligue des droits et libertés in Montreal, however, this literature fails to address the development of rights associations since the sixties.⁵ Some of the key human rights issues discussed in this work include denominational education, police brutality, censorship, and the October crisis.

An important assumption informing this work is that there are two identifiable 'generations' of civil liberties and human rights activists in Canada. The first generation had its roots in the 1930s and peaked in the 1940s; the second generation

emerged in the sixties and continues to be active today. Within the international literature on human rights the term 'generations' is often used to explain changing ideas about rights, such as references to a generation of civil and political rights followed by a generation of social and economic rights. *Generations*, in the context of this study, however, is not a reference to new ideas about rights but to the activists themselves. The rights associations of the 1960s and 1970s were dominated by the baby boomers. Walter Thompson was fresh out of law school in 1972 when he joined the Nova Scotia Civil Liberties Association (and became president a few years later) and Norman Whalen, a founding member and future president of the Newfoundland-Labrador Human Rights Association, was on the cusp of finishing his articling position in St. John's when he became involved in the association. None of the individuals who attempted to form a national rights association in the 1940s was present in the 1970s when a national federation of rights associations was born in Montreal.

As the following work will demonstrate, the two generations were characterized by different dynamics. Each generation of activists operated within a different historical context. The expansion of the welfare state, concerns over the use of illegal narcotics among middle class youth, the Quiet Revolution and other developments shaped the activism of the second generation of rights associations. Building upon the successes of their predecessors, these rights associations engaged with a host of new human rights issues.

The second generation of rights associations began with the creation of the British Columbia Civil Liberties Association in 1962. Since this dissertation is primarily concerned with social movement organizations, this work is organized in such a way as to highlight the perspectives of the four groups under study as opposed to providing a comprehensive analysis of every human rights issue of the period. The research conducted for this project touched on more than two-dozen rights associations, including at least one group in every province. Some of the empirical work on these other organizations is presented in the appendix. However, in order to provide a focussed, intensive discussion of individual associations over an extended period of time, four rights associations have been carefully selected as case studies. The four case studies are geographically distinct, they are divided equally between the two major ideological camps of rights associations (human rights and civil liberties), they include associations from both small and large urban centres, and one francophone association was included. Although only four groups are discussed in detail, many of the conclusions reached in this work can be applied to other rights associations.

Chapter one briefly surveys some ideas about the nature of human rights, including conceptual distinctions between civil liberties and human rights. Chapter two reviews the theoretical underpinnings of this work, with a particular focus on social movement theory and the nature of human rights activism. Part II begins with chapter three, a brief survey of the first generation of rights associations in Canada,

from the 1930s to the 1950s. Since the case studies in this work are presented as one manifestation of a larger social movement, chapter four will endeavour to chart the ‘rights revolution’ of the twentieth century, although such a monumental task can only receive a cursory examination in this context. Chapters five to seven of this dissertation establish the necessary historical context for understanding the emergence of rights associations in the sixties: a brief examination of the October crisis, possibly the most important human rights issue of the period (chapter five); a review of various failed attempts to form a national rights association (chapter six); and an introduction to the role of state funding in supporting rights associations (chapter seven). Chapters eight through eleven (Part III) embody most of the empirical work in this study. Each chapter presents the early history of the four oldest and most active rights associations in Canada, and the chapters are organized chronologically from the point of each group’s inception: the British Columbia Civil Liberties Association (Vancouver, 1962), Ligue des droits de l’homme (Montreal, 1963), the Canadian Civil Liberties Association (Toronto, 1964), and the Newfoundland-Labrador Human Rights Association (St. John’s, 1968).

Many of the issues dealt with in this work are specific to the history of rights associations, but they are also a manifestation of other developments in Canada. In the latter half of the twentieth century, new human rights issues caught the imagination of Canadians and the positions adopted by rights associations, as well as the ideological divisions among them, were partly a manifestation of these new

developments. In addition to exploring the history of the sixties and seventies from the perspective of human rights activists, the organizational concerns facing rights associations were consistent with the experience of many middle class social movement organizations of this period. The history of the four rights associations in this work challenges the assumption that state funding, at a time when government funding for social movement organizations reached unprecedented levels, necessarily limits or constrains social activism.⁶ Similarly, new communications technology, cheaper air travel and an expanding pool of individuals becoming involved in social movement organizations created new opportunities for organizing at the national level. One of the key issues dealt with in this work is the inability of rights associations to form an inclusive national association and, while this failure is primarily rooted in factors specific to these groups, it is also a testament to the obstacles facing all social movement organizations seeking to form a national association in a physically immense, regionally diverse, and culturally divided nation. Many of these topics are addressed in the theoretical literature on social movements and human rights, particularly by sociologists in the United States and Europe, but what is lacking is an intensive, long-term empirical study of the activities of social movement organizations that only an historical study can offer.

Historians have paid little attention to the history of social movement *organizations* in Canada except for political associations, and few scholars have attempted to chart an entire network of organizations dedicated to the same cause.

Historical work on the rights paradigm often focuses on the state and the role of state actors in promoting and defending human rights. The history of these four organizations offers a glimpse into how non-state actors have articulated, promoted and struggled with varying notions of rights. A study of human rights at this particular juncture is propitious; as Maxine Molyneux and Siar Lazar have recently noted, the “focus on security issues following the attacks of 11 September 2001 has set the human rights agenda back, causing some to wonder if the ascendancy of the human rights agenda is over.”⁷ A history of human rights activism can act as a useful reminder of the need for constant vigilance against unnecessary and violent attacks on fundamental freedoms, as well as the limits of this type of advocacy.

Part I: Social Movements and the Age of Rights

Chapter One:

What are Human Rights?⁸

One of the first explorations into the history of human rights in Canada was penned in 1966 by Walter Tarnopolsky in a work titled *The Canadian Bill of Rights*. From the outset he made it clear that he used the terms ‘civil liberties’ and ‘human rights’ interchangeably.⁹ Among rights associations, however, there were important distinctions between human rights and civil liberties associations. A key theme throughout this work is to identify and understand this ideological divide. As a result, it would be useful to develop a tentative framework for explaining how and why rights associations adopted these ideological labels.

Civil Rights, Political Rights, and Social, Economic and Cultural Rights¹⁰

Any attempt to define separate categories of rights is a risky endeavour. A great deal of the literature dealing with human rights depends on the Universal Declaration of Human Rights (UDHR) and the two covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as reference points for distinguishing between differing categories of rights. Yet, the right to self-determination in the ICCPR (1.1) requires some recognition of the economic, social and cultural rights in the ICESCR; the right to family is enshrined in both the ICCPR

(23.2) and the ICESCR (23.2); and, the right to join a union in the ICCPR (10.1) is also entrenched in the ICESCR (8.1). Is an economic right to be defined, as Tarnopolsky suggested in 1966, as the right to own and not be deprived of property, or is it a right to social security, as C.B. Macpherson suggested twenty years later?

Categorizing rights is thus an artificial exercise at best. It is true that, as the following study will demonstrate, rights associations did not always share the same priorities, and this can be partially explained by these ideological distinctions. Yet, as with any social movement organization with a high turnover rate, the priorities and positions of rights associations continually shifted and were never pre-determined. As a result, this exercise should only be undertaken with the understanding that these boundaries “can obviously be blurred and quite arbitrary.”¹¹

C.B. Macpherson offers a useful standard for categorizing rights: “The civil rights are chiefly rights *against* the state, that is, claims for individual freedoms which the state cannot invade. The political rights are rights to a voice *in control* of the state. The economic and social rights are claims for benefits to be guaranteed *by* the state, both by legislation and by positive promotion of services and income supplements.”¹² Using this framework, civil rights are herein understood as property rights and the rule of law. These rights include freedom of contract and the right to property (and to not be deprived of property without compensation), to withhold one’s labour and to join a trade union. Civil rights also encompass basic legal rights such as

Social, economic and cultural rights are difficult to enforce because the nature and scope of such rights are often defined by the current government. Nonetheless, in principle social rights are equally legitimate human rights.¹⁶ As Peter Bailey asks, “is not the sight of a starving beggar in a street in Sri Lanka, or of an exploited migrant worker in an Australian heavy industry workshop, or of an unhealthy pregnant woman unable to obtain decent medical care, or of an uneducated and illiterate refugee attempting to find work in a country of resettlement, not equally an affront to basic rights?”¹⁷

Negative versus Positive Rights

If we hope to understand the nuances behind differing forms of rights activism, it is critical to go beyond simply identifying various types of rights. An interesting theme in the history of rights associations in Canada has been the decision by many human rights organizations to embrace economic, social and cultural rights while civil liberties associations have generally avoided this type of advocacy. One way of explaining this distinction is to distinguish between negative and positive rights. When civil liberties activists argue that people must be free from restraint in carrying out their desires (e.g., freedom from restrictions on personal behaviour), they are articulating a conception of liberty based on *negative* rights. In his groundbreaking essay “Two Concepts of Liberty,” Isaiah Berlin suggested that if “I am prevented by others from doing what I could otherwise do, I am to that degree unfree;

and if this area is contracted by other men beyond a certain minimum, I can be described as being coerced, or, it may be, enslaved.”¹⁸ Negative freedom is essentially the absence of restraint.

Berlin was a fierce opponent of positive freedom, although primarily when interpreted as imposing the majority’s will on individuals. Alternatively, many contemporary liberals understand positive freedom as ensuring individuals’ capacity to formulate their desires, values and goals. A robust definition of positive freedom would characterize liberty as the freedom to act and to make claims against the state: the right to provisions of basic goods or the right to equal access to employment. Jerome Bickenback offers a useful way of understanding the differences between negative and positive freedom in his discussion on disability rights:

Rules, regulations, laws, and other forms of coercion, manipulation, and threat are all limitations upon one’s negative freedom- some justified, some not. These are familiar restrictions. Lack of training, accommodation of needs, or realistic opportunities are also restrictions; they are limitations upon one’s positive freedom, one’s capacity to exercise one’s freedom to do or become what one wishes. Both kinds of freedom open the door to options and choices, but only positive freedom captures the actual capability to achieve or bring about what one chooses. Since the importance of negative freedom presumes one’s abilities to do or become something, if one so chooses, the value of negative freedom must be derivative from positive freedom.¹⁹

Under Bickenback’s construction of positive freedom, social and economic rights (positive rights) are critical in ensuring individual freedom. Maurice Cranston, among others, has argued that positive freedoms are not true human rights because

they require support from the state, and it is unreasonable and costly to characterize the provision of aid as a right. Such a formulation is problematic. Civil and political rights are principally defended through expensive legal systems and often require the state to act in a positive manner to ensure their protection. Social and economic rights are no less enforceable. We have the ability to provide all Canadians with a minimum of food and housing, but we choose not to because of political resistance to extensive redistribution and structural change. Even Berlin, a staunch opponent of positive freedom, acknowledged that “to offer political rights, or safeguards against intervention by the state, to men who are half-naked, illiterate, underfed, and diseased is to mock their condition; they need medical help or education before they can understand, or make use of, an increase in their freedom.”²⁰

Another possible way of explaining the ideological differences among rights activists is to characterize some as libertarians and others as egalitarians. In theory, libertarians believe in liberty and egalitarians believe in equality. A libertarian embraces negative freedom: freedom exists in the absence of coercion.²¹ In contrast, an egalitarian believes in positive freedom: freedom is derived not only from the lack of an intentionally created obstacle, but is also violated by unintended obstacles, such as being born in a poor family. Therefore, egalitarians claim that the poor in capitalist societies are unfree, or less free than the rich, and libertarians claim that the poor are equally as free as the rich.²²

Both terms are highly problematic in this context. Right wing libertarians embrace extreme notions of self-ownership and reject any kind of redistribution of wealth; in contrast, left wing libertarians support the division of resources equally among all individuals and, in some cases, oppose inherited wealth. Egalitarians are also commonly “criticized for wanting to eliminate differences between people, thereby creating a bland and homogenous society devoid of just those individual differences that are responsible for social progress.”²³ As the case studies will demonstrate, no rights association in Canada could be honestly characterized as libertarian or egalitarian based on these definitions.

As labels, libertarianism and egalitarianism are therefore inappropriate. As *descriptive* terms, however, they can be useful in explaining the emergence of contrasting objectives between civil liberties (libertarian) and human rights (egalitarian) associations. Egalitarian activists favour positive rights and advocate for economic, social and cultural rights (but not to the detriment of other rights). A libertarian approach, by contrast, is characterized by a concern for equality of opportunity and protecting individuals’ negative rights. Of course, while these terms make for a useful analytical exercise, in practice the lines among rights associations have often been blurred. Civil liberties activists have not universally denied the importance of economic or social rights, and human rights activists have often defended free speech. Nonetheless, the dichotomy between negative and positive rights partially explains why human rights associations have, unlike civil liberties

associations, considered the elderly's need for inexpensive drugs, or access to low-income housing for the poor, as rights.

But the issue goes further than simply prioritizing certain rights over others. Why have civil liberties groups tolerated hate speech as an exercise of free speech whereas human rights associations demand that hate speech be censored? These divisions can be understood as a debate between libertarian (negative) and egalitarian (positive) approaches to rights advocacy. A libertarian approach would lead someone to oppose any abuse of an individual liberty; hate speech would be tolerable only because the alternative would be a violation of the individual's liberty to speak freely.²⁴ The same approach informs opposition to laws that restrict drug use or consensual and private sexual relationships (including gay sex). Egalitarians also oppose state regulation of private sexual relationships, but argue that equality can only be achieved through positive state action. In theory, minorities can not participate equally in society if they are victims of hate propaganda or live in fear of becoming targets of violence promoted by hate mongers. The difference between libertarian and egalitarian approaches to rights advocacy represents an important ideological dispute over the nature and function of human rights.²⁵

A Conceptual Distinction: Civil Liberties and Human Rights

In the early 1970s a federation of rights associations was formed: the Canadian Federation of Civil Liberties and Human Rights Associations. Clearly, at the level of

self-identification, rights activists defined themselves in ideological terms and, as we shall see, these distinctions also reflected differences in the nature of their activism.

The terms civil liberties and human rights have been used in many contexts to distinguish between ideas about rights. In Australia, for instance, Beth Gaze and Melinda Jones have suggested that the “concept of human rights is encapsulated in the claim for positive liberty; the concept of civil liberties is usually thought of as involving only negative liberty.”²⁶ Not only is the term ‘civil liberties’ associated in some contexts with negative freedom and ‘human rights’ with positive freedom, but by extension civil liberties are associated with civil and political rights while human rights are associated with economic, social and cultural rights.²⁷ Human rights, however, are not *separate* from civil liberties. Conceptually, human rights are an expansion of traditional notions of civil and political rights to broader ideas about freedom and equality.²⁸ Therefore, in the following study, ‘human rights’ is used broadly to refer to all forms of rights discourse whereas ‘civil liberties’ is narrowly applied.

Human rights is a highly malleable term. Such ideological distinctions are a useful tool for explaining the nature of rights advocacy, but should not be mistaken for an unbending ideological predisposition among rights associations. Ideology did not *predetermine* the activities of rights associations. There have always been individuals within human rights organizations who opposed censorship of pornography and individuals among civil liberties groups who support legislation

banning hate speech. Still, although these distinctions are problematic as *labels*, they serve a useful analytical function in helping understand the relationship among rights associations and why they divided over certain issues. Attempting to sort out this conceptual minefield through a study of the practices of social movement organizations is an important goal of this study.

Chapter Two:

Social Movement Organizations and Human Rights Activism

The Fundamentals of Human Rights Activism

I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies, no constitution, no law, no court can save it.²⁹

Speaking before crowds of people in New York's Central Park in 1945, American jurist Learned Hand's famous words continue to resonate today. Although the history of the human rights paradigm is intimately tied to the evolution of the modern state, scholars have too often adopted a top-down approach, examining the evolution of human rights from the point of view of state actors and the courts. Only recently has work emerged on the role of non-state actors in framing rights discourse but, even outside Canada, scholars have yet to vigorously pursue studies linking human rights to social movement activism. As Joe Foweraker and Todd Landman have noted, there "are relatively few comparative studies of either social movements or rights, and, to the best of our knowledge, no such study of the relationship between them over time."³⁰ Neil Stammers has also pointed out that, in the United States, "the ways in which social movements construct and deploy rights discourses have rarely been considered to be of analytical import."³¹ In their study of Latin American non-governmental organizations (NGOs), Maxine Molyneux and Sian Lazar lament how little we know "about the ways in which [non-governmental organizations] have

worked with rights, and less about the specific regional or local understandings about rights that inform project design and implementation.”³² Despite the expansive literature on human rights organizations, only a limited number of studies discuss the impact of rights discourse in shaping social activism.³³

The following study is based on two fundamental assumptions about the nature of human rights activism. First, the idea of human rights as it has evolved in the twentieth century is intimately linked with the state. Human rights activism is primarily, but not exclusively, focussed on the state; activists seek to protect individuals against state abuse of human rights or to mobilize the state to protect human rights. When four black freshmen from the North Carolina Agricultural and Technical College in Greensboro sat down at a whites-only lunch counter at Woolworths demanding to be served, their goal was to pressure a private business to change its policies. Obviously, such activism was not directly state-oriented. Yet, when restaurant owners agreed to serve blacks or when neighbourhoods removed restrictive covenants, they were not conferring *rights* upon others. A voluntary act by private individuals is not a recognition of a right. Thus, the second assumption, which derives from the former, is that human rights are only tangibly realized through state laws or regulations. Individuals and groups can make rights-claims and such claims have a powerful moral force, but they are not *rights* until recognized by the state. Therefore, human rights activists will eventually seek out the state to have their

rights-claims recognized.³⁴ As Thomas Hobbes once remarked, “rights without the sword are but mere words.”³⁵

These assumptions have informed a great deal of the literature on human rights activism. In their study of human rights organizations in Latin America, Molyneux and Shahra Razavi premise their work on the belief that “the central instrument for the protection of rights has been, and must remain, the state.”³⁶ According to Canadian political scientists Alan Cairns and Cynthia William, rights discourse draws activists towards the state: “the state becomes the major instrument to facilitate or block changes. ... Drawing on the rhetoric of rights, citizen groups seek to employ the state for their own advancement.”³⁷ As Miriam Smith observes in her study of the gay rights movement in Canada, “rights talk assumes that changing or strengthening the law is in itself a means to [achieve] social change and that legal changes are thus the proper goal of political struggle and organizing. Rights talk thus defines social and political change as legal change.”³⁸ Martha Minow incorporates the same assumption about rights and the state in her own work on the disability rights movement in the United States: “Rights thus critically articulate relationships between individuals and the state; they represent the rules governing when the state will affirm an individual’s liberty to act or fail to act, and when the state will listen to a person’s objections about another’s conduct.”³⁹ For human rights activists, the state includes both the government as well as the courts which enforce and define rights through their interpretation of the law. In essence, as James Walker posits in his book

on human rights and the Supreme Court of Canada, “rights are what the law says they are.”⁴⁰

Human rights thus encourage social activists to think of social change as legal change. This approach is potentially problematic. As Minow has suggested, the rhetoric of rights “underscores the power of the established order to respond or withhold response to the individual’s claim. ...[R]ights rhetoric can and should be exposed for its tendency to hide the exercise of state authority.”⁴¹ In Minow’s study of the disabled in the United States, she reveals how ‘difference’ is applied in social relationships in the way people apply pre-existing notions of the disabled, notions which are laden with cultural meanings. She perceives knowledge-constructed difference as the root of inequality. By labelling people like the disabled we create insurmountable barriers for them to participate equally in society. Difference is accepted as natural and immutable. In reality, difference is constructed because we apply socially constructed ideas of a ‘norm’ in our everyday lives and, in doing so, exclude all those who do not fit within this conception. Notions of human rights obscure these knowledge-power relationships by offering the veneer of formal equality when, in reality, treating everyone equally blinds us to the social handicaps caused by labelling.

Minow is not alone in raising concerns about the implications of human rights activism. In Canada, several scholars who study the impact of the Charter of Rights and Freedoms have become alarmed at the impact of human rights activists using the

courts to promote social change. In their recent work, *The Charter Revolution and the Court Party*, Rainer Knopff and F.L. Morton raise the spectre of an elite of lawyers and NGOs guiding and dominating the jurisprudence and priorities of the Charter and using the courts to undermine the political process. A ‘Court Party’ composed of NGOs and the legal establishment have subverted the democratic political process by promoting the adjudication of important social issues through an unelected judiciary. These organizations, dominated by an educated middle class elite, exploit the courts as a forum to promote their interests and impose their ideas on public policy without having to lobby governments and mobilize public opinion. Through the funding of private volunteer associations and the Court Challenges Program (federal government funding available for Charter cases), the state supports what Knopff and Morton consider to be a profoundly anti-democratic practice.⁴² One of the main organizations identified by the authors is the Canadian Civil Liberties Association.⁴³

Fears about the implications of human rights activism are shared across the political spectrum. From the Left, Miriam Smith has pointed out that, in the case of the gay rights movement, rights discourse combined with Charter litigation weakened its grass roots base. Identity formation in the 1970s was sacrificed for equality seeking in the 1980s. Although the movement had always employed rights discourse, it initially used litigation and advocacy to mobilize at the grass roots level whereas Charter litigation made legal reform, not mobilization, the central goal of the

movement. Instead of liberating gays from social repression, rights discourse avails itself to a middle-class educated elite who can benefit from legal reforms and human rights charters. Charter litigation also absorbs an increasingly large portion of a social movement's (and NGOs) resources.⁴⁴ But this is not solely a post-Charter phenomenon. As Tom Warner notes in his history of the gay movement before the Charter, gay rights activism, notably various campaigns to have sexual orientation included in human rights codes, had a dampening effect on the movement by redirected resources towards litigation and away from grass roots mobilizing.⁴⁵ Warner also distinguishes between gay *rights* and gay *liberation*, and argues that only the latter encourages identity formation whereas the former is a conservative force which only seeks formal legal equality for homosexuals instead of demanding substantive equality (e.g., challenging heterosexuality as the 'norm').

Certain Canadian legal theorists argue that the courts are a poor forum for seeking social change. Drawing on the theories of Ronald Dworkin, Michael Mandel distinguishes between matters of principle and policy, with the judiciary limiting itself to deciding the former while the latter remains the exclusive jurisdiction of politicians. More often than not, the judiciary will couch its decisions in matters of principle when striking down legislation (particularly in the post-Charter era) and in matters of policy when deferring to legislatures. This is critical because the unelected judiciary lacks democratic legitimacy. Yet this approach is inherently problematic because decisions based on abstract reasoning (principle) are unable to consider the

social costs of the issue at hand. Thus Sunday closing laws are considered within the realm of freedom of religion as opposed to the interests of workers or the economy. In terms of achieving social progress, this presents a serious obstacle. Policy issues (which are goal-oriented) generally consider broader notions of general welfare whereas principle-based arguments (which are rights-oriented) are more conducive to individual interests. As a result, broad social policies designed to satisfy collective needs are threatened by a judiciary using abstract principles to trump public policy.⁴⁶ The judiciary are in no position to combat economic and social inequalities because, in basing their decisions on principle, they often avoid dealing with systemic factors promoting inequality.⁴⁷ “So it is only by ignoring the ugly facts of concrete power that judges can do their job at all.”⁴⁸ As a result of the innate conservatism of judicial politics,⁴⁹ Mandel laments the shift among socially progressive activists, from peace activists to the women’s movement, in seeking out the courts to achieve social change.

Scholars of international human rights activism have reached similar conclusions. Gary Teeple has recently forwarded a vigorous attack on human rights as an ideology which is incapable of confronting systemic inequalities. He shares Smith and Warner’s distress with human rights activists sacrificing grass-roots mobilization and adopting rights-based strategies. Using Amnesty International and Human Rights Watch as case studies, Teeple concludes that they “absorb, moreover, the energies of individuals, groups, sectors, and classes that might otherwise have

presented a challenge to state policies; and they dampen a possible critical awareness about the link between the problems they are supposedly addressing and the nature of the economic and political system itself.”⁵⁰ In their comparison of southern (third world) and northern NGOs, Jackie Smith, Ron Pagnucco, and George A. Lopez point out that the “international human rights movement relies heavily on what are called “insider” tactics, or activities that demand some formal access to political institutions and that typically require more resources (e.g., skills, money) than do “outsider” tactics, such as public demonstrations and boycotts. This pattern is not terribly surprising, given that the human rights movement generally seeks to strengthen legal institutions for the increased protection of human rights.”⁵¹

Only a few historians have considered the impact of human rights activism on social movements. One example, recently forwarded by Nelson Lichtenstein, examined the effect of human rights activism on the labour movement in the United States. According to Lichtenstein, the rights revolution of the sixties had “a powerfully corrosive impact on the legitimacy and integrity of the union idea.”⁵² Unions were displaced by a state-run human rights apparatus, in the form of agencies such as the Occupational Safety and Health Commission, which encouraged workers to seek out individual, as opposed to collective, solutions. But occupational safety regulations are not self-enforcing and require the input of individual workers in order to deal with problems as they arise in the workplace; without unions to protect employees or to monitor the workplace, grievances often go unnoticed. In addition,

the new human rights apparatus promotes excessive dependence on professional and governmental expertise: “[R]egulation takes disputes out of the hands of those directly involved, furthers the influence of administrative professionals, sets up these experts as the target of everyone’s resentment, and ends by increasing litigiousness and undermining government legitimacy. Taken to its logical conclusion, rights consciousness absolves individuals of the consequences of their own grievances.”⁵³ Finally, rights discourse has “proven increasingly incapable of grappling with the structural crisis, both economic and social, that confronts American society. ...[A] rights-based approach to the democratization of the workplace fails to confront capital with demands that cannot be defined as a judicially protected mandate.”⁵⁴

Clearly, there is a strong basis for raising concerns about the implications of human rights activism. Human rights activism can propagate elitism (in that it discourages mass mobilization) and encourages individuals to work through state institutions to advance their interests. But recognizing the drawbacks of human rights activism does not vitiate its potential to promote progressive social change. Canadian historians such as James Walker have argued that the courts can, at times, be a forum for systemic social change through the construction of new cultural codes. Even a negative decision by a court is fruitful if the court becomes a forum for challenging, or at least questioning, common sense notions of, for instance, racial hierarchies or gender roles.

Many of those who have mounted sustained criticisms of human rights activism are not prepared to reject it outright. Minow, for instance, calls on the courts and other state bodies to try and see through the eyes of the disabled to avoid labels. She attempts to rescue rights from the very critique she has proffered. Rights rhetoric is useful because it has the potential to constrain those with power by those who do not, by exposing and challenging hierarchies of power. “Legal vocabulary, including that of rights, can be invested with meaning that challenges power and recover submerged or suppressed experiences. Once constructed and officially embraced, normative language can become loosened from its past uses and turned around to limit its authors, if only through their own shame or courageous self-restraint.”⁵⁵ Minow hopes to exploit the ambiguous nature of rights discourse to promote the interests of those *without* power by forcing those *with* power to acknowledge certain rights.

Miriam Smith also believes in the potential of rights discourse to empower oppressed minorities. People outside the hegemonic classes can politicize their grievances and gain recognition from mainstream members of society by making their demands in the language of rights. This has proven to be, according to Smith, an effective tool for mobilizing activists within the gay community.⁵⁶ Similarly, Lichtenstein, who fears the continued dominance of rights consciousness in its current form, acknowledges that “it’s a good thing that Burger King and so many other companies have put that [Equal Employment Opportunity Commission]

nondiscrimination declaration at the top of their employment applications. But collective action, institution building, and rights consciousness are not mutually exclusive, and we need to quickly redress the balance if the American system of work rights is not to devolve into an ineffective formalism.”⁵⁷ Lichtenstein raises a critical point: human rights activism has a vast potential for challenging inequality and exploitation, but should not be employed to the detriment of other, complementary, forms of collective action.

The optimism which often accompanies attacks on human rights activism is best exemplified by Teeple, whose scathing critique of human rights activism goes beyond most concerns articulated by other scholars. Although Teeple derides the work of Amnesty International and Human Rights Watch, he accepts that “if human rights organizations worked to advance human rights as social rights, instead of focusing almost exclusively on certain political and civil rights, they would as a matter of course raise questions about the intrinsic social and economic inequalities of the system, about how and why these inequalities can only continue to grow, and about the relation between liberal democracy and class property.”⁵⁸

As Teeple suggests, the primary obstacle to effective human rights activism may be the adoption of a minimalist approach to human rights. Stammers has advanced a similar position and calls for a more expansive conception of human rights to deal with economic inequalities: “A concept of human rights that requires economic actors to respect human rights would legitimize action against actors who

do not do so and create a general challenge to the legitimacy of the unconstrained exercise of economic power in the private realm.”⁵⁹ In other words, human rights defined as basic civil and political rights offer, at best, only formal equality and, at worst, the illusion of freedom and equality.⁶⁰

Social Movements and Social Movement Organizations

What is a social movement? The theoretical literature on social movements is, to say the least, vast. Classical social movement theories, most notably those by Max Weber, Karl Marx and Emile Durkheim, characterized social movements as collective behaviour emerging from a breakdown in society during periods of structural change (e.g., industrialization). Social movements were often seen as deviant behaviour or, to borrow from Durkheim, as expressions of *anomie*. More recently, scholars of social movements have premised their work on the recognition that social movements are normal (non-deviant) social behaviour. Social movements are a typical and healthy part of any society. There are several major schools of thought on the function and nature of social movements, but one theory in particular, Resource Mobilization Theory, provides a framework for the study of social movement *organizations*.⁶¹ A key subject in the sociological literature arising from the Resource Mobilization Theory school is the study of the formal organizations as “carriers of social movements.”⁶²

According to Mayer Zald and John D. McCarthy, two leaders in the field of Resource Mobilization Theory, a social movement is defined as “a set of opinions and beliefs in a population representing preferences for changing some elements of the social structure or reward distribution, or both, of a society. ... A *social movement organization* [SMO] is a complex, or formal, organization that identifies its goals with the preferences of a social movement ... and attempts to implement these goals.”⁶³

Instead of attributing the remarkable rise in social movement activity in the 1960s and 1970s to a confluence of specific issues (e.g., Vietnam war, civil rights, women’s liberation), Zald and McCarthy focus on structural changes during a particular historical period to explain social movement mobilization. American society, as well as Canadian society, was increasingly wealthy by the sixties and the middle class was expanding. As many social movement theorists have noted, affluence creates discretionary income which can be provided to social movement causes. Educational attainment and economic success also led larger numbers of people from the middle class to participate in voluntary associations and political activities. While the working class may have had as much leisure time as the middle class, the latter enjoyed greater discretionary income which allowed them to participate more in social movements (i.e., through dues instead of direct participation).⁶⁴ SMOs during this period could also access further resources through foundations and churches which, since the sixties, have provided more funding for

social movements than ever before. Government grants to SMOs increased in the sixties (this issue is discussed in chapter seven) and the bureaucratic requirement for consulting community groups provided opportunities for movement activity. Zald and McCarthy's study also highlights increasing activity in the private sector in support for social movements, from lawyers providing their services for free to corporations offering grants to SMOs.⁶⁵ Finally, new technologies allowed the media to have a disproportionate impact in the formation of SMOs and to encourage individuals to support social movements. Television brought riots in Alabama and police violence in Georgia to the homes of millions of Americans whose support for a movement no longer depended on personal experience and immediate situational context.⁶⁶ Thus, the expansion of social movement activity during this period was a result of structural changes which allowed SMOs to thrive.

Often referred to as the 'entrepreneurial model', Zald and McCarthy provide a framework for examining social movements as manifested in professional organizations. SMOs are composed of various classes of participants, from *adherents* who embrace the goals of the movement to *constituents* who also provide resources. Professional SMOs draw most of their resources from a membership base they have limited contact with and are composed of a professional staff whose central objective is to ensure the group's survival. Media campaigns, mass mailings and other activities allow groups to mobilize support and encourage adherents to become constituents. Activities such as these will inevitably lead to competition among

SMOs for a finite amount of resources. The lack of face to face interaction with adherents or constituents requires SMOs to place a priority on public education campaigns, or tools such as the media and mass mailings, to spread their message.⁶⁷

As the case studies will demonstrate, professionals (lawyers, doctors, social workers, journalists and professors) played a central role in leading the second generation of rights associations. One of the reasons for the preponderance of professionals in SMOs is the power of experts in contemporary debates on issues such as abortion or human rights. It is a feature of contemporary movements that they depend on expert opinion. Analysing the interplay of causes, costs, consequences, and options requires extensive knowledge of esoteric subjects, unavailable to even relatively well-educated laymen. In modern societies experts play a role in defining facts and issues for many movements, from tax redistribution to the impact of pornography on individual behaviour.”⁶⁸

SMOs have become the institutional forum for mobilizing resources, including labour or money, and expressing grievances arising from a social movement. An SMO is not, in itself, a movement, but an SMO and the movement’s grass roots adherents form an important dynamic. Jo Freeman explains the importance of studying SMOs to understand social movements:

A social movement has one or more core organizations in a penumbra of people who engage in spontaneous supportive behavior which the core organizations can often mobilize but less often control. When there is spontaneous behavior with only embryonic organization, there may be a premovement phenomena awaiting the right conditions to

become a movement, but there is no movement per se. ... An organization that can mobilize only its own members, and whose members mobilize only when urged to action by their organization, is lacking a key characteristic of movements. Regardless of whether structure or spontaneity comes first, or if they appear simultaneously, the important point is that both must exist.⁶⁹

Rights associations are presented in this work as social movement organizations which have emerged from the human rights movement (as discussed in chapters three and four). By the end of the 1970s, more than forty rights associations had been independently formed across the country. These groups, which no ties to other rights associations, were linked only by the ideas and beliefs born of the human rights movement.⁷⁰

SMOs, like traditional interest groups, generally pursue their interests against the state. There are some exceptions. As Zald and McCarthy note, SMOs “include in some degree radical and clandestine terrorist groups, retreatist sects that revalue the world, reform-oriented political action groups, and interest groups aimed at changing a law or policy to benefit its members.”⁷¹ Becki Ross has produced a detailed history of the Lesbian Organization of Toronto, an organization in the 1970s composed mainly of “small friendship circles of largely young, white, middle-class lesbian feminists [which] set out to create social and support-oriented settings wherein they could explore the precious opportunity to come out and invent themselves anew.”⁷² The purpose of LOOT was to provide lesbians with a visible presence in the community and challenge dominant heterosexual cultural mores. Nonetheless, with

the exception of rare organizations such as LOOT, most SMOs either directly or indirectly engage with the state.

To be sure, SMOs consider policy or legislative change a victory, but activism takes a myriad of forms and not all SMOs will use litigation or lobbying to achieve social change. SMOs employ a variety of strategies and tactics to get their message across to the public and, at times, promoting tolerance or understanding is more valuable than legislative success. Bill Ratner and William K. Carroll have compared three different SMOs in Vancouver to demonstrate how each of the three groups employed radically different tactics and strategies. End Legislated Poverty, an umbrella organization for anti-poverty groups, attempts to empower the poor and bring light to their plight through a variety of tactics including rallies, picketing, boycotts, letter-writing campaigns, leafleting, producing media (e.g., newsletters), street-theatre and social events. British Columbia's Coalition of People with Disabilities condemns the marginalization of disabled people and employs lobby group tactics to get its message across to the public and policy makers, including the development of position-papers and briefs. In an attempt to undermine the normative assumptions attached to disabled/abled, the disability group avoids affirming a distinctive disabled identity, which stands in marked contrast to the objectives of The Centre. The Centre is a service-oriented organization which provides a physical space for promoting gay/lesbian/bi/transsexual identity. Activists encourage activities which promote a common identity in order to empower sexual minorities and raise

their self-respect in a society where many face discrimination and marginalization. The types of services which are available at The Centre include peer counseling, a library, a speakers bureau, a legal clinic, youth and coming-out groups, and a state-funded health clinic offering human immunodeficiency virus and sexually transmitted diseases tests.⁷³

A key feature of social movement activism, encouraged and organized by SMOs, is direct action. Environmentalists, for instance, have spiked trees or chained themselves to trees to protest clear-cut logging and “create dramatic media footage that can be used to promote the values of the movement.” Instead of “conforming to the ideal type description of social movement political behaviour, many movements may follow a dual strategy of influencing the state and society. Environmental groups may lobby government while engaging in activities that are designed to influence public opinion and to change social attitudes.”⁷⁴

A critical aspect of social movement activity, therefore, is grass roots mobilization and a willingness to employ direct action in conjunction with traditional interest group tactics. SMOs, which are central to mobilizing the resources and adherents of a social movement, are an important part of this process. As Naomi Black has pointed out in her analysis of the Voice of Women in the 1960s and 1970s, SMOs employ a mix of strategies. Some of the Voice of Women’s tactics included anti-nuclear vigils, protest marches, international conferences, knitting clothes for children in North Vietnam and boycotting war toys. Several of these activities were

designed to promote a culture of pacifism or help victims of war, while others were directly oriented towards the state; at one point, the group sought to pressure the Canadian government to oppose nuclear testing by presenting officials with thousands of baby teeth to demonstrate the impact of the fallout from nuclear testing.⁷⁵ The success of the Voice of Women relied, not on its ability to develop a small core group of professional experts working the system, but a host of strategies of which a key factor was mobilizing and engaging with large numbers of people. Warren Magnusson has identified similar strategies with other social movement organizations; the Raging Grannies (peace activists), for instance, focused less on the state and more on promoting their political and cultural sensibilities to others.⁷⁶

Social movement organizations are thus not predisposed to working directly through political and legal institutions, even if their objective is legislative change.⁷⁷ In fact, several social movement scholars have questioned the inevitability of SMOs adopting conservative (e.g., litigation or lobbying) tactics. In their study of SMOs in the United States, Roberta Ash Garner and Mayer Zald have concluded that SMOs employ both radical and conservative tactics, and the direction taken by an individual SMO depends on internal and external developments. Similar conclusions have been reached by Stephen W. Beach, Joseph R. Gusfield and William A. Gamson to name a few.⁷⁸ In his study of tenants associations in New York, David P. Gillespie demonstrates how the decision to avoid using radical tactics (e.g., mass rent strikes) in favour of conservative tactics (e.g., litigation and bargaining with individual

landlords) was the result of a conscious decision by activists of the feasibility of radical tactics in a particular situation.⁷⁹

In the case of rights associations, there is no reason, by virtue of being an SMO, that they should automatically embrace conservative tactics and avoid grass roots mobilization. As noted in the introduction, the only criteria for an SMO to be identified as a 'rights association' is if it is a self-identified civil liberties or human rights association, is non-partisan, and is not linked to a specific constituency or another issue (e.g., environmental rights). However, as the case studies will demonstrate, rights associations have rarely embraced the dual strategies utilized by other SMOs during this period and have seldom employed mass mobilization tactics or direction action strategies. The reason for this strategy lies as much in the nature of their advocacy (human rights) as in their organizational form.

Organized Labour in the Age of Protest

A small, but important theme in this work is the relationship between organized labour and rights associations. Until the seventies, organized labour played a leading role in the human rights movement and in working alongside rights associations. One of the goals of this work is to help explain how and why labour's relationship with rights associations changed dramatically by the seventies.

Although there is a great deal of debate on the impact of 'fordism' or the 'post-war settlement,' most historians agree that, following World War Two,

organized labour entered into a consensus with capital and the state by shedding its transformative agenda in favour of stability and working through a state regulated system of grievance mediation. Under fordism, class conflict was restrained and working class organizations became large bureaucratic associations which discouraged militancy.⁸⁰ In other words, unions were more concerned with wages and job security than undermining capitalism.⁸¹

Fordism may have restrained working class radicalism, but it was also conducive to working class mobilization because it concentrated workers in mass industries and provided discretionary income that could be directed towards movement activities. By the seventies organized labour was increasingly institutionalized (i.e., less dependent on grass-roots mobilization) and, combined with the failure of socialist movements in Europe and disillusionment with marxism, many students of social movements no longer perceived the working class as the vanguard for social change.⁸² For many, labour was no longer able to adopt a broad based transformative agenda and “in its current bureaucratic guise, labour is no longer capable of mounting more than symbolic opposition to an agenda it no longer controls, and on behalf of social actors it cannot presume to speak for.”⁸³ Labour remains an essentially ‘old’ social movement replaced by the activism of postmaterialist groups advocating a gender, race, ethnic, peace, ecology and anti-nuclear agenda among others.⁸⁴ These ‘new’ social movements “embrace a politics of everyday life that prioritizes changes in lifestyle and values in the defence of civil

society.”⁸⁵ While some scholars have suggested that working class activism has become marginalized in light of these new social movements, others argue that labour can adapt by incorporating the needs of these postmaterialist groups to labour’s agenda. The degree to which organized labour has been able to act as an agent for social change beyond workplace-specific issues during and since the fordist era remains an important historical question.⁸⁶

In her study of SMOs representing racial minorities in Toronto, Daiva Stasiulis found that organized labour had no significant presence among social activists. In the case of West Indian associations, she noted the “virtual absence of contacts with trade unions or other working class organizations. Except for the emergent, locally-based anti-racist organizations in the working class neighbourhoods of Riverdale and Parkdale there has been few instances of cooperation between the black community and working class in pursuit of anti-racist goals.”⁸⁷ This trend is consistent with the experience of rights associations since the sixties. Although organized labour played a crucial role in the human rights movement after World War Two, particularly through its support for the Jewish Labour Committee (discussed in chapter three), it is clear that by the seventies organizations such as the Canadian Labour Congress deferred to rights associations in taking the lead on key human rights initiatives.

In many of the debates on human rights and new social movements, historians have made only a marginal contribution. At the same time, despite all the claims

about the potential radicalism of SMOs and the role of the state in human rights activism, surprisingly few people have conducted in-depth empirical studies on SMOs over an extended period. Many of the claims forwarded by Zald and McCarthy, for instance, are hypotheses based on limited data. A few scholars have attempted to fill this void, but Canadian historians have rarely exploited the available source material to enter these debates. Instead of judging SMOs on short term goals or individual campaigns, an historical study of multiple rights associations over a twenty year period can provide a far more detailed analysis of at least one manifestation of human rights activism in Canada. While this study does deal with some sociological questions, it remains primarily a work of history focused on a unique historical phenomena: the unprecedented proliferation of civil liberties and human rights associations in a period of heightened social movement activity.

Part II: Canada's Human Rights Movement

Chapter Three:

The First Generation of Rights Associations

Repression and Resistance: The First Civil Liberties Associations

Communists, political radicals and trade unions were the targets of the most extreme forms of government repression in twentieth century Canada. Stimulated in part by the Russian Revolution in 1917 and the subsequent geo-political developments, the spread of communism concerned Canadian political leaders and their fears had a trickle down effect. In 1933 Constable Joseph Zappa of the Montreal police force shot an unarmed Pole, Nick Zynchuck, in the back during an eviction proceeding in Montreal. When asked to account for his actions Zappa shrugged his shoulders and replied 'He's a Communist'.⁸⁸ The Canadian state was an active participant in the persecution of communism at home. Suspicion about the threat of communism "had always been characteristic of the Canadian governmental and administrative elites."⁸⁹ With its rejection of capitalism and private property, and dedication to the overthrow of the state, communism represented a fundamental challenge to the existing power structure. A tendency to link socialism and unionism resulted in the inclusion of organized labour in various regulations and pieces of legislation directed at repression of communism during the inter-war period. Much of the "violence directed at unions ... stemmed from a fear that every strike was in fact a miniature socialist revolution or an anarchist plot."⁹⁰

Section 97 of the criminal code was one of the earliest and most direct means employed by the federal government to suppress communism. It was added to the Criminal Code in the wake of the Winnipeg General Strike in 1919. The sheer size and range of the general strike had demonstrated the power and potential of organized labour and the Left in post-World War One (WWI) Canada. Essential services were stopped, newspapers closed down, police went on strike and a Central Strike Committee effectively took control of the city. Thirty-five thousand workers were on strike in Winnipeg alone, with thousands more in sympathy strikes across the nation. Section 97 was designed to forestall any similar action in the future by disposing of radical union leaders and foreign agitators. It was complemented by an amendment to the Immigration Act in the same year, which allowed officials to deport any alien or Canadian citizen not born in Canada for advocating the overthrow of the government by force.

The enabling legislation to amend the Criminal Code was rushed through Parliament between 25 June and 5 July 1919.⁹¹ Inspired by the American Espionage Act (no comparable English statutes existed), Section 97 created a penalty of up to twenty years in prison for being a member or officer of an unlawful association (defined as a group seeking governmental or economic change through force or violence), and it encompassed anyone wearing a badge or button indicating membership or paying dues to such a group.⁹² Individuals were presumed members if they attended meetings of an illegal organization, spoke publicly on its behalf, or

distributed its literature. The Royal Canadian Mounted Police (RCMP) was empowered to seize, without warrant, all property belonging or suspected of belonging to an illegal organization, and any owner of a hall who provided premises to such a group could be imprisoned for up to five years with a fine of up to \$5000. Frank Scott, writing in 1932, considered that the “permanent restriction on the right of association, freedom of discussion, printing and distribution of literature, and fear of severity of punishment, is unequaled in the history of Canada and probably any British country for centuries past.”⁹³

Section 97 of the criminal code was used throughout the 1920s and 1930s by the police to harass the Communist Party of Canada (CPC), break up meetings, disperse audiences, raid offices, confiscate literature and detain activists.⁹⁴ Three prosecutions were brought under Section 97, the most notable being the trial of eight leaders of the CPC in 1931. The party had gone public in 1924 but the federal government had chosen to wait seven years to enforce Section 97 against the leaders of the CPC.⁹⁵ At trial, they were found guilty and given five year sentences. On appeal, the Ontario Court of Appeal confirmed the lower court’s decision and found the provisions of Section 97 sufficiently broad to include the CPC as an unlawful association.⁹⁶

Another group targeted by the Toronto police was the Canadian Labour Defense League (CLDL). Founded in 1925 in Toronto, the CLDL was arguably the CPC’s most effective front organization. The central aim of the CLDL was the

protection of strikers from prosecution. By 1927 fifty-two groups were associated with the CLDL, with a combined membership exceeding 3000 people. The CLDL achieved prominence during the worst years of the depression by “promoting communist policies, agitating on behalf of the CPC and defending in courts over six thousand individuals who had ventured astray of the law because of their militant labour activities.”⁹⁷ It was also dedicated to removing Section 97 from the Criminal Code and the recent amendment to the Immigration Act.⁹⁸

The CLDL became moribund in the late 1930s and the federal government formally banned the organization in 1940 in the midst of attempts to revive the group during the war. Soon after the ban, A.E. Smith, founder and president of the CLDL, created the National Council for Democratic Rights in 1941 to lobby against the wartime ban on the CPC. Instead of defending the rights of all Canadians, however, the efforts of the CLDL and its successor were limited to “workers and those on the political left ... did not pretend to follow the dictum of making no distinctions about whose liberties [it] defended.”⁹⁹

There were two attempts in the 1930s to form a more inclusive rights association dedicated solely to the preservation of civil liberties irrespective of the individual’s background. The Canadian Civil Liberties Protective Association was an attempt by members of the League for Social Reconstruction, a think tank of leftist intellectuals with ties to the Co-Operative Commonwealth Federation (CCF), to form a group in the style of the American Civil Liberties Union in 1933. Frank Scott was

part of another initiative in 1934 with the creation of the Emergency Committee for the Protection of Civil Liberties, formed in response to a law in Quebec requiring individuals to receive permission to distribute circulars on city streets.¹⁰⁰ Neither group lasted for more than a few years.

The Padlock Act and Canadian Civil Liberties Union

Mackenzie King's decision to revoke Section 97 of the Criminal Code in 1936 following an election promise had a domino effect destined to have a deep impact in stimulating Canada's first generation of rights associations. Soon after the elimination of Section 97, the CPC began distributing leaflets in Quebec to the ire of the Premier and Attorney General, Maurice Duplessis. Deeply anti-communist, Duplessis quickly acted to fill the void created by the revocation of Section 97 by passing An Act to Protect the Province Against Communist Propaganda (a.k.a. Padlock Act) in 1937.¹⁰¹ This statute made it illegal to print or publish any newspaper, periodical, pamphlet, circular or document propagating communism or bolshevism and to house any organization propagating these views. The Attorney General was empowered, upon receiving satisfactory proof of these activities, to order the closing of the house where the activities were taking place for up to one year. Section fourteen of the legislation further allowed the Attorney General to confiscate and destroy any document banned under the Act.¹⁰² Since the Act did not define bolshevism or communism, leaving this up to the discretion of the Attorney General,

the Act was used against various left wing political dissidents including the CCF and trade unions.¹⁰³ Years later, during the proceedings of the 1950 Senate Special Committee on Human Rights and Fundamental Freedoms, members of the Jewish and Ukrainian communities would claim to have also fallen victim to the Padlock Act.¹⁰⁴

From the reaction to the Padlock Act we see the stirrings of Canada's first rights associations. The previously mentioned Emergency Committee for Civil Liberties in Montreal was replaced in 1937 with the Montreal branch of the Canadian Civil Liberties Union (CCLU). A collection of autonomous organizations across Canada, the CCLU soon had branches in Toronto and Ottawa, stimulated in large part in opposition to the Padlock Act. Additional groups were formed in Winnipeg and Ottawa in 1938-9. Unlike the CLDL, the CCLU was "a non-political organization, the object of which is to maintain throughout Canada the rights of free speech, free press, free assembly, and other liberties, and to take all such action as seems advisable in furtherance of their subject."¹⁰⁵ These branches of the CCLU represented the first attempts to construct rights associations characterised by Larry Hannant as focussed on "political rights considered universal within liberal democratic societies: freedom of speech, association, and worship, the right to a fair and impartial trial, and equality before the law, among others."¹⁰⁶ They were dedicated to the protection of rights irrespective of background or belief system and did not favour the CLDL's working class politics; the ideal was to incorporate people from varying ideological camps. Montreal's CCLU quickly garnered support from the Student Christian Movement,

Fellowship of Reconciliation, League for Social Reconstruction, CCF, Montreal Presbytery of the United Church and local trade unions in their call for disallowance of the Padlock Act.¹⁰⁷ Within a few years the Montreal branch had recruited 1000 members.¹⁰⁸

A concerted effort to convince the federal government to use its power of disallowance on the Padlock Act was initiated in Toronto in 1938 with a delegation to Ottawa of groups representing 100 000 Canadians. Their call was refused by the Minister of Justice, Ernest Lapointe, the cabinet's leading political figure from Quebec. Several attempts by the Montreal CCLU to challenge the legislation in court failed, and it was not until 1956 that a decision of the Supreme Court of Canada found the legislation *ultra vires* and rendered it inoperative.

World War II

With the onset of another world war in 1939 a new host of human rights issues came to the fore. According to historian Ramsay Cook, the Defence of Canada Regulations “represented the most serious restrictions upon the civil liberties of Canadians since Confederation.”¹⁰⁹ An entire apparatus designed to protect national security was expanding under the context of war time powers. “It was an atmosphere in which real debate about the fundamental issues at stake was widely seen as threatening the national consensus, and dissent from that consensus was often interpreted as disloyalty to the country. People who questioned the emergent

orthodoxy sometimes fell under police surveillance, lost their government jobs, were purged from their trade unions, or became subject to deportation proceedings.”¹¹⁰ In the rush to protect the nation from various threats identified by the popular media, RCMP and political leaders, minorities and controversial groups became easy targets.

The Liberal government of World War Two was far more repressive than the Conservative government had been in World War One. King and his cabinet were responsible for censoring 325 newspapers and periodicals in the first years of the war (compared to a total of 184 under Borden). Wartime propaganda was promoted through the National Film Board and the Wartime Information Board. More than thirty political, social, religious and ethnic organizations were banned and internment camps housed approximately 2 423 Canadians during the war.¹¹¹ Habeas corpus and many of the rights designed to protect citizens from arbitrary state action were suspended. One of the most notable legacies of the war was the forcible relocation of 22 000 men, women and children of Japanese descent from the Pacific coast to the interior. Under “wartime powers, these citizens were forcibly relocated to camps in the interior, had their property confiscated, and were seriously threatened with mass deportation to Japan (including Canadian-born among them) at war’s end. All of this was done without proof of a single case of espionage or sabotage by a Japanese Canadian.”¹¹²

Civil liberties groups generally avoided the internment issue and focussed their energies on the Defence of Canada Regulations. In Vancouver, a branch of the

CCLU devoted its efforts to defending a bookstore owner from prosecution for selling subversive material of a communistic nature.¹¹³ The Toronto CCLU, renamed the Civil Liberties Association of Toronto (CLAT) in 1940, organised a massive rally of 5000 people on 17 July 1942 with Arthur Roebuck, a Liberal senator, and Arthur Garfield Hays of the American Civil Liberties Union addressing the crowd. Among the central demands raised at the rally: lifting the ban on the CPC. A second rally, on 10 February 1943, called for the restoration of the Ukrainian Labour Farmer Temple Association, another victim of the DOCR orders.¹¹⁴ Wartime regulations had become a rallying point for individuals determined to ensure the protection of fundamental freedoms.

The War at Home: Civil Liberties and the Left

The CLAT's willingness to defend the rights of association for communists was tempered by its members unwillingness to work with communists in their own organization. B.K. Sandwell and the liberal moderates in the CLAT fought off an attempt by communists to take control of the group in 1942, leading to deep divisions within the organization.

Divisions within the Left were bitter, and the refusal of many social democrats to work with communists compounded the same refusal of prominent liberals like Sandwell to be seen cooperating with communists. Before and during the war, defending communists was a central theme in the activity of associations like the

CLDL/National Council for Democratic Rights or the Toronto group in opposition to Section 97, the Padlock Act and the ban in World War Two. But the defence of communists was not undertaken without some difficulties. Communists dominated the CCLUs in Montreal and Vancouver, and were active in the Toronto group.¹¹⁵ However, the Ottawa CCLU, formed with the support of David Lewis of the CCF, was disbanded in 1939 out of concern communists were gaining too much control of the organization. Winnipeg's CCLU barely lasted a year and the newly constituted Civil Liberties Association of Winnipeg in 1939 refused to allow communists to join. An attempt to form a national civil liberties association initiated by the Montreal CCLU in 1941 failed when other groups refused to work with known communists.¹¹⁶

Many of those loyal to the CCF considered "themselves as honest defenders of civil liberties who were generally appalled by the prosecution of the communists, [but they were] nevertheless deeply suspicious of all communist activity. ... Officially the founding fathers of the CCF decided to have nothing to do with the CPC or any of its front organizations such as the CLDL."¹¹⁷ The CPC's relationship with the labour movement altered radically in the 1930s and 1940s. In 1930 the CPC established the Workers Unity League as an umbrella organization for unions rivaling the more moderate Trades and Labour Council. Within five years the League was disbanded and communists were helping establish another rival to the Trades and Labour Council: the Congress of Industrial Organisations. In contrast to the Trades and Labour Council's trade-based unions, the Congress of Industrial Organisations

organized industrial unions. However, in 1940 the Congress of Industrial Organisations merged with the All-Canadian Congress of Labour to form the Canadian Congress of Labour with resolutions condemning fascism, nazism and communism. The Canadian Congress of Labour soon endorsed the CCF as the main political arm of labour. Meanwhile, the CPC had called for a united front with the CCF in the late 1930s, a move rejected by the CCF and followed by “intercine warfare inside the trade unions and the central labor bodies. It was the confrontation of two inflexible strategies, with the trade unions as the battleground.”¹¹⁸ The ideological divisions within organized labour and the political Left were to have a profound impact on these budding rights associations, preventing cooperation among the Left in the defence of individual rights.

‘A Farce of Citizenship’: Japanese Canadians and the Espionage Commission

Only three rights groups emerged from the war intact: the CLAT, Civil Liberties Association of Winnipeg (CLAW) and the Vancouver branch of the CCLU. Two incidents at the close of the war were to have a major impact on rights associations and lead to a peak of human rights activism in the late 1940s. The first was the scandal surrounding the deportation of Japanese Canadians. Asians had a long history of discrimination in British Columbia. All manner of policies from immigration restrictions, head taxes, restrictions on work and trade, to denial of the franchise were part of the oriental experience in British Columbia from the 1800s to

the Second World War. In a culmination of decades of discrimination, 22,000 Japanese were expelled from the west coast in 1942.¹¹⁹

To compound the frustrations felt by Japanese-Canadians during the war, on 15 December 1945 the cabinet passed orders-in-council PC7355, PC7356 and PC7357 to repatriate 10 347 Japanese Canadians back to Japan. Three quarters of them were Canadian citizens, half born in Canada. These orders were based on voluntary agreements by individuals, encouraged by the government, to repatriate in 1944; when the orders were finally passed in 1945, thousands applied for cancellation.

All three of the surviving civil liberties groups from the war, the CLAW, CLAT and Vancouver CCLU openly opposed the orders. Arthur Lower and members of the CLAW sent letters to Members of Parliament and a brief to the Prime Minister opposing the orders, while the Vancouver CCLU denounced the orders in 1946 after having failed to speak out against the expulsion in 1942.¹²⁰ The CLAT joined a coalition of groups formed in 1945 (Cooperative Committee for Japanese Canadians) opposed to the deportation orders which brought together groups of Japanese, unions, women and social gospel advocates. They brought a case all the way to the Judicial Committee of the Privy Council in London in a failed attempt to have the orders ruled illegal.¹²¹ Individuals noted for speaking out against state abuse of rights also raised objections. In a letter sent to fifty-five newspapers on 4 January 1946 (published in eleven papers), Frank Scott vigorously condemned the deportation of Canadian

citizens on no basis except their racial origins. The orders made “a farce of citizenship. We are all immigrants in Canada, except the Indians and Eskimos, and no citizens’s right can be greater than that of the least protected group. Every Canadian is attacked in his fundamental civil liberties by this policy. To find it sponsored by a government bearing the name Liberal and not objected to by a vigorous public protest, warns us how far our standards have sunk during these past years.”¹²²

If the deportations raised the ire of civil libertarians across the country, the espionage commission of 1946 facilitated the mobilization of rights associations in a way no other issue had done before. Igor Gouzenko’s defection on 5 September 1945 has been referred to by many authors as the instigating event of the Cold War. Hiding classified documents under his coat as he exited the embassy, Gouzenko provided the federal government with evidence of a Russian spy ring operating in Canada. After weeks of interrogating Gouzenko and maintaining complete secrecy about the defection, the cabinet passed a top secret order-in-council (PC6444) empowering the Minister of Justice under the War Measures Act to investigate Gouzenko’s allegations.¹²³ Unbeknownst to Canadians, the government had just suspended several of their basic rights two months after the end of hostilities in August 1945. PC6444 allowed the Minister of Justice to suspend habeas corpus by detaining suspects indefinitely without access to lawyers or family.¹²⁴

The defection became public on 4 February 1946 when a popular American talk show host, Drew Pearson, claimed to have evidence of a Russian defector in Canada. Realizing there was little he could do to keep the defection hidden, King gathered his cabinet together the next day to pass order-in-council PC411 creating a Royal Commission to investigate Gouzenko's claims. Ten days later, following on the heels of thirteen raids by RCMP officers against suspected spies early in the morning (including one raid on the wrong person's apartment), King announced to the world that his government was investigating allegations of espionage.¹²⁵ The decision to use a Royal Commission was a conscious attempt to avoid the pitfalls of procedural protections in the judicial system. In a top-secret memo to the Prime Minister on 5 December 1945, E.K. Williams, president of the Canadian Bar Association, warned that "criminal proceedings at this stage are not advisable. No prosecution with the evidence now available could succeed."¹²⁶ A strict police investigation followed by a trial would likely fail to convict most of the suspects. Williams favoured a Royal Commission as "it need not be bound by the ordinary rules of evidence if it considers it desirable to disregard them. It need not permit counsel to appear for those to be interrogated by or before it."¹²⁷

The proceedings of the 1946 espionage commission rank with the 1970 arrests during the FLQ crisis as the most extensive abuse of individual rights in Canadian history in peacetime. When the federal government passed an order in council in 1945 under the War Measures Act to aid the investigation of a royal commission, an

investigation which continued long after the war had ended, the government effectively suspended the fundamental rights (such as habeas corpus) of every Canadian. The individuals who were arrested were held incommunicado in the Rockcliffe Barracks in Ottawa, without access to lawyers or family, some for up to five weeks. Each was placed in a cell under suicide watch, with an RCMP guard in the cell at all times. The cell was small, 9' by 8', with a window opening three feet wide and a 100 watt lightbulb shining twenty-four hours a day. They were interrogated several times in secret by RCMP officers and encouraged by their cell-mates to cooperate with the commissioners, two Supreme Court of Canada justices, Robert Taschereau and Roy Lindsay Kellock. When they were finally brought before the commission where the proceedings were held *in camera* and with a stenographer present, suspects were questioned about their political beliefs, links to communist reading groups, feelings about the USSR, and their recent activities. Suspects were threatened with contempt of court and six months in jail if they did not testify before the commission. Some were repeatedly interrogated after refusing to speak without access to a lawyer, a right reserved to the commissioners under the Public Inquiries Act.¹²⁸ After a failed hunger strike, one of the detainees, David Shugar, wrote a letter to Minister of Justice Louis St. Laurent on 9 March 1946, claiming that “if I am to judge by the treatment accorded to me yesterday afternoon before your Royal Commission, I can only come to the conclusion that, as a Canadian citizen, I have been completely stripped of all my rights before the law.”¹²⁹

If the government had limited itself to a secret inquiry, the backlash would have been much less severe. The decision to prosecute the suspects using the commission's transcripts represented for many an attempt by the state to circumvent the judicial system. By refusing access to lawyers, the suspects (none of whom were themselves lawyers) did not think to request the protection of the Canada Evidence Act.¹³⁰ Under this legislation, witnesses may ask judges to provide them with immunity from self-incrimination before they testify (the clause is designed to ensure the veracity of witness testimony). Taschereau and Kellock refused to inform witnesses of the Act and its protections, thus opening the door for future prosecutions against the suspected spies.¹³¹

Defending 'Spies' and 'Commies': Rights Associations Take Action

Civil libertarians reacted strongly to the dangerous precedent set by the espionage commission. Three new groups emerged in 1946. With the demise of the communist-led Montreal CCLU during the war, an opening existed for the rise of the Montreal Civil Liberties Association (MCLA).¹³² This new body was composed primarily of social democrats, including Frank Scott, who were opposed to the deportations and PC6444. An attempt to form a cooperative organization among the Left was initiated in Ottawa with the birth of the Ottawa Civil Liberties Association (OCLA). Harry Southam, editor of the *Ottawa Citizen*, was the OCLA's honorary president, and the founding meeting was attended by such luminaries as Arthur

Roebuck, John Diefenbaker, M. J. Coldwell and Cairine Wilson. According to Ross Lambertson, the OCLA was “one of the last attempts to create a civil liberties organization which spanned the increasing ideological gulf between the far left and those further to the right.”¹³³

A third association was spawned in Toronto, but this one represented an extreme expression of the divisions within the Left. The Emergency Committee for Civil Rights (ECCR) was led by a splinter group of communists frustrated at the dominance of liberals like Sandwell in the CLAT.¹³⁴ The creation of the ECCR did not forstall total cooperation between rival groups. An exploratory conference to discuss current issues from the Padlock Act to federal censorship regulations took place in Toronto on 28 November 1946 with the Montreal, Ottawa and Toronto groups.¹³⁵ A civil liberties rally was later held in Toronto with the support of both groups with Senator Roebuck and Leslie Roberts of the MCLA in attendance.¹³⁶ These instances appear to have been uncommon examples of cooperation between communists and social democrats/liberals in rights associations. In 1946, a second attempt (following the Montreal CCLU’s efforts in 1941) in Ottawa to form a national civil liberties association failed and has been characterized by Frank Clarke as a “rancourous affair.”¹³⁷ C.S. Jackson of the ECCR called for a broad based organization to include organized labour while J.P. Erichsen-Brown of the OCLA rejected the idea of a communist being a legitimate civil libertarian. The conference broke down and no consensus was reached.

Both the Vancouver CCLU and the MCLA were relatively silent in 1946 regarding the espionage commission, with the latter limiting itself to an advertisement in the *Montreal Star* condemning PC6444 but not the commission. Scott and other social democrats' dislike of communists and worries of being seen defending accused communist spies likely dampened their enthusiasm. The CLAT refused to join the debate, believing it "would not serve the interests of our Association to hold any sort of public meeting or demonstration until more facts are known and the trials in the courts are over."¹³⁸ This did not stop the president of the CLAT (Sandwell) from vigorously denouncing the commission in *Saturday Night*, which he edited.¹³⁹

The OCLA and the ECCR, and to a lesser degree the CLAW, entered the fray with a passion. They sent letters to politicians, published advertisements in newspapers, produced reports through detailed research, and distributed literature. Advertisements financed by the ECCR appeared in the *Toronto Daily Star*, one of the country's largest newspapers, on 15 June and 29 June 1946. Motions passed by the Ottawa and Winnipeg groups denounced the use of war time powers in peacetime and the circumvention of the judicial process, and were forwarded to the Minister of Justice. They also hoped to convince the Minister to stop distributing the report because it contained accusations of guilt against individuals already acquitted in court.¹⁴⁰ As Sandwell attacked the commission in *Saturday Night*, Arthur Lower of the CLAW expressed similar concerns in the pages of the *Winnipeg Free Press*. Several groups also had their correspondence read before Parliament where the CCF

and Conservative Party were hammering the Liberals over the commission.¹⁴¹ Within a few weeks the ECCR had accumulated \$9000 and had an office with a paid secretary from which it mailed 15 000 pieces of literature including a regular Bulletin.¹⁴²

Thanks to the efforts of the OCLA and the ECCR, extensive research was conducted on the conditions in Rockliffe Barracks and the treatment of individuals by the commission, as well as the implications for each person of being accused of being a communist spy. Both groups produced detailed reports on the espionage commission and the spy trials soon after the submission of the commission's final report.¹⁴³ Their work was based on dozens of interviews with lawyers, the accused and their spouses, politicians and journalists. Accounts of RCMP officers tearing up letters from family members and suggestions of psychological abuse were recounted in the reports. Implications for the upcoming trials were also noted by describing public perceptions of the 'spies' and 'commies' as if suspects had already been found guilty, when in fact many were later acquitted. For some, the experience resulted in prison terms while others found their reputations tarnished or lost employment. Israel Halperin, a math professor at Queen's University, would have been dismissed had it not been for the intervention of Chancellor Charles Dunning before the Board of Trustees who feared embarrassment to the university should Halperin be dismissed despite being acquitted in court.¹⁴⁴ Another acquitted suspect, David Shugar, lost his position with the Department of National Health and Welfare.

Two central themes emerge from the events of 1945-6. First, the debates in Parliament, the media, the Canadian Bar Association (which debated the issue extensively in its 1946 annual meeting) and the creation of three new rights associations represented a high point in activism by rights associations. Issues of individual rights and the role of the state in protecting them became a significant question of public debate, stimulated in large part by the espionage commission, arguably more so than any single event during the war. However, it was at this stage that social democrats and liberals increasingly came to dominate rights associations and communists were marginalised. The Vancouver CCLU, MCLA, CLAW, and CLAT were all led and dominated by social democrats or liberals, and the ECCR (renamed the Civil Rights Union in 1947) was the only communist-inspired association. Attempts to bridge these ideological gaps in the OCLA failed, and its president's refusal to work with communists at the 1946 meeting in Ottawa represented the domination of non-communists in the OCLA. The refusal of leaders in the OCLA, CLAW and MCLA to work with communists, the ascendancy of Garnett Sedgewick and social democrats to the leadership of the Vancouver CCLU and the split in the CLAT had effectively sidelined communists within rights associations. Politically, communists were reeling from the ban on the CPC during the war, and the creation of the Labour Progressive Party to replace the CPC had little success. Most labour votes went to the CCF in the 1945 election, with the Labour Progressive Party attracting fewer than 110 000 votes. The latter was further

tarnished by the espionage commission and the conviction of the party's only elected MP (Fred Rose). Rights associations of the immediate post-war period had undergone a significant ideological shift from the days of the CLDL and CCLU.

Secondly, the philosophy of Parliamentary supremacy was the central obstacle facing rights associations during this period. Louis St. Laurent and J.L. Ilsley (who replaced St. Laurent as Minister of Justice in late 1946) used the language of Parliamentary supremacy to justify the government's actions in the wake of Gouzenko's defection.¹⁴⁵ A crisis justified the use of extreme measures and, in the tradition of Diceyan law, Parliament should not be bound by any rules other than those in the constitution or Parliamentary procedure. In court, judges refused to accept defence counsel objections to the use of the commission's transcripts. One of the earliest rulings, set by James McRuer of the Ontario High Court, concluded that it was not "at all clear that this court has, in these proceedings, any jurisdiction to review the conduct of the commission or to decide that a commission acting with apparent lawful jurisdiction has at any time by its conduct deprived itself of jurisdiction."¹⁴⁶ Judicial decisions in the spy trials reflected a clear deference to Parliament and the inability of the courts to act as a forum for the defence of individual rights when facing the will of the state.¹⁴⁷

Public opinion also seemed to reflect a deference to legislative authority when the question of preserving individual rights was raised. A poll by the *Toronto Star* following the espionage commission determined that 93 percent of respondents had

heard about the Gouzenko Affair and 61 percent approved of the government's tactics.¹⁴⁸ Another Gallup poll taken in 1949 asked respondents if they believed in complete freedom of speech allowing people to say anything at any time about government and the country. Of the 2019 respondents, 36.2 percent said no and another 15 percent had no opinion or had a qualified answer.¹⁴⁹ Four years later, public opinion continued to favour limits on free speech, in this case for communists, where 62 percent of respondents favoured limiting the speech of communists and only 26 percent considered it a fundamental democratic right.¹⁵⁰

Forever Divided: The Association for Civil Liberties and the League for Democratic Rights

By the 1950s most of the rights associations that had emerged in the 1930s and 1940s were largely inactive or defunct. The Vancouver CCLU, CLAW, OCLA and MCLA had quickly dissolved. The Association for Civil Liberties had been formed out of members from the CLAT eager to create a national civil liberties association headquartered in Toronto. Among the leadership were Toronto lawyers Irving Himel and Andrew Brewin (future New Democratic Party MP), as well as Sandwell and Charles Millard of the United Steelworkers of America. They expended most of their energies combating restrictive covenants, censorship and police powers while agitating for provincial Fair Employment Practices legislation and a bill of rights.¹⁵¹ Sandwell, Himel and Brewin were also responsible for creating

the Committee for a Bill of Rights in 1946 as an adjunct to the CLAT. Their committee presented the Minister of Justice with a petition of 200 'respectable' members of the community from across the country calling for a bill of rights in 1946, and in 1951 organized a delegation to Prime Minister St. Laurent representing 200 people and 50 organizations.¹⁵²

One of the requirements for membership in the Association for Civil Liberties was not having membership in any other civil liberties association, a measure designed to exclude communists. The League for Democratic Rights was formed in 1950 out of a union of the Civil Rights Union of Toronto (formerly ECCR), the newly-formed Montreal Civil Liberties Union and a group in Timmins. As was the case with the Association for Civil Liberties, the League for Democratic Rights was an attempt to form a national rights association, but one inclusive of communists. The League for Democratic Rights claimed twenty-four affiliates across the country and received funds from each affiliate and various unions. It was concerned with defeating the Padlock Act and pressuring the federal government to enact a bill of rights.¹⁵³

Divisions among civil liberties associations were a reflection of the impact of the Cold War in the 1950s. According to Bryan Palmer, the "Communist and social democratic rivalries of the 1940s exhibited a vehemence seldom witnessed in Canadian labour," and labour "entered the 1950s largely purged of Communist influence."¹⁵⁴ In-fighting with communists had reached a fevered pitch by the 1950s

within the ranks of organized labour. Caught up in the fervour of the Cold War, the Canadian Congress of Labour effectively vetted its communist-led unions and established clear directives against allowing communists to lead unions or the [Canadian Congress of Labour].”¹⁵⁵ In the Trades and Labour Council, the purging of communists was manifest in the expulsion and undermining of the Canadian Seaman’s Union in 1949 and the development of a system of block voting allowing control of the organization to shift to a small group of anti-communist leaders.

Anti-Discrimination Legislation: Introducing the Jewish Labour Committee

Neither the Association for Civil Liberties nor the League for Democratic Rights were highly effective on their own in accomplishing their goals in the 1950s. Whether a symptom of Cold War politics or their choice of issues, it was the Association for Civil Liberties and its ability to ally with other organizations which was the more effective of the two groups. A key issue for the Association for Civil Liberties during this period was anti-discrimination legislation, most notably Fair Employment and Fair Accommodations Practices Acts. A minority Conservative government in Ontario had passed legislation in 1944 prohibiting discrimination in signs or publications.¹⁵⁶ With no enforcement mechanism and given the limited scope of the law, it achieved little in undermining discrimination.

A movement, in which Jews played a central role, emerged in the 1950s to lobby the Ontario government to pass anti-discrimination legislation. As Carmela

Patrias and Ruth A. Frager have demonstrated, many Jews were particularly well placed to combat discrimination. Jewish lawyers and academics conducted human rights research and acted as spokespersons for various campaigns, while Jewish workers within the labour movement and the political Left represented a large and outspoken ethnic minority in organizations such as the CCF. Jews were able to draw upon an extensive network of Jewish organizations, from community groups to unions, which formed a “province-wide communication network unparalleled by any other minority group.”¹⁵⁷ Possibly the most important organization in this network was the Jewish Labour Committee (JLC).

Few other organizations in Canadian history can claim to have had such a critical impact in battling discrimination across the country. The network of human rights committees established by the JLC were extremely active locally in using the press and various pressure tactics to discourage acts of discrimination. The history of the JLC also offers a useful introduction to the important role played by organized labour in the human rights movement.

Formed in 1936, the JLC and the Joint Public Relations Committee (formed in 1938) of the Canadian Jewish Congress were front runners in the push for anti-discrimination legislation in Ontario. Kalmen Kaplansky, a polish-born Jew who was a member of the International Typographical Workers’ Union, was the JLC’s executive director for combating racial discrimination in the labour movement and was instrumental in the formation of the Joint Labour Committees to Combat Racial

Discrimination in Toronto, Windsor, Montreal, Vancouver and Winnipeg. The Joint Public Relations Committee and the JLC, initially competitors, joined forces in 1947 under the Joint Advisory Committee on Labour Relations with equal funding and executive members from the Joint Public Relations Committee and the JLC, and with Kaplansky as its leader. Each of the labour committees held an annual Race Institute conference, a conference promoting tolerance among workers in unions, and distributed pamphlets and networked with various other bodies like the Canadian Association for Adult Education.¹⁵⁸

Both the Trades and Labour Council and the Canadian Congress of Labour provided funding and support to Kaplansky's network. Labour's participation in the Joint Advisory Committee on Labour Relations represented a significant shift in its attitudes towards racial minorities. For most of the first half of the twentieth century, labour was a strong proponent of closed borders, and considered immigrants and racial/ethnic minorities, most notably the Chinese in British Columbia, who earned significantly lower wages than caucasians, as potential strikebreakers and a threat to the power of organized labour.¹⁵⁹ Changes within the labour force and the realization that racism was a significant obstacle to working class unity had a profound impact on the labour movement. Well over 2 million immigrants entered the country between 1946 and 1961 and a significant percentage of the growing labour force was new Canadians. Post-war prosperity also led to higher wage levels among immigrants who began to swell the ranks of organized labour.¹⁶⁰ Through its support for the JLC,

labour had come full circle and was now one of the most vocal advocates for tolerance and fair practices in the country.

As early as 1946, the Canadian Jewish Congress (CJC) had committed itself to pursuing the creation of Fair Employment Practices legislation in Ontario and the Joint Public Relations Committee had played a role in the passing of the Racial Discrimination Act of 1944. Cooperation between the Association for Civil Liberties and the labour committees in Toronto was essential to the anti-discrimination legislation campaign. Combined, the civil liberties group was the lead organization with prominent members like Sandwell, Brewin, Charles Millard and Rabbi Abraham Feinberg who had access to members in government, while the Kaplansky network provided the funds and resources for public opinion polls, research, publications and sending delegations to Toronto. As a purely voluntary organization consisting of a small number of elite members, the association lacked the resources of organized labour. The Association for Civil Liberties could provide the Kaplansky network with a group of middle class, non-communist advocates of racial equality with access to Canada's political elite. In early 1949, the Association for Civil Liberties and Toronto labour committee formed a Committee on Group Relations to lobby government for a Fair Employment Practices Act, as well as a ban on restrictive covenants and the removal of licences from those who refused services to minorities.¹⁶¹

A large delegation with support from the CJC and consisting of associations representing various minorities, churches, youth groups and labour groups formed a delegation to Ontario Premier Leslie Frost on 7 July 1949, with Irving Himel presenting the brief. Another visit to Queen's Park in January 1950, this time consisting of several hundred people and 105 organizations, called upon the government to pass anti-discrimination legislation. Frost acquiesced, and in 1950 amended the Labour Relations Act to withhold legal protections from collective agreements discriminating on the basis of race or creed, and soon after introduced a bill which prohibited the enforcement of restrictive covenants. Within a year, Frost had also introduced and passed the country's first Fair Employment Practices legislation and another piece of legislation dealing with equal pay for women, the Female Employees Fair Remuneration Act.¹⁶² A Fair Accommodation Practices Act was later introduced in 1954.¹⁶³ These were significant milestones in the history of the human rights movement in Canada and Ontario's initial steps into the field of human rights legislation had a snowball effect. Within five years of Ontario's ground-breaking Fair Employment Practices legislation, similar laws were enacted in five other provinces and several provinces also followed Ontario's lead in passing legislation to ban discrimination in accommodations.¹⁶⁴

In 1960, rights activists achieved a partial victory with the passing of a federal Bill of Rights. An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms was introduced in Parliament by John Diefenbaker, Prime

Minister and leader of the Conservative Party, and became law on 10 August 1960. For Frank Scott and members of the human rights community, the bill was a disappointment. During the proceedings of the Special Committee of the House of Commons on Human Rights and Fundamental Freedoms, Frank Scott, Irving Himel and other advocacy groups from the Canadian Jewish Congress to the Canadian Labour Congress all favoured a constitutional amendment.¹⁶⁵ As a federal statute, the Bill of Rights could be overridden by any future Parliament and was not binding on the provinces. Nonetheless, although it was eventually passed as a simple statute, it had the potential to act as an educative tool to emphasize the importance of tolerance and equal rights. Section two of the legislation further purported to ensure that “every law of Canada shall ... be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of any of the rights of freedoms herein recognized and declared.”¹⁶⁶ The initiative now shifted to the courts and whether they would enforce laws in conflict with the new Canadian Bill of Rights.

Chapter Four:

The Rights Revolution

In the 1950s the small town of Dresden, Ontario was one of the “most racially segregated communities in Canada.”¹⁶⁷ Blacks, who constituted about twenty percent of the population in Dresden, were banned from most white churches and refused service by white merchants. For several years Dresden was the focal point for human rights activists who sought tangible evidence of the need for effective anti-discrimination legislation. One of the more notorious violators of Ontario’s weak anti-discrimination legislation in the 1950s was Morley McKay, a restaurant owner who refused to serve blacks. When the Jewish Labour Committee sent black volunteers to test the law, McKay would either openly refuse them service or quickly close the restaurant when they approached from down the street. At one point, one of the volunteers was “seriously concerned that he might be attacked by the restaurant owner, who was wielding a large meat cleaver and appeared to be having trouble controlling his notorious temper.”¹⁶⁸

Dresden was symbolic of a broader phenomena at this time. As noted in the previous chapter, the state did not hesitate to circumvent individual rights when it was deemed necessary, whether it was the need to prosecute a war or suppress communism. It was also clear that communists or religious minorities were not the only ones who did not enjoy the same rights as everyone else. The deportation of Japanese-Canadians in 1946 was the ultimate symbolic example of the limits of

Canada's rights culture. Immigration policies were explicitly racist until 1962 and restrictive covenants (restrictions on the ethnic, racial or religious mix in a neighbourhood) were common in the first half of the twentieth century. During World War Two, Canada was among the world's least hospitable destinations for Jewish refugees, allowing barely 5000 to enter during the course of the war. Blacks and other many other minorities who sought to enlist were rejected by recruiting centres. Women did not get the vote in Quebec until 1940, and several minority groups, including aboriginals, were denied the provincial and federal franchise until well after the war. Without the franchise, individuals could not hold public office or serve on a jury. Minorities were regularly denied licenses to operate a business. Unions fought for the basic right to be recognized as the bargaining agent for their members. Anti-semitism, segregation amongst blacks and whites in Nova Scotia and Southern Ontario schools, limited economic opportunities for women, and widespread discrimination amongst native peoples was a basic reality of life in Canada. By the 1940s it "was clear that Canadian courts regarded racial discrimination as neither immoral nor illegal, and apart from a tenuous claim to breach of contract in special circumstances, the victim of discrimination could obtain no redress, no matter how flagrant the discriminatory act."¹⁶⁹

Many historians have identified a 'paradigm shift' which occurred around the Second World War. Horrified by the implications of the Holocaust and the abuses committed by a state on its own citizens, it became increasingly difficult to claim that

discrimination was simply a manifestation of aberrant individual behaviour. People began to seek broader solutions. By the 1980s the relationship between individuals and the state had fundamentally altered, and the role of the state in regards to private relationships within civil society had also evolved. Canadians, irrespective of their ideas or physical characteristics, became increasingly assertive rights-bearing citizens. In 1947 Parliament repealed the Chinese Immigration Act, which had virtually banned Chinese immigration, and enfranchised East Indians and Chinese. By 1949 all legal restrictions on Japanese Canadians had been removed. And this was just the beginning. The post-war welfare state established certain basic social rights for all Canadians, from free health care to accessible education. Privacy Acts were passed in most jurisdictions by the 1980s; they protected individuals from such actions as unnecessary police wiretaps or insurance companies disclosing information on their clients. Linguistic rights were given added protection with the passage of the Official Languages Act in 1969. Children were recognized as having their own rights as well. Quebec's Youth Protection Act of 1977 guaranteed youths the right to be consulted when changing foster care and to consult a lawyer before judicial proceedings, while the Ontario Child Welfare Act of 1978 protected the privacy of adopted children. Restrictions on women serving on juries were removed by the 1980s as were requirements for women to leave the civil service after they were married (this requirement remained on the statute books in Newfoundland until the 1980s). Mental patients also became rights-bearing citizens; in some jurisdictions, they were included

in minimum wage laws and greater restrictions were placed on forcible confinement. The first major land-claims treaty was signed in 1975 between the Quebec government and the James Bay Cree to develop hydro-power, and several revisions to the Indian Act placed First Nations on more equal footing with other Canadians, including allowing female aboriginals to retain their native status after marrying a male who was not aboriginal. Prisoners were granted the vote in Quebec in 1979.

Changing attitudes, the expanding role of the state, new laws, activists employing rights discourse: all of these developments were part of a *human rights movement* which swept across the country. This ‘rights revolution’ not only represented an important shift in the relationship between citizens and the state, but within civil society as well.

Developments in Canada reflected similar international phenomena. By the late 1940s there “was a new concept dawning in international thought, of ‘human rights’ as a distinct entity with universal applicability. Canadian policy had not recognized this concept early in the War, but through its participation in United Nations (UN) declarations Canada was accepting the international intention to promote fundamental rights.”¹⁷⁰ The Charter of the United Nations, for instance, stated the organization’s intention “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”¹⁷¹ The UDHR, ICCPR and ICESCR went much further than the Charter.¹⁷² The first two documents not only asserted basic civil and political

rights, but the UDHR and the ICESCR characterized leisure time, education, fair wages and working hours as basic rights. Individuals, and not just states, were now the subject of international law. As Marc Bossuyt notes, it is “fair to state that nothing came even close to an international system of protection of human rights before the founding of the United Nations.”¹⁷³

Although Canadian activists and policy makers drew upon the international discourse of human rights, the human rights movement pre-dated international developments.¹⁷⁴ Organizations dedicated solely to the defence of civil liberties appeared as early as the 1930s. Anti-discrimination legislation appeared in Canada long before the international community enforced similar rights; the two covenants did not come into force until the 1970s and many countries were slow to ratify various human rights treaties, most notably the United States, which did not ratify the covenant on civil and political rights until 1994. Covenants on the rights of women (1979) and children (1989) were slow to emerge from the United Nations, and Canadians had already recognized these rights in legislation. Nonetheless, although the Canadian government voted in favour of the UDHR in 1948, few of the Declaration’s principles could be found in Canadian law in the 1940s. It would take another generation, and intensive efforts by human rights activists, before these principles were reflected in the social and legal order.

The rights revolution in Canada has had profound political, legal, social and cultural ramifications. It would be impossible to delineate every manifestation of the

human rights movement in Canada. Instead, the following chapter builds upon the discussion in chapter three by highlighting key developments within the human rights movement since the sixties. The issues identified below, notably the role of the state, the legal order, rights activism and new cultural codes, are designed to provide the necessary historical context for understanding the emergence of rights associations in the sixties. These developments helped to constitute the human rights movement of which rights associations were an integral part.

The Politics of Rights: Parliamentary Supremacy and the Bill of Rights Movement

As with any revolution, the rights revolution deeply affected political discourse in Canada. In 1922 Prime Minister Mackenzie King expressed concern with Anglo-Saxons becoming ‘debased’ if lower races were allowed to mingle freely in Canada; twenty-five years later King suggested that “the people of Canada do not wish, as a result of mass immigration, to make a fundamental alteration in the character of our population.”¹⁷⁵ Within a couple of generations after the war, however, such views were virtually eliminated from political debate.

The rights revolution entailed an important change in the role of the state in Canada; governments became central to the protection and enforcement of the new rights regime. In 1867, however, the founding fathers had rejected a bill of rights and the only real limits on governments were their jurisdiction of powers as defined by the

constitution.¹⁷⁶ Of all the manifestations of the rights revolution in Canada's political culture, no issue more clearly demonstrates the transformative power of rights discourse than the bill of rights movement and its impact on Parliamentary supremacy as a core principle of Canadian political culture.

At the close of the war in 1945, Alistair Stewart, recently elected member of the Cooperative Commonwealth Federation (CCF), presented before Parliament the first resolution to create a Canadian Bill of Rights. His resolution called for a "bill of rights protecting minority rights, civil and religious liberties, freedom of speech and freedom of assembly; establishing equal treatment before the law of all citizens, irrespective of race, nationality or religious or political beliefs; and providing the necessary democratic powers to eliminate racial discrimination in all its forms."¹⁷⁷ Since its foundation in 1933 with the Regina Manifesto, the CCF had called for amendments to the constitution to protect racial and religious minorities, and to offer greater protection for freedom of speech and of association. Only a year before Stewart introduced his motion, the civil liberties sub committee of the Canadian Bar Association had recommended entrenching certain rights in the constitution.¹⁷⁸

Stewart's motion, with no support from the ruling Liberals, was more symbolic than realistic, as was a similar attempt by John Diefenbaker to introduce a bill of rights into the proposed Citizenship Act in 1946. Diefenbaker, a leading figure within the Conservative Party, talked about the possibility of a Bill of Rights during the debates surrounding the espionage commission, and would continue to support

legislation for protecting individual rights until he led the passage of the Bill of Rights in 1960. His proposed 'Bill of Rights' in 1946 incorporated freedoms of religion, speech and assembly, limited the suspension of habeas corpus to Parliament (as opposed to a cabinet order-in-council), and prohibited government tribunals from circumventing due process.¹⁷⁹

Opponents of a bill of rights appealed to notions of Parliamentary supremacy. Parliament was held to be the defender of personal freedoms, as enshrined in the 1689 Bill of Rights. As defined by A.V. Dicey, the "principle of Parliamentary sovereignty means neither more nor less than this, namely, that Parliament thus defined has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament."¹⁸⁰

Appeals to parliamentary supremacy were often invoked by power-holders concerned with any proposed limits on their ability to legislate. The Liberals had ruled almost continually since 1921, with brief interludes of Conservative rule under Arthur Meighen (1926) and R.B. Bennett (1930-5). During World War Two the executive governed by order-in-council and the ruling party became increasingly comfortable with exercising power. For the CCF and Conservatives like Diefenbaker, a bill of rights was an attractive solution to the potential abuses arising from the exercise of executive power. During the debates over the espionage commission, the Liberals decided that the best defence against accusations by Conservatives and the

CCF of state abuse of individual rights was an appeal to the tradition of Parliamentary supremacy. In defending the actions of his government in suspending habeas corpus and other civil liberties in 1946, Minister of Justice J.L. Ilesley claimed that “those principles resulting from Magna Carta, from the Petition of Rights, the Bill of Settlement and Habeas Corpus Act, are great and glorious privileges; but they are privileges which can be and which unfortunately sometimes have to be interfered with by the actions of Parliament or actions under the authority of Parliament.”¹⁸¹ A bill of rights intended to limit Parliamentary supremacy, in Ilesley’s view, threatened to Americanize the Canadian political system.¹⁸²

Support for legislating rights in some form of bill of rights was already growing in Canada. Alberta attempted to pass its own Bill of Rights in 1946 but it was struck down in the courts, whereas Saskatchewan successfully implemented its Bill of Rights in 1947.¹⁸³ The Canadian Congress of Labour began advocating for a national bill of rights as early as 1947 and the Trades and Labour Congress followed suit in 1948.¹⁸⁴ For civil liberties organizations, there was no denying their desire for a constitutionally entrenched bill of rights. At a December 1946 conference in Toronto to discuss common strategies, civil liberties groups from Ottawa, Montreal and Toronto all expressed their support for a constitutionally entrenched bill of rights.¹⁸⁵

Yet, when the Universal Declaration of Human Rights was being negotiated in 1948, Canada was one of the few countries initially opposed to the Declaration.

Prime Minister Mackenzie King was concerned that the Declaration could be used against the government to pressure it to support unwanted reforms or to criticize public policy. Pressure from the Americans and distress at the thought of voting alongside the Soviet block and South Africa forced Canada to support the initiative.¹⁸⁶ Nevertheless, a year after the UDHR was signed by Canada, Ilesley reasserted his opposition to entrenching human rights in the constitution because it would place limits on Parliamentary supremacy. Placing rights in the constitution represented a “radical departure from principles which have heretofore applied.” Deputy Minister of Justice, F.P. Varcoe, suggested before a committee of the House and Senate that it would be a ‘retrograde step’ to deny Parliament the powers of sovereignty.¹⁸⁷ Varcoe believed that the “parliamentary system, the essential characteristic of which is that Parliament is sovereign, and in the provinces the legislatures, if you impose a bill of rights on the legislature to that extent, you are diminishing its sovereignty.”¹⁸⁸

In the wake of the espionage commission scandal and developments in the United Nations, the Liberals decided to institute a series of Parliamentary committees to consider the possibility of creating a bill of rights. In 1947 and 1948, joint committees of the House of Commons and Senate conducted investigations and asked provincial and federal Attornies-Generals, as well as deans of law schools, if the federal government could pass a bill of rights. A 1950 senate committee carried out public hearings on the potential content and viability of a bill of rights.

The Liberals had little interest in a constitutionally entrenched bill of rights which would permit judicial review as a means to limit executive and parliamentary power. After more than twenty years of continuous rule and the imposition of extensive economic and social controls during the war, the Liberals had little reason to welcome a bill of rights. In presenting his motion to institute the first committee in 1947, Ian Mackenzie (Minister of Veteran Affairs), contended that “many of the rights and privileges which we prize highly we do not owe to specific statutes. Rather we owe them to the absence of laws which would prohibit them. In my view, it is much more important that we should think and talk about freedom than that we should pass legislation in regard to it.”¹⁸⁹ Neither the 1947 nor the 1948 committee accomplished much. Only a select few were allowed to present before the committee in 1947.¹⁹⁰ J.L. Ilsley, who had earlier defended the government’s actions during the espionage commission, and Senator L.M. Gouin from Quebec chaired the committee. Neither was predisposed towards a bill of rights. The former was opposed to judicial limits on Parliament and the latter favoured provincial rights, and it was Diefenbaker who pushed for a second meeting of the committee and a survey of law schools and attorneys general to consider the potential for a Canadian bill of rights.¹⁹¹ In the end, only the Attorney General from Saskatchewan suggested that the federal government had the power to legislate to protect human rights and fundamental freedoms. The rest warned Parliament that it would represent an encroachment on provincial powers.¹⁹²

By far the most productive of the three investigations during this period was the 1950 Special Senate Committee on Human Rights and Fundamental Freedoms. It was led by Arthur Roebuck, a Liberal senator from Toronto, who held the distinction of being one of the most outspoken Liberals in favour of a bill of rights in Canada. Representations from across Canada were invited to present individual and group opinions before the committee, an option unavailable in the previous joint committees. The presentations offer an insight into how non-state actors viewed a potential of a bill of rights. A variety of groups encompassing organized labour, rights associations and various interest groups from the Canadian Jewish Congress to the Canadian Association for Adult Education made representations.¹⁹³ Everyone called on the government to introduce a bill of rights, most believing it should be in the constitution. In describing the types of rights appropriate to the constitution, there was an unspoken consensus in favour of civil and political rights, and not economic and social rights. Speaking for the Association for Civil Liberties, Irving Himel sympathized with those who “approve of these economic and social rights in principle, and favour them as objectives to be attained. ... [I]t must be admitted that they are rights which can only be properly dealt with by specific and detailed legislation and not, as have been the case with the civil and political human rights, as part of the fundamental law of the land.”¹⁹⁴ Presentations by the Department of External Affairs did not consider economic and social rights as “statements of the rights of the individual against the State itself, but descriptive of the responsibility of

Government and Parliament for social welfare and economic prosperity. It is widely recognized that the right to work and the right to social security cannot be much advanced by simply declaring them in a general instrument on human rights.”¹⁹⁵

Organized labour was itself divided on the question of economic and social rights. Eugene Forsey, speaking for the 350 000 workers of the Canadian Congress of Labour, believed that the jurisdictional divisions between federal and provincial governments prohibited the inclusion of the right to work in the constitution. Most importantly, it considered a bill of rights as being solely capable of entrenching negative rights, and the rights to work or education required positive action by the state, best left to federal and provincial economic policy.¹⁹⁶ In contrast, the Trades and Labour Congress called on the entrenchment of economic rights in the constitution and considered it a constitutional right for the unemployed to expect work be created for them, although they were vague on precisely whose responsibility it was to create such work.¹⁹⁷

Roebuck must have been disappointed with the results of the commission he had instituted.¹⁹⁸ The committee recommended passing a declaration of human rights, but only after an amending formula had been agreed upon by the provinces and the federal government, a central issue in the upcoming Dominion-Provincial conference. In a letter to Irving Himel in June 1950, Roebuck emphasized the divisions between the English and French speaking members of the committee, with the latter hesitant to support any derogation of provincial powers suggested in a bill of rights.¹⁹⁹ French

Canadian MPs' opposition to a bill of rights had denied Roebuck the opportunity to present to the Senate a confident recommendation for a constitutionally entrenched bill of rights. No doubt Mackenzie King's earlier hesitancy to support the UDHR out of concern for offending provincial rights had some basis in fact. Any attempt by the federal government to claim jurisdiction on the defence of individual rights could be seen as an attempt to derogate powers from the provinces and would raise opposition from Quebec MPs.

Despite entrenched opposition, there was clearly some significant and growing support for some kind of bill of rights for Canada. The call for a bill of rights was an important step in acknowledging the compatibility of entrenched rights with the Canadian political system. It represented a meaningful alteration in political debate in the context of the evolving welfare state where government was increasingly responsible for ensuring social and economic equality. By 1960, as the Diefenbaker Conservative government prepared to enact its own bill of rights, the notion of Parliamentary supremacy was waning. Although not stated outright by the Minister of Justice, Davie Fulton, it was clear from his testimony that his government was willing and interested in entrenching rights in the constitution. Fulton did not appeal to Parliamentary supremacy in his argument against a constitutional entrenchment, but instead focussed on the legal obstacles to amending the BNA Act. Specifically, he was concerned, as the Roebuck commission had been in 1950, with the lack of an

amending formula and the implications of having Britain amend the constitution for Canada.

At the same time, the position of the Liberal party had begun to change. During the debate over Diefenbaker's proposed Bill of Rights in 1960, Lester B. Pearson, leading the Liberals, was quick to distance the party from the actions of the King government in 1946: "I wish to say for myself and for those associated with me in this House that we do not believe that certain of those actions were really necessary, or that they should be repeated in any similar situation in the future."²⁰⁰ Liberal conventions in 1948 and 1959 took no position on a Bill of Rights.²⁰¹ Nonetheless, in focussing his attack against Diefenbaker's proposed bill for not consulting the provinces and losing the opportunity to develop a bill binding on the provinces and possibly as a constitutional amendment, Pearson's speech signalled an important departure from the late 1940s when most Liberals opposed outright any bill of rights. Parliamentary supremacy was slowly losing its influence among the ranks of the Liberals, a fact Pearson acknowledged:

the record over the years is certainly not perfect. However, I think it has in the past justified this approach and adherence to these principles which are grounded in the sovereignty of a free and democratic parliament. In this bill we are departing from the British tradition. New circumstances, new difficulties and new pressures may justify some such departure, but they will not justify the limited, confused and uncertain departure embodied in this bill.²⁰²

These early political debates on the rights of Canadians reflected a minimalist view of individual rights. Federal and provincial legislation did not go far beyond

traditional British freedoms of press, assembly, speech, association and religion as well as due process and property rights.²⁰³ Classical liberal values dominated the politico-legal order of the country. Statesmen favoured respect for private property, trial by jury, rule of law, freedom of contract and minimal government interference in their basic freedoms. These were the type of rights enshrined in Magna Carta (1215), the Petition of Right (1628), Habeas Corpus Act (1679), the Bill of Rights (1689) and the Act of Settlement (1700-1). Responsible government was combined with a respect for British Parliamentary institutions and the primacy of these institutions. Even the socialist CCF approached rights from a minimalist perspective. As discussed above, the Saskatchewan Bill of Rights, passed by Tommy Douglas and the CCF in 1947, was limited to the five freedoms and anti-discrimination provisions. In 1955 M.J. Coldwell proposed a motion in Parliament to have the federal government take the initiative in entrenching human rights in the constitution. It dealt with the five freedoms: equality under the law, privacy and prohibiting excessive bail and the suspension of habeas corpus.²⁰⁴ The CCF was unique in its unwavering dedication to a constitutionally entrenched Bill of Rights, but had yet to adopt a broader human rights perspective to incorporate social, economic and cultural rights when it came to the constitution.

Under the leadership of Pierre Elliot Trudeau, the Liberals' position on a bill of rights continued to evolve. Trudeau's campaign to lead the Liberals in patriating the constitution and entrenching a Charter of Rights and Freedoms began in 1968

with his first official speech on constitutional rights as Minister of Justice. In a speech before a conference of Federal-Provincial First Ministers in the year of the anniversary of the UDHR, Trudeau called for a constitutionally entrenched bill of rights to “identify clearly the various rights to be protected, and remove them henceforth from governmental interference. ... The basic human values of all Canadians- political, legal, egalitarian, linguistic- would in this way be guaranteed throughout Canada in a way that the 1960 Canadian Bill of Rights, or any number of provincial bills of rights, is incapable of providing.”²⁰⁵

A joint committee of the House of Commons and the Senate was established in 1970 to consider patriating the Canadian constitution and, among other issues, discuss the possibility of a bill of rights. The committee recommended entrenching a bill of rights in the constitution along the same lines as the Canadian Bill of Rights. With the exception of adding anti-discrimination articles and protections for language rights, the substance of the rights favoured by the committee was effectively the same as those demanded in 1950: freedoms of speech, religion, association, assembly and press alongside protections for private property and against arbitrary arrest. Parliamentary supremacy was rejected as an obstacle to entrenching rights in the constitution. In its final report, the committee admitted that their recommendation would limit legislative sovereignty, but

parliamentary sovereignty is no more sacrosanct a principle than is the respect for human liberty which is reflected in a Bill of Rights. Legislative sovereignty is already limited legally by the distribution of

powers under a federal system and, some would say, by natural law or by the common law Bill of Rights. The kind of additional limit on it which would be imposed by a constitutional Bill of Rights is not an absolute one, for a Bill of Rights constitutes rather a healthy tension point between two principles of fundamental value, establishing the kind of equilibrium among the competing interests of majority rule and minority rights which is in our view of the essence of democracy.²⁰⁶

The increasing assertiveness of French Canadians in the 1960s, as manifested in the election of the Parti Québécois in 1976 and the subsequent referendum on sovereignty-association in 1980, played a key role in introducing a new issue in the bill of rights debate: language rights. Federalists had pledged constitutional reform during the referendum campaign, a promise which eventually led to the patriation of the constitution and the Charter. For federalists, the Charter was a powerful weapon to be used for promoting national unity, most notably through its provisions for language rights. Language rights were added to the arsenal of traditional civil and political rights during this period. As Stewart and Diefenbaker had done twenty years earlier, in 1967 Trudeau paid homage to the basic freedoms in a speech before the Canadian Bar Association referring to “the familiar basic rights- freedom of belief and expression, freedom of association, the right to a fair trial and to fair legal procedures generally. We would also expect a guarantee against discrimination on the basis of race, religion, sex, ethnic or national origin. These are the rights commonly protected by bills of rights.” However, unlike Stewart and Diefenbaker, he further argued that a “constitutional change recognizing broader rights with respect to the two official languages would add a new meaning to Confederation.”²⁰⁷ Language rights,

according to the future Prime Minister, were as fundamental and basic human rights as speech or religion.

The Charter of Rights and Freedoms ushered in a new era and was, in many ways, the ultimate manifestation of the rights revolution in Canada. A preference for civil and political rights was evident in the Charter's various articles, with protections for the five freedoms and due process rights. Mobility rights, democratic rights dealing with the political system (e.g., voting), and denominational education rights were all entrenched in the constitution. An equality clause was inserted alongside language rights. Recognition of minority rights was a major step from the traditional political discourse on rights as civil liberties. Nonetheless, the Charter was principally concerned with negative rights and avoided many of the provisions contained in such documents as the UDHR or the ICESCR. These newly entrenched rights were also vulnerable to an override clause and a limitation clause which allowed the judiciary to permit state abuse of fundamental freedoms if the government could demonstrate that its actions were 'justified in a free and democratic society.'

The Charter was not the end of the rights revolution, but it was undoubtedly a critically symbolic achievement. First, economic, social and cultural rights were not absent from political debates about human rights, but negative rights and civil liberties dominated these discussions. Second, if one accepts Miriam Smith's contention that human rights activists conceive of social change as legal change, then

no development in Canadian history better exemplifies the dominance of rights discourse than entrenching a bill of rights in the constitution. Human rights do exist outside the law and exert a powerful moral force in Canada, but they are most clearly manifested in the law; any study of the rights revolution must appreciate how the law and law makers have articulated notions of rights in a particular social and historical context.

The Human Rights State: Human Rights and the Law

The rights revolution went far beyond constitutional debates. Up until the war there was little legal recognition for the rights of minorities. But between the end of the war and culminating in 1982, a massive human rights program was initiated by federal and provincial governments in Canada creating a veritable ‘human rights state.’ The human rights state was an institutional infrastructure designed to protect human rights through various state institutions.

Anti-discrimination legislation was the most visible pillar of the state’s human rights program. Ontario’s 1944 Racial Discrimination Act banned discriminatory signs or publications in an effort to prohibit the use of ‘Whites Only’ or ‘No Jews or Dogs’ signs.²⁰⁸ Saskatchewan’s 1947 Bill of Rights also prohibited discrimination with respect to accommodation, education and employment.²⁰⁹ Neither Act provided an enforcement mechanism and proved weak instruments for protecting citizens against discrimination. According to Walter Tarnopolsky in 1982, there was

a reluctance on the part of the judiciary to convict, probably based upon a feeling that a discriminatory act is not really in the nature of a criminal act. Without extensive publicity and promotion, many people are unaware of the fact that such human rights legislation exists. Members of minority groups who have known discrimination in the past tend to be somewhat sceptical as to whether the legislation is anything more than a sop to the conscience of the majority. Finally, the sanction in the form of a fine does not really help the person discriminated against in obtaining a job or home or service in a restaurant.²¹⁰

As anti-discrimination legislation evolved, it would increasingly form an integral part of the emerging human rights state. Throughout the 1950s several provinces passed legislation banning discrimination in employment and accommodation (see chapter three), albeit with weak enforcement mechanisms. The 1960 federal Bill of Rights was another important pillar of the human rights state. It was an acknowledgment that all Canadians, irrespective of the province they lived in, enjoyed certain basic freedoms, although its value would prove to be primarily symbolic. The Bill of Rights was a dismal failure and led Frank Scott to state in 1964 that “that pretentious piece of legislation has proven as ineffective as many of us predicted.”²¹¹

The Bill of Rights suffered a painful reception at the hands of the judiciary. Judges were simply unwilling to employ the Bill of Rights in the face of a tradition of Parliamentary supremacy. In *Robertson and Rosetanni v The Queen* (1963), the Supreme Court of Canada upheld the federal government’s Lord’s Day Act banning the operation of a business (in this case, a bowling alley) on a Sunday. The Court

rejected arguments that the Act violated freedom of religion under the Bill of Rights. According to Ronald Ritchie's majority decision, the Bill of Rights enshrined existing rights when it was passed in 1960 and did not create any new rights; since freedom of religion existed when the Lord's Day Act was in operation before 1960, the Bill of Rights did not create any new rights making the law inoperative. In effect, the Bill of Rights did not open up new territory.²¹² The main obstacle facing the Bill of Rights was the lack of a clear clause specifically stating that all laws violating its provisions would be rendered inoperative. In fact, by 1969 the court had not once used the Bill of Rights to assert an individual's civil liberties.

Suddenly, in 1970, rights advocates found themselves with an unexpected victory. For ten years the Supreme Court had refused to assert the Bill of Rights in any meaningful way although the court had been confronted with only a handful of Bill of Rights cases by 1970 (between 1960 and 1982, the court only heard 34 cases dealing with the Bill of Rights). In the case of *The Queen v Drybones*, the court found section 94(b) of the Indian Act in direct violation of section 1(b), equality under the law, of the Bill of Rights. In a potentially precedent-setting decision, the court ruled section 94(b) of the Indian Act inoperative. Joseph Drybones had been found guilty by a Territorial Court of the Northwest Territories (affirmed by the Appeals Court) of being drunk off a reserve, was fined \$10 and held for three days in custody. According to Ritchie's majority decision, section 1(b) meant "at least that no individual or group of individuals is to be treated more harshly than another under

that law, and I am therefore of opinion that an individual is denied equality before the law if it is made an offence punishable at law, on account of his race, for him to do something which his fellow Canadians are free to do without having committed any offence or having been made subject to any penalty.”²¹³ Ritchie’s decision led the majority of the court in a ruling which may have been influenced by the federal government’s controversial 1969 white paper seeking to eliminate Indian status and place natives on more equal footing with other Canadians. It was a major victory for rights advocates in placing the rights of the individual as enshrined in the Bill of Rights above federal legislation.

The precedent, however, proved to be short lived. In 1974 the court effectively reversed itself in *Attorney General of Canada v Lavell*. Jeanette Lavell was an Indian woman challenging section 12(1)(b) of the Indian Act requiring native women to surrender their status upon marrying a non-Indian. Since the same rule did not apply to Indian men, Lavell used the same argument as Drybones: she claimed that the regulation violated her right to equality under the law. This time, however, the court’s decision was much different. The problem with interpreting the Lavell case is that, as one author has suggested, the majority of the decision 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.”²¹⁴ As an example of exaggerations made in the case, Ritchie (once again

writing for the majority) suggested that to accept Lavell's claim would be to invalidate the federal government's ability to designate special treatment for native people and thus render it impotent in carrying out its responsibilities under the constitution.²¹⁵ Ritchie distinguished between the two cases by pointing out how Drybones dealt with penal law instead of civil law (although there is no reason to believe the Bill of Rights was meant to apply more strictly to penal law) and dealt with an off-reserve Indian being treated differently from a non-Indian. In effect, the judgement meant that Indian women could be discriminated against so long as all Indian women were discriminated against equally.²¹⁶

Subsequent attempts in the 1970s to use the Bill of Rights' equality under the law clause to render legislation inoperative were equally unsuccessful. In *Brownridge v the Queen*, *Curr v The Queen* and *Duke v The Queen*, individuals accused of drunk driving claimed a violation of their right to counsel and their due process rights while questioning the legality of breathalyzer tests.²¹⁷ Another case, *Smythe v The Queen*, impugned the Receiver General's discretion to prosecute under the Revenue Act as a violation of equality under the law.²¹⁸ Each case failed. By 1982 it was clear that only an amendment to the constitution would transform the court into a more effective agent for combating rights violations rooted in statute.²¹⁹

While the court remained unimaginative in its approach to human rights issues in the 1960s, several provincial governments were involved in implementing a novel method for making governments more accountable. Another pillar of the human

rights state was the ombudsman. The role of the ombudsman was to “generate complaints against government administration, to use its extensive powers of investigation in performing a post-decision administrative audit, to form judgements that criticize or vindicate administrators, and to report publicly its findings and recommendations but not to change administrative decisions.”²²⁰ Canada’s first ombudsman appeared in Alberta in 1967, followed by New Brunswick (1968), Quebec (1968) and Manitoba (1969). Ombudsmen were available in every jurisdiction by the end of the 1970s except in Prince Edward Island and the federal government.²²¹ While ombudsmen had no direct link to human rights codes, they clearly played a role in defending individuals from the state by establishing machinery in which citizens could pursue claims against the government. This process included complaints not falling under the jurisdiction of human rights codes, such as the case of a civil servant abusing their power.

In addition to the ombudsmen, Canada’s two largest provinces initiated major investigations to revise their laws in the 1960s to better conform with current standards of human rights. On 21 May 1964 Ontario established the Royal Commission Inquiry into Civil Rights chaired by former Chief Justice of the High Court, James McRuer. Its mandate was to provide a comprehensive review of all the laws in Ontario and to “recommend such changes in the law, procedures and processes as in the opinion of the commission are necessary and desirable to safeguard the fundamental and basic rights, liberties and freedoms of the individual

from infringement by the State or any other body.”²²² For the next seven years the McRuer commission examined hundreds of Ontario statutes, received thousands of submissions and heard hundreds of witnesses. All told, the commission’s reports contained 2281 pages and 976 recommendations. As McRuer’s biographer has suggested, “nothing quite like McRuer’s inquiry into civil rights had been seen before in Canada. In a sense, it became a great work of constitutional reform- an attempt to give meaning, within the laws and legal procedures of the province, both to the civil rights acquired through the common-law tradition and to the other ‘inalienable rights’ that Canadians enjoyed.”²²³

While McRuer was preparing his first report, another major commission was announced by the Quebec government on 24 January 1967 led by lawyer and former Minister of Municipal Affairs, Yves Prévost.²²⁴ The Commission of Enquiry into the Administration of Justice on Criminal and Penal Matters in Quebec was to inquire into the application of criminal and penal law in Quebec.²²⁵ Prévost’s report was even larger and more extensive than the McRuer report, containing 5 volumes (some as long as 1500 pages) with more than a dozen sub-volumes and appendices prepared between 1968-9. It represented the most comprehensive analysis of Quebec penal law ever conducted by the provincial government.

It would be impossible to come close to summarizing the hundreds of recommendations and analyses presented in these two voluminous reports. Each investigation dealt with the particular needs of the province. For instance, McRuer

called for an ombudsman (which Quebec already had) while Prévost insisted on establishing a system of legal aid (which Ontario already had). One of the key issues was the question of a Bill of Rights. Prévost recommended a comprehensive Charter of Fundamental Freedoms and Human Rights while McRuer, guided by principles of traditional British justice and democracy, was more hesitant to recommend a Bill of Rights for Ontario but did favour legislation similar to the Diefenbaker Bill of Rights. Despite these differences, the reports shared similar concerns on the operation of juvenile and family courts, coroner's inquests, the provision of bail for poor people, providing compensation to victims of crimes, and making the judicial system more efficient in processing appeals. Both resulted in the implementation of widespread reforms.

While McRuer and Prévost were busy transforming the statute books of the two provinces where two-thirds of the Canadian population resided, human rights legislation was undergoing a significant transformation. The Fair Employment Practices and Fair Accommodation Practices laws noted in the previous chapter were consolidated into human rights codes, beginning with Ontario in 1962 and ending with the federal government in 1977.²²⁶ Human rights codes were far more expansive than earlier pieces of legislation; they dealt with discrimination in employment, services and housing and expanded to ban discrimination on grounds such as political opinion. The codes provided enforcement mechanisms through human rights commissions which could hear cases and impose fines or require a service to be

rendered or employment provided. Most of the commissions were also active in educational campaigns promoting equality and awareness of anti-discrimination regulations. Until 2002, when British Columbia became the first province to disband its human rights commission, these commissions remained a mainstay of the state's human rights program in every jurisdiction across Canada.

Human rights commissions were at the forefront of challenging traditional ideas about human rights. Early human rights legislation and litigation was concerned primarily with direct discrimination. Individuals were prosecuted for refusing employment to Jews or denying blacks entry into restaurants. By the seventies, there was a recognition of systemic discrimination based on the belief that practices which were considered neutral could, in fact, be discriminatory. A policy by the British Columbia College of Physicians and Surgeons forcing newly licensed non-Canadian doctors to practice for a limited time in remote areas of the province was challenged in *Human Rights Commission v College of Physicians and Surgeons of British Columbia* (1976).²²⁷ British Columbia's Human Rights Commission found against the College because its policy unreasonably discriminated against non-Canadians for reasons not relevant to working as a doctor. The Supreme Court of Canada agreed. A year later, in *Singh v Security and Investigations Services Ltd* (1977), the Supreme Court was faced with an appeal to a ruling of the Ontario Human Rights Commission.²²⁸ The Commission had considered the case of a Sikh security guard who was required to shave and wear a safety helmet as part of his job requirements.

There was no direct attempt at discrimination against Sikhs, it was a generic requirement for all employees, but in the opinion of the Commission the requirement unfairly discriminated against Singh who could not follow the job requirement without violating his religious beliefs. Once again, the Supreme Court of Canada found in favour of the minority group. Such an expansive approach to dealing with discrimination heralded a more positive role for the state in the field of human rights. Instead of simply prohibiting the offensive activity of individuals, human rights codes could be used to recognize the historical inequalities of minority groups and the social and economic conditions in which inequality was rooted.

Another facet of the human rights state was law reform commissions. Law Reform Commissions were responsible for conducting extensive research and study into provincial and federal laws in their respective jurisdictions and, as was the case with the McRuer and Prévost commissions, offered recommendations to improve the law in ways which could better respect individual rights. The central function of the commissions was as follows: “a search by the Commission for those values which the law should uphold; the effective communication to others of the results of this search; and general persuasion of the need for rational change and the achievement of reform by practical results.”²²⁹ Ontario began the trend by appointing a Law Reform Commission under McRuer in 1964 at the same time it appointed the Royal Commission Inquiry on Civil Rights, and by the end of the 1970s most of the

provinces had similar institutions (the federal Law Reform Commission was created in 1971).

There were several other minor developments which contributed to the infrastructure of the human rights state. A Conference on Human Rights Ministers was held for the first time in British Columbia in 1974. Closed to the press, the conference assembled mostly labour ministers to discuss their views on human rights legislation. The only decision to emerge from the conference was to encourage the expansion of the Canadian Statutory Association of Human Rights Associations into a truly national coordinating committee for human rights commissions.²³⁰ This Association, another important development in the 1970s, had been formed a few years earlier as a forum for organizing annual conferences of human rights commissioners to exchange ideas and provide training exercises for human rights officers.

An Interdepartmental Committee on Human Rights emerged from the conference of human rights ministers. The committee was designed to organize task forces within the federal government to study human rights issues while working to maintain an open dialogue between various human rights ministers and commissions.²³¹ When the provinces and federal government established a Continuing Federal-Provincial Committee of Officials Responsible for Human Rights as part of the negotiations over entrenching rights in the constitution, the

Interdepartmental Committee on Human Rights provided the administrative framework to foster communication among human rights ministers.

With the introduction of the Charter in 1982 the deficiencies of the Bill of Rights were overcome and the human rights state was fully entrenched. Numerous other pieces of legislation, royal commissions and bureaucratic structures were created to promote the state's human rights program. The rights revolution thus entailed a significant transformation in the law from the pre-World War Two period when "the violation of civil liberties in Canada did not seem to be of serious concern."²³²

Strategies for Change: Human Rights Activism

The impact of the rights revolution was felt outside the realm of policy-making and the courts. During a period of widespread social movement activism, a myriad of new social movements promoted alternative lifestyles and challenged conventional mores. One manifestation of these movements were social movement organizations. Unlike the rights associations which are the focus of this work, however, these organizations served a particular constituency and were involved in more than simply rights advocacy; many ethnic organizations, for instance, organized cultural events and provided direct services to their members. These organizations represented a 'human rights community,' a collection of activists and organizations employing human rights discourse. Political lobbying and legal reform was only one

form of activism. True equality for gays or women, for example, could not be achieved simply by adding new sections to human rights codes; education programs, women's centres, gay pride parades, civil disobedience and a multitude of other forms of activism forced Canadians to confront new ideas about equality. Social movement activists were an integral a part of the rights revolution.

Drugs, free love, long hair, flashy clothes, rock and roll, and a host of other challenges to conformity defined the sixties. By 1965 half the population in North America was under 25 years old. Fifty thousand people attended the Toronto rock festival in 1968, and the following year hundreds of thousands poured into Woodstock in upstate New York. With music came drugs, both equally at the heart of the counter-culture of the sixties. LSD, made illegal in Canada in the 1960s, and cannabis were the drugs of choice for most youth seeking to rebel. Fearful of the implications of mass drug use, the state stepped up its attack on illegal narcotics. Between 1960 and 1970, drug charges laid in Canada jumped from 516 to 8 596. And if rock and roll mixed with drugs was a threat to traditional middle class social standards, the sexual revolution of the sixties was an even greater threat to the basic moral standards epitomized in the 1950s. "By the time the first baby-boomers reached university ... sexuality was fully depicted in both literature and movies in ways that would have been completely unacceptable only a decade earlier."²³³

Intertwined with this counterculture was the student movement and the rise of the New Left. Within ten years the student movement peaked and declined. The

Combined University Campaign for Nuclear Disarmament, a symbol of the New Left in the sixties, was university-centered, encouraged direct protest and considered political parties ineffectual. It launched a journal in 1961, *Our Generation Against Nuclear War*, and organized Peace Houses in various cities where people could gather for discussion, organize mass mailings, lead debates and promote antipathy to nuclear weapons.²³⁴ In 1964 the Combined University Campaign for Nuclear Disarmament transformed into SUPA (Student Union for Peace Action), an “explicitly ... New Left organization, influenced by the SDS [Students for a Democratic Society] and firm in its belief in direct action, non-violence, and participatory democracy.”²³⁵ Focused primarily on the university campus, SUPA was dedicated to working with disadvantaged communities, protesting the Vietnam war and consciousness raising. It was “the single most important New Left organization in Canada.”²³⁶

In direct competition with SUPA was the Company of Young Canadians. Created by an Act of Parliament in 1965, the Company of Young Canadians was a federal government sponsored youth organization modeled on the American Peace Corps and designed to channel the energies of the youth movement into positive community-based programs. It did consulting work, research and sent teams of youths across the country to support poverty-stricken areas and promote community development. As the activities of the Company of Young Canadians expanded, SUPA itself began to decline. It was no coincidence that the rise of one saw the decline of the other; after SUPA’s government funding dried up in 1965, the

Company of Young Canadians began to absorb its activists and leaders, undermining SUPA's core support.²³⁷ The last SUPA conference took place in Goderich in 1967 and the Company of Young Canadians was soon at the mercy of government cutbacks. After 1973 the number of student protests on campuses declined precipitously and the Company of Young Canadians was effectively defunct by the late 1970s.²³⁸

In the midst of an expanding student movement, the women's movement experienced its own resurgence. By the 1960s increasingly larger numbers of women were joining the workforce and receiving a university education. On campuses women became active in SUPA and in 1967 met separately as a women's caucus. Branches of the Voice of Women, formed in 1960, began campaigning for the legalization of the Pill as early as 1962, a position the country's largest women's organization, the National Council of Women, was slow to accept. Thanks to the efforts of the Canadian Federation of University Women and supported by other feminist organizations across Canada, a Royal Commission on the Status of Women was formed by Prime Minister Pearson in 1967. The contradictions between the promise of education and the reality of the labour market, as well as changing attitudes towards sexuality and the family, contributed to the revitalization and radicalization of the women's movement. The Royal Commission on the Status of Women was a watershed for the women's movement and a symbol of second wave

feminism, a critical juncture characterized by Naomi Black as the “first success of the second wave of Canadian feminism.”²³⁹

When the Royal Commission on the Status of Women published its report in 1970 it provided a rallying point for women and led to the formation of a new national federation of women’s organizations. Those feminists who had been central in lobbying the government to create the commission formed the National Ad Hoc Action Committee on the Status of Women (NAC) in 1971. The NAC’s primary mandate was to ensure the implementation of the commission’s recommendations. By 1972 the NAC represented more than 42 associations.²⁴⁰

Following the formation of NAC the “women’s movement expanded enormously both in the numbers of women’s organizations it included and in the range of issues. ... [T]he number of women’s organizations and services started up in the 1970s is staggering.”²⁴¹ British Columbia’s feminists claimed two established women’s groups in 1969; by 1974 they could boast more than a hundred. There were at least 39 women’s centres across Canada by 1979. National conferences were held by lesbians in 1973 in Toronto and by rape crisis centres in 1975. International Women’s Year, proclaimed by the United Nations for 1975, contributed to the continued mobilization of women into various organizations and activities. The expansion of women’s rights groups created a veritable mosaic of organizations.²⁴² Crisis centres were a form of grass roots organizing concerned less with political lobbying than with providing a direct service to women. There was also a radical

wing to the women's movement. The Lesbian Organization of Toronto was formed in the early 1970s and, as with many other radical women's groups, rejected any working relationship with men on the basis that such relationships were inherently unequal.²⁴³

One of the most difficult issues the women's movement had to grapple with was the place of lesbians. Many lesbians formed separate organizations, including the Lesbian Organization of Toronto or Lesbian Organization of Ottawa Now, and accused groups such as NAC of not giving enough attention to their needs.²⁴⁴ The proliferation of gay and lesbian groups is another example of a social movement dramatically coming to life in the 1960s and 1970s. The first and most successful gay group organized in Canada was the Association for Social Knowledge in 1964 in Vancouver. An organization materialized in Toronto in 1969 at the time the Association for Social Knowledge was becoming defunct; the University of Toronto Homophile Association was established on 24 October 1969 with the goal of educating the community about homosexuality and combating discrimination.²⁴⁵ These early attempts to organize homosexuals were short-lived and focused primarily on either educating the public about homosexuality or providing a secure social atmosphere for gays and lesbians.

As one historian has suggested, the "1970s are hailed as the decade of gay rights in North America."²⁴⁶ Several small gay liberation groups appeared in Canada's larger cities in the early 1970s, groups such as the Front de libération

homosexual in Montreal in reaction to the closure of gay bars under the War Measures Act. Gay liberationists challenged established moral codes (e.g., heterosexuality) by living an alternative lifestyle and articulating a new set of values. During this same period, gay rights activists called for legal protections for gays and lesbians, including the Gay Alliance Towards Equality in Vancouver and Toronto; a journal, *The Body Politic*, also emerged in Toronto.²⁴⁷ These organizations were at the forefront of the gay rights movement. According to Tom Warner, human rights legislation “provided the political and legal frameworks within which an agenda for social change could be promoted. Advocating that sexual orientation become a prohibited ground of discrimination in such laws was a strategy that could be embraced by gays and lesbians in large urban centres and smaller communities. ... [H]uman rights advocacy was a focused strategy, but one that could be supported by both conservatives [assimilationists] and militants.”²⁴⁸ While there are no statistics on the number of gay organizations formed in the 1970s, there is no doubt the number was quite substantial. Even a national organization was formed, the National Gay Rights Coalition, in 1975.²⁴⁹

Aboriginals were also highly active in forming social movement organizations. Between 1960 and 1969 four national aboriginal associations and thirty-three separate provincial organizations were born.²⁵⁰ Many of these groups were pioneers in organizing aboriginals beyond the local level for the first time. In Nova Scotia, for instance, the Union of Nova Scotia Indians (1969) was Nova

Scotia's first province-wide aboriginal association. At the national level, one of the most influential aboriginal organizations was the National Indian Council of Canada (1961) which disbanded when the National Indian Brotherhood was formed in 1968. The National Indian Brotherhood was the first national aboriginal organization run by and for aboriginals.²⁵¹ Indian Friendship Centres multiplied across the country thanks to substantial financial support from the federal government's Secretary of State.²⁵² As David Long notes, a significant aspect of this revived aboriginal activism was "the expansion of the term 'aboriginal rights,' which by 1981 had been revised from its original focus on land rights to include the rights to self-government."²⁵³ Human rights activism, however, was only one part of a broad-based social movement, often referred to as the 'Red Power' movement, which called for a fundamental re-alignment of aboriginals' relationship with the dominant group through an aggressive assertion of aboriginal identity: "They were able to both nurture and capitalize on their spiritual-cultural identity as a 'people' as movement supporters identified with the exclusiveness of the member groups' characteristics. In effect, the movement emerged and grew as Natives learned together to cultivate their 'Indianness.'"²⁵⁴ However, Long also suggests that by the mid-1970s "the idealistic radicalism that had blossomed in the 1960s and early 1970s had begun to wane."²⁵⁵ In its place was an increasingly bureaucratic movement dominated by hierarchical organizations employing traditional interest group tactics.

Ethnic minorities also mobilized in unprecedented numbers. Several Associations for the Advancement of Coloured People were formed in the late 1950s and 1960s in several provinces, including Nova Scotia, British Columbia, New Brunswick and Alberta.²⁵⁶ These black rights organizations employed similar tactics as the NAC, Gay Alliance Towards Equality or National Indian Brotherhood; primarily political lobbying, educational programs within the black and non-black community, and providing some services to their members.²⁵⁷ Some of the more active of the new groups representing African-Canadians included the Black United Front in Nova Scotia, Urban Alliance on Race Relation (Toronto) and the National Black Coalition. The Black United Front, formed in 1969 at a meeting of 700 mostly young black militants, is a good example of the increasing assertiveness of African-Canadians.²⁵⁸ Black United Front activists rejected the assumption that discrimination was a result of individual acts, and located the problem in systemic obstacles to black equality. They sought to promote a collective sense of identity, develop programs to enhance the economic and political power of black people, and improve their self-image. These organizations provided African-Canadians with a stronger voice on the local and national stage than they ever had before. Empowering black people was at the heart of their activism.²⁵⁹

By the mid-1980s, the Secretary of State was providing funding to 3500 separate organizations across the country, and this does not even account for those organizations which were not receiving government grants.²⁶⁰ Prisoners' rights

groups became increasingly vocal and well organized; the Quebec Prisoners' Rights Committee was one of the most prominent and radical prisoners' rights advocates in the country with a mandate to seek the abolition of all prisons.²⁶¹ Greenpeace was founded in Vancouver in 1971. Children's rights, animal rights, advocates for peace and official language groups are just a few other examples of the many social movement organizations active across Canada during this period.

Human rights discourse pervaded throughout these social movements, but not all social movement organizations could be characterized as human rights advocates. Important distinctions divided many of these organizations and movements. Gay *reformers* sought amendments to human rights statutes while *liberationists* called for more fundamental change such as eliminating the age of consent. At times, liberationist militancy on such issues as pornography and the age of consent "grated on assimilationist, equality-seeking advocates, who saw them as impediments to securing legislative reform."²⁶² Liberal feminists, who played a key role in pushing for an equality clause in the Charter of Rights and Freedoms and dominated the NAC, placed their faith in the liberal-democratic system and demanded equality of opportunity for women, whereas radical feminists turned "towards the creation of social and political alternatives to the existing society."²⁶³ One manifestation of these alternatives were physical spaces for women, such as women's centres, which were focused on "providing space for women, and on trying to figure out how to organize a world that would reflect women's needs and experiences."²⁶⁴ A book published in

1971 entitled *Women Unite!*, the first Canadian book to explore the women's liberation movement, emphasized the distinction between rights-based activism of the NAC and the liberationism of some grass-roots women's organizations:

Although the broad basis of both is the improvement of the quality of life for women in Canada, the philosophy of the women's rights groups is that civil liberty and equality can be achieved *within* the present system, while the underlying belief of women's liberation is that oppression can be overcome only through radical and fundamental change in the structure of our society.²⁶⁵

Several activists have also, in retrospect, criticized rights-based reformers. As Tom Warner notes in the case of gay rights groups, "pursuing human rights amendments would lead ultimately to the dominance of conservative voices and assimilation with heterosexuals on their terms, rather than the liberation sought by more radical proponents."²⁶⁶

The massive expansion of social movement organizations was partly a manifestation of the new rights paradigm. Previously marginalized and powerless members of Canadian society were employing rights discourse to make claims for equality and fair treatment. Social movement activism and the human rights state were equally important manifestations of the rights revolution. But for activists who adopted a liberationist approach, while the rights revolution promised a new era of equality, it was not without its limitations.

Canada's Rights Culture

The bill of rights movement, law reform and social movements offer only a glimpse into the profound impact of the rights paradigm on Canadian society. One could easily point out additional political debates, other social movements or legal reforms as examples of how human rights have come to play an important role in the lives of Canadians in the twentieth century. Fundamentally, however, the rights revolution was about new ideas. As James Walker notes in his study of four key Supreme Court of Canada cases on racial discrimination, law defines rights “and the law on this point changed dramatically.”²⁶⁷ Legal change is part of a dialectical process which results in the evolution of new cultural codes. “When change in the law occurred, it was not because a reforming judge decided to break with tradition, but when the social dynamic within which the law existed underwent a shift. ... [T]he initiative for reform was taken first by members of the public who perceived a need for change, usually individuals from the affected minority. ... Reform was accommodated only when common sense grew to accept it.”²⁶⁸ Human rights are intimately linked with changes in the law, yet at the same time they are informed by cultural context of the community they serve. For instance, as Walker notes in his first case study, in 1914 the Supreme Court of Canada upheld a Saskatchewan statute banning white women from working for Chinese men. The entire issue was reduced to a debate over the right of Chinese men to hire white women; no one raised the issue of a woman’s right to choose her own employment. In the case of a Jewish man challenging a restrictive covenant in 1951 which barred Jews from owning property in

a Toronto neighbourhood, “the Court allowed the respondents’ argument- that racial discrimination was both morally and legally acceptable- to pass without contradiction, and declined to confirm the appellants’ assertion that racial distinctions were contrary to public policy.”²⁶⁹ By the 1980s racial and religious discrimination would not only be considered illegal, but morally reprehensible.

Human rights are a powerful force, not simply because they have the force of law, but because the *source* of human rights lies not in the law but in human morality. “Rights-based social change is distinguished by the prior entitlement of the right-holder, with the special force this gives to his claims, and by the fact that the right-holder uses his right to remove the barriers to its enjoyment. Systematically unenforced rights position the right-holder to mount a particularly powerful attack on the institutions that deny him rights.”²⁷⁰ A society with a strong rights culture thus provides the context for individuals to make rights claims even though, at the time, they are not recognized by the state.

As Michael Ignatieff notes, a unique rights culture has evolved in Canada. “First, on moral questions such as abortion, capital punishment, and gay rights, our legal codes are notably liberal, secular, and pro-choice. ... Second, our culture is social democratic in its approach to rights to welfare and public assistance. ... The third distinguishing feature of our rights culture, of course, is our particular emphasis on group rights.”²⁷¹ This ‘rights culture’ has found expression in many forums, and not only the courts. The power of rights discourse is based on its ability to empower

marginalized and powerless people in the community. They may be denied legal recourse for their claims, but rights discourse provides them with a legitimate forum in which to advance their claims in ways that are not easily ignored. Such was the case with the battle for sexual equality for gays and lesbians. “Rights equality changes moral culture because groups demand recognition. As they do so, they force sexual majorities beyond toleration towards acceptance and approval. ... So on questions of sexual morality, the impact of the rights revolutions has been to diminish the power of the heterosexual majority to define what is normal and normative in personal life.”²⁷²

Canadians have come to view themselves as rights-bearing citizens, and this has had a profound impact on the relationship between the state and civil society. As with Ignatieff, Cynthia Williams suggests that Canada’s rights culture has shifted towards egalitarian and cultural rights from the traditional focus on negative rights. According to Williams, the “preoccupation with procedural equality in the 1950s centred on equality before the law. ... During the 1960s and later, however, popular equality claims turned to more substantive concerns, and a new focus on equality of opportunity included the demand that citizens be guaranteed equal benefits from society.”²⁷³ Sections on language rights, multiculturalism, and aboriginals in the Charter are only one manifestation of this new paradigm. By the 1980s, Canadians increasingly considered access to education and health care as rights. In many ways, the pillars of the welfare state, from employment insurance to workers compensation,

were as much a manifestation of Canada's rights culture as the right to vote and equal pay. "The welfare state is built upon an expanded definition of citizenship captured in the concept of social rights."²⁷⁴

The legal, political, social and cultural manifestations of the rights revolution discussed above were thus part of a fundamental shift in Canadian society. As Stammers suggests, the "use of rights discourse seeks to create an outlook which challenges dominant ideas of 'common sense' and could be said to be seeking to be counter-hegemonic in respect of such power."²⁷⁵ Ideas about racial hierarchies and parliamentary supremacy were discarded, and new conceptions of the role of the state and the law emerged. "The global human rights 'paradigm shift' ... represented at least a shift in sensibility in Canada: public protests against discriminatory businesses, the campaigns against Japanese Canadians' deportation and to repeal the Chinese immigration laws, support for Asian enfranchisement, passage of municipal by-laws and fair practices legislation, all represented the development of a new perception among majority Canadians about what was right and fair."²⁷⁶

A veritable rights revolution had occurred in Canada.

Chapter Five:

The October Crisis

In October 1970, the nation held its collective breath as events in Quebec unfolded. The October crisis, initiated by the kidnappings of James Cross and Pierre Laporte by the Front de Libération du Québec (FLQ), was one of the most stunning events of the period, and the subject of intense discussion in the media as well as academic and political circles for decades. For the second and only other time in Canadian history, twenty-four years after the espionage commission, the powers of the War Measures Act were employed to suspend Canadians' fundamental civil liberties in peacetime. The imposition of the War Measures Act on 16 October 1970 remains the most important rights issue of the period under study and is the one constant theme throughout the four case studies. As a result, it will be useful to briefly review the crisis from a human rights perspective.

FLQ activities date back to as early as 1961 with graffiti and other forms of vandalism calling for an independent Quebec, with the first bombs exploding in an army barracks on 7 March 1963. The Quiet Revolution was in full swing at this stage, beginning with the election of Jean Lesage and the Liberals in 1960. Lesage's victory ended the sixteen year rule of the Union Nationale, following the death of Maurice Duplessis and his lieutenant, Jean-Paul Sauvé, in 1959. Between 1960 and 1966 (when they were defeated by the Union Nationale under Daniel Johnson) the Lesage Liberals played a major role in the transformation of Quebec into a secular,

technocratic, modern society. Hydro-electricity was nationalized and placed under the control of Hydro Quebec where francophones dominated what would soon become the provinces's largest employer; capital investment funds were created to support francophone businesses and a pension plan was instituted; the education system was secularized and a health insurance system was inaugurated in 1961 (universal health care was adopted in 1970). The state service sector expanded exponentially, with the number of hospital employees alone rising from 50 000 to 100 000 between 1960 and 1966.²⁷⁷

Alongside the transformations initiated by the Quiet Revolution was the rise of the modern separatist movement. The Rassemblement pour l'indépendance nationale was a centre-left party founded in September 1960 and was followed by another party, the right-wing Ralliement national, founded in 1964. In the 1966 election, the two parties garnered about 10 percent of the popular vote. A year later, René Lévesque abandoned the Quebec Liberal Party and formed the Mouvement souveraineté-association. He succeeded in uniting his organization with the Ralliement national to form the Parti québécois (Rassemblement was dissolved and many of its members joined the Parti québécois) and captured 24 percent of the popular vote in the 1970 election which saw the Liberals return to power under Robert Bourassa.²⁷⁸

The first FLQ bombs in 1963 coincided with the entry of the Rassemblement pour l'indépendance nationale into Quebec politics. Soon, bombs detonated at a federal tax building, Canadian National Railway station and rail tracks at Lemieux.

Other bombings and acts of vandalism occurred across the province throughout 1963, including twenty-four sticks of dynamite failing to explode at a broadcast tower of Canadian Broadcasting Corporation on Mont Royal and the toppling of the statue of General Wolfe on the Plains of Abraham. All of these incidents were linked with the FLQ. Wilfrid O'Neil, a night watchman, became the first victim of the FLQ, killed during a bomb attack on a Canadian forces recruiting centre in Montreal in April 1963.

In 1966 Pierre Vallières and Charles Gagnon, the ideological leaders of the FLQ, were arrested and charged with a variety of offences from murder to bombings. During Vallière's trial which began on 26 February 1968, he released a soon to be widely circulated book, *Nègres blanc d'Amérique (White Niggers of America)* on March 15. It became a best seller in Canada and internationally. The book, borrowing the imagery of the black civil rights movement through the word 'niggers' to symbolize the repression and second class status of francophones ("to be a 'nigger' in America is to be not a man but someone's slave"²⁷⁹), was a call to arms. In his opening chapter, he noted how "the liberation struggle launched by the American blacks nevertheless arouses growing interest among the French Canadian population, for the workers of Quebec are aware of their conditions as niggers, exploited men, second-class citizens."²⁸⁰ Vallières saw the FLQ as the vanguard of a revolutionary movement comparable to movements in Algeria and Cuba that would lead not only to the creation of a Quebec state, but a socialist society. As with these other movements,

the FLQ sought systemic change and, while it promoted the interests of the working class, it accused the labour movement of becoming coopted by the state.²⁸¹

The rise of a terrorist organization deeply influenced by socialist principles was in part a manifestation of broader developments within the Left in Quebec. Throughout the 1960s organized labour in Quebec broke away from its links with the conservative Catholic church and shifted dramatically to the Left. As John T. Saywell notes, the sixties was a period of “radicalization of the trade unions [and] the adoption of starkly socialistic manifestos based on a marxist analysis of the roots of Quebec’s ills by the union leadership.”²⁸² In the 1960s and 1970s organized labour in Quebec was coming into its own. Through the unionization of public sector workers, organized labour expanded considerably, representing approximately 40 percent of workers in the 1960s compared with 30 percent a decade earlier. While the major unions in Quebec became increasingly secularized the nationalist-oriented Confédération des syndicats nationaux expanded exponentially from 90 000 members in 1957 to 250 000 by 1974.²⁸³ A new labour code was introduced in 1964 which extended the right to strike to professionals and agricultural workers, later expanding to include hospital workers, teachers and public servants. Quebec became the first province in Canada to permit its public sector workers to unionize.

In 1977 political scientists Michael Ornstein and H. Michael Stevenson suggested that “in Quebec, nationalism is associated with social democratic positions on class issues; its supporters are more likely to favour controls on foreign

investment, support the labour movement, and sympathize with social welfare initiatives.”²⁸⁴ William D. Coleman argues in his exhaustive analysis of the independence movement in Quebec that the movement was intimately linked with the political Left: “The class character of the struggle constrains the independence movement to be anti-capitalist. Because of the strong presence of the workers’ movement in the independence coalition, this anti-capitalism has been expressed in the terminology of the left and not of the right.”²⁸⁵ The existence of the Ralliement national is evidence that the Left never monopolized the independence movement in Quebec, but what is significant in this context is the perception in some quarters that Quebec nationalism, particularly the more radical manifestations of the movement, was a movement of the Left. Certainly, the RCMP and Montreal police believed there was a link between the Left and the separatist movement and, as Jeff Salot, Jean-François Cardin and others have noted, the RCMP began to equate separatism with the threat to national security posed by communists.²⁸⁶ As a result, authorities directed many of their raids, searches and arrests against members of Left, notably the Rassemblement pour l’indépendance nationale in the early 1960s, taking membership lists and other documents.²⁸⁷

FLQ bombings continued amidst these developments. On 19 February 1969, the most spectacular bombing by the FLQ took place at the Montreal Stock Exchange where 20 people were injured (there were no deaths because the FLQ sent a warning in advance). The attack was initiated by one of the most violent cells of the

FLQ network, that of Pierre-Paul Geoffrey. He was soon arrested on 4 March 1969 and pleaded guilty to all the actions of his cell. Judge André Fabien, presiding over Geoffrey's trial, handed down the most severe sentence in the history of the British Commonwealth: 124 life sentences.²⁸⁸

By the time James Cross was abducted in 1970, the province of Quebec had been the locus of extreme forms of violence and social unrest for almost a decade. Cross was abducted on 5 October 1970 by the Liberation cell; it demanded the FLQ manifesto be read on Radio Canada, the release of 23 political prisoners in jail for various crimes linked with the FLQ, \$500 000 in gold bullion and safe passage to either Cuba or Algeria. On 8 October the FLQ manifesto was read on the air by Radio Canada, having been already made public by the private radio station CKAC the night before. This act engendered some sympathy for the FLQ among the people of Quebec by appealing to a collective sense of frustration towards economic troubles and Quebec's minority status in North America.²⁸⁹ Police acted quickly as one of the largest manhunts in Canada began. Between 7 and 10 October, police carried out nearly 1000 raids and searches, and arrested, questioned then released about 50 people. Within a few days, on 10 October, Minister of Justice for Quebec, Jérôme Choquette, announced at a press conference the government's willingness to provide the kidnappers with safe conduct to a foreign country, but refused to give in to any of their remaining demands. In response, on the same day, an independent cell with no contact with the Liberation cell proceeded to kidnap Pierre Laporte.

Kidnapping Pierre Laporte was a symbolic act for the socialist FLQ, given his position as Deputy Prime Minister and Minister of Labour in the Quebec government. The kidnappings heightened tensions to new levels- it gave the impression the FLQ was well organized and capable of coordinated action. Bourassa responded to the capture of his friend and colleague by calling for negotiations with the FLQ. On 12 October he released Robert Lemieux, a lawyer famous for his defence of various felquists (one of the first individuals arrested following Cross' kidnapping), to negotiate on behalf of the kidnappers. On the same day, as tensions continued to rise, 500 soldiers arrived in Ottawa to protect politicians and diplomats.

Within twenty-four hours Lemieux had given up on the negotiations and called for a new mandate from the FLQ.²⁹⁰ Meanwhile, as the lawyers negotiated and the government vacillated in the hopes of gaining more time, police continued their search for the two kidnapped men. Bourassa was adamant in his refusal to give in to the terrorists' demands of releasing prisoners and providing money. Military reinforcements continued to pour into Quebec, with six thousand troops stationed in Montreal by 15 October 1970.²⁹¹ Finally, a crisis point was reached by 16 October, at which point Bourassa and Jean Drapeau (Mayor of Montreal) sent a letter to Prime Minister Pierre Elliot Trudeau declaring their belief that an apprehended insurrection was at hand and calling on the federal government to intervene.²⁹² For the first time in 24 years, the War Measures Act was adopted by order in council. The next day Pierre Laporte was found in the trunk of a car, murdered by the FLQ.

Subsequent events are detailed elsewhere, and involve a great deal of work on the part of the police in tracking down Laporte's killers and Cross' kidnappers.²⁹³ Cross was eventually released on 3 December and his abductors, who would return to Quebec more than ten years later, were flown to Cuba.²⁹⁴ The army remained in Quebec until 29 December. What is significant within the context of this analysis is the reaction to the imposition of the War Measures Act. The War Measures Act had an instant impact on police activity and political debate in Quebec. Two hundred and eighty-eight people were arrested in the first night, and eventually 438 were detained under the War Measures Act and police conducted 3068 searches without warrants. As had been the case in most police raids dealing with separatism or FLQ violence, raids and arrests were directed against nationalists and the political Left in general.²⁹⁵ The statistics on those arrested during this period is a testament to the overeagerness of the police in employing emergency powers, as had been the case in 1946. Those arrested spent an average of a week in jail or up to 21 days (legal limit) without charge; a large majority, almost 90 percent, were eventually released without ever being charged. Those who were charged with a crime spent an average of two and a half months in jail before being released on bail; 95 percent of them were either acquitted or had the charges withdrawn. Only 20 people were ever found guilty of a crime arising out of the October crisis of 1970.²⁹⁶

The use of the War Measures Act quickly came to dominate most of the debate on the October crisis, notably in the media. Early on police were searching

and seizing media stories, limiting what could be made available to the public.²⁹⁷

Editors were divided on how to deal with the situation. Most of the English language papers supported the government, but within Quebec there were a variety of reactions.²⁹⁸ *L'Action* encouraged the populace to rally behind the government; *Le Nouvelliste* counseled the government to give in absolutely; and, *Le Devoir* called for continued negotiations until the hostage was released.²⁹⁹ While editors for *La Presse* and *Le Soleil* cautiously supported the use of the War Measures Act, Claude Ryan of *Le Devoir* was a constant advocate against the hard line taken by both governments.³⁰⁰

Initially organized labour in Quebec adopted a moderate stance, calling on both governments to negotiate with the kidnappers.³⁰¹ But all this changed dramatically with the imposition of the War Measures Act. A unified stance between all three major union federations in the province was soon organized and they became one of the most outspoken critics of the federal and provincial government. With twenty-four hours the unions issued a statement denouncing the use of emergency legislation and accusing Bourassa of giving in to pressure from Ottawa. More than 500 delegates attended a mass meeting on 21 October to formulate labour's position on the crisis. From having adopted a fairly moderate position, labour now made clear its complete opposition to the state's tactics. Quebec labour called on Bourassa to lift the emergency measures and attacked the state for denying prisoners bail.³⁰² For a movement ridden with internal conflicts and tension over union-raiding, the unity of 1970-1 was a significant moment of inter-union cooperation.

On university campuses and throughout Montreal, students also reacted strongly to the imposition of the War Measures Act. Even before the imposition of the War Measures Act, students were making their voices heard. A demonstration at the Paul-Sauvé centre in Montreal organized by Front d'action politique on 15 October soon turned into a pro-FLQ rally of 3000 people, many of whom were students from the University of Montreal who were denied a permit to rally on their own campus.³⁰³ Student papers at McGill and University of Montreal also expressed their support for the FLQ during the crisis.³⁰⁴ A newly opened university in 1969, l'Université du Québec à Montréal, proved to be the most radical campus. Suspecting it of harboring an FLQ cell led by historian Robert Comeau, the RCMP planted informers on the campus to investigate the possibility that the Comeau cell was responsible for drafting the FLQ manifesto the previous June and stealing 450 sticks of dynamite. When the crisis hit, a rally of 800 students paralyzed the campus on 15 October. An action committee was formed with a three point plan to support the FLQ as students occupied the rector's office and other buildings overnight. In response, concerned administrators closed down the university in the face of militant student activism.³⁰⁵

The imposition of the War Measures Act simply aggravated the situation, although in a limited fashion. Three hundred students demonstrated in front of the McGill Arts building against the War Measures Act on 16 October.³⁰⁶ In Toronto, the Canadian Civil Liberties Association organized a meeting attended by hundreds of

students to challenge the arrest of two University of Toronto students for raising a make-shift flag. It was not long before the police began to exercise their new powers outside of Quebec. An American draft-dodger, suspected of being an active supporter of the FLQ, was arrested in Toronto on 20 October and released hours later. Seven members of the Vancouver Liberation Front, a fringe group sympathetic to the aims of the FLQ, were arrested and detained for distributing copies of the FLQ manifesto in Vancouver; they were released several hours later after the police had confiscated all the flyers.³⁰⁷

Police also confiscated hundreds of copies of student newspapers at the University of Guelph for publishing the FLQ manifesto and a professor in Vancouver was dismissed for reading the manifesto in public. In Winnipeg, a university library was forced to temporarily close down after raising a pro-Quebec independence sign.³⁰⁸ A woman in Ottawa had her home raided by the Quebec Provincial Police under the authority of the War Measures Act because she had been photographed in a demonstration protesting the imposition of the Act.³⁰⁹ Civil liberties groups were also formed at the instigation of professors at McGill and University of Montreal to challenge the use of emergency powers, with a thousand students and teachers attending a teach-in organized by the latter on 27 October.³¹⁰

As was the case during the espionage commission, the October crisis was also an issue at the annual meeting of the Canadian Bar Association. Members of the country's leading law association expressed concern for those detained under the War

Measures Act and questioned the legitimacy of preventative detention. There were several parallels with the espionage commission of thirty years earlier. Critics of the federal government pointed to the practice of holding individuals without charge, incommunicado and without access to a lawyer.³¹¹ However, as was the case in 1946, the Canadian Bar Association deferred the matter and refused to condemn the government. The debate, dominated by members opposed to calling the government to task, focused on the need to provide special powers to the state during an emergency and opposed the repeal of the War Measures Act. In the end, in contrast to student groups and organized labour, the Canadian Bar Association effectively condoned the state's actions by its silence.³¹²

The Canadian Bar Association's refusal to challenge the imposition of the War Measures Act reflected an overall deference within English Canada to the federal government's actions. Any concerns in government about a negative public reaction against the use of war time powers was assuaged, however, by consistent public opinion polls reaffirming the public's support of the federal government. A poll conducted by CTV's popular news program W5 found only 10 percent of Canadians outside Quebec and 13 percent inside the province opposing the use of war time powers.³¹³ A Gallup Poll funded by *La Presse* on 14 December 1970 concluded that 87 percent of Canadians supported Trudeau's actions.³¹⁴ On the first anniversary of the October crisis in 1971, another poll conducted by Adgomb Research found that Canadians predominantly supported the use of the War Measures Act: 75 percent

agreed with the government's decision to use the controversial piece of legislation and 72 percent favoured using the army again in future situations.³¹⁵ Dozens of other polls conducted by various other agencies found similar results: Canadians overwhelmingly supported the use of the Act in the suppression of terrorism.

Whether or not the federal government was justified in imposing the War Measures Act goes to the heart of the debate surrounding the October crisis of 1970. By proclaiming the Act, the rights of all Canadians, not simply those in Quebec, were temporarily suspended. For rights activists in particular, such action could only be justified under the most exceptional circumstances. As will be seen in the chapters ahead, rights activists believed that the state ultimately failed to prove the need for such drastic action. No convincing evidence was ever produced by the federal or provincial government to demonstrate that Bourassa's government was in any real threat of being toppled. In effect, the existing powers under the criminal code for search, seizure and arrest coupled with the broad provisions for sedition and conspiracy were seen by many as sufficient for dealing with the terrorist activities of the FLQ and the kidnappings.

Chapter Six:

A National Rights Association

The October crisis highlighted, among other things, the need for a national rights association in Canada to coordinate the efforts of existing associations. Dozens of rights associations were emerging across the country with few ties to each other. Meanwhile, in the context of a massive expansion of social movement activity in the 1960s and 1970s, various movements coalesced into national organizations, from the National Action Committee on the Status of Women to the Assembly of First Nations. Amidst this surge of social movement activism were several attempts to form a national rights association.

One of the more curious aspects of the history of rights associations is the failure to form a national association. Our examination of the second generation of rights associations, therefore, begins at the national level. Two other organizations, the Jewish Labour Committee and the Canadian Bar Association, are discussed as well. True, neither organization is a genuine rights association. Not only did the Canadian Bar Association, a professional organization for lawyers, represent a specific constituency, but it could hardly claim to be a self-identified 'civil liberties' or 'human rights' organization. Human rights was just one of the many issues dealt with by the Bar Association, and its tactics and strategies were influenced by a myriad of other priorities. In contrast, the JLC was unquestionably a human rights organization first and foremost. Still, the JLC's close ties to organized labour can not

be ignored. Support for the JLC came primarily from working class organizations, and its mandate was undeniably influenced by the priorities of organized labour. Rights associations offer a unique insight into human rights activism because they were autonomous and their sole mandate was the defence of human rights. The JLC, its tactics, strategies and priorities influenced by working class organizations and an almost exclusive mandate to focus on anti-discrimination, was no rights association. For this and many other reasons, when rights associations across Canada attempted to form a national group, no one thought to call either the Bar Association or the JLC to sign up. Yet their willingness to advocate on behalf of all individuals and to establish a national network of human rights committees merits the inclusion of the JLC and the Bar Association in this study, and their failure reflects similar problems which faced rights associations in their attempts to form their own national association.

The National Committee for Human Rights

Organized labour continued to play a prominent role at the national level in the sixties and championed the earliest efforts to form a national human rights organization since the demise of the Association for Civil Liberties and the League for Democratic Rights. Combined with the efforts of the Jewish Labour Committee, which had become integral to labour's human rights activities since the 1950s, labour's efforts represented the most well organized and prolific human rights program by the 1960s.

When the Trades and Labour Council and the Canadian Congress of Labour merged in 1957, each had its own human rights committees with mandates to undermine racial discrimination in the labour movement.³¹⁶ A new National Committee for Human Rights (NCHR) was formed at the time of the merger and the Jewish Labour Committee's *Canadian Labour Reports*, which highlighted the human rights work of organized labour, became the *Human Rights Review* in 1960. The NCHR's mandate was to focus on the "elimination of racial and religious discrimination in all areas of Canadian society and the promotion of equality of opportunity in employment, housing, and public accommodation for all residents of Canada."³¹⁷ The NCHR worked with local and regional human rights committees in the labour councils and federations to campaign for anti-discrimination legislation, education, research, publicity, the investigation of cases of discrimination and work with government and non-governmental organizations to promote tolerance and fair practices. By 1957 seven municipal labour councils with human rights committees were located in Nova Scotia, Ontario, Quebec, Manitoba and British Columbia.³¹⁸ Provincial labour federations in British Columbia, Manitoba, Ontario and Quebec also had their own human rights committees. The role of the NCHR was to coordinate the activities of these various labour committees and advise the Canadian Labour Congress (CLC) executive on how best to lobby the federal government.

Most of the NCHR's work in the 1960s involved funding local labour committees. Through the CLC it was also able to secure an amendment to the

National Housing Act to prohibit government contracts to companies which discriminated in their employment practices.³¹⁹ In 1968, when the country was celebrating International Year for Human Rights, in its most ambitious project the CLC funded a newly graduated social worker, Pat Kerwin, to work in Kenora, Ontario, one of the poorest regions of Canada surrounded by native reserves, to educate and train natives to be their own advocates. The project was successful in implementing several local projects, from securing welfare benefits for individuals to building ice rinks with government funding.³²⁰

The Kenora project was a unique initiative for the CLC organized specifically for International Year for Human Rights, and was not replicated despite its apparent success. After 1968, the CLC became increasingly less active within the human rights movement. As the leader of the labour movement in Canada, the CLC continued to play a significant role in the lobbying for rights-related issues in general. The CLC was one of the few organizations outside Quebec to oppose the use of the War Measures Act in 1970, and it continued to lobby on issues including abortion, capital punishment, wiretapping, RCMP activities and the federal Human Rights Act. But the NCHR was unquestionably playing a diminished role. The *Human Rights Review* had been discontinued and by 1977 the CLC no longer provided grants to the local and provincial labour committees. While its advisory role to the CLC executive on human rights issues continued, and remains today, the new Department of Social Action and Community Affairs (created in 1970) took over responsibility for a variety

of human rights issues, notably Indian affairs.³²¹ By the late 1970s a separate women's bureau had been created, taking even more responsibility away from the NCHR. Whereas the labour movement had been one of the most vocal advocates of an entrenched bill of rights in the 1940s and 1950s, it was absent from the special joint committees on the constitution in 1970 and 1981 when hundreds of other groups presented. With the exception of a few organizations, most notably the Canadian Civil Liberties Association (see chapter ten), the CLC had virtually no relationship with any rights association.³²²

The Jewish Labour Committee

The decline of the NCHR was linked with the parallel disintegration of the JLC. Since the JLC had combined the human rights work of the CLC and the Canadian Jewish Congress in the 1950s to combat discrimination, the activities of labour and the JLC were intimately connected. Such was the success of the JLC by 1960 that Frank Scott was led to state he knew "of no single body in the whole of Canada doing as much continuous and consistent work for civil liberties."³²³ At the heart of the JLC's human rights program was the work of various labour committees to combat racial intolerance funded through the JLC by individual unions, the Canadian Jewish Congress and the CLC. Another noted civil liberties lawyer in the 1960s claimed that "every major effort to get civil rights legislation, most of the leading cases and surveys, have been organized and initiated by one of our labour

committees for human rights.”³²⁴ The JLC administered labour’s entire human rights program; reports of the NCHR were simply verbatim reports of local JLC committees. With operations in five urban areas by 1959 (Vancouver, Winnipeg, Windsor, Toronto and Montreal) the JLC had a large network of rights associations. For most of the 1960s the JLC-CJC alliance remained a powerful force in the slowly evolving human rights movement and was the closest manifestation in the country to a national rights association.

JLC activists were involved in some of the most comprehensive anti-discrimination campaigns in Canada. In Montreal, the United Council for Human Rights (the JLC’s local labour committee) badgered the provincial government continually to pass a provincial bill of rights. In 1962, Alan Borovoy, the head of the JLC’s operations in Ontario, was dispatched to Halifax where he helped form a new JLC committee to fight for fair compensation for the impoverished black residents of Africville who were being forcibly relocated by the municipal government. The JLC’s program of action in the 1960s included “dispatching staff to certain areas to help create an indigenous organization among the impoverished racial minority and to develop with them a program of social action related to the problems as they see them.”³²⁵ Africville represented one of the most blatant examples of racial segregation in Canada and, alongside the JLC’s work in organizing natives (particularly in Ontario), the initiative was consistent with the group’s desire to help empower minorities to fight discrimination and defend their interests. The most active

committee in the country was the Ontario Labour Committee for Human Rights. In his time with the Ontario committee Borovoy resolved dozens of cases of discrimination across the province, and organized a large number of surveys to highlight cases of discrimination.

By the early 1970s the work of organized labour and the JLC was eclipsed by a burgeoning number of rights associations following the creation of new groups surrounding International Year for Human Rights and the maturing of rights associations created in the early 1960s. None of the labour committees were active after 1972 and, although the JLC national committee was revived in the late 1970s, it was a shadow of its former self. The JLC was effectively moribund by the mid-1970s and the NCHR, whose main activity was consulting the CLC executive and supporting the JLC, followed the latter into obscurity.

If there is any single event linked with the decline of the JLC, it would be the decision of Alan Borovoy to quit as director in 1968 and join the Canadian Civil Liberties Association (CCLA). It was a symbolic switch given the increasing dominance of rights associations such as the CCLA in the field of rights activism which was slowly eclipsing the work of the JLC. Borovoy had agreed to take over leadership of the JLC in 1967 and the inability to replace him at the local level was a sign of the deterioration of the JLC. While there seemed to be a large collection of labour committees dealing with human rights issues, this was in large part an illusion. At one point, Borovoy was the Associate Director of the NCHR, the Director of the

JLC, and the staff person for the Ontario Labour Committee for Human Rights (OLCHR) and the human rights committees of the Ontario Federation of Labour and the Toronto and District Labour Council. These five different committees were in effect all doing the same work out of one office in Toronto led by a single individual who would don whatever 'hat' was most appropriate to the situation.³²⁶ Within a year, however, Borovoy left the JLC to become the General Counsel of the CCLA.³²⁷ Borovoy's predecessor as Director of the JLC, David Orlikow, a member of Parliament for the New Democratic Party, agreed to return and take temporary control of the JLC. It was readily apparent that Orlikow could not devote much time to the JLC and for years he struggled to find a suitable replacement. Not only had the JLC lost its most dynamic activist in Borovoy, but the NCHR had also begun conducting its own human rights activities and stopped working with the JLC.³²⁸

Demographic factors and changing attitudes towards minorities further contributed to the fall of the JLC. Whereas the Jewish working class had been a major force in establishing the JLC and the Joint Public Relations Committee in the 1940s, it was a declining constituency by the seventies.³²⁹ James Walker has also recently suggested that the nature of the 'problem' the JLC was designed to combat had changed. The JLC had been created to deal with discrimination derived from pathologically prejudiced individuals (thus necessitating anti-discrimination legislation to ban such behaviour), but by the seventies discrimination was increasingly characterized as 'institutional racism' or 'systemic racism.'³³⁰ As a

result, a new set of strategies and organizations were needed to deal with more systemic forms of discrimination.

But perhaps the most convincing explanation for the decline of the JLC was simply that it had accomplished many of its goals. While few would argue racism was absent by the seventies, it was clearly on the decline. Anti-discrimination legislation had been passed in every province and would soon be implemented at the federal level; most of the provinces had active human rights commissions, several with full time staff. For more than twenty years the labour committees of the JLC had been combating discrimination in major urban areas, and it could be fairly said that at the time of its demise, racism in employment, services and housing was at an historic low.

The Canadian Bar Association

Another organization with the potential to play a significant role in the human rights movement at the national level was the Canadian Bar Association. In theory, the Canadian Bar Association had established a formidable structure to place itself at the forefront of the human rights movement in the 1960s and 1970s. As the preeminent lawyers' association in the country, it had access to the legal skills for examining statutes and making recommendations for change. Since having established a permanent civil liberties committee in 1946, the Canadian Bar Association encouraged the formation of civil liberties committees in all of its

provincial sections. With a national committee coordinating the work of provincial sub-committees, supported by the resources of the national network, the association was in an excellent position to take a stand on human rights issues, influence public opinion and lobby governments. But throughout the 1960s the Canadian Bar Association civil liberties sub-committee and its provincial counterparts failed to live up to their potential. According to the chairman of the national committee in 1967, the section “during the last year has been, as usual, active in one or two provinces, mildly active in one or two others, and totally inactive in all of the others.”³³¹ Two years later the chairman continued to lament the failure of the committee to attract enough supporters to become a viable advocate and blamed the association for not taking enough interest in human rights issues:

The problem of maintaining the Civil Liberties Sub-section are aggravated by the apparent lack of enthusiasm for the work of the Section in a number of provinces. ... The lack of interest reflected in the last half of the current year is symptomatic of the feeling which prevails among those persons normally active in the affairs of the Civil Liberties Section- that their wishes and points of view cannot effectively be expressed through the medium of the Association. I share this view.³³²

The Canadian Bar Association was not unaware of the key human rights issues of the period. There were several heated debates on abortion (1966 and 1971) and capital punishment (1971), and on a variety of other issues such as wiretapping, writs of assistance, youth rights and the October crisis. At times, as in the case of writs of assistance, the association lobbied to have the legislation amended.³³³ These

efforts were most often conducted through the Canadian Bar Association executive and the national network of civil liberties committees was not involved. In 1970 the national civil liberties committee was totally inactive. It finally began work again in 1972 only to spend the next ten years as a minor committee in the Canadian Bar Association, conducting research and passing resolutions at annual meetings. In many provinces, such as Alberta, British Columbia, Newfoundland and Nova Scotia, the civil liberties section attracted few members and was rarely active, sometimes going years without a meeting.³³⁴ Although the association would eventually play a prominent role during the debates on entrenching rights in the constitution, it never lived up to its potential as a national rights association.³³⁵

Toronto's Canadian Civil Liberties Association

Alongside the failure of the Canadian Bar Association and organized labour to form a network of human rights committees, rights associations also endeavoured, and also failed, to form a national rights association. The first attempt to form an autonomous national organization exclusively designed to defend the rights of all individuals with no links to a specific constituency was in 1964 with the creation of the CCLA. There was initially nothing national about the organization beyond its name. Its precursor, the Association for Civil Liberties, had also envisioned itself evolving into a national organization but had failed to develop beyond Toronto and had focussed most of its efforts in securing anti-discrimination legislation in the

Ontario. Throughout most of its early history the CCLA remained a purely Toronto-based organization concerned with local issues until it was able to secure a major grant from the Ford Foundation in 1969 which allowed the CCLA to expand outside of Toronto by helping fund groups willing to affiliate with the Toronto group. As the CCLA expanded and grew richer from various large donations and membership dues, it attempted to form permanent chapters across the country to establish itself as Canada's national rights association. Many of these chapters, however, had a short life span or chose to disaffiliate and operate independently.³³⁶ By 1982 the CCLA remained a Toronto-based organization with only a couple of active chapters. The history of the CCLA as a national organization is discussed in detail in chapter ten.

The Canadian Human Rights Foundation

Before the CCLA had managed to secure its Ford Foundation grant, another organization with the potential to act as a national rights association emerged in 1967 in the form of a Canadian Human Rights Foundation. Unlike the CCLA, this was not an advocacy group but instead a national charitable organization conducting education and research programs for promoting human rights issues. The foundation received grants predominantly from government sources including the Secretary of State and the Canada Council, as well as federal and provincial departments of Justice. Its membership included such distinguished personalities as John Humphrey (drafted the UDHR), Justice Antonio Lamer (future justice of the Supreme Court of Canada),

Professor Paul A. Crépeau (head of the Office for the Revision of the Civil Code of Québec) and Thérèse Casgrain (future senator and well known women's rights activist).³³⁷ However, the foundation was never designed to be a popular association with a broad membership. It was a fellowship of elites raising money to promote human rights issues. According to the minutes of its founding meeting, the "purpose of the Foundation is to advance the course of Human Rights by helping to finance the work of organizations and activities in this field. It would not, however, take any stand on particular issues but would restrict itself to channeling moneys to appropriate agencies."³³⁸ At no time could the Foundation honestly claim to be a national rights association.

Two years later came another attempt to form a national rights association. As early as August 1968 Kalmen Kaplansky, Chairman of the Board of Directors of the Canadian Commission on International Year for Human Rights, was talking about using the anniversary celebrations as a forum for creating a national rights association.³³⁹ Only one motion materialized from the December conference in Ottawa which represented the culmination of a year's work across the country promoting human rights for the anniversary of the UDHR. The motion called for the formation of a Canadian Council on Human Rights to act as a national rights association made up of interested individuals and voluntary agencies. Within a few months, Kaplansky brought together many of the executive members of the Canadian Commission for the International Year for Human Rights to act as the planning and

organizing committee for the Council. Funding left over from the Secretary of State grant for the International Year for Human Rights (over \$17 000) was transferred to the Council and an office was established with administrative support through the Canadian Welfare Council.

The Canadian Council on Human Rights was particularly concerned with lack of funding. A grant of \$19 500 from the Secretary of State was followed by a cessation of state funding and the Council was unable to procure funding from any additional sources. During its one year of existence, the major accomplishment of the Council was to fund a report produced by Maurice Miron surveying rights associations across the country. Miron's goal was to consult with potential members on the feasibility of a national human rights organization, their willingness to participate in such an organization and to consider means of financing such a group. Based on his findings, Miron recommended that the Secretary of State provide the Canadian Council on Human Rights with a \$47 500 grant to set up a national rights association to employ a national director as well as five regional directors.³⁴⁰ Nothing came of the report and the Council, devoid of government funding, became inactive and officially folded in 1970.

The Canadian Federation of Civil Liberties and Human Rights Association (Federation)

As was the case with the espionage commission, an important event of national proportions helped mobilize rights associations across the country and this, in turn, led to another attempt to form a national rights association. One of the long term implications of the October crisis and the use of the War Measures Act in 1970 was the creation of the Canadian Federation of Civil Liberties and Human Rights Associations ('the Federation'). It was designed as a federation of civil liberties and human rights groups, each having an equal vote and voice within the organization, paying minimal membership fees and funded by the Secretary of State. The idea behind the creation of the Federation emerged from the imposition of the War Measures Act. A collection of rights associations from Montreal, Toronto, St. John's, Edmonton, Windsor, Fredericton and Vancouver had coordinated their efforts in 1970 to publicly oppose the imposition of the War Measures Act and lobby the federal government to rescind the emergency powers as soon as possible.³⁴¹ On 18 February 1971 rights groups in Ottawa, Newfoundland and British Columbia sent a letter endorsed by ten other rights associations across the country to Quebec's Minister of Justice, Jérôme Choquette, asking the government of Quebec to compensate individuals arrested under the War Measures Act.³⁴² These initial efforts prompted the leaders of established rights associations to consider the formation of some type of national umbrella organization to provide a unified national voice.

During the October crisis an information network of rights associations was formed under the banner of the Union of Human Rights and Civil Liberties

Associations, officially established on 30 October 1970. It had the support of groups in Vancouver, Montreal, Halifax, Fredericton, Ottawa, Edmonton and Windsor. The Union published a regular newsletter, and focused its energies on applying for a grant from the Secretary of State to hold a national conference of rights associations. At this stage the Union was not an advocacy group, but an association facilitating the exchange of ideas, communication and development of national positions on public issues.³⁴³

There were several attempts to bring rights associations together into a formal organization throughout 1970 and 1971 but each failed. At a meeting in Toronto to conclude its research for the Ford Foundation, the CCLA proposed that groups from Vancouver, Winnipeg and Halifax form a national group headed by the CCLA general counsel, centred in Toronto and funded by individual membership fees. Its proposal was soundly rejected because it was felt such an organization would be easily dominated by the CCLA.³⁴⁴ Don Whiteside, who worked for the Secretary of State and was a member of the National Capital Region Civil Liberties Association, and Eamon Park of the CCLA, divided bitterly over the question of government funding. Park was adamantly opposed to any kind of government funding whereas Whiteside was equally adamant about the need for small rights associations to seek out government grants.³⁴⁵ The rift represented the basic divide between the CCLA and most of the remaining rights associations in Canada and would play a key role in

preventing the formation of a national rights association that included the largest association in the country.

Another attempt at founding a national organization was made in 1972 at a conference of rights associations in Winnipeg. Unfortunately, the same problems arose. In this case, not only was government funding an issue, but the question of control and representation in the Federation was debated. The CCLA, by far the largest rights association in the country, refused to join the Federation unless its constitution included a ban on state funding and members were given voting rights equal to the size of their membership. When no compromise could be reached, sixteen organizations formed a national organization based on principles of equal representation by group, not membership. On 27 June 1972 the Canadian Federation of Civil Liberties and Human Rights Associations was officially formed at a meeting in Montreal, the first truly national rights association in Canadian history, with representation from every province. The central aim of the organization was to liaise between rights associations and consider national policies in the field of rights.³⁴⁶ The CCLA, with its desire to ignore regional distinctions through a single national voice, would not accept such an arrangement and boycotted the new organization.³⁴⁷

Representation and funding were the core issues separating rights associations. The question of government funding was fundamentally an ideological division based on the relationship of rights groups to the state and had replaced the divisions between social democrats and communists which had prevented the formation of a national

rights association in the 1940s. A final distinction between the CCLA and the Federation was the relationship between the parent organization and its affiliates. All the organizations affiliated with the CCLA enjoyed a great deal of independence and minimal interference with their internal affairs, with the exception that any position taken on a national issue (e.g., abortion) had to be approved by the CCLA Board of Direction. In contrast, the Federation's constitution specifically stated that each member retained "complete integrity and independence in regard to its existing Constitutional arrangements, policy statements, programme priorities, finances and membership."³⁴⁸

Over the next ten years the Federation provided as much support to its affiliates as was fiscally possible, writing letters of support and working with the media to offer national credibility to a local group's campaigns. It dealt with a variety of issues from the federal Privacy Act to opposing the deportation of Haitians in 1975 who faced poverty and persecution back home.³⁴⁹ In general, however, it was a weak advocacy group and its major contribution was to network among rights associations. Nonetheless, it played a critical role in the deliberations of the Special Joint Committee on the Constitution in 1981 in which the Federation, represented by members from three separate associations, presented a comprehensive brief. Among the Federation's recommendations were revisions to section ten dealing with legal rights upon arrest. These amendments were accepted verbatim in the final draft of the Charter. Its brief also expressed concerns regarding section seven, which originally

read, “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the procedures established by law.” By qualifying the deprivation of rights as being *in accordance with the law*, the Federation argued that any government could pass a law allowing officials to ignore these basic freedoms. Instead, as was accepted in the final draft of the Charter, the Federation’s brief recommended the section be modified to include the following wording: “... except in accordance with the principles of fundamental justice.”³⁵⁰ The success enjoyed by the Federation before the joint committee was evidence of the ability of a collection of rights associations to cooperate effectively to accomplish a specific objective at the national level.

Despite its victory before the Parliamentary committee, by 1982 the Federation had failed to achieve anywhere near the same public profile as the better known CCLA. The CCLA’s brief received the most attention in the committee’s draft report (in the final report reference to specific groups was omitted). In addition, when the Minister of Justice, Jean Chrétien, introduced his suggested revisions to the government’s proposal for a Charter of Rights and Freedoms, the CCLA, not the Federation, was credited with inspiring many of the changes to the proposal.³⁵¹

Whiteside acknowledged in his presidential reports his frustration with the national media’s focus on the CCLA and the lack of attention being afforded the Federation.

While the CCLA remains active today, the Federation folded in 1990-1 after Whiteside died from cancer and several associations had stopped attending meetings

because financial support from the federal government to attend meetings had run out. The fall of the Federation could be attributed to a host of factors. The Federation's shoestring budget made it impossible to hire a permanent national director and the Federation depended on part time labour and volunteers. The situation was exacerbated by having the head office in Ottawa while the executive was scattered across the country. Ross Lambertson, one of the Federation's last presidents, found it "virtually impossible" to manage the organization from his home base in Victoria.³⁵²

Ideology, regionalism, and state funding also contributed to the demise of the Federation. It had always been a shaky coalition. Within the Federation human rights advocates were sometimes frustrated with their civil liberties counterparts, particularly on free speech issues such as pornography. Civil liberties associations such as the British Columbia Civil Liberties Association (BCCLA) had a history of conflict with egalitarians from various movements, notably feminists. As one of the BCCLA's presidents, John Dixon, once quipped: "it was very soon the case that we got to be called unconscious exploiters only on our luckiest days."³⁵³ Regional priorities further divided the Federation: members in Montreal or Vancouver continually questioned the value of belonging to a national federation when their priorities were provincial.³⁵⁴

Finally, and perhaps most telling, by the late 1980s the Federation had lost its main source of revenue when the Secretary of State refused to continue providing core funding.³⁵⁵ The founders of the Federation had never intended the organization

to be fully funded by membership fees. It began as a product of state funding and, in the end, the Federation became a victim of government cutbacks.

Between 1962 and 1982 the number of rights associations expanded exponentially, supported in large part by government funding (see next chapter). Most of the organizations born during this period did not last into the 1990s and were lucky to survive more than a handful of years. The number of active rights associations peaked in the seventies and coincided with the rise of the Federation and the availability of funding from the federal government. Most of these rights associations were affiliated with either the CCLA or the Federation; while the former achieved greater recognition throughout Canada as a national rights association, the Federation was far more representative, with members from every province. Its demise and other failed attempts to form a national rights association represent one of the more unique aspects of the history of the human rights movement in Canada.

Chapter Seven:

State Funding and the Secretary of State

One of the central themes in the history of the human rights movement in the seventies is the question of state funding. None of the first generation of rights associations had access to government funding, and it was an intensely divisive issue among rights activists in the seventies. A policy of restraint and respect for the independence of voluntary organizations gave way by the seventies to a new philosophy where the state, notably the federal government, adopted a significant role in promoting citizenship participation through voluntary agencies. Departments such as National Health and Welfare, Manpower, Immigration and others provided grants for a variety of programs and events. In the period under study, however, no department was more visible in the provision of grants, notably for rights associations, than the Secretary of State (SOS). With the exception of the Canadian Civil Liberties Association, most rights association in Canada applied for and received grants from the SOS, many of them becoming dependant on state funding.

Unfortunately, SOS files are extremely bare and highly inaccessible. It took over three years simply to access those files dealing with rights associations under numerous and exhaustive access to information requests. The following chapter summarizes the fruits of this research, and briefly reviews the role government funding played in maintaining rights associations in the seventies.

‘Strengthening National Unity’: State Funding for Non-Governmental Organizations

The federal government’s interest in promoting integration and cohesive social relations among its citizens dates back at least to World War Two when the Nationalities Branch was created to “foster and sustain national consciousness and strengthen national unity.”³⁵⁶ It was formed in 1941 under the War Services Department and in 1945 transferred to the SOS to pursue the integration of ethnic groups in Canada with a particular focus on immigrants and refugees. Five years later, the branch became an independent department within the federal government and was renamed the Department of Citizenship and Immigration.

The first grants offered by the Citizenship Branch of the Department of Citizenship and Immigration to voluntary organizations began in 1951-2.³⁵⁷ These programs were designed to promote immigrant integration through social events and education programs. According to Leslie Pal, by the mid-1950s the branch was increasingly focused on national unity. “The dual focus on citizenship and integration had inexorably led the branch to project itself into wider and wider circles of societal activity.”³⁵⁸ The branch’s concern with immigration and refugees led it into the field of human rights where it organized a seminar on human rights at the University of British Columbia and funded other citizen-led initiatives. Among the roles of the branch, soon after Canada joined the United Nations Commission on Human Rights for the first time, was to provide information to the Department of External Affairs

about the country's progress on citizenship issues such as inter-group (i.e., racial or ethnic) relations.³⁵⁹

In 1962 the department initiated the practice of offering a limited number of grants to voluntary associations fostering Indian and immigrant integration, as well as group understanding and citizenship promotion. These grants were capped at \$5000 per organization for three years, and were to be used for specific projects and not operational funding.³⁶⁰ By this prohibition the government wished to avoid getting involved in the creation and operation of voluntary groups. Grants were to be directed to established organizations.³⁶¹ As of 1964 no funds had yet been made available to rights associations, although a report entitled "A New Focus for the Citizenship Branch" in 1965 recommended grants be provided for 'civil liberties leagues' in Canada.³⁶² The report had little initial success. In 1966 a total of \$202 500 in grants were allocated to various non-governmental organizations across Canada (approximately \$65 000 going to Indian friendship centers alone) with nothing allocated for rights associations.³⁶³

A reorganization of government departments in 1966 led to the re-integration of the Citizenship Branch into SOS. The Citizenship Branch of the SOS continued with its original mandate associated with citizenship participation: the promotion of inter-group and inter-regional understanding throughout the country and increased participation by ethnic groups in community activities. It preached tolerance and understanding towards racial and ethnic minorities by providing funds for voluntary

groups, organizing conferences and publishing educational materials. In 1967 the Branch's priorities were narrowed to five areas: human rights, immigrant participation, Indian participation, travel and exchange programs, and youth. Human rights, in this context, did not extend to the traditional freedoms such as speech and association. All the Branch's activities and grants with respect to human rights focused on racial and ethnic integration and tolerance. A total budget of \$2 003 000 was allocated to the citizenship development branch of the SOS in 1968, with \$95 000 allocated for the human rights program.³⁶⁴

1968: International Year for Human Rights

International Year for Human Rights was a watershed for the SOS. In 1968, Trudeau became Prime Minister and Gerard Pelletier, former editor of *La Presse* and member of the Ligue des droits de l'homme, was appointed Secretary of State. To celebrate the anniversary of the UDHR the budget for the human rights program expanded exponentially; the \$95 000 grant to the Canadian Commission for the International Year for Human Rights was a marked increase from the usual \$5000 grants. Other programs enjoyed substantial increases under Pelletier's tenure (1968-1972), notably grants to native groups and friendship centres, initially budgeted at \$100 000 in 1967 expanding to \$540 000 in 1970 and \$5 205 000 in 1972 (see Table 1). In 1966 \$10 900 in grants were given under the category of 'human relations' while \$30 000 was provided in sustaining grants to the Canadian Citizenship Council

and the Indian-Eskimo Association and \$73 150 was made available for ‘citizenship promotion’.³⁶⁵ Grants for the promotion of human rights continued to remain relatively high under Pelletier, with \$95 000 allocated in 1968 and \$80 000 in 1972 (see Table 2). In his extensive study of Secretary of State funding, Leslie Pal suggests that the federal government’s largess during this period was partially designed to counter French Canadian nationalism by enhancing the role of the federal government in the voluntary sector and encouraging citizen participation in national debates and institutions.³⁶⁶

State Funding in the Trudeau Era

After 1968 SOS became the central department responsible for the federal government’s human rights program. A memorandum prepared for the cabinet in October 1968 endorsed SOS as the only department with the necessary experience and field officers capable of administering a broad human rights program. For years it had worked with External Affairs on human rights issues. The memorandum also set the stage for providing financial support for rights organizations, suggesting they would support national unity by developing public attitudes conducive to equality of treatment and opportunity. Cabinet approved the memorandum in December 1968 and the SOS began dispensing grants soon thereafter.³⁶⁷

Within two years grants were being allocated to a variety of rights associations (see Table 3). A variety of other organizations apart from formal rights associations

were funded under the SOS human rights program, from the Nova Scotia Association for the Advancement of Coloured People to the Toronto Christian Resource Centre. Of the 249 grants totaling \$1 082 472 provided through the Citizenship Branch in 1970 to voluntary groups, \$58 670 was provided for 22 associations engaged in human rights activities.

*Table 1:
Funding for native organizations and friendship
centres, 1967-1981*

<i>Fiscal Year</i>	<i>Budget</i>
1968	\$175 000
1969	\$378 168
1970	\$540 000
1971	\$1 907 110
1972	\$5 205 000
1973	\$8 436 000
1974	\$9 403 633
1975	\$7 175 402
1976	\$*
1977	\$8 395 000
1978	\$8 657 000
1979	\$9 488 000
1980	\$9 488 000
1981	\$10 500 000

*Source: Report of the Department of the Secretary of
State of Canada, 1968-1981*

**information on grants was not provided for the year
1975-6*

*Table 2:
Group Understanding and Human Rights Branch,
Secretary of State, grants, 1968-1981*

<i>Fiscal Year</i>	<i>Budget</i>
1968	\$95 000*
1969	\$100 000**
1970	\$58 670
1971	\$85 000
1972	\$80 000
1973	\$140 000
1974	\$225 000
1975	\$138 395
1976	\$139 132
1977	\$995 000***
1978	\$995 000
1979	\$620 000
1980	\$224 000
1981	\$500 000

*Source: Report of the Department of the Secretary of
State of Canada, 1968-1981*

**International Year for Human Rights*

***The bulk of these funds went to the Canadian
Council on Human Rights*

****An additional \$80 000 was made available for
educational activities*

*Table 3:
Funding to rights associations by the Secretary of State for 1969-1970*

Alberta Human Rights Association	\$4000
Atlantic Regional Human Rights Conference	\$600
British Columbia Civil Liberties Association	\$5000
British Columbia Human Rights Council	\$2500
B.C. Human Rights Council (Regional Committees & Council)	\$5000
Canada Council for Human Rights	\$19 500
Canadian-Asian Sikhna Committee, Williams Lake, B.C.	\$1000
Canadian Association for Adult Education	\$250
École Polyvalente de Buckingham	\$300
École Secondaire Immaculée-Conception	\$150
Fredericton Civil Liberties Association	\$100
Hamilton Growth Centre	\$1000
Newfoundland-Labrador Human Rights Committee	\$250
Nova Scotia Association for the Advancement of Colour People	\$5000
New Brunswick Committee Project	\$500
Saskatchewan Association on Human Rights	\$3500
Séminaire bilingue sur les Nations Unies	\$520
Sudbury Mayor's Committee on Human Rights	\$1000
Toronto Christian Resources Centre	\$3000
United Nations Association of Canada	\$4500
University of New Brunswick Human Rights Group	\$500
University of PEI Student Union	\$500
<hr/>	
Total	\$58 670

Source: Report of the Department of the Secretary of State of Canada for the Year Ending 31 March 1970.

*Table 4:
Individual Paid Memberships in Civil Liberties and Human Rights Associations, 1971-6*

Association	1971	1972	1973	1974	1975	1976	1977
Newfoundland-Labrador H.R.A.	40	120	120	119	130	125	117
Prince Edward Island C.L.A.	NF	100	65	80	35	119	250
Nord-est du Nouveau Brunswick	NF	300	200	400	250	30	30
Sud-est du Nouveau Brunswick	NF	NF	1500	10	10	IN	IN
*C.C.L.A., Fredericton	60	40	60	35	52	IN	10
Nova Scotia C.L. & H.R.A.	233	230	75	125	120	IN	IN
Ligue des droits de l'homme	350	300	550	750	750	738	487
C.L.A. Cornwall	NF	NF	20	55	30	25	20
C.L.A. National Capital Region	160	150	38	72	79	68	113
C.L.A. Hamilton	40	20	92	90	90	150	NA
*C.C.L.A. Toronto	2000	4000	2750	4000	4000	3000	3000
*C.C.L.A. London	20	20	IN	6	20	IN	IN
Kitchener-Waterloo H.R. Caucus	NF	NF	14	35	30	40	27
H.R. Committee, Sudbury Region	NA	30	40	IN	35	25	NA
Owen Sound H.R. Committee	20	20	IN	IN	IN	IN	IN
Kenora Area Civil Liberties Group	NF	NF	NF	NF	NA	IN	IN
*C.C.L.A., Windsor	75	50	IN	IN	10	10	10
*C.C.L.A., Manitoba	200	100	40	10	IN	IN	IN
Manitoba C.L. & H.R.A.	NF	NF	NF	NF	NA	NA	NA
Winnipeg C.L.A.	NF	NF	NF	NF	NF	NF	14
Saskatchewan Association on H.R.	75	75	200	235	475	456	480
*C.C.L.A., Regina	60	60	75	18	12	12	NA
Alberta H.R. & C.L.A.	200	200	250	150	250	50	75
Alberta H.R. & C.L.A., Lethbridge	NF	NF	25	24	IN	25	IN
Fort McMurray Citizens H.R. Council	NF	NF	NF	NF	NF	NF	20
Lethbridge Citizens H.R. Council	NF	NF	NF	NF	NF	NF	25
British Columbia C.L.A.	500	450	500	463	364	268	259
British Columbia H.R. Council	NF	45	80	72	103	100	85
Williams Lake H.R. & C.L.A.	NF	NF	30	30	30	7	36
Comox-Strathcona C.L.A.	NF	NF	NF	NF	41	IN	IN
Quesnel C.L. & H.R.A.	NF	NF	NF	30	70	18	60
Kamloops Civil Liberties Society	NF	NF	NF	NF	22	41	35
Abbotsford C.L.A.	NF	NF	NF	25	IN	IN	IN
Powell River C.L.A.	NF	NF	NF	NF	NF	57	29
South Okanagan C.L.A.	NF	NF	NF	NA	26	38	100
North Central C.L.A.	NF	NF	NF	NF	NF	NA	NA
Fair Practices Committee, Whitehorse	NF	NF	NF	NA	IN	IN	IN
Yukon H.R.A., Whitehorse	NF	NF	NF	NF	NA	IN	IN

Source: Rights and Freedoms, No.21, March 1976 and No.25, March 1977.

*chapters of the Canadian Civil Liberties Association

*Table 5:
Rights Associations Receiving Government Funding, 1970-1982*

The following is a list of groups which received government funding throughout the 1970s but are not listed in table three.

Association	Sources of Funding
Alberta Human Rights and Civil Liberties Association	Secretary of State/ Government of Alberta
Civil Liberties Association, National Capital Region	Secretary of State
Comité pour les droits de l'homme du nord-est (N.B.)	Secretary of State
Comité pour les Droits de l'homme du Sud-Est (N.B.)	Secretary of State
Cornwall Civil Liberties Association	Secretary of State
Fredericton Chapter, CCLA	Secretary of State
Kamloops Civil Liberties Society	British Columbia Law Foundation
Kitchener-Waterloo Human Rights Caucus	Secretary of State
Lethbridge Citizens Human Rights Council	Secretary of State/Ministry of Justice (Federal)
Manitoba Association for Rights and Liberties	Secretary of State
Nova Scotia Civil Liberties Association	Secretary of State
Prince Edward Island Civil Liberties Association	Secretary of State
Quesnel Civil Liberties and Human Rights Association	British Columbia Law Foundation
Saskatchewan Association for Human Rights	Secretary of State
South Okanagan Civil Liberties Association	British Columbia Law Foundation
Williams Lake Civil Liberties Association	British Columbia Law Foundation/ Secretary of State

Between 1970 and 1982, the operations and size of SOS and the Citizenship Branch continued to expand. As tables one and two demonstrate, grants to native organizations and friendship centres reached \$10 500 000 by 1981 and the human rights program peaked in 1977 with \$995 000, diving as low as \$224 000 in 1980 but rising to \$500 000 in 1981 to coincide with the Trudeau government's project to patriate the constitution. The human rights program remained a small percentage of the overall budget of the Citizenship Branch which was \$4.6 million in 1969-70 and \$44 million in 1971-2. An average of 30 to 34 organizations received funding each year through this program. Some, such as the Ligue des droits de l'homme, received as much as \$65 000 in 1978, while the smaller Newfoundland-Labrador Human Rights Association received \$15 000 in the same year.³⁶⁸ Under Pelletier the branch and SOS in general had dispensed with the classical liberal hesitancy of becoming implicated in the maintenance of social movement organizations and were generously providing the bulk of funding for many associations.

Another innovative program entitled the Opportunities for Youth program was initiated in 1971 and proved to be another source of funding for rights associations. While direct SOS grants provided project or core funding, groups used the program to hire students to conduct surveys and do research.³⁶⁹ The Opportunities for Youth program was to provide socially relevant employment to high school and university students in high unemployment and economically depressed regions. By 1973, 3014 different projects were administered under the program employing 30 255 students.³⁷⁰

Rights associations also took advantage of the Local Initiatives Program. The program was also created in 1971 and, as with Opportunities for Youth, discontinued in 1977 as a result of massive budget cuts. The aim of the program was to fund local initiatives to benefit the community by producing previously non-existent facilities and services or use untapped resources within the community. In 1975 the British Columbia Civil Liberties Association (BCCLA) received a \$65 000 Local Initiatives Program grant to send field workers across the province to promote human rights issues through education programs.³⁷¹

State Funding and Rights Associations

The files of the Secretary of State and its annual report contain a breakdown of grants to specific rights association in only one year, 1970, as detailed in table three. Otherwise, there is no information on how much money was provided to which associations and based on what criteria. Nonetheless, other sources demonstrate the pervasiveness of such grants across the country. In fact, three of the four case studies received SOS grants ranging from a few hundred dollars to thousands each year. Only the Canadian Civil Liberties Association refused to accept government grants, although in 1966 it made at least one attempt to request government funding, which was refused.³⁷² The groups in St. John's, Vancouver and Montreal were dependant on SOS funds (in some cases supplemented by provincial government funds as well) for maintaining staff and an office. Each group organized a variety of recruitment

campaigns but membership numbers were never high enough to provide sufficient funding for operational expenses and in general accounted for less than 10 percent of their budget.³⁷³ They wholly dependant on government funding.

The Canadian Council on Human Rights was one example of a national rights association unable to survive without state funding.³⁷⁴ But no organization better exemplifies a dependance on state funding than the Federation. The initial meeting which led to the formation of the Federation in Winnipeg in 1971 was funded by a \$3500 grant from SOS acquired by the BCCLA.³⁷⁵ From then on SOS grants ranging up to \$5000 were provided to the Federation to cover the costs of its annual meetings. Operational and project funding was also provided by the SOS over the years, with grants as high as \$50 000.³⁷⁶ With membership fees capped off at \$25 for each organization (later raised to \$250 in the 1980s), there was no way the Federation could have covered its own expenses, much less an annual meeting, without government funding.³⁷⁷ Any attempt to change the fee structure was vigorously opposed by such groups as the BCCLA which was determined to keep the fees equal for all organizations.³⁷⁸ The Federation once endeavoured to secure non-governmental funds through an application to the Donner foundation for a \$48 900 grant to study police and native community relations.³⁷⁹ The application failed and other attempts between 1972 and 1982, including the creation of the Rights and Freedoms Foundation (a charitable wing of the Federation designed to raise funds), to encourage large private donations were equally unsuccessful. The group was clearly

at the mercy of government funding. With no alternative means of support, the ability of the Federation to operate an office, hire staff, publish a newsletter and organize annual meetings depended each year on the generosity of the Secretary of State.

As table three and the discussion above demonstrates, rights groups in British Columbia, Newfoundland, Quebec, Alberta, New Brunswick, Saskatchewan and Sudbury, as well as two national groups (Canadian Council on Human Rights and the Federation), all received extensive government funding. A thorough analysis of recently released SOS files combined with interviews and archival research reveals the names of a host of other rights associations at the receiving end of state funding (listed in Table 5). Of all the rights associations operating in Canada in the seventies which lasted more than a few years, only two, the CCLA and its Hamilton chapter, managed to survive without state funding. An entire network of social movement organizations was, in effect, bankrolled by the federal government. As the case studies will demonstrate, however, dependence on state funding may have constrained the activities of rights associations, but it did not discourage them from challenging the state on a variety of fronts.

Part III: Case Studies

Chapter Eight:

British Columbia Civil Liberties Association

The Sons of Freedom was a minor sect of the Doukhobours in southwestern British Columbia, at most numbering a couple of hundred members. Zealous traditionalists, they rejected materialism and encouraged their Doukhobour brethren to adopt a more religious lifestyle and avoid the trappings of modern society in everything from exploiting animals to the use of electricity. This 'encouragement' went far beyond simply adopting a particular lifestyle for themselves; bombings and destroying Doukhobours' property, burning symbols of materialism and nude parades to demonstrate Adamite simplicity were among the Freedomites' more notorious activities from the 1930s to the 1960s as they waged a virtual guerilla war in southwestern British Columbia. From 1923 to 1962, the Freedomites were responsible for over 1100 arsons and bombings. The federal government and the RCMP struggled to deal with the violence, beginning with imposing harsh sentences of up to three years in jail for nude paraders, and seizing Doukhobour children, in a series of raids between 1954 and 1960, who were then sent to state institutions.³⁸⁰ But the violence continued, culminating in a string of 259 bombings and arsons in 1962 alone in the Kootenay region.³⁸¹ On 24 March 1962 the RCMP's new tactic was revealed. One hundred and fifty officers (out of total of 700 stationed in B.C.) raided the town of Krestova to arrest 57 members of the Fraternal Council of the Sons of

Freedom, having already detained 10 others and issued warrants for three more.³⁸²

The charge: conspiracy to intimidate the Parliament of Canada and the Legislature of B.C.³⁸³

The Freedomites' tactics had earned them little public sympathy despite the loss of their children and the imprisonment of hundreds of nude paraders. Coverage in the *Vancouver Sun* and *The Province* in 1962 suggests that the media approved of the police's determination to contain the sect through rigid law enforcement. The decision to use the extraordinary charge of intimidating Parliament and the legislature, however, had lasting repercussions in the province long after the Freedomites had disappeared. In reaction to the raids, a civil liberties committee was formed in Vancouver to raise money for the defence of those Doukhobours charged. The British Columbia Civil Liberties Association (BCCLA) was thus born from a concern at excessive police powers and state repression of an unpopular minority group, a dominant theme in the organization's activities for the next twenty years. This chapter will explore the basic structure of the BCCLA and the civil liberties ideology informing its activism, charting its rise from a small collection of academics meeting in the halls of the University of British Columbia to an outspoken, well funded and widely respected community group active in the defence of individual rights. Several key developments in British Columbia between 1962 and 1982 are also examined from the perspective of the province's most enduring rights association. In particular, the BCCLA dedicated itself to defending against

censorship, the use of the War Measures Act in 1970, abuse of police powers and compulsory treatment of drug addicts. While the association would prove highly successful in many of its endeavours, it chafed at the inability of the courts to act as an effective forum for the defence of fundamental freedoms in British Columbia.

A New Era Begins: The British Columbia Civil Liberties Association

An Association is Born

On 9 December 1962 a public meeting held at International House on the campus of the University of British Columbia, attended by 80 people, led to the creation of the BCCLA.³⁸⁴ The original Board of Directors consisted mainly of university professors and lawyers, led by Philip Hewett, an well-known Anglican minister in Vancouver.³⁸⁵ They immediately established a committee to examine the Freedomite issue and created a 'Doukhobour Defence Fund' for litigation and investigation into the conditions at Agassiz prison where at least 104 Doukhobour, men, women and children were held.

The conspiracy charges leveled against the Fraternal Council had been dismissed months prior to the formal creation of the BCCLA. In July 1962, at a preliminary hearing, Sid Simons, one of the group's founders, had defended the accused by arguing that there was no direct evidence of a conspiracy and that mere association with the Council was not sufficient to warrant conviction or even a trial. In handing down his decision, Judge William Evans concluded that the Crown did not

have enough evidence to justify going to trial. The two witnesses presented by the Crown gave contradictory testimony and the judge could find no evidence the Freedomites had taken any action to intimidate the legislature.³⁸⁶ More than 100 Doukhobours continued to be held at Agassiz prison under deplorable conditions, and the newly minted BCCLA successfully lobbied the provincial government for several early releases. The conspiracy charges were eventually dropped with no one having been brought to trial.³⁸⁷

The BCCLA was the first attempt to form a civil liberties association in the province since the demise of the Canadian Civil Liberties Union's Vancouver chapter soon after the end of the Second World War.³⁸⁸ RCMP reports on the new organization found no links between the BCCLA and its predecessor, although both had been formed and operated largely on the campus of the University of British Columbia.³⁸⁹

Following the initial meeting on 9 December 1962, an executive for the BCCLA was elected which proceeded to incorporate the group under the Societies' Act on 11 February 1963.³⁹⁰ Hewett soon stepped down as president due to other commitments and was replaced by James Foulks, a professor of pharmacology at UBC. The remaining executive included John Fornataro (Vice President, professor), Michael Audain (Executive Secretary, student), Margaret Erickson (Recording Secretary, housewife), and Fritz Bowers (Treasurer, professor).³⁹¹ The original constitution limited the group's operations to those "chiefly carried on in the Province

of British Columbia,” and drew upon the UDHR, French Declaration of the Rights of Man and the bills of rights in the US, Britain and Canada as its guiding principles.

A few basic observations can be noted at this stage about the BCCLA, whose structure and membership remained relatively consistent between 1962 and 1982. It was predominantly a male organization, with only three or four women elected to the Board at various stages and serving as the occasional vice president, but never as president. The Directors of the association were white, middle class professionals living in the Lower Mainland. More than 80 percent of the Directors between 1962 and 1982 were either lawyers, professors or social workers, with a scattering of journalists, housewives and students filling out most of the remaining positions on the Board. Membership was open to anyone who supported the group’s principles, and while several members of the NDP sat on the Board, none from the Social Credit Party joined.³⁹² Harry Rankin, a Vancouver city counselor and a communist who never joined the Communist Party of Canada, noted the lack of minorities represented on the Board and warned the organization against becoming too academic.³⁹³ An editorial in the *Vancouver Sun*, heralding the creation of the BCCLA, similarly cautioned the group that “this academic, left-wing orientation should not be reflected in the causes the [BCCLA] chooses to defend. Trade unionists or Doukhobours ... are not the only people whose liberties are occasionally threatened.”³⁹⁴ Although the BCCLA was never constrained by any kind of partisan bias in its activities, its first

twenty years of activity would be characterized by close ties with the NDP and an inability to construct a leadership structure which reflected the broader community.

Dogma in the Classroom: Committees and Early Activism

The BCCLA's earliest activities were by necessity limited, with a budget of less than \$2000 in the first few years, rising to \$6230 in 1969 at which point the group appointed its first part time assistant and secured an office in downtown Vancouver. The association initially provided free legal advice over the phone and formed several committees to conduct research and lobby government. The existence of a committee was no assurance of anything actually being done, but it did hint at the group's priorities in these early years. Following the 1963 AGM, committees were established to work in the following areas: Sons of Freedom, fund for racial equality, legal aid, police powers, censorship, and religion in schools. The committees expanded over the next decade to include the rights of B.C. Indians, trade unions, private offenses, bail and treatment of prisoners before trial, rights of tenants, immigration, children, private offences, criminal libel, contempt of court, expropriation, conspiracy, coroner's act and drivers license.³⁹⁵ Dependence on volunteer work was a significant obstacle to achieving most of the association's early goals. Few of the committees did anything more than provide a report, and most became moribund within a few years.

The committee on religious education is an example of why this aspect of the BCCLA's activities did not prove effective in the long run. British Columbia operated a secular education system with no publicly funded religious schools. Only the Lord's Prayer was permitted in public schools and clergy were banned from the positions of superintendent, teacher, trustee or inspector. In an attempt to combat demands by religious groups for separate schools, the provincial government amended the Public School's Act in 1944 to require readings from the Bible and the Lord's Prayer in all public schools.³⁹⁶ When the BCCLA was formed one of its original committees concerned itself with removing the 1944 amendment, but it seems to have done very little until 1969 when a report was prepared by one of the Board members, Herschel Hardin. The report recommended an amendment to the Public Schools Act to secularize public schools and remove all religious practices while encouraging the secular study of religion.³⁹⁷ The report was forwarded to the provincial government but received no response. Hardin then sought out his only natural ally outside the BCCLA with the resources to raise the public profile of the issue: the British Columbia Teachers' Federation.

The teachers' federation had been grappling with this issue since at least 1958, when local federation leaders raised concerns over religious practices in schools. In a response to a letter in 1958 from Vaughan Lyon of the United Church, J.A. Spragg of the teachers federation claimed that "many of the active advocates of religious education seem to be interested primarily in using the time, authority, and the

influence of the public schools to further the specific dogma of their particular denomination or sect. It is our opinion that the schools should foster attitudes of tolerance and mutual understanding, and that introduction into the schools of the divisive influences of sectarian instruction would be inconsistent with this objective.”³⁹⁸ In 1964, after several failed attempts by various teachers locals to push the union into an official position, a policy was adopted at the teachers federation annual meeting for the removal of religious exercises in B.C. schools. A committee was immediately struck to examine the issue, and it concluded that teachers felt a degree of coercion in following religious exercises despite the option to be exempted under the legislation, and that teachers felt unqualified to discuss the theological aspects of Bible readings.³⁹⁹

These developments did not inspire change. While there was a degree of consensus in the teachers federation against religious practices in schools, it was not a priority for the union. A later report, compiled by Philip Hewett in 1968, concluded that while a majority of teachers opposed the practice it had broad public support and the teachers federation could alienate large segments of the public if it challenged the practice.⁴⁰⁰ The union corresponded briefly with members of the provincial cabinet about considering amendments to the Public Schools Act with little success, and the issue was quietly dropped by the union’s executive.

Hardin attempted to reignite the debate within the B.C. Teachers Federation and the B.C. Parent-Teacher’s Federation in 1969 through correspondence with the

executive and a request that he be allowed to address the latter's annual meeting. The teachers federation and the parents association had the resources and public profile to raise a serious public debate on this issue in a way that the BCCLA, still a young organization, could not do alone. His request to speak was quickly rebuffed, with the parent-teachers' association spokesman noting the failure of a motion two years earlier by a local federation to ban bible readings in schools.⁴⁰¹ The disinterest of the B.C. Teachers Federation and parent-teacher's association's executives, and the failure of both the BCCLA and teachers federation to push the government to consider amending the legislation, left no more options for action. The committee on religious education did not continue operating after its 1969 report. As will be seen in the cases of the Newfoundland-Labrador Human Rights Association and the Canadian Civil Liberties Association, a rights association had targeted religious education as a key rights issue from its founding but soon found its efforts ineffective.⁴⁰²

'Another Unwelcome Organization Issuing Press Releases': Tactics and State Funding

Education was another important aspect of the association's activities, as it was with most of the other rights associations across the country. It organized seminars and invited speakers to lecture on a variety of issues, although few attended. More effective was the group's publications, the newsletter *Democratic Commitment* beginning in 1967 and increasing to over 4000 copies a year by the late 1970s, and the

booklet *Arrest* published continually for the next two decades. In 1980 alone the BCCLA sold 10 000 copies of its three booklets, *Arrest*, *Discrimination* and *Youth and the Law*.⁴⁰³

The BCCLA received its first government grant in 1971 to support its educational program. Opportunities for Youth and the Local Initiatives Program provided grants in 1971 and 1972 through the federal Secretary of State (approximately \$6000 each year) to design educational material and programs for schools and community groups. The group was given a major boost in 1973 with a \$35 000 grant from the federal government's Local Initiatives Program to expand its operations beyond Vancouver.⁴⁰⁴ The new grant provided for the hiring of a group of field workers who traveled across the province to create local rights associations to inform individuals of their rights. Field workers also provided para-legal services to inform people about the availability of legal aid (created under the NDP government in 1972), alternative avenues for redress, helping secure counsel, and contacting relatives for bail. The project initially enjoyed considerable success; civil liberties associations were formed in Powell River, Kamloops, Penticton, Quesnel, Prince George, Comox-Strathcona Courtnay, Kelowna, Williams Lake and in the North-Central and South Okanagan regions. This was the closest the BCCLA ever came to forming chapters outside Vancouver, although these new associations were independent and did not receive direct funding from the BCCLA outside the government grant. Unfortunately, it soon became evident that the local associations

depended heavily on the field worker and, once he/she moved on to a new city, several associations became defunct within a year or two.⁴⁰⁵

The BCCLA received additional support from several city councils between 1975-1978 for local community projects. A Neighborhood Action Program was initiated in Vancouver in 1975 to “try and enlist the support of individuals within a neighbourhood and, with the cooperation of local police departments, to reduce the incidents of vandalism and harassment allegedly of a racially discriminatory nature. The hope was that if people of an area could meet together in an informal atmosphere, they could be encouraged to join in a program to help protect their neighbours from racial harassment.”⁴⁰⁶ In a rare moment of close cooperation, the BCCLA and RCMP built lists of nineteen families in Surrey where racial tensions had been high, particularly among East Indians. Teams canvassed the neighborhood, isolated individuals suspected of vandalism and other offences to be targeted by the police, and organized neighborhood meetings to encourage community cooperation to reduce racial tensions. It was a creative and proactive approach to rights activism outside Vancouver, albeit limited in scope.⁴⁰⁷

Education, legal advice and research were the three main services offered by the BCCLA until 1982.⁴⁰⁸ The scope of these activities would change as additional funding allowed the group to establish a permanent office and extend its activities beyond Vancouver for a limited time. A *Vancouver Sun* editorial serenading the young organization in 1962, however, not only warned the BCCLA’s directors to

ensure the protection of everyone's civil liberties whatever their political leanings, but also encouraged them to focus on the courts in order to avoid becoming "another unwelcome organization issuing press releases."⁴⁰⁹ This principle held true for several members of the BCCLA, and it became a continuous struggle throughout the 1960s and 1970s to seek out lawyers willing to provide free legal support or, in some cases, to create a legal defense fund. Board members were often called upon to provide free legal services, and a network of about 80 volunteer lawyers was available to defend people abused by the police or jailed demonstrators, usually students or the poor with no means to hire their own lawyers.⁴¹⁰ Test cases were another form of defending civil liberties in B.C., a process involving a court challenge to undermine contentious pieces of legislation. As the BCCLA matured, however, it discovered two important obstacles to using the courts as a defence against attacks on civil liberties.

Overcoming Adversity: Obstacles to Human Rights Activism

The first obstacle was financial. Unlike the many associations created in the wake of the International Year for Human Rights or those located in small urban areas such as St. John's, the BCCLA had a relatively strong membership base. Sixty members in 1962 rose to more than 500 by the late 1970s; in 1972 it collected \$4 509 in dues, rising to \$7 416 by 1979 (these numbers include sustaining and organizational members). Not until the early 1980s did membership dues exceed

more than 10 percent of the budget. Combined with annual donations of anywhere from \$500 to \$1000 and profits from the booklet of approximately \$2000, the BCCLA could boast an annual revenue of approximately \$10 000 in a good year, exclusive of government grants.⁴¹¹ Ten thousand dollars hardly constituted prosperity and, limited to these funds, the BCCLA's services would have been severely curtailed. The organization was clearly dependent on government funding.

At one point, in 1975-6, the BCCLA enjoyed a revenue base of almost \$150 000. Most of these monies were government grants directed at specific projects, mainly educational work in schools and field workers, not legal services. Any funds to hire lawyers would have to come out of donations or membership dues left over from administrative costs.⁴¹² A legal defense fund was established in 1970-1 with usually a few thousand dollars available for costs and hiring a lawyer. The funds were used in 1978 for a civil case when a couple sued the Vancouver police for physical abuse. The Schucks were grabbed by undercover police, roughed up and arrested on suspicion of purchasing illegal narcotics simply for walking near a known drug dealer.⁴¹³ In 1982 the BCCLA funded its first Supreme Court challenge over the legality of the provincial Heroin Treatment Act which imposed compulsory treatment on heroin addicts. The Schuck case alone cost \$1000 and the Supreme Court appeal almost \$9000.⁴¹⁴ Both cases were lost. The high cost of any court action made it difficult for the BCCLA, with most of its \$150 000 trapped in administration or

government project grants, to contemplate taking a case to court unless free legal services could be made available.

Despite its dependance on state funding, however, there is no evidence the organization ever shied away from an issue to avoid insolvency. In fact, as the discussion below suggests, the BCCLA never avoided taking on unpopular issues which could have cost them members, such as the Ku Klux Klan's right to free speech. All three levels of government were also targeted by the BCCLA for intense criticism on a variety of fronts and at no time was the association in danger of losing its funding as a result of its activities.

The second obstacle was institutional. Until the advent of the Charter of Rights and Freedoms, judges generally frowned upon requests by third parties for intervenor status. Many judges, for instance, were concerned about the possibility of interveners turning their courtroom into a public forum comparable to a royal commission.⁴¹⁵ There was nothing peculiarly Canadian about this philosophy as Australian and English rights associations also found the courts hesitant to allow them to submit factums, even in appeals to the High Court or Privy Council.⁴¹⁶ When the provincial government threatened teachers with dismissal in 1970 if they expressed sympathy with the Front de libération du Québec, several university professors in the BCCLA sought to challenge the legislation in court. It came down to a question of who had legal standing. The judge found "no question whatsoever of the plaintiffs being in jeopardy. I think jeopardy must mean actual jeopardy not hypothetical

jeopardy, which could arise only if the plaintiffs advocated one or other of the policies specified in the impugned Order in Council. ... There is no suggestion they have or wish to do so.”⁴¹⁷ Hippies, protestors and students alike enjoyed free legal advice and assistance in bail hearings or magistrates’ courts thanks to members of the BCCLA Board of Directors, even if in most cases it was a futile gesture to attempt to convince a judge that the police had overstepped their bounds.⁴¹⁸ In general, however, the BCCLA found the courts to be a limited forum for defending civil liberties.

Reg Robson

For the first twenty years of its existence the BCCLA would prove to be one of the most active rights associations in Canada and a leading influence among rights associations across the country. A key figure in the association’s early history was Reg Robson, a sociology professor at the University of British Columbia whose major publications focussed on the effectiveness of alcohol treatment centres and sociological factors affecting professional recruitment for academics and nurses. One of the founders of the association, Robson sat on the Board of Directors until at least 1982 and served in various executive positions including executive secretary (1969-1972, 1978), president (1972-5, 1980-2) and treasurer (1975, 1979). No member was more dedicated than Robson, who served in these various capacities when no one else was available and helped to ensure the viability and institutional memory of the association. It was Robson who would fight with the CCLA over their differing

visions of what a national association should be and pushed for the creation of the Federation while serving on its first executive. Robson took the lead in doing media interviews on behalf of the BCCLA during the FLQ crisis, he oversaw the creation of new rights associations across British Columbia, and would be a key player in the association's most active campaigns, including its reaction to the Gastown riot and challenging the Heroin Treatment Act. It was thanks to his dedication and perseverance that the association thrived and became an effective rights advocate provincially and nationally.

'A Pitiful Record For An Association That Claims National Status':

Constructing A National Rights Association

The BCCLA played a central role in the creation of the Canadian Federation of Civil Liberties and Human Rights Associations. Robson secured funding to organize meetings in Winnipeg and Montreal, initiated the first cooperative actions during the October crisis, corresponded (along with Whiteside) with rights associations, chaired the meetings, wrote the constitution, and provided leadership on the Federation's Board of Directors.⁴¹⁹ Had Robson and his cohorts managed to convince the CCLA to join the Federation, it would have been a truly inclusive national rights association. But divisions among rights associations, and particularly between the BCCLA and CCLA, made such unity difficult.

The relationship between the BCCLA and CCLA was always quite tense. The BCCLA letterhead in 1967 indicated that it was formally affiliated with the CCLA, although except for doing some research under the CCLA's Ford Grant there is no evidence of the two groups having worked together. Affiliation, even if it existed in practice, was quickly dismissed by the membership and the BCCLA executive in 1968 and was never again reconsidered. The Board of Directors decided that the CCLA was "primarily an Ontario Association [and] there would be some reluctance on the part of the BC Association to regard it as an appropriate Federal organization of which they would become an affiliate."⁴²⁰ Nonetheless, the BCCLA accepted funding from the CCLA to conduct a survey on due process in British Columbia. The report produced by the BCCLA in 1970 was the only project where the associations worked together on a common goal.

Tensions between the BCCLA and the CCLA emerged as early as 1970. On behalf of the BCCLA, Robson thwarted attempts by Alan Borovoy and the CCLA at this time to create an informal network of rights associations coordinated by the CCLA. Robson believed that Borovoy's proposal would have created a paper organization dominated by the Toronto group. Robson was interested in creating a more concrete and independent association.⁴²¹

In fact, the CCLA's efforts to evolve into a national rights association often rankled members of the BCCLA. In the BCCLA's newsletter, *Democratic Commitment*, several contributors expressed frustration with the CCLA's practice of

‘poaching’ BCCLA members in British Columbia. By refusing to explicitly acknowledge in its solicitation campaigns that it was not affiliated with the BCCLA, the CCLA was signing up members who believed they were joining the Vancouver association.⁴²² In effect, the CCLA was stealing members from the BCCLA. Robson and others on the BCCLA Board of Directors also accused the CCLA of falsely laying claim to national status when, in reality, it was nothing more than an Ontario organization with a scattering of members outside the province. Hugh Keenleyside, a former ambassador and University of British Columbia professor with a reputation for advocating western interests in federalist circles, relinquished his membership in the CCLA because of poor geographic representation on the Board of Directors (twenty-two were from Toronto and five others from Ontario out of a total of thirty-two).⁴²³ According to Keenleyside, “even for Canada this is a pitiful record for an association that claims national status. ... I shall ... confine myself to working with the [BCCLA] which makes no pretense to a status it cannot justify.”⁴²⁴

Despite its problems with the CCLA, the BCCLA was active in working with other rights associations. It was represented on the Federation’s national executive almost every year until 1982. The first ten years of the Federation were spent building networks among rights associations, establishing an office in Ottawa, and organizing annual conferences funded by the Secretary of State. In addition to helping with funding applications for various associations, the Federation worked on briefs dealing with capital punishment, writs of assistance, the Lavell case, and various immigration

issues. Robson also appeared before House of Commons Standing Committee on Justice and Legal Affairs to discuss wiretapping.⁴²⁵ As one of the larger rights associations in the country, the BCCLA was able to provide some additional support for the Federation, such as printing 5000 pamphlets in 1976 at no charge.⁴²⁶ Support for the national federation was, nevertheless, qualified. In 1978 the BCCLA could not afford to send a delegate to the national conference without financial assistance, and debated the possibility of leaving the Federation if changes to the fee structure required larger groups to contribute more. Limited finances and a focus on local issues often constrained the BCCLA's ability to function at the national level.

The BCCLA developed an important national presence in the seventies through its involvement in the Federation, and did not hesitate to involve itself in key national debates outside the Federation when suitable. The BCCLA made representations to the LeDain commission (1973) on illegal narcotics and the McDonald commission (1979 and 1980) on national security. Such endeavors remained a peripheral activity for a group whose priority remained the defence of civil liberties in B.C. The nature of these activities, however, depended largely on how the organization understood and conceived of the nature of civil liberties.

The Ideological Foundations of the BCCLA

In forming an organization dedicated to individual rights, members of the new association found themselves facing important ideological and conceptual challenges.

The international debate over the nature of individual rights, symbolized in the UDHR and the two covenants, raised serious questions about the importance of economic, social and cultural rights. Should a rights association advocate for a minimum standard of living and access to education in addition to free speech? Rights associations since the sixties have also faced an expanding bureaucracy and administrative tribunals on a scale never before seen in Canada.⁴²⁷ These new challenges were reflected in the positions taken by the BCCLA between 1964 and 1982 as the association developed a philosophy regarding the meaning and limits of rights activism while tackling some of the key social and political issues of the period.

Administrative Decision-Making

Positions proposed and adopted by the BCCLA in the area of administrative decision-making suggested a negative approach to rights activism. The positions adopted under this heading can be divided into two categories. The first concerned the increasing judicial powers of administrative tribunals and the need for greater review, usually by a court. Among these proposals was a recommendation for a Crimes Compensation Board to provide relief for victims of a criminal offence, the creation of an ombudsman's office, expanding opportunities for claimants to appeal decisions of the immigration review board, and a provision for adequate safeguards against the expropriation of property.⁴²⁸ However, the BCCLA was solely concerned with the *administration* of these services, not the impact or nature of those services.⁴²⁹ Its

positions were consistent with the idea of negative freedom: preventing the arbitrary exercise of state power.

The second series of issues dealt with under the heading of administrative decision-making involved relations outside the realm of the state but regulated by the state. Labour legislation was introduced in 1968 to allow the government to end a strike if it affected the public interest and welfare of British Columbia. According to the BCCLA brief, placing such arbitrary power in the hands of the cabinet without appeal to the courts violated workers' rights to negotiate freely and offended their fundamental freedom to withdraw their labour.⁴³⁰ When legislation dealing with landlord-tenant rights was introduced in 1970, the BCCLA raised concerns regarding the potential for landlords to exploit tenants in an economy of increasing unemployment and a rising demand for housing. The brief recognized tenants' problems as rooted in the larger social and economic problems facing the community, but limited its recommendations to procedural matters. Its position was to seek a balance of interests through strict regulations on security deposits, precise guidelines limiting the landlord's right to evict tenants, and the creation of a tenant bureau to mediate disputes.⁴³¹

In the field of administrative decision-making, the BCCLA did not hesitate to consider important social and economic issues, from the provision of social welfare to industrial relations. In conceptualizing civil liberties, the BCCLA extended far beyond the basic freedoms of speech, assembly, association, press and religion. This

was inevitable within the context of an expanding welfare state and increasing government regulation. For the BCCLA, the solution to each problem was always government regulation or some form of judicial or administrative review of state agencies. Thus, the civil liberties association concerned itself solely with the role and responsibilities of the state. It was a philosophy rooted in the perception of civil liberties as negative rights, free from government interference except through regulation or appeal to ensure equal access by everyone.⁴³²

Discrimination and Free Speech

The same philosophy informed the association's approach to issues of discrimination. Restrictive covenants were illegal in British Columbia by the mid-1960s. The lack of legislation specifically banning restrictive covenants forced some individuals to cover the cost of court proceedings to have existing covenants declared void, and the BCCLA intervened in 1968 to have a regulation of the British Pacific Properties Limited removed from banning people of Asian or African descent purchasing land.⁴³³ A more contentious issue was the BCCLA position on the Ku Klux Klan, which received some attention in the press around 1981 following reports of flyers appearing in a Vancouver high school. The BCCLA reacted by sending a speaker to Argyle high school in December 1981 to speak on the evils of discrimination.⁴³⁴ In principle, BCCLA supported the right to free speech no matter

how heinous the ideas, and promoted education over the use of the Human Rights Code to combat discriminatory ideas spread by the Ku Klux Klan.

The decision to support the Klan's right to free speech received little debate within the BCCLA itself, unlike the divisive argument over affirmative action. A brief presented to the Board in 1980 recommended promoting affirmative action programs that would require employers to notify minority applicants of potential job openings and actively seek to correct any imbalances in the representation of minorities in certain sectors of the economy.⁴³⁵ It is not clear if the BCCLA adopted any official position on this issue or made any efforts to lobby on the recommendations within the brief. The Board debated the question for weeks and arrived at no conclusion, an unusual situation for an organization accustomed to working by consensus.⁴³⁶ While restrictive covenants and free speech for the Ku Klux Klan fit comfortably within the framework of negative freedom, the idea of positive programs designed to favour particular groups to counter discrimination did not conform to the group's institutional conception of civil liberties. Affirmative action expanded the concept of rights beyond what most civil liberties advocates, who were concerned with ensuring equality of opportunity and not positive state action, were willing to accept.

Due Process

The BCCLA's central focus during this period, due process rights, reflected the priority it placed on negative rights. Due process rights generally referred to the administration of justice, such as access to legal aid, court proceedings, provisions for bail and protections against self-incrimination. The BCCLA spent years attacking the habitual criminal provisions of the Criminal Code which dated back to 1947. These provisions allowed for anyone previously charged three times before turning eighteen years old and charged with a fourth crime to be imprisoned for life. They were at the mercy of the National Parole Board which alone could allow habitual criminals to go free, while remaining on parole for the rest of their lives. By the 1960s there were few such prosecutions in Canada, but in 1963 Stewart McMorran, the Vancouver City Prosecutor, began a series of prosecutions against habitual criminals. By 1968 British Columbia was the unquestioned leader in charging people as habitual criminals, with 75 convictions compared with the next largest number in Ontario at 16, a province with more than double the population.⁴³⁷ One of these cases, where the defendant was represented by a well known criminal attorney in Vancouver, Thomas Berger, involved a three time shoplifter and petty drug user who was prosecuted by McMorran and sentenced as an habitual criminal. In his memoirs, Berger notes how those "who were liable to find themselves targeted called it 'The Bitch.'" The legislation was eventually repealed in 1977 by the federal government and replaced

with a dangerous offender law permitting the state to detain individuals for intermittent periods if it was determined they had a penchant for violence.

For the BCCLA, it was a question of natural justice. The idea of imprisoning an individual for what they *might* do in the future was reprehensible to civil libertarians, and the group was incensed at the provisions of the habitual criminal section which allowed the Crown to introduce evidence of people the accused associated with to be used against them in court. In effect, the provision allowed for a form of guilt by association.⁴³⁸

Material witness orders were another popular issue for law reformers and others concerned with due process rights. A material witness order approved by a judge allowed the police to hold an individual for up to thirty days if they had witnessed a crime and were considered a flight risk before trial.⁴³⁹ Oftentimes the orders could be abused, leading some witnesses to be imprisoned for weeks at a time. The BCCLA recommended a full judicial hearing to determine whether or not a witness' evidence was in fact material and they were unlikely to attend trial, allowing for bail and conditions of detention different from accused criminals, and allowing for a witness to testify under oath before trial if their appearance at trial was questionable. The association adopted similar tactics in dealing with other administrative issues including writs of assistance, providing costs to accused on appeals, pretrial publicity, protections against self-incrimination, diversion and others.

Due process advocacy highlights the final key component in understanding how the BCCLA conceived of individual rights. Rights were conceptualized as negative rights. Civil liberties were rights derived from the state, protected through judicial review or regulation. An individual's freedom was threatened by the arbitrary exercise of state power, such as when welfare officers abused their power, or by the lack of *procedural* safeguards in areas where people are easily exploited, such as landlord-tenant relations. As discussed in chapter one, *civil liberties* is generally associated with civil and political rights (negative) while *human rights* incorporate economic, social and cultural rights (positive). When measured against such documents as the UDHR or the International Covenant on Economic, Social and Cultural Rights, the ideological borders established by the BCCLA clearly favour negative rights. The latter covenant encourages its members to provide access to education, a minimum standard of living and health care, and fair wages. The BCCLA never addressed these issues, and its positions in such areas as social assistance were careful to not specify what minimum standard of support was appropriate. Its focus on negative rights represented the kind of a minimalist approach to rights advocacy derided by the critics of human rights activism discussed in chapter two.

Defending Free Speech in British Columbia

'It's Simple Common Sense': State Censorship

Censorship is the most direct form of undermining free speech, arguably the most fundamental right in a democratic society. There was no shortage of forms of censorship in Vancouver to occupy the BCCLA. For instance, producers of potentially obscene or contentious literature and art had to face a myriad of potential obstacles in the 1960s and 1970s. Under the City Charter, the Chief License Inspector had wide powers to censor publications and performances within the city. Section 277 (c) of the Charter read as follows:

The Chief License Inspector shall have power at any time summarily to suspend for such period as he may determine any license if the holder of the license. ... (c) Has, in the opinion of the Inspector, been guilty of such gross misconduct in or with respect to the licensed premises as to warrant the suspension of his license.⁴⁴⁰

Bylaw 2944 further provided the Chief License Inspector with explicit power to censor theatre: “It shall be deemed cause for the cancellation, suspension or revocation of any license granted, hereunder for any person to produce in any building or place in the City any immoral or lewd theatrical performance or exhibition of any kind, and the Inspector shall have full power to prohibit or prevent any indecent or improper performance or exhibition.”⁴⁴¹ Neither the city charter nor the bylaw defined gross misconduct or immoral material, a decision left up to the subjective analysis of the inspector. In a 1969 interview, the Chief License Inspector, Milton Harrel, claimed to use “simple common sense” in determining if a production was obscene.⁴⁴² He was also in a position to pressure theatres or newspapers to change their format by simply threatening a ban or removal of license.

The post office and customs office could prohibit material from entering Vancouver. McMorran was responsible for prosecuting local violations of the Criminal Code, including obscenity charges, during this period. He was zealous in his work. By 1966, McMorran was barred from eight of ten magistrates courts for disrespect and bad behaviour. Another agency for censorship was the provincial film censor. Under the 1913 Moving Pictures Act, a censor was hired to regulate the distribution and content of films in the province. Section 5 of the Act allowed the censor to “permit or absolutely to prohibit the exhibition of any film or slide which it is proposed to exhibit in the Province.”⁴⁴³ Seventy four films were censored in 1931 although, by the 1960s, only two or three films on average each year were being censored.

The provincial government in British Columbia was occasionally active in censorship. The Minister of Education banned Philip Roth’s *Defender of the Faith*, from being distributed to grade twelve students in 1967.⁴⁴⁴ Local governments, however, were by far the most prolific censors during this period. In 1968, the BCCLA’s Vice-President, Bill Deverell, defended Doug Hawthorn who was in court for selling Kama Sutra calenders in his Vancouver psychedelic shop.⁴⁴⁵ New Westminster passed a by-law banning the distribution of newspapers on city streets in 1969. In practice, the by-law did not affect mainstream media such as the *Vancouver Sun* and *The Province*, which were left unmolested while vendors selling alternative papers were harassed and denied licenses. When the BCCLA failed in its efforts to

pressure the police to act on the new law in order to challenge it in court, it sold newspapers themselves in New Westminster to force the Crown prosecutor to act, who subsequently claimed the by-law did not apply to newspapers.⁴⁴⁶ Darwin Sigurgreirson represented the BCCLA in the B.C. Supreme Court in 1971 when the court upheld a Surrey by-law giving the City Council control over special events, a law primarily designed to prohibit rock concerts.⁴⁴⁷ As late as 1978-9, Vancouver's mayor was threatening to require licenses for merchants selling pornography and Penticton banned the distribution of pamphlets on its streets.⁴⁴⁸

Theatre and the Chief License Inspector

It was the censoring of local theatre that eventually cost the Chief License Inspector some of his broad powers of censorship. Harrel was targeted by the BCCLA for threatening to remove the license of David Gardner, who ran the Vancouver Playhouse, if he presented the rock musical *Hair* because of its final scene depicting people in the nude. Despite offers of free legal counsel from the BCCLA, Gardner chose to acquiesce instead of taking on the city and the play was removed.⁴⁴⁹ Inspector Harrel also imposed a fine on the Gallimaufry troop's performance of *The Beard* at the Riverqueen Coffee House. When the proprietors of the Riverqueen were arrested on obscenity charges, the BCCLA provided legal counsel to appeal their convictions.⁴⁵⁰ On 8 July 1969, Harrel shut down a production of *Camera Obscura*, a Gallimaufry Theatre production allowing actors to wear transparent clothing at the

Arts Club. The BCCLA quickly offered them free legal counsel to defend against the charges, and subsequently contacted Charles Fleming (Deputy Cooperation Counsel for Vancouver) in an effort to convince him that the bylaw empowering the inspector to close down theatre productions was *ultra vires* the city's jurisdiction since it was a use of the federal criminal power. Fleming agreed and suggested to Council that the section be re-written. On 15 July 1969, City Council voted to instruct Fleming to remove theatre censorship from the section in bylaw 2944, thus limiting the power of the licensing inspector. Unfortunately for the BCCLA it was less successful in having the entire bylaw amended. Harry Rankin, a member of the BCCLA and an alderman, pushed Fleming to further recommend the removal of section 277 (c) dealing with gross misconduct, which Fleming supported and in turn recommended to Council. Section 277 (c), however, was upheld by the provincial Supreme Court and the censor continued to threaten Gallimaufry with license removal if it did not cooperate and stop producing obscene productions.⁴⁵¹

Censorship in the Private Sector: The Pacific National Exhibition

The private sector had its own role to play in censoring unpopular ideas. The *Victoria Times* was unwilling to print articles on homosexuals in 1970, and thirteen other papers similarly refused when they received a copy of an article being circulated to papers across the province.⁴⁵² Several store owners in Vancouver also agreed in the late 1960s to voluntarily remove copies of *Playboy* from their shelves. One example

of private sector censorship directly involving the BCCLA, which substantially raised its public profile, involved a challenge to a regulation imposed by the Pacific National Exhibition. The amusement park passed a regulation in 1969 prohibiting booths with partisan or political purposes.⁴⁵³

The BCCLA was less opposed to a ban on political parties if it applied equally to all parties, but raised concerns over indiscriminate use of the regulation to censor any form of social activism. Its fears were quickly proven justified. Among those banned from setting up booths at the Pacific National Exhibition were the People's Co-Operative Bookstore, China Arts and the Combined University Campaign for Nuclear Disarmament. When the BCCLA was refused a meeting with the Pacific National Exhibition Board of Directors, it took the unusual step of setting up a picket in front of the parade grounds. The picket, supported by British Columbia Federation of Labour and the Vancouver Labour Committee for Human Rights (the local JLC committee), received coverage in the newspapers and television media, particularly once the groups began calling for a labour boycott of the Pacific National Exhibition. The groups directed its public criticisms against the Pacific National Exhibition as well as the Vancouver City Council which provided the grounds free of charge. After the picket was moved to City Hall, Mayor Tom Campbell intervened to mediate the dispute and the ban was soon lifted.⁴⁵⁴ The BCCLA had achieved an important, and very public, victory against censorship.

'I Wouldn't Tolerate It On The Streets Any longer': Defending the Georgia Straight

Despite the BCCLA's success with the Pacific National Exhibition, the issue paled in comparison to the virtual war of survival fought by the *Georgia Straight*. Members of the BCCLA would play a critical role in defending the right of the *Straight* to be distributed in Vancouver. The *Georgia Straight* was an alternative paper, part of the hippie youth culture challenging conformity and authority. Founded in 1967, the paper soon had a circulation of 60 000 to 70 000.⁴⁵⁵ Jean Barman quotes one of the paper's founders in her history of British Columbia who admits to not knowing "any particular reason for the founding beyond a general pervasive desire to annoy establishment institutions in general and established newspapers in particular. Also, if one wished to be flowery, to provide a local voice for whatever counter-culture exists in Vancouver."⁴⁵⁶

It took less than six weeks for Tom Campbell to attack the new paper. He urged the City Licensing Inspector to use his power under section 277 (c) of the City Charter to suspend the paper for gross misconduct. Campbell described the paper as 'filth' and made it clear that "as far I'm concerned, this was a 'rag' paper; it was a dirty paper; it was being sold to our school children; and I wouldn't tolerate it on the streets any longer."⁴⁵⁷ Within weeks the paper was suspended and initially the BCCLA failed to have the suspension lifted. Justice Thomas Dohm, presiding over the BCCLA's challenge to the suspension order, went so far as to praise the mayor for his actions. The case was appealed before the provincial Appeals Court, with a

representative from the Attorney-General of Canada appearing alongside the *Straight's* lawyers to argue for freedom of the press. While the appellate court concluded there was no Supreme Court of Canada decision establishing freedom of the press as a federal power, it chose to void the suspension on the grounds that the licensing inspector should have provided a hearing to explain why the paper was suspended. However, the court's ruling was mooted by an earlier decision of the City Licensing Inspector to lift the ban after he was satisfied the content of the paper had changed.⁴⁵⁸

Not to be outdone, the mayor sought support from City Council to reinstate the suspension and when the council refused, at a meeting attended by the BCCLA, he hired a private law firm to consider an injunction. The firm recommended the mayor wait until the results of an obscenity charge against the *Straight* were concluded in the hopes it would deter the publishers from allowing contentious material to appear in the paper.⁴⁵⁹

The first two years were a constant battle for Don McLeod, the *Straight's* publisher. After the suspension was overturned in court, other

municipalities prohibited the sale of the newspaper on their streets; McLeod and the *Straight's* vendors sold the paper openly and courted arrest. For poking fun at a judge, the *Straight* was charged with criminal libel, sparking a legal battle that lasted years. For the ribald humour of its comics pages, the *Straight* fought nine obscenity charges. For printing instructions on marijuana-growing, the *Straight* was charged with 'inciting to commit an indictable offence'. A sex-advice column from a hippie doctor brought four separate obscenity charges. For running an excerpt from a novel, the *Straight* faced

another obscenity charge. In March 1968 the *Straight* was found guilty for defamatory libel when it awarded Magistrate Lawrence Eckhardt the Pontius Pilate Certificate of Justice for sending a group of hippies to jail for hanging around outside the courtroom.⁴⁶⁰ All this took place within two years of 5 May 1967.⁴⁶¹

Even the University of British Columbia's bookstore refused to distribute the *Georgia Straight*.⁴⁶²

The BCCLA was not involved in the libel suit but was successful in having the local bans removed. Relations between the BCCLA and the *Straight* were often strained though, and many times the two acted independently in challenging the bans. The BCCLA was still considered by many in Vancouver, including writers for the *Straight*, as a middle class organization lacking proper representation by women or minorities.⁴⁶³ It was not uncommon for the *Straight* to refuse the BCCLA's offers of assistance.⁴⁶⁴ Nevertheless, in at least one case, counsel provided by the BCCLA helped McLeod defeat an obscenity charge. In May 1969, McLeod was charged with obscenity under section 150 (1)(a) of the Criminal Code for various pictures published in the *Straight* and two articles entitled 'Penis De Milo created by Cynthia Plaster-Caster', and 'Young Man Wants to meet women 30 yrs old for Muffdiving, etc.'" Thomas Berger, a future appellate court judge, defended McLeod and used Frederick Bowers (one of the founders of the BCCLA) to testify to the publication's literary merit. The original trial judge had dismissed the charges because undue exploitation of sex, which formed the basis of the Crown's obscenity charge, was not part of the test established by the Supreme Court. The judge also did not find the

pictures published in the *Straight* obscene and “dismissed the charge, having no evidence before him of what the word ‘muffdiving’ means, and declining to take judicial notice of a word that he has never heard before.”⁴⁶⁵ The appeal judge supported the lower court conclusion in regards to the charge of obscenity and held “the view that there will always be those few in society who will continue to abuse civil rights and liberties and to confuse freedom with licence to print anything, forgetting that the rest of society has a right to be protected against unwarranted shock or abuse. ...[B]ut I find that there is no undue exploitation of sex in the article, and that the article in the context in which it is written does not amount to an obscene publication with sec. 150 (8).”⁴⁶⁶

In dismissing the charges in *R v McLeod*, Judge Isman also suggested that the city prosecutor, McMorran, was too eager in his policies and the vague criteria he applied led to inconsistent prosecutions.⁴⁶⁷ This verbal reprimand as well as the dismissal of the charges represented a successful conclusion for the BCCLA and the *Straight* against the state’s attempt to suppress the newspaper. Nonetheless, there were many unforeseen implications arising from the city’s constant attempts to undermine the paper. McLeod also had to deal with having been found guilty of growing marijuana, placing him under the continued scrutiny of the police and fearful of further action which could jeopardize his parole. As a result, his “lawyers now regularly read and pre-censor samples of the *Georgia Straight*. The *Straight*’s vendors also appear to undergo more than usual police harassment and suspicion for

vagrancy or drugs or whatever.”⁴⁶⁸ Censorship was not limited to direct action in court.

The mainstream media remained silent throughout most of these developments, perhaps because they cared little for hippies or were intimidated by the possibility of being charged with libel themselves. The coverage was limited to discussing why the *Straight* had been charged with libel, and no critical commentary or discussion on freedom of the press was raised in either the *Vancouver Sun* or *The Province*.⁴⁶⁹ It was not until 1973 that Alan Fotheringham, a popular columnist for the *Vancouver Sun*, commented on the court’s imposition of a \$1500 fine against the *Georgia Straight*. Fotheringham lamented the inability of the mainstream media to raise their voices against a campaign of injunctions and suits directed at other members of the press. “Some day some scholar interested in the law and its abuse is going to do a serious study of how authorities in this town- particularly [Stewart] McMorran- have attempted to intimidate and to bust the *Straight* by persistent harassment and prosecutions which more often than not failed. The documentation will cause a scandal and everyone will ask what the rest of us were doing- including the newspapers- while this was going on.”⁴⁷⁰

The October Crisis

Soon after Berger had successfully appealed the obscenity charge against the *Straight*, the BCCLA found itself embroiled in the October crisis. Trudeau’s decision

to declare the War Measures Act received a quick condemnation from the association which could find no evidence of a legitimate insurrection to justify the use of war powers:

The BCCLA is opposed to the new legislation [Public Order Act] as reported by the media, which was introduced in the House of Commons by the Government, 2 November 1970, to replace the War Measures Act. We oppose the new legislation for the same reason as we objected to the invocation of the War Measures Act, namely that the government has failed to indicate why the powers presently held by the government under the provision of the Criminal Code are inadequate to handle the threat posed by the terrorist activities of the FLQ.⁴⁷¹

Opposition to the federal government was a bold move given the amount of support the Prime Minister's action enjoyed in British Columbia, particularly among the mainstream media. The same newspapers Fotheringham noted had remained silent about attempts to suppress the *Straight* were quick to support the use of war powers. As with most Canadian newspapers, *The Province* and the *Vancouver Sun*'s headlines were dominated by the FLQ crisis from October to December 1970. The *Vancouver Sun*, by far the largest paper in the province and with the highest distribution west of Toronto, only began criticizing the government in late November over continued secrecy behind the investigation into the kidnapping.⁴⁷² The powers were portrayed as a "temporary measure, to be lifted when its purpose is achieved and possibly replaced by a new act designed to stamp out revolutionary violence of the kind typified by the Front de libération du Québec. The pledge to restore normal democratic liberties when the danger is past is explicit enough for most Canadians to

take it on faith.”⁴⁷³ Concerns raised by the BCCLA received very little attention in the *Vancouver Sun* (none in *The Province*), although at one point the paper noted that it was “disquieting to know so many Canadians have been jailed without probable cause.”⁴⁷⁴

The press reserved their criticism on the use of war powers for developments closer to home. Detentions and army patrols were limited to Ottawa and Quebec, yet the crisis atmosphere caused by the invocation of the War Measures Act was not unfelt in British Columbia. The first controversy was a minor one. According to the April 1971 edition of *Democratic Commitment*, several

self-appointed guardians of public virtue in the ranks of public officials in our Province, jumped on the band wagon to further curtail the civil liberties of the citizens of the Province. The Mayor of Vancouver [Tom Campbell] proposed to use the War Measures Act to run hippies and draft-dodgers out of town, Alderman Halford Wilson introduced a resolution at a meeting of City Council which would have banned public meetings on city-owned property, [and] various members of City Council tried their best to prevent a parade which had been held annually for the previous five years in Vancouver.⁴⁷⁵

Neither the *Vancouver Sun* nor *The Province* had any kind words for such blatant attempts to exploit the situation to pursue interests pre-dating the crisis and totally unrelated to the terrorist activities. The *Vancouver Sun* was particularly virulent in its condemnation, suggesting that “the least responsible reaction to be found anywhere in Canada was that of Vancouver’s own mayor. At a time when the country was in the grip of horror, Tom Campbell tried to capitalize on the invoking of the War Measures

Act to further his vendetta on local hippies and draft dodgers. His personal politicking with such a sad affair can only be described as damnable.”⁴⁷⁶

The second controversy was a great deal more serious. The provincial cabinet, under the leadership of W.A.C. Bennett, passed an order in council calling for the dismissal of any teacher expressing sympathies with the FLQ or calling for the overthrow of democratically-elected government.⁴⁷⁷ Universities, colleges and school boards were included in the order and the implicit threat was that any institution failing to apply the new regulation would lose its grant from the government. In a province so distant and untouched by the October crisis, the declaration was little more than a show of force by a Social Credit Party soon to be defeated in the upcoming election. The order was prompted by the actions of Arthur Olsen, a Dawson Creek high school teacher, for reportedly expressing sympathy for the FLQ.⁴⁷⁸ The press quickly distanced themselves from the order. The *Vancouver Sun* characterized the decision as “an overreaction which serves to emphasize the very dangers that Mr. Trudeau was so anxious to guard against,” and *The Province* considered the order a far reaching abuse of rights.⁴⁷⁹

For the BCCLA, the order and Bennett’s threats to refuse grants to schools with teachers sympathetic to the FLQ represented a blatant attack on freedom of speech and offended one of the association’s most basic principles. It sought to challenge the validity of the order in court (once again represented by Thomas Berger) and were refused a hearing because the BCCLA members in the case had no direct

standing.⁴⁸⁰ In effect, until someone was actually dismissed under the authority of the order in council, the legislation could not be challenged.

Once again, the courts proved a difficult venue for the defence of fundamental freedoms. The unwillingness of judges to accept interveners was compounded by a decision in the provincial Supreme Court refusing to consider the constitutionality of legislation unless the appellant could demonstrate standing. The threat of dismissal alone was an infringement on freedom of speech; the cabinet did not have to dismiss anyone to exercise a degree of control over the rights of teachers to speak freely. While it is unlikely many teachers, if any, were affected by the order, the defeat established a poor precedent for future confrontations between the BCCLA and the cabinet. With the exception of the dismissed obscenity charge against McLeod, the courts had, once again, proven to be a limited forum for the defence of civil liberties.

Civil Liberties and Police Powers: The Gastown Riot

Symbols of authority are often the central target of protest movements. *Georgia Straight* was used as a forum for criticizing the mainstream press and openly mocking the legitimacy of the courts. The most visible symbol of authority in any society, however, is the police. Limiting the gamut of police powers has been one of the key objectives of civil liberties associations since their inception.

During this period the BCCLA was the only organization consistently concerned with police-community relations in British Columbia. It was mildly

successful in convincing the police to change tactics and accept new procedures, but in most cases the group could only hope to bring public attention to police activities through the press or a court challenge. Suppression of the Sons of Freedom by the RCMP and provincial government had led to the creation of the BCCLA. The Schuck trial discussed earlier, where a couple was harassed for walking near a drug dealer, was an attempt by the BCCLA to convince a judge to award damages as a result of police tactics. The police were launched into the headlines once again in 1971 when Fred Quilt, an Indian in northern British Columbia, died while in police custody for drunk driving. The BCCLA worked successfully with native groups to have an inquest called over the circumstances of Quilt's death, although the investigation subsequently rejected claims of police brutality as the cause of death.⁴⁸¹ A group of teens were pulled over by police around the same time near Saanich for having 'suspicious materials' in their vehicle (an empty oil can and some tubes). According to an investigation by the BCCLA, the three teens had their car impounded and were forced to walk home in the middle of winter.⁴⁸² To discourage prostitution, the police would sometimes target suspected pimps with continuous fines and parking or speeding tickets to put them out of business.⁴⁸³ Accusations of police abuse were also raised following drug raids in Coquitlam and Port Moody. Interrogating children in schools, equipping officers with mace and riot sticks, unfairly suspending drivers' licenses, raids on book sellers, searches without warrants and harassing juveniles were among the many serious accusations laid against the police by the BCCLA.

Tensions between youth and police climaxed in the Gastown riot of 7 August 1971 which proved to be an important symbolic event in the province's history. The riot was, in some ways, just another addition to the list of police abuse of powers during this period, but it also brought to the fore the conflicts between institutions of authority and various movements in the province. In the context of the seventies, the riot was representative of the battles being fought by the *Straight*, Doukhobours and the BCCLA against the courts, municipal government and the police.

It was a smoke-in. Prompted by articles in the *Georgia Straight* hundreds of youths had converged on Maple Tree Square in the popular area of Gastown in downtown Vancouver. For the previous week, writers Kenneth Lester and Eric Sommer had been promoting the gathering to protest drug laws and recent drug raids in the area (Operation Dustpan). Hundreds of young people, many described by the media as hippies, had assembled in the square; some were smoking pot, others playing music or just wandering around. By 10:00am, combined with people on the street, the crowd had expanded to almost 2000. Inspector Abercrombie, who was the senior officer in charge at the scene, decided to clear the crowd after receiving false reports of windows being broken. He ordered the crowd to disperse within two minutes. When his first warning was ignored, Abercrombie ordered four policeman on horseback with riding crops to disperse the throng. They were followed by police officers in riot gear supported by plain clothes officers scattered among the crowd. Absolute pandemonium broke out. People coming out from stores and restaurants in

Gastown found themselves caught up in a battle between police and youths, some of the latter throwing rocks, pieces of cement and bottles.⁴⁸⁴ Abercrombie quickly realized he was faced with a riot in the making.

The violence soon got out of hand. Observers were available from the BCCLA and the media, having followed the calls issued through the *Georgia Straight* by Lester and Sommer. Officers used their horses to pin people into doorways and hack at them with their sticks; a woman was pulled by her hair screaming across shards of broken glass by two police officers; a police officer was struck by a brick, which led to the crowd cheering; and, youths shouting obscenities were beaten by police.⁴⁸⁵ A clash between police and youth had unexpectedly erupted into uncontrolled violence in the heart of Vancouver.

Seventy-nine people were arrested and thirty-eight charged with various offences. There was an immediate public backlash. Newspapers lined their front pages with details on the riot and its aftermath, with editors commenting extensively on the incidents of violence. *Vancouver Sun* editors called for an inquiry, noting the “volume of rhetoric and abuse that has been pouring out ever since [the riot] ... has so confused the public that only a detached, impartial and coherent assessment of the whole affair will now suffice to put blame where it belongs.”⁴⁸⁶ An editor for *The Province* was convinced there would be “deepening suspicion and hostility between young people and the police- unless Attorney General Peterson steps in at once and orders an independent investigation of the whole affair.”⁴⁸⁷ Naturally, the *Georgia*

Straight was quick to condemn the police and point to the riot as evidence of a police force hostile to youths. Mayor Tom Campbell defended the police and claimed that a conspiracy by Sommer and Lester was responsible for the violence. But he publicly stated his support for the Attorney General to call an inquiry into alleged police abuses.⁴⁸⁸ Gastown merchants, sympathetic with those caught in the riot, organized a bail-fund and planned a social gathering for protestors and police to ease tensions within the community.⁴⁸⁹ Campbell, the BCCLA, and the media (including the *Georgia Straight*) were all calling for a provincial inquiry, and as a result Justice Thomas Dohm (a provincial Supreme Court judge) was ordered in late August by the Attorney General to investigate the causes behind the Gastown riot.

The Dohm inquiry lasted for ten days and heard forty-eight witnesses. Joseph Laxton represented the BCCLA which had managed to raise \$1200 to cover his legal fees. Its position centered on the use of excessive force by the police. For the past few years the association had opposed the acquisition of more riot sticks by the local police force, fearing an increase in confrontations between police and youths, and the riot seemed to have confirmed its earlier concerns. A public statement released by James Wood of the BCCLA (based on reports from its observers on the scene) criticized the tactics employed by the police, their use of plain clothes officers and the prejudice displayed by officers in targeting youths with particular hair cuts and clothes.⁴⁹⁰

As the inquiry progressed, two different interpretations over the causes of the Gastown riot emerged. On one side was the BCCLA, supported by the B.C. Federation of Labour and other advocacy groups. It saw the riot as a reflection of underlying tensions between youths and police that had been building for years.⁴⁹¹ Youths were frustrated with strict drug laws while police harbored negative and prejudicial attitudes towards hippies, an attitude encouraged by the rhetoric and blustering of local politicians like Campbell. Research conducted by the BCCLA concluded that police officers were increasingly alienated from the community through the use of patrol cars over foot patrols, distinguishing uniforms, lack of civilian participation in the administration of the police force and a poor system for handling complaints. These factors all contributed to a fundamental problem between youths and symbols of authority; since March 1970, twenty-five separate demonstrations by youths had occurred in Vancouver and Victoria alone.⁴⁹²

On the other side of the debate were the policemen's union, municipal politicians, the media and the Dohm report. The report acknowledged Abercrombie's overzealousness, noting how the crowd had not degenerated into a mob and admitting that individual officers used "unnecessary, unwarranted and excessive force." He recommended that the Board of Police Commissioners adopt a policy of no longer allowing demonstrators to take over public streets, training squads of police officers specifically for crowd control duty, continuing to use horses for crowd control but only after sufficient warnings and keeping off sidewalks and store fronts, eliminating

the use of plainclothes officers, providing better sound equipment and not using motorcycles.⁴⁹³

Responsibility for the riot, however, was placed squarely on the shoulders of Sommer and Lester whose “true motivation is their desire to challenge authority in every way possible. ... Any popular cause serves their purpose if it enables them to gather a gullible crowd who may act in such a way as to defy any authority. The harassment of young people by the drug squad police and the resultant hostility was grist to their trouble-brewing mill.” Dohm, George Murray of the policeman’s union and Mayor Campbell all blamed the riot on a conspiracy by anarchists to cause havoc on the streets. The editor of *The Province* considered the “root cause of the whole ugly business ... [was] two dangerous yippies [trying] to use a protest against marijuana law as a means of gathering a crowd for a confrontation with police.”⁴⁹⁴ This sentiment was shared by the editor of the *Vancouver Sun* who lambasted Campbell for his inflammatory rhetoric but laid blame at the feet of a small group of troublemakers.⁴⁹⁵

Compared to riots in American cities, the Gastown riot was a minor affair, small in numbers and limited in the degree of violence. For the city of Vancouver, and to a lesser extent the province as a whole, no event better represented the divisions within the community throughout this period. Institutions of authority focused on the superficial causes of the riot, unwilling to consider the broader implications of the conflict. The BCCLA and other advocacy groups sought a deeper

explanation, looking to the underlying strain emerging from the nature of the youth protest movements with their illicit drug use and hippie culture, and the attitudes of the state and media to this new movement. The arrival of an NDP government in 1972 and the BCCLA's increasing public profile through such events as the Pacific National Exhibition affair may have contributed to the Police Commissioner's Board greater receptiveness in the early 1970s. The BCCLA was involved in drafting a new procedures manual for the Vancouver police and was invited to the opening of the new police college in 1975. Frustrated with its inability to curb police abuses through individual cases, the association had turned to working with the police on procedures, training and policies.⁴⁹⁶ The willingness of the police to entertain feedback from community groups was most likely prompted, however, by the fallout from the riot.

Taking the Government to Court: The Case of the Heroin Treatment Act

Illegal narcotics and their popularity among youths was undeniably one of the central causes of the Gastown riot, and had been an issue for the BCCLA since the mid-1960s. The association framed the debate as a question over the role of the state in regulating behaviour versus the right of an individual's freedom to determine their own lifestyle. With the highest number of drug addicts and users in the country, Vancouver loomed large in the battle against illegal drugs. The BCCLA's battle against the Heroin Treatment Act was its last major initiative before the passing of the Charter in 1982 and represented the organization's most concerted effort to use the

courts to defend individuals from state abuse of their civil liberties. The history of Heroin Treatment Act also highlights one of the most divisive public debates on a civil liberties issue in the province during this period.

Treatment was the new catch word on the war against drugs in the 1950s and 1960s. Attempts to use criminal sanctions were giving way to a recognition that the use of illegal narcotics had increased despite already existing draconian measures. Emerging “pro-treatment sentiment as a response to the Vancouver drug scare of the 1950s marked the beginning of the new era of conflict over narcotic control.”⁴⁹⁷ A Narcotic Addiction Foundation was set up in British Columbia on 13 September 1955 (a second opening up in 1961) to provide homes for drug users to work off their addiction.⁴⁹⁸

Compulsory treatment as the new treatment paradigm was also reflected in the Narcotic Control Act, passed by the federal government in 1961 to replace the pre-existing legislation dealing with illegal drug use. It was the first major revision of the drug laws since the 1920s. The legislation maintained most of the provisions of the original Opium and Drug Act including its extensive powers for search and seizure, removing only the minimum sentence for possession to provide judges more flexibility in dealing with first time drug users. Part II of the Act, however, which never passed into law, provided for compulsory treatment followed by ten years of parole for first time offenders. In theory, treatment could stem the flow of illegal drugs into Canada by eliminating the demand for drugs. Part II also allowed for

preventative detention of convicted traffickers. This new law, based on the desire to reform instead of punishing addicts, was unquestionably a major step with the potential to completely reverse the traditional law enforcement paradigm. None of these provisions were ever employed; the institutions designed to treat addicts were never built and Part II was never proclaimed.⁴⁹⁹

A new problem born in the sixties revitalized the debate on how to deal with drug addiction. Marijuana use increased exponentially during this period, notably among middle class youth and on university campuses. Unlike the previous generation of users, portrayed as poor, downtrodden and on the periphery of society, these new users were part of mainstream society and used drugs as a form of social protest against prevailing social norms. Attempts to deal with this new problem through traditional law enforcement techniques failed miserably. In 1965, there were only 60 convictions for possession of marijuana, a figure which increased to over 6000 by 1970, with no noticeable deterrent effect on users.⁵⁰⁰ The Gastown Riot was the perfect example of the new drug culture among youths in Canada and its clash with police.

In 1969 the federal government implemented a royal commission (chaired by Gerald LeDain) to investigate the use of narcotics in Canada. The report called for compulsory treatment of addicts administered by the provinces, and favoured a system of methadone and heroin dosages.⁵⁰¹ But the commission was divided on the issue. A minority dissent by Professor Marie-Andrée Bertrand, a criminologist,

rejected compulsory treatment because the psychological aspects of addiction could not be properly dealt with through a regime of forced treatment rejected by the patient. She further called for the complete decriminalization of cannabis and for a system to provide for its legal distribution.⁵⁰² In retrospect, the report accomplished very little. Few of the recommendations were adopted and the only major change to the drug laws in the 1980s was abolishing writs of assistance, a change not based on the commission's findings.

The BCCLA had maintained a consistent interest in drug laws dating back at least to 1966 when the association hosted a well attended seminar on the question of illegal drugs and whether or not they should be legalized. When the LeDain commission held hearings in Vancouver in 1969 and 1970, hundreds of people attended and dozens made presentations. The police called for greater regulation of the drug trade and various individuals demanded the state not interfere with their chosen habits.⁵⁰³ The BCCLA's position reflected its civil libertarian ethos.

Individual actions, not conditions, should be illegal. An alcoholic caught driving and threatening others or a drug addict stealing to pay their habit should be the target of criminal proceedings, but otherwise the association felt criminalizing possession and the use of non-medical drugs violated the individual's right to live their chosen lifestyle. It also noted the failure of criminal laws in the United States and other countries to discourage drug use. LeDain's first report in 1969 supported greater state regulation of drugs because addicts were a strain on public funds, but the BCCLA

quickly dismissed the idea since the same point could be made for smoking tobacco. The second report received a mixed response from the association. It supported recommendations requiring police to abstain from violence and entrapment to obtain evidence, removing the onus of proof on the accused, and the destruction of individual records. But the report did not go far enough. To ensure complete protection of individuals' civil liberties, the BCCLA felt the commission should have recommended the complete legalization of cannabis. The report's support for fines for the possession of cannabis reflected undue deference to the police and a patronizing attitude towards addicts.⁵⁰⁴ According to the BCCLA, the Narcotic Control Act "creates a legal fiction. It transforms a relatively harmless substance into the equivalent drug such as opium and heroin."⁵⁰⁵

For years, provincial politicians had been talking about dealing with the drug problem in British Columbia. An attempt in 1969 to legislate a ban against LSD (unless its use was approved by the health minister) was struck down by the Supreme Court of Canada for invading federal jurisdiction over criminal law. A speech by a member of the Attorney-General's office under the NDP in 1973, Malcolm Matheson, recommended compulsory treatment and the creation of quarantines for addicts to which the BCCLA objected as simply another type of prison.⁵⁰⁶ Outside occasional comments by individual members of government, however, there is no evidence the NDP seriously contemplated new legislation to implement the recommendations of

the LeDain commission. The election of the Social Credit Party in 1975, however, would soon lead to the opening of a new front on the war against drugs.

The decision to act on the LeDain report drew the Social Credit Government into a major political controversy lasting years. In 1977 the province introduced the Heroin Treatment Act to provide for compulsory treatment of heroin addicts.⁵⁰⁷

Heroin use had reached remarkable levels by the late 1970s in British Columbia. The heroin trade alone was estimated at \$255 million per annum, the fifth largest industry in the province. Sixty-one percent of all heroin addicts in the country were in British Columbia, an increase of 167 percent since 1970 and 586 percent since 1956.⁵⁰⁸ Traditional law enforcement mechanisms had clearly failed to effectively combat the drug trade.

The Act provided for the creation of area coordinating centres, a commission to administer the Act and evaluation panels consisting of medical practitioners and psychologists. Under section 13 of the Act, police were given the power to require suspected drug addicts to present themselves at area coordinating centres to be evaluated by a panel of experts as to the extent of their addiction.⁵⁰⁹ Once the panel decided treatment was required, the Act empowered the commission to apply to a court to forcibly detain the individual for up to three years, of which six months could include incarceration. Appeals against the detention order were available through the appellate court although the onus of proof was reversed to require the defendant to demonstrate they were not in need of treatment. Having been defeated in 1969 in

their attempt to ban LSD, the government was careful to focus on treatment, not criminal sanctions, as the basis of their new drug legislation.

Opposition members in the Legislature accused the government of using the bill as a political tactic by playing off public fears of drug use and drug related crimes. Few other debates in British Columbia politics in the seventies raised as many concerns about individual rights. Due process concerns loomed large in the debate. One member characterized the medical board as a disguised judicial hearing and condemned the decision to reverse the onus of proof. Others suggested the Bill was unconstitutional and violated the federal Bill of Rights, and quoted the Canadian Bar Association's brief describing the bill as criminal law cloaked as health legislation. Since voluntary treatment had failed in several other jurisdictions, the viability of a compulsory system was questioned. Norman Levi, a former cabinet minister and member of the BCCLA, declared his opposition to spending "billions of dollars of scarce resources fighting an impossible war. I'm not prepared to do that at all. ... But this idiocy of trying to beat something that we can't beat. ... If you are going to look at it from the medical position, what we have to do is follow it through logically."⁵¹⁰

The government responded to these accusations with the claim that the new legislation would not only protect the safety of the community but, in an excellent example of the flexibility of rights discourse, the civil liberties of drug addicts as well. Introducing the legislation in second reading was Minister of Health Robert H. McClelland. He acknowledged how

one of the most overriding concerns that has been expressed to date, at least, of those opposed to this proposed health legislation is the infringement upon the civil liberties of known heroin users. I can't repeat this often enough, but anyone with any knowledge of the nature of narcotic dependency is fully aware of the lack of normal civil liberties to which narcotic dependent individuals can be enjoyed. ... [T]his plan is designed to help individuals retain a state of being where the same civil liberties that most people ordinarily enjoy are accessible. ... [A] sincere desire to improve one's lot in life is paired with an insatiable thirst for immediate gratification. ... [T]he coercive aspect of the heroin plan would immediately address and remedy this dynamic.⁵¹¹

The government's case rested on the inability of voluntary treatment programs in the past to deal with heroin addicts and the overriding needs of the community over the individual. Kenneth Rafe Mair, Minister of Consumer and Corporate Affairs, considered the availability of counsel when called before the Board of Review and the appeals process as sufficient provisions to satisfy due process. He accepted that "the Mental Health Act is [not] easy legislation. ... I don't pretend that they do not in some way erode what we consider to be the pure civil liberties to which we are entitled. But to the extent that it varies from those principles, I am convinced it is justified in light of the ill that we seek to cure."⁵¹² The debate split among party lines, with the NDP providing the main voice of opposition against the Social Credit government.⁵¹³

Among the many groups in opposition to the proposed legislation were the Canadian Bar Association, Elizabeth Fry Society, B.C. Corrections Association, Narcanon Society and former Chair of the B.C. Police Commissioner, John Hogarth. In presenting a petition of 9000 of his constituents in Langley, the lone Liberal in the

Legislature, Gordon F. Gibson, claimed the mainstream media were also against the Bill.⁵¹⁴ The most extensive coverage appeared in the *Vancouver Sun*, in which the editorial section was adamantly against the legislation, particularly over the threat it represented to civil liberties. In the midst of the debate in mid-June, the paper concluded that relevant statistics did not “provide a rationale for a multi-million dollar treatment program- such as that proposed by McClelland- that denies due process of law, turns policemen into health officials and health officials into judges, and has every chance of failing to achieve its goal, and may not be within the jurisdiction of the province to enact.”⁵¹⁵

The Heroin Treatment Act was the perfect cause for the BCCLA. The association had been debating the issue for years and had a clear stance against any form of compulsory medical treatment. Due process and police powers were the main points of contention against legislation with the potential to effect everyone in the community, not only minority groups. Programs such as affirmative action raised difficult questions over the scope of civil liberties whereas the Heroin Treatment Act was a simple question of negative rights threatened by state action. It pitted the BCCLA against a political party whose policies it generally opposed,⁵¹⁶ and immediately provided them with such allies as the NDP, Canadian Bar Association, Elizabeth Fry Society and the media.⁵¹⁷ The controversy also had the potential to provide the association with publicity and a forum to promote its views. Throughout the debate in the Legislature, NDP politicians quoted from BCCLA briefs and the

Vancouver Sun noted the association's opposition in articles and editorials.⁵¹⁸ When the Act was assented to on 29 June 1978, the BCCLA prepared its court challenge on the constitutionality of the legislation.

Jim Dybikowski appeared before the B.C. Supreme Court on behalf of the BCCLA in June 1979. Requests to the provincial and federal government to have the legislation reviewed by the courts were rebuffed and the association had been forced to bring the legislation to court on its own. Judge Allan McEachern heard the case and initially refused the group standing because, as in the teacher's case during the FLQ crisis, Dybikowski was not directly affected by the legislation. Brenda Ruth Schneider, a heroin addict living in British Columbia, replaced Dybikowski as appellant and the judge allowed the BCCLA case to go forward with Dybikowski as counsel. Since there was no constitutional basis upon which to challenge the legislation for violating Schneider's civil liberties, the BCCLA's case rested on whether or not the province had the appropriate jurisdiction to pass the Heroin Treatment Act.

Counsel for the Attorney General stressed that the Act was designed to treat heroin addicts and fell under comparable jurisdiction such as the provincial Public Health Act. Treatment, not punishment, was the purpose of the legislation, and it therefore also fell under provincial jurisdiction over 'property and civil rights' and not the federal criminal law power. In contrast, Dybikowski claimed the pith and substance of the legislation was punishment because it provided for incarceration and

compulsory detention in the guise of treatment. Due process rights were at stake. Persons tested under the Act had no power to examine or question the results. They were barred from choosing their own medical examiner. Accused could not introduce or collect evidence themselves, and upon detention a person lost all liberty and was at the mercy of the director's discretion. The core of the BCCLA's case, however, was the federal Narcotic Control Act. Despite Phase II of the federal anti-drug legislation not yet being declared, it was proof Parliament intended to legislate in the field of treatment of addicts as well as punishment of dealers.⁵¹⁹

McEachern's decision in favour of the appellant, Schneider, was the greatest court success the BCCLA achieved prior to the passing of the Charter. It was a high profile case, initiated and funded by the association, against a major piece of provincial legislation. The judge considered the legislation criminal law because health legislation was meant to apply equally to all residents as opposed to targeting a particular subset within the community. His decision revolved around the question of jurisdiction in relation to the treatment of addicts. According to McEachern, the federal Narcotic Control Act was also designed to deal with treatment and, as such, the province could not legislate in this area.⁵²⁰

After succeeding in the provincial Supreme Court, the *Schneider* case faced an uphill battle. In 1981 the British Columbia Court of Appeal unanimously struck down the lower court decision and ruled the legislation *intra vires*. The appellate court's analysis of the Narcotic Control Act and claimed the Act had no relevance to

the provincial legislation by virtue of Phase II not being declared. Its decision focused on the narrow language of the statute itself and its concern with dependency, patients and treatment to conclude the legislation was designed to help addicts, not punish them. McFarlane decided that “the provisions of the impugned statute for the examination, apprehension and detention of dependant persons or patients are in no way intended to be punitive. They are provided for as ancillary to ‘treatment’ as defined. The legislative plan is not to punish users of narcotics.”⁵²¹

Within a year the BCCLA funded an appeal to the Supreme Court where another unanimous decision found the legislation *intra vires*. Brian Dickson, in presenting the decision for the entire court, believed that the Heroin Treatment Act did not fall under any all-encompassing federal residuary power. Since Phase II of the federal legislation was not yet declared, the paramountcy argument was rejected. The due process argument put forth by the appellant raised some concerns for Dickson as the legislation dealt with ‘local evils’ and curtailed the individual’s freedom, but this was not enough in his opinion to place the treatment of drug addicts under the criminal law power. There were already several provisions for appeal available under the legislation and a written statement from the Director of the review board was necessary to commit a patient, satisfying the requirement for due process. Quoting the LeDain report, the judge concluded that narcotics were a medical, not criminal, condition and the Heroin Treatment Act was in pith and substance a public health issue.

Due process arguments aside, the BCCLA also objected to the Heroin Treatment Act because it violated some of the fundamental principles upon which the organization was founded. The law was being used to punish people for their state of being, not actions, and refused individuals the right to choose their own form of medical treatment. Moreover, the legislation violated the integrity of the judicial system by establishing a non-judicial decision making body with the power to incarcerate and detain people for years, allowing only for an appeal against the question of whether or not treatment was needed, a question the BCCLA felt was unsuitable for provincial Supreme Court judges. Unfortunately, until the advent of the Charter, the BCCLA could not present a case before the courts based on the violation of a fundamental freedom.

Conclusion

Despite its failure in the Supreme Court and at a cost of almost \$9000, the case shone the national spotlight on the BCCLA. After twenty years, the BCCLA had grown from an association of sixty members with a budget of a few hundred dollars, to over 1000 members and \$150 000. Between 1962 and 1982, the BCCLA was an active defender of individual rights locally and nationally. Irrespective of background or political affiliation, the BCCLA was willing to defend an individual's rights before the courts, in its political lobbying, and through various educational campaigns. Although it was a young organization, struggling year by year simply to stay afloat,

the BCCLA was successful in employing rights discourse to defend the interests of the marginalized. Its appeal was consistent in each case: each individual had fundamental freedoms, such as free speech, and the community had a moral responsibility to respect these rights. At a time when the mayor of Vancouver was waging a virtual war on hippies and the *Georgia Straight*, and the Ku Klux Klan was promoting hate mongering, it was the rare organization willing to come to the defence of those who were easy targets for vilification and state suppression.

Yet, the first twenty years of the BCCLA's existence was marked by constant failures to achieve its own goals. Courts were poor forums for the defence of civil liberties in the seventies. Two of the most controversial state policies violating civil liberties, the order in council directed against teachers in 1970 and the Heroin Treatment Act, survived legal challenges while the BCCLA was forced to expend a great deal of its resources in the courts. The history of the BCCLA also reflected a minimalist approach to rights activism. At no time did the group embrace positive rights or promote economic, social and cultural needs as rights. The repertoire of strategies employed by the BCCLA involved working directly with state officials or state institutions, in contrast to other social movement organizations which were willing to employ civil disobedience or mass mobilization (e.g., boycotts). But this was no classical liberal association. Its focus on the due process rights of workers and welfare recipients reflected the new issues facing human rights activists under the welfare state in Canada. Civil liberties advocates were ideally suited to raise concerns

about abuses of power derogated to welfare state agencies. The organization was also the leading community group in Vancouver intent on policing the police. The BCCLA remains active in 2004, and is the oldest operating civil liberties association in Canada.

Chapter Nine:

Ligue des droits et libertés

Trudeau: "It's true that there are a lot of bleeding hearts around who can't stand the sight of soldiers with helmets and guns. All I can say is: go on and bleed. But it's more important to maintain law and order in society than to take pity on people whose knees start to quake as soon as they see the army. ... Society must take every means available to defend itself against the rise of a parallel power which would defy the power of the people's elected representatives, and I believe that there are no limits on this obligation. Only cowards would be afraid to go all the way."

Reporter: "How far would you go?" Trudeau: "Just watch me."⁵²²

Pierre Elliot Trudeau's famous words during the October crisis in 1970 continue to reverberate today as evidence of the Prime Minister's unwavering hostility to those who openly challenged his decision to invoke the War Measures Act. His reference to 'bleeding hearts' was not directed simply to his political rivals in the House of Commons but to the rights associations across Canada who were among the most vocal opponents of the government's actions during the crisis. Surprisingly, Quebec's only rights association was noted not for its actions but its silence. When the ultimate challenge to the rights of Canadians and Quebecers from the state presented itself, the Ligue des droits de l'homme (later renamed the Ligue des droits et libertés) failed to distinguish itself and fulfill its central mandate. The failure of the Ligue des droits de l'homme (LDH) during the FLQ crisis would lead to profound changes in the structure and orientation of the association.

A study of the LDH offers invaluable insights into the history of the human rights movement in Canada. First, it was by far the most egalitarian rights association in Canada, focussing on broader questions of social justice after 1972 as well as on social, economic and cultural equality as compared to the BCCLA's focus on civil liberties. Secondly, the LDH is the only Canadian rights association to truly deal with the question of collective rights in the case of minority language and cultural rights, in contrast to other groups' primary concern with individual rights. Thirdly, as the second largest rights association in the country and the most well funded by the state, it raises questions about the implications of state funding, particularly when the group raised the ire of the state with its controversial language policy.

Unlike the history of the three other case studies in this work, the early history of the LDH can be easily divided into three distinct periods. In each period, the organization experienced significant transformations in its structure, leadership and orientation. The years 1963 to 1970 were the 'law years' of the LDH when legal reform and a concern for civil liberties dominated the association's agenda. During this period it embraced the same principles and tactics as the BCCLA and, as will be seen in the following chapter, the CCLA. From 1970 to 1975, in the wake of the October crisis, the group espoused a broader conception of human rights, focussing on social, economic and cultural rights instead of simply civil and political rights. Finally, with the passing of the Quebec Charter of Human Rights and Freedoms in 1975, the LDH experienced a slow decline as it struggled with internal conflicts and

funding problems. By 1982 it had become clear that the LDH, as with many rights associations of the period, had peaked in the mid-1970s.

1963-1970: The Birth of A Civil Liberties Association

In contrast to the three other case studies, no specific event triggered the creation of the Ligue des droits de l'homme. Its origins can be traced to several leading intellectuals in Quebec in 1963 who envisioned a modern rights association to serve Quebec and possibly the nation as a whole. It was an initiative of Father Gérard Labrosse, a French speaking Jesuit priest, who recruited Pierre Elliot Trudeau (law professor at l'Université de Montréal), Jacques Hébert (a publisher) and J.Z. Léone Patenaud to help form a provisional committee alongside 19 others.⁵²³ Included in this collection of prominent figures was Frank Scott, famous for his defeat of the Padlock Act and a renowned constitutional scholar, and Thérèse Casgrain who was notable in the women's movement and a key figure in the successful drive in 1940 to grant women the vote in the province. Labrosse drafted the constitution and the provisional committee compiled a list of potential members to form the administrative council, the association's governing body. By May 1963 the provisional committee had recruited 54 individual members and four group members, one of which was the Fédération des travailleurs du Québec.⁵²⁴

A general assembly met on 29 May 1963 with Frank Scott presiding. During the meeting the constitution was voted on and accepted, and a Montreal lawyer, Alban

Flamand, was elected the first president. During the proceedings the only real debate surrounded the name of the association. Originally, it had been dubbed the Ligue des droits de l'homme de la Province de Québec but Trudeau, determined to have the group play a national role, suggested the provincial reference be eliminated. Thus was born the Ligue des droits de l'homme/Civil Liberties Union.⁵²⁵

Introducing the Ligue des droits de l'homme

A concern with civil liberties was expressly articulated in the group's constitution, a document strongly reflecting the ideas of Frank Scott who had long been a leader among human rights activists in Canada. Article one of the constitution read as follows:

- i) To protect civil liberties, whether they are physical, intellectual or moral, without distinction as to sex, religion or ethnic origin and in particular but without limiting the generality of the foregoing, liberty of movement, thought, speech, press, religion, assembly, association, and the equality of all before the law.
- ii) Within the context of existing law, to inform the public and to intervene on behalf of persons claiming violations of their civil liberties.
- iii) To advocate changes in the law by
 - a) Studying critically the relevant laws and the Constitution of our country
 - b) Making proposals to municipal, provincial or federal authorities or to any other authority and,
 - c) Informing the public.⁵²⁶

Of the individuals chosen to lead the association, eight were lawyers, eight journalists, two union organizers, one professor, one economist, two business men and two student leaders. There was a clear elitist bias to the League, which drew

most of its members from the professional and well educated classes, and with a strong anglophone presence; eight of the twenty five initial members were English speaking.⁵²⁷ Few minorities or women were brought into the fold and the organization would have to claim to speak on behalf of people who were not active within the organization. A recruitment campaign prepared in February 1966 qualified the group's interest in being "plus sur la qualité que la quantité" of its membership.⁵²⁸ In addition, all new members to the association had to be approved by the administrative council. By requiring all new members to be approved in a vote, the LDH could effectively filter potentially contentious members.

There are several key insights suggested by the constitution and the group's initial statements. First, there was no reference to language rights. While language rights would become a central issue for the organization by 1972, for this early period, it was not reflected in the group's priorities. While in 1963 this was consistent with the political context of the period as language rights would not become a major political issue until the late 1960s, at the same time the association refused to adopt a position on language rights before 1972, even after the issue had begun to dominate Quebec politics. Perhaps out of a concern for implicating themselves in the one of most controversial issues of the period, language rights were not explicitly asserted by the LDH in this stage of its history. Most likely, however, members such as Scott would have wanted the League to focus on individual rights as befitted a proper civil liberties association, as opposed to entering into the debate over language rights as

collective rights. Secondly, as was the case with the BCCLA, the constitution of the new LDH focussed on equality of opportunity, political and civil liberties and anti-discrimination. There was no reference to the social and economics rights of youth, women, the elderly, aboriginals or the disabled. These issues would not mobilize the organization for another decade. Thirdly, there was no reference to Quebec's right to self-determination, another issue not raised until the 1970s.

Finally, it is no coincidence the LDH was formed during this stage in Quebec history. These were the formative years of the Quiet Revolution, a period when 'le grand noirceur' had finally been exorcised and the economic, social and political modernization of the province was in full swing. Many of the LDH's founders, such as Pelletier and Trudeau, could arguably be considered among the leaders of the Quiet Revolution. With the Union Nationale having been defeated in 1960 by the Liberals (who would stay in power until 1966) and the repression associated with the Duplessis years experienced by Scott in his battle against the Padlock Act or Casgrain's fight for women's rights behind them, the potential for social change was palpable. Scott had presided over the formation of the Montreal branch of the CCLU only to see it bitterly divided between communists and social democrats. The LDH represented another attempt to establish a viable rights association in Quebec promoting the traditional liberal values Scott had placed a great deal of faith in, and for the first time there was a legitimate hope the state would support and not prove an

obstacle to reform. The principles of the Quiet Revolution made the optimism of the LDH's founders possible.

The LDH began as an organization fully funded by its members and deliberately chose to avoid government funding. The more militant members of the newly-formed association were determined to ensure the group's independence and autonomy, and government funding threatened to institutionalize the association and make it dependent on the state. Revenue after one year of operations thus amounted to only \$2 580.⁵²⁹ Membership in the organization fluctuated between 100 and 300 members during this period.

Denominational Education

The LDH faced a variety of issues in the first seven years of its existence. As with the BCCLA and other rights associations of the period, the question of religious education was debated. This issue was raised by Dr. Henry Morgentaler (soon to be famous for challenging the abortion laws) at the 19 January 1967 meeting of the administrative council. Surprisingly, for the first twenty years of its existence, religious education did not figure prominently in the group's activities, despite being centred in the most religiously oriented provincial education system with the possible exception of Newfoundland. Morgentaler's concerns were the same as those raised by the BCCLA, CCLA and the Newfoundland-Labrador Human Rights Association (NLHRA): teachers were being fired or rejected for work because they did not

conform to tenets of a particular faith, and students of minority faiths were forced to expose themselves to other religions. But the motion was defeated and Morgentaler did not pursue the issue.⁵³⁰

Prévost and the Administration of Justice

Inadequacies in the legal system, particularly in the administration of justice, were the central focus of the association's work in its early years. Members of the LDH were involved in consulting the provincial government. Casgrain sat on a Conseil consultatif de l'administration de la justice for the Ministry of Justice as of 1965 and Scott was appointed in 1966 as chairman of the Civil Rights Committee for the Office of the Revision of the Civil Code presided over by another LDH member, Paul Crépeau.⁵³¹ Within the League, a law committee was formed to research current problems in the justice system in Quebec. George Wesley, a founding member of the LDH, prepared a report in the same year the LDH was founded which highlighted serious problems in the administration of justice in Quebec. According to Wesley, there was an estimated 14 000 cases awaiting trial at the Superior Court in Montreal alone, compared to 2550 in Ontario. Some cases had to wait a remarkable 4 to 5 years before being heard, with the average wait being 36 months. Judges were also underpaid, with the average salary of a Superior Court judge being \$17 000 compared to \$22 000 in the United States. A shortage of judges led to constant delays, and

economically weak litigants were at the mercy of those who were well financed and could stretch out legal proceedings for long periods of time.⁵³²

As a solution to the many problems plaguing the judicial system, the LDH proposed the appointment of a commission to investigate the administration of justice and, in 1967, its lobbying paid off. Thanks largely to the efforts of the LDH, the Minister of Justice appointed the Prévost commission in 1967 to report on the administration of justice in penal and criminal matters in Quebec.⁵³³ As discussed in chapter four, the commission was to investigate the efficiency of the courts and police forces, treatment of prisoners and current police methods in investigating crime. What emerged from the inquiry was the most comprehensive analysis of the provincial justice system ever produced. Out of 253 meetings and 181 public sessions the Prévost commission produced a massive compendium condemning the judicial system and recommending vast changes to the system.

Virtually all the recommendations forwarded by the LDH in its report to the commission were accepted and included in the report. These included recommendations providing for operating some twenty-four hour courts, indemnifying victims of crimes, more resources for the judicial system as well as hiring more judges and police officers and stricter regulations on search warrants. The League even recommended the Commission go beyond its provincial mandate and inquire into the uncertainty and arbitrariness of penal sentence which the Commission did, recommending the system be reformed to impose more lenient

sentences and focus more on rehabilitation rather than punishment.⁵³⁴ Many of the LDH's recommendations endorsed by the commission, including twenty-four hour courts and expanding the judicial system, would eventually be established although not for many years to come.

Prisoners' Rights

Prisoners' rights was another pertinent issue in the 1960s for the LDH, and was consistent with its general concern for the administration of justice in the province. One of the critiques by the Prévost commission of the province's prison system was its focus on punishment instead of rehabilitation, and this was clearly the case with the new psychiatric wing being planned for St. Vincent de Paul prison in 1965. St. Vincent de Paul was a federal penitentiary with a special wing for mentally ill offenders, an additional wing designed to isolate particularly violent felons, including those who represented a threat to the rest of the prison population. Cells were designed for complete isolation, with no windows or views of other prisoners with guards patrolling above looking down on prisoners.⁵³⁵ In a letter to the Solicitor General Guy Favreau in 1965, professors at the McGill forensic science clinic suggested the new wing would simply encourage violence: "As spatial and social isolation become more rigorous, destructive impulses tend to intensify in some individuals, precisely the type for whom this unit is designed. These impulses find solution in three ways, often interchangeable; aggression directed against the self in

self-mutilation and suicide; against others in physical violence, or in the demolition of the cell; or there is withdrawal, with mental breakdown.”⁵³⁶

The LDH helped organize a coalition of groups including the John Howard Society and the Quebec Criminological Society to lobby the federal government to stop construction of St. Vincent de Paul.⁵³⁷ Activists with the LDH organized seminars, wrote letters and toured the prison.⁵³⁸ Opposition was also raised to the construction of a Special Penitentiary at Ste-Anne des Plaines as a maximum security prison with similar isolation units. Lucien Cardin, Minister of Justice, justified the building of a new wing because those inmates placed in the new section were the worst of the worst: hardened habitual criminals guilty of causing disturbances in prisons and in some cases murdering prison guards.⁵³⁹ In response, the coalition of forty-eight groups including the LDH organized a delegation in 1966 to the Solicitor General.⁵⁴⁰ It was a failed initiative and the government refused to give in, determined to construct both facilities. Nonetheless, the LDH would continue to advocate on behalf of prisoners, visiting prisons and lobbying both levels of government.

The Beginnings of a Crusade: A Bill of Rights for Quebec

Most of these issues remained peripheral to the LDH's main concern during this period which was the question of a bill of rights for Quebec. From its founding in 1963 to the passing of the Quebec Charter of Human Rights and Freedoms in 1975,

the LDH was a consistent advocate for a provincial bill of rights. In contrast to most human rights codes, the LDH favoured a bill of rights which would incorporate both fundamental freedoms such as speech and assembly with the anti-discrimination provisions found in human rights codes. Saskatchewan was the only province in Canada with a bill of rights (Alberta's 1946 Bill of Rights was invalidated by the Supreme Court of Canada). Since there remained some confusion regarding jurisdiction in the field of individual rights, most provinces limited their human rights legislation to actions clearly in their sphere of influence.

The LDH's vision of a provincial bill of rights was first articulated by law professor (and future parliamentary leader of the Parti québécois) Jacques-Yvan Morin in a 1963 article published in the *McGill Law Journal*. At the time the LDH was only in its infancy, but the article was later republished by the LDH with the association's endorsement and Morin was asked to chair a committee to lobby the provincial government for a bill of rights.⁵⁴¹ The proposed bill of rights offers a glimpse into the LDH's perception of rights in its formative years. Given Morin's disposition to construe provincial jurisdiction broadly (he challenged the assumption that only the federal government could legislate on human rights), there were articles protecting the five fundamental freedoms (speech, religion, association, assembly, press), equality for women, non-discrimination and the right to form unions (although there was a provision banning the police and essential services from striking at a time when civil servants did not have collective bargaining rights). Nearly a quarter of the

proposal dealt with the administration of justice (e.g., right to reasonable bail and access to counsel) which was consistent with the LDH's priorities during this period. Surprisingly, there were provisions for the recognition of economic and social rights; Morin wanted to ensure access to a free education, minimum salary and standard of living, as well as the right to work and to social security. The inclusion of these rights in any provincial bill would have made Quebec the most progressive province in the field; even the Saskatchewan Bill of Rights did not include such sweeping economic and social rights. In suggesting clauses for education and social rights in a provincial bill of rights, the LDH also distinguished itself from the advocacy of the BCCLA, which would have considered education as a question of public policy, not rights. Finally, the proposed bill ended with recommendations for a human rights commission and ensuring the supremacy of the legislation over all other statutes by making it impossible to amend the bill without a two-thirds vote in the National Assembly.

Morin's piece was followed up by a campaign throughout the 1960s to convince the provincial government to pass a bill of rights. This campaign mainly took the form of organizing seminars and public engagements, with prominent individuals such as Frank Scott espousing the benefits of a provincial bill of rights.⁵⁴² In its presentation before the Prévost commission the LDH raised the issue again. These efforts bore some fruit. In volume five of its extensive report, the Prévost commission recommended that the Minister of Justice introduce a 'Charte des droits

fondamentaux de la personne humaine' to define people's rights, specify the means and recourse through which such rights could be recognized, and establish sanctions in cases where such rights were violated. The report failed to specify the contents of such a charter but the recommendation in itself was a validation of the LDH's position.⁵⁴³

Morin and Scott were also part of a committee seeking to entrench rights in the Civil Code. While a bill of rights would protect rights in public law, a declaration of rights in the Civil Code would complement a bill of rights by entrenching rights in private law. Paul Cr peau, as president of the Office for the Revision of the Civil Code, appointed Scott chairman of the Civil Rights Committee. The committee was to propose a declaration of rights for inclusion in the Civil Code and it was composed of Morin and two other well known lawyers from Quebec, Jean Beetz and Gerald LeDain. Their report was submitted in 1966 with 10 articles to be added to the Civil Code. This draft declaration of human rights included asserting an individual's right to privacy, dignity and reputation, enjoyment and disposition of property, inviolability of one's home, life, physical security and personal freedom. Under the new Civil Code all individuals had the right to freedom of conscience, opinion and expression, peaceful assembly and association as well as the right to assistance if in peril (thus requiring others to give aid). A detailed clause guaranteed equal access without discrimination to enter public spaces and access goods and services. Anyone violating these articles would be subject to civil damages under the Code.

Members of the LDH were therefore at the forefront of proposing significant revisions to provincial law to better protect individual rights. The work of the LDH, combined with the lobbying efforts of the United Council for Human Rights, finally paid off in 1970 when the newly-elected Liberal government under Robert Bourassa appointed two people to draft a bill of rights. Frank Scott, who was still on the administrative council of the LDH, and Paul Crépeau were asked by the government to draft the bill which they completed in 1971. By this stage each political party in Quebec had expressed some support for a provincial bill of rights and most had placed it in their election platforms.⁵⁴⁴ An election in 1970 postponed any plans to enact a bill of rights in the near future.

In an important symbolic move demonstrating the role played by the LDH in pushing for a bill of rights, the Bourassa government's newly appointed Minister of Justice used the LDH's 1970 annual general meeting as a platform for announcing his intention to establish greater protections for individual rights. Among the reforms Jérôme Chôquette suggested were the insertion of a declaration of human rights in the Civil Code and in a future Quebec constitution, creating a permanent commission for the revision of civil rights in the Civil Code, creating a system of legal aid and instituting new measures to improve the speed and efficiency of the courts. Most importantly, Chôquette committed himself to a provincial bill of rights to complement the Canadian Bill of Rights which he characterized as 'almost worthless'.⁵⁴⁵ This apparent success, however, achieved little. Although initially warming to the idea of a

provincial bill of rights and promising to present a Declaration of Rights before the National Assembly, Chôquette soon refused to go ahead with the proposal. It would take another five years before he would honour his commitment to introduce a bill of rights into the National Assembly.

With human rights codes being passed across the country in almost every province, why was the Quebec government so recalcitrant? Duplessis had responded to demands for a bill of rights in the 1950s by claiming that the only thing Quebecers needed to defend themselves against discrimination was the Bible.⁵⁴⁶ Clearly, under his regime there was little chance of passing anti-discrimination legislation. But the sixties was the period of the Quiet Revolution and the blossoming of the rights revolution. Jean Lesage's Liberals had ushered in a new era of Quebec politics more sympathetic to the idea of state protection for individual rights, and the Union Nationale of Daniel Johnson and Jean-Jacques Bertrand was a far cry from the party under Duplessis, having publicly endorsed the idea of a provincial bill of rights. And yet, successive governments in Quebec hesitated to act on this issue. The most likely explanation for this hesitation was the highly contentious issue of language rights. The entire question of language rights had proven to be a political time-bomb in the late 1960s and a riot in the St. Leonard suburb of Montreal in 1969 followed by a divisive debate regarding the Union Nationale's Bill 63 providing parental choice for the language of their children's education simply inflamed the issue. Lesage and the Liberals were unwilling to consider a provincial bill of rights until a commission

appointed under the previous government to study language issues in Quebec (Gendron Commission) completed its report.⁵⁴⁷ Any attempt to pass a bill of rights would invariably sink the government into a debate on language rights and most politicians in Quebec were not interested in doing so until the timing was propitious.

For these reasons, the LDH's dream of a bill of rights for Quebec remained unfulfilled by 1970. It is interesting to note how the LDH itself continued to avoid the question of language rights. The group had failed to assert language rights in its declaration of principles, made no presentation before the Royal Commission on Bilingualism and Biculturalism, and in 1969 avoided taking any position on Bill 63. Morin's proposal for a provincial bill of rights and the Civil Rights Committee's recommendations for the Civil Code made no mention of language rights. When the League publicly endorsed Trudeau's call in the late 1960s for a constitutional bill of rights, it conveniently sidestepped any mention of his position on language rights.⁵⁴⁸ It was also a hallmark of the LDH's activism during this period that while in some situations it may have advocated for social and economic rights, it did not explicitly take a position in favour of collective rights. At no time did it express any support for Quebec self-determination nor for the protection of the French language. This was no doubt the type of organization envisioned by such founders as Trudeau and Scott, both of whom rejected the nationalists' stand demanding special protections for the French language in Quebec.

In 1969, Claude Forget (who would later become Minister of Social Affairs under the Liberals) resigned as president of the LDH. It was not a happy parting. Forget, who wrote an extensive discussion paper on economic and social rights on behalf of the Quebec committee for International Year for Human Rights,⁵⁴⁹ accused the League and its members of being incapable of accomplishing anything. He characterized the organization as composed of dilettantes and elites who had never been victimized themselves; it was an anachronism failing to function properly.⁵⁵⁰ Forget's embittered resignation highlighted the basic weakness in the League in this early period. With limited funds and only a few dedicated volunteers, the LDH was capable of only a few minor achievements. In particular, the association had adopted a minimalist approach to rights activism, and was exclusively focussed on lobbying for legislative and policy reform as evinced in its focus on law reform and the Prévost commission, a bill of rights for Quebec, the Civil Rights Committee and lobbying policy makers for changing regulations dealing with prisoners. It had limited contact with other social movement organizations in the province, and did not participate in the United Council for Human Rights, a coalition of human rights groups in Quebec. The LDH's early years reflected a limited vision of social change, one based on a small group of elites working the legal and political system to protect basic civil and political rights.

1970-1: The October Crisis

The defining moment in the history of the Ligue des droits de l'homme remains the October crisis of 1970. Within a few years, the fundamental orientation of the League, its organizational structure and leadership would alter dramatically. At the initiation of the crisis, the LDH was a collection of intellectual, economic and political elites with close ties to government, including Prime Minister Trudeau (although the Prime Minister was no longer a member, Frank Scott, Thérèse Casgrain and Jacques Hébert were all friends of Trudeau), concerned primarily with defending civil liberties through legal reform. Quiet back room diplomacy was the association's core strategy. But by 1973, the LDH had transformed itself into a more broadly-based organization with few ties to governing elites. It retained an interest in public policy and law reform but preferred coalition building with other social movement organizations and taking on larger issues of social justice. A permanent staff made available through extensive government financing soon came to control most of the activities of the LDH. All of this could be dated back to the inability of the LDH to take an effective stance during the October crisis, eventually leading to the downfall of the group's old guard.

'Just Watch Me': Human Rights and the October Crisis

Compared to the later events, the government's initial reaction to the second kidnapping was relatively muted. Fifty people were arrested immediately following

the kidnapping of Pierre Laporte, five days after Cross had been abducted. In the federal cabinet, discussions soon turned to the use of extreme methods to deal with the second abduction. Pelletier was one of the key advocates pushing for the use of the War Measures Act. Recently released cabinet documents reveal two meetings on 15 October, one at 9:00am and another at 2:30pm, when the cabinet met to consider implementing some form of emergency legislation. Bourassa was calling for special measures from the federal government to help his embattled administration, which Trudeau interpreted to mean an amendment to the criminal code or special temporary emergency legislation. It was Pelletier who recommended to the Cabinet security committee that the War Measures Act be employed, although the committee rejected his recommendation. Pelletier raised the issue again in cabinet during the first meeting as did several other ministers. John Greene, Minister of Energy, Mines and Resources, could not see how the government could establish the existence of an insurrection, particularly as the security panel had not come to such a conclusion. Nonetheless, it was much less a debate than a discussion. The cabinet was unanimously behind some form of emergency legislation.⁵⁵¹

The cabinet was not insensitive to the potential repercussions of declaring the War Measures Act. Trudeau was particularly worried about the retroactive nature of the legislation offending rights activists, an accurate prediction in hindsight. John Turner, Minister of Justice, felt the interference with civil liberties and admitting the insurrection was apprehended would make the use of wartime legislation seem like

overkill, and he stressed the need to mobilize Parliamentary and public support behind their decision.⁵⁵² These considerations had little impact on the resolutions that followed. In fact, three days later, the cabinet discussed the possibility of having police officers stationed at every radio and television station to prevent the press from ‘mishandling’ any information related to the crisis.⁵⁵³

The Quebec media was an early victim of increased state powers. Among those arrested after the War Measures Act was declared on 16 October 1970 were several journalists and media personalities, including Louis Fournier from CKAC, Yves Fabre a photographer from the *Journal de Montréal*, and journalist Pol Chantraine. Through the War Measures Act the police were able to delay the reporting of Laporte’s death by two hours. McGill University’s student newspaper, *The McGill Daily*, received a warning from authorities about their editorials (which condemned the War Measures Act) as being too sympathetic to the FLQ, and received threats that such opinions would not be tolerated.⁵⁵⁴ In Toronto, the University of Toronto publication *Varsity* was confronted by its printer, who refused to publish the magazine with the FLQ manifesto. Within Radio Canada, Vice President E. S. Hallman warned his reporters to be cautious in reporting on the FLQ crisis.⁵⁵⁵ At a public seminar in Montreal, Michel Bourdon, a journalist with Radio Canada, accused the leadership at Radio Canada of harassment and censorship. Bourdon was soon suspended and an investigation instituted to consider his allegations. The issue reached the House of Commons in mid-November 1970 when Secretary of State

Pelletier was asked if the government was putting pressure on the media to limit its coverage of the affair. Pelletier vigorously denied the accusation, stating they had only warned journalists to be sure of their facts and to verify them extensively before reporting. Whether or not any direct political pressure was placed on Radio Canada, it is clear tensions were high. Two pieces were banned from the show *Les Beaux Dimanches* and a documentary, the *Testament of Lenin*, was not shown out of concern it might incite the populace to violent action. As for Bourdon, he and another journalist, Denis Vincent, both lost their jobs. They claimed to be speaking in their capacity as leaders of the National Association of Broadcast Employees and Technicians, one of the Canadian Broadcasting Company (CBC) unions, but their dismissal was not rescinded.⁵⁵⁶

The central issue, however, was not freedom of the press but the detention of individuals and suspension of their traditional rights to due process. Habeas corpus was suspended and people held in jail for several weeks without being charged. Individuals were detained without any notification to their families of their arrest and were denied legal counsel, while others were held completely incommunicado.⁵⁵⁷ The regulations passed under the War Measures Act made membership in the FLQ a crime and, most importantly, was made retroactive. A person who had been active only briefly in the FLQ seven years earlier and had not supported the organization since then was criminally liable under the regulations. By the end of the crisis, over four hundred people had been arrested and detained under the emergency legislation.

Mobilizing Human Rights Activists Against the War Measures Act

As was the case in 1938 with the Padlock Act and in 1946 with the espionage commission, the FLQ crisis stimulated the formation of ad hoc civil liberties associations. Professors at the Université de Montréal instigated a meeting of 200 people on the same day the War Measures Act was declared to call for its revocation and removal of the army from Quebec. They formed the Comité québécois pour la défense des libertés with plans to create similar committees at all four Montreal universities.⁵⁵⁸ In turn, McGill students formed a Comité pour la défense des droits et libertés and initiated a petition to revoke the War Measures Act. A Comité québécois pour la défense des libertés civiles, made up of a collection of progressive organizations, emerged in Montreal to hold a seminar on freedom of the press on 28 October 1970 which led to Michel Bourdon being fired from Radio Canada.⁵⁵⁹ Another group, the Mouvement pour la défense des prisonniers politiques (MDPPQ), led by Dr. Serge Mongeau who had recently been an independent candidate in the South Shore riding of Taillon in April 1970 (against René Lévesque), found itself revitalized by the crisis. Originally named the Comité d'aide au group Vallières-Gagnon, it was reorganized on 30 June 1970 as the MDPPQ. Although the police labelled the MDPPQ as an FLQ front, the purpose of the organization was to raise bail and legal fees for anyone imprisoned for taking part in demonstrations for political reasons.⁵⁶⁰ On 20 January 1971, several thousand demonstrators took part in a protest organized by the MDPPQ, trade unions and other Left wing groups to call

for the release of the prisoners arrested since October. The group would remain active until 1973.

Of course, the most important group to have emerged from the October crisis of 1970 was the Canadian Federation of Civil Liberties and Human Rights Associations. A birth-child of the crisis, the Federation would remain active for another twenty years promoting the cause of civil liberties and human rights across the country.

Another organization was formed in December 1970 in Waterloo, Ontario in reaction to the seizure of a Guelph student newspaper and arrest of a Kitchener resident for distributing a pamphlet on Quebec in violation of the regulations under the War Measures Act.⁵⁶¹ The Citizens Commission of Inquiry into the War Measures Act was composed of university professors, labour leaders, a church minister, journalist and a former Premier of Saskatchewan.⁵⁶² Its purpose was “to investigate the reasons for the invocation of the War Measures Act and the subsequent Public Order Act and the alleged abuses following their wake.”⁵⁶³ While the group held several public sessions in Ontario and Quebec, the goal of organizing provincial committees across the country to conduct similar investigations was never realized. Within a year the group effectively petered out, and there is no evidence it even produced a report.

'Il nous paraître excessif et contraire à l'esprit de nos lois': The League Takes

Action...

As groups mobilized within and outside Quebec to deal with the crisis, the LDH, the only established rights association in Quebec, failed to distinguish itself. A declaration released on 19 October 1970 was far from a clear condemnation of the government's actions. This was the League's first statement on the crisis. Stating its complete opposition to the tactics of the FLQ and the use of violence, the declaration raised concerns over the arrest and detention of individuals for long periods of time:

La Ligue des droits de l'homme demande que les personnes accusées d'avoir commis un crime soit jugées suivant la loi et déplore le fait que, dans certains cas, on ait détenu des accusés pendant des périodes très longues, avant même que ces accusés nient été trouvé coupable, ces injustices s'étant produites avant le 16 octobre 1970, il y a lieu de croire qu'elles se reproduisent d'autant plus aisément qu'elles seront devenues légales.⁵⁶⁴

The statement goes on to condemn the use of war time powers to deal with the situation in Quebec: "Elle [LDH] ne peut accepter, à aucun prix, l'utilisation de la Loi des mesures de guerre pour faire face à la situation qui existe dans le Québec et dont elle reconnaît l'extrême gravité." However, these comments were balanced by an acknowledgement that the federal government was taking into consideration the interests of the province's citizens and using the only law available.⁵⁶⁵ Instead of calling for the immediate abrogation of the War Measures Act, the declaration called for the government to bring the law before Parliament and work with the opposition parties to repeal the legislation as soon as possible. It further called on the Minister of

Justice to advise families whose members had been arrested and detained, to release those individuals where investigations and searches did not justify the charges, provide prisoners with access to legal counsel, and to establish a commission of three eminent personalities to ensure those detained had access to appropriate services and supervision.

As the events dragged on and people continued to be arrested and detained under the Act, the LDH maintained its diplomatic position. In a press release on 27 November 1970, it challenged the retroactivity of the law, guilt by association, arrest without warrant and detention without bail. “Il nous paraître excessif et contraire à l’esprit de nos lois de les pourchasser indéfiniment et de les rendre passibles à jamais des sanctions de la loi pour leur appartenance passée à un groupe, pour une déclaration favorisant une méthode politique ou pour des convictions qu’ils ont depuis lors récusées.”⁵⁶⁶ As Trudeau predicted, the retroactive nature of the regulations passed under the War Measures Act was a particularly sore point for human rights activists, and the LDH declaration warned the government against arresting young men who were only associated with the FLQ in its early years. Another press release on 1 April 1971, however, reiterated its position supporting the government’s right to protect itself, and limited its critique to the wide powers of the War Measures Act. The LDH proposed a new formula for using the War Measures Act, one which would require the government to provide, in writing, the reasons why it made the proclamation which would have to be ratified by two-thirds of Parliament. It further

called for the removal of the War Measures Act from the statute books, for all regulations passed under the Act to be reviewed by the Supreme Court, and for the government to respect the tenets of the UDHR in respect of non-retroactive laws, innocence until proven guilty, the right to association and freedom of expression.⁵⁶⁷ Alongside these claims was a reiteration of the group's position calling for a bill of rights in the Canadian constitution as a symbolic recognition by the state of the need to respect individual rights.

The statements issued on 19 October 1970, 11 November 1970 and 1 April 1971 were the sum total of the LDH's public declarations during the crisis. No demonstrations were organized, no briefs presented to the federal or provincial government, no letters sent to public officials and no attempt to rally support against the legislation. While students held sit-ins and demonstrations and formed ad hoc civil liberties groups, and the MDPPQ, Committee of Ten (a group of leading personalities in Quebec calling on the both governments to negotiate with the kidnappers) and organized labour adopted a more confrontational approach to the federal and provincial government's actions, the LDH remained relatively silent. The press releases established the group's opposition to the use of the War Measures Act, but little action was taken to challenge the government's position.⁵⁶⁸ Years later Sandra Djwa, interviewing Hébert for her biography on Frank Scott, noted that Hébert (president of the LDH during the crisis) justified the LDH's actions during the crisis by "pinpointing the difference in emotional climate between Quebec and Ontario

when he observed the Quebec Civil Liberties Union could not take a position like that adopted by the Canadian Civil Liberties Association in Toronto, which condemned the use of the Act, because Québécois members were so conscious of living in ‘a climate of fear.’ In the Montreal group there was complete unanimity about the need to restore order, but the middle-of-the-road position they took annoyed both the moderates and the extremists.”⁵⁶⁹

Comité d'aide aux personnes détenues en vertu de la loi

Nonetheless, the LDH did contribute to reducing the impact of emergency powers on individual civil liberties in one significant way. On 25 October 1970 the LDH formed a Comité d'aide aux personnes détenues en vertu de la loi sur les mesures de guerre (Committee to Help Persons Detained Under the War Measures Act) with a mandate to inquire into the conditions of prisoners held under the War Measures Act. Amidst criticism that the LDH, as the province's leading rights association, was doing little to counteract the harsh measures and limits on individual rights imposed by the state, the committee was unquestionably its most effective contribution to the battle against the zealotry of the federal and provincial governments in stamping out the FLQ. This initiative was consistent with the LDH's historical concern with the rights of prisoners. The goal was to focus exclusively on getting access to prisoners and helping them contact their families, evaluate the conditions of their detention and provide some of them with legal counsel. The

committee received generous funding from the CCLA in the amount of \$4000, \$5000 from the provincial government, and more than \$5000 from various individual and group donations.⁵⁷⁰

The purpose of the committee was to provide the prisoners with all the necessary support and services while reporting complaints to the ombudsman (the most direct forum for seeking compensation for abusive action by government agencies). Jacques Hébert, Reverend Jacques Tellier and Rolland Parenteau were given access to the prisoners by the provincial Minister of Justice starting 28 October in order to investigate the conditions under which they were being held, and in many cases the committee was successful in winning their early release. The committee also created a legal aid sub-committee, led by Paul Crépeau, to provide prisoners with free access to legal counsel. It managed to convince the ombudsman, who had done very little in the first few weeks, to investigate and consider compensation for loss of employment to those who had been detained for too long (eventually \$200 was given to a large number of those detained). In addition, the committee provided financial assistance to families whose breadwinners were detained, intervened with landlords to prevent families and individuals from being evicted when rent was not paid in time, negotiated with banks and other credit institutions on loan payments, and spoke on behalf of students who missed exams. It also made several recommendations to the Minister of Justice relating to the unnecessary seizure of books and documents unrelated to the crisis, raised concerns regarding the unjustified treatment of certain

prisoners during their imprisonment and interrogations, and complained about those being held incommunicado. Hébert was particularly concerned that Parthenais detention centre, a prison designed to hold people for a few weeks at most, was being used for long term incarceration of people arrested during the crisis.⁵⁷¹ In its formal report, the committee suggested that “all the prisoners, men and women, were being held in conditions unworthy of a civilized country.”⁵⁷² By the time most of the prisoners had been released, the committee had met with 130 prisoners. One member of the committee concluded that it was “évident que la Comité ... à joué une rôle indispensable qui, dans une certain mesure, a pu atténuer les effets des lois d’exception. Par ailleurs, comme le démontre le rapport financier, le Comité a obtenu un large appui du public qui à répondu aux appels lancés à la radio et dans les journaux.”⁵⁷³

The Backlash: Hébert Defends the League

Despite its efforts with the prisoners committee, the LDH was perceived in many circles as having failed to distinguish itself during the crisis. Letters to the editor published in *Le Devoir* called on Hébert to resign because of his failure to position the Ligue more critically during the crisis, one of them suggesting that “if your degree of patience is proportional to the level of your friendship with Mr. Trudeau, leave the union Mr. Hébert.”⁵⁷⁴ An editorial by Claude Ryan appearing in *Le Devoir* on 3 April 1971 referred to a perception in the media that the LDH’s role in

advocating for the protection of civil liberties in Quebec had been supplanted by the more active association in Toronto, the CCLA, which had been far more critical of the use of the War Measures Act. While the editorial in question lauded the position taken by the LDH in its 1 April 1971 statement against the creation of permanent peacetime emergency legislation, the LDH's position in general failed to have the force of the more stringent CCLA position (discussed in chapter five).⁵⁷⁵ Another article in the *Montreal Gazette* on 5 April 1971 predicted Hébert would face a bitter crowd at the LDH's annual general meeting the following day because the League "under Hébert's leadership has been woefully negligent in doing battle against alleged injustice and abuses in this province practically all of them stemming from the October crisis."⁵⁷⁶ The *Montreal Gazette* article hinted that Hébert's relationship with Trudeau had stayed the former's criticism of the federal government during the crisis; the two had travelled together in China in the early 1960s and co-written a book on their experiences, and had founded the LDH with Pelletier in 1963.⁵⁷⁷ In 1971, less than a year after the crisis, Trudeau would appoint Hébert to the Canadian Radio and Telecommunication Council and would later appoint Hébert to the Senate.⁵⁷⁸ As a report prepared for the Secretary of State in 1972 concluded, since Trudeau "was one of the association's founding members along with Jacques Hébert, now president of La Ligue, and others, and because of the ambiguous stand taken by the association on the War Measures Act, many citizens are not convinced that the group is non-political, as such a group must be."⁵⁷⁹

Hébert made no attempt to counter the claims that he had been soft on the federal government during the crisis. The League's statements during the FLQ crisis reflect a clear opposition to the use of the War Measures Act balanced by a degree of deference to the federal government. Hébert's sympathy towards the federal government, and in turn Trudeau, was reiterated during a meeting of the Undersecretary of State's Advisory Committee on Human Rights in January 1971 where Hébert was asked to consult with the group on how the federal government could involve itself in the field of human rights. Hébert confirmed his belief that the province, not the federal government, was responsible for any human rights issues arising out of the crisis:

... although the War Measures Act was a Federal law, we must remember that it was under the jurisdiction of the Province of Quebec and it was totally administered by Quebec and the Quebec Police. ...I don't think it was felt that the Federal government lacked in some way, as far as Human Rights were concerned. After all, it was not their responsibility. ... [P]eople were detained in the Provincial jail, so it was, to my point of view, totally provincial.⁵⁸⁰

Criticism of the LDH, and Hébert in particular, was highlighted during a protest in the offices of his publishing house, Éditions du Jour, in March 1971. Members of the MDPPQ and a group calling itself Les Chevaliers de l'indépendance, 20 in total, marched into Hébert's office to call attention to the LDH's weak performance during the crisis. They were further protesting the publication on the same day of Gérard Pelletier's *The October Crisis* by Éditions du Jour. With large signs stating 'Hébert is a Traitor' and sporting two-by-fours, the grim faced protestors

refused to allow anyone in or out of the office, forcing Hébert to sleep in his office for a couple of nights to avoid a violent confrontation.⁵⁸¹ Among their demands was for the LDH to call a general assembly to denounce the retroactivity of the Public Order Act and the treatment of prisoners in Orsainville prison, speak out against the treatment of Paul Rose and others in Parthenais prison, and to provide observers during the trials of those arrested during the crisis. The protestors also called upon the LDH to demand that women be allowed on juries and for the organization to affiliate with the Fédération Internationale des Droits de l'Homme. Hébert attempted to negotiate with the protestors but, failing to come to an accord, he eventually called the police and the sit-in was brought to an end after 36 hours.

The protest was well covered in the press, with *Le Devoir*, *La Presse* and *Montreal Gazette*, among others, providing coverage. A bitter letter published in the *Montreal Star* addressed to Serge Mongeau (treasurer of the MDPPQ) from Hébert accused Mongeau of orchestrating a publicity stunt and claiming Mongeau (whose books had been published by Hébert) could have discussed the issues with him personally at any time.⁵⁸² Four days later, in what was one of the most striking attacks on the LDH and Hébert since October 1970, an open letter endorsed by the members of the MDPPQ published in *Le Devoir* raised the core issues dividing the LDH from people on the militant Left in Quebec. The letter accused Hébert of treating them as “d’imbéciles, de lâches, de sauvages, de fiers-à-bras, etc ... c’est bien votre droit de ne pas aimer nos manières, et nous avouons ne pas être très familiers avec la

dialectique byzantine des éminences de la Ligue.”⁵⁸³ According to the letter, while Hébert’s work with prisoners was laudable, the committee was a separate organization independent of the LDH. From their perspective, the LDH did virtually nothing other than distribute some press releases. Hébert should have denounced the justice system itself instead of working with the established authorities, particularly in regard to the denial of justice for militants and separatists who were imprisoned for their beliefs. They noted the LDH’s silence regarding contempt of court charges laid against several people after October and pointed out how the number of charges had increased dramatically since October with penalties ranging from a few days in jail to fifteen months. Their most scathing accusation, however, was to suggest that Hébert and the LDH, which had never taken a position on Quebec self-determination and had close ties to the federal government, were only willing to defend federalists and not separatists. In particular, they pointed to the refusal of the LDH to take a public stand on the recently imprisoned Vallière and Gagnon who had yet to be found guilty of a crime (the LDH claimed it would require two specialists to study the case at a cost of \$15 000 for two years before it could take a position).

The hostile encounter between the MDPPQ and the LDH had more symbolic than practical consequences. Hébert was re-elected as president of the LDH and there were no further confrontations between the two organisations. But for many on the Left, including members of the League, the LDH had failed to act against the most repressive attack on civil liberties in Canada since World War Two. Organized

labour and many members of the Parti québécois, Rassemblement pour l'indépendance nationale, MDPPQ and other political movements were not only targets for arrest in October 1970 but among the federal and provincial governments' most vocal critics. When the CLC presented a brief to the federal cabinet in 1971, Louis Laberge, president of the Quebec Federation of Labour, entered into a shouting match with Trudeau over the War Measures Act.⁵⁸⁴ The failure of the LDH to act more aggressively during the crisis was a particularly significant omission for a civil liberties organization. Since the 1930s rights associations in Quebec had never hesitated to defend unpopular individuals and associations, particularly those on the militant Left who were often the target of state repression, as was the case with individuals prosecuted under the Padlock Act. Even Frank Scott, a founding member of the LDH with a history for taking key civil liberties cases to the Supreme Court of Canada, openly supported the use of the War Measures Act.⁵⁸⁵

The LDH had placed itself in a difficult position by trying to condemn the use of the War Measures Act while simultaneously hedging its criticism of Trudeau's government. Hébert's situation was exacerbated when Trudeau was quoted in a television interview (and previously in a radio interview as well on 7 May) on 16 May claiming the LDH supported his position during the crisis. When asked how he viewed the crisis as a civil libertarian, Trudeau responded with the claim that the "Civil Liberties Union of Montreal supported the government's invocation of the War Measures Act. Never forget that. It's easy when you're sitting in Toronto and

Vancouver to talk about civil liberties. But the Civil Liberties Union of Montreal supported the government; don't forget that."⁵⁸⁶ At its 1971 annual general meeting the LDH resolved to send a letter to Trudeau asking him to retract his comments. But Trudeau refused. He argued in his letter to Pierre Jasmin, Director General of the LDH, that the LDH had acknowledged that the government was acting in the interests of the people and were working under extreme circumstances. As far as Trudeau was concerned, the LDH understood the necessity of his government's actions and supported them.⁵⁸⁷

Fourteen years later, the League's conduct during the FLQ crisis continued to rankle its members. The events of October 1970 would be reflected upon by future members of the LDH as an abysmal failure on the part of the LDH. In a report to the administrative council in 1984, the LDH's actions in 1970 were characterized as shameful and a failure to live up to the organization's mandate.⁵⁸⁸ This attitude was to be a major stimulus for instigating the institutional and philosophical changes in the LDH between 1970 and 1972.

1970-1975: Transition Years

The impact of the FLQ crisis did not have immediate implications within the LDH. It would be another two years before Maurice Champagne, a professor at the University of Montreal, would take over as Director General of the LDH and introduce a manifesto representing the new orientation of the League backed-up by a

new administrative council. Between those two years the organization would become increasingly active in the defence of civil liberties in Quebec and support the formation of a new national rights association.

State Funding

One of the most profound changes in the institutional structure of the LDH was the infusion of state funds. In the midst of the October crisis of 1970, Hébert reported to members of the administrative council that he had secured a grant of \$20 000 from the Secretary of State (presided over by Gérard Pelletier).⁵⁸⁹ An intense debate on 26 April 1971 at the Annual General Meeting surrounding the question of state funding ended in a resolution to accept a federal grant, but with the caveat that all future funding must be approved by the administrative council.⁵⁹⁰

The infusion of extensive state funding could not help but have a profound impact on the organization. Up until 1970, meetings of the LDH administrative council had taken place in Casgrain's home or Hébert's publishing house. They had no money to hire lawyers or fund legal cases, and they could not hire any full time staff. Within the next five years the LDH was able to hire a full Director General, secretary, assistant to the Director General, receptionist, and a researcher. And the level of funding itself from the state was staggering, far more than most other rights associations in Canada. Between 1963-1969, revenues averaged around \$1200 per year. In 1971 and 1972, revenues for the association were \$24 614 and \$28 252

respectively, soaring to \$126 395 in 1975 with the bulk coming from the federal (Secretary of State) and provincial governments (Minister of Justice).⁵⁹¹ While it is true the BCCLA was taking in similar monies during this time period (\$30 494 in 1973 and \$115 426 in 1975) its grants were locked into specific projects whereas the LDH was offered more core grants allowing them to hire full time staff. In addition, the BCCLA's grants peaked in 1975 and its revenues would drop afterwards, whereas the LDH continued to enjoy a revenue base well over \$100 000 for the next several years. Revenue from membership fees rose from \$1200 (1973) to \$2635 (1975), but continued to represent a minuscule portion of the group's revenues (LDH membership had risen from about 200 in 1972 to about 1000 in 1975).⁵⁹² It was fully dependent on state funding.

The 1972 Manifesto: From Civil Liberties to Human Rights Activism

The second most intense change to the LDH was initiated with the publication of a new manifesto in September 1972. From an association of elite members with a focus on singular cases and individual rights, the association began to take on the role of encouraging social transformation in Quebec and a concern with collective rights. The manifesto called upon the League to adapt to the changes occurring within Quebec society and to consider the problems of poverty, women's rights, ageism, youth, ethnic minorities, the right of citizens to be better informed on ways to challenge exploitation and the right of everyone to participate equally in social

institutions. It embraced notions of positive freedom instead of the group's traditional focus on negative freedom. Economic, social and cultural rights were given equal priority in the manifesto to civil and political rights. Native rights, handicapped, non-unionised workers, immigrants, families and others fell under the new mandate. Several of the original priorities would continue under the new orientation: prisoners' rights, police abuse of powers and a bill of rights for Quebec. But now, instead of concerning themselves with specific abuses of individual rights, equality would be achieved by improving the social conditions in which those rights were exercised.⁵⁹³

The manifesto raised a number of concerns about social inequalities in Quebec society. According to the report, many elderly were kicked out by their children and had no home to go to, were rejected by hospitals for not being sick enough while old age homes rejected them for being too sick. Discrimination against women was prevalent. Children and teenagers were abused, families raised children in decaying urban environments, prisoners were held in degrading conditions, police abused their powers, immigrants were summarily rejected from entering the country with little recourse to appeal, college students were denied freedom of opinion and employees were dismissed for union activity. Among the specific issues raised in the manifesto were the lack of human rights legislation, Montreal bylaw 3926 (anti-demonstration legislation passed in 1969), judges abusing their power through charges of contempt of court and the need for reforms in the training of police officers, appointment of judges and providing legal aid. It was a broad attack on both specific problems and

fundamental inequalities in Quebec society and went much further than the civil liberties-oriented BCCLA.

This new orientation was bound to have some significant repercussions, one of which was the loss of many of the old members. Perhaps the most notable loss for the association was Frank Scott, who left the administrative council in 1972 while remaining an ordinary member. In a letter to Maurice Champagne, the new Director General of the association, Scott expressed concern about the association's new direction:

Since reading the last public declaration of the League I have felt that I could not honestly continue to be a member of the Council. It is evident that a totally new conception of the League is now dominant, and however valid this may appear to the present executive it is a concept which I find quite at variance with my notion of what a proper Civil Liberties Union should be. There were political statements in that declaration which I do not think we had any right to make.⁵⁹⁴

Those political statements included a demand by the LDH for a minimum salary for workers and attacks on the government for being secretive and not providing the public with enough information about its operations.⁵⁹⁵ The League was crossing the boundary into politics, an area Scott felt the association should avoid in its goal of being non-partisan.

Scott's alienation from the LDH was a reaction to the association's move towards advocating for positive rights. While he had always been an avowed social democrat and determined supporter of the CCF/NDP, Scott was liberal when it came to human rights advocacy. In other words, Scott's brand of rights activism was rooted

in the idea of equality of opportunity as opposed to a more expansive approach to rights activism in which the state was expected to ensure more than simply formal equality among individuals. As noted in chapter four, leading members of organized labour echoed Scott's opposition to the inclusion of economic, social and cultural rights in the Diefenbaker Bill of Rights. Scott was also the author of the Saskatchewan Bill of Rights which offered no provisions for economic, social or cultural rights. The LDH's call for a minimum wage and the declarations within the 1972 manifesto on a variety of social and economic issues were clearly at variance with the organization Scott had helped found eight years earlier. Scott's decision to leave the administrative council was thus in many ways symbolic of the League's increasing shift towards human rights activism and the larger divisions within the human rights movement.

The League and the Left in Quebec

The League's new demands on the Quebec state were part of the overall socio-political transformations occurring within the province during this period. Organized labour in Quebec became increasingly radicalized. Kenneth McRoberts has suggested that "during the 1960s and 1970s the Canadian Labour Congress was still clearly tied to the conventional 'trade unionism' Quebec union leaders had decried. The Confédération des syndicats nationaux and Centrale des syndicats du Québec, in particular, concerned themselves with much more than the normal objectives of

collective bargaining and, consequently, advanced broad-based critiques of capitalist society.”⁵⁹⁶

During this same period the Quebec independence movement was maturing. By the 1970s the independence movement had manifested itself most directly in the form of a new political party, the Parti québécois, which soon “secured a monopoly of the national question.”⁵⁹⁷ The Parti québécois was primarily a coalition of nationalists of varying political stripes with a strong middle class base of support, but for most of the 1970s it was also a social democratic party with strong links to the political Left. When it was founded the party “adopted the mantle of a social-democratic party. ... [The party] stressed the role of the state as the central economic planner. ... It identified itself as the party with a ‘favourable bias’ toward the working class.”⁵⁹⁸ According to John Saywell, the “economic programme of the party remained far to the left of anything proposed by the national or provincial New Democratic parties.”⁵⁹⁹ After coming to power in 1976 the party quickly moved to implement a number of policies which many historians have characterized as social democratic, including pro-union labour legislation with regulations restricting the use of replacement workers, public automobile insurance, raising the minimum wage, and nationalizing parts of the asbestos industry. McRoberts, who has forwarded a detailed analysis of the political orientation of the Parti québécois, is critical of the social democratic label and notes how the party did not formally allied with organized labour and never “assigned the Quebec working class the privileged position that one

would expect of a social democratic party.”⁶⁰⁰ Lévesque, in particular, was a powerful moderating influence within the party and continually fought against moving the party to the Left. Nonetheless, even McRoberts acknowledges that until the late 1970s the Parti québécois’ membership, electoral support base and platform were consistent with social democratic parties of the period and favoured a strong, active role for the state.⁶⁰¹

The massive expansion of organized labour in Quebec in the 1960s and 1970s, combined with the rise of the Parti québécois and its success in 1976, strengthened the Left in Quebec. Since the onset of the Quiet Revolution the Quebec state had played an increasingly prominent role in the social and political life of Quebecers. Francophones in Quebec “came to view the Quebec state as a powerful instrument capable of improving their social and economic condition and, moreover, obligated to do so.”⁶⁰² The LDH’s shift towards positive rights and greater demands on the state was thus consistent with broader developments within Quebec at this time.

With the acceptance of the new manifesto by the administrative council in 1972, structural changes were introduced to make the association more inclusive. The elitism which had characterized the LDH since its founding was being shed. Membership fees, having risen to 10 dollars per person in the late 1960s, were reduced to 2 dollars. No longer would new members have to be voted on and accepted by the administrative council. Following the elections of 1972, the administrative council, once dominated by lawyers, professors and journalists,

became more representative.⁶⁰³ There were now only four lawyers, a criminologist, sociologist, psychologist, social worker, journalist, chemist (ex-prisoner) and various advocates for the rights of women, youth, non-unionised workers and others.⁶⁰⁴

Maurice Champagne

One of the central architects of this new orientation was Maurice Champagne. Champagne's background was typical of those attracted to the League. He was well educated, with a Bachelor's degree from the University of Montreal in 1955, a Masters degree in medieval studies from the same university in 1957 with a second Masters degree in 1965 in French literature. Three years later he completed his Doctorate at l'Université de Nice in France in the field of child psychology. As with many of the LDH's leaders, he was a professor for a short period of time and became the Director of Studies at Collège Saint Denis until he joined the LDH full time.⁶⁰⁵ Champagne had been elected Vice-President of the LDH in 1971 and was later elected president, a volunteer position he vacated in 1972 to become the LDH's full time director. It was Champagne who recommended the group develop a manifesto to focus its goals and he was mandated by the group to draft the proposal.⁶⁰⁶

'Le simple respect des droits individuels et collectifs': Language Rights and Self-Determination

It became clear early on that the manifesto and the proposed new direction was not a hollow declaration. No issue made this more evident than the group's decision to take a position on language rights, an issue the old guard had vigorously avoided. A committee on language rights formed by the LDH reported on 12 April 1973 with a series of principles it felt should guide the government in determining its language politics. A year later the Bourassa government introduced Bill 22, legislation designed to protect the French language by removing, among others things, parental choice for a child's education as established in Bill 63 in 1969 (language of education would now be based on a competency test). Whereas the LDH had studiously avoided taking a stance on Bill 63, it eagerly jumped into the fray in 1974. The association wanted French entrenched as the official language of Quebec and education used to promote the French language, two of the core objectives of Bill 22. But the LDH's position went much farther. Alongside a statement acknowledging the equal rights of aboriginals and ethnic minorities to explore their own separate cultural identities, the LDH forwarded the radical suggestion of having all primary education in French with a transition period for current students to French education within 16 years. The justification was that, since English speakers were over protected by the dominant North American environment, it would be just for them to cede some of their privilege to the majority in Quebec so francophones could exercise their right to survival (the LDH's own publications were now to be printed only in French).⁶⁰⁷ In forcing students to be educated in French, the LDH was committing what the old

guard would have considered blasphemy: placing the collective interests of French society (through the preservation of the French language) over individual choice. According to the declaration, the “droits linguistiques pour la majorité français au Québec sont des droits collectifs qui ont une importance telle qu’ils peuvent justifier pleinement, à ce moment de notre histoire, des mesures qui aient pour effet de créer des obligations particulières aux individus, notamment dans les limites qu’il faut apporter au choix de la langue d’enseignement pour les parents et les jeunes.”⁶⁰⁸ The LDH supported aspects of Bill 22 but were concerned with those parts of the bill which threatened to legalize “both in spirit and in letter those very bilingual practices that should have been curtailed in order to affirm the priority of French.”⁶⁰⁹ Bourassa criticized the LDH’s proposals, attacking the association publicly on a radio show using several choice epithets to describe the organization’s ideas on language rights.⁶¹⁰

If taking a position on language rights hinted at a new orientation, the decision to adopt a position on the right to self-determination was proof the LDH had abandoned its roots. Although the group shied from going as far as to take an explicit position on separatism, the LDH asserted the right of minorities to self-determination as stated in the Charter of the United Nations. In a special declaration issued in 1972 the LDH advocated that no fair negotiations for rights could take part between minority and majority unless the fundamental right to self-determination of a minority was recognized by the majority.⁶¹¹ An editorial published the next day in *Le Devoir*

warned against taking such a extreme position. If the LDH hoped to advocate a rights-based approach to self-determination, the editor argued, it would have to affirm its position on the basis of minority rights: “Ce n’est donc pas pour défendre l’indépendantisme que le Ligue affirme le droit à l’auto détermination, mais c’est plutôt pour forcer tous les hommes politiques à affirmer leur respect pour les droits des minorités. ... Le simple respect des droits individuels et collectifs exige qu’on laisse aux hommes et aux peuples la liberté d’évoluer comme ils l’entendent.”⁶¹²

The organization’s new orientation put its leaders at odds with other rights activists in the province. Once again, Frank Scott found himself in conflict with the LDH. In a letter to Walter Tarnopolsky in 1976, he claimed that “the League was captured by a group of extreme nationalists and separatists whose chief concern was to see that [an amended] Bill 22 was enacted and that the Charter of Human Rights, which Crépeau and I drafted, was not put into force until the language position was clarified.”⁶¹³ Even the Premier shared Scott’s views. Bourassa publicly condemned the LDH for being run by fanatical nationalists with unrealistic policies on language rights.⁶¹⁴ The LDH was clearly drawing on the rhetoric encouraged by the Parti québécois and the current political battles raging in the province over language and education. In addition to the adoption of positions on language rights and self-determination, the organization’s new cadre of leaders associated civil liberties ideology with anglophone culture. Normand Caron, Champagne’s successor as Director in 1975, believed that the LDH’s main contribution to the national federation

(discussed ahead) was to challenge anglophones' definition of human rights as purely civil and political rights.⁶¹⁵ Years later, Lucie Lemonde, president of the LDH in the 1990s, expressed similar sentiments when reflecting upon the association's early activism: "c'était la conception anglaise des droits civils (civil liberties) qui prévalait."⁶¹⁶ The LDH's new orientation evolved within the context of an increasingly influential sovereignty movement which, in 1973, had garnered the Parti québécois 30 percent of the popular vote. Although there were no formal ties between the Parti québécois and the LDH during this period, they often entered into coalitions together on various issues, such as calling for more government sponsored daycare.⁶¹⁷

Office Des Droits des Détenu-e-s (ODD)

In addition to adopting positions on language rights and self-determination, the League followed through with its new mandate to advocate for social, economic and cultural rights with the creation of offices for the elderly, prisoners and women. Both the women's committee and the office for the elderly floundered by 1974 due to lack of interest.⁶¹⁸ In contrast, the Office des droits des détenu-e-s (ODD) proved to be an impressive success.

The LDH had always advocated on behalf of the rights of this unpopular class of citizens and, while a few other rights associations across Canada took up the cause of prisoners' rights, no group did so to the extent of the LDH. In the 1960s the LDH

had taken up the cause of St.Vincent de Paul and Ste-Anne des Plaines, and in 1971 formed a committee which successfully lobbied Chôquette to transfer Paul Rose and Bernard Lortie from Parthenais prison. Parthenais was designed to hold prisoners only for short periods as people awaited trial, and these two FLQ prisoners had been in Parthenais for months.⁶¹⁹ In fact, the LDH had even opposed the construction of Parthenais itself in the early 1970s, to no avail. ODD was simply an extension of this type of advocacy. It was formed as a separate office, which meant it had its own executive and administrative council and did not have to answer to the administrative council of the LDH except in cases dealing with broad policy issues. Its mandate was to develop an open and accessible prison system concerned with rehabilitation, make prisoners aware of their rights, conduct extensive research on prisoners' rights and inform the public, and defend prisoners' rights whenever possible.⁶²⁰ The committee was chaired by Raymond Boyer (one of the individuals detained by the espionage commission in 1946), with Pierre Landreville as Vice President and Champagne as secretary.⁶²¹

While the ODD was in many ways an extension of the goals adopted by the LDH in its early years in seeking justice for prisoners, the ODD went much further than its predecessors, demonstrating once again the influence of the LDH's new mandate.⁶²² The ODD not only sought fair treatment for prisoners but it favoured the complete abolition of prisons altogether: "L'objectif de l'ODD est l'abolition des prisons. L'emprisonnement est fondée sur la discrimination et la destruction de la

personne incarcérée. A court terme, l'ODD prône des changements qui non seulement améliorent les conditions de vie des personnes détenues mais qui vont dans le sens de l'abolition."⁶²³

In 1972 the ODD secured a major grant from the Donner foundation (\$41 000) to conduct a major research program into the conditions of prisons in Quebec.⁶²⁴

With the support of the provincial Minister of Justice it conducted an extensive study into prison conditions and policies later published as a book in 1976 (*Les prisons par ici*).⁶²⁵ Thanks to the Donner foundation and, in 1975, grants from the United Way, the ODD was able to operate without government funding. In fact, it became a staple position of the ODD to reject government funding except for specific projects, to avoid any conflict of interest, an ironic position given that it was an office of the state-subsidized LDH.⁶²⁶

In addition to its work in spreading awareness and taking on individual dossiers the ODD promoted coalition-building among social movement organizations, including with its campaign for the closure of Parthenais. Parthenais prison (Centre de prévention de Parthenais) had been built to accommodate short term prisoners who were awaiting trial (it was built on the 10th to 13th floor of the Quebec Provincial Police building in Montreal), yet in practice prisoners would be incarcerated for extended periods of time. The conditions were deplorable. A hunger strike in 1974 protested poor food, being required to eat in their cells near the toilet instead of on tables, not being able to use the telephone, lack of clean clothes and being kept in

individual cells for extended periods, sometimes days, without being allowed outside.⁶²⁷ More than most other prisons, Parthenais experienced widespread demonstrations by prisoners: four hunger strikes in November 1970, January 1972, August 1972 and July 1973, with a riot in 1973 and six prisoners mutilating themselves in protest on 9 September 1973.⁶²⁸ A seminar was organized by the ODD on 7 October 1974 in collaboration with the School of Criminology at the Université de Montréal to bring together groups to collectively pressure the government to close the controversial prison. In the following year, on 23 February 1975, at the initiative of the ODD, twelve associations (including the three labour federations) linked together to form a common front calling for the closure of Parthenais. The LDH secured promises from Chôquette for the closure of the prison but without a firm date, and the common front was designed to bring greater public pressure to close the prison.⁶²⁹ As an organization now concerned with direct democracy and encouraging public participation in policy making, the LDH encouraged coalition-building. It developed strong ties with organized labour in particular, ties which did not exist before 1972. Several coalitions from protesting the War Measures Act to advocating for prisoners and daycare were successfully formed after 1972.

Abortion

The LDH dealt with issues of provincial and national concern. In fact, the League rarely shied away from taking on national issues during this period and

placing them in a provincial context, although it was unquestionably a provincial organisation first and foremost. Abortion was one such issue. The League's first major publication (the LDH never published a newsletter before 1982) appeared in 1974 in the form of a book entitled *La Société Québécois face à l'avortement*. It provided a detailed analysis of the abortion issue in Quebec, noting attitudes and changing perceptions in Quebec society. Statistics offered a general idea of the problem. Therapeutic abortions rose in Quebec from 534 in 1970 to 2847 in 1972 thanks to the 1969 omnibus bill which decriminalized hospital-sanctioned abortions. However, only five francophone hospitals provided abortions (mostly in Montreal) compared to 133 anglophone institutions. There was a clear hesitancy among francophone institutions to provide this service, a serious problem for poor francophone women who could not afford to travel abroad or out of province for abortions.

Instead of using a pure rights-based approach by arguing that abortion was a human right in itself, the League characterized the issue as a question of social justice. "La Ligue ne saurait reconnaître l'avortement comme un droit mais comme une mesure d'exception légitimée par le droit à la santé et à la qualité humaine de la vie pour tous ainsi une par le droit de la femme à décider de ses maternités et à les voir faciliter par la société et l'état."⁶³⁰ It went to great pains to place abortion in the context of positive rights, such as promoting gender equality (as opposed to simply a question of individual liberty): "La discrimination systématique qui est fait à la

femme, par l'absence de politiques et de services adéquats de garderies, contribue à maintenir un partage injuste des tâches et des responsabilités entre l'homme et la femme."⁶³¹ The problem was not with the law but in the socio-political context of Quebec where people knew little about abortion or its implications, with minimal education on sexuality and contraception, and limited support services. It was a truly egalitarian position and contrasted sharply with the group's previous focus on negative rights.

Renewing the Debate Over a Bill of Rights for Quebec

Abortion and prisoners were just a few examples of the renewed activism of the LDH during the transition years. Yet, while all these issues remained important, implementing a bill of rights in Quebec remained the group's central priority. With its new philosophy firmly entrenched by 1972, the LDH sought to negotiate with the government to make its vision of a bill of rights a reality. Unfortunately, Jérôme Chôquette continued to vacillate. The LDH responded by forming a committee to draft a proposed Charter of Rights for Quebec and by February 1973 had consulted with a variety of jurists, judges, union leaders and others on the contents of the proposed bill.⁶³² Its goal was to stimulate a massive public debate to pressure the government to go ahead with passing a provincial bill of rights. It was fully consistent with the group's new philosophy of a 'société de participation,' and would encourage greater public participation in public policy. A total of 500 000 copies of

the League's proposed bill were distributed across the province *Le Devoir* and *La Presse* distributed 50 000 and 100 000 copies respectively. *Le Soleil* carried a full page advertisement and 50 000 information packages were sent to individuals and organizations.⁶³³ Members of the executive council participated in radio shows, television programs, newspaper interviews and various conferences to promote the proposal. By the end of 1973 the group had managed to encourage the participation of almost 400 groups in the debate on the bill of rights.⁶³⁴

A proposal for a provincial bill of rights was completed by May 1973 and demonstrated just how far the League had come since Morin's draft ten years earlier. All of the basic provisions in the Morin proposal were to be found in the new draft with only minor variations. Unlike Morin's draft, however, this new proposal had specific provisions for economic and social rights for children, the elderly and the handicapped. For instance, it recognized the rights of children to be treated equally with adults and for the handicapped to have equal access to public transportation. References to collective rights appear in the 1973 draft, whereas Morin focussed exclusively on individual rights.⁶³⁵ Finally, and most telling, it included language rights. The proposal would establish French as the official language of Quebec while asserting the right of the people and government to act in the protection of their language. In such areas as immigration the state was called upon to do all in its power to assure the supremacy of the French language.

Despite continued efforts to pressure the government to act, nothing developed. In a speech before the Canadian Jewish Congress in March 1974, Chôquette made it clear that “si cette Charte n’a pas été présentée jusqu’a date, c’est en large partie à cause de la difficulté de réconcilier, dans la domaine linguistique, les aspirations de la majorité français au Québec de voir exister et se développer une vie culturelle française même économique avec, ce qui est aussi important, le droit de ceux qui sont ici et qui sont déjà intégrés, dans la minorité anglophone, d’exercer leur libre choix en matière d’éducation et en matière de communication avec leurs proches ou dans leurs affaires.”⁶³⁶

Then, in late 1974, the Bourassa government introduced Bill 22. With the controversial issue of language rights solved for the Bourassa government, it could now move towards implementing a bill of rights.

The efforts of the LDH (the United Council for Human Rights had by now become defunct) had clearly paid off when, in the speech from the throne in 1974 announcing the government’s intention to introduce language legislation, the government committed itself to a bill of rights.⁶³⁷ By March 1974 a committee of the Department of Justice began a study on a potential bill of rights and solicited input from the LDH. Months later, on 29 October 1974, the government introduced Bill 50: Loi sur les droits et libertés de la personne. Led by Champagne, the LDH expressed both support and concern over Bill 50 before a legislative committee. In many ways the Bill was far ahead of most provincial human rights codes in Canada

and the section on the proposed Human Rights Commission represented about 70 percent of the LDH's own recommendations, including provisions to ensure its independence by requiring it to report directly to the National Assembly.⁶³⁸ But the legislation had some significant flaws. Section 60 limited the Commission's investigations to cases of discrimination whereas the League hoped the Commission could have a broader mandate to investigate all complaints as well as take on educational activities. There was also no provision for a right to access to information and the LDH felt the Charter should include a clause asserting francophones' right to self-determination.⁶³⁹

The final version of the Quebec Charter of Human Rights and Freedoms, passed in 1975, owed a great deal to the efforts of the LDH (and, in particular, to Champagne who led the LDH at the time and would be remembered years later as one of the architects of the Charter).⁶⁴⁰ A few months before the legislation was passed, the Quebec representative to a conference of human rights ministers in British Columbia credited the LDH with being the leading influence on Bill 50.⁶⁴¹ In the debate in the National Assembly on the proposed legislation, no group except the LDH was mentioned, with the official opposition pointing to the LDH's demand for a paramountcy clause to support its own call to make the legislation dominant.⁶⁴² The first eight articles of the Charter of Rights and Freedoms incorporated the recommendations of the 1966 Civil Rights Committee which Frank Scott chaired while a board member for the LDH. There were also specific provisions for the

protection of the elderly and children in both the proposed and final draft Charter. As mentioned earlier, the section on the Commission was predominantly copied from the LDH proposal. Small changes in wording and the inclusion of certain clauses such as civil status and social condition (as opposed to social origin) as a category of discrimination, while changing references to 'men' to 'human beings' and including a right to information as provided by law emerged from the LDH brief.⁶⁴³ Language rights were not included in the final version of the bill and the LDH did not discuss language rights in its presentation before the Parliamentary committee, most likely since Bill 22 had just been passed. Perhaps the LDH's greatest success was to convince the government to make the Charter a fundamental law of the province, an issue it had vigorously promoted alongside the Parti québécois whose parliamentary leader, Morin, had drafted a bill of rights in 1963 endorsed by the LDH. Chôquette vigorously opposed a paramountcy clause out of concern that the application of the Charter to existing legislation would cause widespread instability. In the end he partially relented, agreeing to insert a section to ensure that all future laws would be required to conform to the Charter (unless explicitly stated otherwise) and that two-thirds of the National Assembly would have to consent to amend the human rights statute in the future.⁶⁴⁴

With the passing of a Quebec Charter of Rights and Freedoms, the League basked in what would be its greatest accomplishment. The group peaked in 1975 with high levels of funding, several full time staff, a highly active ODD, a book length

publication on abortion and various other public policy initiatives wherein the LDH was consulted on proposed legislation. At the same time, a fundamental ideological shift had occurred within the organization with its new approach to rights activism. Not coincidentally, this ideological shift was linked with the rise of French Canadian nationalism and the Quiet Revolution. Nationalists transformed the LDH with positions on language rights and self-determination. Paralleling these developments was the strengthening of the political Left in the province, symbolised not only in the ideology of the FLQ and the rising power of organized labour, but as well in the rise of the social democratic Parti québécois in the 1970s.

The LDH and the Federation

These transition years were also marked by a stronger relationship with other social movement organizations. For years the LDH had remained relatively aloof from other rights associations except to produce a bilingual version of the CCLA's booklet, *Arrest and Detention*, for distribution in Quebec.⁶⁴⁵ But during the transition years it was becoming increasingly involved with other rights associations. This desire to branch out beyond Quebec was evident from the group's involvement in the founding of the Federation. Since the LDH was heavily state-funded it did not share the CCLA's qualms about government funding. By the mid-1970s the LDH had overtaken the BCCLA as the second largest rights association in Canada, and its presence on the Federation's board also had an important symbolic role because the

LDH was the dominant francophone rights association in the country. Although the LDH never hesitated to take on national issues outside the Federation, such as abortion, it coordinated briefs with the Federation, supported Federation initiatives, and allowed the Federation to act as its spokesperson on such key issues as the McDonald commission investigation into RCMP illegal activities in the seventies.

Maintaining strong ties with other rights associations was an important aspect of the LDH's work, although the organization did not consider it a major priority. For the LDH, the Federation offered the prospect of a stronger voice at the national level on those occasions when it dabbled in national issues.⁶⁴⁶ The leaders of the LDH also saw their role as offering an alternative ideological approach to rights activism. In a predominantly anglophone organization, the LDH insisted on recognizing collective as well as social, economic and cultural rights: "Si on rappelle que les anglophones sont surtout orientés vers la lutte pour les *libertés civiles*, l'influence de la Ligue des droits de l'homme apparaît encore plus grande quant aux *libertés de la personne*" (italics added).⁶⁴⁷

New Orientations and Divisions: 1975-1982

The passing of the Quebec Charter of Rights and Freedoms was the cornerstone of the second major transformation in the League's priorities since its formation in 1963. For years, the group had taken on the responsibilities of a human rights commission in Quebec. It instituted educational programs to promote

awareness of rights, lobbied the government to change legislation to protect rights, and mediated rights abuses between private citizens. All these responsibilities would now be taken up by the Quebec Human Rights Commission.

The Implications of Success: State Funding

With the creation of the Human Rights Commission the League also lost one of the key guiding influences in the new orientation established in 1972: Maurice Champagne. While René Hurlbise, a Quebec judge and former president of the League (1964), was appointed president of the Commission, Champagne left the League to take the position of Vice-President of the Commission, further evidence of the impact of the LDH in the passing of the Charter. Before leaving, Champagne presented a final brief to the association as a type of mini-manifesto to help guide the group along its second major period of transition. It did not chart any new ideological paths for the organization and, in fact, the fundamental orientation established in the early 1970s remained constant throughout these years. Instead, Champagne encouraged the group to expand its grass roots base in order to become a broad-based organization representing various sectors of the community. Using rights discourse, the League could bring together youth, prisoners, minorities and other collectivities to achieve social peace.⁶⁴⁸

One of the unexpected implications of the Charter, however, was a financial crisis. With the establishment of a Human Rights Commission, the Bourassa

government no longer felt the need to provide generous funding to the League. At the same time, the federal government was reviewing its own funding program. However, the federal government's decision to withdraw its own grant was associated with the League's language policy. In 1976 the League accused the federal government of trying to influence its controversial language policy by withholding financial support. There was a clear lesson to be learned: government funding was not always unconditional.⁶⁴⁹ A hastily convened press conference bringing the issue to light managed to convince the federal government to reinstate its grant.⁶⁵⁰ What began as a major financial crisis soon settled into a reduced budget for 1976 (\$75 747) and some staff cuts.⁶⁵¹ The financial crisis forced the organization to seek out members as a basis of support for the first time, and in 1977 it had accumulated \$37 811 in membership fees alone, almost 30 percent of the budget. By 1977 it had approximately 2000 individual members and 100 member organizations, making it the second largest rights association in Canada behind the CCLA which had a little over 3000 members. For at least one year, the LDH was no longer fully dependent on state funding.

The LDH's daily activities and tactics continued much the same as it had done since 1972. The League educated people about their rights, formed action groups among victims of abuse (i.e., women and elderly), conducted research, presented briefs to government and developed relationships with local, national and international groups. Notably, there continued to be little courtroom activity.

Whereas the BCCLA, and as will be seen the CCLA, often sought out the courts for the defence of individuals' rights, the League's focus on social justice was not conducive to spending precious resources on legal action. It hired lawyers for a couple of days per week and, working with volunteer lawyers, provided people with advice and consultations pro bono. Yet this remained a marginal aspect of the group's work and by 1982 the association had not taken a single case to court.

National Security and The Montreal Olympics

As the LDH entered into this new period an event of international significance gripped the city and the country for a short while. In 1976, the Olympics came to Montreal and with it increased government repression. There were two particular causes taken up by the LDH during the Olympics which occupied much of the group's work in 1976.⁶⁵² The first was designed to deal with the housing crisis caused by a massive surge in visitors to the city and skyrocketing rental costs. Individuals and families with low incomes were kicked out of their homes so that ambitious landlords could profit off the games, creating a minor housing crisis in the city. In one press release, the League estimated there was a shortage of 25 000 living units during the Olympics.⁶⁵³ In conjunction with the United Way, the League set up a call centre to inform renters of their rights and attempted to help them find temporary lodging during the Olympics.⁶⁵⁴ Meanwhile, the LDH's new housing committee organized protests against the destruction of low income housing and called upon the city and

landlords to improve housing conditions, including a march of 150 residents demanding heat, hot water and potable water in their homes. In the case of the latter, the city responded by sending housing inspectors and cistern trucks.⁶⁵⁵

The Olympics also caused a minor stir after a series of firings from the committee organizing the Olympics (Comité Organisateur des Jeux Olympiques). These firings resulted from RCMP reports labelling particular individuals as security risks. None of those fired were given reasons or explanations; they were simply dismissed. It soon became clear, however, that the individuals in question were fired for their political opinions, in direct violation of the Quebec Charter of Human Rights and Freedoms. François Cyr and Sylvie Cameron were militant members of the Revolutionary Marxist Group, Carol Cohen was an organizer for the Young Socialists and Stuart Russell was a militant for the Young Socialists and the Ligue socialiste ouvrière as well as the Comtié Homosexuel Anti-Répression.⁶⁵⁶ Initially the Human Rights Commission refused the League's overtures for an investigation because certain parts of the Charter of Human Rights and Freedoms were not yet operative.⁶⁵⁷ Eventually, after continued pressure from the League, the Commission attempted to investigate the matter only to be turned back by the federal Solicitor General, Francis Fox, who used the broad discretionary powers of his office to refuse providing information on the RCMP for reasons of national security.⁶⁵⁸

From the Ligue des droits de l'homme to the Ligue des droits et libertés

In 1977, the resignation of Simone Chartrand and Norman Caron from the staff of the League signalled the rising dominance of the committees within the association. With the departure of Maurice Champagne in 1975, Normand Caron had taken over as Director General with Simone Chartrand as his assistant. By 1977 the two were gone and their positions eliminated and replaced by a general coordinator and researcher. The energy and dedication brought to the organization by Caron and Chartrand dissipated with their absence and the staff became more concerned with simply maintaining the organization while the committees were responsible for most of the new initiatives. These were the beginnings of the core divisions which would plague the League in the following years as the group became increasingly decentralized, a situation made worse by limited leadership from the administrative council.

Between 1977 and 1979 a host of new committees emerged. One of the committees formed during this period was a women's committee which evolved into an Office of Women, although it never achieved the same prominence as the ODD. In fact, it seems to have accomplished little early on except to convince the League to change its name in 1978 to the Ligue des droits et libertés (the English name, Civil Liberties Union, remained unchanged) to remove the gendered aspect of the group's title.⁶⁵⁹

National Security and Opération Liberté

Committees on the handicapped, aboriginals, workers and academic freedom were also formed. After the provincial appeals court denied a request by the Keable commission on 21 February to access federal government records on the RCMP, a national security committee was launched within the League. Jean F Keable had been appointed by the Parti québécois government on 15 June 1977 to investigate allegations of wrongdoing by the RCMP with a mandate similar to that of the McDonald commission (discussed in the following chapter). Keable's failure to access RCMP documents because the federal Solicitor General used his power to block access for reasons of national security infuriated those who were critical of the McDonald commission and wanted an independent Quebec inquiry. Within a month of the appeals court decision (later reaffirmed by the Supreme Court of Canada) Opération Liberté was launched by the national security committee at a colloquium in May at the University of Montreal. The colloquium brought together 400 people representing dozens of groups, including the three large union centrales, to discuss the ways in which police were using national security to abuse individual rights. Among the concerns raised at the meeting was the use of electronic listening devices, mail opening, police promoting criminal activities such as stealing arms and explosives, harassing individuals and organizations, and utilising medical dossiers.⁶⁶⁰ It soon began publishing a newsletter, *Opération liberté*, with a circulation of 100 000 for its first issue in 1978.

As with the ODD and its call for the elimination of all prisons, the work of the national security committee demonstrated the broader approach to rights proffered by the League. It offered a radical Left-wing critique against social and political institutions. In a publication entitled *Mounting Repression: Its Meaning and Importance in Canada and Quebec*, the RCMP was portrayed as an institution defending the interests of Canadian and American capitalists. Its main purpose was to intervene against labour, undermine revolutionary movements and harass individuals and groups promoting socialism. The expansion of national security measures, including spying on unions and other Left wing organizations, was explained as a manifestation of the economic crisis in the capitalist system caused by the recent economic depression which led the federal government to impose wage and price controls. Among the regulations highlighting the new national security state were article 41 of the Federal Court Act (introduced December 1970) allowing judges to keep certain documents inaccessible to the public if related to national security; privacy legislation allowing police to use wiretaps; citizenship regulations allowing the refusal of citizenship for people deemed a national security risk; the 1977 federal Human Rights Act refusing individuals access to their personal dossiers if deemed necessary for reasons of national security; and immigration regulations passed in 1977 allowing security certificates to deny entry or deport those considered national security risks without having to justify the action. Opération liberté was mandated to

combat the emerging national security state by cementing alliances and presenting a common front against all new initiatives justified for reasons of national security.⁶⁶¹

Unsurprisingly, many of the members of the national security committee were also members of the Parti québécois.⁶⁶² Since the mid-1970s members of the separatist party had begun playing a more prominent role in the LDH, although the association never adopted a policy of outright support for separation and did not endorse the 1980 referendum on sovereignty-association. The Parti québécois' original platform was far more social democratic and oriented towards social reform than any of the other political parties, and thus had more in common with the post-1972 orientation of the LDH. The LDH had also broken with the past by staking out positions on self-determination and language rights, two issues which were at the core of the Parti québécois' politics. It is thus impossible to divorce the LDH from broader movements occurring within Quebec in the seventies.

Crisis Within the League

By 1979 the LDH had become so decentralized that it no longer reflected the organization once run efficiently by Champagne, Caron and Chartrand. The administrative council was providing little leadership.⁶⁶³ Facing further cutbacks in 1979 from government grants, the administrative council decided to cut members of the staff. But the unionised staff favoured non-hierarchical and equal pay policies and refused to accept the decision of the administrative council; coupled with existing

personality clashes, the staff decided to quit in unison in 1979.⁶⁶⁴ For two months the LDH was paralysed with the only employee being Jean Claude Bernheim, the non-unionized ODD staff member. Only one staff member was hired in 1979 and for the next two years the LDH operated with a small budget and limited staff. Divisions within the League continued to hamper its ability to work collectively. Two members of the administrative council, Elizabeth Roussel and André Legault, resigned from their posts in the administrative council in 1980 convinced the council had become a useless body providing no direction or leadership.⁶⁶⁵

As a result of the divisions and tribulations in 1979-80, the League was generally inactive; most of the other committees were either defunct or doing little as a result of minimal resources or lack of direction. Nonetheless, the ODD achieved a major success by getting the provincial vote for prisoners. Under provincial election law prisoners were not specifically denied the vote, yet they were denied the facilities to exercise their democratic rights. For years the ODD had sent letters, distributed press releases and met with government officials demanding prisoners be given the right to vote. Finally, in 1979, the government acceded and prisoners in Quebec were allowed to vote for the first time in the referendum in 1980.⁶⁶⁶ Unfortunately, the vote continued to be denied to federal prisoners in federal elections, but it was nonetheless a significant victory in the mission to recognize the rights of prisoners in the province of Quebec.

Between 1980 and the group's twentieth anniversary in 1983, the League experience a revival of sorts. With the mass resignation of the five staff members in 1979 and their replacement with a new staff, tensions within the organization declined and the association was able to focus its energies on securing more funding. In 1980 the group could boast a budget of \$210 755.⁶⁶⁷ Most of its revenue came through government grants; in 1981 the group only amassed \$8 429 from members. The one exception to the group's dependence on state funding was money for the ODD which was provided by the United Way. This source of revenue was threatened, however, when the ODD published a Charter of the Rights of Prisoners in 1980 with a provision suggesting prisoners had a right to escape given the conditions under which they were held.⁶⁶⁸ United Way officials threatened to cut off funding unless the LDH issued a declaration retracting the clause, but the ODD and the LDH remained adamant in its stand that its policies could not be dictated by outside funding donors: "La Ligue a toujours refusé qu'un bailleur de fonds, quel qu'il soit, nous dite nos lignes de conduite et nos positions. C'est le genre de compromission que nous trouvons tout à fait inacceptable. Un organisme comme le nôtre ne peut accepter d'avoir les mains liées par de telles contraintes."⁶⁶⁹ As a result, within a few years its funds were cut off and the group was once again fully dependent on state funding.

Nonetheless, the new staff hired in 1980-1 was able to reorganize the League and place it back on its collective feet. Since 1979 the group had been haemorrhaging elected members and having a hard time getting quorum. The group lost its status as

a charity organization because it had failed to submit reports; membership lists were lost; there was little contact with the membership and the only two active committees were the aboriginal committee and ODD. By 1982 the new staff had helped reinvigorate committees on immigration, health and social services, national security and youth. The administrative council was finally achieving a regular quorum and a new full time coordinator was hired, alongside a secretary and a part time bookkeeper. A newsletter was also organized to provide information to the membership on the activities of the League. For twenty years the League had never bothered to publish a newsletter, most likely since its funding came from the state and not the membership, but its revival in the early 1980s led to the publication of the League's first official newsletter.⁶⁷⁰ Thanks to these new efforts the organization was able to boast a level of activity it had lacked for several years.

The period from 1975 to 1982 proved to be the most difficult in the history of the League but it managed to end on a positive note. In 1982 the LDH hosted the first meeting in North America of the *Fédération Internationale des Droits de l'homme* for which the League was the Canadian representative. Gilles Tardif, League president, was elected a Vice President of the international organization. With the passing of the Charter of Rights and Freedoms in 1982 a new era opened up for the League, one in which the courts would play a prominent role in the defence of rights. Most importantly for the organization itself, it had survived a difficult period in which its purpose and internal cohesion were under attack, and it emerged by 1982 intact and

on healthy footing. A new beginning was underway for the second oldest and second largest rights association in the country.

Conclusion

By the 1980s the LDH had embraced an expansive approach to human rights activism in contrast to the minimalist approach of civil liberties groups such as the BCCLA. The LDH employed rights discourse to demand recognition of the economic, social and cultural needs of the elderly, youth, disabled, francophones and others. No civil liberties association in Canada had ever suggested that prisoners had a right to escape because of their living conditions, that the state's violations of individual rights for national security reasons were linked to the crisis facing capitalism, or that extensive economic, social and cultural rights should be recognized in human rights legislation.

Yet, as we can see in the history of the League, even an organization dedicated to an expansive interpretation of human rights had little in the way of a grass roots following. By the mid-1970s the LDH was arguably far more representative of its community than its fellow rights associations, with ex-prisoners, women, aboriginals and others joining the group. But it remained dominated by educated, middle class professionals, which was consistent with most social movement organizations which relied on experts instead of mass mobilization. In addition, the focus on mobilizing small numbers of skilled activists was undoubtedly a result of state funding and its

ability to function without having to recruit large numbers of constituents. Even when the LDH was required by necessity to build up a large membership base, it had a weak relationship with its membership except through dues and donations. The association's professed goal of promoting a 'société de participation,' which was manifested most clearly in its campaign for a provincial bill of rights, was a rare example of a rights association employing a strategy that required mobilizing large segments of the population to promote change. The bill of rights campaign remains a rare instance when the LDH abandoned insider tactics in favour of mass mobilization in its formative years.

Chapter Ten:

Canadian Civil Liberties Association

On the night of 11 May 1974, undercover agents from the RCMP and Niagara Regional Police slowly crept into the Landmark Motor Inn Hotel in Fort Erie, Ontario, in preparation for a massive drug raid. Without a warrant but under the authority of a writ of assistance authorized through the Narcotic Control Act, 50 police officers prepared to storm the hotel in search of heroin and marijuana. Although three of the officers had been recognized by drug dealers who quickly left the scene, the raid went ahead. Approximately 115 patrons were arrested and detained. All 35 women were herded into the woman's washroom, stripped and subjected to vaginal and anal searches; those who refused to comply were threatened with having a male officer come into the room and force the search on them. Meanwhile, only seven of the male patrons were similarly searched. With the searches completed, the bounty of the raid became depressingly clear: 6 ounces of marijuana were found, and most of it lying on the floor, not in people's orifices. According to a later *Globe and Mail* editorial, "considering the manner in which the raid was conducted, according to testimony from the mouths of the officers who planned and executed it, it is highly probable that the Niagara Regional Police has succeeded in making itself the laughing stock of its community; that is, among people who aren't afraid to go out to have a drink for fear that they'll end up stark naked and leaning spread eagled against some washroom wall."⁶⁷¹

This monumental blunder was not without serious consequences. Media coverage was extensive across Ontario and the Toronto papers, notably the *Globe and Mail* and the *Toronto Star*, covered the story almost continually throughout May to August 1974.⁶⁷² Solicitor General for Ontario, George Kerr, promised an investigation by the Ontario Police Commission. Rights activists, led by the Toronto-based Canadian Civil Liberties Association (CCLA), called on the Ontario government to appoint an independent inquiry to avoid the possibility of a cover up by a Police Commission investigating its own officers. A rally organized by the CCLA in June 1974 was attended by nearly 1000 people from the Niagara Falls region with speakers including writer and journalist Pierre Berton as well as political figures and members of the Ontario Federation of Labour who endorsed the demand for an independent inquiry. Bowing to public pressure stimulated by the press and the CCLA, Kerr created an inquiry under Justice J.A. Pringle. Although Pringle's report would later acknowledge that the police were within their powers under the Narcotic Control Act to raid the Inn based on a mere suspicion of drug use, he called the raid 'foolish' and 'unnecessary'. Both Pringle and Kerr called on the federal government to clarify and narrow the powers of police when searching for drugs.⁶⁷³

The events surrounding the Fort Erie drug raid represent the central themes in the history of the CCLA. Created ten years before the Fort Erie affair in the wake of another scandal surrounding excessive police powers, much of the early history of the CCLA until the Charter was dominated by the desire to curb police abuse of powers

and see the implementation of a independent review board for civilian complaints of police actions. In its brief to the Pringle Commission, the CCLA (the only group to present a brief) was critical of the system of police investigating police and suggested that “the concept of self-investigation is, to say the least, structurally uninspiring.”⁶⁷⁴ Police abuse and a civilian complaint system were key issues throughout the group’s first 18 years of operation but by no means its only priorities. Free speech, religious exercises in public schools, due process, native poverty and the rights of welfare recipients were among the central causes adopted by the CCLA in its early years.

This chapter examines the early history of the CCLA and its unique place among the second generation of rights associations. Its history brings to the fore questions about the impact of state funding, the viability of forming a national association and the ideological divide between civil liberties and human rights activism.

No group contrasts more deeply with human rights organizations such as the LDH than the CCLA. Whereas the post-1972 LDH promoted social, economic and cultural rights, the CCLA embraced a negative conception of freedom and focussed its efforts on the defence of civil and political rights. The LDH was one of the key founders of the Federation while the CCLA sought to establish itself as the country’s only viable national rights organization. As of 1970 the LDH, and most rights associations in Canada, accepted government funding, in contrast to the CCLA’s consistent refusals. Thus, the CCLA evolved into the largest group in terms of

membership. Although the LDH occasionally had lawyers provide free advice to people off the street, legal action remained a peripheral aspect of the organization's activities compared to the CCLA which brought dozens of cases to court, several of them to the Supreme Court of Canada. Finally, no other organization exemplifies the evolving relationship between organized labour (a leader in the human rights movement since the 1930s) and contemporary rights associations. It is clear that, in the case of the Canadian Labour Congress, the leading labour organization in the country increasingly deferred to rights associations such as the CCLA in leading human rights campaigns.

First Steps: 1964-1968

'It Makes The Quebec Padlock Law Look Like The Bill of Rights': Bill 99

As the birth-mother of the CCLA, Bill 99 (Ontario Police Bill) seemed an innocuous piece of legislation. In first reading in March 1964, Attorney General Frank Cass characterized the legislation as simply a series of amendments to the Police Act to define and clarify the powers of the Ontario Police Commission.⁶⁷⁵ Once the press realized the contents of the legislation, however, a political controversy erupted that would only be settled with the resignation of the Attorney General and the appointment of the McRuer Royal Commission on Civil Rights. According to Walter Tarnopolsky, a constitutional expert and future leader of the CCLA, the incident "illustrates both the extent to which Parliament and the provincial

legislatures may restrict rights and freedoms deemed to be fundamental, and the power of an aroused public opinion to force even those legislatures which are dominated by a government party having an overwhelming majority to revoke provisions which are believed to be too drastic for the ends sought to be achieved.”⁶⁷⁶

Organized crime was increasingly perceived in the early 1960s as a problem in Ontario. Following a speech in the legislature by Liberal opposition leader John Wintermeyer in 1961 in which he claimed that organized crime was rampant, the provincial government appointed Justice W.D. Roach to investigate the level of organized crime in Ontario. Roach concluded in his report, submitted on 15 March 1963, that organized crime had not reached dangerous levels although it was certainly present.⁶⁷⁷ Convinced the Roach inquiry was incomplete, the newly established Ontario Police Commission persuaded the Attorney General of the need for a continuous investigation into the impact of organized crime. Cass agreed, but the Commission soon found itself unsure about its ability to hold *in camera* hearings and detain suspects, and the Attorney General himself questioned the Commission’s powers under the current legislation. The solution was Bill 99. Under the new bill, the notorious section 14 allowed the Commission to arrest and detain individuals without notifying their next of kin, deny them access to legal counsel, and jail them for eight days if they refused to testify before the Commission. Bail and the right to appeal were withheld. Should witnesses continue to frustrate the Commission they could be held almost indefinitely for 8 day periods, and those who testified were

subject to a \$2000 fine and a year in jail if they or anyone else revealed information presented before the Commission.⁶⁷⁸ The new leader of the Liberals, Farquhar Oliver, called on the government to retract the bill or call an immediate election. In Ottawa, J.W. Pickersgill suggested the bill made the Quebec Padlock Act look like the Bill of Rights.⁶⁷⁹

It did not take long for the media to condemn Bill 99 and demand its removal. One *Toronto Star* editorial appearing on the front page within 24 hours of the legislation being introduced suggested that it was

the most offensive and dangerous legislation ever introduced in Ontario. It was brought in like a thief in the night- slipped through the Conservative caucus when only 12 members were present, and introduced to the Legislature under the pretence that it was concerned only with police pensions and other routine matters. Now that its real nature is known, the Legislature should lose no time in rejecting it.⁶⁸⁰

Eventually, section 14 was replaced with a new section clearly detailing the rights of witnesses before the Commission, including the right to counsel, habeas corpus and other remedies, and the rights of witnesses guaranteed under the Evidence Act and in civil court. *In camera* sessions could only be held at the behest of the witness.⁶⁸¹

Cass was replaced by A.A. Wishart as Attorney General and the McRuer commission was soon appointed. However, the most enduring legacy of Bill 99 was unquestionably the creation of the CCLA.

Since the late 1950s, the Association for Civil Liberties had been effectively moribund. It existed only on paper with Irving Himel, a prominent Toronto Jewish

lawyer, as its sole member and leader. The police bill spurred Himel to reinvent the group. He brought together a collection of prominent members of the Toronto community with an interest in civil liberties to form the Canadian Civil Liberties Association (CCLA) and transferred the remaining \$10 000 from the accounts of the Association for Civil Liberties to the CCLA. The CCLA officially came into being at a meeting at Osgoode Hall on 11 February 1965 although its early years would prove, as was the situation with all rights associations during this period, a struggle for simple survival.⁶⁸²

Staffing and Funding the CCLA

As was the case in the early years of the LDH and the BCCLA, the CCLA was a relatively elitist organization. The CCLA's president was J. Keiller Mackay, former Lieutenant Governor of Ontario and famous for having presided over the *Drummond Wren* case in 1945, where he ruled restrictive covenants illegal.⁶⁸³ Among its other more notable founding members were Professor Harry Arthurs (Osgoode Hall Law School), June Callwood (writer), Pierre Berton (writer, journalist), Abraham Feinberg (rabbi emeritus of Holy Blossom Temple), Professors Edward McWhinney, Mark MacGuigan and Bora Laskin (University of Toronto Law School), Reverend Donald Gilles (Bloor Street United Church), Ron Haggart (Toronto Star columnist) and lawyers Glen Howe and Sidney Midanik. Julian Porter, a young lawyer and son of Chief Justice Dana Porter of Ontario, was the part time counsel for the organization,

Himel was chair of the Board of Directors and Doris Dodds (founder of the Ethical Education Association to oppose religious instruction in public schools) served as the executive secretary.⁶⁸⁴ Many of the CCLA's founders would go on to have highly distinguished careers. For example, Bora Laskin became Chief Justice of the Supreme Court and Mark MacGuigan would serve as Minister of Justice as well as External Affairs under Trudeau. As with the BCCLA and LDH, this was clearly a middle class, caucasian, male-dominated organization.

Members were to provide the bulk of the group's funding, although surprisingly (for a group later famous for refusing state funding) there was an attempt to secure state funding a few years after it was formed.⁶⁸⁵ A request by Sidney Linden to the Secretary of State for a grant in 1966 was refused and it was the first and last time the CCLA ever sought money from the government.⁶⁸⁶ As with the BCCLA and the LDH, in its initial years funding for the organization was minimal and desperate. As part of the revitalization of the CCLA and distancing itself from the Association for Civil Liberties, the new group hoped to establish a permanent office with paid employees (the Association for Civil Liberties was voluntary and had no office). But the group was forced to close its office and dismiss its staff due to lack of funds in November 1966 (having peaked at 330 members), only to be saved from ruin by a \$10 000 operating grant from the Atkinson Foundation. After this, the group's funding improved substantially with an \$80 000 grant in 1967 from the estate of Clement Wells which allowed them to hire a full time general counsel.⁶⁸⁷

When the CCLA was created in 1964, it joined an already vigorous human rights movement in Ontario. Under the leadership of Alan Borovoy, a young lawyer trained at the University of Toronto, the Ontario Labour Committee for Human Rights was easily the most active of the JLC's human rights committees. As previously noted, most of the work of the labour committees centred around discrimination issues. The CCLA also had the advantage of operating in a province, unlike the LDH (until 1975), with a well funded and active Human Rights Commission. Ontario had been the first province to pass a Human Rights Code and the first to employ full time commission staff. However, there were critical distinctions among the CCLA, the Human Rights Commission and the labour committees. From its inception, members of the CCLA saw themselves focussing on civil liberties issues such as censorship and due process of law, while discrimination cases were to be left primarily to the Human Rights Commission and JLC.⁶⁸⁸ By the early 1970s labour's human rights program would be on the decline and the CCLA would be on the rise as the dominant rights association in the province, with a host of other rights associations emerging in cities throughout Ontario. Between 1964 and 1968, however, the CCLA was a small, young association struggling to survive.

Early Activism: Free Speech

The CCLA accomplished very little in its initial years but remained true to its concern with civil and political rights. As its first act in January 1965, the group sent out letters and press releases protesting a bylaw passed by the Police Commission empowering police officers to censor signs used in parades and processions.⁶⁸⁹ In April 1965, Porter and Mackay presented a brief to the McRuer Royal Commission on Civil Rights, calling for the end of religious practices in public schools, stricter regulation of electronic eavesdropping, an end to any form of government censorship, reforming the bail system which discriminated against the poor and compensation for victims of police abuse.⁶⁹⁰ A few months later the CCLA came to the defence of Dorothy Cameron, a local gallery owner who had paintings seized by police during an exhibit entitled *Eros '65*. The paintings were seized under the vague obscenity provisions of the Criminal Code which the CCLA considered too broad and sought to challenge all the way to the country's highest court only to be denied the right to appeal by the Supreme Court of Canada.⁶⁹¹ This was the first major case the CCLA took to court (reaching the Ontario Appeals Court which ruled against Cameron) and would represent the first of many cases the organization would pursue with the help of volunteer lawyers in Toronto.

Free speech issues dominated the organization in its early years. When violence erupted at Allan Gardens in response to a speech by a self-styled Nazi, John Beattie, City Council chose to enact a bylaw allowing it to ban public speaking permits if there was the potential for violence. Although opposed to the content of

Beattie's speech, the CCLA supported his right to speak and fruitlessly lobbied City Council to remove the bylaw.⁶⁹² Two years later the Police Commission passed a bylaw empowering police officers to remove people or groups from Nathan Phillips square if they did not have permission from city council.⁶⁹³ Once again, the CCLA unsuccessfully lobbied against this limitation on free speech.⁶⁹⁴ Finally, in the same year, the CCLA challenged a decision by the Police Commission to re-route an anti-Vietnam parade from Yonge street to Bay street.⁶⁹⁵

In its early years the CCLA had established itself not only as a defender of free speech, but a dedicated observer of police activities and attempts to expand police powers. But it was a slow start. It was still a young organization with minimal staff and exposure in the community. Without the Atkinson grant in 1966 and the estate grant in 1967 the CCLA could very well have folded early on. It was unusual for such a young organization, barely a few years old, to receive such generous donations, and the success of the CCLA in gaining private funding was no doubt facilitated by being located in Ontario (the Atkinson foundation was only for organizations in Ontario) and its elitist leadership, with several well known Canadians such as Pierre Berton and Keiller MacKay vouching for the group. It was also in these initial years when the group established the key priorities to guide the organization for the next 15 years: free speech and police practices.

Entrenchment Years: 1968-1977

Alan Borovoy

Few rights organizations, as is the case for many social movement organizations, manage to survive without the services of one particularly dedicated individual. Reg Robson in Vancouver, Maurice Champagne in Montreal and, as will be seen in the following chapter, Biswarup Bhattacharya in St. John's, were absolutely critical in making their respective rights association viable and effective. This was no less the case with the CCLA. Until 1968 the group struggled to survive, both financially and organizationally, but the hiring of Alan Borovoy in 1968 with funds from the Atkinson foundation and the Clement Wells estate was the single most important development in the history of the CCLA.

Borovoy had earned a Bachelor's degree and LLB by 1956. By the time the CCLA recruited Borovoy in 1968 to be its General Counsel, he had already distinguished himself with the Ontario Labour Committee for Human Rights. In 1961 he had organized activists in Halifax and attracted a great deal of attention in taking up the cause of the residents of Africville, which led to the formation of the Halifax Advisory Committee on Human Rights. A year later he was at the centre of a successful lobby to introduce legislation against racial discrimination in Ontario. When natives from Kenora approached Borovoy about discrimination and limited government services, it was Borovoy who organized a large protest march to City Hall with hundreds of natives from neighbouring reserves to demand everything from telephones to an alcohol treatment centre (which were eventually provided).

Borovoy encapsulated many of the qualities of the CCLA as an organization. He had an undying faith in the law and its ability to promote tolerance and liberty, focussing most of his energies on briefs to government to change legislation or seeking redress in the courts. Borovoy was a Jewish lawyer (as was Himel) with an appreciation for the plight of minorities, having himself experienced discrimination. He had lived and worked all his life in Toronto and, although he travelled extensively, most of the issues taken on by the CCLA during this period were Toronto-centred. Finally, he was a middle class, white male in an organization which claimed to speak on behalf of all equally, yet failed, for instance, to attract many women to its ranks. In 1971, out of 42 Board members and executives, there were only four women. The leadership of the organization consisted primarily of lawyers, academics, journalists, unionists and church ministers.⁶⁹⁶ The demographics of the organization would remain the same until at least the early 1980s.

State Funding?

Through its full time staff the CCLA was able to attract more funding and membership. In 1968 the CCLA had barely 300 members; by 1977 the association could boast more than 3000 members, by far the largest rights association in the country (it would have more than 5000 by the early 1980s). While most groups in Canada sought government funding, the CCLA was particularly proficient at gaining private grants from various foundations. In 1968 the group successfully applied to the

Ford Foundation for an \$85 000 grant to study due process across Canada.⁶⁹⁷ In 1973 the Atkinson Foundation provided another grant of \$53 000 to study aboriginals' access to legal services in the northern Ontario, while the Laidlaw Foundation provided grants of \$30 000 in 1971 and \$45 900 in 1973 to study the rights of welfare recipients across the country. Meanwhile, the United Church of Canada gave the CCLA \$15 000 in 1973 to help natives in the Kenora region. These grants were continually supplemented by various other smaller donations, anywhere from a few hundred dollars to a \$1000. While membership fees generally covered 90 percent of the organization's expenses, these grants allowed the association to conduct extensive programs throughout Ontario and, in the case of the Ford and Laidlaw grants, across Canada.

'The Insane Are Devil Possessed!': Denominational Education

Soon after arriving in the CCLA, Borovoy was pleased to see the publication of a report which would bolster the CCLA's advocacy in the realm of education. Since 1944 Ontario had allowed the exercise of religious practices in public schools as well as the teaching of religion by clergy. At the time, roughly half the population in Ontario supported the practice.⁶⁹⁸ But by the sixties, criticism against the use of religious exercises and teachings in schools mounted. A combination of increasing urbanization and secularism with rising prosperity and declining Sunday school attendance, as well as heavy immigration introducing new faiths into the community,

all combined with the rising rebelliousness of youth against parental mores to undermine support for religious practices in public schools. There were also several practical reasons why people objected to the practice. Jewish organizations, for obvious reasons, objected to a system of religious instruction based on Christian theology. Teachers, many of whom felt unqualified to be teaching scripture, who requested an exemption feared retaliation from employers while students allowed to stand outside the classroom during the exercises were placed in the same position as students being punished. There was also a degree of ostracism for students exempted from religious exercises.

All of these concerns were raised by Borovoy in 1966 when he was invited by a group of universalists in the small town of Gosfield, 30 miles out of Windsor, to call on the school board to remove religious instruction in the school. Several parents in the region had been concerned about some of the content of the instruction, with clergy going so far as to suggest the insane were 'devil possessed' and people with strong enough faith could defy gravity.⁶⁹⁹ It was a failed endeavour, with the school board deciding to maintain the practice, but it did engender much publicity in the province. Later, in 1967, Borovoy made similar presentations before the Mackay committee on behalf of the Ontario Labour Committee for Human Rights as did the CCLA. Mackay, honorary president of the CCLA since 1965, had been appointed in 1966 by the Ontario government to lead an investigation into the implications of religious practices in Ontario schools. The report was released soon after Borovoy

joined the CCLA. Although the committee concluded in favour of maintaining the Lord's Prayer, it otherwise vindicated the position of Borovoy and the CCLA by calling for the removal of all religious practices from public schools.⁷⁰⁰

When Borovoy moved from the OCLHR to the CCLA, his crusade against religious exercises in public schools in Ontario resumed. He continued to push the government of Ontario to implement the recommendations of the Mackay report, organizing a delegation to the Minister of Education in 1971 with 60 people representing various organizations calling on the minister to implement the report's key recommendations.⁷⁰¹ Petitions were organized and letters sent to members of the government. Yet, the government remained recalcitrant, refusing to change the system, claiming it was waiting for an alternative to present itself for teaching morality to youths in public schools. One can only speculate as to the reasons why the Progressive Conservatives refused to eliminate religious practices in the public school system. Many MLAs were undoubtedly concerned about the need to teach morality to children and were devout Christians themselves. At the same time, Catholics throughout the province had mobilized a large campaign in the 1960s to convince the province's three political parties to support full funding for the Catholic separate school system. Both the Liberals and NDP supported the measure but the Progressive Conservatives, fearing the potential costs to the system, refused. Conscious of the strong support the Liberals already enjoyed among Catholics, it is probable the Progressive Conservatives feared alienating Catholic voters even more if

they eliminated religious practices in public schools.⁷⁰² For a political party, an issue like prayers in schools was also often best left to the status quo lest they court a negative public backlash. After all, those whose interests feel threatened (those who support prayers in schools) were more likely to be vocal critics compared to those who have been living with the practice for years. In any event, a large number of school boards had discontinued the practice in the 1970s and 1980s, making it a non-issue for many voters.⁷⁰³ It was not until 1990, following one of the CCLA's most successful Charter cases, that religious preachings in schools in Ontario were finally discontinued.⁷⁰⁴

The October Crisis

On the heels of the Mackay committee report in 1969 came the FLQ crisis a year later. The CCLA soon found itself embroiled in a national crisis and for the first time in its history directed its efforts towards Parliament Hill instead of Queen's Park. Whereas the LDH had failed to distinguish itself during the crisis, *Le Devoir* credited the CCLA with being one of the few groups outside Quebec to take a clear stand on the crisis.⁷⁰⁵ As one editorial noted on the extensive support Trudeau enjoyed outside Quebec, at the

height of the crisis brought on by the abduction of Mr. Cross and Mr. Laporte, one had the impression that, but for a few voices crying in the wilderness, all critical reflection had practically ceased in English-Canada. The solid, almost dogmatic support which English Canadians gave to the governments' decisions (including those which

contradicted their strongest traditions) was such that certain dissident voices seemed themselves frightened at times of their own isolation.⁷⁰⁶

Closer to home the CCLA was powerfully reminded about the support in English Canada for the use of emergency powers following a rally of 5000 people on the campus of York University in support of Trudeau's actions. One of the few critics at the rally to speak out against the government noted the extent to which the crowd was in support of the measures: "I have never before or since been afraid of a crowd, never feared being torn form limb to limb, but that day I was frightened. The shouts from the students that interrupted my speech were frequent and hostile; the visceral hatred of the FLQ kidnapers and murderers, and, as I interpreted it, of all Québécois, was palpable."⁷⁰⁷

The most notable aspect of the LDH's inaction, which damned them in the eyes of many, was the group's unwillingness to take a definitive stand against the War Measures Act and to take the government to task. This was clearly not the case with the CCLA. Three days after the War Measures Act was declared, the CCLA submitted a brief to the federal cabinet calling for the Act's revocation, arguing that the powers had not been justified: "Only the doctinaire could claim that such harsh measures are never justified; but reasonable democrats must insist that the proponents of such measures produce the justification."⁷⁰⁸ Ten days later, the CCLA appeared before the Toronto Board of Education to challenge a proposed resolution, similar to the one passed by the provincial government in British Columbia, in which teachers

would be dismissed for advocating FLQ policies.⁷⁰⁹ When the Public Order Act was passed to ban the FLQ and suspend civil liberties, the CCLA returned to Ottawa with another brief with the same position: the government had yet to justify the need to use extraordinary powers because the Criminal Code possessed sufficient powers of arrest and detention to deal with the kidnappings.⁷¹⁰ Letters were sent out to Members of Parliament and other organizations to garner their support.⁷¹¹ At a time when the LDH was doing little to discourage the federal government from its course of action, Borovoy met informally with Justice Minister John Turner in Ottawa in November 1970 to discuss the situation and consider alternatives.⁷¹²

It is difficult to gauge how much influence the CCLA had on the decision makers in Ottawa, but it is clear that the organization had access to high level officials and was one of the few highly vocal organizations outside Quebec attacking the government. A public forum was organized in November 1970 featuring Jean Paul Goyer (future Solicitor General). A meeting of rights activists and scholars was convened on International Human Rights Day (10 December 1970) to discuss the implications of emergency powers, and Borovoy appeared on various television and radio shows.⁷¹³ The October crisis was one of the greatest threats to civil liberties in a generation, and the CCLA was swift to act.⁷¹⁴ When the federal government announced it was considering permanent peacetime emergency legislation, the CCLA organized a delegation to meet Turner in March 1971. Perhaps the most compelling argument presented in the brief was that it was essentially normal detective work, not

emergency powers, which led police to capture Laporte's kidnappers and rescue James Cross.⁷¹⁵ Whether it was the CCLA or other forces at work, after meeting with the CCLA Turner announced to the press that the government was no longer committed to peace time emergency legislation.

The Man in the House Rule: Human Rights and the Welfare State

The October crisis was assuredly one of the most dramatic episodes in the CCLA's history, and the first time since its inception that the group had demonstrated its effectiveness at the national level. Soon after the crisis, the association entered a new realm of advocacy: the rights of welfare recipients. The creation of the welfare state expanded exponentially the ways in which the state interfered in the private lives of its citizens. And yet, whereas human rights associations such as the LDH embraced the idea of economic and social rights, the CCLA shared the same ideological bent as the BCCLA with their mutual concern for negative freedom. In other words, the CCLA dealt solely with the *administration* of welfare and the equitable treatment of recipients as opposed to the amount and the nature of welfare support.

Jennifer Smith was a 30 year old woman trying to raise four children in Toronto by herself after having been deserted by her husband.⁷¹⁶ She was taking courses to complete her high school degree and had been on welfare since the mid-1960s. In 1970 Smith received a letter in the mail with no warning informing her that

her welfare was being cut off because she was no longer living as a single person.⁷¹⁷ Denied any right to challenge the decision and having to wait until a Board of Review was called, Smith was typical of single mothers who were victims of a welfare system eager to cut costs. Single women suspected of having a male in the house, the infamous 'man in the house' rule, were denied access to welfare as it was assumed males, as breadwinners, would provide for women. The man in the house rule clearly discriminated against women, assuming a sexual relationship implied a financial one, and the abruptness with which recipients could be denied welfare raised the potential for numerous procedural abuses. There were also serious concerns about the tactics employed by the welfare office in determining whether women were living as single persons. During some surprise visits (all welfare recipients in the 1970s were required to sign forms permitting surprise inspections) inspectors would demand to know about the most intimate aspects of a recipient's relationships and in some cases draw conclusions based on such weak evidence as the presence of open beer cans or a raised toilet seat.⁷¹⁸

The man in the house rule and the procedural regulations of the Department of Welfare in Toronto were two of many issues raised by the CCLA in briefs and correspondence to various Ministers of Family and Social Services in the late 1960s and throughout the 1970s. Its work in this field was supported by two generous grants from the Laidlaw foundation in 1971 and 1973. A report produced by the CCLA based on interviews with 1002 welfare recipients across Canada revealed a host of

abuses of the natural rights of welfare recipients and became the basis of much of the organization's lobbying work throughout the 1970s.⁷¹⁹ The amount of control exercised by the welfare department was extensive. Through welfare, the state determined how people could eat, where they could live, and what they bought and from whom. Welfare procedures at local offices departed significantly from common law requirements of due process, requiring recipients to wait for long periods for responses. Decision makers were difficult to contact and official conduct was often characterized as demeaning. Women with illegitimate children were forced to reveal the names of the fathers so the department could seek them out and recover costs.⁷²⁰ Recipients lived well below the poverty line, receiving an estimated 60 percent of the basic amount required to lead a healthy and functional lifestyle.⁷²¹ These regulations emerged from a system struggling with the inherent contradiction of providing welfare while seeking to minimize costs. As the report itself suggested, a "person accused of the most heinous crimes enjoys more discernible protection of his domestic privacy than does an innocent recipient of public welfare."⁷²²

Through the efforts of the CCLA and anti-poverty groups in Ontario, welfare regulations were eventually narrowed through court action and lobbying. One of the few requirements attached to the Canada Assistance Plan was that provinces should provide appeal boards. Ontario initially resisted, and only through pressure from various activist groups did the province finally establish a Board of Review in 1969. Although the CCLA's attempt to challenge the provincial regulations dealing with the

discretion of the Director of Welfare and the man in the house rule failed in the Ontario Court of Appeal, Jennifer Smith eventually had her benefits restored after negotiations between the CCLA and the minister.⁷²³ In the same year the Smith case was decided, the Ontario government passed the Civil Rights Law Amendment Act requiring notice in advance of any loss of benefits and allowing recipients to reply in writing to defend themselves. A few years later, an Ontario Court of Appeal ruling in 1975 required welfare officials to demonstrate the existence of a financial relationship between a man and a women before cutting off benefits to single women.⁷²⁴ The man in the house rule was more resilient despite several attempts by the CCLA in the 1970s to defeat the regulation in court, lasting until 1986 when threatened court action by women's groups to challenge the rule as a violation of the Charter led the Ontario government to eliminate the regulation.⁷²⁵ Realizing how few welfare recipients were aware of their rights, the CCLA organized a volunteer duty counsel service in 1971 in Metropolitan Toronto welfare offices where a volunteer would provide free legal advice to welfare recipients visiting the office.⁷²⁶ But it was an uphill battle against a government terrified about the soaring costs of welfare in the 1960s and 1970s and comfortably entrenched in power.⁷²⁷ The Progressive Conservatives ruled Ontario from 1943 to 1985.

Police Violence in Ontario

Religious education and welfare rights are two examples of the CCLA's advocacy program during these years; other issues included native rights, the rights of demonstrators, abortion and capital punishment. But no issue captured the imagination of the organization more than police abuse of powers and a new civilian complaints system. Throughout the 1970s, there was no issue the CCLA remained more single-mindedly focussed on than the question of a civilian review board. As early as 1967, Harry Arthurs began research for the CCLA on a proposal for a new system of investigating civilian complaints against police officers in Toronto, notably a system independent of the actual police force.⁷²⁸ Metropolitan Toronto's police force was a recent creation, formed in 1957 with the amalgamation of thirteen municipalities. The police force employed a fairly crude complaints system where citizens could raise concerns at a complaints bureau located in the force's headquarters and regular duty officers would conduct informal investigations of their colleagues. The idea of a civilian review board for complaints against police was rejected early on in 1968 by Attorney General and Minister of Justice A.A. Wishart because of the functional difficulties of such a system. If separate agencies existed for the enforcement of the law and the disciplining of law officers, Wishart claimed, it would inevitably lead to conflict between the two agencies and undermine the effectiveness of the system.

A year later the CCLA presented a brief to Wishart calling for a civilian complaints system followed up by another brief in 1973 to the Task Force on Policing

which was created by the province in 1972 to study the organization and effectiveness of policing in Ontario. According to the CCLA's research, of 161 individuals interviewed in 7 Ontario cities, 41 claimed they were abused by police. Yet, only 12 percent sought redress and most assumed it would do no good. The simple problem was that, in a system where police investigated police, there was a perception of rampant cover ups and bias against the complainant.⁷²⁹ A police commission concerned about the public image, efficiency and morale and legal liability of the force could hardly conduct an impartial investigation. In fact, in 1972 when the Ukrainian Canadian Committee publicly accused the police of abusive tactics against their demonstrators during the visit of Soviet Premier Kosygin, the Toronto police commission asked the Attorney General to establish an independent inquiry to eliminate the perception of bias on their part. Clearly, this was a recognition on the part of the police commission of the faults in the system. In its many briefs throughout the 1970s, the CCLA called for an independent citizens advisory committee made up of members from the community and located outside the police headquarters to investigate complaints. Once a complaint had been received, it would be investigated fully and could not be withdrawn, a weakness in the established system as it made complainants potential targets for police intimidation. If some fault were found, the committee would be empowered to conciliate and force the police department to pay damages or call a hearing into the issue. The key was to ensure a fair and open investigation and the perception of independence. This was the

CCLA's enduring vision of how the relationship between citizens and police should be regulated.⁷³⁰

The vision would only be partially realized in the early 1980s but in the 1970s there were many opportunities for the CCLA to air its grievances against the current system of processing complaints. There were three major inquiries in the 1970s alone highlighting the problems with the current system of handling complaints against the police. The Toronto police commission appointed Toronto lawyer Arthur Maloney to a one-man inquiry in 1974 to study complaints procedures.⁷³¹ Maloney found evidence of cover ups when fellow officers were being investigated and recommended the appointment of a Commissioner of Citizen Complaints to be appointed by Metropolitan Toronto Council, either a lawyer or a judge. He refused to go so far as to create a fully independent civilian system, instead preferring an outside arbitrator to review police activities; the investigation would remain with the police themselves.⁷³² A civilian system was rejected as it would lower police moral and be counterproductive, increasing tensions between police and citizens.⁷³³

The Maloney report helps explain why the subject of complaints procedures was an issue of public concern by the 1970s. Maloney notes how the seventies was a period in which Ontarians, as an increasingly well educated population, possessed a heightened awareness of individual rights and were willing to seek redress when those rights were abused. Secondly, the widespread enforcement of criminal laws respecting drugs involved a new criminal element, mainly young, middle class and

often vocal individuals who were increasingly brought into contact with police. Thirdly, complaints usually arose when the police were required to enforce unpopular laws or those about which most of society was ambivalent, notably drinking, gambling, prostitution and drugs. Since these crimes had no discernible victims who would push for an investigation, they could often lead to illegal searches, arrests and activity by undercover agents sometimes leading to outright entrapment, thus increasing the number of potential complaints against police.⁷³⁴

In the same year Maloney reviewed Toronto's police complaint system (the year of the Fort Erie raid), the media was pressuring the province to take action. A series of ten hard-hitting front page stories appeared in the *Globe and Mail* in October 1974 documenting 17 cases of police brutality. In one case, a drug dealer claimed his police interrogators applied a stapler and mechanical claw to his genitals to extract a confession, while another man was kicked in the stomach so severely he nearly died in hospital. As a result, the province appointed Justice Donald Morand, who later became the province's second ombudsman (Maloney was the first), to head a Royal Commission into Metropolitan Toronto Police Practices. Morand's commission investigated a total of 114 complaints against Toronto police. The report, presented in 1976, documents a variety of illegal activities by police, from lying under oath to hiding evidence, changing duty books and lying to superior officers. Morand called for criminal charges to be laid in relation to 11 incidents and for a new system of processing complaints against police. Once again, the CCLA's conception of an

independent civilian complaints system was rejected. Morand recommended the implementation of Maloney's idea of a Public Complaints Commission, a system which would retain the Chief of Police's responsibility for imposing discipline and require police to investigate the initial complaint.⁷³⁵

By 1977 the province had yet to act on the major recommendation of both the Maloney and Morand reports. The Toronto police commission had called on the provincial government to implement Maloney's recommendations to no effect. A civilian review agency, long sought after by the CCLA, remained beyond its grasp despite having made presentations before the Maloney commission and the Solicitor General following the Morand report. Nonetheless, between 1968 and 1977 the CCLA established itself as the leading rights association in Ontario and one of the major activist groups in the country. It was invited to meet with government ministers, to present briefs and, through several generous grants from large foundations, conduct important research projects which led to significant legislative reforms. Within the organization, former Supreme Court Justice Emmet Hall was appointed honorary president of the association in 1973 following the death of Keiller Mackay three years earlier. These were the formative years as the CCLA worked to place itself in a position to influence key national and provincial policy issues.

From Local to National: 1977 to 1982

Protecting People from the Police: A Civilian Review System for Complaints Against the Police

Police scandals and investigations into the need for a new process of investigating complaints did not end with the Morand report in 1976. Within a year the public was once again clamouring for reform in the face of police violence. This time it involved cases of physical abuse against members of minority groups by Toronto police, notably a series of subway beatings with racial overtones on New Year's Eve in 1976. Walter Pitman, president of Ryerson Polytechnical Institute, was appointed by the Toronto police commission in 1977 to head a Task Force on Human Relations. His report called for basic reforms to the structure of the police force and recommended the implementation of a new system for processing citizen complaints against police along the lines of the Maloney report.⁷³⁶ All of his recommendations were eventually adopted and the police commission recommended to the provincial government it legislate for a new system of processing citizen complaints.⁷³⁷

After three major reports investigating police abuse in Toronto, it was an understatement when the Chairman of the police commission suggested that "no other police force or public agency for that matter has undergone such intensive and wide-ranging scrutiny in recent years as the Metropolitan Toronto Police."⁷³⁸ And it was not to end there. Two years after the Pitman report, the Toronto police force found itself mired in another scandal following complaints by the homosexual community. Homosexuals became incensed following revelations that police were notifying

school boards about public school teachers who had appeared in court on morals charges. Tensions peaked when a black man, Albert Johnson, was shot and killed on 26 August 1979. It was the culmination of a series of police shootings over a ten month period involving mostly members of minority groups, at least one shooting a month, and 2000 people demonstrated in downtown Toronto in wake of Johnson's death. The issue was serious enough to lead Toronto City Council to pass a motion of non-confidence in the Toronto police commission.⁷³⁹ Gerald Emmet Cardinal Carter of the Roman Catholic Church was appointed to mediate between police and minority groups. His report (1979) called for a series of revisions to police practices including more street patrols and regulations against verbal abuse, including a better procedure for handling complaints.⁷⁴⁰

Throughout all this the CCLA consistently called for a civilian agency to review complaints against police. The association was present before the Maloney commission, made representations before the Toronto police commission, and lobbied several provincial Solicitor Generals. Remarkably, the CCLA was even able to make common cause with the Ontario Police Association which supported the CCLA's call for a fully independent civilian complaints system.⁷⁴¹ Throughout the 1970s a series of events continually revitalized the CCLA's dogged campaign for a civilian review system. In 1973 Vicky Trerise, a striker on a picket line during the Artistic Woodwork labour dispute in Toronto, was dragged by her hair and beaten by police without provocation.⁷⁴² A year later the CCLA made presentations before the Pringle

commission on the Fort Erie raid. Throughout 1978-1979, the CCLA entered into extended correspondence with two succeeding Solicitors General over questions of police abuse of native people in Kenora following a series of investigations in which 20 people claimed abuse. The issue was serious enough to lead to an inquiry by the Ontario Provincial Police and a debate before the Standing Committee on the Administration of Justice.⁷⁴³ Following accusations of police abuse of strikers during the Boise Cascade strike in Kenora in 1979, the CCLA repeated its demands on the Solicitor General to implement a new system.⁷⁴⁴ For over a decade the CCLA had been constantly calling for reform.

Attempting to transform the citizens complaints system proved to be a torturous process with the issue constantly stalling in the legislature. As early as October 1976 John MacBeth, Ontario's Solicitor General, promised legislation to improve complaints procedures.⁷⁴⁵ A year later MacBeth introduced Bill 113, An Act to Amend the Police Act, to implement Maloney's recommendation for a civilian complaints commissioner.⁷⁴⁶ His bill died on the order paper and another bill was not introduced until 1979 when a new Solicitor General, Roy McMurtry, introduced Bill 201 to create a Commissioner of Citizen Complaints for a three year test period.⁷⁴⁷ This bill also died on the order paper and McMurtry attempted again in May 1980 to push through similar legislation. At the time the Progressive Conservatives under William Davis were operating as a minority government, and there was intense opposition, particularly from the NDP, to the government's proposed legislation.

Each piece of legislation introduced thus far by the government simply proposed civilian oversight of the initial police investigation; a Citizens Complaints Commissioner would review a report produced following a police investigation of the initial complaint and had the power to call a tribunal or impose penalties if the commissioner felt the investigation had been improperly handled. While this was consistent with Maloney's vision of a civilian complaints system (and supported by subsequent commissions), it contrasted with the CCLA and the opposition NDP's idea of a fully independent civilian investigatory body. From McMurtry's perspective, since 90 percent of complaints were solved in the initial interview (either through clarifying an issue or an apology from the officer) a fully civilian system would create unnecessary burdens. Undoubtedly McMurtry was also concerned about a possible confrontation with the police who, with few exceptions, were adamantly opposed to a fully independent review system.⁷⁴⁸

While an attempt by the NPD to introduce a private members bill to create a civilian review agency failed, McMurtry's legislation was defeated by combined opposition from the Liberals and the NDP.⁷⁴⁹ Four attempts by the government and private members to introduce legislation to deal with civilian complaints had thus failed. Finally, on 5 May 1981, McMurtry introduced Bill 68 to create an office of the Public Complaints Commissioner. Two key factors paved the way for passing the legislation. First, in March 1981 the Progressive Conservatives had won a resounding victory over the Liberals and NDP and now enjoyed a majority government. Second,

in February 1981, in what was characterized as the largest police action since the FLQ crisis, 150 Toronto police officers raided four gay bathhouses and arrested hundreds of gay men for being found-ins. The incident sparked an outcry from the gay community and local papers for the police's singling out of homosexuals. The *Globe and Mail* characterized the raids as an 'ugly action' and a clear case of discrimination against homosexuals, suggesting that "this flinging of an army against the homosexuals is more like the bully-boy tactics of a Latin American republic attacking church and lay reformers than of anything that has a place in Canada."⁷⁵⁰ At least two papers, the *Globe and Mail* and the *Toronto Star*, suggested the provincial government should implement an independent civilian system for handling complaints soon after the election in light of the bathhouse raids.⁷⁵¹ All of this pressure undoubtedly encouraged McMurtry to reintroduce his police review bill in the form of Bill 68 within days of the legislature being recalled in May 1981 (the bill was passed in December 1981).

Once again, the CCLA had used a highly public issue to call for a new system of transmitting police complaints.⁷⁵² After nearly 15 years of pressure, the CCLA finally had its wish in the form of Bill 68. Despite the failure to achieve a fully independent civilian system for handling police complaints, the CCLA could claim a partial success in the creation of the Public Complaints Commissioner after more than a decade of advocacy. The entire question of police powers had been the central preoccupation of the CCLA since its founding, from its advocacy in the realm of

demonstrations and police censorship in the mid-1960s to the complaints system. Appropriately enough, the first Public Complaints Commissioner appointed by the province for a three year trial period beginning in 1981 was none other than Sidney Linden, former General Counsel and one of the founders of the CCLA.⁷⁵³ As the CCLA moved from focussing predominantly on local issues to tackling more national concerns, it would retain its interest in regulating police powers.

From Barn Burning to Opening Your Mail: RCMP Illegal Activities

While 1977 to 1982 represented a culmination of the CCLA's activities in the field of police abuse, it was also a period in which the CCLA vigorously asserted itself on the national stage. Whereas in the 13 years previous the association had focussed its efforts predominantly on provincial and municipal issues, with the exception of research under the Ford and Laidlaw grants and the FLQ crisis, by 1982 the CCLA had truly made a name for itself nationally. This was done through two key events. The first began with Canada's own version of Watergate.

In 1976 there were revelations of extensive illegal activities conducted by the RCMP. Among other things, police were illegally opening mail and in 1972 had conducted an illegal raid on the office of the Agence de Presse Libre du Québec, a left wing news agency. RCMP officers, in conjunction with the Quebec Provincial Police and the Montreal Urban Community Police force, were further responsible for secretly raiding the offices of the Parti Québécois and copying membership lists.

Other incidents included stealing explosives and burning down a barn to prevent a meeting of the Black Panthers and suspected members of the FLQ. It was clear the RCMP had overstepped its bounds, although its actions were entirely consistent with the force's focus on separatists and socialists as a threat to national security. Within a year, Solicitor General Francis Fox appointed a Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police chaired by Alberta judge David C. McDonald.⁷⁵⁴ The commission's final report appeared in 1981.

The history of the McDonald Commission is presented elsewhere and does not need be recounted in full here.⁷⁵⁵ Sitting from 1977 to 1981, the commission's inquiry involved extensive research into the role of the RCMP, hundreds of briefs and individual investigations, massive media coverage, and conflicts with the Quebec provincial government after the newly elected Parti Québécois government enacted its own inquiry (Keable Commission) in 1977. Two other provincial inquiries emerged from these developments, including royal commissions in Alberta under Justice James Laycroft and in Ontario under Justice Horace Krever. The McDonald commission took 49 months to produce more than 2000 pages in three separate reports costing \$8 million, and \$2 million for RCMP lawyers.⁷⁵⁶ At the heart of the commission's findings was the idea of an inherent contradiction facing the RCMP: a belief that in order to enforce the law they felt the need to break it. To protect the nation from security threats, the police believed they had to circumvent the law by opening mail and committing other abuses. Among the commission's

recommendations was the creation of a civilian agency without police powers to take control of the RCMP's security service. It further recommended making access to information reviewable by the Federal Court, clarifying the mandate of the RCMP, banning the infiltration of unions and political parties, establishing external investigations of RCMP activities, and greater ministerial responsibility for the force. However, it did not recommend any specific criminal proceedings be taken against the accused police officers (although the Keable Commission did recommend prosecutions and several were undertaken in the Quebec).⁷⁵⁷ The entire episode served to highlight the weak oversight of the RCMP by political leaders and, as journalist Jeff Sallot suggested in 1979, the "true test of a national security agency ... is its ability to quickly identify the real threats and not to waste its time on legitimate dissenters. This the Security Service failed to do."⁷⁵⁸ In the end, the commission not only mobilized rights activists across the country but also stimulated a widespread public debate on the extent of police powers in Canada.⁷⁵⁹

The CCLA embraced the scandal surrounding RCMP illegal activities with a passion. This response was entirely consistent with the association's longstanding efforts to establish civilian checks on the operation of police forces. One of its first acts was to petition the commission for standing to allow its own lawyers to cross-examine witnesses, a request McDonald denied.⁷⁶⁰ Not to be discouraged, the CCLA had a representative at the commission's public hearings who produced reports on the commission's activities. Borovoy organized a team of researchers across the country

to prepare a massive brief. After all, no issue fit more perfectly into the CCLA's mandate and there would be no better forum for promoting reform in the relationship between the police and citizens throughout the country than the McDonald commission given its mandate and all the media attention. Lawyers and other volunteers were recruited from as far away as Nova Scotia and British Columbia to do research on everything from due process jurisprudence in the United States to unresolved citizen complaints against the RCMP.⁷⁶¹ It was a testament to the CCLA's effectiveness that it was able to recruit people from diverse backgrounds and outside of Ontario to do volunteer work for the association.

There is little doubt the CCLA exploited the McDonald commission in an attempt to establish itself as Canada's true national civil liberties association. On 16 November 1977 the CCLA sent a letter to Prime Minister Trudeau and three days later had it published in the *Globe and Mail*. This full page advertisement cost the organization a painful \$10 000, straining its budget, but ensuring the CCLA did more than any other rights association in publicly challenging the government's position on RCMP wrongdoings. Signed by such luminaries as Walter Tarnopolsky and Emmet Hall, the letter went to the heart of the issue as the CCLA perceived it: ministerial responsibility. Quoting Trudeau's own words, the letter questioned the Prime Minister's defence of RCMP illegal activities when he noted how in some situations the police must break the law, as in the case of entering a private residence to diffuse a bomb or speeding to catch a bank robber. According to the CCLA, none of these

acts could justify the need to break into the office of a legitimate political party and copy its membership lists. The letter went on to question why the Prime Minister and his cabinet failed to inform themselves on the activities of the RCMP and the association accused the government of using the commission as a delaying tactic. The CCLA called on Trudeau to prosecute all known police offenders, inform the provincial attorneys general of all the evidence the commission had gathered, and launch a Parliamentary committee to investigate the responsibility of a Minister of the Crown in supervising the RCMP.⁷⁶²

Trudeau responded with his own public letter effectively criticizing the CCLA for quoting him selectively and justifying the need for ministers to remain aloof from the administration of the police:

I do not believe it appropriate, for example, for the government to be aware of, or involved in, either police or security investigations. The independence of these investigations, and the confidence of the public in their honesty, must not be impaired by even the suggestion of political interference. ... It is necessary, I suggest, for those asking these questions to bear in mind the extraordinary techniques employed by those engaged in espionage, subversion or terrorism, as it is necessary for those answering the questions to focus on the precarious and sometimes fragile nature of our democratic process.⁷⁶³

Trudeau rejected all the association's recommendations. He refused to pass on information to individual Attorneys General preferring a single investigation run by the federal government and did not want to discipline individual RCMP members as discipline was best left to the internal processes of the force. A Parliamentary

committee on ministerial responsibility was also dismissed as the idea had already been rejected by the Marin commission on security.

The issue of ministerial responsibility was at the heart of the divide between the CCLA and the federal government. For years the CCLA had been calling for civilian review of local police forces and in calling for greater ministerial responsibility the group hoped to achieve a form of civilian review of the RCMP. In contrast, Trudeau and his ministers seemed loath to take direct responsibility for RCMP law breaking. As suggested in one *Globe and Mail* editorial, the “Prime Minister and his colleagues either don’t know or won’t admit what Cabinet responsibility means. This has been growing more and more apparent as incidents involving the Royal Canadian Mounted Police have been revealed.”⁷⁶⁴ In 1977 Solicitor General Francis Fox was admitting to the mail opening but claimed to have known nothing about it; Justice Minister Ron Basford said there was nothing he could do but refer the issue to the McDonald commission since the RCMP’s own investigatory unit would be inappropriate; and, Postmaster Jean Jacques Blais claimed to know nothing of the practice.⁷⁶⁵ Not only would the Liberals introduce a bill to legalize mail opening a couple of years later in 1979 (and, in doing so, inflaming rights activists who felt this legitimized illegal activities by the police), but after the report was released in 1981 the new Solicitor General, Robert Kaplan, would continue to maintain that the RCMP’s activities were justified except for the more egregious offences such as barn burning.⁷⁶⁶ Given the consistent refusal of senior political

leaders to accept responsibility and the four year delay in the McDonald commission's investigation, cynicism surrounding the inquiry and the belief it was a delay tactic were understandable.

The CCLA's campaign, mixed with several public forums and no less than five briefs before the McDonald commission (including a massive 100 page brief), substantially increased the group's public profile.⁷⁶⁷ It garnered 400 new members in the first two weeks alone following the advertisement placed in the *Globe and Mail*.⁷⁶⁸ By the end of the year the advertisement and the CCLA's promotional work had earned them at least 1000 new members. It also engendered some negative feedback from those who came to the defence of the RCMP. The association's correspondence files are littered with letters stating things such as 'Bullshit!! Thank God for the RCMP', 'You bloody communists ... Canadians aren't with you', 'You middle class humbugs', 'Drop dead you bastards', 'The country's biggest collection of assholes, especially your legal counsel.'

In a creative campaign to solicit public interest and pressure the government to act, the CCLA organized a petition calling on the government to initiate proceedings against offenders. Unlike traditional petitions, this one required all signatories to pay \$1 to emphasize their support for the cause. Well known public figures such as Margaret Atwood, Pierre Berton, Daniel G. Hill (first Chair of the Ontario Human Rights Commission), T. C. Douglas, David Lewis, and Walter Tarnopolsky sat on a sidewalk booth on Yonge Street soliciting donations. The CCLA was also able to use

its connections with the NDP and organized labour to solicit support by way of large mailing campaigns through various mailing lists, as well as working with its chapters in Nova Scotia and Manitoba.⁷⁶⁹ It netted more than \$15 000 and the petition was presented to Kaplan as Solicitor General in May 1980, with media coverage across the country.⁷⁷⁰ By this time the CCLA had 5000 paid members and 30 organizational members (mainly church, labour and ethnic groups). In the end the entire episode elevated the CCLA to one of the government's leading critics.

While an initial report had been released in 1980 dealing with such issues as revisions to the Official Secrets Act and access to information, the major reports were not released until 1981.⁷⁷¹ After four years of tireless work and activism (the McDonald Commission was the group's largest expense for several years), the CCLA leadership must have been disappointed with the results. While many of the CCLA's minor recommendations, such as requiring that any proclamation of the War Measures Act be approved by Parliament within a specific time limit, were included in the commission's recommendations, the inquiry's two key recommendations were opposed by the CCLA.⁷⁷² First, the commission did not directly recommend the prosecution of RCMP wrongdoers because in some cases (such as illegal mail opening) it refused to investigate allegations on a case by case basis and it considered recommendations for specific prosecutions beyond its jurisdiction.⁷⁷³ As of 1977, the CCLA had been outspoken in demanding illegal acts be prosecuted. This was not so much a disagreement with a specific recommendation as much as frustration with the

commission for not being more strident in demanding prosecutions. Second, the McDonald Commission recommended the creation of a civilian security agency with no police powers, which soon led the federal government to create the Canadian Security and Intelligence Service. In a lengthy column published in the *Globe and Mail*, Borovoy criticized the commission's central recommendation as it would divorce criminal investigations from security work.⁷⁷⁴ Law enforcement was reactive whereas security service was preventative. Security services gather a great deal of information on broad and vague mandates in contrast to law enforcement agencies which focus on specific crimes and gather evidence for easily identifiable crimes. Borovoy was concerned about a security service separated from criminal investigations blurring the lines between subversion and legitimate dissent. This was entirely possible if the new security service was not reacting to crimes but seeking to prevent subversion and attempting to predict the future. For those who criticized the RCMP system, Borovoy noted how the problem with the RCMP's structure was the total removal of the criminal investigation branch from security investigations. The solution was, therefore, to reintegrate the criminal with the security services within the RCMP.⁷⁷⁵

The final domino fell in July 1982 when Minister of Justice Jean Chrétien decided not to initiate prosecutions against any RCMP officers. Nothing could have infuriated the CCLA, and other rights activists, more than the decision not to prosecute. In a letter to Solicitor General Kaplan, Chrétien explained that his refusal

to prosecute was primarily based on the fact that the commission did not provide evidence for specific illegalities and instead recommended the government investigate hundreds of allegations. Given the massive scope of hundreds of potential investigations, Chrétien chose not to act. In the case of illegal mail openings, the Minister of Justice noted how for some individuals the statute of limitations made some prosecutions impossible, so only those who had committed the crime more recently would be prosecuted, which the Minister considered an unfair form of discrimination. He was also cognisant of the fact that for many RCMP officers the practice had an air of legitimacy and many were unaware they were committing illegal acts; in addition, he did not believe the offenders acted out of personal gain. Ironically, given how many observers considered the commission a government delaying tactic, Chrétien concluded his letter by noting that “it should be borne in mind that time applicable to limitation periods was running during the nearly four years of the existence of the Commission of Inquiry.”⁷⁷⁶

Borovoy and the leadership of the CCLA were incensed. Chrétien’s letter was a collection of excuses for not prosecuting RCMP officers even though, had it been civilians who had been accused of similar crimes, the state would surely have acted. In an article published in the *Toronto Star*, Borovoy called on Chrétien’s successor (Mark MacGuigan, a former CCLA executive) to act on the commission’s recommendations. Borovoy argued that there was no reason to refuse to prosecute simply because the statute of limitations had expired in a few cases. While it was true

that the officers in question did not gain materially from their activities, it was also highly likely some committed these acts to curry favour with their supervisors. In addition, the commission's hearings clearly revealed how high echelon officers knew the practice was illegal. The CCLA had been calling for prosecutions since 1977 and the government had yet to explain why it chose not to act earlier.⁷⁷⁷

To be sure, the McDonald commission stands out as one of the CCLA's most important efforts in its history. In many ways, it was a spectacular failure. Despite practically dominating the organization's efforts for several years, neither the reforms to the RCMP security service nor the anticipated prosecutions were realized. As well, changes to the War Measures Act and Official Secrets Act recommended by the commission were never implemented. Yet, for the first time in its history, the CCLA had justified calling itself a national organization. It continued to lack representativeness across the country, with most of its membership in Ontario and a few chapters scattered across the country, but it asserted itself aggressively on a national issue. Its briefs provided some of the most extensive analyses of the problems facing policing in Canada available to the commission, and its advertisement in the *Globe and Mail* and petition campaign brought attention to the organization and its cause at a national level. No other rights association came close to doing the same in relation to the McDonald commission, including the Federation. Borovoy's criticism of the McDonald Commission's recommendations and of the government's refusal to prosecute were well covered in the press and the CCLA had

established a strong enough profile that the Prime Minister himself felt the need to respond to the group's criticism in a detailed letter.⁷⁷⁸

The Charter of Rights and Freedoms

By 1981 the group was not only the largest rights association in the country but it was by far the most active. While the LDH struggled with internal disputes, the BCCLA with declining government grants and the Federation with virtual invisibility, the CCLA thrived. It enjoyed a budget fluctuating between \$125 000 to \$150 000 although the organization did not receive any major research grants during this time, so membership fees accounted for approximately 80 percent to 90 percent of the group's funding.⁷⁷⁹ Funds accrued from the campaign on RCMP wrongdoings netted an impressive \$54 000 by 1980 (the CCLA executive had estimated they would only be able to raise around \$21 000).⁷⁸⁰

While the CCLA continued to promote legislative change in Ontario, it geared up in the early 1980s for one of the most important developments in Canadian history: the patriation of the constitution.⁷⁸¹ Aspect's of the CCLA's role in the Charter debates are already documented in a book published by Borovoy in 1991 entitled *Uncivil Disobedience*; but the issue deserves some attention here given the recognition accorded the CCLA during the Charter debates and the Charter's contribution to helping establish the organization as a national rights association.

The CCLA had a greater impact on the Charter than any other rights association in the country. In its brief before the Special Joint Committee on the Constitution, the organization went so far as to actually oppose the passing of the Charter, suggesting the status quo would be better than the proposed Charter unless significant improvements were made. Among the changes suggested were removal of section 1, the limitation clause, because it would allow judges to reassert the philosophy of parliamentary supremacy which had been the bane of the Bill of Rights. Section 8 on searches would allow any search as proscribed by law, an insufficient protection since anything passed by a legislature was 'proscribed by law' and the CCLA hoped to have broader restrictions on searches. In regard to section 10 on right to counsel, the CCLA called for a clause requiring, as was the case in the United States, individuals to be informed of their right to counsel. The CCLA also wanted a section ensuring evidence illegally obtained would not be admissible in court.⁷⁸²

The final draft of the Charter drew inspiration from the CCLA's brief. Although section 1 remained, it was reworded based on submissions by the CCLA and the federal Human Rights Commission to require any limits on constitutional rights be 'demonstrably justified;' the CCLA had recommended 'necessary' but the effect was the same in that the burden was now on the state to prove the need to limit a certain right.⁷⁸³ Section 8 was amended to ban unreasonable searches and seizures (in contrast to *illegal* searches which could be permitted by law thus placing a greater burden on the state in justifying the search), section 10 was changed to add the right

to be informed of one's right to legal counsel upon arrest (although the actual wording was drawn from the Federation's brief), a section on remedies for Charter violations was added and trial by jury was entrenched.

In the Special Joint Committee on the Constitution's draft report to Parliament the CCLA was the only rights groups mentioned (in the final draft references to specific groups were removed). In fact, the CCLA and only four other groups are referred to in the report out of 95 groups who made presentations before the committee and 914 which sent in briefs.⁷⁸⁴ When Jean Chrétien introduced his recommendations in January 1981 for changing the draft resolution patriating the constitution, the CCLA was among only nine organizations referred to as having directly influenced the revised version of the resolution. With the exception of one short reference to the BCCLA, the CCLA is the only rights association referred to by the Minister of Justice. Despite the apparent influence of the Federation's recommendations on the final draft (notably section 10), Chrétien only credited the CCLA. Whatever his motivations, Chrétien recognized the CCLA in reference to changes on the limitation clause (s.1), search and seizure (s.8), being detained by police (s.9), to be informed of the right to counsel (s.10), admissibility of evidence (s.26) and remedies (new section).⁷⁸⁵ Although not all of Chrétien's recommendations were accepted in the end (such as dropping the section allowing illegally obtained evidence at trial which was amended, not dropped, in Parliament), it is clear the CCLA had a critical impact on the development of the Charter. Only the

brief presented by the Canadian Bar Association received more attention by the government. Undoubtedly Walter Tarnopolsky's presence as arguably the country's leading expert on individual rights and president of the CCLA, greatly enhanced the brief's reception.

If the history of the Charter demonstrates anything, it is that the CCLA was at least nominally recognized by many policy makers as the leading rights association in the country. As will be discussed, this did not mean the association was a truly national rights association, only that it had greater visibility and name recognition than any other association in Canada. The years 1977 to 1982 were therefore the peak years in the organization's early history wherein it established itself on the national stage while it continued to promote reform in Ontario. With section 1 entrenched in the constitution, the Charter would no doubt prove a bitter pill for many of the organization's members, but for those such as Tarnopolsky who in principle supported constitutional rights, it was the ultimate victory for a civil libertarian. By 1982, with a membership of 5000, nearly double the next largest association, the CCLA could truly claim to have come into its own 18 years after its birth.

Conclusion: The CCLA as a Social Movement Organization

The Courts

No other rights associations had such a proclivity towards litigation than the CCLA. Granted, the BCCLA also looked to the courts for redress. But the BCCLA

was only able to take on a few cases in its first 20 years of operation, and only one of them reached the Supreme Court of Canada. No rights association had a stronger presence in the provincial appellate court and Supreme Court in the pre-Charter era than the CCLA. As Robert J. Sharpe and Kent Roach note, under “Laskin’s liberal regime, the CCLA became a familiar presence before the [Supreme] Court.”⁷⁸⁶

Between 1964 and 1982, the CCLA provided legal counsel for 23 separate cases in either the County Court, provincial superior/supreme courts, appellate courts or the Supreme Court of Canada. Of these cases, five reached the highest court in the country, six were argued before a provincial appellate division, two went before the Federal Court (one of them reached the Federal Court of Appeal) and the rest resided in various inferior courts. Most of the litigation occurred in Ontario, although four of the CCLA’s cases during this period were outside of the province, two in Nova Scotia, one in New Brunswick and one in British Columbia.⁷⁸⁷

One of the significant advantages of being located in Toronto was having access to a fairly large pool of volunteer lawyers and two major law schools.⁷⁸⁸ The CCLA rarely had difficulty in securing free legal counsel at a time when most rights associations in the 1970s could barely afford to hire a secretary or find lawyers willing to work for free.⁷⁸⁹ To be sure, the organization’s faith in the legal system was driven by a belief in the potential for the law to promote equal (legal) opportunity and the association’s focus on civil and political rights (courts have always been poor forums for promoting social, economic and cultural rights). As was the case with the

BCCLA, the CCLA sought in most cases to convince the courts to expand their understanding of the Bill of Rights. In other cases, the CCLA simply hoped to encourage the courts to accept the practice of interveners.⁷⁹⁰

An analysis of the CCLA's track record suggests its faith in the legal system, in the pre-Charter era, was misplaced. Of 23 challenges, the association was successful in only one case. In 1981 the CCLA pursued a case involving a researcher at CBC in Halifax, Linden McIntyre, who sought public access to material behind the issuance of a search warrant. When the Nova Scotia Attorney General challenged the case and argued that only property owners had a right of access, the case eventually reached the Supreme Court of Canada and the CCLA was successful in establishing a precedent for access to such information.⁷⁹¹ Otherwise the CCLA failed in each court battle, although in some cases the association won in the appellate court only to be defeated in the Supreme Court. Attempts by rights activists to seek redress in the courts were therefore continuously thwarted, bringing into question the ability of the courts in the pre-Charter era to act as an effective forum for the defence of individual rights.

Of course, the success of litigation should not only be measured in the decision handed down by the court. Several leading members of the CCLA, such as Borovoy and Harry Arthurs (who served as president of the CCLA from 1976-8), were in actuality cautious in their enthusiasm about the court's potential to promote social change.⁷⁹² Instead, a social movement organization could benefit from the

publicity and mobilization which accompanied a major court case. As Miriam Smith has argued in relation to the gay rights movement, rights discourse legitimized demands for sexual equality for gays and helped mobilize members within the movement despite several failed attempts to have the courts recognize their claims.⁷⁹³ Both the BCCLA and the CCLA could use the legal system to politicize and claim legitimacy for their demands for free speech, including contentious hate speech. A loss in the courts could also help to soften public opinion and pave the way for a political assault which was most often more important than an actual win in court. As Borovoy once quipped to a lawyer representing the CCLA, the “key thing is to lose with flair and, for heaven’s sake, don’t win because I’ll have to rewrite my speeches.”⁷⁹⁴

The passing of the Charter represented a significant victory for the CCLA, an organization dedicated to using the courts to protect individual rights. By 2000 the CCLA had intervened in more Charter cases than any other organization in Canada with the exception of the Legal Education and Action Fund, a women’s rights organization.⁷⁹⁵ Between 1982 and 1997 alone, the CCLA had intervened in 32 Charter cases to the Supreme Court and was the primary litigant in two other cases. With a 63 percent success rate in the Supreme Court, the post-Charter era represented a significant transformation in the association’s fortunes in court and encouraged increasing litigation as a core tactic.⁷⁹⁶

Ideology

As civil liberties associations, the CCLA and BCCLA understood human rights in terms of civil and political rights, or negative freedom. In the field of administrative decision-making, the BCCLA distinguished between the administration of social services and the content of such services, avoiding any discussion of the latter as a right. This was clearly the case with the CCLA's extensive work in the field of welfare. According to the federal government and the Toronto Social Planning Council, Ontario welfare recipients received barely 60 percent of the minimum funding they required to survive in the early 1970s. Yet, when the CCLA took on the case of Jennifer Smith and provided a duty counsel in welfare offices, its goal was to improve the administration of welfare and ensure due process, and the association never questioned the amount of welfare doled out by the state. In the association's voluminous report on welfare practices across Canada, there was no mention of rampant under-funding.⁷⁹⁷

Civil liberties activists mobilized to deal with the new threats posed by the welfare state, but there remained important ideological distinctions between civil liberties and human rights activists. A human right, for equality-seekers, was more than simply protecting individuals from lack of unfair restraints. The LDH defended the handicapped, elderly, youth and prisoners, areas the CCLA generally avoided. Not only did the LDH's subcommittee (ODD) focus on prisoner's due process rights, the LDH also advocated for better food, wages and, ultimately, the abolition of

prisons altogether. For the elderly, the LDH argued that they had a right to their own lodgings, obtaining services at home including medical help and transportation, and achieving a minimum standard of living and participating in the social and cultural life of the community.⁷⁹⁸

But it was more than simply a question of prioritizing rights. The BCCLA and the CCLA have been ardent defenders of free speech, and have opposed criminalizing hate speech and censoring pornography.⁷⁹⁹ To this day, the NLHRA supports the censorship of pornography (and in the late 1980s adopted a position supporting hate legislation), as have many human rights associations.⁸⁰⁰ Surprisingly, the LDH did not take a stance on pornography, despite the creation of an office for women in the mid-1970s with an express mandate to promote women's *equality*. Nonetheless, LDH's equality-seeking agenda is evident in its campaign in 1980 to, among other things, have the criminal code amended to prohibit accused rapists from introducing their accusers sexual history at trial.⁸⁰¹ Eleven years later, the CCLA earned the ire of many equality-seekers when it successfully intervened in a case to strike down the criminal code's rape-shield law. Free speech was not the only issue dividing rights associations. Since 1972 the LDH distinguished itself as an ardent defender of the collective rights of French Canadians, including the extension of their language rights in such a way as to make the public education system unilingually French. It was not only an assertion of the socio-cultural rights of French Canadians, but a positive understanding of human rights based on a belief that the state should actively promote

equality and not just protect liberty. Few civil libertarians with a penchant for conceiving of human rights as negative freedoms would have seen Quebec's language laws in the 1970s in a favorable light. Borovoy, for instance, severely criticized the application of Quebec's language laws in the workplace and on public signs, characterizing them as 'morally dubious', an unwarranted encroachment on freedom of expression, and "an affirmative action program in favour of the majority," which "contributed nothing to the legitimate protection of the French majority."⁸⁰²

Organized Labour and the CCLA

In its crusade to protect free speech, the CCLA found itself at odds with many other social movement organizations, mostly notably Jewish activists and feminists. Generally, however, the CCLA had a positive working relationship with other social movement organizations. Several of its mail solicitation campaigns, sometimes numbering as many as 80 000 letters, used the mailing lists of other groups.⁸⁰³ It organized occasional coalitions to present briefs to the provincial or federal government on such issues as religious education and capital punishment. Borovoy even sat on a committee of the CJC, although the two groups did not cooperate on joint ventures. The CCLA's group members were almost exclusively unions and ethnic and church groups. There was no propensity to organize coalitions; the LDH was far more successful in organizing coalitions than the CCLA, particularly when presenting briefs to government. It is likely the CCLA's narrow rights philosophy

limited its ability to find common ground with other social movement organizations whereas the LDH, willing to consider issues such as the conditions of imprisonment and the financial needs of the elderly as human rights, found it easier to establish similar positions with others.

There is no question the CCLA's most important relationship with social movement organizations outside other rights associations was organized labour. Several of the leading members of the CCLA's Board of Directors were important figures in the labour movement, notably Terry Meagher (Secretary-Treasurer of the Ontario Federation of Labour) and Dennis McDermott (president of the CLC). Borovoy himself was the main link between labour and the CCLA. Borovoy had been one of the most important figures in the JLC and in organized labour's human rights program, and he maintained these ties when he moved to the CCLA. He continuously gave speeches and represented the CCLA at meetings with the CLC, the Ontario Federation of Labour and various labour councils. It was Borovoy who convinced the CLC to hire Patrick Kerwin to work in Kenora to organize natives as part of its program for International Year for Human Rights, and for the next two years Borovoy and the CCLA supervised Kerwin's work.⁸⁰⁴ Labour could also count on the CCLA to come to its aid when the police abused strikers on the picket line. In 1972 the CCLA supported striking workers from the United Steelworkers of America by sending letters of complaint to the provincial government when the courts repeatedly forced strikers to stay away from the picket line. Similarly, in 1973, the CCLA

attacked the provincial government's proposed legislation to restrict the right of teachers to strike.⁸⁰⁵ When Vicky Trerise was grabbed by the hair and beaten by police during the Artistic Woodwork strike, the CCLA lobbied the police commission and Solicitor General for a public inquiry.⁸⁰⁶ Six years later strikers accused local police of harassment and favouring strike breakers when arresting people over clashes on the picket line during the Boise Cascade Strike in Fort Francis-Kenora. In response the CCLA sent a staff member to investigate and lobbied the Solicitor General for sanctions against police.⁸⁰⁷

These were just a few examples of how the CCLA cooperated with organized labour generally, and the CLC specifically. When the CLC decided in 1972 to write a primer on civil liberties to distribute to its members, it asked the CCLA to write it instead of the JLC.⁸⁰⁸ To support the CCLA's petition in 1978 on RCMP wrongdoings, the CLC endorsed the petition and distributed it to its members encouraging them to sign up.⁸⁰⁹ Not only the CLC but several NDP clubs endorsed the CCLA campaign as well and provided it with access to their mailing lists for the petition while the United Auto Workers and the Canadian Union of Public Employees donated \$1000 each to defray the costs of the advertisement in the *Globe and Mail*.⁸¹⁰

In the days of the JLC organized labour was a key player in the human rights movement, but by the 1970s it was clear it had surrendered its position to rights associations. The decision to have the CCLA and not the JLC produce the primer was in itself an acknowledgement of the rise of the CCLA as a leader in the human rights

movement. Most importantly, the CLC's interest in human rights activism was on the decline. Although the CLC's human rights committee continued to operate, the committee was increasingly eclipsed by the activities of the Women's Bureau and stopped publishing its newsletter.⁸¹¹ With the NCHR falling by the wayside the only independent and active aspect of labour's human rights program was the JLC, and it was in effect defunct by the mid-1970s. In retrospect, the last major human rights initiative by the CLC was in 1968 when it sent Kerwin to Kenora and organized a national conference in Ottawa. Since then the CLC effectively shied away from human rights advocacy. Without a doubt the CLC took an active interest in specific human rights issues such as privacy legislation, abortion and capital punishment, presenting briefs to various parliamentary commissions. But this was a far cry from the financial commitment it had accepted with the JLC and the educational programs it had sponsored through the local labour committees in the sixties, not to mention taking on specific cases of discrimination. Nothing exemplifies this reality more clearly than the fact that with nearly a thousand submissions presented to the Special Joint Committee on the Constitution in 1980-1, organized labour was virtually absent from the proceedings.⁸¹² This was a significant omission from a movement which had been visibly active in the committees studying a bill of rights in the 1940s and 1950s.

Despite the proliferation of rights associations across the country in the seventies, the CLC and its provincial federations had little or no contact with them. In fact, except for the LDH (which had some links with Quebec unions) and the

CCLA (which had only a limited working relationship with the CLC alone), rights associations had few links with the labour movement. This was an important change from the 1940s when prominent unionists, including C.S. Jackson and Charles Millard, were highly active within right associations and the labour movement worked alongside rights associations in several human rights campaigns. Organized labour's diminished participation in the human rights movement was intimately tied with the decline of the JLC. Although discrimination, the heart and soul of labour's human rights program, was hardly eliminated, human rights commissions took over most the labour movement's human rights work. In addition, there were more social movement organizations in the seventies than at any other point in Canadian history. The number of feminist and aboriginal groups had grown exponentially, and traditionally voiceless constituencies, from gays to the disabled, were organizing themselves. These new social movements increasingly eclipsed organized labour, either in attracting more adherents or in dominating the public agenda. Finally, the early seventies was the pinnacle of the fordist period in Canadian history, with the welfare state fully entrenched and labour focussed primarily on job security and wages for its workers. As Leo Panitch and Donald Swartz have pointed out, the post war settlement "directed the efforts of union leaders away from mobilizing and organizing and toward the juridical arena of labour boards. ... These activities tended to foster a legalistic practice and consciousness in which union rights appeared as

privileges bestowed by the state, rather than democratic freedoms won, and to be defended by, collective struggle.”⁸¹³

Tactics

In 1991 Alan Borovoy published *Uncivil Obedience: The Tactics and Tales of a Democratic Agitator*.⁸¹⁴ At the heart of book is a faith in human nature and a belief that public opinion will set most wrongs right again. His book emphasizes the CCLA’s core tactic: convincing the media to cover a story and bringing public pressure to bear on the state or private individuals. In the 1960s and 1970s, for instance, the CCLA organized several surveys of employment agencies and held press conferences to highlight instances when agencies agreed to post racially discriminatory job advertisements. When Borovoy visited the small town of Gosfield, Ontario to petition the school board to end religious practices in public schools, he had little hope the board would ever change its policy. Instead, Borovoy wanted the media to cover his visit. In Gosfield the media was exposed to extremists who sought to use public schools for religious indoctrination, and the resulting headlines and editorials strengthened the CCLA’s campaign to remove religious practices from public schools.

The CCLA engaged in a variety of strategies to attract the media. Although Borovoy has often recommended that social activists employ ‘disruptive’ tactics to get their message across (e.g., sit-ins), the CCLA itself has always depended on the

expertise of its leadership and rarely employed grass roots mobilization and has scrupulously avoided disruptive tactics. The only exception to this rule was a set of rallies organized in conjunction with other social movement organizations (which had closer ties to a grass roots following). However, by the late 1990s, the CCLA had only participated in three such actions throughout its long history.

Appealing to the press therefore became the CCLA's core strategy. Public letters, press conferences, surveys and, to a lesser extent, litigation were all designed to attract the media. The CCLA was also prolific in preparing and presenting briefs to various municipal councils, government officials or regulatory bodies. It presented no less than 54 briefs between 1964 and 1982. The RCMP petition, albeit the only time the CCLA organized a petition, was successful in bringing attention to RCMP illegal activities. Coalitions were another tactic, although the CCLA avoided long term coalitions.⁸¹⁵ Extensive correspondence was an additional means of convincing an organization to change its policies. Throughout the 1970s the CCLA exchanged dozens of letters with the Canadian Veterinary Medical Association in an attempt to persuade the association to stop discriminating against Asians in the provision of licenses.

These tactics were appropriate for an organization which sought respectability and a legitimate voice in the community. The CCLA, and the other rights associations in this study, did not embrace civil disobedience or mass mobilization as effective strategies to promote social change. Instead, the CCLA recruited

‘respectable’ members of the community to facilitate its activism, as was the case in 1970 when the CCLA was granted a meeting with the Ontario minister responsible for the administration of welfare thanks to the participation of the CCLA president, former lieutenant-governor J. Keiller MacKay. The elitist nature of rights associations led them to speak on behalf of people in their community who were poorly represented within the organization. In addition, rights associations clearly differed from many other social movement organizations in their unwillingness to employ dual strategies. None of the tactics associated with the American civil rights movement, including sit-ins, freedom rides, boycotts, occupying public buildings, shouting obscenities at public meetings and dozens of other disruptive tactics were ever employed by Canadian rights associations. In an article written for the *Canadian Bar Review* in 1973, Borovoy condemned civil disobedience, and suggested that violence would simply beget a similar reaction from the state.⁸¹⁶ However, rational public debate, the cornerstone of the CCLA’s modus operandi since it was founded in 1964, could only achieve so much. As Borovoy himself admitted, “the reliance on exclusively legal tactics in political disputes is likely to reduce the prospects of anything but incremental victories. The quick and radical transformation of society can rarely be achieved through the use of lawful strategies.”⁸¹⁷

A National Rights Association?

Irving Himel's legacy to the CCLA, having himself founded its predecessor the Association for Civil Liberties as a failed national association, was a vision of a central body defending against rights violations across the nation. Since its founding in 1964 the CCLA has strived to be a national rights association, with a pan-Canadian membership and Board of Directors. There were two ways in which it sought to be a national organization: first, by forming chapters across Canada and, second, by taking on national issues.

As early as 1967 the CCLA was formulating plans on how to create a framework for a national organization. Thanks to the Ford grant and the interest surrounding International Year for Human Rights, affiliates of the CCLA emerged in eight cities across Canada: Windsor, London, Hamilton, Regina, Ottawa, Fredericton, Winnipeg and Halifax.⁸¹⁸ By 1971, when Whiteside and the BCCLA were making plans to form a federation of rights associations, the CCLA had lost three chapters to disaffiliation (Ottawa, Windsor and London). As noted earlier, the CCLA participated in the negotiations leading up to creation of the Federation. From the beginning of these negotiations in 1970, the proposed Federation threatened the CCLA's vision of forming a single national rights association comparable to the ACLU in the United States. Not only was the Federation going to accept state funding, to which the CCLA was adamantly opposed, but it would be a loosely connected federation of associations instead of a centralized agency capable of quick and coordinated action. Throughout the negotiations the CCLA attempted to offer a

counterproposal to the original federation concept. The 'Arthurs proposal' as it was dubbed would create a Co-ordinating Committee of Civil Liberties Associations where every member would be allowed one delegate to meetings for every 100 members. In 1971 this would have translated into 20 delegates for the CCLA and one for the NLHRA or five for the BCCLA as the next largest association. It would be funded through a \$1 fee per member of each association and the office would be located in Toronto with the CCLA's general counsel as the committee's executive director. Among the committee's responsibilities would be to coordinate the activities of various groups, promote national rights campaigns, work towards establishing a permanent structure and hold an annual conference.⁸¹⁹

The result was a clash of visions between the CCLA and most of the other rights associations. From the perspective of the CCLA, if the proposed national group was to succeed without government funds it would need a head office and a national director. Since the CCLA was the only rights association in 1971 with a full time director and staff, and was centrally located, the Toronto group was the logical choice. At the same time, with more than 2000 members, it was deemed illogical to have a federation where a group as small as the Prince Edward Island Civil Liberties Association with barely a dozen members would have an equal vote to that of the CCLA. In the end though, according to the CCLA, it was the question of state funding which damned the attempt to form an inclusive national association; the Arthurs proposal, which compromised in many areas, was founded on opposition to

receiving government funds. It was evident that the BCCLA and the other future members of the Federation were unwilling to compromise on this issue. The CCLA was helpless to act.

Why did state funding lead the CCLA to reject the Federation? Borovoy, Arthurs and Park were adamantly against forming a national organization dependent on government funding, yet several of the CCLA affiliates, including the Nova Scotia Civil Liberties Association and the Manitoba Association for Rights and Liberties, received funding from the Secretary of State.⁸²⁰ Clearly, the CCLA had no problem working alongside state-funded organizations, but it drew the line at joining a federation dependent on government grants. None of the affiliates could claim to speak on behalf of the CCLA. However, if the CCLA joined the Federation, the latter could conceivably have deferred to the government out of fear of losing support while claiming to speak on behalf of the CCLA. This new state-funded federation challenged the CCLA's vision of what defined an effective national social movement organization.

Between 1964 and 1982, CCLA had managed, at one point in time, to create chapters in 12 different cities across Canada. Many times Borovoy was himself directly responsible for the creation of a chapter, taking the opportunity after being paid to speak at a law school or before a particular association to mobilize locals (often law students or lawyers) to form an association. Such a process led to the creation of highly unstable and ad hoc groups, and the leadership of the CCLA

remained based in Toronto. When the CCLA attempted to recruit Mark MacGuigan, one of the association's founding members and future Minister of Justice and of External Affairs, back into the fold in 1970, MacGuigan informed the association that he "would like to belong to a national civil liberties association, but I am reluctant to join the Toronto one."⁸²¹ MacGuigan refused to join the CCLA because the association's Board of Directors was predominantly from Toronto. Although the CCLA claimed to have eight chapters in 1982 (Saint John, Timmins, Fredericton, Halifax, Hamilton, Winnipeg, Regina and Calgary), most of them were inactive.⁸²² The only affiliate on the rise by the 1980s was the Manitoba Association for Rights and Liberties (MARL), which had emerged in 1978. MARL was the sole affiliate with a full time staff member, and thus the only group with any kind of stability.⁸²³

By the 1980s the CCLA had failed to create a network of rights associations across Canada, and thus to be a truly national rights association. The CCLA had done little more than stimulate discussion among rights associations, as a result of which they occasionally established common positions on certain national issues.⁸²⁴ The vision of a centrally organized national association with membership dues being funnelled from the chapters to the Toronto headquarters without the need for state funding and organizing national campaigns never materialized.⁸²⁵

With the failure to create a viable national association through chapters/affiliates, the only other claim to national status for the CCLA was its advocacy. It was not until after 1977 that the CCLA established a strong presence at

the national level, but it did so effectively with its work surrounding the McDonald Commission and the Charter. However, except for a few campaigns, the CCLA's advocacy was limited primarily to Ontario. In theory the affiliates would do the advocacy work for the CCLA as part of a national campaign, but in practice they tended to act independently and rarely coordinated at the national level. For instance, the research surrounding a report published by the CCLA in 1975 based on interviews with welfare recipients across Canada was the basis for the association's advocacy on welfare rights for most of the 1970s. Yet, its work was largely confined to Ontario despite having discovered various administrative abuses of due process in other provinces. Its major research grants dealing with native advocacy and living conditions were limited to Ontario; the only other national research projects was the Ford foundation grant in 1968.

The main exception to the CCLA's provincial focus was six briefs presented before federal Parliamentary committees. Combined with its work surrounding the McDonald commission and the Charter, the CCLA could legitimately claim to be doing more work at the national level than any other rights association. This was often simply a question of resources, with groups in Vancouver and St. John's unable to cover the expenses to fly to Ottawa. Located in Montreal, the LDH was partially active in presenting briefs to the federal government on such issues as capital punishment and immigration. In general, however, the CCLA was far more active federally with briefs on immigration, capital punishment, privacy, mail opening,

prisons, the Human Rights Act and freedom of information. Often the CCLA could claim some success, as when the federal government, in reaction to opposition from a variety of sectors including the CCLA, chose to abandon its legislation to legalize mail opening by the RCMP. In other cases the association was less effective, notably in its opposition to hate propaganda provisions in the federal human rights legislation. Nonetheless, as was the case with the Charter, by 1982 the CCLA was a well recognized national association with members from across Canada and a strong voice in Ottawa despite being a primarily Toronto-based association.

Chapter Eleven:

Newfoundland-Labrador Human Rights Association

Religion and religious institutions have historically played a more influential role in the public education system in Newfoundland than any other province in Canada, with the possible exception of Quebec. In 1972, when 25-year-old Judy Norman refused to state her denominational affiliation on the application form, she was denied a teaching certificate. With the aid of friends and colleagues, student committees were formed at Memorial University to debate the value of a church-based education system, and supporters marched through shopping malls in St. John's, Gander, Grand Falls and Harbour Grace with petitions demanding that Norman be granted her certificate. In the House of Assembly, the Liberal opposition's education critic, F.W. Rowe, echoed the demands of the petitioners that "academic or professional qualification be the basis for recommendation [for a teaching certificate]."⁸²⁶ Progressive Conservative Premier Frank Moores responded by announcing an immediate investigation into the matter by a committee of the House. Newspaper articles discussing the activities of Judy Norman and her colleagues were carried in at least 11 papers across the country. In dismissing accusations of discrimination, Rev. Geoffrey Shaw, head of the Pentecostal examining board, argued that the existing system was ideal for a province where 98 percent of the population was Christian. He also stressed the need for children not to "be subjected to a militant atheistic Communist who might unteach Christian principles," though he had no

evidence about Norman's political views.⁸²⁷ A potentially divisive social issue quickly died away. Moores's investigation never materialized, the media soon tired of the case, and Norman began teaching for the Integrated School Board a few months later, having never declared her affiliation.⁸²⁸

A significant sidebar to this event, ignored by the media and Norman herself, was an exchange of letters between John Carter, Minister of Education, and Dr. Biswarup Bhattacharya, a psychiatrist at the Waterford Hospital and president of the Newfoundland-Labrador Human Rights Association (NLHRA). In response to Bhattacharya's concerns about religious discrimination in the education system, Carter countered with the contradictory response that "never has a teacher been denied a Teaching Certificate in Newfoundland on the basis of Religion. ... [I]f a teacher will agree to uphold the Christian tradition within the school system of her choice ... but the candidate for certification ought to indicate the denomination he or she wishes to teach under. ... [Judy Norman] failed to assure the certifying authorities that she would not seek to undermine the religion of others."⁸²⁹ In reply, Bhattacharya challenged Carter's assumptions about the value of a "Christian" education system in a multicultural society, and dismissed the idea that non-Christians would undermine the religion of others. He claimed to have contacted civil liberties and human rights associations across the country, and all agreed that this was a case of religious discrimination: "Our [concern] lies ... with the process within which there remains a loophole which allows discrimination on religious grounds, and not accepted merit

only.”⁸³⁰ Bhattacharya then offered the services of the NLHRA to Norman in her fight to gain a teaching position. She did not respond, and the NLHRA moved on.

The Norman episode was a brief interlude in the history of the NLHRA. Unlike the LDH, the NLHRA was founded in the wake of International Year for Human Rights and began as a human rights organization. It was representative of the many organizations born in 1968 out of a government-based initiative, and thus offers a fundamental contrast to the other three groups in this study. The NLHRA also offers a useful comparison with other rights associations because it was located in a small, geographically isolated region of the country and its location would have an important impact on the nature of its advocacy. As one of the few surviving human rights associations in the country, an analysis of the NLHRA helps to explain the historical divisions among civil liberties and human rights organizations. Through its interaction with other rights associations, the NLHRA had an impact on national debates, and at home. But it remained unsuccessful in confronting one of the most important human rights issue in Newfoundland history: denominational education.

International Year for Human Rights and the Newfoundland Human Rights Code

The impetus to form the NLHRA began in Ottawa with plans to celebrate International Year for Human Rights in 1968. John Humphrey, Dean of Law at McGill and the original drafter of the UDHR, and Kalmen Kaplansky, an executive of

the International Labour Organization, headed the Canadian Commission for the anniversary. Formed in 1967 and funded through the federal government's Secretary of State citizenship program, one of the Commission's first tasks was to stimulate the creation of provincial human rights committees to organize conferences and educational activities to celebrate the twentieth anniversary of the UDHR. Humphrey sent letters to provincial premiers requesting their support. In some provinces, the 1968 celebrations were organized by volunteer groups formed through the initiative of local community leaders. Others worked through the local human rights commission, but in Newfoundland and Prince Edward Island, the provincial governments set up their own human rights committees.

The Newfoundland-Labrador Human Rights Committee was formed on 31 January 1968 at a public meeting initiated by the provincial government. It was attended by 23 volunteer groups, Peter Truman of the United Nations Association of Canada, and 70 high school and university students. The meeting elected an executive composed of R.J. Greene and W.J. Noseworthy (co-chairs), Felix Murphy (secretary), and J.E. Butler and Shannon O'Keefe (directors). A cabinet committee was formed to consult with the executive and discuss recommendations for legislative action. It consisted of G.A. Frecker, F.W. Rowe, John Crosbie, Alex Hickman, W.J. Keough, Edward Roberts and J.G. Channing. A provincial grant of \$7,500 and the composition of the committee reflected the importance the government placed on the event. Rowe was the influential Minister of Education (later appointed to the Senate); Crosbie was

Minister of Municipal Affairs and Housing; and Keough, the Minister of Labour, was a close friend of Smallwood and later drafted the provincial human rights code.

Members of the Human Rights Committee spent the year speaking at school assemblies, encouraging clergy to discuss human rights in sermons, organizing a conference at Memorial University, corresponding with community groups, and planning for a national conference in December.⁸³¹

The efforts of the human rights committee throughout 1968 resulted in a series of recommendations to the provincial government. In summary, these recommendations included:

1. establish a permanent human rights association with a \$7,500 grant until it becomes independently funded
2. establish a human rights commission to conduct research, education and conciliation activities
3. introduce a human rights code and amend the Minimum Wage Act to eliminate differential pay between men and women
4. establish an ombudsman's office with broad powers to include schools, universities, municipal councils and boards
5. the government should take the initiative to have the United Nations Convention on the Rights of the Child and the UDHR entrenched in the Canadian constitution
6. the government should undertake research to reassess the rights of minorities in Newfoundland, particularly in the case of Inuit and Indians
7. review the prison system based on recommendations of the John Howard Society and expand the scope of the legal aid system
8. reassess the viability of the denominational school system which currently discriminates against non-Christians⁸³²

These recommendations were based on input from community groups, and offer a glimpse into the human rights issues facing Newfoundland in the late 1960s.⁸³³

It was one of only three provinces (alongside Québec and Prince Edward Island) lacking comprehensive human rights legislation; every other province had enacted either a human rights code, or laws dealing with discrimination in employment and accommodation. There was a clear appreciation for national and international issues, not only in the references to United Nations resolutions, but also in the decision to focus on an issue, prison reform, which was gaining increasing attention across the country.⁸³⁴ The Minimum Wage Act was of particular concern, and the question of equal pay was to develop into the central human rights issue for the provincial government in the next decade. The recognition of discrimination against aboriginals was significant, coming as it did from a committee sponsored by a government whose leaders dismissed the existence of racial discrimination. A year later, for example, Keough stated that he “knew of no case of racial and ethnic discrimination having taken place in this province.”⁸³⁵ The most controversial recommendation referred to the denominational school system. When Judy Norman created a minor stir in 1972, her complaint was directed towards discrimination in the hiring of teachers. The committee’s recommendation was more far-reaching, attacking the legitimacy of a denominational education system which discriminated against non-Christians. It was a daring move, and from its inception a year later the NLHRA openly opposed the denominational school system. The provincial government, however, had no wish to deal with that issue.

The government was prepared to pass human rights legislation though, and in May 1969, a Human Rights Code became law. Speaking to the bill, Smallwood saw the legislation as

not a Bill to establish human rights, to create them or to establish or protect them. This has been handsomely done by our forefathers. ... This legislation does not create the right to free speech, because the right is already there, it does not need to do it. This does not create the right of free press. ... [I]t is already established.⁸³⁶

The bill was meant to bring together existing laws under one statute enforceable by a human rights commission. In the debate, Clyde Wells was the only member to grasp the essence of the new Human Rights Code: it was more akin to fair employment and fair accommodation practices acts, than to the more sweeping human rights codes which existed in such provinces as Ontario and New Brunswick.⁸³⁷

The Newfoundland Human Rights Code was indeed a weak piece of legislation. The bill was divided into three key sections, the first dealing with discrimination in accommodation, the second employment, and the third with enforcement and the human rights commission. It forbade discrimination in accommodation or employment for reasons of race, religion, political opinion, colour or ethnicity, and national or social origin, with the caveat of a 'bona fide occupational requirement' for employment.⁸³⁸ No provisions were made for the administration of justice, such as guaranteeing humane treatment while under arrest, or an individual's right to be promptly informed of the substance of charges laid against him or her.⁸³⁹ The commission was a temporary body with no permanent staff, to be called upon

when needed, and beholden to the Minister of Labour. Regulations were included to ensure equal pay for women, but only for work done in the same establishment; a corporation or the government could continue with discriminatory wage scales, so long as men and women did not work in the same place. Only the inclusion of political opinion as a prohibited ground of discrimination could be considered progressive. Indeed, Newfoundland was the first Canadian jurisdiction to protect political opinion in its human rights jurisdiction.⁸⁴⁰ The key weakness of the legislation, also noted by Clyde Wells, was the exemption under section 9 for all educational institutions.⁸⁴¹ This exemption was a clear sign of the government's unwillingness to use the Code to implement substantial change.⁸⁴²

The first Human Rights Commissioner was not appointed until March 1971. This was Gertrude Keough, wife of the recently-deceased Minister of Labour and a former school teacher who, in an *Evening Telegram* interview, admitted to knowing little about the issues, the Human Rights Committee, the Code, or even her own salary.⁸⁴³ This appointment further weakened the legitimacy of the Commission and its ability to push the government to expand the scope of the Code (Mrs. Keough served until 1981). It was not Keough but Fred Coates, the Commission's full time Director, who was successful in pressuring the Treasury Board and private employers to end discriminatory wage practices.⁸⁴⁴ Under Keough the Commission did not make a single proposal for amending the Human Rights Code even though Coates was publicly critical of such provisions as the exemption for educational institutions.

In 1974 the Progressive Conservative government under Frank Moores removed the 'same establishment' clause to guarantee equal pay for equal work across the board (the implementation of equal pay for work of equal value would take another generation).⁸⁴⁵ But in the House of Commons debates it was the NLHRA, not the Commission, which was credited for lobbying and informing the amendment. In contrast, the chairs of human rights commissions in Ontario (Dan Hill) and British Columbia (Kathleen Ruff) were active in the 1970s in promoting substantive changes to their respective provincial human rights codes, particularly in expanding the definition of accommodation and the inclusion of sexual orientation as a prohibited basis of discrimination.

Despite its weaknesses, the passing of a Human Rights Code and the creation of a Human Rights Commission was an important step in a province lagging behind the rest of the country in anti-discrimination legislation. It created a potential forum for handling complaints and promoting awareness of human rights, and helped eliminate gender differentials in minimum wage laws. The remaining recommendations of the Human Rights Committee were generally ignored. Grants to the legal aid fund were increased but remained small, the decision to create an ombudsman's office was rejected, and no advances were made in prison reform or in the further reform of the denominational education system.

From Humble Beginnings: The Newfoundland-Labrador Human Rights Association

Interest in establishing a human rights association had waned by early 1969. At some point between December 1968 and July 1969, W.J. Noseworthy stepped down as president of the Human Rights Committee and Dr. Biswarup Bhattacharya took control of the organization which was now called the Newfoundland-Labrador Human Rights Association. Keough's death in 1969, and the dissolution of the cabinet liaison committee due to lack of interest, effectively severed the NLHRA's ties with the provincial government. However, an increasingly frustrated Bhattacharya lobbied Smallwood for continued funding, asserting that it was the "duty of the provincial government to start us off."⁸⁴⁶ In his last recorded attempt to convince Smallwood to support the fledgling human rights group, the president of the NLHRA argued that

the very survival of the organization depends on your generosity. Perhaps it is true that we could receive money from different sources in this Province, but we feel this possibly would bind us in subtle ways to groups which may prevent us from working without bias and independently. It is our understanding that the responsibility of maintaining a Human Rights Association in the province is the joint responsibility of the government of the province and the Federal Government.⁸⁴⁷

There were small grants of \$250 and \$500 in 1969 and 1970, but these ended government financial support, and the NLHRA might well have become defunct, like

similar committees in Québec, Saskatchewan, Manitoba, Alberta and Prince Edward Island, had it not been for Bhattacharya and his small executive.

There are few NLHRA records before 1972, but it appears that in its early years the organization concentrated on attempting to secure government funding, and on lobbying for the full implementation of the Code (provisions on equal pay were not to come into effect until 1972 in order to allow private enterprise to adjust their wage base).⁸⁴⁸ With little financial support, the original members (Bhattacharya, Lilianne Bouzane, James Morgan and Rae Perlin) were forced to meet in private homes, and there is no evidence of additional members beyond this small group of individuals. But much as Robson in Vancouver, Borovoy in Toronto and Champagne in Montreal helped keep their respective associations alive, so Bhattacharya proved to be the leading force within the NLHRA.

With no support from the provincial government, the NLHRA turned to the federal government. As early as 1971 the NLHRA began tapping into a large federal government grants system through the Opportunities for Youth and Local Initiatives programs. These were project-specific grants aimed at providing youth with community-oriented work experience, with most of the money going to workers' salaries. In 1976 the NLHRA began to receive core funding from the federal Secretary of State to establish an office and hire secretarial staff, with additional grants for summer student research projects.⁸⁴⁹ These projects involved the investigation of particular human rights issues and the production of flyers and

booklets for distribution to schools and members. Various federal government grants would remain a central source of funding for the organization until the present-day.⁸⁵⁰ At no point did membership fees ever provide more than three percent of the budget, and the organization would forever be dependant on federal grants.⁸⁵¹

The NLHRA, with a small membership base and dependant on the Board of Directors for research and action, drew members for its Board from the educated, middle class, professional and (except for Bhattacharya) caucasian population of St. John's. Few women were active in the organization in the 1970s. Bouzane and Morgan, one a civil servant the other a politician, would remain on the Board until the mid-1970s, but fewer directors were now linked with the provincial government.⁸⁵² Bhattacharya would be replaced as president by John Peddle, former general manager of the Newfoundland Association of Public Employees (currently head of the Hospital Association), until Norman Whalen, a young Liberal lawyer from St. John's, became president in 1977 and remained until 1981. Other directors included Karl Beck (college professor), James Boyles (social worker) and David Kirby (professor of education at Memorial University). They were members of a newly emerged and matured middle class that had grown out of the economic boom of the post-Confederation period under Smallwood with the expansion of public works program, the bureaucracy and education system.⁸⁵³ The NLHRA was able to recruit from a pool of social activists with a shared concern in human rights issues while the leadership of the NLHRA was active in maintaining its own continuity. Bhattacharya recruited

Peddle and then Whalen to take over the presidency, and Whalen recruited William Collins, a lawyer practising in St. John's, to replace him in 1981.⁸⁵⁴

The group used its meagre funds in the first few years to set up a telephone line to provide legal advice and direct complaints to the appropriate agency or organization. By the mid-1970s the NLHRA was able to establish an office with a part-time secretary who could direct complaints to members of the Board. They would review individual cases, discuss cases at monthly Board meetings, and decide whether or not to redirect the case to another agency or take it on themselves. Lacking the funds for litigation, the best the NLHRA could do in most situations was to send a letter to the individual or organization the complaint had been lodged against, warning them that their actions could lead to legal sanctions or a Human Rights Commission tribunal. The complaints phoned in to the NLHRA office during this period (1968-1982) were predominantly in the area of employment discrimination, although there were also calls dealing with housing discrimination, refusal to offer a service, and accusations of police abuse. In 1974 there was an average of 30 to 40 calls per month. By 1980 there were over 1,500 calls annually.

There were also attempts to form chapters. As was the case with the other rights associations under study the NLHRA hoped to expand the movement into smaller urban areas across the province but it was singularly unsuccessful. Chapters in Corner Brook, Labrador and Gander all died within a few years due to their inability to organize local interest.⁸⁵⁵

The organization was able to take an active stance on local issues and implement change. The NLHRA was successful in pressuring the Minister of Justice in 1973 to destroy police photographs of protestors taken the year before in front of Confederation building, and eliciting a statement confirming that the RCMP was not keeping photo files on protestors.⁸⁵⁶ When amendments to the Human Rights Code were introduced in 1974, the government credited the NLHRA with having informed most of the changes.⁸⁵⁷ Not only did it secure an amendment to the equal pay provisions of the Code noted earlier, but in the same year sex and marital status was added to the Code as prohibited ground of discrimination.⁸⁵⁸ In 1978-9, the NLHRA made representations to the Minister of Justice in a successful bid to improve conditions at the St. John's courtroom jail, and convinced the Mutual Life Insurance Company to remove a question regarding illegal drug use on insurance applications. During the same period the association teamed up with residents in rural Labrador to push the provincial government to stop uranium mining because of health and environmental dangers.⁸⁵⁹ In conjunction with its educational and referral activities, the NLHRA had demonstrated an ability to deal effectively with issues of local concern. In 14 years it had become a stable and legitimate voice for social commentary in Newfoundland.

A great deal of the Association's work involved individual complaints rather than legislative reform. For instance, on 26 October 1973, the Medical Records Librarian at the Waterford Hospital in St. John's received a subpoena to appear in

Supreme Court three days later to discuss the medical records of a specific patient. This was not a criminal matter but a divorce case, and neither the patient nor the psychiatrist were informed of the subpoena. Unsure about whether or not to accede to the request and divulge private patient information, the librarian contacted Bhattacharya, who immediately took possession of the documents and refused to hand them over to the court, arguing that the records were the property of the hospital and it was an unnecessary violation of a patient's privacy. When the Justice Department realized it would have to take the president of the NLHRA to court, the matter was quietly dropped and the subpoena retracted. It was just one example of the type of service the NLHRA could provide on an individual basis for people unsure about their rights, or the rights of others.⁸⁶⁰

The NLHRA could also claim some credit for the appointment of an ombudsman in 1975, although the process had been a long one. In 1969 a government committee recommended the creation of an ombudsman's office.⁸⁶¹ Although legislation was passed in 1970 creating the position, the legislation was not proclaimed and an ombudsman appointed until 1975. At that time Moores awarded the position to a recently-defeated Progressive Conservative M.P., Ambrose Peddle. The Leader of the Opposition called the appointment a "filthy act of political patronage," and the NLHRA expressed concern that the appointee would not develop the position's full potential.⁸⁶² Indeed, Peddle proved to be a weak advocate, and the NLHRA's hope that the office's scope would be expanded beyond government

agencies to Crown corporations and other government businesses never materialised.⁸⁶³

Despite all its work over the past decade and the concerns the organization had raised, no human rights issue marshalled the local populace around the NLHRA and there is no evidence that the association attempted to develop a grass roots following or mobilize people around a particular campaign. Outside the province, rights associations were able to mobilize around highly publicized events in which they could step in and make a unique contribution. Members of the BCCLA assembled their forces to deal with the impact of the Gastown riot, while the CCLA had the Fort Erie raid and the LDH came to the defence of prisoners during the FLQ crisis. Many of the core developments mobilizing other rights associations were simply not an issue in Newfoundland. While the BCCLA's most important case in the 1970s was undoubtedly compulsory treatment of drug addicts, Newfoundland's drug problem paled in comparison. According to the LeDain Commission, in 1972 B.C. had 4 029 illicit habitual narcotic drug users; Newfoundland had two.⁸⁶⁴ From its founding until 1975 the LDH wanted nothing more than a provincial bill of rights, something the NLHRA achieved within two years of its founding. Meanwhile, the CCLA had dedicated much of its early history towards establishing checks on police abuses in Toronto (and to a lesser degree around Ontario) and the RCMP. Certainly Newfoundland had comparable figures for alcohol abuse and theft, but with regard to serious crime the island was a haven of peace. Throughout the 1960s and 1970s there

were no more than one or two murders a year (often none) and a violent crime rate which most often ranked the lowest or second lowest in Canada; Newfoundland's first ever bank holdup occurred in 1967, committed appropriately enough by a mainlander.⁸⁶⁵ The type of issues Maloney suggested brought police in contact with elements in society more likely to register complaints and assert their rights were simply not occurring in large numbers in the province and remained well below the national average.⁸⁶⁶ Combined with a comparatively (to Toronto) homogenous population and limited urban congestion, police in Newfoundland were not faced with the racial and other minority complaints which led to so many investigations into police complaints procedures in Toronto (although the Status of Women's Council did criticize the police for their failure to help battered women when responding to domestic disputes). The NLHRA was simply not confronted with the same human rights violations facing activists in Canada's major urban areas. There was thus a marked absence of issues in Newfoundland which had mobilized mainland rights associations and pushed them to concentrate their efforts on constructive campaigns while motivating them to marshal public opinion and take an active stance on a controversial case.

The NLHRA and the Federation

The NLHRA helped to organize the first coordinated action among rights associations during the FLQ crisis and Bhattacharya, representing the NLHRA, was

one of the founding members of the Federation.⁸⁶⁷ Through the Federation, the NLHRA was active in national rights debates. Both Bhattacharya and Whalen served on the Federation executive throughout the 1970s and 1980s and it was Whalen who led the Federation's delegation before the Special Joint Committee on the Constitution in 1981. The success enjoyed by the Federation before the joint committee remains a small but lasting contribution of the NLHRA and its former leaders to the human rights movement.

The Federation was a logical association for the NLHRA, but the effect was to divert interest in national issues with important local consequences, such as abortion or capital punishment, to another organization. During the October crisis, for instance, groups in Toronto, Montreal and Vancouver all sent their own separate letters and briefs to the federal government expressing their opposition to the War Measures Act, yet the NLHRA's only action during the crisis was to support a declaration written by the BCCLA. In Vancouver, Montreal and Toronto rights activists used the media to publicize their opposition to Trudeau's actions in an attempt to turn local opinion against the federal government. The NLHRA made no comparable attempt to influence Newfoundlanders.

A similar silence greeted the McDonald commission. Instead of taking a stand on RCMP illegal activities, the NLHRA did nothing to raise concerns in Newfoundland about RCMP wrongdoings, preferring to allow the Federation to take the lead in Ottawa. In this and many other situations the NLHRA deferred to the

Federation. As a small organization with limited resources with a mandate to concentrate on local issues, the NLHRA simply did not see national issues as a priority. The lack of aboriginal or gay rights organizations on the island in the seventies contributed to the lack of public debate over national human rights concerns, although the women's movement raised the abortion issue within the context of women's rights in Newfoundland as early as 1975.⁸⁶⁸ Local issues dominated the agenda of the NLHRA, but it nonetheless maintained important links to rights associations of this era and made its own unique contribution.

Human Rights, Not Civil Liberties

The LDH was not unique in propagating an expansive approach to human rights inclusive of economic, social and cultural (positive) rights; human rights associations emerging from International Year for Human Rights shared this philosophy. As a group born amidst celebrations over the anniversary of the UDHR, the NLHRA's conception of individual rights was distinct from the approach taken by civil liberties groups. Activists within the NLHRA called on the government to accept a more active role in promoting equality through programs promoting economic and social rights. While the NLHRA's contribution to the Charter debates through the Federation reflected a shared concern with due process, in Newfoundland it was active in pushing for low-income housing and improving the conditions of foster care. Many of the leaders in the BCCLA and CCLA would have characterized

the human rights issues identified by the NLHRA, not as human rights, but questions of public policy. In a brief before the Mayor of St. John's at a conference on housing issues, the NLHRA was "concerned with two issues. The first being that monies be made available for housing to people with low incomes; the second, that housing be so built and allocated that it becomes a part of, and integrates with, the environment in which we live."⁸⁶⁹ Throughout the 1980s the issue of low income housing was a priority for the association and, drawing on the edicts of the UDHR which called for a minimum standard of housing, the NLHRA advocated for more and better public housing in Newfoundland, often acting as a liaison between individuals seeking housing and government departments.⁸⁷⁰ It also made several representations to government to improve the resources provided to foster homes. In perceiving individual rights within the context of subsidies to alleviate poverty or better conditions for foster children, the NLHRA deviated from civil libertarians' approach to economic and social rights which focussed on equal treatment by the state.⁸⁷¹

Human Rights Activism: The Case of Denominational Education

Despite the expansive approach to human rights adopted by the NLHRA, as with the LDH the Newfoundland association employed relatively conservative strategies in dealing with human rights violations. The limits of this form of activism are no more evident than the association's unrelenting opposition to the denominational education system. From its inception, the NLHRA was a consistent

critic of the denominational education system. In truth, concerns over the economic efficiency of maintaining multiple school systems organized around religious lines was perhaps the key motivation and justification for the elimination of the denominational system in the late 1990s. However, the history of the NLHRA offers a unique, rights-based perspective on one of the most important public debates throughout Newfoundland history.

Newfoundland's state-funded denominational education system was rooted in the nineteenth century. There had been sporadic criticism of the system from time to time- both Wilfred Grenfell and the Fisherman's Protective Union voiced serious concerns, for example. The Commission of Government tried to implement reform, but was rebuffed by the churches. It was to appease the churches, and Roman Catholics in particular, that the Newfoundland delegation negotiating the Terms of Union with Canada insisted on the insertion of Term 17 to protect denominational education. There were some amalgamated schools by 1956, composed primarily of Protestant denominations, which formed the closest thing to the type of public education system available on the mainland. But they were few in number- 24 in 1956, out of a total of 1,193 schools - and served only 8 percent of the school population.⁸⁷² Nowhere else in Canada, with the possible exception of the province of Quebec, did the churches enjoy such expansive control over education.

In 1967, the Royal Commission on Education (Warren Commission) recommended a switch to a secular education system, which Phillip McCann

attributes to the influence of “United Nations policy on Human Rights and Children’s Rights, and North American thinking on development of human resources in a technological age.”⁸⁷³ A minority report accused the majority of violating its terms of reference by considering the denominational issue, and pointed to the Terms of Union as a constitutional protection for religious education. The government implemented some of the commission’s recommendations, but the denominational system remained entrenched.

Only four years after the Warren Commission report, the birth-mother of the NLHRA, the government-sponsored Human Rights Committee, recommended abolishing the denominational education system. From its inception, and later reaffirmed in 1972 when Judy Norman was refused her teaching certificate, the NLHRA had opposed the churches’ monopoly over education as a violation of religious freedom. In 1984 the NLHRA prepared a brief on the Human Rights Code to the Minister of Justice arguing that

The greatest single threat to equality of religion and freedom of worship [in Newfoundland] is the restrictive nature of the denominational education system. It is recommended that a second alternative be available for students who are not of faiths which benefit from a special constitutional privilege, or that denominational schools be prohibited from discriminating on the basis of religion. The best resolution of this issue would be an immediate court reference to seek a declaratory judgement concerning the scope of Term 17 of the Terms of Union.⁸⁷⁴

The then-current system allowed public school teachers to be fired for not following the tenets of the faith, such as marrying outside the church.⁸⁷⁵ To vote or be

a candidate in consolidated school board elections individuals were required to belong to either the Salvation Army, Anglican, Presbyterian or United churches. In a gathering of 120 people at Memorial University in 1987 to debate the merits of denominational education, Lynn Byrnes, who served as president of the NLHRA after 1982, stated that the system was “based on some very blatantly discriminatory policies which we feel must be changed. ... If these legal rights allow such cut and dried examples of religious discrimination then the legal rights are wrong.”⁸⁷⁶ For two decades, the NLHRA believed that the solution to the denominational education system was to pressure the government to act, either through the courts or through legislative change such as amendments to the Human Rights Code.

Yet, for over a century, attempts by various advocates for legal reform had failed to transform government policy. The reality of Newfoundland politics made it unpalatable to challenge a system which, according to the commissioner of the Human Rights Commission in 1985, was “a fact of life in Newfoundland and is such because it is in accord with the wishes and desire of a large majority of the Province’s population.”⁸⁷⁷ The NLHRA was no different than any other civil liberties or human rights association in Canada in its focus on legal rights and state protection for religious freedom. The CCLA and the BCCLA both opposed any form of state funding for denominational education. As we have seen, a committee formed by the BCCLA in 1963 to lobby for changes to the legislation achieved little success.⁸⁷⁸ In each case, rights associations focussed on political lobbying or legal challenges under

their respective human rights legislation to challenge religious instruction in public schools; it was, in fact, a court challenge under the Charter in 1990, led by the CCLA, which resulted in the removal of religious practices from public schools in Ontario.⁸⁷⁹

The saga surrounding denominational education in Newfoundland did not end in 1982 with the introduction of the Charter. Whereas the CCLA had successfully eliminated religious practices in Ontario's public education system with its Charter challenge in 1990, the system in Newfoundland was constitutionally protected by Term 17. Throughout the 1980s the boundaries of denominational education actually expanded. In 1987 Pentecostals were added to the list of religious affiliations under Term 17 and were thus assured state funding for their schools and a voice in the administration of the education system. Within a few years, however, there was a clear movement to challenge the dominance of the major religions in education. Significantly, this movement was led not by the NLHRA, but from the provincial government. In 1990 Premier Clyde Wells appointed a royal commission to study the efficiency and operation of the school system. In its report, *Our Children, Our Future*, the commission recommended a reduction of the churches role in education while at the same time suggesting the system continue to promote Judeo-Christian values.⁸⁸⁰ After negotiations between the government and churches to reform the education system broke down, Wells chose to hold a referendum to revise Term 17 and introduce a public school system. With 54 percent voting Yes the government was able to go ahead and amend Term 17, only to find themselves blocked by the

courts who ruled that the revised Term 17 allowed the province to take over the administration of the school system but not close down the schools themselves.⁸⁸¹ Frustrated at their inability to establish a unified and secular public school system, a second referendum was held under the direction of Wells' successor, Brian Tobin, to fully revise Term 17 to ensure the churches had no say in the running of the education system. With 73 percent voting Yes, Newfoundlanders finally achieved a fully secular public school system in 1997.⁸⁸²

The NLHRA was always at the forefront in the debate over denominational education. Children who were 'bumped' from an over-registered enrichment program in 1982 due to their religion were rescued by members of the NLHRA who lobbied to have increased federal funding provided to allow students entry into the program. Press releases were sent out and press conferences held throughout the 1980s calling on the government to end discriminatory practices inherent in the education system. A fiery television debate between Lynn Byrnes of the NLHRA and Archbishop Penney on CBC in 1985 helped keep the controversy alive and promote the NLHRA's cause to a wide public audience.⁸⁸³ In the same year a group of French Canadian parents approached the NLHRA when their children were denied entry into a French immersion program because they were of no professed religion or were non-Christian. Thanks to the intervention of the NLHRA, the federal government once again provided additional monies to hire teachers so students could join the program. Other activities included submitting a detailed review of the provincial human rights

legislation with a section on denominational education in 1985 and polling provincial election candidates in the same year and publishing their views on religious education.⁸⁸⁴ By 1987 the NLHRA had also changed its position on denominational education: it now called for replacing the entire system with a secular public education system.

One tactic the NLHRA hoped to use to undermine the system was to apply to the federal government's Court Challenges Program, a fund set up to support Charter cases, which the NLHRA sought unsuccessfully in the mid-1980s.⁸⁸⁵ Another tactic was education, leading to a large conference attended by 120 people at Memorial University which was held in 1987. Lynn Byrnes, a past-president of the association, even sought election to the local School Board only to be denied because of her religious affiliation in an attempt to demonstrate the discrimination inherent in the system. When Premier Clyde Wells appointed a Royal Commission in 1990 to study the education system, the NLHRA presented a well researched and sophisticated brief calling for the removal of denominational education. Basing its arguments on the need to end discrimination in education, the NLHRA claimed the system unfairly discriminated against students by not allowing them to attend neighbourhood schools if they were not of the proper affiliation; it also discriminated against teachers by not hiring those of the proper denomination and discriminated against citizens seeking election to school boards.⁸⁸⁶ Although lacking a strong presence during the 1995 referendum, the NLHRA joined a coalition called Education First in 1997 to fight for

the Yes side during the second referendum. It received favourable press coverage and Tobin worked primarily with the teachers' union and NLHRA to rally support for his initiative.⁸⁸⁷ It is unclear how effective the NLHRA was in mobilizing public support in gaining a 73 percent Yes vote, but it was active in leading a coalition of associations in Newfoundland to support the Yes campaign (e.g., distributing literature and organizing a public forum) and working with the press.

Conclusion

The NLHRA was not the only social movement organization in the seventies expressing concern with the denominational education system. A potential challenge to the education system had always existed through the Newfoundland Teachers Association, with its concern over the ability of religious school boards to dismiss teachers. In 1975 Gregory Stack was fired by a Roman Catholic school board for marrying a non-Catholic. The teachers' association argued that this constituted dismissal without cause, and was therefore a violation of the collective agreement. A board of arbitration supported the school board's argument that the Terms of Union protected the rights of the school boards to dismiss at will, and that the collective agreement was *ultra vires*.⁸⁸⁸ The Newfoundland Supreme Court overturned the decision, but the ruling did not challenge the right of the Catholic school board to fire Stack (and others) if sufficient notice and cause was given. In fact, courts in Newfoundland, British Columbia and Ontario upheld the power of religious schools

to dismiss teachers for violating tenets of the faith, because religious observance was a “bona fide occupational requirement” under provincial human rights codes.⁸⁸⁹

The inability (or disinterest) of the labour movement in Newfoundland to mount an effective challenge to the education system was to be expected in an era when the labour movement was increasingly institutionalized. In addition to having no relationship with the local human rights group (even though Peddle, a union leader, served on the NLHRA Board), the labour movement did little more than organize legal challenges to violations of collective bargaining agreements. As noted in chapter two, contemporary critics of organized labour in the seventies have lamented the shift away from mass mobilisation and working class militancy to focussing on wages and job security. The latter places the emphasis on collective bargaining and the increasing influence of lawyers and entrenched union leaders in the structure of organized labour. Bryan Palmer’s critique of contemporary trends in the labour movement in the form of ‘social unionism’ rhetoric highlights the core weakness of organized labour’s ability to promote social change in the context of new social movements:

Social unionism, for instance, might be seen as simply a progressive facade behind which a wing of the labour hierarchy adroitly masks its traditional business unionism refusal to use and extend the class power of the unions to launch a struggle for social change. It actually understates working-class power by accepting the current conventional wisdom that class as the central agent of socio-economic transformation has been undermined, and new social movements of women, ecologists, and peace advocates are more potent than class because they can more easily mobilize masses of supporters. ...A real

social unionism would indeed link up with these sectors, but it would rightly stress the extent to which only mobilizations led by the working class and backed by the working-class capacity to stop the productive forces of advanced capitalist society in their tracks have the actual power to transform social relations.⁸⁹⁰

Without entering into the complex debate over whether or not the working class versus new social movements are the most effective agents for promoting social change, Palmer's analysis emphasizes the consequences of any social movement organization rigidly tied to institutional forms of activism. By rejecting grass roots organizing in favour of litigation, organized labour's self-imposed boundaries limited its ability to achieve systemic social change.

The situation is comparable to the obstacles facing rights associations, with the predominance of lawyers among the leadership of human rights and civil liberties groups, and their focus on working through state institutions to achieve their goals. The only challenges presented by organized labour in Newfoundland to the school boards' discretion to dismiss teachers based on religious dogma was to bring each case to court, which the union subsequently lost.⁸⁹¹ Similarly, the NLHRA consistently sought to work through state institutions to secularize the education system and, as with the teachers association, at no time sought to develop a grass roots following or organize a campaign to mobilize large numbers of people. In fact, all of the NLHRA's campaigns were based on the same strategies. Its early years were spent seeking amendments and implementation of the Human Rights Code, forwarding complaints to state agencies, having an ombudsman appointed, and acting

as a watchdog against potential abuses of human rights by the state. True, there are some exceptions in the historical record of rights associations. The BCCLA organized one demonstration in the seventies to challenge a policy of the Pacific National Exhibition; the League participated in (but rarely organized) demonstrations and days of protest for prisoners; the CCLA organized three rallies in its forty year history; and the NLHRA successfully pressured an insurance company to change its policies without having to submit a complaint through the human rights commission. Such instances were few and far between, however, and the history of rights associations in Canada is characterized by a focus on working through state institutions to achieve social change. Compared to the dual strategies employed by many social movement organizations during this period, the repertoire of strategies employed by rights associations were almost exclusively state-oriented and conservative. As with other rights associations, the NLHRA encountered immense obstacles in dealing with what it believed to be one of the most important human rights issues of the period.

Conclusion

The 1960s and 1970s was a period of energetic social movement activism, from the gay liberation movement to the formation of women's centres to thousands of new social movement organizations representing a myriad of constituencies. During this period the rights revolution came to fruition as manifested, in part, by the explosion of civil liberties and human rights associations across the country. These social movement organizations (SMO) were a product of an evolving rights culture in Canada and were supported by the rising affluence of the middle class. Fuelled by an economic boom lasting into the mid-seventies and the rise of the service sector and bureaucracies, the middle class played an increasingly prominent role funding and leading SMOs. Linked with the rise of university enrollments in the wake of the post-war boom, rights associations drew their members and leaders from rising numbers of middle class professionals, including journalists, lawyers, academics, social workers and ministers. The focus on quality of life issues characteristic of many social movements of the period, such as the environment or individual rights, was distinct from working class activism rooted in attacks against capitalism and excessive individualism.

The mounting influence of Canada's middle class coincided with the expansion of the welfare state which, in turn, motivated rights associations to act. Rights activists traditionally concerned with state suppression of rights believed that the welfare state represented a potential threat to individual liberties. Prime Minister

Lester B. Pearson's declaration of a War on Poverty in the sixties symbolized not only the expanding role of the state through welfare measures, but also symbolized Canadian society's expectation that the state would take an active role in dealing with poverty and other social welfare issues. While the CCLA and BCCLA spent years defending welfare recipients' due process rights, members of the LDH and NLHRA saw in the welfare state an acknowledgement of the right of citizens to certain basic social and economic resources, from low income housing to subsidies for the disabled.

More than ever the state was intruding upon people's private lives and regulating the behaviour of its citizens. With urbanization came greater population density, more crime and larger police forces. In 1957 the Metropolitan Toronto Police Force was created and by 1977 it had more than 5000 members (about 1000 of them civilians); the cost of policing Toronto alone had risen from \$58 129 000 in 1971 to \$140 520 000 by 1977.⁸⁹² State repression of illicit drug use was at an all time high. Not only did this translate into greater conflict between police and citizens for an activity many felt should be legalized, but it forced a clash between police and middle class youth who were vocal and articulate in defending their rights. Perhaps the most visible manifestations of this conflict was the Gastown Riot of 1971 and demands for a civilian review system for complaints against the police in Toronto. Rights associations were active in their early years in defending youth against charges of vagrancy, drug use or protests. At the same time, the growing consensus around

the inviolability of human rights internationally, as manifested in the UDHR and subsequent covenants, as well as the eruption of the civil rights movement in the United States, undoubtedly played some role in inspiring and motivating human rights activists at home. An increasingly well educated population, rising affluence, greater state activity, new social movement activism, the peripheralization of the labour movement, urbanization, international developments and conflicts between police and youth all contributed to the proliferation of rights associations in unprecedented numbers during this period.

The New Anti-Liberals? Comparing Generations

A new generation of activists was at the forefront of organizing and leading rights associations in the sixties and seventies. The idea of distinctive generations is an elusive and vague concept, but if one accepts the notion that generations are an age group shaped by history, there “is no doubt that the social moment for the baby-boom generation was the sixties.”⁸⁹³ The history of rights associations is not a history about ‘evolving’ ideas about rights. At the dawn of the twenty-first century, civil liberties activists continue to fight many of the same battles as their forerunners as evidenced by the disturbing parallels between the current war on terror and the suppression of communism in the forties. Instead, the history of rights associations is about how a particular historical context shaped social activism. Second generation rights activists built upon the achievements of their predecessors and reacted to the issues and events

confronting them, from the nationalism of the Quiet Revolution to the rising conflict between police and youth in the cities.

The generational divide among rights activists was best symbolized by the differing priorities of Irving Himel, who left the CCLA in the mid-1960s, and Alan Borovoy, who replaced Himel as the leader of the CCLA. Both were lawyers with an interest in civil liberties, both were Jewish with strong ties to organized labour and Jewish organizations, and both were dedicated to combatting discrimination in all its forms. Yet whereas one of Himel's key objectives was to secure anti-discrimination legislation in Ontario, Borovoy spent most of his time dealing with police powers and due process violations. Unlike his predecessor, Borovoy not only led a rights association at a time when discrimination was increasingly unacceptable, he had the support of an emerging state human rights program in the form of a provincial human rights commission. Borovoy was in his early teens when the espionage commission was formed and had only recently graduated from law school in the late 1950s when the Padlock Act was struck down by the Supreme Court of Canada. He never had to deal with the infighting between communists and social democrats which had divided the Toronto associations in the 1940s, but instead had to contend with egalitarians who were hostile to his own ideology of rights, to the point that he wrote a book denouncing egalitarians as 'anti-liberals.'

Still, there were several important similarities between the two generations. Since the 1930s rights associations have failed to organize a grass roots following and

have drawn their members primarily from among educated middle class intellectuals. Journalists, academics, ministers and other professionals have consistently formed the leadership structure in these organizations. With the increasing accessibility of university education by the sixties this core constituency expanded dramatically, allowing the rights associations to be larger and mobilize more members. Essentially, however, the basic qualities of their members remained the same. Women continued to participate in small numbers, and there were few racial or religious minorities on the Boards of rights associations. Jews have always been prominent in Toronto rights associations, yet outside Toronto few have participated in these groups.

Despite these similarities, there was one significant distinction between the demographics of each generation: the presence of French Canadians. Virtually absent from the first generation, by the seventies French Canadians led one of the most dynamic rights associations in the country. They dominated the LDH, an association which began as a bilingual organization only to become unilingually French by 1972. The LDH was one of the founders of the Federation and, although not to the same degree as the CCLA, it did participate in national debates on such issues as national security regulations and privacy legislation by presenting briefs to parliamentary committees.

The second generation also had the benefit of the UDHR (1948) and the Bill of Rights (1960). Although neither document had much of an impact on Canadian law and the latter proved to be a lame duck, they had a strong educational value and

were exploited by rights associations. Certainly the Bill of Rights, if it had any kind of an impact at all, was to begin chipping away at the idea of parliamentary supremacy. As noted in chapter four, by 1970 with the inquiry of the first Special Joint Committee on the Constitution, parliamentary supremacy was no longer seen as a viable obstacle to entrenching human rights in the constitution. The Bill of Rights was also often the inspiration for litigation on behalf of the second generation of rights activists. When the BCCLA challenged the validity of the Heroin Treatment Act it claimed that the Act violated the equality under the law clause of the Bill of Rights, and the CCLA often intervened in court cases to argue a violation of the Bill of Rights. At the same time, human rights activists pointed to the UDHR as a symbol of how human rights should be interpreted and applied. Instead of negative rights requiring little action by the state, human rights activists demanded more positive state action in the field of welfare, housing and providing for the poor. Both documents were powerful tools to be employed by rights activists who could claim that the state was violating its obligations under the UDHR and the Bill of Rights.

Without a doubt the single most important distinction between the two generations was the question of ideology. Both generations were characterized by ideological divisions, although only in the first generation did these divisions degenerate into bitter conflicts between activists. The division between communists and social democrats/liberals in the thirties and forties was part of the broader divisions within the Left. By the seventies rights associations were divided between

negative and positive conceptions of rights. More than any other organization the LDH symbolized the ideological divide between human rights and civil liberties associations. League activists did not focus exclusively on civil and political rights but instead saw human rights as a pathway to promoting a program of social justice as manifested in its call for the abolition of prisons, economic rights for youth, handicapped and the elderly while placing the debate over national security within the context of class repression. This ideological transformation was intimately linked with the Quiet Revolution and the increasingly militant Left in Quebec. But it is too reductionist an interpretation to account this transformation solely to the Quiet Revolution and French Canadian nationalism. It should not be forgotten that the LDH emerged within the context of an expanding human rights movement in Canada, a movement with organizations in every province with thousands (if not millions) of adherents. Rights associations such as the NLHRA, and many of the participants in the celebrations surrounding International Year for Human Rights, embraced a positive approach to human rights. It was thus part of a movement concerned with the limits of traditional notions of rights articulated by civil liberties organizations which shared their space within the human rights movement.

Divided We Stand: A National Rights Association

Bitter divisions between communists and social democrats/liberals in the 1930s and 1940s were sufficient to prevent the formation of a national rights

association. The second generation of rights activists found themselves equally helpless to form a truly national rights organization, although for more complex reasons.

The Federation had always been a weak organization. Dependent on government funding, when the state pulled the plug in the late 1980s the Federation soon collapsed, unable to pay for its newsletter and annual meeting. For nearly twenty years it had proven to be the best forum for bringing together rights associations but it never developed a strong agenda or lobbying program, and it focussed more on networking than advocacy. The Federation was a pale image of the type of national rights association envisioned by its founders.

Only the CCLA challenged the Federation for the status as Canada's national rights association. By the 1970s, with chapters spanning the country and confronting important human rights violations such as the implementation of the War Measures Act and RCMP illegal activities, the CCLA was far closer to being a national rights association than the Federation. Yet the strength of the CCLA was also its weakness. What made the Federation so weak was its decentralized model, its inability to consult with other associations quickly and its failure to raise funds to act on national issues. Most of the work was left up to individual associations. In contrast, the CCLA, as a highly centralized association, was able to act more quickly and efficiently, but in doing so it could rarely be said to represent the interests of its chapters. Most chapters could not afford to send their leaders to CCLA Board

meetings and by the 1980s it was clear that most of the chapters were themselves in decline. Whereas the Federation could honestly claim to be a national association with representation from across the country, the CCLA had a weak claim through its chapters and could only point to having some members from outside Ontario on its membership lists. In addition, national campaigns rarely materialized. The reality of the situation was that the Toronto group spent most of its time dealing with problems in Ontario. This was continually acknowledged by other rights associations who refused to recognize the CCLA as a national association and by individuals who refused to join the association because it was Toronto-centred.

As a result, by the 1980s there were two weak national organizations, and neither was able to develop a viable program of action at the national level. In an era with no electronic mail and costly long-distance telephone service in a geographically vast country, it was extremely challenging to maintain a national organization. The inability to form a national human rights and civil liberties organization is a core theme in the history of rights associations in Canada throughout the twentieth century.

The Debate Over State Funding

When Don Whiteside sought to mobilize rights activists across Canada to form a national rights association in 1970-1, he was entreated by Eamon Park, the current Chair of the Board of Directors of the CCLA, not to solicit government funding for the meeting. The two men found themselves at an impossible impasse

which would eventually cause a fundamental rift between the two national rights associations, one heavily state funded and the other autonomous of government. In exhorting Whiteside to refuse state funding, Park warned him that it would forever tarnish the reputation of the proposed Federation and undermine its public credibility. Imagine, Park suggested, an organization supported by state funding refusing for legitimate reasons to take on a particular issue involving the government. No matter how justified its motivation, the group would be perceived as having backed off because of its dependence on state funding.⁸⁹⁴

It is clear that the CCLA was able to survive and thrive without state funding while other associations faced dissolution unless outside support could be secured. No issue caused more acrimony between the CCLA and other associations than the question of state funding. For the CCLA, state funding was proof of cooption by the state and an inability to effectively challenge governments when the state itself represented the greatest potential threat to civil liberties as evinced by the FLQ crisis, McDonald commission, police abuses and welfare issues.

From the perspective of government officials, funding private voluntary agencies had a specific policy objective. Funding became a means, among other things, by which the federal government could support organizations to mobilize the public and direct public attention to national issues in order to develop a sense of a national community, fostering a “greater allegiance to national institutions through a feeling that these institutions were open to popular forces.”⁸⁹⁵ This was clearly the

case with rights associations. The human rights program was entirely consistent with Trudeau's vision of combating Quebec separatism with rights discourse (epitomized in the Charter), such as promoting language and education rights outside Quebec. It was immediately following the FLQ crisis that the LDH received its first major grant from the Secretary of State and just prior to Trudeau's introduction of a draft Charter that the budget for the human rights program doubled from the previous year (as did the program supporting women's associations, which were highly active in the Charter debates).

From the perspective of most rights associations, state funding often meant the difference between survival and defeat. CCLA opponents of state funding focussed their criticism on three key points. First, they believed that organizations dependent on state funding would hesitate to take their paymasters to task on controversial issues. Yet, as the previous chapters have demonstrated, there is no evidence either the BCCLA, LDH or NLHRA ever found themselves constrained by state funds. All three organizations expanded their membership, activities and scope exponentially over 20 years and rarely hesitated to challenge the government on controversial issues. While the NLHRA received most of its funding from the federal government and shied away from national issues for functional reasons, the other two associations did not hesitate to take on controversial issues involving the same governments (federal and provincial) who funded them, from compulsory treatment of addicts in British Columbia to self-determination and a bill of rights in Quebec. In fact, the one

time the federal government threatened to cut off funds as a result of the LDH's language policy, a hastily convened press conference denouncing the government's tactics soon led to a renewal of the grant. While it is true all three organizations were often constrained by project-specific grants and unable to conduct the type of initiatives they may have desired, this was no less the case with the CCLA. The latter's focus on welfare and Indian issues, while predating the 1970s, were no doubt intensified as a result of various project-specific grants from private foundations.

At most, one could accuse the three state-funded rights associations in this study of making little effort to attract membership to their ranks whereas the CCLA continually focussed on attracting new members to the fold. The CCLA was far more active in encouraging individuals to become active in a rights association whereas the LDH only attracted large numbers of members when its government grants were temporarily cut off, and soon afterwards its membership declined. The LDH and NLHRA did not even bother to publish a newsletter, whereas the CCLA published both *Civil Liberties* and a bi-monthly 'News Notes.' At any rate, in an age of professional social movement organizations where most middle class adherents contented themselves with placing a cheque in the mail as the sum of their entire participation in a movement, there is no evidence the CCLA was able to mobilize the public in its activities more intimately than the other associations. Except for the petition campaign, several public forums and the Fort Erie demonstration, the CCLA did little to mobilize the public to participate in its activities.

The CCLA also enjoyed several core advantages any Toronto organization invariably has over any other association. First, located in the country's largest and richest city, the association had access to a wide base of support. Most of its membership campaigns were large mail solicitation campaigns through lists acquired from unions, church groups, the NDP and others, many of whom were located in Toronto or throughout Ontario. Even by 1982 the vast majority of the association's membership were located in Toronto as was its Board of Directors and Board of Advisors who contributed financially to the organization. The availability of a large base of support allowed the group to hire full time employees whose job was to enlist new members, creating a circle of reproduction that groups in isolated and small cities could never match. In building a stable membership base the CCLA was a much more attractive recipient for a grant from various private foundations interested in investigating specific issues than rights associations who might use the funds to secure staff to help build up the association. Secondly, the CCLA had access to the Atkinson foundation to stave off financial problems, in both 1967 and 1973. Third, much of the association's success in acquiring funding was attributable to its elite leadership with notable figures such as Keiller Mackay, Pierre Berton and June Callwood. Organizations located in St. John's or Saskatoon could not hope to match these advantages.

Secondly, as noted earlier, Eamon Park believed that any group receiving state funding would be perceived as being biased in favour of the state if it failed to take

on a key rights issue, even if it had legitimate reasons for doing so. Of course, it is impossible to answer a question involving a lack of action. However, there is no evidence any of the three state funded associations were openly criticized for inaction on a major issue or lost members for inaction. Only the LDH was publicly lynched by letters to the editors and in some editorials for not doing enough during the October crisis; however, this incident occurred before the association received its federal grant. Compared to the CCLA, all three associations, either individually or through the Federation, were vocal critics on key national issues, from the October crisis to RCMP wrongdoings. Although the CCLA was certainly far more active and dedicated to the RCMP scandal, this reflected more the regionalisation of rights associations and their preference for working through the Federation on national issues.

Thirdly, Donald Smiley (a Director for the CCLA) once asked how one can ever expect bold and imaginative leadership leading to significant social change from state-funded associations? There is undoubtedly some validity to Smiley's criticism. As noted above, organizations dependent on state funding do not seek to mobilize larger numbers of adherents and only the CCLA had a large membership base. All three state funded associations employed the same tactics, mainly litigation, education, press releases, letter writing campaigns and briefs to parliamentary committees to pursue their agenda. Yet was this any different from the CCLA? In Fort Erie the CCLA organized a demonstration to demand an inquiry into the 1974

drug raid. Such was the same tactic employed by the LDH on the anniversary of the War Measures Act and on several protests against prison conditions, and with the BCCLA in protesting censorship at the Pacific National Exhibition. Perhaps the only truly imaginative campaign pursued by the CCLA in its early history was the petition on RCMP wrongdoings. Otherwise, there is no evidence a group not funded by the state provided more imaginative leadership. In fact, as a civil liberties association, the CCLA presented a more traditional approach to rights advocacy than the broader philosophy adopted by the LDH and the NLHRA. When the LDH revolutionized its operations in 1972 after it began receiving government grants, it became more militant, adopting positions on language rights and self-determination and taking on new issues such as the rights of the elderly and children. In its case, state funding did not dampen its activism but enhanced it. Granted, the most radical wing of the LDH was the only privately-funded sub-committee of the association, the prisoners committee. Nevertheless, when the prisoners committee suggested in its Charter of Prisoners' Rights that prisoners were justified in trying to escape because of the harsh conditions of jails, the prisoners committee had its funding pulled by the United Way. Even private funding, which the CCLA considered more legitimate than public funding, could threaten to inhibit a group's ideals. State funding did not seriously hamper the activities of rights activists in Canada and there is no evidence private funding provided the CCLA with significant advantages over its rival rights associations.

Human Rights Activism in the Age of Protest

Rights associations in Canada are typical of the professional social movement organizations identified by social movement theorists in the United States.

Government and private funding expanded considerably in the seventies and played a key role in allowing rights associations to thrive. They were also supported by a membership base they had little contact with except through membership dues and donations. Middle class professionals dominated these organizations and the media was a key tool for expanding their membership base as well as promoting their cause to a wider audience. Rights associations also depended a great deal on experts in their advocacy, whether it was placing BCCLA Board members on the stand to testify on the literary merits of the *Georgia Straight* or using the LDH's academic experts to study the conditions of prisons across Quebec. Finally, while rights associations did not *constitute* the human rights movement, these SMOs formed an important dynamic within the overall movement. Campaigns such as the CCLA's petition on RCMP illegal activities, the LDH's bill of rights crusade, the NLHRA's public debates on denominational education, and the BCCLA's educational campaigns were designed, in part, to reach out to adherents of the human rights movement and encourage them to join the association or support their cause. As discussed briefly in the appendix, many of these qualities are attributable to most, if not all, of the other rights associations which emerged during this period.

Social movement scholars who have studied SMOs have identified a myriad of strategies employed by SMOs. An important feature of social movement activism since the sixties is the use of dual strategies, including alternative tactics to working through state institutions. In the age of protest, social movement activists raised the spectre of mass mobilization, from rallies to sit-ins, as well as alternative forms of protest including civil disobedience or forming sub-cultures, to promote social change. Yet it is a distinguishing feature of rights associations that, with the exception of a few rare instances, they did not favour such strategies. All of the associations identified in this study, whose sole criteria were to be a self-identified civil liberties or human rights organization (with no partisan or constituency affiliation), depended largely on what Zald and Ash have characterized as 'conservative' tactics. Rights associations shied away from grass roots mobilization in the way tenants unions employed mass rent strikes or civil rights activists used sit-ins.⁸⁹⁶ The repertoire of tactics available to SMOs was extensive, but rights associations limited themselves primarily to briefs, publications, litigation, developing position papers and sending observers to protest marches. No single element can explain this development; a confluence of factors affecting all rights associations have informed these strategies. Rights associations have rarely been led by the same oppressed peoples whom they were defending; SMOs in general tend to focus their activities on state institutions by virtue of their own hierarchically organized structure; professional SMOs have little direct interaction with their

members; and state funding allows SMOs to forgo the mobilization of large numbers of constituents. Finally, it is essential to appreciate the impact of rights discourse in conjunction with these other forces. Human rights encourage the perception of social change as legal change, and when combined with these other factors, further motivated rights associations to focus their efforts on state institutions. Human rights, after all, are primarily realized through the state.

As Michael Ignatieff has suggested, human rights “is universal not as vernacular of cultural prescription but as a language of moral empowerment. Its role is not in defining the content of culture but in trying to enfranchise all agents so that they can freely shape that content.”⁸⁹⁷ The history of rights associations in Canada demonstrates the ability of activists to employ rights discourse to advance the interests of the vulnerable and powerless. In Vancouver, the BCCLA articulated a forceful defence of free speech for an unpopular newspaper and hippies; in Quebec, the unique needs of the handicapped, youth and the elderly were explicitly recognized in the provincial Bill of Rights while individuals associated with a brutal act of terrorism discovered that, even in the midst of a crisis, they would not be left completely to the mercy of the state; in Toronto, poor single mothers dependent on welfare ascertained that they could question the government’s arbitrary policies and seek redress; and, in St. John’s, the NLHRA played a key role in getting equal pay for women through amendments to the human rights code and protecting protestors from the police.

But seeking social change through state institutions can often be a bitter and frustrating enterprise. The history of rights associations abound with examples of failed attempts to use mainstream tactics to protect individual rights. They often found themselves unable to deal with the core controversies they themselves identified, including abusive drug laws and enforcement, police violence, and denominational education. Perhaps the most successful association was the LDH, which succeeded in its objective of pushing the government to implement expansive human rights legislation (albeit, the last province to do so). But even the LDH faced severe obstacles, including national security regulations which prevented individuals from seeking redress from state abuse of fundamental freedoms. Institutional barriers simply proved too difficult to overcome for many human rights activists.

According to some critics, the problems facing human rights organizations are of their own making: a minimalist approach to human rights. Irwin Cotler, a future Minister of Justice in the federal government, suggested in the early 1990s that at the time “a disproportionate number of NGOs deal with matters pertaining to political and civil rights, while the cause of economic, social and cultural rights appears to be under-represented among the NGOs.”⁸⁹⁸ Around the same time, Laurie Wiseberg advanced a similar criticism about the limited scope of human rights activism in Canada: “Yet [human rights associations] have, by and large, not delved into the structural causes of [human rights] violations, and they have, by and large, not devoted the same degree of attention to economic and social rights. ... What they have

not done has been to call for the radical restructuring of societies.”⁸⁹⁹ Ignatieff goes so far as to locate Canadian’s minimalist approach to human rights activism in our culture of rights: “I am astonished that social and economic inequality, the focus of so much socialist passion when I was a student, has simply disappeared from the political agenda in Canada and most other capitalist societies. This disappearance has something to do with rights talk. It can capture civil and political inequalities, but it can’t capture more basic economic inequalities, such as the ways in which the economy rewards owners and investors at the expense of workers.”⁹⁰⁰

Not all rights associations proffered such a limited conception of rights. Civil liberties associations refused to embrace positive notions of human rights, and any engagement with economic or social rights was conceived within the context of negative freedom. It is clear, however, that human rights associations such as the LDH and NLHRA did not fit this mould. As organizations dedicated solely to the promotion of human rights, it is significant that these two associations considered low-income housing and the economic needs of the elderly as *rights* and not simply privileges of the welfare state. It is a testament to the historical period in which they battled that human rights activists of the sixties and seventies, building upon the successes of their predecessors, no longer fought simply for the recognition of basic

civil and political rights but ambitiously proffered an expansive conception of human rights.

Endnotes

1. William K. Carroll, "Social Movement and Counterhegemony: Canadian Contexts and Social Theories," in William K. Carroll, ed., *Organizing Dissent: Contemporary Social Movements in Theory and in Practice, Studies in the Politics of Counter-Hegemony*, Toronto: Garamond Press, 1997, p. 4.

2. Laurie S. Wiseberg, "Human Rights Nongovernmental Organizations," in Richard Pierre Claude and Burns H. Weston, *Human Rights in the World Community: Issues and Action*, 2nd ed., Philadelphia: University of Pennsylvania Press, 1992, pp. 372-3.

3. A second category of human rights organizations would be organizations which support human rights struggles, but have broader mandates and are not exclusively focussed on human rights issues. Such organizations would include trade unions, churches, women's groups, professional associations, ethnic associations, indigenous groups, and groups concerned with the handicapped, poor, children, consumers, and a host of other constituencies.

4. Dominique Clément, "'It is Not the Beliefs but the Crime that Matters': Post-War Civil Liberties Debates in Canada and Australia" *Labour History* (No.86, May 2004): 1-32; Dominique Clément, "Spies, Lies and a Commission, 1946-8: A Case Study in the Mobilization of the Canadian Civil Liberties Movement" *Left History* (Vol. 7, No.2): 53-79; George Egerton, "Entering the Age of Human Rights: Religion, Politics, and Canadian Liberalism, 1945-50" *Canadian Historical Review* (Vol.85, no.3, September 2004): 451-479; Ruth A. Frager, and Carmela Patrias, "'This Is Our Country, These Are Our Rights': Minorities and the Origins of Ontario's Human Rights Campaigns" *The Canadian Historical Review* (Vol.82, No.1, March 2001): 1-35; Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930-1960*, Toronto: University of Toronto Press, 2004; Christopher MacLennan, *Toward the Charter: Canadians and the Demand for a National Bill of Rights, 1929-1960*, Montreal: McGill-Queen's University Press, 2003; William A. Schabas, "Canada and the Adoption of the Universal Declaration of Human Rights" *McGill Law Journal* (Vol.43, 1998): 403-441; James Walker, "The 'Jewish Phase' in the Movement for Racial Equality in Canada," *Canadian Ethnic Studies* (Vol.34, No.1, 2002): 1-23.

5. Laurin's work does not deal with the Ligue exclusively, does not go beyond 1975, and fails to consider the activities of the Ligue in a national context. Lucie Laurin, *Des Luites et Des Droits: Antécédants et histoire de la Ligue des Droits de l'Homme de 1936-1975*, Montréal: Éditions du Meridien, 1985. Some graduate work

on the history of civil liberties activism in Canada includes: Stephanie Bangarth, "The Politics of Rights: Canadian and American Advocacy Groups and North America's Citizens of Japanese Ancestry, 1942-9," (PhD, University of Waterloo, 2004); Dominique Clément, "The Royal Commission on Espionage, 1946-8: A Case Study in the Mobilization of the Early Civil Liberties Movement," (MA, University of British Columbia, 2000); Jaroslav Petryshyn, "A.E. Smith and the Canadian Labour Defence League," (PhD, University of Western Ontario, 1977); Suzanne Skebo, "Liberty & Authority: Civil Liberties in Toronto," (MA, University of British Columbia, 1968).

6. While Leslie Pal has recently argued that government funding programs in the 1970s and 1980s did not co-opt social movement organizations, some sociological studies have attempted to demonstrate how government funding is inimical to social movement activism. For further information, refer to: Leslie A. Pal, *Interests of State: The Politics of Language, Multiculturalism, and Feminism in Canada*, Montreal & Kingston: McGill-Queen's University Press, 1993; Dorothy Emma Moore, "Multiculturalism- Ideology or Social Reality?," (PhD, Boston University, 1980); Daiva Kristina Stasiulis, "Race, Ethnicity and the State: The Political Structuring of South Asian and West Indian Communal Action in Combating Racism," (PhD, University of Toronto, 1982).

7. Maxine Molyneux and Sian Lazar, *Doing the Rights Thing: Rights-Based Development and Latin American NGOs*, ITDG Publishing, 2003, p. 25.

8. Some key texts which deal with the nature of human rights include: Maurice Cranston, *What is a Human Rights?*, New York: Basic Books, 1973; Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd edition, Ithaca and London: Cornell University Press, 2003; Ronald Dworkin, *Taking Rights Seriously*, Cambridge: Harvard University Press, 1977; Louis Henkin, *The Age of Rights*, New York: Columbia University Press, 1990; Michael Ignatieff, *Human Rights as Politics and Idolatry*, Princeton: Princeton University press, 2001; Will Kymlicka, *Multicultural Citizenship- A Liberal Theory of Minority Rights*, Oxford: Clarendon Press, 1995. A useful overview of human rights concepts and theories is available in: Brian Orend, *Human Rights: Concept and Context*, Peterborough: Broadview Press, 2002.

9. Walter Tarnopolsky, *The Canadian Bill of Rights*, Toronto: The Carswell Company Ltd., 1966, p. 3.

10. Collective rights, or group rights, include everything from the rights of aboriginals to the environment and development. Since few rights associations in Canada have undertaken to advocate for group rights, these 'third generation' rights

are not dealt with in this chapter. A good discussion on the nature of groups rights is available in: Peter Jones, "Human Rights, Group Rights, and People's Rights," *Human Rights Quarterly* (Vol.21, No.1, 1999): 80-107; Will Kymlicka, *Multicultural Citizenship- A Liberal Theory of Minority Rights*, Oxford: Clarendon Press, 1995; Joel E Oestreich, "Liberal Theory and Minority Group Rights," *Human Rights Quarterly* (Vol.21, No.1, 1999): 108-32.

11. George Williams, *Human Rights Under the Australian Constitution*, Melbourne: Oxford University Press, 1999, p. 7.

12. C.B. Macpherson, *The Rise and Fall of Economic Justice and Other Papers*, New York: Oxford University Press, 1985, p. 23.

13. This conceptualization of civil rights is reflected in the history of Canadian constitutional jurisprudence. Only one heading in the British North America Act of 1867 referred specifically to rights: section 92 (14) which allocated jurisdiction over 'Property and Civil Rights' to the provinces. Civil rights were predominantly associated with private law and the power to regulate property, contracts, torts and commercial matters. In a ground breaking case in 1937 dealing with press censorship in Alberta, followed by a series of high profile cases in the 1950s, the Supreme Court of Canada rejected attempts to define rights to speech, press and religion as civil rights under the Canadian constitution (the judges instead referred to these rights as 'civil liberties'). Civil rights in Canada have thus historically not shared the same connotations as they have in the United States where civil rights are associated with the rights derived from the Thirteenth and Fourteenth amendments. *Alberta Press Bill*, [1938] Supreme Court Reports [S.C.R.] 100; *Switzman v Elbling and Attorney-General of Québec*, [1957] S.C.R.; *Saumur v City of Québec*, [1953] 2 S.C.R. 299. For further discussion on this approach to civil rights, refer to: Beth Gaze and Melinda Jones, *Law, Liberty and Australian Democracy*, Sydney: The Law Book Company Ltd., 1990; Rolf Kunnemann, "A Coherent Approach to Human Rights," *Human Rights Quarterly* (Vol.17, No.2, 1995): 323-342. Teeple, Macpherson and Tarnopolsky as cited above also deal with this issue.

14. *Alberta Press Bill*, p. 133.

15. For further information on the distinctions between civil and political rights, and economic, social and cultural rights, refer to: Ron Hirschl, "'Negative' Rights vs. 'Positive' Entitlements: A Comparative Study of Judicial Interpretations of Rights in an Emerging Neo-Liberal Economic Order," *Human Rights Quarterly* (Vol. 22, 2000): 1060-1098. Lunan, Kunneman, Orend, Tarnopolsky and Teeple as cited above also deal with this issue.

16. As James L. Richardson notes, "leading western scholars on the subject [human rights] reject a conception which excludes economic and social rights, and in particular there is a wide support for the claim that the right to subsistence must be included in any definition of basic rights- its denial is as unacceptable as threats to the physical security and survival of individuals, and it is as much a prerequisite for the enjoyment of other rights." James L. Richardson, "Contending Liberalisms: Past and Present," *European Journal of International Relations* (Vol.3, No.1, 1997): 23.
17. Peter H. Bailey, *Human Rights: Australia in an International Context*, Sydney: Butterworths, 1990, p. 15.
18. Isaiah Berlin, *Four Essays on Liberty*, London: Oxford University Press, 1969, p. 122.
19. Jerome Bickenback, *Physical Disability and Social Policy*, Toronto: University of Toronto Press, 1993, p. 37.
20. Maurice Cranston, *What is a Human Rights?*, New York: Basic Books, 1973; Berlin, p. 124.
21. According to John Hospers, libertarianism is a "philosophy of personal liberty- the liberty of each person to live according to his own choices, provided that he does not attempt to coerce others and thus prevent them from living according to their choices. Libertarians hold this to be an inalienable rights of man; thus, libertarianism represents a total commitment to the concept of individual rights." John Hospers, *Libertarianism: A Political Philosophy*, Los Angeles: Nash Publishing, 1971, p. 5.
22. According to Ron Hirschl, many "libertarian theorists argue that positive, second generation rights as well as collective, third-generation rights are not really human rights at all because they are not universal, paramount or categorical; they are impractical or too expensive; and most importantly because they imply a fundamental redistribution of goods, which ignores the fact that people may already have property rights over resources that would have to be redistributed to actually provide basic living conditions for all. However, proponents of positive and collective rights provide the convincing counter-argument that no one can fully enjoy or exercise any right if she or he lacks the essentials for a healthy and decent life in the first place, because basic needs are more fundamental than property rights." Hirschl, p. 1072.
23. Bickenback, p. 260.

24. A libertarian would, of course, accept that there are reasonable limits to liberties such as free speech. The well-known example of yelling fire in a crowded theatre would be an unacceptable use of free speech. An individual should be allowed to enjoy the fullest extent of their liberties as long as they do not conflict with the liberties of others.
25. This issue will be drawn out more in the case studies. It is interesting to note at this stage, however, that bitter debates over free speech continue to divide activists in the human rights movement. In a recent book written entirely on the question of egalitarian approaches to human rights advocacy, Alan Borovoy (Canadian Civil Liberties Association) has denounced egalitarian feminists as 'anti-liberals' because of their support for censoring pornography. Alan Borovoy, *The New Anti-Liberals*, Toronto: Canadian Scholars Press Ltd., 1999, p. 12.
26. Gaze and Jones, p. 6.
27. Hirschl, 1071-2.
28. As future Supreme Court of Canada justice Rosie Abella once noted, "human rights start where civil liberties end. And by end I do not by any means consign civil liberties to historical oblivion. ... [H]uman rights are not only about civil liberties' emphasis on individuals in their relationship with the State, they are more emphatically about individuals in their relationship to one another, relationships that invoke the State's intervention and assistance, and request different treatment to narrow the gap. ...[I]n human rights there are rights we, as individuals who are members of a group, ask the State to promote." Rosalie Silberman Abella, "From Civil Liberties to Human Rights: Acknowledging the Differences," in Kathleen E. Mahoney and Paul Mahoney, eds., *Human rights in the twenty-first century: a global challenge*, London: Martinus Nijhoff Publishers, 1993, p. 67.
29. Irving Dillard, ed., *The Spirit of Liberty: Papers and Addresses of Learned Hand*, 1954, 189-90.
30. Joe Foweraker and Todd Landman, "Individual Rights and Social Movements: A Comparative and Statistical Inquiry," *British Journal of Political Science* (Vol. 29, No.2, April 1999): 291.
31. Neil Stammers, "Social Movements and the Social Construction of Human Rights," *Human Rights Quarterly* (Vol.24, No.4, 1999): 987.
32. Molyneux and Lazar, p. 4.

33. At the same time, activists have, in turn, informed ideas about human rights. In her recent study of civic leaders in Hamilton in the late 1990s, Rhoda E. Howard-Hassmann concluded that social activists “were not mere passive recipients of human rights norms passed down from above; they were active participants in the creation and internalization of these norms among the Canadian population.” Rhoda E. Howard-Hassmann, *Compassionate Canadians: Civic Leaders Discuss Human Rights*, Toronto: University of Toronto Press, 2003, p. 216.
34. These assumption do not obviate the argument that human rights are premised on moral claims. Louis Henkin is among the many scholars of human rights who reject the positivist school and insist that the state does not *create* rights; it *recognizes* them. Louis Henkin, *The Age of Rights*, New York: Columbia University Press, 1990, p. 145.
35. As quoted in: Jack Donnelly, *The Concept of Human Rights*, London & Sydney: Croom Helm, 1985, p. 15.
36. Maxine Molyneux and Shahra Razavi, *Gender, Justice, Development and Rights*, United Nations Research Institute for Social Development, January 2003, p. iv.
37. Alan Cairns and Cynthia Williams, “Constitutionalism, Citizenship and Society in Canada: An Overview,” in Alan Cairns and Cynthia Williams, eds., *Constitutionalism, Citizenship and Society in Canada*, Toronto: University of Toronto Press, 1985, p. 13.
38. Miriam Smith, *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995*, Toronto: University of Toronto Press, 1999, p. 75.
39. Martha Minow, *Making All the Difference: Inclusion, Exclusion and American Law*, Ithaca and London: Cornell University Press, 1990, p. 279.
40. Walker, “Race,” *Rights and the Law in the Supreme Court of Canada*, pp.320-1. Joe Foweraker and Todd Landman base their work on social movements and rights discourse on a similar premise: “The state is the primary focus of social movement activity, since it is only the state which can entrench individual rights by designing and supporting a legal system which protects rights and punishes infractions. Hence the rise of modern social movements and the growth of the modern state occur in tandem.” Joe Foweraker and Todd Landman, *Citizenship Rights and Social Movements: A Comparative and Statistical Analysis*, Oxford: Oxford University Press, 1997, p. 226.

41. Minow, p. 298, 306.
42. Rainer Knopff and F.L. Morton, *The Charter Revolution and the Court Party*, Peterborough: Broadview Press, 2000.
43. Many human rights scholars embrace the courts as a check on the political process. Jack Donnelly, a leading advocate of the transformative power of human rights discourse, acknowledges that human rights are “profoundly anti-democratic. For example, the US Supreme Court is, by design, 'anti-democratic,' because it regularly frustrates the will of the people.” Unlike Knopff and Morton, however, Donnelly does not assume that the political arena is the ideal location for resolving rights claims. Jack Donnelly, “Human Rights, Democracy and Development,” *Human Rights Quarterly* (Vol.21, No.3, 1999): 620.
44. Miriam Smith, *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995*, Toronto: University of Toronto Press, 1999.
45. Tom Warner, *A History of Queer Activism in Canada*, Toronto: University of Toronto Press, 2002.
46. Michael Mandel, *The Charter of Rights and the Legalization of Politics in Canada*, Toronto: Thomson Educational Publishing, 1994, pp. 60-1.
47. As an example, Mandel points to the idea of two people entering into a contract. For a contract to be legally enforceable, it must be entered into freely by two people (with the exception of such things as fraud, duress, insanity, etc). But, according to Mandel, how can any contract between unequals in power be justified, notably contracts between individual workers who are constrained by their material needs and large corporation. The courts are unable to recognize these types of systemic inequalities in attempts to formulate legally enforceable principles, and are thus blind to unequal social relations. The courts recognize neither strength nor weakness, and in doing so entrench existing inequalities. To refuse to enforce such contracts would undermine the very institutions the court draws its principles from. Mandel, pp. 66-7.
48. Mandel, p. 67.
49. According to Mandel, by its very nature the law, and in turn rights claims, are intrinsically conservative. Since they focus on issues of principle and not policy, the judiciary are limited to enforcing institutional rights, specifically those which can be drawn from existing institutions and accepted practices, based on prior decisions under the rule of *stare decisis*. They do this by “developing a theory which best

justifies these institutions and practices and then applying that theory to the question at hand.” The necessity of basing their decisions on past precedent limits the potential for the judiciary to promote progressive social change. Law, and rights, can not help but entrench unequal social relations since this is the basis of current social arrangements. Mandel, p. 65.

50. Teeple, p. 101.

51. Jackie Smith, Ron Pagnucco, and George A. Lopez, “Globalizing Human Rights: The Work of Transnational Human Rights NGOs in the 1990s,” *Human Rights Quarterly* (Vol.20, No.2, 1998): 394.

52. Nelson Lichtenstein, *State of the Union: A Century of American Labor*, Princeton and Oxford: Princeton University Press, 2002, p. 141.

53. Lichtenstein, pp. 209-10.

54. Lichtenstein, p. 210.

55. Minow, p. 307.

56. Joe Foweraker and Todd Landman also argue that rights discourse is a useful tool for forcing the dominant group in society to pay attention to the demands of the marginalized by providing the weak with a common language that allows them not only to form alliances, but find common ground with the dominant groups: “At the same time the discourse of rights plays key role in translating the specific (communal, sectoral, or class) demands of particular movements into a common language, and in facilitating the construction of political alliances and movement networks. In this way the lack of resources available to social movements can be overcome by the ‘synthesizing force’ of political discourse.” Foweraker and Landman, p. 32.

57. Lichtenstein, p. 211.

58. Teeple, p. 118.

59. Neil Stammers, “A Critique of Social Approaches to Human Rights,” *Human Rights Quarterly* (Vol.17, No.3, 1995): 502.

60. After a detailed discussion in her 1980 dissertation of how multiculturalism policies had failed to address the systemic inequalities facing minorities in Canada, Dorothy Moore turned to Canada’s human rights programs and concluded that “the Human Rights Commission has aided minority individuals to combat discrimination but has at the same time made their subordinate social status official. Minority

leaders have individually and overwhelmingly confirmed their awareness that discrimination still exists but that now it has to be more subtle to avoid the law.” Moore argued that education, and promoting equality of *opportunity*, was not enough to deal with the obstacles facing minorities. “[I]t was doubtful whether improving education levels alone would have the ability to create real change since the occupational structure is pyramidal in Canadian society. This means that other factors like influence, class, position, culture, and judgements as to whether ‘different’ means ‘inferior’, also became relevant in the competition at every level for jobs.” Dorothy Emma Moore, “Multiculturalism- Ideology or Social Reality?” (PhD, Boston University, 1980), pp.279, 451.

61. New Social Movement theory is another major school of thought on the nature of contemporary social movements, but it provides a weak framework for the study of social movement *organizations*. New Social Movement theory is an umbrella term for a multiplicity of theories which reject marxist analysis in favour of a postmodern or postmaterialist approach, and concentrate on cultural analysis. Work involving New Social Movement theory generally focusses more on grievances instead of mobilization, and considers formal organizations a minor aspect of social movement activity.

62. Mayer N. Zald, “The Trajectory of Social Movements in America,” in Louis Kriesberg and Bronislaw Misztal, eds., *Research in Social Movements: Social Movements as a Factor of Change in the Contemporary World*, vol. 10, Greenwich: Jai Press, 1988, p.20.

63. Mayer N. Zald and John D. McCarthy, “Resource Mobilization and Social Movements: A Partial Theory,” in Mayer Zald and John D. McCarthy, eds., *Social Movements in an Organizational Society*, New Brunswick: Transaction Publishers, 1987, p.20.

64. According to Zald and McCarthy, “educational attainment and economic position both correlate positively with sociopolitical participation; therefore, the more America becomes a middle-class society, the higher the societal rate of participation in the sociopolitical concerns.” Zald and McCarthy, “The Trend of Social Movements in America: Professionalization and Resource Mobilization,” in Mayer Zald and John D. McCarthy, eds., *Social Movements in an Organizational Society*, New Brunswick: Transaction Publishers, 1987, pp.342, 349-53.

65. Zald and McCarthy, “The Trend of Social Movements in America,” p.360-4.

66. They also suggest that the “public’s perception of a movement’s intensity of action may reflect media coverage rather than the actual membership strength or the

scope and intensity of grievances.” Zald and McCarthy, “The Trend of Social Movements in America,” p.373.

67. Zald and McCarthy, “Resource Mobilization and Social Movements,” pp.29-31.

68. Zald and McCarthy, “The Future of Social Movements,” in Mayer Zald and John D. McCarthy, eds., *Social Movements in an Organizational Society*, New Brunswick: Transaction Publishers, 1987, p.323.

69. In the case of the women’s movement, Freeman contends that “before any social movement could develop among women, there had to be created a structure to bring potential feminist sympathizers together.” Jo Freeman, “On the Origins of Social Movements,” in Jo Freeman, ed., *Social Movements of the Sixties and Seventies*, New York & London: Longman, 1983, pp.2,18.

70. The major exception to this rule are the rights associations which emerged as a result of International Year for Human Rights, which are discussed in chapter eleven.

71. Zald and McCarthy, “The Trend of Social Movements in America,” p.339. Carroll argues that SMOs do not “necessarily evolve into bureaucracies. A bureaucratic structure may yield technical expertise but be less effective at mobilizing at the ‘grassroots.’ A decentralized structure may be more effective at mobilizing the grassroots but less able to make timely strategic interventions.” Carroll, p.10.

72. Becki L. Ross, *The House that Jill Built: A Lesbian Nation in Formation*, Toronto: University of Toronto Press, 1995, p.54.

73. William K. Carroll and R.S. Ratner, “Sustaining Oppositional Cultures in ‘Post-Socialist’ Times: A Comparative Study of Three Social Movement Organisations,” *Sociology* (Vol.35, No.3, 2001): 605-29.

74. Miriam Smith, “Interest Groups and Social Movements,” in Michael Whittington and Glen Williams, eds., *Canadian Politics in the 21st Century*, 6th ed., Toronto: Thomson Nelson, 2004, pp. 219-20.

75. Naomi Black, “The Canadian Women’s Movement: The Second Wave,” in Sandra Burt, Lorraine Code, and Lindsay Dorney, eds., *Changing Patterns: Women in Canada*, 2nd ed., Toronto: McClelland and Stewart, 1993.

76. Magnusson details some of the strategies the Raging Grannies have adopted to promote a culture of pacifism: “Their weapon is as harmless and powerful as the

Amnesty letter: song and dance. They perform as a group at peace rallies and other suitable occasions, dressing up in Victorian costumes and singing songs of peace and social protest. At times, they act out their protests theatrically: once they sang their peace songs to an American submarine from a canoe. On another occasion, they rented a caleche, rode up to the gates of the naval base, and asked to put flowers on the guns. On yet another, they journeyed with other peace activists to a small island in Nanoose Bay, north of Victoria, and pelted it with oyster shells, in symbolic protest against the shelling of an unoccupied Hawaiian Island during a Canadian naval exercise." Warren Magnusson, "Critical Social Movements," in Alain-G. Gagnon and James P. Bickerton, eds., *Canadian Politics: An Introduction to the Discipline*, Peterborough: Broadview Press, 1990, p. 533.

77. Francis Fox Piven and Richard A. Cloward have forwarded one of the most authoritative studies of the relationship between SMOs and social movements, and the role of the former. Their historical study of several social movements in the United States, including the civil rights movement, led them to conclude that movements are far more influential when they are unorganized, grass-roots, mass-based movements. Eventually, however, out of these movements will emerge organizations which claim to speak on behalf of adherents to the movement. Elites, both economic and political, encourage the formation of these organizations which are far easier to control and manage than mass-based movements. No development better demonstrates the mainstreaming of radical protest into controlled reformism than the use of electoral politics to mainstream the civil rights movement. According to Piven and Cloward, protest lost legitimacy as electoralism absorbed the energies of black activists, many of whom gained prestige or influence through political action. Francis Fox Piven and Richard A. Cloward, *Poor People's Movements: Why They Succeed, How They Fail*, New York: Pantheon Books, 1977.

78. Stephen W. Beach. "Social Movement Radicalization: The Case of Poor People's Democracy in Northern Ireland," *Sociological Quarterly* (Vol.18, No.3, Summer 1977): 305-18; William A. Gamson, *The Strategy of Social Protest*, Homewood: Dorsey Press, 1975; Roberta Ash Garner and Mayer N. Zald, "Social Movement Organizations: Growth, Decay and Change," in Mayer Zald and John McCarthy, eds., *Social Movements in an Organizational Society*, New Brunswick: Transaction Publishers, 1987; Joseph R. Gusfield, "Social Movements: The Study," in David Stills, ed., *International Encyclopedia of the Social Sciences*, v. 14, New York: Macmillan, 1968.

79. David P. Gillespie, "Conservative Tactics in Social Movement Organizations," in Jo Freeman, ed., *Social Movements of the Sixties and Seventies*, New York & London: Longman, 1983.

80. William K. Carroll and R.S. Ratner, "Social Democracy, Neo-Conservatism and Hegemonic Crisis in British Columbia," *Critical Sociology* (Vol.16, No.1, 1989): 5. Laurel Sefton MacDowell and Bryan Palmer have recently engaged each other over the implications of the post war settlement. For more information, refer to: Bryan Palmer, "Renegades: J.L. Cohen, Bill Walsh, and the tragedies of the Canadian Left," *Journal of Canadian Studies* (Vol.37, No.1, Spring 2002): 207-224; Bryan Palmer, *Text of the keynote speech delivered by Professor Bryan Palmer on May 7 at the Alberta Federation of Labour membership forum*, 2004; Laurel Sefton MacDowell, *Renegade Lawyer: The Life of J.L. Cohen*, Toronto: University of Toronto Press, 2001, pp. 291-300.
81. According to Piven and Cloward, "unionization ritualizes and encapsulates the strike power, thus limiting its disruptive impact on production, and limiting the political reverberations of economic disruptions as well. And the unions themselves have never exerted direct influence in electoral sphere comparable to the electoral influence of the worker's movement in the 1930s." Piven and Cloward, p. 174.
82. Some of the more notable critics of contemporary working class movements include: Alberto Melucci, *Nomads of the Present- Social Movements and Individual Needs in Contemporary Society*, Philadelphia: Temple University Press, 1982; Claus Offe, "Challenging the boundaries of institutional politics: social movements since the 1960s," in Charles S. Maier, *Changing boundaries of the political: essays on the evolving balances between the state and society, public and private in Europe*, New York: Cambridge University Press, 1987; Alain Touraine, *The voice and the eye- An analysis of social movements*, Cambridge: Cambridge University Press, 1978.
83. Bob Russell, "Reinventing a Labour Movement?" in Carroll, ed., *Organizing Dissent*, p. 117.
84. Some scholars have challenged the characterization, particularly among new social movement theorists, of labour as an 'old' social movement and postmaterialist movements as 'new.' For more information, refer to: Craig Calhoun, "'New Social Movements' of the Early Nineteenth Century," *Social Science History* (Vol. 17, No. 3, Fall 1993): 385-427.
85. William K. Carroll and R. S. Ratner, "Old Unions and New Social Movements," *Labour/LeTravail* (Vol.35, Spring 1995): 195.
86. Although she does not deal directly with the concept of fordism, Meg Luxton has recently published an interesting article in which she discusses organized labour's involvement in women's issues and the women's movement: Meg Luxton, "Feminism as a Class Act: Working Class Feminism and the Women's Movement in

Canada,” *Labour/Le Travail* (Vol.48, Fall 2001): 63-88. Several articles also deal with the issue of labour as a social movement in: William K. Carroll, ed., *Organizing Dissent: Contemporary Social Movements in Theory and in Practice, Studies in the Politics of Counter-Hegemony*, Toronto: Garamond Press, 1997.

87. Stasiulis, p. 455.

88. Frank Scott, *Essays on the Constitution- Aspects of Canadian Law and Politics*, Toronto: University of Toronto Press, 1977, p. 71.

89. Reg Whitaker, and Gary Marcuse, *Cold War Canada: The Making of a National Insecurity State: 1945-1957*, Toronto: University of Toronto Press, 1994, p. 11.

90. Norman Penner, *The Canadian Left: A Critical Analysis*, Scarborough: Prentice-Hall of Canada, 1977, p. 69.

91. Canada, Statutes, *An Act to Amend the Criminal Code*, 1919, c.46.

92. An unlawful association was defined as any organization “whose professed purpose ... is to bring about any governmental, industrial or economic change within Canada by use of force, violence or physical injury to person or property, or by threats of such injury, or which teaches, advocates, advises or defends the use of force, violence, terrorism, or physical injury to person or property.” Canada, Statutes, *An Act to Amend the Criminal Code*, 1919, c.46, s.97A(1).

93. Scott, *Essays on the Constitution*, p. 50.

94. Thomas R. Berger, *Fragile Freedoms: Human Rights and Dissent in Canada*, 2nd ed. Toronto: Irwin Publishing, 1982, p. 135.

95. The CPC recorded 4810 members in 1922 and 4000 by 1931. Scott, *Essays on the Constitution*, p. 55.

96. In *R. v Buck*, the defendants argued that the CPC did not advocate the overthrow of the government by force but simply predicted this outcome as stated in the teachings of Marx and Lenin. The appellate court did not accept this distinction as an acceptable defence against the provisions of Section 97. D.A. Schmeiser, *Civil Liberties in Canada*, Toronto: Oxford University Press, 1964, pp. 217-8.

97. J. Petryshyn, “A.E. Smith and the Canadian Labour Defence League,” (PhD, University of Western Ontario, 1977), p. iv.

98. In 1934 A.E. Smith, leader of the CLDL, was charged with sedition when he publicly accused Prime Minister R.B. Bennet of ordering an attempt on Tim Buck's life in prison. Buck, leader of the CPC, was still serving his sentence for having been convicted under Section 97. The Smith trial provoke a large, and negative, public response. CLDL affiliates and international supporters provided money for the trial, lawyers from Manitoba and the United States assisted in the case, and demonstrations followed by petitions greeted the trial. A split also occurred within the Ontario wing of the Co-Operative Commonwealth Federation (CCF), with half the organization wanting to support Smith while others, supported by the national CCF, was adamantly opposed. Petryshyn, chapter eight.
99. Larry Hannant, *The Infernal Machine: Investigating the Loyalty of Canada's Citizens*, Toronto: University of Toronto Press, 1995, p. 222.
100. Ross Lambertson, "Activists in the Age of Rights: The Struggle for Human Rights in Canada, 1945-60," (PhD, University of Victoria, 2000), pp.37-8.
101. Québec, *An Act Respecting Communist Propaganda*, R.S.Q. 1937, c.11.
102. Schmeiser, p. 218.
103. Berger, *Fragile Freedoms*, p. 141.
104. Canada, 1950, *Proceedings of the Special Committee on Human Rights and Fundamental Freedoms*, p. 222.
105. National Archives of Canada [NAC], Frank Scott Papers, MG30 D211, vol.9, CCLU constitution.
106. Hannant, p. 220.
107. Lambertson, "Activists in the Age of Rights," pp. 38-9.
108. Members of the Montreal CCLU were predominantly anglophone, from Montreal and middle class. They held four meetings per year. Laurin, p. 22.
109. Ramsay Cook, "Canadian Freedom in Wartime," in W.H. Heick and Roger Graham, eds., *His Own Man: Essays in Honour of A.R.M. Lower*, Montreal: McGill-Queen's University Press, 1974, p. 38.
110. Whitaker and Marcuse, p. 4.

111. Whitaker and Marcuse, pp. 7-8.
112. Whitaker and Marcuse, p. 7.
113. Ramsay Cook, "Canadian Civil Liberties in Wartime," (MA, Queen's University, 1955), pp. 220-2.
114. NAC, Royal Canadian Mounted Police Papers, RG146, vol.2883, Canadian Civil Liberties Association- copies of agent reports from rally and newspaper coverage, 1942.
115. Cook, pp.190-1; Lambertson, "Activists in the Age of Rights," p. 40.
116. Lambertson, "Activists in the Age of Rights," pp. 40-1.
117. Petryshyn, p. 55.
118. Penner, p. 158.
119. For more information on the oriental experience in British Columbia, refer to: W. Peter Ward, *White Canada Forever: Popular Attitudes Toward Orientals in British Columbia*, Montreal & Kingston: McGill-Queen's University Press, 1990.
120. Lambertson, "Activists in the Age of Rights," p. 95.
121. The Cooperative Committee for Japanese Canadians was able to raise thousands of dollars to fund a challenge to the Supreme Court of Canada and, following its defeat, to the Judicial Committee of the Privy Council in England. In court, the Committee argued that the orders referred only to aliens and not British citizens, and any attempt to banish nationals based on their racial origin was a violation of international law. There were also questions raised about the vagueness of the term 'Japanese race'. Neither the Supreme Court nor the Judicial Committee agreed with the arguments presented by the Committee. In a unanimous decision passed down on 20 February 1946, the Supreme Court found the orders *intra vires* the powers of the federal government under the War Measures Act except in the case of wives and children under sixteen years of age, which the court could not bring itself to condone for deportation. In the Matter of a Reference as to the Validity of Orders in Council for the 15th Day of December 1945 (PC7355, 7356, 7357), in Relation to Persons of the Japanese Race, [1946] S.C.R. 248.
122. Scott, *Essays on the Constitution*, p. 192.

123. Canada, *War Measures Act*, Revised Statutes of Canada (R.S.C.) 1927, c.206.
124. Gouzenko remained under the protection of the RCMP for the next several months; nothing was said publicly of the defection and no one was arrested under after PC6444 was passed. When the War Measures Act was revoked in December 1945 and special wartime powers continued under the National Emergency Transition Powers Act to deal with postwar reconstruction, only two sets of orders-in-council continued in operation: PC6444 and the deportation orders. However, PC6444 and the defection remained top-secret, and when John Diefenbaker asked the Minister of Justice Louis St. Laurent in January 1946 if any other orders-in-council passed under wartime powers were still in operation, St. Laurent replied negatively. He would later claim, after the defection became public, to have forgotten about PC6444. Whitaker and Marcuse, p. 58.
125. Initially, King avoided making it public that they had a Russian defector. From the moment of Gouzenko's defection, King was loath to go public, concerned it would damage already shaky relations between the USSR and the West. He eventually announced the defectors' nationality following the presentation of an interim report by the espionage commission in March 1946.
126. Back, Badeau, Nora and Grey were codenames assigned to the suspects. NAC, Records of the Department of Justice, RG 13, vol.2119, 2121, top-secret memorandum from E.K. Williams to Mackenzie King on 5 December 1945.
127. NAC, Records of the Department of Justice, RG 13, vol.2119, 2121, top-secret memorandum from E.K. Williams to Mackenzie King, 5 December 1945.
128. The conditions under which the prisoners were held and the commission's procedures are explored in the following: Canada, 1946. *Report of the Royal Commission to Investigate the Disclosures of Secret and Confidential Information to Unauthorized Persons*, Sections 2 and 11. **[Report]**; June Callwood, *Emma*, Toronto: University of Toronto Press, 1988; Gordon Lunan, *The Making of a Spy*, Toronto: Robert Davies Publishing, 1995.
129. David Shugar to John Diefenbaker, 9 March 1946, NAC, John Diefenbaker Papers, MG26-M, vol. 82, p. 65326.
130. Canada, *An Act Respecting Witnesses and Evidence*, R.S.C. 1927, c.59.
131. Canada, 1946, *Royal Commission to Investigate Facts Relating to and the Circumstances Surrounding the Communication, by Public Officials and Other Persons in Positions of Trust of Secret and Confidential Information to Agents of a*

Foreign Power, pp.672-3. The final suspects were released on 29 March 1946 and the commission tendered its final report on 26 June 1946. On 17 April 1947 the second last spy trial was concluded (the final trial would have to wait until 1949 upon the capture of Sam Carr, who had fled to the United States). Fred Rose, Member of Parliament, was sentenced to six years in jail. Eighteen people in total were charged with conspiracy to violate the Official Secrets Act. With the reversed onus of proof requiring defendants to prove their innocence (another issue which riled civil liberties activists), combined with Gouzenko's testimony and witness confessions before the commission, eleven people were sentenced to prison terms. Without the commission's evidence, gained through extraordinary measures, it is unlikely so many convictions could have been assured.

132. Lucie Laurin's research on the Montreal CCLU suggests that the stress of the Padlock Act and the Defence of Canada Regulations effectively strangled the organization. However, Larry Hannant has recently argued that the leaders of the Montreal CCLU suspended its operations as part of the communists' strategy of supporting the government in its war effort following the German invasion of the USSR. Laurin, p.35; Hannant, pp. 236-7.

133. Lambertson, "Activists in the Age of Rights," p. 172.

134. Dominique Clément, "Spies, Lies and a Commission, 1946-8: A Case Study in the Mobilization of the Canadian Civil Liberties Movement," *Left History* (Vol. 7, No.2), pp. 64-5.

135. NAC, J. King Gordon Papers, MG30 C241, vol.19, f.15, copy of agenda for meeting of civil liberties organizations, 28 December 1946.

136. NAC, Arthur Roebuck Papers, MG32 C68, vol.1, f.15, copy of speech and agenda for civil rights rally, 27 January 1947.

137. Frank K Clarke, "Debilitating Divisions: The Civil Liberties Movement in Early Cold War Canada, 1946-8," in Gary Kinsman, ed., *Whose National Security? surveillance and the creation of enemies in Canada*, Toronto: Between the Lines, 2000, p. 177.

138. As quoted in Clarke, p. 174.

139. Clément, "Spies, Lies and a Commission," pp. 65-7.

140. NAC, Records of the Department of External Affairs, RG25, vol.2081, f. AR 13\13; NAC, Records of the Department of Justice, RG 13, vol.2119, vol.2121; NAC,

John Diefenbaker Papers, vol.82, p. 65442.

141. For further details on the debate in Parliament, refer to: Dominique Clément, "The Royal Commission on Espionage and the Spy Trials of 1946-9: A Case Study in Parliamentary Supremacy," *Journal of the Canadian Historical Association* (2000), pp. 168-70.

142. Lambertson, "Activists in the Age of Rights," p. 171.

143. NAC, J. King Gordon Papers, MG30 C241, vol.19, f.15, "Report of a Fact-Finding Committee," report produced by the Ottawa Civil Liberties Association; NAC, Records of the Department of Finance, vol.349, f. 101-85-24, "'Justice and Justice Only?' A draft memorandum on the fourth report of the Kellock-Taschereau commission," memorandum produced by the Emergency Committee for Civil Rights (Toronto).

144. Frederick W. Gibson, *Queen's University-V.II (1917-1961)*, Kingston: Queen's University Press, 1983, pp. 281-2.

145. Canada, Hansard Parliamentary Debates, 1946, vol.1, p.92; 1947, vol.2, pp. 1330-3.

146. *R v Mazerall*, [1946] 2 Criminal Reports (CR) (Ontario High Court- O.H.C.).

147. Justice McDougall, ruling on the case of Raymond Boyer and taking into consideration the existence of a crisis and the exigencies of war, believed the "normal and salutary safeguards surrounding the admissibility of evidence against an accused charged with dereliction of his duty as a citizen, are not to be stringently applied, with the result that the range of admissibility is inevitably enlarged or widened. ... War time emergency sets a pattern of conduct alien to the usual amenities of peaceful existence, which may impinge upon the common rights and liberties of the subject. It can scarcely be otherwise when the very life of the nation is in jeopardy. *R v Boyer*, [1948] 7 CR 295 (Quebec Court of King's Bench).

148. Toronto Daily Star, 16 April 1946.

149. Gallup Poll of Canada- The Canadian Institute of Public Opinion, July 1949, CIP191.

150. Paul Axelrod, *Scholars and dollars : politics, economics and the universities of Ontario, 1945-1980*, Toronto: University of Toronto Press, 1982.

151. Lambertson, "Activists in the Age of Rights," pp. 316-7.
152. Lambertson, "Activists in the Age of Rights," pp. 478-493.
153. NAC, John Diefenbaker Papers, vol. 9, pp.6830, 7833-6843, pamphlet of the League for Democratic Rights, 1952.
154. Bryan Palmer, *Working Class Experience: Rethinking the History of Canadian Labour, 1800-1991*, Toronto: McClelland & Stewart Inc., 1992, pp. 291, 297.
155. Irving Abella, *Nationalism, Communism and Canadian Labour: the CIO, the Communist Party and the Canadian Congress of Labour*, Toronto: University of Toronto Press, 1973, p. 163.
156. Ontario, *Racial Discrimination Act*, Statutes of Ontario (S.O.) 1944, c.51.
157. Ruth Frager and Carmela Patrias, "'This Is Our Country, These Are Our Rights': Minorities and the Origins of Ontario's Human Rights Campaigns." *The Canadian Historical Review* (Vol.82, No.1, March 2001), pp. 17-8.
158. The history of the labour committees is discussed in: Ross Lambertson, "The Dresden Story: Racism, Human Rights, and the Jewish Labour Committee of Canada," *Labour/Le Travail* (Vol.47, Spring 2001): 43-82.
159. Palmer, p. 266.
160. Lambertson, "The Dresden Story," pp. 48-9.
161. Lambertson, "The Dresden Story," pp. 62-4.
162. Ontario, *An Act to Ensure Fair Remuneration to Female Employees*, S.O. 1951, c.26; Ontario, *An Act to Promote Fair Employment Practices in Ontario*, S.O. 1951, c.24; Ontario, *The Conveyance and Law of Property Amendment Act*, S.O. 1950, c.11; Ontario, *The Labour Relations Act*, S.O. 1950, c.34; Lambertson, "The Dresden Story," pp. 65-8.
163. Ontario, *An Act to Promote Fair Accommodation Practices in Ontario*, S.O. 1954, c.28; Ontario, *An Act to Promote Fair Employment Practices in Ontario*, S.O. 1951, c.24.
164. Manitoba (1953), Nova Scotia (1955), New Brunswick (1956), British Columbia (1956) and Saskatchewan (1956) passed Fair Employment Practices legislation, and Quebec became the seventh province to ban discrimination in

employment in 1964. The first Fair Accommodation Practices Act was passed in Ontario in 1954, with Saskatchewan (1956), New Brunswick (1959), Nova Scotia (1959), Manitoba (1960) and British Columbia (1961) soon doing the same. British Columbia enacted a more restricted statute in 1961 while Quebec avoided passing Fair Accommodation Practices legislation entirely, but did add a section to the Hotels Act to forbid discrimination in hotels, restaurants and camping groups. Walter Surma Tarnopolsky, *Discrimination and the Law*, Toronto: Richard DeBoo Limited, 1982, pp. 27-8.

165. Canada, 1960. *Special Committee on Human Rights and Fundamental Freedoms*.

166. Canada, Statutes, *An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms*, Statutes of Canada 1960, c.44.

167. Ross Lambertson, "The Dresden Story: Racism, Human Rights, and the Jewish Labour Committee of Canada," *Labour/Le Travail* (Vol.47, Spring 2001), p. 61.

168. Lambertson, "The Dresden Story," p. 75.

169. Ian A. Hunter, "The Origin, Development and Interpretation of Human Rights Legislation," Humphrey, John P. and Macdonald, R.St.J., eds., *The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms*, Toronto: Butterworth & Co., 1979, p. 79.

170. Walker, "Race," *Rights and the Law in the Supreme Court of Canada*, p. 31.

171. Article one of the Charter also committed the United Nations to "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion," and article fifty-five promised to promote full employment, economic and social progress, cultural and educational cooperation, and health.

172. United Nations, *Universal Declaration of Human Rights*, 1948; United Nations, *International Covenant on Civil and Political Rights*, 1964; United Nations, *International Covenant for Economic, Social and Cultural rights*, 1964.

173. Marc Bossuyt, "International Human Rights Systems: Strengths and Weaknesses," in Kathleen E. Mahoney and Paul Mahoney, eds., London: Martinus Nijhoff Publishers, 1993, p. 47. Writing in the late 1980s, Louis Henkin points out the impressive accomplishments of the international human rights movement in only

forty years: "Human rights are in the constitution of virtually every state. All states have recognized the idea of human rights and have accepted their articulation in the Universal Declaration; most states are parties to some of the principal international instruments, and at least half of the world's states (including most of the major powers, but not the United States) are parties to the principal, comprehensive covenants. Although the UN human rights program is still politicized, its human rights bodies- the Human Rights Commission and its Subcommission on Discrimination and its work group- increasingly consider charges of violation by more countries and seek to bring about improvement. Regional human rights systems, in Europe and also in Latin America, are at work and have contributed to significant ameliorations in the condition of human rights in various countries." Louis Henkin, *The Age of Rights*, New York: Columbia University Press, 1990, pp. 26-7.

174. For a list of various international human rights treaties, refer to: Thomas Buergenthal, "The Normative and Institutional Evolution of International Human Rights," *Human Rights Quarterly* (Vol. 19, No.4, 1997): 704, 709.

175. Walker, "Race," *Rights and the Law in the Supreme Court of Canada*, pp. 15, 32.

176. The decision to avoid the American experience with a Bill of Rights was "not surprising if one considers the traditions and training of those who were lawyers amongst the Fathers of Confederation. If they were asked what our fundamental freedoms included, they would have referred to speech, press, religion, assembly, association, probably such legal rights as right to habeas corpus and to a fair public trial. Perhaps they would have stressed the rule of law in its terms as a principle of the British constitution, and perhaps they would have emphasized freedom of contract and rights to property." NAC, Walter Tarnopolsky Papers, MG31 E55, vol.31, f.14, speech before the Conference of Human Rights Ministers in Victoria, 8 November 1974.

177. Canada, *Hansard Parliamentary Debates*, vol.1, 1945, p. 900.

178. Despite the recommendations of its sub-committee, the Canadian Bar Association chose to avoid supporting the call for a bill of rights. In its presentation before the 1960 committee on the Diefenbaker bill of rights the Canadian Bar Association rejected the Bill because the division of powers made it uncertain as to who possessed the jurisdiction to protect civil liberties. It also opposed a constitutionally entrenched bill of rights because many of the Canadian Bar Association's members felt rights were best protected by elected members of Parliament as opposed to the courts. Canadian Bar Association, *The 1944 Yearbook of the Canadian Bar Association and the Minutes and Proceedings of its Twenty-*

Seventh Annual Meeting,” Ottawa: National Printers Limited, 1944; Canada, 1960. *Special Committee on Human Rights and Fundamental Freedoms*, pp. 107-8.

179. The final part of his motion, dealing with tribunals, was based on Diefenbaker’s disgust with the tactics employed by the espionage commission in 1946. Canada, *Hansard Parliamentary Debates*, vol.11, 1947, pp. 1214-5.

180. A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, London: St. Martin’s Press, 1962, pp. 39-40.

181. Canada, *Hansard Parliamentary Debates*, vol.4, 1947, pp. 3214-6.

182. Canada, *Hansard Parliamentary Debates*, vol.4, 1947, pp. 3215.

183. The Alberta Bill of Rights proposed, among other things, to guarantee the right to work and pensions. In order to ensure its provisions, the legislation would require the provincial government to take control of institutions of credit, notably banks. This was a clear violation of federal jurisdiction over banking and the Supreme Court of Canada found the entire statute *ultra vires*. Alberta, *The Bill of Rights Act*, Statutes of Alberta, 1946, c.11; Reference re Alberta Bill of Rights Act [1946], 3 Western Weekly Reports (Alberta Court of Appeal).

184. Canada, 1960. *Special Committee on Human Rights and Fundamental Freedoms*, p. 191.

185. NAC, J. King Gordon Papers, MG30 C241, vol.19, f.15, copy of agenda for meeting of civil liberties organizations, 28 December 1946.

186. For further information on Canada’s role at the United Nations in the passing of the Universal Declaration of Human Rights, refer to: William A. Schabas, “Canada and the Adoption of the Universal Declaration of Human Rights,” *McGill Law Journal* (Vol.43, 1998): 403-441.

187. Both quoted in: Scott, *Essays on the Constitution*, p. 214.

188. Canada, 1950. *Proceedings of the Special Committee on Human Rights and Fundamental Freedoms*, pp. 122-3.

189. Canada, *Hansard Parliamentary Debates*, 1947, vol.2, p. 3146.

190. John Humphrey spoke for the United Nations and its pioneering efforts in the field of human rights advocacy; R.G. Riddell of External Affairs reviewed Canada’s new international obligations as a member of the United Nations; and, F.P. Varcoe,

Deputy Minister of Justice, discussed the legal implications of a establishing more stringent human rights protections in Canada. Canada, 1947. *Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms*.

191. Canada, 1947. *Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms*, pp. 114-34.

192. Canada, *Hansard Parliamentary Debates*, 1948, vol.2, p. 2845.

193. The following groups made representations before the committee in addition to the individual presentations by Frank Scott, F.V. Varcoe (Deputy Minister of Justice) and J. King Gordon (United Nations Division of Human Rights): Association for Civil Liberties (Toronto), National Council of Women, National Council of Jewish Women in Canada, Canadian Jewish Congress, Canadian Congress of Labour, League for Democratic Rights, Young Men's Christian Association, Canadian Association for Adult Education, Vancouver CCLU, Trades and Labour Congress, Toronto World Federalists, Department of External Affairs, Committee for the Repeal of the Chinese Immigration Law, Canadian Committee for a Bill of Rights, United Jewish People's Order, Civil Liberties Union of Montreal, Church of England in Canada, Windsor Interracial Council, Save the Children Fund, National Japanese-Canadian Citizen's Association and the Co-ordinating Committee on Canadian Youth Groups.

194. Canada, 1950. *Proceedings of the Special Committee on Human Rights and Fundamental Freedoms*, p. 37.

195. Canada, 1950. *Proceedings of the Special Committee on Human Rights and Fundamental Freedoms*, p. 198.

196. Canada, 1950. *Proceedings of the Special Committee on Human Rights and Fundamental Freedoms*, p. 89.

197. Canada, 1950. *Proceedings of the Special Committee on Human Rights and Fundamental Freedoms*, p. 174.

198. Following the limited success of the 1947 and 1948 committees, Roebuck decided to force the government to act by introducing into the Senate a bill to create a federal Bill of Rights. He soon retracted the bill following an agreement which would see the implementation of a Senate committee to recommend how the Canadian government could act to better protect rights in Canada and to consider a draft bill of rights.

199. The Padlock Act (a repressive piece of anti-communist legislation in Quebec) was symbolic of the political difficulties involved in any attempt to entrench a bill of rights. In 1937 the Liberals, with their large support base in the province of Quebec, had refused to disallow or even refer the Padlock Act to the courts, although they did not hesitate to do so with Alberta's social credit legislation. When the UDHR was being negotiated in 1948, Canada had abstained in the early stages on voting on the Declaration and nearly refused to vote in its favour before the General Assembly. The pretext for not initially supporting the UDHR was the uncertainty regarding provincial jurisdiction. William Schabas has challenged the claim that provincial rights explained King and St. Laurent's misgivings towards the UDHR. He believes that they were concerned about minorities like communists or Jehovah's Witnesses using the UDHR as a platform for challenging government policy and to embarrass the government by claiming protection under the UDHR. William A. Schabas, "Canada and the Adoption of the Universal Declaration of Human Rights," *McGill Law Journal* (Vol.43, 1998): 403-441; NAC, Arthur Roebuck Papers, MG32 C68, vol.1, f.23, letter from Roebuck to Irving Himel, 28 June 1950.

200. Canada, *Hansard Parliamentary Debates*, vol.5, 1960, p. 5651.

201. Liberal Party, *The Liberal Party of Canada*, Ottawa: National Liberal Federation of Canada, 1957; Liberal Party, *New Statements of Liberal Policy: Resolutions Adopted by the Fourth National Liberal Convention in Ottawa, January 14-16, 1958*, Ottawa: National Liberal Federation of Canada, 1958.

202. Canada, *Hansard Parliamentary Debates*, vol.5, 1960, p. 5666.

203. The Bill of Rights passed in 1960 was comparable to provincial legislation in Saskatchewan (1947), Alberta (1972) and Quebec (1975). Each was a regular statute, vulnerable to override by a future Parliament or legislature. All four referred to the five basic freedoms: religion, speech, assembly, association and press. The Saskatchewan, Quebec and federal bills provided for protection against arbitrary arrest and detention, while the Alberta, Quebec and federal bills required equality before the law and the right to not be deprived of property without due process of law. Each piece of legislation, as well as Stewart and Diefenbaker's motions, encompassed some form of due process rights. Alberta, Statutes, *Alberta Bill of Rights*, 1972, c.A-14; Canada, Statutes, *Canadian Bill of Rights*, 1960, c.44; Saskatchewan, Statutes, *Saskatchewan Bill of Rights Act*, 1947, c.35.

204. Cited by Hazen Argue in: Canada, *Hansard Parliamentary Debates*, vol.5, 1960, p. 5667.

205. Anne F. Bayefsky, *Canada's Constitution Act of 1982 & Amendments: A Documentary History*, Toronto: McGraw-Hill Ryerson Limited, 1989, p. 54.
206. Canada, 1972. *Special Joint Committee of the Senate and House of Commons on the Constitution of Canada- First Report*, pp. 18-19.
207. Canadian Bar Association, *The 1967 Yearbook of the Canadian Bar Association and the Minutes and Proceedings of its Forty-Ninth Annual Meeting*, Ottawa: National Printers Limited, 1967, p. 239.
208. Ontario, *Racial Discrimination Act*, Statutes of Ontario (S.O.) 1944, c.51.
209. Saskatchewan, *Saskatchewan Bill of Rights*, Statutes of Saskatchewan, 1947, c.35. The only comparable anti-discrimination legislation passed in Canada prior to the 1944 Ontario Racial Discrimination Act would be the 1793 Upper Canada anti-slavery law (superseded in 1833 by Imperial Statute), the 1932 Ontario amendment to Insurance Act preventing discrimination against race or religion, and Manitoba's 1934 amendments to the Libel Act to prohibit group libel or promoting racial antipathy. NAC, Walter Tarnopolsky Papers, MG31 E55, vol.31, f.14, speech before the Conference of Human Rights Ministers in Victoria, 8 November 1974.
210. Walter Tarnopolsky, *Discrimination and the Law*, Toronto: Richard DeBoo Limited, 1982, p. 27.
211. Frank Scott to Gordon Dowding, 20 September 1964, vol.47, NAC, Frank Scott Papers, MG30, D211.
212. Robertson and Rosetanni v The Queen [1963] 42 D.L.R. (Supreme Court of Canada).
213. The Queen v Drybones [1970] S.C.R., p. 297.
214. Walter S. Tarnopolsky, *The Canadian Bill of Rights*, 2nd ed. Toronto: McClelland and Stewart Limited, 1978, pp. 149-50.
215. Attorney General of Canada v Lavell- Isaac v Bédard [1970] S.C.R.
216. In a commentary on the Lavell case that same year, Peter Hogg suggested that there was no need in Ritchie's argument to "construe the vague phrase 'equality before the law' as requiring such a radical result as the abolition of laws enacted by the federal Parliament which employed a racial classification when the use of that classification is essential to the validity of the law under the British North America Act. It is much more plausible to construe the guarantee of equality as not intended to

disturb the federal principle: inequalities between the laws of different legislative bodies within the federation should be deemed not to be inconsistent with equality before the law.” Peter Hogg, “Case and Comments,” *Canadian Bar Review* (Vol.52, No.2, 1974): 268.

217. *Brownridge v The Queen* [1972] S.C.R.; *Duke v The Queen* [1972] S.C.R.; *Curr v The Queen* [1974] S.C.R.

218. *Smythe v The Queen* [1971] S.C.R.

219. As Beverley Baines notes, the “judiciary denied every claim in which women relied on the guarantee of sex equality in the Canadian Bill of Rights. ... Thus, from the perspective of women, the judiciary effectively emptied the guarantee of sex-equality in the Canadian Bill of Rights of any meaning.” Beverley Baines, “Law, Gender, Equality,” in Sandra Burt, Lorraine Code, and Lindsay Dorney, eds., *Changing Patterns: Women in Canada*, 2nd ed., Toronto: McClelland and Stewart, 1993, p. 259.

220. Karl A. Friedmann, “The Ombudsman,” in John P. Humphrey and R.St.J. Macdonald, eds., *The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms*, Toronto: Butterworth & Co., 1979, p. 344.

221. Nova Scotia (1971), Saskatchewan (1972), Ontario (1975) Newfoundland (1975) and British Columbia (1977) passed legislation creating the office of the ombudsman in the 1970s. Newfoundland passed legislation in 1970 for the creation of an ombudsman’s office but a quick change in government led to the legislation remaining unproclaimed. An ombudsman was not appointed until 1975 (and was eliminated in the 1990s). British Columbia also delayed the appointment of its ombudsman. Karl A. Friedmann, “The Ombudsman,” in John P. and Macdonald, R.St.J., eds., *The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms*, Toronto: Butterworth & Co., 1979, p. 347.

222. Ontario, 1968. *Report of the Royal Commission Inquiry into Civil Rights*.

223. J. Patrick Boyer, *A Passion for Justice*, Toronto: The Osgoode Society for Canadian Legal History, 1994, p. 303.

224. Yves Prévost served as member of the Quebec legislature for l’Union Nationale between 1948-1962, and was Minister of Municipal Affairs from 1953-6.

225. More specifically, the commission was mandated to investigate the following issues: the means available to police to fight crime and the police methods of

investigation; the efficiency of provincial laws in criminal and penal matters; treatment towards people charged who were detained after having been charged with a crime; the ability of prisoners to get access to lawyers and the relationship between lawyers and prisoners; and, the expeditiousness in the conduct of affairs before courts in criminal and penal jurisdiction. Quebec, Minister of Justice, *Premier rapport annuel, Ministère de la Justice*, 1967.

226. Nova Scotia followed Ontario in 1962 with its own Human Rights Act but did not appoint a full time director until 1967. Similar legislation was passed by Alberta (1966), New Brunswick (1967), British Columbia (1969), Prince Edward Island (1968), and Newfoundland (1969). Manitoba passed its human rights code in 1970, Quebec in 1975 and the federal government in 1977. Saskatchewan, Newfoundland and Prince Edward Island delayed establishing full time commissions until 1972, 1974 and 1975 respectively (the Saskatchewan commission enforced various anti-discrimination statutes before the code was passed in 1979). With the exception of the Ontario Human Rights Commission, however, most provinces were consistently criticized for having commissions which were underfunded and understaffed. A 1968 report by D.A. Coupland of the Canadian Labour Congress discussing human rights legislation noted not only the lack of resources and staff, but there were some weaknesses with the provisions in the legislation itself. None of the statutes contained political opinion as a category for discrimination (Newfoundland was the first province to include political opinion in its human rights legislation in 1969) and Coupland noted that, in Quebec, women could still not belong to a union if their husbands objected. NAC, Canadian Labour Congress Papers, vol.647, f.13, An Analysis of Human Rights Legislation in Canada, October 1968.

227. Rainer Knopff, *Human Rights and Social Technology: The New War on Discrimination*, Ottawa: Carleton University Press, 1989, p. 46.

228. Knopff, pp. 45-6.

229. John Barnes, "The Law Reform Commission," in John P. and Macdonald, R.St.J., eds., *The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms*, Toronto: Butterworth & Co., 1979, p. 324.

230. NAC, Walter Tarnopolsky Papers, vol.31, f.14, Conference of Human Rights Ministers, 7-8 November 1974.

231. Secretary of State, *Report of the Department of the Secretary of State*, 1977.

232. Walter Tarnopolsky, *The Canadian Bill of Rights*, Toronto: The Carswell Company Ltd., 1966, p. 4.

233. Doug Owram, *Born at the Right Time: A History of the Baby Boom Generation*, Toronto: University of Toronto Press, 1996, p. 260.
234. Myrna Kostash, *Long Way From Home: The Story of the Sixties Generation in Canada*, Toronto: James Lorimer & Company, 1980, p. xxii.
235. Owram, pp. 221-2.
236. Owram, p. 221.
237. According to Myrna Kostash, the “*coup de grâce* was the intervention of the [Company of Young Canadians]. Opacity of motivation, ideology and practice blurred the line between the function of the [Company of Young Canadians] and SUPA, and as SUPA floundered many activists simply went over to [the Company of Young Canadians], thinking to continue there what SUPA had begun.” Kostash, p. 27.
238. By the early 1970s many moderates had abandoned the student movement after violent outbreaks by student protestors in Simon Fraser University and Sir George Williams University. Students had already been admitted to positions in the governance of the university and most universities had established new procedures for discipline to respect legitimate protest activity. Others simply moved on. Owram, p. 288.
239. According to Naomi Black, “the key period for the second wave of the Canadian women’s movement was the years 1967-1970. The activities of the Royal Commission in this period resulted in a significant increase in public awareness of women’s situation. The same period produced women’s liberation and radical feminism in Canada. These latter groups, which drew substantial public attention, can take much of the credit for directing attention to such crucial women’s issues as equal pay, abortion, and violence against women.” Naomi Black, “The Canadian Women’s Movement: The Second Wave,” in Sandra Burt, Lorraine Code, and Lindsay Dorney, eds., *Changing Patterns: Women in Canada, 2nd ed.*, Toronto: McClelland and Stewart, 1993. For more information on feminist organizing in the 1960s, refer to: Nancy Adamson and Linda Briskin and Margaret McPhail, *Feminist Organizing for Change: The Contemporary Women’s Movement in Canada*, Toronto: University of Toronto Press, 1988.
240. With NAC active at the national level, women had a large, national and soon well established vehicle for promoting women’s claims. A Canadian Advisory Council on the Status of Women was established to advise the federal government on women’s issues, and similar organizations were formed at the provincial level.

Unlike the National Council of Women, NAC and the government councils rejected maternal feminism and espoused a rights-based approach to women's issues. This liberal feminism called for equality of opportunity for women and the removal of all forms of institutionalized discrimination.

241. Adamson, Briskin and McPhail, p. 54.

242. Adamson, Briskin and McPhail, p. 55.

243. For more information on LOOT, see: Becki L. Ross, *The House that Jill Built: A Lesbian Nation in Formation*, Toronto: University of Toronto Press, 1995.

244. According to Tom Warner, in the early 1970s "women's centres and organizations were frequently unhappy places for lesbians." It was not uncommon for centres to refuse to hang banners or advertise lesbian-initiatives out of fear of alienating their members. Warner, p. 79.

245. Warner, p. 59.

246. Evelyn Kallen, *Label Me Human: Minority Rights of Stigmatized Canadians*, Toronto: University of Toronto Press, p. 168.

247. Warner, pp. 68-9.

248. Warner, p. 70.

249. The years 1970 to 1974 in particular "stand out as a golden age of activism. ... [T]he foundation for political and social activism was firmly laid, enabling the efforts of the next several years to concentrate on discrimination employment and housing, breaking down loneliness and isolation, and dispelling notions of sin, sickness and deviance." In 1978 the National Gay Rights Coalition was renamed the Canadian Lesbian and Gay Rights Coalition (with 27 member groups across Canada) which became defunct in 1981. Warner, p. 94.

250. References to native political organizations do not include band councils or individual tribes.

251. Of the other two national organizations, the National Indian Youth Council of Canada (1965) was reorganized and changed its name to the National Native Student Association in 1969, and the Canadian Metis Society (1969) organized natives from the four western provinces. Don Whiteside, "Historical Development of Aboriginal Political Associations in Canada," report prepared for the Secretary of State, August 1973.

252. For more information on the Secretary of State's funding programs, refer to: Leslie Pal, *Interests of State: The Politics of Language, Multiculturalism, and Feminism in Canada*, Montreal & Kingston: McGill-Queen's University Press, 1993.
253. David Long, "Culture, Ideology, and Militancy: The Movement of Native Indians in Canada, 1969-91," in William K. Carroll, *Organizing Dissent: Contemporary Social Movements in Theory and Practice*, Toronto: Garamond Press, 1992, p. 121.
254. Long, p. 123.
255. Long, p. 130.
256. Robin Winks, *The Blacks in Canada: A History*, 2nd ed., Montreal & Kingston: McGill-Queen's University Press, 1997, p. 458.
257. According to Dorothy Moore, the Nova Scotia Association for the Advancement of Coloured People was founded in 1946 and "began to work on removing the various barriers which kept Blacks from participating in society; they stressed the need for improvements in education, and publicised and resisted specific instances of discrimination such as segregated seating arrangements in cinemas. This organization, together with the Church, can be viewed as the main leaders of the Black community well into the 1960s." Moore, p. 395.
258. Black activists were becoming increasingly assertive during the 1960s and employed unconventional tactics to have their message heard. As Moore notes, there were "one or two street demonstrations, a concert tour by the Freedom Singers from the souther United States, and increasingly serious 'rap sessions' which involved three visits by Black Panthers, the Stokeley Carmichael visit, and the formation of a group called the Afro-Canadian Liberation Movement. By this time, older members of the Black community, as well as the Whites, were throughly alarmed about the possibility of violence erupting from such events." Moore, p. 396.
259. Gus Wedderburn to David Orlikow, 24 February 1969, NAC, Jewish Labour Committee Papers [JLC], MG28, V75, vol. 41, n.1.
260. Pal, p. 14
261. The Prisoners' Rights Committee was a wing of the Ligue des droits de l'homme and is discussed further in chapter nine.

262. Warner, p. 131.
263. Adamson, Briskin and McPhail, p. 65.
264. Nancy Adamson, "Feminists, Libbers, Lefties, and Radicals: The Emergence of the Women's Liberation Movement," in Joy Parr, ed., *A Diversity of Women: Ontario, 1945-1980*, Toronto: University of Toronto Press, 1995, p. 265.
265. As quoted in: Adamson, p. 255.
266. Warner, p. 160.
267. Walker, "Race," *Rights and the Law in the Supreme Court of Canada*, p. 320.
268. Walker, "Race," *Rights and the Law in the Supreme Court of Canada*, p. 319.
269. Walker, "Race," *Rights and the Law in the Supreme Court of Canada*, p. 302.
270. Jack Donnelly, *The Concept of Human Rights*, London & Sydney: Croom Helm, 1985, p. 22.
271. Ignatieff also suggests that Canada's rights culture is unique because it is one of the few countries that has legislated on how to break the federation apart. Michael Ignatieff, *The Rights Revolution*, Toronto: House of Anansi Press Ltd, 2000, pp. 7-8.
272. Ignatieff, pp. 89, 118.
273. Cynthia Williams, "The Changing Nature of Citizen Rights" in Alan Cairns and Cynthia Williams, *Constitutionalism, Citizenship and Society in Canada*, Toronto: University of Toronto Press, 1985, p. 124.
274. Alan Cairns and Cynthia Williams, "Constitutionalism, Citizenship and Society in Canada: An Overview," in Alan Cairns and Cynthia Williams, *Constitutionalism, Citizenship and Society in Canada*, Toronto: University of Toronto Press, 1985, p. 18.
275. Neil Stammers, "Social Movements and the Social Construction of Human Rights," *Human Rights Quarterly* (Vol.24, No.4, 1999): 1006-7.
276. Walker, p. 309.
277. Confederation of National Trade Unions and the Centrale de l'enseignement du Québec, *The History of the Labour Movement in Québec*, Montreal: Black Rose

Books, 1987, p. 194.

278. Confederation of National Trade Unions and the Centrale de l'enseignement du Québec, pp. 191-2.

279. Pierre Vallières, *White Niggers of America*, Toronto: McClelland and Stewart Ltd., 1971, p. 21.

280. Vallières, p. 21.

281. Socialist rhetoric was central to the ideology of the FLQ. Its manifesto, broadcast by the private radio station CKAC on 6 October 1970, referred to the FLQ as a group of "Quebec workers". It established the FLQ as a group dedicated to "achieve the total independence of the people of Quebec to have them united in a free society, without the clique of ravenous sharks, the 'big bosses' of business and politics, and their lackeys, who have turned Quebec into their private preserve of cheap labour and unscrupulous exploitation." It rejected the British Parliamentary system and the Parti Québécois as viable forums for solving Quebec's grievances. Louis Fournier, *F.L.Q. - The Anatomy of an Underground Movement*, Toronto: NC Press Ltd., 1984, pp. 223-4.

282. John T. Saywell, *The Rise of the Parti Québécois, 1967-1976*, Toronto: University of Toronto Press, 1977, p. 57.

283. The Confédération des travailleurs catholiques du Canada becoming the Confédération des syndicats nationaux in 1959-60 and the Corporation des instituteurs et institutrices catholiques changing its name to the Centrale de l'enseignement du Québec in 1967. Confederation of National Trade Unions, *Quebec Labour: The Confederation of National Trade Unions Yesterday and Today*, Montreal: Black Rose Books, 1972, p. 21.

284. Michael D. Ornstein and H. Michael Stevenson, "Elite and Public Opinion Before the Quebec Referendum: A Commentary on the State in Canada," *Canadian Journal of Political Science* (Vol.14, No.4, December 1981): 774.

285. William D. Coleman, *The Independence Movement in Quebec, 1945-1980*, Toronto: University of Toronto Press, 1984, p. 226.

286. Jeff Sallot, *Nobody Said No- The Real Story About How the Mounties Always Get Their Man*, Toronto: James Lorimer and Company, 1979, p.92; Jean-François Cardin, *Comprendre Octobre 1970: Le FLQ, La Crise et le Syndicalisme*, Montréal: Éditions du Méridien, 1990, pp. 78-9.

287. Fournier, p. 102.
288. Fournier, pp. 150-3.
289. According to Bernard Dagenais, "ils ont forcé les Québécois à une prise de conscience individuelle et collective qui pourrait bien devenir le prélude à une prise de position. En obligeant la population à réfléchir et à s'interroger, les felquistes se sont gagné une certaine sympathie et même une complicité certaine au niveau des principes qu'ils défendent, dans plusieurs couches de la société, du moins." Bernard Dagenais, *La crise d'octobre et les médias: le miroir à dix faces*, Outremont: VLB Éditeur, 1990, p. 187.
290. The fundamental divide between Lemieux and the government revolved around what terms to negotiate. While the government, represented by lawyer Robert Demers, was only interested in considering ways of peacefully releasing the hostages, Lemieux wanted to negotiate the release of political prisoners. Dagenais, p. 201.
291. Dagenais, p. 69.
292. In an interview with Canadian Broadcasting Company (CBC) in 1975, Bourassa admitted that he never truly believed an actual insurrection was at hand, but he used that specific language to provide an incentive and justification for the federal government to use the War Measures Act. Mannon Leroux, *Les Silences D'Octobre- Le Discours Des Acteurs de la Crise de 1970*, Montreal: VLB Éditeur, 2002, pp. 74-5.
293. For more information on the events surrounding the October crisis, refer to: Eric Bédard, *Chronique d'une insurrection appréhendée- Le crise d'Octobre et le milieu universitaire*, Sillery: Les Éditions du Septentrion, 1998; Bernard Dagenais, *La crise d'octobre et les médias: le miroir à dix faces*, Outremont: VLB Éditeur, 1990; Louis Fournier, *F.L.Q.- The Anatomy of an Underground Movement*, Toronto: NC Press Ltd., 1984; Mannon Leroux, *Les Silences D'Octobre- Le Discours Des Acteurs de la Crise de 1970*, Montreal: VLB Éditeur, 2002.
294. Those allowed to fly safely to Cuba were as follows: Jacques Lanctôt, March Carbonneau, Pierre Séguin, Lactôt's wife and son, and Jacques Cosette-Trudel and his wife. Dagenais, pp. 266-7.
295. Among those arrested were separatists and people active in organizations of the Left, including Leftists elements within the Parti Québécois, Comité d'action politique, Mouvement pour la défense des prisonniers politiques du Québec, Front d'action politique and others. Approximately 20-30 percent of those arrested were militant unionists. Jean Francois Cardin, *Comprendre Octobre 1970: Le FLQ, La*

Crise et le Syndicalisme, Montréal: Éditions du Méridien, 1990, pp. 81-2.

296. Fournier, p. 247, 271. In February 1975, a lawyer representing Claude Samson, one of the individuals arrested, detained and released without charge, was given \$16 000 in damages. In contrast, the 104 which were recommended for compensation by the provincial ombudsman received only \$400. Pauline Julien, a singer, also received a minor victory in 1978 when the Minister of Justice and the Sûreté du Québec announced publicly that her arrest was a mistake, and provided her with a symbolic \$1 in compensation. Leroux, p. 64.

297. Due to restrictions imposed by the police on the media, the death of Pierre Laporte was delayed in being made public until approved by the police. Dagenais, p. 147.

298. For further details on the English language press reaction to the FLQ crisis and the use of the War Measures Act, see chapters eight through eleven. Evening Telegram, 19 October 1970; Globe and Mail, 20 October 1970; Vancouver Sun, 19 October 1970.

299. Dagenais, p. 141.

300. According to Jean-Francois Cardin, *Le Devoir* stood out among other papers in the province in its outspoken opposition to the government's tactics: "Contravenant aux autres grands journaux, qui rivalisèrent d'autocensure et se rangèrent en bloc derrière le gouvernement en oubliant leur sens critique, Le Devoir conserva une ligne de pensée fort différente, même après l'adoption de la Loi des mesures de guerres." Cardin, p. 97.

301. One of the spokesman for the Fédération des travailleurs du Québec, Jean-Gérin Lajoie, made some prescient statements on 12 October 1970 in anticipation of the crisis' potential to impact on fundamental freedoms: "Le terrorisme risque d'entraîner la perte des libertés fondamentales. ... On sait que certains moyens nous mènent trop loin et qu'ils provoquent un danger de répression. Le résultat du terrorisme est que les gens sont prêt après un certain temps, à n'importe quelle folie policière pour retrouver la paix." Cardin, p. 94.

302. Cardin, pp. 126-7.

303. Bédard, pp. 67-8.

304. Bédard, pp. 70-2, 81-2.

305. UQAM remained closed until 21 October 1970. Bédard, pp. 95-8.
306. Bédard, p. 121.
307. Globe and Mail, 27 October 1970; Montreal Star, 20 October 1970; Vancouver Sun, 26 October 1970.
308. Bédard, pp. 134-5.
309. The reporter who covered the story noted in their column that it was highly irregular for the Quebec Provincial Police to operate outside their jurisdiction, but that no one from the Quebec Provincial Police was willing to comment on the irregularity. Ottawa Citizen, 20 October 1970.
310. Bédard, p. 125, 138.
311. Canadian Bar Association, *The 1971 Yearbook of the Canadian Bar Association and the Minutes and Proceedings of its Fifty-Third Annual Meeting*, Ottawa: National Printers Limited, 1971, p. 107.
312. It is also interesting to note that, unlike the espionage commission where the *Canadian Bar Review* published a scathing attack on the commission in a piece written by Fyfe, nothing appeared in the journal on the October crisis.
313. Ottawa Citizen, 16 November 1970.
314. Gérard Pelletier, *The October Crisis*, Toronto: McClelland and Stewart, 1971, p.152.
315. Globe and Mail, 18 October 1971.
316. Speaking to a Montreal audience in 1972, Michael Rubinstein, current president of the Jewish Labour Committee, said that the original purposes of the human rights committees of the Trades and Labour Council and Canadian Congress of Labour in 1948 were the following: "Le principal objectif de ces comités était d'entreprendre une activité éducative au niveau de la section locale, ainsi que dans la collectivité elle-même, d'organiser des conférences sur les droits de l'homme, en vue de promouvoir à l'intérieur du mouvement syndical un sentiment de compréhension et de sympathie envers les problèmes des groupes minoritaires, de protéger les syndiqués et les syndicats eux-mêmes d'être victimes de la bigoterie et de la discrimination. Enfin, le dernier objectif était d'organiser une activité et de promouvoir un appui et un intérêt dans une action législative contre tout type de discrimination." NAC, JLC, MG28, V75, vol.38, f.1, discours prononcé par Michael

Rubinstein, à la conférence provinciale pour un code des droits de l'homme tenue à Montréal, 2 December 1972.

317. NAC, JLC, MG28, V75, vol.13, f.12, Summary Report of the NCHR, 26 July 1961. Fighting racial discrimination remained the cornerstone of labour's human rights program into the 1960s. For instance, David Orlikow, a federal New Democratic Party (NDP) MP from Manitoba and secretary of the NCHR in 1964, noted in his correspondence that the NCHR limited itself to issues of racial and religious discrimination. David Orlikow to H Christianson, 17 November 1964, vol.14, f.9, NAC, JLC, MG28, V75.

318. Tom Mombourquette to Sid Blum, 11 October 1957, vol.40, f.7., NAC, JLC, MG28, V75.

319. Canadian Labour Reports, Vol.15, No.12, December 1960.

320. Pat Kerwin, interview by Dominique Clément, 2 July 2003.

321. NAC, Ontario Labour Committee for Human Rights Papers, MG28 I173, vol.1, f.20, National Committee on Human Rights, no date.

322. Pat Kerwin, interview by Dominique Clément, 2 July 2003.

323. Frank Scott, *Essays on the Constitution- Aspects of Canadian Law and Politics*, Toronto: University of Toronto Press, 1977, p. 356.

324. Alan Borovoy to Max Awner, 21 January 1966, vol.6, f.2, NAC, Ontario Labour Committee for Human Rights Papers, MG28, I73.

325. NAC, JLC, MG28, V75, vol.2, f.7, memorandum to the national executive of the JLC from Alan Borovoy on the future character of our work, n.d.

326. Alan Borovoy, interview by Dominique Clément, 12 March 2004.

327. Borovoy's salary disputes were a long standing problem between him and the JLC. As early as 1964 he wrote to Orlikow, then Director of the JLC, that he had "been reflecting further about the problem of personal finances and income. I have changed my mind. I would like, at this point, to renew my original request for an addition to my salary of \$2000 per year. Let the chips fall where they may." Later, when appointed Director of the JLC, Borovoy complained about his salary to the Canadian Jewish Congress which was providing funds for the Director's salary and requested a raise to total \$13 000. Alan Borovoy to David Orlikow, 17 December 1964, vol.43, f.10, NAC, JLC, MG28, V75; Alan Borovoy to Michael Rubinstein, 21

June 1968, vol.43, f.14, NAC, JLC, MG28, V75.

328. David Orlikow to Michael Rubinstein, 4 July 1968, vol.10, f.8, NAC, JLC, MG28, V75. Orlikow was able to reestablish a working relationship between the NCHR and the JLC in 1969, but it is clear the relationship between the two organizations had become strained. Annual grants to the JLC dropped from \$2000 to \$1000 and eventually, by the time Pat Kerwin was appointed secretary of the committee, this funding was completely cut off and there was little or no interaction between the two organizations. Patrick Kerwin, interview by Dominique Clément, 2 July 2003; David Orlikow to Michael Rubinstein, 4 July 1969, vol.9, f.21, NAC, JLC, MG28, V75; David Orlikow to S. Liberman, 30 June 1971, vol.10, f.4, NAC, JLC, MG28, V75.

329. A detailed discussion on the evolving demographics of Canada's Jewish community is available in: Robert J. Brym, "The Rise and Decline of Canadian Jewry?" in Robert J. Brym, William Shaffir, and Morton Weinfeld, *The Jews in Canada*, Toronto: Oxford University Press, 1993.

330. James Walker, "The 'Jewish Phase' in the Movement for Racial Equality in Canada," *Canadian Ethnic Studies* (Vol.34, No.1, 2002), p. 12.

331. Canadian Bar Association, *The 1967 Yearbook of the Canadian Bar Association and the Minutes and Proceedings of its Forty-Ninth Annual Meeting*, Ottawa: National Printers Limited, 1967, p. 273.

332. Canadian Bar Association, *The 1969 Yearbook of the Canadian Bar Association and the Minutes and Proceedings of its Fifty-First Annual Meeting*, Ottawa: National Printers Limited, 1969, p. 298.

333. Canadian Bar Association, *The 1970 Yearbook of the Canadian Bar Association and the Minutes and Proceedings of its Fifty-Second Annual Meeting*, Ottawa: National Printers Limited, 1970, p. 86.

334. William Black, interview by Dominique Clément, 20 June 2002; Walter Thompson, interview by Dominique Clément, 1 June 2003; Ed Webking, interview by Dominique Clément, 26 August 2003; Norman Whalen, interview by Dominique Clément, 4 April 2002

335. For more information on the Canadian Bar Association's position on constitutionally entrenched rights, see: Committee on the Constitution, Canadian Bar Association, *Towards a New Canada*, Ottawa: Canadian Bar Association, 1978.

336. By 1969 the CCLA had convinced rights associations in Nova Scotia and Manitoba to affiliate with promises of financial support, and two new chapters were formed in Fredericton and London (the latter also died of inactivity but was revived later on as an independent organization). Chapters in London, Fredericton and Manitoba simply adopted the CCLA's name unlike the Nova Scotia Civil Liberties and Human Rights Association. By 1970 two additional chapters were formed in Hamilton and Regina. Out of eight chapters, five remained by 1972 but were generally weak and only partially active with the exception of the Nova Scotia group which continued to meet regularly until its demise in 1976. NAC, Kalmen Kaplansky Papers, MG30, A53, vol.7, f.3, A Brief Historical Analysis of the Development of Human Rights and Civil Liberties Associations in Canada, 6 June 1972; Sidney Midanik to Gerard Pelletier, n.d., NAC, Canadian Civil Liberties Association Papers, R9833, vol.181, f.23.

337. Human Rights, Vol.2, October 1976.

338. None of the civil liberties and human rights group under study here received any grants from the Foundation. NAC, Frank Scott Papers, MG30, D211, vols.44-5, minutes of the Board of Directors for the Canadian Human Rights Foundation, 17 December 1968.

339. Kaplansky to Tarnopolsky, 12 August 1968, vol.6, f.12, NAC, Kalmen Kaplansky Papers, MG30, A53.

340. Of the 88 activists interviewed, 73 were in favour of a national organization and only four against (eleven unresponsive). Maurice Miron, *A Canadian Organization for Human Rights- Report of a Canada-Wide Survey*, Canada Welfare Council, March 1970.

341. NAC, Canadian Labour Congress Papers, MG28, I103, vol.662, f.16, 1971 Annual General Meeting of the National Capital Region Civil Liberties Association, 27 March 1971.

342. NAC, Canadian Labour Congress Papers, MG28, I103, vol.662, f.16, report of the National Capital Region Civil Liberties Association, February 1971.

343. Nicholas Pawley to members of the Union of Human Rights and Civil Liberties Associations, 30 October 1970, Université de Québec à Montréal [UQAM], Service des archives et de gestion des documents [SAGD], Fond Ligue des droits et libertés [LDL], 24P2b/12.

344. NAC, Canadian Labour Congress Papers, MG28, I103, vol.662, f.16, NCR CLA executive committee report, 4 January 1971.
345. Eamon Park to Don Whiteside, 18 November 1970, UQAM, SAGD, LDL, 24P2b/9; Don Whiteside to Eamon Park, no date, UQAM, SAGD, LDL, 24P2b/9.
346. National Bulletin, Vol.1, No.2, August 1972.
347. Law Society of British Columbia Archives [LSBCA], British Columbia Civil Liberties Association Papers [BCCLA], Democratic Commitments (monthly newsletter of the BCCLA), No. 17, April 1971; No. 21, July 1972; No. 22, August 1972.
348. National Newsletter, Vol.1, No.2, August 1972.
349. Ligue des droits de l'homme, *Loi sur la protection de la vie privée- Bill C-176*, 22 June 1973; National Bulletin, Vol.3, No.3, May 1974; Rights and Liberties, No.16, January 1975.
350. Ed Webking, interview by Dominique Clément, 26 August 2003; Canada, *Proceedings of the Special Joint Committee on the Constitution of Canada* (1980-1), RG 14, D4, Acc 90-91/119, Box 62, Wallet 10, brief of the Canadian Federation of Civil Liberties and Human Rights Associations.
351. NAC, Special Joint Committee on the Constitution 1980-1 Papers, RG 14, D4, Acc 90-91/119, Box 5, Wallet 1- Draft First Report.
352. Ross Lambertson, interview by Dominique Clément, 26 August 2003.
353. John Dixon, "The Porn Wars" in John Russell, ed., *Liberties*, Vancouver: New Star Books, 1989, p. 26.
354. According to James Dybikowski (BCCLA Board of Directors, 1970-1975, and president, 1977-1979) and John Russell (BCCLA Executive Director, 1980-8), the Federation was never a priority for the BCCLA. In fact, the BCCLA rarely devoted much energy to working through the Federation. James Dybikowski, interview by Dominique Clément, 1 December 2004; Bert Riggs, interview by Dominique Clément, 15 July 2003; John Russell, interview by Dominique Clément, 23 December 2004; Jerry Vink, interview by Dominique Clément, 11 March 2002; Webking, interview.
355. Webking, interview; Vink, interview; Norville Getty, interview by Dominique Clément, 14 October 2003.

356. NAC, Department of the Secretary of State, RG6, vol.661, f.2-2-4, Memorandum to Cabinet- Confirmation of Citizenship Branch Role, February 1968.
357. Pal, p. 85.
358. Pal, p. 90.
359. NAC, Department of the Secretary of State, RG6, vol.661, f.2-2-4, Memorandum to Cabinet- Confirmation of Citizenship Branch Role, February 1968.
360. Secretary of Treasury Board (no name) to G.F. Davidson (Deputy Minister of Citizenship and Immigration), NAC, Department of the Secretary of State Papers, RG6, V.661, f.2-2-4, 31 September 1962.
361. Despite the regulation, two organizations were granted sustaining grants: the Canadian Citizenship Council and the Indian-Eskimo Association, each receiving \$15 000. Pal, p. 107.
362. NAC, Department of the Secretary of State Papers, RG6, vol.661, f.2-2-4, A New Focus for the Citizenship Branch, August 1965.
363. NAC, Department of the Secretary of State Papers, RG6, vol.661, f.2-4-8, statement of grants for citizenship promotion, 15 March 1966.
364. The Secretary of State operated a network of sixteen regional offices in various urban areas in each province (except Prince Edward Island) to promote its funding programs and publications. In 1968, in conjunction with the International Year for Human Rights, the Branch produced a flyer entitled 'Human Rights Review' and distributed 15 000 copies. Secretary of State, *Report of the Department of the Secretary of State*, 1967-8.
365. Pal, p. 108.
366. Leslie Pal, *Interests of State: The Politics of Language, Multiculturalism, and Feminism in Canada*, Montreal & Kingston: McGill-Queen's University Press, 1993.
367. NAC, Secretary of State Papers, RG6, Acc.1986-87/319, vol.145, f.17-1, memorandum to cabinet, October 1968.
368. The files of the Newfoundland-Labrador Human Rights Association do not specify how much of the \$15 000 came from the SOS human rights program and how much from the Opportunities for Youth Program. It is likely the bulk of these funds were for the latter.

369. In 1976 the Newfoundland Labrador Human Rights Association hired four students to survey residents in four regions across Newfoundland and Labrador (Labrador, West, Central and South) on their level of awareness on human rights issues. The Opportunities for Youth program was transferred from SOS to the Department of Manpower and Immigration in 1973. Newfoundland-Labrador Human Rights Association, *Human Rights Survey*, March 1976.
370. Secretary of State, *Report of the Department of the Secretary of State*, 1973.
371. LSBCA, BCCLA, vol.2, f.1, brief on the community information project, 1975.
372. Judy LaMarsh to Sidney B Linden, NAC, Department of the Secretary of State, RG6, vol.661, f.2-4-7.
373. UQAM, SAGD, Fonds LDL, 24P5/12, financial records, 1977.
374. A report commissioned by the group concluded that "none of the possible private sources of funding were willing to commit themselves and that most of the militant groups are operating on a shoe-string budget. It would appear obvious, therefore, that such a national organization could come into being only through massive public support." NAC, Kalmen Kaplansky Papers, MG30, A53, vol.7, f.1, minutes of the meeting of the executive committee of the Canada Council on Human Rights, 18 April 1970.
375. Reg Robson to Jacques Hébert, 10 September 1971, UQAM, SAGD, LDL, 24P2b/16.
376. One of the Federation's advantages was having Don Whiteside as treasurer and later president. He had worked for the Secretary of State in the Citizen Rights and Freedoms Section as a Senior Planning Officer with Strategic Planning while he was active in the CLA NCR and thus was highly familiar with government funding programs.
377. Most of the Federation's members were unable to pay the expense of a flight to the annual general meeting; if it had not been for government grants many of the associations would never have attended the meeting, the most important event of the year for the Federation. Designed primarily as a networking agency among rights associations, the meeting was as crucial as the newsletter in communicating among groups. At one point, the BCCLA, the Federation's second largest member behind the Ligue des droits de l'homme, notified the Federation that it would be unable to send a delegate to the meeting without government support. LSBCA, BCCLA, vol.2,

minutes of the executive council, 3 April 1978.

378. LSBCA, BCCLA, vol.2, minutes of the executive council, 3 April 1978.

379. National Bulletin, Vol.2, No.4, August-September 1973.

380. *Criminal Code of Canada* [C.C.C.], s.159.

381. Statistics on Freedomite activities available in: Simma Holt, *Terror in the Name of God: The Story of the Doukhobours*, Toronto: McClelland and Stewart Ltd., 1964, p. 8.

382. The Fraternal Council of the Sons of Freedoms was the leadership council of the sect, a group providing moral and theocratic guidance.

383. George Woodcock and Ivan Avakumovic, *The Doukhobours*, Toronto: Oxford University Press, 1968, p.352; C.C.C., S.C., 1953-4, s.51.

384. There is no evidence to indicate who called the meeting and why, although the initiative is linked to a decision by a group of academics and lawyers to support those Sons of Freedom charged with conspiracy. LSBCA, BCCLA, vol.3, f.25, Annual General Meeting Minutes and Agendas/Annual Reports, 1963.

385. The 1962 meeting was not the first time the University of British Columbia was linked with the Doukhobour issue. The university's president formed a Doukhobour Research Committee in 1950 to find other ways outside rigid law enforcement as a means of ending Freedomite violence, headed by Harry Hawthorn who later helped found the BCCLA. The report recommended continued repression of violent elements within Doukhobour society, but emphasized the need to respect local customs in areas such as marriage, while removing bans on voting and jail sentences for nude paraders. Woodcock and Avakumovic, pp. 337-9.

386. Holt, pp. 269-70.

387. LSBCA, BCCLA, vol.3, f. 5, Annual General Meeting Minutes and Agendas/Annual Reports, 1963.

388. There was an organization for a brief period of time at the University of British Columbia in the 1940s, a UBC branch of the CCLU, which was active in condemning the deportation of Japanese Canadians and calling for a bill of rights. Lambertson, "Activists in the Age of Rights," pp. 314-5.

389. NAC, Royal Canadian Mounted Police Papers (RCMP Papers), RG146, vol. 2888, Civil Liberties Union- Communist Activities Within- Vancouver, 30 September 1963.

390. LSBCA, BCCLA, vol.3, f.5, Annual General Meeting Minutes and Agendas/ Annual Reports, 1963.

391. NAC, RCMP Papers, RG146, vol. 2888, B.C. Civil Liberties Newsletter, 28 February 1963, 6 June 1963.

392. When the NDP was finally elected in 1972 under David Barrett and until its defeat in 1975, the BCCLA could boast closer ties with the provincial government through its former Board members than any other civil liberties group in Canada. Norman Levi held a variety of cabinet posts including Municipal Affairs and Alex McDonald was appointed Attorney General, a significant link for an organization interested in legal reform. The BCCLA received financial support from the provincial government under the NDP and made regular representations to the Attorney General and other members of government. BCCLA revenues jumped from \$28 000 in 1971 to \$69 000 in 1972, \$95 000 in 1973, and \$145 000 in 1974. The budget increase was largely due to special projects grants by the provincial government, although it received significant support from the federal government as well. LSBCA, BCCLA, vol.4, f. 17-21, Financial Committee Reports and Statements, 1971-1974.

393. LSBCA, BCCLA, vol.3, f.5, Annual General Meeting Minutes and Agendas/ Annual Reports, 1963.

394. Vancouver Sun, 20 December 1962.

395. LSBCA, BCCLA, vol.3, f.5, Annual General Meeting Minutes and Agendas/ Annual Reports, 1963-1970.

396. Section 167 of the Public Schools Act read as follows: "All public schools shall be opened by the reading, without explanation or comment, of a passage of Scripture to be selected from readings approved by the Council of Public Instruction. The reading of the passage of Scripture shall be followed by the recitation of the Lord's Prayer, but otherwise the schools shall be conducted on strictly secular and non-sectarian principles. The highest morality shall be inculcated, but no religious dogma or creed shall be taught." British Columbia, Statutes, *Public Schools Act*, 1944, c.2, s.167.

397. The recommended amendment read as follows: "All public schools shall be conducted on strictly secular and non-sectarian principles. No religious dogma or

creed shall be taught, and no religious practices shall be observed. Nothing in this section shall be interpreted to prohibit the academic study of religion in all its aspects wherever it is appropriate within the school curriculum." LSBCA, BCCLA, vol.11, f.41, Religion in Public Schools, 1968-1973.

398. British Columbia Teacher's Federation Records Management, letter from J.A. Spragg, Executive Assistant of the teachers federation to Vaughan Lyon, Unitarian Church, 11 August 1958.

399. British Columbia Teachers Federation Records Management, Religious Exercises in Schools- Consultative Committee Report, 1964.

400. British Columbia Teachers Federation Records Management, Report of the Committee on Religious Education in Public Schools compiled by A.P. Hewett, Gordon Inglis and D.G. Steeves, 5 December 1968.

401. LSBCA, BCCLA, vol.11, f.41, Religion in Public Schools, 1968-1973, letter from British Columbia Teachers Federation to Hardin, 5 March 1969.

402. The BCCLA supported the position of the Newfoundland-Labrador Human Rights Association in opposing the denominational education system in that province as a violation of freedom of religion. LSBCA, BCCLA, vol.1, f.5, Minutes of the Board of Directors, 12 January 1976.

403. Democratic Commitment, No.1, February 1981.

404. LSBCA, BCCLA, vol.4, f. 1-21, Financial Committee Reports and Statements, 1971-1982.

405. LSBCA, BCCLA, vol.16, f.16-17, Local Initiatives Project- Community Information Project (May 1974), Report to the Board (December 1974) and list of inquiries for 1974.

406. LSBCA, BCCLA, vol.16, f.18., Neighbourhood Action Program- Report of the NAP, September 1965.

407. According to William Black (a former member of the BCCLA executive), members of the community generally resented what they perceived to be the BCCLA and others intruding into their own affairs and few attended the meetings. Black, interview.

408. By 1974 the group was receiving 4000 calls per year and, in 1975, it received 5000 calls to the head office. Field workers in 1975 received 7000 calls, although not

all of these inquiries dealt with civil liberties issues. Democratic Commitment, No. 30, February 1974 and No.1, February 1975.

409. Vancouver Sun, 20 December 1962.

410. NAC, Canadian Civil Liberties Association Papers, vol.4, f.3, Civil Liberties and Human Rights Associations- Report on Voluntary Organizations by Gilles Thériault and Michel Swinwood, 10 March 1972.

411. LSBCA, BCCLA, vol.4, f. 1-21, Financial Committee Reports and Statements, 1971-1982.

412. Between 1971-1978, most of the group's administration costs were covered by a grant from the federal Secretary of State. The grant was denied in 1978 on the basis that the department did not fund 'established' community organizations. After 1978 the Secretary of State increasingly refused requests for core funding by groups such as the Newfoundland-Labrador Human Rights Association and the Federation, although project grants were still provided. LSBCA, BCCLA, vol.1, f.4, Minutes of the Board of Directors, 11 September 1978.

413. LSBCA, BCCLA, vol.17, f.7, Court Cases, Re. Police- Schuck- correspondence between BCCLA and lawyer Marvin Starrow.

414. LSBCA, BCCLA, vol.18, f.19, Legal Defence Fund Expenditures (1979-83).

415. Phil Bryden, "Public Interest Intervention Before the Courts," in John Russell, ed., *Liberties*, Vancouver: New Start Books, 1989.

416. Kenneth Bailey (New South Wales Council for Civil Liberties), interview by Dominique Clément, 4 September 2002.

417. Jamieson et al. v Attorney General of British Columbia, [1971] 5 Western Weekly Reports [W.W.R.] 600 (British Columbia Supreme Court- BCSC).

418. Norman Levi, interview by Dominique Clément, 25 June 2002.

419. Interviewed by Dominique Clément: David Braybrooke, 30 May 2003; Norville Getty, 14 October 2003; Patrick Kerwin, 2 July 2003; Ross Lambertson, 26 August 2003; Walter Thompson, 1 June 2003; Jerry Vink, 11 March 2002; Ed Webking, 26 August 2003; Norman Whalen, 4 April 2002.

420. LSBCA, BCCLA, v.3, f.19, Annual Reports, 1968.

421. Reg Robson to Alan Borovoy, 7 August 1970, v.4, f.2, NAC, CCLA, R9833.
422. Democratic Commitment, No. 18, July 1971.
423. Apart from representatives of the Regina and Winnipeg chapters, the CCLA Board of Directors only had two members from western Canada.
424. Hugh Keenleyside to Eleanor Meslin, 25 May 1973, v.1, f.25, LSBICA, BCCLA.
425. Democratic Commitment, No.30, February 1974.
426. Democratic Commitment, No.1, February 1976.
427. As Keith Banting notes in the introduction to his study of the Canadian welfare state, the “state shapes the contours of modern life. The political landscape of the twentieth century has been transformed by the steady expansion of government, until today few if any economic and social relationships remain completely immune from political decisions.” Keith G. Banting, *The Welfare State and Canadian Federalism*, Kingston: McGill-Queen’s University Press, 1987, p. 1.
428. LSBICA, BCCLA, vol.8-12, Position Papers. The BCCLA’s position papers are also available on-line: www.bccla.org/positions.html
429. LSBICA, BCCLA, vol.12, f.6, Background Position Papers- Social Assistance (1974-5).
430. LSBICA, BCCLA, vol.9, f.8, Position Papers- Labour Code of B.C., Regulations (1974).
431. LSBICA, BCCLA, vol.10, f. 39-40, Background Position Papers- Landlord-Tenants Rights (1968-1974).
432. This approach was also consistent with the Universal Declaration of Human Rights, one of the documents informing the guiding principles in the BCCLA constitution. As a pact among nation states, the UDHR recognized the right of all human beings to access education, social security and employment as rights to be enjoyed within the limits of the law. They were rights derived from the state but placed no direct obligation on the state to act. Even the ICESCR required few actual obligations on its signatories.
433. LSBICA, BCCLA, vol.11, f.43, Background Position Papers- Restrictive Covenants (1968-9).

434. Ku Klux Klan: B.C. Human Rights Code, section 2 (1981).
435. LSBKA, BCCLA, vol.9, f.23, Background Position Papers- Affirmative Action (1977-80).
436. Black, interview.
437. The following is a breakdown of habitual criminal convictions by 1968: Nova Scotia 6, Quebec 7, Ontario 16, Manitoba 14, Saskatchewan 6, Alberta 13, British Columbia 75. Quebec, Commission on enquiry into the administration of justice on criminal and penal matters in Quebec, *Crime, justice and society- volume 3*, 1969, p. 248.
438. LSBKA, BCCLA, vol.10, f.21, Background Position Papers- Habitual Criminals (1964-78).
439. C.C.C., s.611.
440. British Columbia, Statutes, *Vancouver Charter*, Statutes of British Columbia 1953, c.55, s.277.
441. Mark M Krotter, "The Censorship of Obscenity in British Columbia: Opinion and Practice," *University of British Columbia Law Review* (Vol.5, No.1, June 1970): 125.
442. Krotter, p. 127.
443. Other provisions of the Motion Pictures Act included section 8 required the censor's stamp on films before they were sold, section 9 controlled advertising in films by requiring pre-approval through the censor, section 13 allowed the censor to seize films which were in violation of the Act, and section 16 allowed police to enter and inspect cinemas at any time. Krotter, p. 144.
444. Democratic Commitment, No.1, December 1967.
445. There is no information in the BCCLA files on whether or not the defence was successful. Democratic Commitment, No.2, February 1968.
446. Democratic Commitment, No.12, October 1969.
447. The judge held that the by-law fell under the authority of the Municipal and Health Acts. LSBKA, BCCLA, vol.19, f.8, press release by the BCCLA, 1971.

448. Democratic Commitment, No.1, December 1978 and No.1, February 1979.
449. Vancouver Sun, 28 May 1969; Vancouver Sun, 5 June 1969.
450. National Newsletter, Vol.1, No.4, December 1972.
451. L.A. Powe, "The *Georgia Straight* and Freedom of Expression in Canada," *Canadian Bar Review* (Vol. 48, No.2, 1970): 414. Curbing the activities of the license inspectors in Vancouver was one of the BCCLA's major preoccupation in the late 1960s and early 1970s. The amended regulation, however, was only a partial victory; Council continued to allow inspectors to remove licenses for gross misconduct. LSBCA, BCCLA, vol.3, f.16, Minutes of the Annual General Meeting, 1970; vol.2, f.19, publicity policy/press releases, 1972-4; vol.2, f.1, activities and function of the BCCLA, 1973-5; vol.19, f.8, press release by the BCCLA, 1971; Krotter, pp. 127-8.
452. Democratic Commitment, No.13, February 1970.
453. The regulation read as follows: "No political activity of any kind whatsoever shall be carried out or suffered to be carried out by the Exhibitor within the area of the Exhibition. Without prejudice to the generality of the foregoing, no political party, program, theory, interest or idea of any nature whatsoever, and either of a local, national or international nature, shall be promoted, opposed, protested, or in any way whatsoever publicised or permitted to be publicised by an Exhibitor within the Exhibition area. Partisan activity of all kinds is prohibited." Democratic Commitment, No.5, August 1968.
454. BCCLA papers and newspaper coverage only provide partial details on the Pacific National Exhibition affair. Most of the information, including the mediation by Tom Campbell, was covered by the Canadian Broadcasting Corporation's daily television news. Canadian Broadcasting Corporation, transcripts of daily news coverage, February 13-15, 1969.
455. Krotter, p. 125.
456. Jean Barman, *The West Beyond the West: A History of British Columbia*, Toronto: University of Toronto Press, 1991, p. 315. According to a more recent account, "the precise circumstances of *Georgia Straight*'s birth, however, remain the subject of grave dispute and much conjecture. Poets were involved in it. ... The whole thing might have arisen from a discussion that followed a reading by Leonard Cohen at the University of B.C. in February 1967. Some early stalwarts point to a handbill-printed by Bill Bissett's blowpoint press- advertising an open meeting for April 2,

1967, that resulted in serious plans for the foundation of a radical newspaper. Drugs were involved. Confusion persists to this day.” Charles Campbell and Naomi Pauls, *The Georgia Straight: What the Hell Happened?*, Vancouver: Douglas & McIntyre, 1997, pp. 2-3.

457. Powe, p. 411.

458. Powe, pp.420-1; Democratic Commitment, No.1, December 1967.

459. Democratic Commitment, No.6, October 1968.

460. Power, p.427; C.C.C., s.247-67.

461. Campbell and Pauls, p. 3.

462. LSBGA, BCCLA, vol.3, f.17, Minutes of the Annual General Meeting, 1970.

463. *The Grape*, another alternative paper in Vancouver, was critical of the association for not having more women and minorities on its Board of Directors. It further argued, with quotes from a former BCCLA president (unnamed), that the group’s discussions were boring and academic, remote from life and dominated by Americans or ex-Americans (notable in its poor response to the use of the War Measures Act in 1970- Americans know little of Quebec), and concluded that the composition of its Board led them away from key human rights and social welfare issues. *The Grape*, May 23- June 5, 1971.

464. Levi, interview.

465. Regina v McLeod and Georgia Straight Publishing Ltd. [1970] 73 W.W.R. (B.C. Court of Appeal -B.C.C.A.) 221, p. 223.

466. Regina v McLeod and Georgia Straight Publishing Ltd. [1970] 73 W.W.R. (B.C.C.A.) 221, p. 234.

467. Krotter, p. 136.

468. Krotter, p. 151.

469. Powe, p. 433.

470. Vancouver Sun, 14 December 1973.

471. LSBCA, BCCLA, vol.19, f.26, press releases- War Measures Act, no date.
472. According to an announcement in the *Vancouver Sun* using statistics from the Audit Bureau of Circulation, the paper sold 233 156 daily issues and had an estimated reading audience of 700 000, twice the next size competitor (in the west) and three times the top rated television show in Vancouver. *Vancouver Sun*, 1 October 1970.
473. *Vancouver Sun*, 19 October 1970.
474. *Vancouver Sun*, 22 October 1970.
475. *Democratic Commitment*, No. 17, April 1971.
476. None of the attempts by municipal politicians to take advantage of the situation were successful, and Campbell did not act on his threat. *Vancouver Sun*, 20 October 1970. *The Province* editorial suggested that Campbell should not run again in the following election because of his threat to use the War Measures Act against hippies. *The Province*, 24 October 1970.
477. The regulation read as follows: "That it is declared as public policy that no person teaching or instructing our youth in educational institutions receiving Government support shall continue in the employment of the educational institution if they advocate the policies of Le Front Liberation du Quebec, or the overthrow of democratically elected governments by violent means." *Jamieson et al. v Attorney General of B.C.* [1971] 5 WWR (BCSC) 600.
478. It was around this time that Ronald Kirby, a philosophy professor at the University of Victoria, issued a press release supporting the FLQ and blaming Trudeau for Laporte's murder. *Montreal Star*, 22 October 1970; *Vancouver Sun*, 22-23 October 1970.
479. *Vancouver Sun*, 24 October 1970; *The Province*, 24 October 1970.
480. *Jamieson et al. v Attorney General of B.C.* [1971] 5 W.W.R. (BCSC) 600. The BCCLA raised \$2000 to support an appeal, and was working with the endorsement and support of the teachers federation and the Canadian Association of University Teachers.
481. *Democratic Commitment*, No.18, July 1971.
482. LSBCA, BCCLA, vol.3, f.16, AGM Minutes and Agendas, 1970.

483. LSBCA, BCCLA, vol.1, f.5, Minutes of the Board of Directors, 16 April 1976.
484. The events leading up to the riot are described in: British Columbia, 1971, *Report on the Gastown Riot (Dohm inquiry)*.
485. These incidents were recounted in an article in: Vancouver Sun, 9 August 1971.
486. Vancouver Sun, 12 August 1971.
487. The Province, 10 August 1971.
488. Vancouver Sun, 8 August 1971.
489. The Province, 13 August 1971.
490. Vancouver Sun, 2 October 1971.
491. In a letter to the editor the president of the BCCLA, Reg Robson, noted that the BCCLA's position was "that [the Gastown Riot] must be viewed in the context of the overall relationship between our police forces and the wider community they serve." The Province, 14 August 1971.
492. LSBCA, BCCLA, vol.17, f.2, Court Cases, re.: Police, Gastown Riots, The Police and the Community- Implications of the Report of the Commission of Inquiry by Mr. Justice Dohm, December 1971.
493. British Columbia, 1971, *Report on the Gastown Inquiry*.
494. The Province, 8 October 1971.
495. Vancouver Sun, 7 October 1971.
496. Democratic Commitment, No.10, February 1976.
497. P.J. Giffen and Shirley Endicott and Sylvia Lambert, *Panic and Indifference: The Politics of Canada's Drug Laws*, Ottawa: Canadian Centre on Substance Abuse, 1991, p. 359.
498. Giffen, Endicott and Lambert, p. 389.

499. One reason for not proclaiming Part II was the legislation's questionable constitutionality. Part II could have been challenged as a law providing for health care, a provincial responsibility. Giffen, Endicott and Lambert, p. 396.
500. Giffen, Endicott and Lambert, p. 495.
501. Canada, 1973. *Final Report of the Commission of Inquiry into the Non-Medical Use of Drugs*, [LeDain Inquiry], p. 170.
502. Fearing such a move would convince people the drug was safe, another minority report by Ian Campbell recommended a fine for possession of cannabis. Campbell was convinced cannabis should continue to be criminalized. LeDain Inquiry, pp. 252-3, 265-71.
503. Vancouver Sun, 30 October 1960, 21 November 1970.
504. LSBICA, BCCLA, vol.18, f.8-10, Non-Medical Use of Drugs, Brief presented by the BCCLA to the Commission of Inquiry into the Non-Medical Use of Drugs, 20 October 1969; Comments on the Interim Report of the LeDain commission, June 1970; Comments by the BCCLA to the LeDain commission, November 1970.
505. LSBICA, BCCLA, vol.19, f.28, Press Releases (1969-1974), letter to Hon John C Monroe from the BCCLA, 13 August 1969.
506. Reg Robson to Alex MacDonald, 6 December 1973, LSBICA, BCCLA, vol.18, f.6, Summary Conviction Act (1973-8).
507. British Columbia, *Heroin Treatment Act*, Revised Statutes of British Columbia, 1979, c.24.
508. LSBICA, BCCLA, vol.18, f.17, Heroin Treatment Act- Reasons for Judgement (1979)- copy of brief by BCCLA in appeals case on HTA, June 1979.
509. British Columbia, Statutes, *Heroin Treatment Act*, 1978.
510. British Columbia. *Debates of the Legislative Assembly*, 1978, p. 2284.
511. British Columbia. *Debates of the Legislative Assembly*, 1978, p. 2250.
512. British Columbia. *Debates of the Legislative Assembly*, 1978, p. 2276.
513. The legislature in 1978 was composed of 31 Social Credit members, 18 NDP, 1 Liberal and 1 Progressive Conservative.

514. British Columbia. *Debates of the Legislative Assembly*, 1978, p. 2258-60.
515. Vancouver Sun, 15 June 1978.
516. When the NDP was defeated in the 1975 election and the Social Credit party returned to office under W.A.C. Bennett's son, Bill Bennett, the BCCLA faced a government unsympathetic to its cause. Bennett cut funding to community groups including the BCCLA. The funding cuts were not directed at any specific organization but were part of an overall reduction in the government's human rights program, as evinced by the decision to downsize staff and resources for the Human Rights Commission. The Human Rights Act remained intact until 1984 when the Social Credit government removed the 'reasonable cause' section which had allowed for a more expansive application of the legislation. Tom Warner, *A History of Queer Activism in Canada*, Toronto: University of Toronto Press, 2002, p. 154.
517. It was around this time that the BCFL's Human Rights Committee became defunct until 1980 and there is no evidence available suggesting the BCFL was active in the debate.
518. British Columbia. *Debates of the Legislative Assembly*, 1978, pp.2258-60, 2270, 2701; Vancouver Sun, 19 June 1978.
519. There was no doubt about the validity of the federal law. In *R v Hauser* the Supreme Court upheld the Narcotic Control Act under Parliament's residual powers. *R v Hauser* [1979] S.C.R. 984.
520. *Schneider v R.* [1980] 37 British Columbia Law Reports [B.C.L.R.] (British Columbia High Court).
521. *Schneider v R.* [1981] 22 B.C.L.R. (British Columbia Appeals Court).
522. Louis Fournier, *F.L.Q.- The Anatomy of an Underground Movement*, Toronto: NC Press Ltd., 1984, p.237.
523. UQAM, SAGD, LDL, 24P4c/3, letter to Jean Louis Gagnon (no author), May 1963; Globe and Mail, 15 February 1963.
524. UQAM, SAGD, LDL, 24P1/5, minutes of the administrative council, 10 May 1963.
525. NAC, Frank Scott Papers, MG30, D211, vol.46, minutes of founding meeting of LDH, 29 May 1963. The founding members discussed the possibility of developing a national infrastructure. There were plans to open an office in Toronto

and Quebec City and the Law Society of Manitoba requested affiliation. None of the branches, however, ever materialized. UQAM, SAGD, LDL, 24P4c/3, letter to Jean Louis Gagnon (no author), May 1963.

526. NAC, Frank Scott Papers, MG30, D211, vol.46, constitution of the LDH.

527. Laurin, p. 59.

528. UQAM, SAGD, LDL, 24P1/5, minutes of the administrative council, 7 February 1966.

529. NAC, Frank Scott Papers, MG30, D211, vol.46, statement of revenue for LDH, 1964.

530. Education would be organized along confessional lines in Quebec until 1998 when it was reorganized along linguistic lines. UQAM, SAGD, LDL, 24P1/5, minutes of the administrative council, 19 January 1967.

531. Quebec, *Premier rapport annuel, Ministère de la Justice*, 1967.

532. UQAM, SAGD, LDL, 24P6b/1, Dans la Province de Quebec, Quatorze Mille Cause Attendent la Justice- report written by George Wesley on judicial reform, 1962.

533. UQAM, SAGD, LDL, 24P1/5, minutes of the administrative council, 4 May 1967.

534. Archives Nationales du Québec, Fonds de la Commission d'enquête sur l'administration de la justice en matière criminelle et pénale, E142, f.1960-01-521, mémoire de la Ligue des droits de l'homme, 18 May 1967.

535. Ligue des droits de l'homme to Lucien Cardin, 27 July 1965, 24P9d/6, UQAM, SAGD, LDL.

536. UQAM, SAGD, LDL, 24P9d/6, letter from professors at McGill's forensic psychiatric institute to Guy Favreau, 31 May 1965.

537. Face à la justice, Vol.4, No.6, November-December 1981.

538. The groups involved in the coalition included: LDH, United Council for Human Rights, Quebec Criminological Society, Canadian Corrections Association, John Howard Society, Quebec Psychiatric Association, Canadian Mental Health Association, Clinic of Forensic Psychiatry of McGill University, Department of Criminology of the University of Montreal. Joseph Cohen to Lucien Cardin, 21

October 1965, 24P9d/6, UQAM, SAGD, LDL.

539. Lucien Cardin to Joseph Cohen, 4 November 1965, 24P9d/6, UQAM, SAGD, LDL.

540. E.W. Kenrick to L.T. Pennell, 22 March 1966, 24P9d/6, UQAM, SAGD, LDL.

541. UQAM, SAGD, LDL, 24P2a/4, letter from Jacques Hébert to LDL members, 12 March 1964.

542. For example, James Chalmers McRuer, chair of the Ontario Royal Commission on Civil Rights, was invited in 1968 to give a presentation on citizens and the state in Canada to promote greater legislative protections for rights by provinces. UQAM, SAGD, LDL Paper, 24P1/29, minutes of the annual general meeting, 1965-1971.

543. Commission d'enquête sur l'administration de la justice en matière criminelle et pénal au Québec, *La société face au crime, vol.5, omnibus*, 1968, p. 198.

544. NAC, JLC, MG28, V75, vol.38, f.1, conference resolution on a human rights act for Quebec, 2 December 1972.

545. Montreal Star, 26 May 1970.

546. NAC, JLC, MG28, V75, vol.38, f.1, discours prononcé par Michael Rubinstein, à la conférence provinciale pour un code des droits de l'homme tenue à Montréal, 2 December 1972.

547. When the LDH confronted Chôquette about his promise in 1970 to introduce a bill of rights, he refused to do so until after the Gendron Commission submitted its report. According to the minutes of the meetings of the LDH's administrative council, Scott was among those who accepted the need to delay the issue for political considerations because of the explosive potential of the language issue. UQAM, SAGD, LDL, 24P1/8, minutes of the administrative council, 5 April 1972.

548. UQAM, SAGD, LDL, 24P1/5, minutes of the administrative council, 8 February 1968.

549. NAC, Canadian Labour Congress Papers, MG38 I103, v.648, f.1, International Year for Human Rights working paper by Claude Forget, 2-3 November 1968.

550. UQAM, SAGD, LDL, 24P1/5, minutes of the administrative council, 13 March 1969.

551. The federal government had recently entered into negotiations with Lemieux, the FLQ lawyer, and Trudeau was concerned that any action on 15 October would be seen as breaking faith with the negotiations. Delaying the proclamation for one day, which was supported by the police, would at least give the appearance of having negotiated in good faith. NAC, Privy Council Office, RG 2, Series A-5-a, vol.6359, 15 October 1970.

552. NAC, Privy Council Office, RG 2, Series A-5-a, vol.6359, 15 October 1970.

553. NAC, Privy Council Office, RG 2, Series A-5-a, vol.6359, 18 October 1970.

554. Éric Bédard, *Chronique d'une insurrection appréhendée- Le crise d'Octobre et le milieu universitaire*, Sillery: Les Éditions du Septentrion, 1998, pp. 118-9.

555. The memorandum warning journalists about commenting on the crisis read as follows: "Each one of you must be aware of the public concern and anxiety which exists in Canada following the FLQ kidnappings and the bringing into force of the War Measures Act. Each of us should therefore be conscious of the high responsibilities we have as broadcaster to protect the integrity of the CBC and its program services in a period when information and opinion are so important to the community. Accuracy, impartiality, good judgement and respect for the law are essential. At this time let me reiterate the Corporation's policy and tradition which prohibits staff members from taking public positions in matters of current political controversy. I bring this policy to your attention for your guidance. Any infringement of this policy by CBC staff can damage the credibility of the CBC program service and must be avoided. Regular on-air hosts of CBC programs in radio and television are in a specifically sensitive position. Since they are publicly identified with the conduct of the CBC programs they should be advised of the Corporation's policy." (E.S. Hallman, Vice President and General Manager, English Services Division). NAC, Canadian Civil Liberties Association Papers [CCLA], R9833, vol.27, f.3, memorandum to all staff- CBC Policy in Matters of Public Controversy, 28 October 1970.

556. Robert Bouchard to Alan Borovoy, 25 November 1970, NAC, CCLA, R9833, vol.27, f.5.

557. Prisoners who were held incommunicado were not permitted to phone a family member or a lawyer, write letters, be visited by a lawyer or next of kin, or to read anything from the press, including watching a television or listen to a radio.

These provisions were amended on 29 October by the Minister of Justice and prisoners were allowed access to lawyers and family members, although the LDH later argued that in practice many prisoners remained incommunicado for several weeks. *Montreal Star*, 23 December 1970.

558. NAC, CCLA, R9833, vol.123, f.3, presentation du Comité Québécois des liberté, n.d.

559. Bernard Dagenais, *La crise d'octobre et les médias: le miroir à dix faces*, Outremont: VLB Éditeur, 1990, p. 163.

560. Fournier, p. 203.

561. NAC, CCLA, R9833, vol.6, f.23, Citizens Commission of Inquiry into the War Measures Act, press release, 16 April 1971.

562. The members included Trevor Berry (Manitoba Branch, CCLA), Fernand Daoust (Quebec Federation of Labour), Professor Richard Dunlop (University of British Columbia), Professor Laurier Lapierre (McGill), Adele Lauzon (Quebec journalist), Alonzo LeBlanc and Michel Bourdon (Confederation of National Trade Unions), Linda Meissenheimer (student council, Simon Fraser University), John Hanly Morgan (United Church minister) and Woodrow Loyd (former Premier of Saskatchewan).

563. NAC, Canadian Labour Congress Papers, vol.663, f.4, flyer of the Citizens Commission of Inquiry into the War Measures Act.

564. NAC, Frank Scott Papers, vol.46, Declaration de la LDH, 19 October 1970.

565. The statement read as follows: “... la Ligue des droits de l’homme admet que le gouvernement fédéral a agit dans l’interet des citoyens en utilisant, à la demande du gouvernement provincial et des autorités municipales de Montréal, la seule loi existante.” NAC, Frank Scott Papers, vol.46, Declaration de la LDH, 19 October 1970.

566. NAC, Frank Scott Papers, vol.46, press release of the LDH, 27 November 1970.

567. NAC, Frank Scott Papers, vol.46, Declaration of LDH on Loi D’Urgence, 1 April 1971.

568. It is also interesting to note that the BCCLA, in its official declaration on the crisis, did not call for the total revocation of the War Measures Act, only that the

abuse of civil liberties be kept to a minimum. BCCLA to Pierre Elliot Trudeau, 23 October 1970, NAC, CCLA, R9833, vol.123, f.3.

569. Sandra Djwa, *The Politics of Imagination: The Life of F.R. Scott*, Toronto: McClelland and Stewart Ltd., 1987, p. 417.

570. Most of this money went to support families with members in jail. NAC, Frank Scott Papers, MG30, D211, vol.46, Rapport Final du Comité D'Aide Aux Personnes Arrêtés en Vertue des Lois D'Urgence, De la L.D.H., 1971.

571. NAC, Royal Canadian Mounted Police Papers, RG146, vol.2888, information report, 18 December 1970.

572. Montreal Star, 23 December 1970.

573. NAC, Frank Scott Papers, MG30, D211, vol.46, Rapport Final du Comité D'Aide Aux Personnes Arrêtés en Vertue des Lois D'Urgence, De la L.D.H., 1971.

574. As quoted in an article appearing in: Montreal Gazette, 5 April 1971.

575. Le Devoir, 3 April 1971.

576. Montreal Gazette, 5 April 1971.

577. When Hébert had been charged with contempt of court for his book on the hanging of Wilbert Coffin in 1953 in Gaspé, Trudeau had rushed to his friend's defence in court as his lawyer. Montreal Gazette, 5 April 1971. The Montreal Star also described Hébert as a friend of Trudeau. Montreal Star, 9 April 1970.

578. Hébert had been a broadcaster on CBC radio and various television networks for 15 years. Ottawa Citizen, 21 May 1971. A report written for the Secretary of State in 1972 noted that "since Pierre Elliot Trudeau was one of the association's founding members along with Jacques Hébert, now president of La Ligue, and others, and because of the ambiguous stand taken by the association on the War Measures Act, many citizens are not convinced that the group is non-political, as such a group must be." NAC, CCLA, R9833, vol.4, f.3, Civil Liberties and Human Rights Associations- Report on Voluntary Organizations by Gilles Thériault and Michel Swinwood, 10 March 1972.

579. NAC, CCLA, R9833, vol.4, f.3, Civil Liberties and Human Rights Associations- Report on Voluntary Organizations by Gilles Thériault and Michel Swinwood, 10 March 1972.

580. UQAM, SAGD, LDL, 24P2b/14, minutes of the Undersecretary of State's Advisory Committee on Human Rights, 25 January 1971.

581. At one point during the standoff an agitated Frank Scott, walking with a cane and screaming at the protestors, forced his way past the armed men to reach Hébert in his office. Hébert described the incident in an interview a few years later: "He came in, right in, and there was this Reggie Chartrand and the other bouncers that were there with big sticks and he was pushing them around. They allowed it because he was Frank Scott. You know? They couldn't hit him on the head. So he came into the office and he was shouting 'Get out of my way. Who said that I won't get into this place? ... He was raging mad with his cane, tearing apart the signs in front of bouncers with big sticks and he didn't care. ... God, he is a man of courage. He just came to comfort me and to make sure that I was okay. That I didn't need anything. And to say that he was solidaire with me and that I could count on him." Djwa, 417-8.

582. Le Devoir, 25 March 1971. Mongeau replied with his own open letter published in the same paper, refusing to discuss any of the points raised by Hébert and asserted his solidarity with the MDPPQ in its goal of pushing the LDH to become more conscious of developments in the province. Le Devoir, 26 March 1971.

583. Le Devoir, 29 March 1971.

584. Kerwin, interview.

585. Djwa, p. 416.

586. UQAM, SAGD, LDL, 24P6/2, transcripts of interview with Pierre Trudeau on CBC Television show 'Weekend', 16 May 1970.

587. Pierre Trudeau to Pierre Jasmin, 13 July 1971, NAC, Frank Scott Papers, MG30, D211, vol. 47.

588. UQAM, SAGD, LDL, 24P6f/4, mémoire au conseil administration sur l'état de la Ligue, 5 April 1984.

589. UQAM, SAGD, LDL, 24P1/6, minutes of the administrative council, 12 November 1970.

590. UQAM, SAGD, LDL, 24P1/29, minutes of the annual general meeting, 26 April 1971.

591. In 1971 and 1972 the LDH was receiving less than \$1500 in membership dues each year. Funding from the Secretary of State totalled \$24 000 (1973), \$20 000

(1974) and jumping to \$40 000 in 1975. From the provincial Minister of Justice the LDH received \$30 000 (1973), \$30 000 (1974) and \$40 000 (1975). The group also received revenue from several other government ministries including immigration, social affairs and labour while receiving the occasional grant from the Donner foundation (\$34 100 in 1974) and other private agencies for specific research projects. UQAM, SAGD, LDL, 24P5/12, financial statements of the LDH, 31 December 1973, 31 December 1974, 31 December 1975.

592. The files of the LDH provide little information on the group memberships. However, in 1974, a short list of some of these group members was mentioned at the annual meeting which included: Société Saint-Jean-Baptiste; l'Association du Québec pour les déficients mentaux; Conseil des syndicats nationaux; Association des enseignements secondaire; Association des Chefs de police et pompiers de la Province du Québec; Mouvement national des québécois; Fédérations des médecins omnipraticiens du Québec; Centre international de criminologie comparée; Association des institutions de niveaux pré-scolaire et élémentaire du Québec. UQAM, SAGD, LDL, 24P1/32, minutes of the annual general meeting, 22 February 1974.

593. Ligue des droits de l'homme, *Les Droits de l'Homme dans la Société Actuelle*, 27 September 1972.

594. NAC, Frank Scott Papers, MG30, D211, vol. 47, letter from Frank Scott to Maurice Champagne, 30 May 1972.

595. The statement made by Champagne quoted in *Le Devoir* which Scott was concerned with read as follows: "Nous croyons que le gouvernement du Québec ne peut pas justifier le fait que quantité des employés de la fonction publique aient un revenu hebdomadaire inférieur à cent dollars. Dans la société où nous vivons, et compte tenu de l'analyse des salaires des hautes fonctionnaires, cela constitue une injustice et prive nombre de ces employés et de leur dépendants du droit à vivre décemment. La comparaison qui a été faite par le gouvernement lui-même entre la situation de ces employés et celle de secrétaires est odieuse; on pourrait précisément prouver en maints cas que la rémunération de secrétaires est injuste." *Le Devoir*, 17 March 1972.

596. Kenneth McRoberts, *Quebec: Social Change and Political Crisis*, 3rd ed., Don Mills: Oxford University Press, 1993, p. 205.

597. McRoberts, p. 202.

598. Alain G. Gagnon and Mary Beth Montcalm, *Quebec Beyond the Quiet Revolution*, Scarborough: Nelson Canada, 1990, p. 61.
599. According the Saywell, the “economic plan called for total national, regional, and sectoral economic planning, and included abolition of finance companies, strict controls over financial institutions, nationalization of companies such as the Canadian Pacific (but not Bell), rigid controls on foreign investment and foreign-owned companies, and a vastly expended role for public corporations. Social policy in an independent Quebec was to be based on a ‘just’ division of wealth and the complete abolition of poverty, at the root of which was a guaranteed annual income of \$3500, plus \$500 a child and extensions of all forms of financed health care, education, and housing.” Saywell, p. 77.
600. McRoberts, p. 256.
601. In addition to Alain Gagnon, Mary Beth Montcalm, John Saywell and Kenneth McRoberts, Reg Whitaker, Susan Mann Trofimenkoff and Jean-François Cardin also argue that the Parti québécois was a social democratic party. Whitaker suggests that the party was closer to a social-democratic party than any previous provincial party in Québec history. Jean-François Cardin, *Comprendre Octobre 1970: Le FLQ, La Crise et le Syndicalisme*, Montréal: Éditions du Méridien, 1990; Susan Mann Trofimenkoff, *The Dream of a Nation: A Social and Intellectual History of Quebec*, 2nd ed., Montreal & Kingston: McGill-Queen’s University Press, 2002; Reginald Whitaker, “From the Québec Cauldron to the Canadian Cauldron,” in Alain-G. Gagnon, *Quebec: State and Society*, 2nd ed., Scarborough: Nelson Canada, 1993.
602. McRoberts, p. 173.
603. UQAM, SAGD, LDL, 24P1/32, minutes of the annual general meeting, 22 February 1974.
604. Laurin, pp. 99-100.
605. UQAM, SAGD, LDL, 24P2a/12, curriculum vitae of Maurice Champagne.
606. UQAM, SAGD, LDL, 24P1/7, minutes of the administrative council, 22 December 1971.
607. UQAM, SAGD, LDL, 24P6g/1, Les Québécois Ont le Droit de Survivre-Position de la Ligue sur les droits linguistiques au Québec, 26 May 1974.

608. UQAM, SAGD, LDL, 24P6g/1, Les Québécois Ont le Droit de Survivre- Position de la Ligue des Droits sur les droits linguistiques au Québec, 26 May 1974; UQAM, SAGD, LDL, 24P1/8, minutes of the administrative council, 1 December 1972.
609. UQAM, SAGD, LDL, 246g/1, Transformation or Repeal of Bill 22, 27 May 1974
610. UQAM, SAGD, LDL, 24P1/10, minutes of the administrative council, 30 May 1974.
611. UQAM, SAGD, LDL, 24P6q/1, La negation du droit a l'autodetermination dans la campagne electorale- Declaration spéciale du Conseil d'Administration de la Ligue des droits le l'homme, 13 October 1972.
612. Le Devoir, 14 October 1972.
613. NAC, Walter Tarnopolsky Papers, vol.14, f.5, letter from Frank Scott to Tarnopolsky, 30 January 1976.
614. UQAM, SAGD, LDL, 24P1/10, minutes of the administrative council, 30 May 1974.
615. UQAM, SAGD, LDL, 24P1/13, minutes of the administrative council, 5 December 1977.
616. Le Devoir, 12 November 1998.
617. Le Jour, 27 June 1975.
618. UQAM, SAGD, LDL, 24P1/9, minutes of the administrative council, 13 October 1973.
619. UQAM, SAGD, LDL, 24P1/7, minutes of the administrative council, 25 May 1971.
620. UQAM, SAGD, LDL, 24P9a/1, Office des droits des détenus- LDH- Statues, 1973.
621. Raymond Boyer had his own encounter with injustice which may have encouraged his interested in joining a rights association. In 1946 he was one of the suspects arrested and held incommunicado in the Rockliffe Barracks by the espionage commission, and was convicted and sentenced to two years in jail for conspiracy to

violate the Official Secrets Act.

622. Most of the group's early work dealt with individual cases. With about 200 separate dossiers per year, the group would receive complaints from prisoners and in turn contact the officer in charge, send a letter to the institution or call for an injunction or court hearing on a particular case. These usually involved illegal transfers, lack of medical treatment, segregation or abuse of power by parole officers. There was also an educational aspect to its work, through press conferences and working with the media. Face à la justice, Vol.4, No.6, November-December 1981; UQAM, SAGD, LDL, 24P9a/19, summary of LDH activities.

623. Face à la justice, Vol.1, No.2, February 1978.

624. UQAM, SAGD, LDL, 24P1/31, minutes of the annual general meeting, 27 April 1973.

625. Unfortunately, the group was never able to get access to federal prisons in Quebec and its work remained largely provincial in focus. National Bulletin/Bulletin nationale, Vol.3, No.2, March 1974. Pierre Landreville and Astrid Gagnon and Serge Desrosiers, *Les prisons par ici: Droits des détenus au Québec*, Montréal: Editions Parti-Pris, 1976.

626. Face à la justice, Vol.4, No.6, November-December 1981.

627. UQAM, SAGD, LDL, 24P9d/4, declaration of inmates at Parthenais during a hunger strike, 9 July 1974.

628. Pierre Landreville, Astrid Gagnon, Serge Desrosiers, *Les prisons par ici: Droits des détenus au Québec*, Montréal: Editions Parti-Pris, 1976, p. 196.

629. Members of the common front included: Association des parents et amis des détenus, Association du P.Q. Ste-Marie, Associations Les Copains Enrg, Contact Rive Sud, C.S.N., Etape Travail, Maison Saint-Laurent, ODD, Opération Porte Ouverte, Société de Criminology (Région de Montréal), Transformation, C.E.Q. and Tremplin. Landreville, Gagnon, Desrosiers, *Les prisons par ici*, pp. 213-4.

630. Ligue des droits de l'homme, *La Société Québécois face à l'avortement*, Ottawa: Editions Leméac Inc., 1974.

631. Ligue des droits de l'homme, *La Société Québécois face à l'avortement*, Ottawa: Editions Leméac Inc., 1974, p. 47.

632. The process by which the LDH stimulated a widespread public debate over the bill of rights is detailed in: Ligue des droits de l'homme, *La première des lois au Québec- La Charte de la Commission québécois des droits de l'homme*, no date.
633. UQAM, SAGD, LDL, 24P1/8, summary of distribution of charter campaign, no date.
634. UQAM, SAGD, LDL, 24P1/8, Programme d'Animation sur le Projet de Charte et de Commission Québécois des Droits de l'Homme, October 1973.
635. The proposed Article 5 in the LDH draft read as follows: "Les rapports qui s'établissent dans la société québécois entre les personnes, les groupes, les organismes et les pouvoirs publics, constituent l'une des principales conditions d'exercice des droits individuels et collectifs." Ligue des droits de l'homme, *Mémoire de la Ligue des Droits de l'Homme à la Commission Parlementaire de la Justice, sur le loi Project de loi 50, Loi sur les Droits et Libertés de la Personne*, 1975.
636. UQAM, SAGD, LDL, 24P12/8, 'Pourquoi une Charte Québécois des Droits de l'Homme?' speech by Chôquette before the CJC, 31 March 1974.
637. Québec, *Journal des débats*, 1974, vol.15, no.1, p. 1.
638. NAC, Frank Scott Papers, MG30, D211, vol.47, Bilan de Maurice Champagne, sur ses trois années à la Ligue des Droits à titre de directeur général, présenté à l'occasion de l'assemblée général annuelle des membres du 28 mai 1975.
639. Le Jour, 22 January 1975.
640. Le Devoir, 12 November 1998; Le Devoir, 17 June 2000.
641. NAC, Walter S. Tarnopolsky Papers, MG 31 E 55, vol.31, f.14, Conference of Human Rights Ministers, 7-8 November 1974.
642. Québec, *Journal des débats*, 1974, 15, no.71, p. 2755, 2761, 2822.
643. Ligue des droits de l'homme, *Mémoire de la Ligue des Droits de l'Homme à la Commission Parlementaire de la Justice, sur le loi Project de loi 50, Loi sur les Droits et Libertés de la Personne*, 1974.
644. In 1982 the Charter would be amended to apply to all laws in Quebec.
645. UQAM, SAGD, LDL, 24P1/5, minutes of the administrative council, 23 April 1970. According to the minutes of the May 1970 annual general meeting, the

organization planned to publish up to 5000 translated versions of the CCLA booklet. UQAM, SAGD, LDL, 24P1/29, minutes of the annual general meeting, 25 May 1970.

646. The Federation spoke on behalf of the LDH on the most important rights issue of the period, the creation of a constitutional bill of rights, although the fact that the Charter was designed to counter the language policies the LDH favoured undoubtedly discouraged the organization from becoming involved in the consultation process. Maurice Champagne was a vocal critic of the Charter of Rights and Freedoms, although by the 1980s he was no longer a member of the LDH's executive. Champagne believed that the Charter was designed to undermine Quebec's language legislation (Bill 101), and he feared 'judiciariser les droits de la personne' by making the judiciary the final arbiter of competing rights claims. *Le Devoir*, 12 November 1998. Some of the League's work on national issues is discussed in the following: Ligue des droits de l'homme, *Le Viol du Courrier: Beaucoup de Faux Pretextes Mais Aucune Raison Valable- Mémoire sur le Bill C-26 présenté par la Ligue des droits de l'Homme au Comité permanent de la Justice et des questions juridiques*, 31 March 1978; Ligue des droits de l'homme, *La Commission d'Enquête McDonald va-t-elle Protéger la 'Sécurité Nationale' des Gouvernants ou celle des Gouvernés*, October 1977.

647. UQAM, SAGD, LDL, 24P1/13, minutes of the administrative council, 5 December 1977.

648. NAC, Frank Scott Papers, MG30, D211, vol.47, Bilan de Maurice Champagne, sur ses trois années à la Ligue des Droits à titre de directeur général, présenté à l'occasion de l'assemblée général annuelle des membres, 28 May 1975.

649. UQAM, SAGD, LDL, 24P1/9, minutes of the administrative council, 13 October 1973.

650. UQAM, SAGD, LDL, 24P5/2, press release by LDH, 25 November 1976.

651. Within a year the organization was able to recoup its losses through grants from other government agencies and by 1977 could boast a revenue of \$152 636. UQAM, SAGD, LDL, 24P5/12, financial records, 31 December 1976 and 31 December 1977.

652. UQAM, SAGD, LDL, 24P6f/16, minutes of the working committee, 6 April 1976; UQAM, SAGD, LDL, 24P6f/16, Le Bill C-85, Le Ministre de l'Immigration aura-t-il trop de pouvoir si le projet de loi C-85 est sanctionné?, 1976.

653. UQAM, SAGD, LDL, 24P6p/3, press release by LDH, 20 April 1976.
654. Operation Housing-Crisis received 560 calls from angry residents within a period of two months, 68 percent of whom were frustrated with the Commission and only 2 having successfully managed to speak to someone on the phone. On average landlords were raising rent by 20 percent and 200 of the calls alone came from the elderly, welfare recipient and single parents. UQAM, SAGD, LDL, 24P6p/3, press release by LDH, 3 June 1976.
655. UQAM, SAGD, LDL, 24P1/35, minutes of the annual general meeting, 21 May 1977.
656. UQAM, SAGD, LDL, 24P6f/16, press release, no date.
657. Hélène Mailhot to Pierre Cloutier, 27 July 1976, 24P6f/16, UQAM, SAGD, LDL.
658. UQAM, SAGD, LDL, 24P6f/16, Commission des Droits de la Personne, affidavit de Francis Fox SG, no date.
659. UQAM, SAGD, LDL, 24P1/14, minutes of the administrative council, 7 November 1978; 24P3/4, Les droits et libertés sur la Côte Nord- Recherche Action présentée par le Comité régional Côte Nord de la Ligue des droits et libertés, 1979.
660. Opération liberté, Vol.1, No.1, 1978.
661. UQAM, SAGD, LDL, 24P6k/23, Mounting Repression- Its Meaning and Importance in Canada and Quebec.
662. UQAM, SAGD, LDL, 24P9f/4, mémoire au conseil administrative sur: L'Etat de la Ligue, 5 April 1984.
663. In his letter of resignation as a member of the staff in May 1979, Jocelyn Lauzon noted the "absences de leadership au sein du conseil d'administration, la démobilitation de certains de ses membres (démissions, absences aux réunions, etc) et sans doute aussi l'incompréhension des rôles et fonctions de certains membres de la permanence, ont amené à la Ligue et ce progressivement, une lourdeur de fonctionnement et les problèmes qui y sont inhérents." UQAM, SAGD, LDL, 24P1/15, letter of resignation by Jocelyn Lauzon, 29 May 1979.
664. UQAM, SAGD, LDL, 24P1/15, letter from the LDL union of employees to the administrative council, 21 February 1979; 24P1/38, minutes of the annual general meeting, 27 September 1980.

665. UQAM, SAGD, LDL, 24P1/16, letters of resignation by Elizabeth Roussel and André Legault, 25 February 1980. The LDH's problems were highlighted in a 1980 proposal by Marianne Roy, president of the ODD, that the LDH transform itself into a federation. According to Roy, the committees would form the membership and leadership of the organization and have their own budgets and staff. Her proposal was successfully opposed by the staff who pointed out that such a system would result in each of the 11 committees making separate applications for funds to government agencies, with little coordination or direction. Despite this apparent victory for unity, the League was wounded by the departure of its recently formed handicap committee. Frustrated with the association's inability to act and its sinking budget which was taking the handicap committee's finances with it, the committee formally dissociated itself from the LDH in February 1980 and became an independent organization. UQAM, SAGD, LDL, 24P4c/6, LDL: Une Fédération ou un Mouvement, 1980; UQAM, SAGD, LDL, 24P1/16, letter from the handicap committee to the administrative council, 10 February 1980.

666. Face à la justice, Vol.4, No.6, November- December 1981; Hélène Dumont to Rod Blaker, 24 March 1975, 24P9b/7, UQAM, SAGD, LDL.

667. The actual budget for 1979 is impossible to determine as the group changed its accounting practices that year and the only available information is a three month assessment in March 1979 listing a budget of \$23 900 based on a grant from the Ministry of education. UQAM, SAGD, LDL, 24P5/12, financial records, 1979-1981.

668. UQAM, SAGD, LDL, 24P1/16, minutes of the administrative council, 18 August 1980.

669. UQAM, SAGD, LDL, 24P9f/4, press release, 10 May 1984.

670. Archives nationale du Québec, Fonds Ligue des droits de l'homme, f.S7, SS6, D2/1, Une affrontment qui ne doit pas perdurer- a declaration from the staff of the Ligue des droits et libertés, n.d.

671. Globe and Mail, 30 July 1974.

672. The key theme in the Toronto coverage was the decision to strip the all the women and few of the men. Images of women being stripped and subjected to invasive searches made for sensational headlines throughout May to August (the Pringle commission investigated in July and August). Among the papers which covered the raid and the subsequent inquiry were the following (July-August 1974): Fort Erie Times Review, St. Catharines Standard, Simcoe Reformer, Chronicle Journal, Peterborough Examiner, The Intelligencer (Belleville), Moncton Transcript,

Hamilton Spectator, Brantford Expositor and the Montreal Star.

673. Toronto Star, 28 January 1975.

674. In his report, Pringle did not accept the CCLA's demands to eliminate writs and requiring police to get warrants for drug searches. He instead recommended a minor amendment to search powers that would limit police to searching only those individuals where there was a strong presumption of drug possession, a recommendation that was ignored by the federal government. NAC, Canadian Civil Liberties Association Papers [CCLA], vol.14, f.7, Submission to the Pringle Commission Re Fort Erie Raid, 1974.

675. Ontario, *Official Reports*, 1964, no.58, p. 1797.

676. Tarnopolsky, *The Canadian Bill of Rights*, pp. 57-8.

677. Tarnopolsky, *The Canadian Bill of Rights*, p. 58.

678. Toronto Star, 20 March 1964.

679. It is interesting to note that the 223 page report of the Ontario Police Commission upon which the legislation was supposedly based did not call for as invasive a piece of legislation as was presented by Cass to the legislature. Notably, it was Cass' department which decided to deny bail, counsel and the right to appeal. Toronto Star, 20 March 1964.

680. Toronto Star, 20 March 1964.

681. The right of a witness to refuse an in camera hearing was another issue debated in the legislature. D.C. MacDonald, leader of the Ontario NDP, suggested that the clause would undermine the ability of the Commission to investigate organized crime. According to MacDonald, the Commission needed to hold secret hearings to protect witnesses from the consequences of testifying, and crime syndicates could pressure potential witnesses to demand open hearings so they could ensure no one gave evidence against them. Despite MacDonald's efforts in the committee and third reading, however, the legislation went ahead with the provision intact. Ontario, *Official Reports*, 1964, no.82, pp.2616-2623.

682. Harry Arthurs, interview by Dominique Clément, 13 March 2004; NAC, June Callwood Papers, MG31 K24, vol.18, f.16, Joint Submission of the Canadian Civil Liberties Association and the Canadian Civil Liberties Education Trust to the Ford Foundation For a Grant-In-Aid of an Ongoing Programme in the Field of Civil

Liberties and for Special Assistance for 'Due Process in Canadian Criminal Law: A Programme for Reform, circa 1968.

683. Re. Drummond Wren [1945] Ontario Reports 778 (Ontario High Court). Himel recruited Mackay himself, having already established a working relationship with the former Lieutenant-Governor by 1964. Arthurs, interview.

684. Globe and Mail, 8 January 1965.

685. In practice most of the CCLA's group members were drawn from organized labour, ethnic groups and religious institutions. NAC, June Callwood Papers, MG31 K24, vol.18, f.11, minutes of the steering committee, 3 December 1964; Ottawa Journal, 15 May 1980.

686. The letter is not dated, but another source, a report written for the Secretary of State in 1972, claims the request was made in 1966. Judy LeMarsh to Sidney B. Linden, n.d., NAC, Secretary of State Papers, RG6, vol.661, f.2-4-7; NAC, CCLA, R9833, vol.4, f.3, Civil Liberties and Human Rights Associations- Report on Voluntary Organizations by Gilles Thériault and Michel Swinwood, 10 March 1972.

687. NAC, CCLA, R9833, vol.2, f.11, minutes of the executive committee, 3 October 1967.

688. Some of the CCLA's former members have suggested that one reason Himel was asked to resign from his position as Chair of the Board of Directors was because of his desire to focus on discrimination issues, notably anti-semitism. Discrimination campaigns clashed with the desire of the new members of the association to focus on free speech and other fundamental freedoms such as freedom of religion and association. Organizing and directing the new association fell into the hands of Doris Dodds and later Sydney Midanik until Alan Borovoy arrived in 1968. Arthurs, interview; Borovoy, interview.

689. NAC, June Callwood Papers, MG31 K24, vol.18, f.3, public letter and press release from CCLA to Police Commission on Metropolitan Toronto, 21 January 1965.

690. NAC, June Callwood Papers, MG31 K24, vol.18, f.15, Submission of the Canadian Civil Liberties Association to the Royal Commission on Civil Rights, 30 April 1965.

691. Civil Liberties, Vol.1., No.2, October 1965; Cameron v R, [1965] 62 Dominion Law Reports (Supreme Court of Canada).

692. Civil Liberties, Vol.1., No.2, October 1965. A history of the riot is available in: Franklin Bialystok, "Neo-Nazis in Toronto: The Allan Gardens Riot," *Canadian Jewish Studies* (Vols. 4-5, 1996): 1-38.

693. The Police Commission had the power to enact bylaws if it fell within its mandate. Civil Liberties, 19 December 1967.

694. D. J. Dodds and Julian Porter to Chairman Charles O Bick, 5 May 1965; B.J. Shoemaker to D.J. Dodds, 10 March 1965; A. A. Wishart to D.J. Dodds, 16 March 1965, NAC, CCLA, R9833, vol.25, f.10, R9833.

695. Not only was the CCLA concerned about the limitation on free speech by redirecting the controversial demonstration, but it opposed the ability of the Police Commission to pass bylaws. In this case, the Commission had arbitrarily decided to guarantee parade permits only for groups which had paraded for more than ten years (obviously not the case with the Vietnam war in 1967), providing exceptions only in cases where they were of exceptional municipal, provincial or federal importance. In addition, while the Vietnam Mobilization committee was shunted away from Yonge street, the Salvation Army was given a permit. Officials refused the Vietnam Mobilization committee a permit again in 1967 but in the following year, after pressure from the CCLA, the permit was eventually allowed for a demonstration on Yonge street. Alan Borovoy to C.O. Bick, 9 October 1968, NAC, CCLA, R9833, vol.14, f.34, R9833. Toronto Star, 17 October 1967; C.O. Bick to Alan Borovoy, 22 October 1968, NAC, CCLA, R9833, vol.25, f.10, R9833.

696. NAC, Canadian Labour Congress Papers, MG38 I103, vol.662, f.3, Board of Directors of the CCLA, 1971; NAC, CCLA, R9833, vol.23, f.3, Board of Directors of the CCLA, n.d.; NAC, CCLA, R9833, vol.39, f.2, Board of Directors of the CCLA, n.d.

697. NAC, Walter Tarnopolsky Papers, MG31, E55, vol.2, f.19, Joint Submission of the Canadian Civil Liberties Association and the Canadian Civil Liberties Education Trust to the Ford Foundation For a Grant-In-Aid of an Ongoing Programme in the Field of Civil Liberties and for Special Assistance for 'Due Process in Canadian Criminal Law: A Programme for Reform', circa 1968.

698. A poll taken in 1944 found that 49 percent of the Ontario public favoured religious exercises, 44 percent were opposed and 7 percent were undecided. A history of religious practices in Ontario public schools is available in: Ontario, Department of Education, 1969. *Religious Information and Moral Development- The Report of the Committee on Religious Education in the Public Schools of the Province of Ontario*.

699. NAC, Jewish Labour Committee Papers, MG28 V75, vol.43, f.13, Submission to Gosfield South School Board from A Delegation of Parents re Religious Education in Public Schools, 1966.
700. Ontario, Department of Education, 1969. *Religious Information and Moral Development- The Report of the Committee on Religious Education in the Public Schools of the Province of Ontario*.
701. NAC, CCLA, R9833, vol.15, f.2, letter from CCLA to members, 15 December 1971; Civil Liberties, Vol.5, No.1, June 1972.
702. Some discussion on the history of the separate schools system is available in: R.D. Gidney, *From Hope to Harris- The Reshaping of Ontario's Schools*, Toronto: University of Toronto Press, 1999.
703. Borovoy, interview.
704. Canadian Civil Liberties Association v Ontario [Attorney General], [1990] 71 Ontario Reports (Ontario Court of Appeals).
705. Le Devoir, 3 April 1971.
706. Le Devoir, 1 February 1971.
707. J L Granatstein, "Changing Positions: Reflections on Pierre Trudeau and the October Crisis," in Andrew Cohen and J.L. Granatstein, eds., *Trudeau's Shadow: The Life and Legacy of Pierre Elliot Trudeau*, Toronto: Vintage Canada, 1998, pp. 297-8.
708. NAC, June Callwood Papers, MG31 K24, vol.19, f.1, Submission to the Government of Canada re the War Measures Act, 19 October 1970.
709. According to the CCLA brief, educational institutions required the free exchange of ideas and the willingness to take devil's advocate, and the resolution threatened to undermined the basic need for open discussion in schools: "By threatening to discharge teachers for the mere advocacy of certain unacceptable political ideas, this Board might very well inhibit the most creative pedagogical techniques employed by our better teachers." NAC, CCLA, R9833, vol.14, f.3, Submission to Board of Education, City of Toronto, The Resolution Requiring Discharge for Advocating FLQ Policies, 29 October 1979.
710. NAC, CCLA, R9833, vol.18, f.6, Submission to the Government of Canada re The Public (Temporary Measures) Act, 7 November 1970.

711. NAC, CCLA, R9833, vol.123, f.3, letters to various organizations from the CCLA on the FLQ crisis, 30 March 1971; Robert Stanfield to Alan Borovoy, 2 November 1970, vol.123, f.4.
712. John Turner to Alan Borovoy, 3 December 1970, NAC, CCLA, R9833, vol.123, f.4.
713. Civil Liberties, Vol.3, No.1, May 1971; Borovoy, interview.
714. One of the consequences of the CCLA's campaign against the War Measures Act, and further proof of the support Trudeau's actions enjoyed in English Canada, was the loss of hundreds of members and donations. At one point, Borovoy estimated the CCLA had lost between \$5000 to \$10 000 due to its controversial position surrounding the War Measures Act. Alan Borovoy to Roger Baldwin, n.d., NAC, CCLA, R9833, vol.181, f.12.
715. Canadian Civil Liberties Association, *Submission to the Honourable John Turner, Minister of Justice, Re. Emergency Powers*, 29 March 1971.
716. The name Jennifer Smith is the author's creation. The woman's real name has been concealed as required by access regulations.
717. Alan Borovoy to John Yaremko, 4 January 1971, NAC, CCLA, R9833, vol.15, f.2.
718. NAC, June Callwood Papers, MG31 K24, vol.18, f.6, Extracts from a letter from the CCLA to John Yaremko, Minister of Social and Family Services, 15 June 1970.
719. The study interviewed a total of 1002 recipients as follows: Toronto 445, Hamilton 106, Halifax 151, Winnipeg 132, Fredericton 93 and Regina 75.
720. There were several reasons why women with an illegitimate child did not want to name the father, for practical and psychological reasons. For instance, in several cases the women in question had married or moved in with another man, and did not want to involve the father of one her children in her life. In the study conducted by the CCLA, 37 women stated they were told to name the father and 32 did so. Canadian Civil Liberties Association, *Welfare Practices and Civil Liberties- A Canadian Survey*, Toronto: Canadian Civil Liberties Education Trust, 1975.
721. Federal government assessments and those of the Toronto Social Planning Council estimated the average family of four required \$3000 annually to meet basic

needs but only received 60 percent of this amount, even after increases through General Welfare Assistance (Ontario) in 1967.

722. Canadian Civil Liberties Association, *Welfare Practices and Civil Liberties- A Canadian Survey*, Toronto: Canadian Civil Liberties Education Trust, 1975.

723. Civil Liberties, Vol.2, No.1, September 1969.

724. Civil Liberties, Vol.2, No.1, September 1969; Globe and Mail, 2 April 1975.

725. Globe and Mail, 19 September 1986.

726. Over a period of 18 months these volunteers, laypersons trained in law, handled 613 cases and in at least 138 situations their work resulted in the awarding of benefits. Civil Liberties, Vol.4, No.1, December 1971; Alan Borovoy, *When Freedoms Collide: The Case For our Civil Liberties*, Toronto: Lester & Orpen Denny's, 1988, p.179.

727. James Struthers notes the expansion of the welfare system and its concomitant strain on Ontario's resources during this period: "By the end of the 1960s as the proportion of employables on general welfare assistance rose from 42 per cent to 64 per cent of an increasingly youthful caseload, and the numbers of family benefits and general welfare combined almost doubled from 80 000 to more than 150 000 between 1961 and 1971, the province's welfare system, according to John Yaremko, was 'under the greatest strain since the depression.'" James Struthers, *The Limits of Affluence: Welfare in Ontario, 1920-1970*, Toronto: University of Toronto Press, 1994, p. 242.

728. NAC, CCLA, R9833, vol.12, f.22, new notes, 19 December 1967.

729. Canadian Civil Liberties Association, *Submission to the Task Force on Policing in Ontario*, 21 September 1973.

730. Canadian Civil Liberties Association, *Submission to the Task Force on Policing in Ontario*, 21 September 1973; NAC, June Callwood Papers, MG31 K24, vol.18, f.17, Submission to Arthur A. Wishart, Attorney General of Ontario, re Police Practices in Ontario, 1969; NAC, CCLA, R9833, vol.14, f.7, Submission to Arthur Maloney re Metropolitan Toronto Review of Citizen-Police Complaints Procedure, n.d.; NAC, CCLA, R9833, vol.14, f.7, Submission to the Pringle Commission re Fort Erie Raid, 1974.

731. NAC, CCLA, R9833, vol.126, f.17, Metropolitan Board of Police Commissioners, Chairman's Report, 23 January 1975.

732. According to the report, "dissatisfied complainants, even though few in number, can in conjunction with the media greatly impair the regard in which the police are held by the public. As a consequence, there must be a procedure available for resolving complaints in a manner that will inspire public confidence in the police force. In the interest of maintaining the police-public relationship at a high level, justice must not be done but must be seen to be done." NAC, Daniel G. Hill Fonds, MG 31 H 155, vol.12, f.6, Arthur Maloney: The Metropolitan Toronto Review of Citizen-Police Complaint Procedure, 12 May 1975, p. 5.

733. Among Maloney's other recommendations were for open public hearings, a bill of rights for police officers and opening up the complaints bureau (to be physically separate from police headquarters) 24 hours a day and seven days a week. The tribunals would only hear major complaints (minor complaints would be conciliated by the commissioner) and could recommend up to \$1500 to be paid by the municipality for damages. Tribunal members would not be paid but act as a duty and the tribunal would forward recommendations to the Chief of Police who would retain the final decision on disciplinary action. Complainants should also be allowed to appeal to a County Court as could police officers in the case of major complaints. NAC, Daniel G. Hill Fonds, MG 31 H 155, vol.12, f.6, Arthur Maloney: The Metropolitan Toronto Review of Citizen-Police Complaint Procedure, 12 May 1975.

734. NAC, Daniel G. Hill Fonds, MG 31 H 155, vol.12, f.6, Arthur Maloney: The Metropolitan Toronto Review of Citizen-Police Complaint Procedure, 12 May 1975, pp. 16-17.

735. Ontario, 1976. *Royal Commission into Metropolitan Toronto Police Practices*.

736. Walter Pitman, *Now is Not Too Late- Submitted to the Council of Metropolitan Toronto by the Task Force on Human Relations*, November 1977, pp. 158-9.

737. Metropolitan Board of Police Commissioners, *Chairman's Report*, 24 January 1980.

738. Metropolitan Board of Police Commissioners, *Chairman's Report*, 24 January 1980, p. 5.

739. Richard L. Henshel, *Police Misconduct in Metropolitan Toronto: A Study of Formal Complaints*, Toronto: LaMarsh Research Programme on Violence, 1983, p.

- 10.
740. Metropolitan Board of Police Commissioners, *Chairman's Report*, 24 January 1980.
741. Alan Borovoy to Roy McMurtry, 3 December 1979, NAC, CCLA, R9833, vol.15, f.8.
742. Alan Borovoy to George Kerr, 25 May 1974, NAC, CCLA, R9833, vol.15, f.5.
743. Alan Borovoy to George Kerr, 1 May 1978, NAC, Walter Tarnopolsky Papers, MG31 E55, vol.3, f.1.
744. Alan Borovoy to Roy McMurtry, 15 September 1979, NAC, CCLA, R9833, vol.15, f.8.
745. Globe and Mail, 27 October 1976.
746. Ontario, *Official Reports*, 1977, no.64.
747. Ontario, *Official Reports*, 1979, no.133, p. 5374.
748. Arthurs, interview.
749. Ontario, *Journals of the Legislative Assembly*, 10 June 1980, pp. 133-4.
750. Globe and Mail, 9 February 1981.
751. Globe and Mail, 28 February 1981; Toronto Star, 18 February 1981. In the case of the Toronto Star, one editorial claimed that it had "been evident for some time that such a review process is vital if the police are to continue to enjoy the support of all segments of what has become a multicultural, cosmopolitan society- one in which minorities, visible or otherwise, would, if lumped together, probably constitute a majority." Toronto Star, 18 February 1981.
752. NAC, Walter Tarnopolsky Papers, MG31 E55, vol.3, f.5, news notes, June 1981.
753. Daniel G. Hill Papers, MG31 H 155, vol.12, f.5, Sidney B. Linden: Interim Report on the Activities of the Office of Public Complaints Commissioners, 23 July 1981 to 20 December 1981.

754. All three key figures in the commission were Liberal party stalwarts: McDonald was a Liberal-appointed judge and the past president of the Alberta Liberal Association and the other commissioners were Guy Gilbert, who had aspirations for running for the Liberals federally and had contributed to the party's campaigns, and Richard Rickerd, a former business associate and friend of Fox. *Globe and Mail*, 16 September 1977.
755. For information on the history of the McDonald commission, refer to: Jeff Sallot, *Nobody Said No- The Real Story About How the Mounties Always Get Their Man*, Toronto: James Lorimer and Company, 1979.
756. Sallot, p. 141.
757. Canada, 1979. *Security and Information: Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police*; Canada, 1981. *Freedom and Security: Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police*.
758. Sallot, p. 179.
759. Robert Dion, *Crimes of the Secret Police*, Montreal: Black Rose Books, 1982, p. 128.
760. Sallot, p. 105.
761. Alan Borovoy to Walter Thompson, 15 December 1978, NAC, CCLA, R9833, vol.109, f.8; Pat Reed to Helen Cainer, 12 November 1977, NAC, CCLA, R9833, vol.109, f.8.
762. *Globe and Mail*, 19 November 1977.
763. Pierre Elliot Trudeau to Walter Tarnopolsky, 21 December 1977, NAC, Walter Tarnopolsky Fonds, MG31 E55, vol.2, f.22.
764. *Globe and Mail*, 11 November 1977.
765. *Globe and Mail*, 11 November 1977.
766. *Canadian Lawyer*, November 1981; *Globe and Mail*, 27 August 1981.
767. Canadian Civil Liberties Association, *Submission to the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police- Priorities and Procedures for the Commission's Proceedings*, 30 January 1978; NAC,

June Callwood Papers, MG 31 K24, vol.19, f.6, Submission to the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police re Public Disclosure and the Official Secrets Act & Submissions to the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police re Emergency Powers and the War Measures Act, 3 October 1979; NAC, CCLA, R9833, vol.109, f.1, Submission to Commission of Inquiry Concerning Certain Activities of the RCMP re Toward a Charter for the RCMP, 17 April 1980; NAC, CCLA, R9833, vol.108, f.9., Submission to Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police re Submissions of Commission Counsel, 24 July 1980.

768. NAC, Walter Tarnopolsky Papers, MG31 E55, vol.3, f.1, CCLA news notes, March 1978.

769. NAC, CCLA, R9833, vol.107, f.17, RCMP Wrongdoing Petition Campaign-Progress Report, 4 January 1979.

770. The following papers covered the story on 15 May 1980: Ottawa Journal, Le Journal de Quebec, The Times News [Thunder Bay], Barrie Examiner, Oshawa Times, Prince George Citizen, Stratford Beacon Herald, North Bay Nugget, Sudbury Star, St. Catharines Standard, Charlestown Guardian and the Hamilton Spectator.

771. Canada, 1981. *Certain R.C.M.P. Activities and the Question of Governmental Knowledge*; Canada, 1981. *Freedom and Security Under the Law: Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police*; Canada, 1979. *Security and Information*.

772. Canada, 1981. *Freedom and Security: Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police*, pp. 1103-4.

773. Canada, 1981. *Freedom and Security: Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police*, p. 1108. In the commission's third report, the commissioners suggest that "it is not within our jurisdiction to advise the federal Attorney General or provincial Attorney General whether, in any particular situation, there should or should not be a prosecution, because that is a matter solely within the discretion of Attorneys General." The report, which deals with specific illegalities, recommended against prosecutions in the case of surreptitious entry and mail opening. Most of the specific incidents investigated by the commission, however, such as barn burning and individual operations (including mail opening) were deleted from the report and not made public. Canada, 1981. *Certain RCMP Activities & The Question of Governmental Knowledge*, p. 503.

774. In general the CCLA and the CLC cooperated and adopted similar positions on many of the same issues but in the case of the security service the two groups found themselves at odds. The CLC supported the idea of a civilian security system divorced from the RCMP. Given the bitter history between organized labour and the RCMP, it is not surprising the CLC wanted to remove the broad mandate for investigating subversion from the police force.

775. Globe and Mail, 24 September 1981.

776. Jean Chrétien to Bob Kaplan, 20 July 1982, NAC, Walter Tarnopolsky Papers, MG31 E55, vol.3, f.7.

777. Toronto Star, 12 February 1983.

778. NAC, CCLA, R9833, vol.1, f.13, minutes of the Annual General Meeting, 9 November 1982.

779. NAC, CCLA, R9833, vol.1, f.42, financial reports, 1977 to 1982; NAC, CCLA, R9833, vol.1, f.10 to 13, minutes of the Annual General Meeting, 1978 to 1982.

780. NAC, CCLA, R9833, vol.1, f.41, minutes of the Board of Directors, 19 March 1980.

781. It is interesting to note that while the BCCLA made a presentation to the 1970-1 Special Joint Committee on the Constitution which eventually recommended entrenching a bill of rights the CCLA did not participate. There is no evidence to explain why the CCLA did not take part in the 1970-1 hearings. According to Alan Borovoy, the CCLA did not purposefully boycott the committee. Instead, this lack of action could be explained by the resistance of many leading members of the CCLA, notably Borovoy himself and Harry Arthurs, to the idea of entrenching rights in the constitution. Borovoy, interview.

782. NAC, Special Joint Committee on the Constitution, 1980-1 Papers, RG 14, D4, Acc. 90-91/119, Box 62, Brief of the Canadian Civil Liberties Association.

783. The original section as proposed read as follows: "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government."

784. The following rights associations made presentations to the committee: BCCLA, the Federation, British Columbia Council for Human Rights, Calgary Civil Liberties Association, Manitoba Association for Rights and Liberties, South Okanagan Civil Liberties Association and the Canadian Human Rights Foundation. There is a brief mention of the BCCLA in the final report but only in reference to a word it suggested removing from one of the clauses. NAC, Special Joint Committee on the Constitution, 1980-1 Papers, RG 14, D4, Acc. 90-91/119, Box 59, First Draft Report.

785. Canada, 1981. *Special Joint Committee on the Constitution*, pp. 36:9 - 36:21.

786. Laskin challenged the traditional procedures of the Supreme Court by allowing more interveners to appear before the Supreme Court. Robert J. Sharpe and Kent Roach, *Brian Dickson: A Judge's Journey*, Toronto: University of Toronto Press, 2003, p. 383.

787. Lawyers were also included in various other CCLA initiatives outside the courtroom. They were asked to represent individuals before various government boards, including welfare appeal boards, the Public Service Staff Relations Board and several cases before the Immigration Appeals Board. Lay people were trained in northern Ontario to provide legal information to natives while a duty counsel was assigned in the early 1970s to Toronto welfare offices. As early as 1967 the CCLA provided funding to the Yorkville Bar, a group of young lawyers doing pro bono work in one of the most policed areas of Toronto.

788. One file in the CCLA papers contains dozens of letters from various lawyers across Ontario, and some outside the province, volunteering to litigate Charter cases on behalf of the CCLA. This was in response to a general letter sent out to lawyers across Canada. NAC, CCLA, R9833, vol.191, f.11.

789. Only once has the CCLA had to pay legal fees, and even in that case it was a miserly sum. This was during the hearings of the Morand commission when the CCLA asked a local lawyer to attend the hearings on a regular basis to represent the CCLA and report on the committee's activities. Given the enormous time commitment required, the CCLA felt obligated to pay the individual for their time, although the association could afford very little. Borovoy, interview.

790. Borovoy, interview.

791. NAC, Walter Tarnopolsky Papers, MG31 E55, vol.3, f.5, News Notes, June 1981.

792. Arthurs, interview; Borovoy, interview.
793. Miriam Smith, *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995*, Toronto: University of Toronto Press, 1999.
794. Borovoy, interview.
795. Rainer Knopff and F.L. Morton, *The Charter Revolution and the Court Party*, Peterborough: Broadview Press, 2000, p. 25.
796. Knopff and Morton, p. 66.
797. Canadian Civil Liberties Association, *Welfare Practices and Civil Liberties- A Canadian Survey*, Toronto: Canadian Civil Liberties Education Trust, 1975.
798. UQAM, SAGD, LDL, 24P8/1, Proposition de Déclaration des Droits des Personnes Agées au Québec, n.d.
799. NAC, CCLA, R9833, v.32, f.23, Submission to Senate Standing Committee on Legal and Constitutional Affairs re Legislation on Hate Propaganda, 22 April 1969. Nearly a decade later, the CCLA opposed the inclusion of a section on hate propaganda in the proposed federal human rights legislation. NAC, CCLA, R9833, v.51, f.19, Submission to House of Commons Standing Committee on Justice and Legal Affairs Re The Federal Government's Human Rights Bill From CCLA, 28 April 1977.
800. Vink, interview. The Newfoundland-Labrador Human Rights Association never developed position papers until the mid-1980s, but the positions adopted since then on issues such as hate propaganda are available on its website at www.nlhra.org.
801. A cornerstone of the LDH's campaign on the rape legislation was the distribution of 'coupons' in La Press and other newspapers for individuals to fill out and mail to their federal government representatives. Over 2000 of the LDH's coupons were received in Ottawa. UQAM, SAGD, LDL, 24P7b/26, petition campaign materials, 1980.
802. Borovoy, *The New Anti-Liberals*, pp.132-9. The CCLA organized a forum to debate Quebec's language law in Toronto in 1977 with Camille Laurin (the Parti québécois' chief spokesperson for the language legislation) defending the legislation. In 1982 the association considered intervening to challenge the language laws but decided to hold off because it had few resources in Quebec to support the case. NAC, CCLA, R9833, v.141, f.13 and v.1, f.43, posters and minutes of the executive

committee, 1977, 1982.

803. NAC, June Callwood Papers, MG31 K24, minutes of the Board of Directors, minutes, vol.18, f.3, 1 March 1978.

804. Kerwin, interview.

805. Alan Borovoy to Dalton Bales (Attorney General of Ontario), 25 May 1972, NAC, CCLA, R9833, vol.15, f.3; Alan Borovoy to Thomas Wells, 17 December 1973, NAC, CCLA, R9833, vol.15, f.4.

806. Alan Borovoy to George Kerr, 25 May 1974, NAC, CCLA, R9833, vol.15, f.5.

807. Alan Borovoy to Roy McMurtry, 15 August 1979, NAC, CCLA, R9833, vol.15, f.8.

808. Jim MacDonald to Alan Borovoy, 7 February 1972, NAC, CCLA, R9833, vol.15, f.3.

809. Dennis McDermott to Ranking Officers of Affiliated Organizations, 15 August 1978, NAC, CCLA, R9833, vol.109, f.8.

810. NAC, CCLA, R9833, vol.107, f.17, RCMP Wrongdoing Petition Campaign-Progress Report, 4 January 1979; Alan Borovoy to Dennis McDermott, 15 December 1977, NAC, CCLA, R9833, vol.183, f.2.

811. Kerwin, interview.

812. Leo Panitch and Donald Swartz account for the CLC's absence during the Charter debates to its "trenchant economism [and] its subordinate consciousness to the exclusion of a hegemonic orientation." In addition, they blame the Quebec Federation of Labor for paralysing the CLC in order to prevent the CLC from taking part in a process which could strengthen federalism in Quebec. Leo Panitch and Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms*, 3rd ed., Aurora: Garamond Press, 2003. The CLC did, in fact, submit a short letter to the commission but not a brief. The letter was simply an assertion of the rights of native peoples and the need to recognize their rights in the new constitution. This was consistent with the CLC's official statement on human rights (written in 1968) and its work during International Year for Human Rights which placed native rights at the forefront of the CLC's human rights program. NAC, Special Joint Committee on the Constitution Papers (1980-1), RG 14, D4, Acc 90-91/119, Box 62, Wallet 10,

Submission from the CLC, n.d.

813. Panitch and Swartz, p. 20.

814. Alan Borovoy, *Uncivil Disobedience: The Tactics and Tales of a Democratic Agitator*, Toronto: Lester Publishing Ltd., 1991.

815. According to Borovoy, "Permanent alliances can undermine everyone's agenda. It is wise to remember that coalitions are created among constituencies that have different as well as common objectives. Thus, these groups should create only temporary and *ad hoc* alliances. In the political, unlike the sexual, arena, promiscuity is a distinct virtue." Borovoy, *Uncivil Disobedience*, p. 73.

816. In the same piece, Borovoy acknowledged that for the poor and others without a voice in public debate such as politicians, the use of disruptive tactics might be a necessary and legitimate tactic. But the CCLA never engaged in such activities. Alan Borovoy, "Civil Liberties in the Imminent Hereafter," *Canadian Bar Review* (Vol.51, No.1, March 1973): 93-106.

817. Borovoy, *Uncivil Disobedience*, 13.

818. NAC, CCLA, R9833, vol.1, f.1., Minutes of the Annual General Meeting-memorandum, 1 December 1967.

819. NAC, CCLA, R9833, v.6, f.14, Arthurs proposal, 1971.

820. Walter Thompson, interview by Dominique Clément, 1 June 2003; Public Archives of Nova Scotia, Nova Scotia Civil Liberties Association Papers, MG 20, v.625, minutes of the Board of Directors, 15 November 1972; In defence of human rights and civil liberties (MARL newsletter), 1 November 1978, No.2.

821. Mark MacGuigan to Sidney Midanik, 6 August 1970, v.181. f.2, NAC, CCLA, R9833.

822. In Halifax, for instance, Walter Thompson, a young lawyer and president of the Nova Scotia Civil Liberties Association in the 1970s, continued to correspond with the CCLA's head office in the 1980s but the Nova Scotia chapter had, for all intents and purposes, become defunct years earlier. The CCLA had established a sound financial relationship with only one rights association in Canada, the Hamilton Civil Liberties Association, which provided 20 percent of its membership dues to the head office (the Hamilton group became defunct sometime in the early 1980s). NAC, CCLA, R9833, v.2, f.22, Minutes of the Executive Committee, 13 April 1978;

Thompson, interview.

823. NAC, CCLA, v.4, f.21 and v.5, files 2 to 6, correspondence and newsletters from the Manitoba Association for Rights and Liberties, 1978 to 1982; Borovoy, interview.

824. The CCLA only organized two truly national campaigns, one on due process funded by the Ford Foundation and another on the rights of welfare recipients funded by the Laidlaw Foundation.

825. The CCLA only organized two truly national campaigns, one on due process funded by the Ford Foundation and another on the rights of welfare recipients funded by the Laidlaw foundation. Although there were several briefs presented to the federal government by the CCLA with the support of its chapters arising from its research on due process, suggesting a national lobbying campaign, no coordinated efforts outside Ontario were organized in regards to the welfare practices survey.

826. Newfoundland, *Hansard*, vol. 11, 1972, p. 4126.

827. *Star Weekly* (Toronto), 12 August 1972.

828. *Star Weekly* (Toronto), 12 August 1972.

829. John Carter to Biswarup Bhattacharya, 29 January 1972, Centre for Newfoundland Studies (CNS), Newfoundland-Labrador Human Rights Association Papers (NLHRA), f.2.08.001.

830. Biswarup Bhattacharya to John Carter, 5 July 1972, CNS, NLHRA, f. 2.08.001.

831. CNS, Joseph Smallwood Papers, f. 3.29.101 (human rights), correspondence between human rights committee and Smallwood, February 1967- December 1968.

832. CNS, Joseph Smallwood Papers, f. 3.29.101 (human rights), correspondence between human rights committee and Smallwood, February 1967- December 1968.

833. The community groups officially registered as members of the Human Rights Committee that drafted the recommendations included: Canadian Red Cross Society, Newfoundland-Labrador History Teachers Association, Canadian Mental Health Association, Newfoundland Co-operative Services, Newfoundland Teachers Association, Canadian University Overseas, Local Council of Canadian Women, Canada Manpower Center, Canadian Federation of University Women, Law Society of Newfoundland, 4 H Clubs, Youth Action Committee, YMCA, St. John's High

School Debating League, Ministerial Association, Association of Registered Nurses, Newfoundland Government Employee Association, Newfoundland Federation of Labour, Boy Scouts Association, Newfoundland Branch of Canadian Association of Social Workers. CNS, Joseph Smallwood Papers, f. 3.29.101 (human rights), Members of the Newfoundland-Labrador Human Rights Committee.

834. Prison reform was discussed extensively throughout the December conference on human rights in Ottawa. Lucie Laurin notes that prison reform was an important part of the work of the Ligue des droits et libertés and the issue is also raised in the files of the BCCLA. LSBCLA, BCCLA, Annual General Meeting Reports, 1963-1970, files. 1-1 to 1-1-8; Canada. *Report of the Proceedings, National Conference on Human Rights and Activities of the Canadian Commission*, 1969; Lucie Laurin, *Des Luittes et Des Droits: Antécédants et histoire de la Ligue des Droits de l'Homme de 1936-1975*, Montréal: Éditions du Meridien, 1985.

835. Newfoundland, *Hansard*, vol.9, 1969, p. 3639.

836. Newfoundland, *Hansard*, vol. 9, 1969, p. 3648.

837. In Walter Tarnopolsky's extensive analysis of human rights legislation in Canada, he argues that human rights codes differ from fair accommodation and fair practices legislation in two key ways. First, codes prohibit discrimination in areas beyond simply accommodation and employment, such as advertising or commercial units. Second, codes are enforced by Commissions as opposed to being dependant on some officer or responsible minister in a government department. Newfoundland did not appoint a permanent commission until 1974 and fields of prohibited legislation under the Act were limited to employment and accommodation. Tarnopolsky, p. 31

838. Province of Newfoundland and Labrador, *An Act to Establish the Newfoundland Human Rights Code and to Provide for its Implementation*, Statutes of Newfoundland and Labrador, 1969, no.75.

839. In the late 1960s there were no provisions for the administration of justice in the Ontario Human Rights Code and other similar provincial legislation, although such provisions had been proposed when the Ontario code was drafted. In 1975 the Province of Quebec passed its own human rights code and it included extensive protections for the administration of justice.

840. British Columbia followed Newfoundland's lead in 1973 by incorporating political opinion as a prohibited form of discrimination, and Manitoba (1974), Prince Edward Island (1975) and Québec (1975) soon did the same. Tarnopolsky, pp. 320-1.

841. Newfoundland, *Hansard*, vol. 9, 1969, p. 3677-8. There is no evidence in the NLHRA papers (and nothing discerned from interviews) indicating why Memorial University was also exempted. It seems to have simply been included as a side product of broad wording in the legislation exempting all educational institutions.

842. Over the years government officials often linked the Code with Canada's obligations under the UDHR. In reality, the Code had little in common with the UDHR, with the former's almost exclusive focus on employment issues. It is more likely, and this was suggested by Keough himself at first reading, that the Code reflected the conventions of the International Labour Organization. Newfoundland, *Hansard*, vol.1, 1969, p. 3.

843. *Evening Telegram*, 9 July 1971.

844. Fred W. Coates, interview by Dominique Clément, 11 March 2002.

845. Newfoundland, *An Act Further to Amend the Newfoundland Human Rights Code*, Statutes of Newfoundland, 1974, No.114.

846. *Alternate Press*, 27 May 1971.

847. Bhattacharya to Smallwood, 2 September 1971, CNS, Joseph Smallwood Papers, f. 3.29.101 (human rights).

848. CNS, Joseph Smallwood Papers, f. 3.29.101 (human rights), correspondence between human rights committee and Smallwood, February 1967- December 1968; *Alternate Press*, vol. 1, nos. 1-3; *Evening Telegram*, 9 July 1971.

849. The paucity of documentation available for the organization's early period make it impossible to determine exactly when it began receiving financial grants, but as early as 1969 the NLHRA received a \$250 grant from the Secretary of State and by 1972 the amount had risen to \$3000 to hire a part time administrator. Grants from the Secretary of State were made available in the following amounts: \$16 576 (1976), \$22 411 (1977), \$15 000 (1978), \$17 900 (1979), \$9 930 (1980), \$21 280 (1983). CNS, NLHRA, f. 1.03.001, budgets and financial statements of the NLHRA, 1972-1982; Report of the Department of the Secretary of State of Canada for the Year Ending 31 March 1970.

850. The Opportunities for Youth and Local Initiatives Program were discontinued in 1977 and replaced by the Canada Works Program.

851. Between 1968 to 1982, the organization's revenues from membership fees peaked in 1976 (\$781) and 1980 (\$827) with its lowest point in 1977 (\$59). In general, membership fees during this period provided \$500-\$600 in annual revenue, but with no fee structure and limited documentation there is no way of knowing how many members were registered at any given time. CNS, NLHRA, f. 1.03.001, budgets and financial statements of the NLHRA, 1972-1982.

852. Two of the original four executive were drawn from government circles: Lillian Bouzane was the representative for Labrador Affairs and James Morgan a Member of the House of Assembly. Little is known about Rae Perlin except that she was a local artist in St. John's. There are also references to there being six, not four, executives of the NLHRA in a newspaper article in 1971. These were likely Jim O'Dea and Ben Squires whose names appear on director's minutes in 1972, although nothing is known about their backgrounds or activities. Lillian Bouzane, interview by Dominique Clément, 13 March 2002; John Peddle, interview by Dominique Clément, 12 April 2002.

853. James Overton, "Towards a Critical Analysis of Neo-Nationalism in Newfoundland," in R. Brym and R.J. Sacouman, eds., *Underdevelopment and Social Movements in Atlantic Canada*, Toronto: New Hogtown Press, 1979, p. 237.

854. Interviewed by Dominique Clément: Lillian Bouzane, 13 March 2002; William Collins, 10 April 2002; John Peddle, 12 April 2002; Norman Whalen, 4 April 2002.

855. Norman Whalen, interview by Dominique Clément, 4 April 2002.

856. There is some debate over what role the NLHRA actually played in the decision to destroy the files. The *Evening Telegram* article and the NLHRA leaders claim that dossiers on individuals were being maintained and the efforts of the latter led to their destruction, while the Minister at the time, T. Alex Hickman, denied the existence of the dossiers and claimed to have destroyed the photos prior to meeting with the association. *Evening Telegram*, 23 October 1973.

857. Newfoundland. *Hansard*, 1974, vol.3, p.8728-30.

858. Newfoundland, *An Act Further to Amend the Newfoundland Human Rights Code*, Statutes of Newfoundland, 1974, No.114.

859. Whalen, interview; CNS, NLHRA, f. 2.04.016, Mutual Life Insurance Company of Canada application form, filled out by Norman Whalen, 5 January 1979.

860. Rights and Freedoms, vol.2, No.4, August-September 1973.
861. Newfoundland, *Hansard*, 1969, vol.1, p. 3.
862. Karl A. Friedman, "The Ombudsman," in John P. Humphrey and R. St. J. Macdonald, eds., *The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms*, Toronto: Butterworth & Co., 1979, p. 356 (ft.20).
863. Vink, interview; CNS, NLHRA, f. 2.05.021, The Role of the Ombudsman.
864. Canada, 1973. *Final Report of the Commission of Inquiry into the Non-Medical Use of Drugs*, p. 761.
865. A thorough analysis of crime reporting and statistics is available in: William O'Grady, "Criminal Statistics and Stereotypes: The Social Construction of Violence in Newfoundland," in Elliott Leyton, William O'Grady and James Overton, *Violence and Public Anxiety: A Canadian Case*, St. John's: Institute of Social and Economic Research, 1992.
866. According to Elliott Leyton, in Newfoundland by "1977 there were fifteen reported rapes (and God knows how many unreported), 333 assaults of all kinds, thousands of cases of theft and wilful damage, hundreds of breaches of the Narcotic Control Act, 179 forgeries, and even a kidnapping and an extortion case: a long way from the alcoholic little city proffering the occasional punchup or brutal seduction attempt." Elliott Leyton, "Drunk and Disorderly: Changing Crime in Newfoundland," in Rex Clark, ed., *Contrary Winds: Essays on Newfoundland Society in Crisis*, St. John's: Breakwater, 1986.
867. NAC, CLC, MG28, I103, vol.662, f.16, report of the National Capital Region Civil Liberties Association, February 1971.
868. By 1975, the St. John's Status of Women Councils openly supported pro-choice and were members of the Canadian Association for Repeal of Abortion law. Sharon Grey Pope and Jane Burnham, "The Modern Women's Movement in Newfoundland and Labrador," in Linda Kealey, ed., *Pursuing Equality: Historical Perspectives on Women in Newfoundland and Labrador*, St. John's: Institute of Social and Economic Research, 1993, p. 203.
869. CNS, NLHRA, f. 2.04.011, Brief In respect to Housing submitted to the Mayor and Councillors of St. John's through the Conference on Housing, n.d.

870. Riggs, interview.
871. Vink, interview.
872. D.A. Schmeiser, *Civil Liberties in Canada*, Toronto: Oxford University Press, 1964, p. 185.
873. McCann, "Denominational Education in the Twentieth Century in Newfoundland," p. 95.
874. CNS, NLHRA, f.2.06.004, Outline of Provincial Human Rights Code Analysis, 1984.
875. The exemption for educational institutions in the Code had consequences outside of protecting denominational education from accusations of religious discrimination. In 1978 Marlene Webber, a professor in the School of Social Work at Memorial University, was dismissed because her "political activities have indicated considerable divergence from the philosophy and purposes of the School and [Webber's] involvement both on and off campus with a political movement [communism] which is totally inimical to and destructive of the system upon which our government is based." Such a clear violation of academic freedom and right to political opinion was immune from the Human Rights Code as a result of the general exemption for educational institutions. CNS, NLHRA, f. 2.04.001, Press Release by the NLHRA on Marlene Webber, no date.
876. Quoted from: *Evening Telegram*, 1 April 1987.
877. Quoted in: Mark Graesser, "Public Opinion on Denominational Education: Does the Majority Rule," in William A. McKim, ed., *The Vexed Question: Denominational Education in a Secular Age*, St. John's: Breakwater, 1988, p. 35. While the Human Rights Commission lobbied the provincial government to make changes to the Human Rights Act in such areas as sexual orientation, it avoided the question of denominational education because it was explicitly exempted from the legislation. It was not until the 1990s when it began organizing public forums to discuss the denominational education system and in one case it successfully defended a janitor who had been fired from a local high school for not sharing the same religious beliefs of the school he worked at. According to the commission, only teachers could be fired for their religious affiliation. Riggs, interview.
878. The resolution passed at the 1964 British Columbia Teachers' Federation Annual General Meeting read as follows: "Be it Resolved that the following resolution be added to Section 19 of the Policy Handbook: 'That the Federation

recommend that religious exercises be discontinued in British Columbia schools,' British Columbia Teachers Federation Records Management, Religious Exercises in the Schools- Consultative Committee Report; LSBKA, BCCLA, vol.11, f.41, Background Position Papers- Religion in Public Schools.

879. Canadian Civil Liberties Association v Ontario [Attorney General] [1990] 71 Ontario Reports (Ontario Court of Appeals).

880. Newfoundland, 1992. *Our Children, Our Future: Report of the Royal Commission of Inquiry into the Delivery of Programs and Services in Primary, Elementary, Secondary Education.*

881. Evening Telegram, 1 August 1997.

882. In the words of the editor of the *Evening Telegram*, the voters supported the Yes side because many "were simply fed up with court battles and endless wrangling over the shape of education compromise that we ended up with (and yet it displeased enough people to bring the matter to court). And they simply wanted to harness all the province's educational resources in a single school system, eliminating any wasteful dollars spent on duplication that might be better spent in the classroom." Evening Telegram, 3 September 1997.

883. Riggs, interview.

884. CNS, NLHRA, f.2.04.007, Summary, Involvement with Denominational Education System, n.d.

885. Evening Telegram, 10 December 1985.

886. Private records of the NLHRA, NLHRA Policy Manual.

887. Evening Telegram, 30 July 1997.

888. *Stack v Roman Catholic School Board*, [1979] 23 Newfoundland and Prince Edward Island Reports (Newfoundland Supreme Court) 221.

889. CNS, Newfoundland Teachers Association Papers, Newfoundland Teacher's Association Journals- Vol. 70, Spring 1982, No.2.

890. Bryan Palmer, *Working Class Experience: Rethinking the History of Canadian Labour, 1800-1991*, 2nd ed., Toronto: McClelland & Stewart Inc., 1992, pp. 372-3, 377.

891. In 1976 a music teacher in Grand Falls was dismissed for marrying a non-Catholic, but because he was a non-tenured teacher he did not fall under the collective agreement and the Newfoundland Teacher's Association chose not to act. Gregory Stack was not rehired as a teacher in the Catholic School Board. CNS, Newfoundland Teachers Association Papers, Newfoundland Teacher's Association Journals- Vol. 70, Spring 1982, No.2.
892. Ontario, 1977. *Report of the Royal Commission on Metropolitan Toronto*, p. 275.
893. Owram, p. 159.
894. Eamon Park had also served as the chair of the Toronto and District Labour Council Human Rights Committee in the early to mid-1960s. Eamon Park to Don Whiteside, 18 November 1970, SAGD, UQAM, LDL, 24P2b/9.
895. Pal, p. 251.
896. Although Alan Borovoy has advocated the use of various 'disruptive' tactics from sit-ins to boycotts, and employed them on occasion when he was with the JLC, it is important to appreciate that he *did not employ such tactics with the CCLA*. In his book on tactics for social activists, Borovoy explores various possible strategies for legal disruption and has often suggested that other groups employ such tactics, but it is notable that the CCLA avoided disruptive tactics. David Orlikow, a long time human rights activist and a former Director of the JLC, recognized the distinction between groups like the CCLA and the JLC when Borovoy consulted him about working for both the JLC and the CCLA in the late 1960s: "From the point of view of our work, I think it is important to keep in mind that the work is to the largest extent financed by the Jewish Labour Committee and Canadian Jewish Congress. These two organizations are primarily interested in human relations, with particular emphasis on race, color and religion. Civil liberties issues could often be unpopular and I can conceive of your work in civil liberties not having the approval of these organizations. Similarly, in the field of civil liberties, the people or organizations to whom you would be responsible and who would be financing the work, might not be able to endorse our activities." David Orlikow to Alan Borovoy, NAC, Ontario Labour Committee for Human Rights Papers, MG28 I173, vol.8, f.8.
897. Michael Ignatieff, *Human Rights as Politics and Idolatry*, Princeton: Princeton University Press, 2001, p. 73.
898. Irwin Cotler, "Human Rights as the Modern Tool of Revolution," in Kathleen E. Mahoney and Paul Mahoney, eds., London: Martinus Nijhoff Publishers, 1993, p.

19.

899. Laurie S. Wiseberg, "Human Rights Nongovernmental Organizations," in Richard Pierre Claude and Burns H. Weston, *Human Rights in the World Community: Issues and Action*, 2nd ed., Philadelphia: University of Pennsylvania Press, 1992, p. 380.

900. Michael Ignatieff, *The Rights Revolution*, Toronto: House of Anansi Press Ltd., 2000, p. 20. Ron Hirschl has studied constitutional jurisprudence in Canada, New Zealand and South Africa and has concluded that, even in 2000, a minimalist approach to human rights pervades in these three countries: "My systematic analysis of these three countries' records of constitutional rights jurisprudence reveals a clear common tendency to adopt a narrow conception of rights, emphasizing Lockean individualism and the dyadic and anti-statist aspects of constitutional rights." Hirschl, 1095-7.

Bibliography of Sources

PRIMARY SOURCES

Archives and Collections:

ANQ- Archives Nationale du Québec
CNS- Centre for Newfoundland Studies
LSBCA- Law Society of British Columbia Archives
FTQ- Archives of the Fédération des travailleurs du Québec
MCA- Montreal City Archives
NAC- National Archives of Canada
PANS- Public Archives of Nova Scotia
UBC- Rare Books and Special Collections, University of British Columbia
UQAM- Service des archives et de gestion des documents, Université du Québec à Montréal

Arthur Roebuck Papers- NAC
British Columbia Civil Liberties Association Papers- LSBCA
British Columbia Federation of Labour-UBC
British Columbia Teachers Federation Files (not archived)
Canada. Department of Citizenship and Immigration- NAC
Canada. Department of External Affairs- NAC
Canada. Department of Finance- NAC.
Canada. Department of Justice- NAC
Canada. Privy Council Office- NAC
Canada. Royal Canadian Mounted Police/Canadian Security Intelligence Service- NAC
Canada. Secretary of State- NAC
Canadian Bar Association- NAC
Canadian Bar Association, B.C. Section- LSBCA
Canadian Broadcasting Corporation, Television and Radio Archives
Canadian Civil Liberties Association Papers- NAC
Canadian Labour Congress Papers- NAC
Daniel G. Hill Papers- NAC
Quebec Federation of Labour Papers- UQAM
Fonds de la Commission d'enquête sur l'administration de la justice en matière criminelle et pénale- ANQ
Frank R. Scott Papers- NAC
Jewish Labour Committee Papers- NAC
J. King Gordon Papers- NAC
Joey Smallwood Papers- CNS

John Diefenbaker Papers- NAC
June Callwood Paper- NAC
Kalmen Kaplansky Papers- NAC
Fond du Fédération des travailleurs du Québec- FTQ
Fond du Ligue des droits et libertés- UQAM
Montreal City Council Papers- MCA
Newfoundland-Labrador Federation of Labour- CNS
Newfoundland-Labrador Human Rights Association Papers- CNS
Newfoundland-Labrador Human Rights Commission Files (not archived)
Newfoundland-Labrador Teachers Association- CNS
Nova Scotia Civil Liberties Association- PANS
Nova Scotia Human Rights Association- PANS
Ontario Labour Committee for Human Rights- NAC
Special Joint Committee on the Constitution Papers (1980-1)- NAC
Walter Surma Tarnopolsky Papers- NAC
William J Keough Papers- CNS

Publications and Reports:

British Columbia, 1971, *Report on the Gastown Riot*.

Canada, 1981. *Certain R.C.M.P. Activities and the Question of Governmental Knowledge*.

Canada, 1973. *Final Report of the Commission of Inquiry into the Non-Medical Use of Drugs*.

Canada, 1981. *Freedom and Security Under the Law: Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police*.

Canada, 1977. *Report of the Committee on the Abortion Law*.

Canada, 1969. *Report of the Proceedings, National Conference on Human Rights and Activities of the Canadian Commission*.

Canada, 1970. *Report of the Royal Commission on the Status of Women in Canada*.

Canada, 1950. *Proceedings of the Special Committee on Human Rights and Fundamental Freedoms*.

- Canada, 1980-1. *Special Joint Committee on the Constitution of Canada.*
- Canada, 1979. *Security and Information.*
- Canada, 1972. *Special Joint Committee of the Senate and House of Commons on the Constitution of Canada.*
- Canada, 1974. *Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms.*
- Canada, 1969. *Statement of the Government of Canada on Indian Policy.*
- Canada, Department of Justice, 1983. *The Position of the Attorney General of Canada on Certain Recommendations of the McDonald Commission.*
- Canada, Manpower and Immigration, 1975. *Highlights from the Green Paper on Immigration and Population.*
- Canada, Secretary of State, 1969-1982. *Annual Reports.*
- Canada, Task Force on Canadian Unity, 1979. *A Future Together: Observations and Recommendations.*
- Canadian Bar Association, *The Yearbook of the Canadian Bar Association and the Minutes and Proceedings Annual Meeting*, Ottawa: National Printers Limited, 1943-1982.
- Canadian Bar Association, *Towards a New Canada*, Ottawa: Canadian Bar Association, 1978.
- Newfoundland and Labrador, 1967. *Report of the Royal Commission on Education and Youth.*
- Newfoundland and Labrador, 1972. *Report of the Royal Commission on Labour Legislation in Newfoundland and Labrador.*
- Newfoundland and Labrador, 1992. *Our Children, Our Future: Report of the Royal Commission of Inquiry into the Delivery of Programs and Services in Primary, Elementary, Secondary Education.*
- Ontario, 1970. *Highlights of the report of the Committee on the Healing Arts.*

- Ontario, Department of Education, 1969. *Religious Information and Moral Development- The Report of the Committee on Religious Education in the Public Schools of the Province of Ontario.*
- Ontario, 1980. *Report of the Commission of Inquiry into the Confidentiality of Health Information.*
- Ontario, 1977. *Report of the Royal Commission on Metropolitan Toronto.*
- Ontario, 1976. *Royal Commission into Metropolitan Toronto Police Practices.*
- Ontario, 1974. *Task Force on Policing in Ontario.*
- Pitman, Walter, *Now is Not Too Late- Submitted to the Council of Metropolitan Toronto by the Task Force on Human Relations*, November 1977.
- Quebec, 1981. *Rapport de la commission d'enquête sur des opérations policières en territoire québécois.*
- Quebec, 1980. *Rapport sur les événements d'octobre 1970 (Duchaine).*
- Quebec, Commission d'enquête sur la crime organisé, 1976. *Rapport Officiel: La Lutte au Crime Organisé.*
- Quebec, Commission de police du Québec, 1968-1982. *Rapport Annual.*
- Quebec, Commission of enquiry into the administration of justice on criminal and penal matters in Quebec, 1968-9. *Crime, Justice and Society, vols.1 to 5, Fundamental Principles of a New Social Action Programme.*
- Québec, Ministère de la Justice, 1968-1970, 1977-9. *Rapport annuel.*
- Québec, Ministère des Affaires Sociales, 1970-1982. *Rapport annuel.*
- Quebec, Quebec Police Commission, 1977. *Organized Crime and the World of Business- Report of the Commission on Inquiry on Organized Crime and Recommendations.*
- Toronto, Metropolitan Board of Police Commissioners, 1960-1982. *Chairman's Report* (unpublished, available through the Toronto Police Services Board).

Interviews:

Arthurs, Harry – 13 March 2004
Bouzane, Lillian – 13 March 2002
Black, William – 20 June 2002
Borovoy, Alan – 12 March 2004
Braybrooke, David – 30 May 2003
Coates, Fred – 11 March 2002 (telephone)
Collins, William – 10 April 2002
Dickson, Gary – 4 April 2003
Dybikowski, James – 1 December 2004
Gagnon, Théo – 11 November 2003 (telephone)
Getty, Norville – 14 October 2003 (telephone)
Giesbrecht, William – 25 February 2003
Keeping, Janet – 19 March 2004 (telephone)
Kerwin, Patrick – 2 July 2003
Lambertson, Ross – 26 August 2003 (telephone)
Levi, Norman – 25 June 2002
Macdonald, Alex – 18 June 2002 (telephone)
Peddle, John – 12 April 2002
Riggs, Bert – 15 July 2003
Russell, John – 23 December 2004
Thompson, Walter – 1 June 2003
Vink, Jerry – 11 March 2002
Webking, Ed – 26 August 2003 (telephone)
Whalen, Norman – 4 April 2002

Periodicals and Newspapers:

Alternate Press (NFLD)
Canadian Bar Review
Canadian Labour Reports
Civil Liberties (ON)
Democratic Commitment (BC)
Evening Telegram (NFLD)
Face à la justice (QC)
Georgia Straight (B.C.)
Globe and Mail
Grape (BC)
Montreal Star

Morning Watch (NFLD)
National Bulletin
Opération liberté (QC)
Rights and Liberties
The Daily News (NFLD)
The Province (B.C.)
Toronto Star (ON)
Vancouver Sun (B.C.)

SECONDARY SOURCES

Articles and Papers:

- Badar, Mohamed Elewa, "Basic Principles Governing Limitations on Individual Rights and Freedoms in Human Rights Instruments," *International Journal of Human Rights* (Vol.7, No.4, Winter 2003): 63-92.
- Bangarth, Stephanie D., "The Co-Operative Committee on Japanese Canadians and the ACLU: Engaging Debate, 1942-1946," *Princeton University Library Chronicle* (Vol.LXIII, No.3, Spring 2002): 496-533.
- Bangarth, Stephanie D., "'We are not asking you to open wide the gates for Chinese immigration': The Committee for the Repeal of the Chinese Immigration Act and Early Human Rights Activism in Canada," *Canadian Historical Review* (Vol. 84, No.3, September 2003): 395-422.
- Beach, Stephen W., "Social Movement Radicalization: The Case of Poor People's Democracy in Northern Ireland," *Sociological Quarterly* (Vol.18, No.3, Summer 1977): 305-18.
- Bialystok, Franklin, "Neo-Nazis in Toronto: The Allan Gardens Riot," *Canadian Jewish Studies* (Vols.4-5, 1996): 1-38.
- Borovoy, Alan "Civil Liberties in the Imminent Hereafter," *Canadian Bar Review* (Vol.51, No.1, March 1973): 93-106.
- Buergenthal, Thomas, "The Normative and Institutional Evolution of International Human Rights," *Human Rights Quarterly* (Vol. 19, No.4, 1997): 703-723.

- Calhoun, Craig, "'New Social Movements' of the Early Nineteenth Century," *Social Science History* (Vol. 17, No. 3, Fall 1993): 385-427.
- Carroll, William K. and Ratner, R.S., "Old Unions and New Social Movements," *Labour/LeTravail* (Vol.35, Spring 1995): 195.
- Christman, John, "Liberalism and Positive Freedom," *Ethics* (Vol.101, No.2, January 1991): 343-359.
- Clark, Roger S., "Human Rights Strategies of the 1960s Within the United Nations: A Tribute to the Late Kamleshwar Das," *Human Rights Quarterly* (Vol.21, No.2, 1999): 308-341.
- Clément, Dominique, "'It is Not the Beliefs but the Crime that Matters:' Post-War Civil Liberties Debates in Canada and Australia," *Labour History (Australia)* (No.86, May 2004): 1-32.
- Clément, Dominique, "Searching for Rights in the Age of Activism: The Newfoundland-Labrador Human Rights Association, 1968-1982," *Newfoundland Studies* (Vol.19, No.2, Spring 2003): 347-372.
- Clément, Dominique, "Spies, Lies and a Commission, 1946-8: A Case Study in the Mobilization of the Canadian Civil Liberties Movement," *Left History* (Vol. 7, No.2): 53-79.
- Clément, Dominique, "The Royal Commission on Espionage and the Spy Trials of 1946-9: A Case Study in Parliamentary Supremacy," *Journal of the Canadian Historical Association* (2000): 151-172.
- Cohen, G.A., "On the Currency of Egalitarian Justice," *Ethics* (Vol. 99, No.4, July 1999): 906-44
- Donnelly, Jack, "Human Rights, Democracy and Development," *Human Rights Quarterly* (Vol.21, No.3, 1999): 608-632.
- Egerton, George, "Entering the Age of Human Rights: Religion, Politics, and Canadian Liberalism, 1945-50," *Canadian Historical Review* (Vol.85, no.3, September 2004): 451-479.

- Foweraker, Joe and Landman, Todd, "Individual Rights and Social Movements: A Comparative and Statistical Inquiry," *British Journal of Political Science* (Vol. 29, No.2, April 1999): 291-322.
- Fragar, Ruth A. and Patrias, Carmela, "'This Is Our Country, These Are Our Rights': Minorities and the Origins of Ontario's Human Rights Campaigns." *The Canadian Historical Review* (Vol.82, No.1, March 2001): 1-35.
- Freeman, Neil, "The Philosophical Foundations of Human Rights," *Human Rights Quarterly* (Vol.16, 1994): 491-514.
- Gusfield, Joseph R., "Social Movements: The Study," in David Stills, ed., *International Encyclopedia of the Social Sciences*, v. 14, New York: Macmillan, 1968.
- Hirschl, Ron, "'Negative' Rights vs. 'Positive' Entitlements: A Comparative Study of Judicial Interpretations of Rights in an Emerging Neo-Liberal Economic Order," *Human Rights Quarterly* (Vol. 22, 2000): 1060-1098.
- Howe, R. Brian, "The Evolution of Human Rights Policy in Ontario," *Canadian Journal of Political Science/ Revue canadienne de science politique*, (Vol.24, No.4, December 1991): 783-802.
- Jones, Peter, "Human Rights, Group Rights, and People's Rights," *Human Rights Quarterly* (Vol.21, No.1, 1999): 80-107.
- Kealey, Greg, "State Repression of Labour and the Left in Canada, 1914-20: The Impact of the First World War," *Canadian Historical Review* (Vol.73, No.3, 1992): 281-314.
- Kim, Ki Su, "J.R. Smallwood and the Negotiation of a School System for Newfoundland, 1946-8," *Newfoundland Studies* (Vol.11, no.1, 1995): 53-74.
- Kunnemann, Rolf, "A Coherent Approach to Human Rights," *Human Rights Quarterly* (Vol.17, No.2, 1995): 323-342.
- Kymlicka, Will, "The New Debate Over Minority Rights," Lectures and Papers in Ethnicity- Robert F. Harney Professorship and Program in Ethnic Immigration and Pluralism Studies, University of Toronto, 1997.

- Lambertson, Ross, "The Black, Brown, White and Red Blues: The Beating of Clarence Clemons," *Canadian Historical Review* (Vol.85, No.4, December 2004).
- Lambertson, Ross, "The Dresden Story: Racism, Human Rights, and the Jewish Labour Committee of Canada," *Labour/Le Travail* (Vol.47, Spring 2001): 43-82.
- Landman, Todd, "Measuring Human Rights: Principle, Practice and Policy," *Human Rights Quarterly* (Vol.26, No.4, 2004): 906-931.
- Luxton, Meg, "Feminism as a Class Act: Working-Class Feminism and the Women's Movement in Canada," *Labour/Le Travail* (Vol.48, Fall 2001).
- Lyon, J.N., "Constitutional Validity of Sections 3 and 4 of the Public Order Regulations, 1970," *McGill Law Journals* (Vol.18, No.1, 1972): 136-144.
- MacGuigan, Mark R., "The Development of Civil Liberties in Canada," *Queen's Quarterly*, (Vol.72, No.2, 1965): 270-88.
- Oestreich, Joel E ., "Liberal Theory and Minority Group Rights," *Human Rights Quarterly* (Vol.21, No.1, 1999): 108-32.
- Offe, Claus, "Challenging the boundaries of institutional politics: social movements since the 1960s," in Charles S. Maier, *Changing boundaries of the political: essays on the evolving balances between the state and society, public and private in Europe*, New York: Cambridge University Press, 1987.
- Ornstein, Michael D. and Stevenson, H. Michael, "Elite and Public Opinion Before the Quebec Referendum: A Commentary on the State in Canada," *Canadian Journal of Political Science* (Vol.14, No.4, December 1981): 745-774.
- Palmer, Bryan, "Renegades: J.L. Cohen, Bill Walsh, and the tragedies of the Canadian Left," *Journal of Canadian Studies* (Vol.37, No.1, Spring 2002): 207-224.
- Petryshyn, J., "Class Conflict and Civil Liberties: The Origins and Activities of the Canadian Labour Defense League, 1925-40," *Labour/Le Travailleur*, (10 Autumn 1982): 39-63.
- Powe, L.A., "The Georgia Straight and Freedom of Expression in Canada," *Canadian Bar Review* (Vol. 48, No.2, 1970): 410-438.

- Richardson, James L., "Contending Liberalisms: Past and Present," *European Journal of International Relations* (Vol.3, No.1, 1997): 5-34.
- Rubinstein, Leonard S., "How International Human Rights Organizations Can Advance Economic, Social, and Cultural Rights: A Response to Kenneth Roth," *Human Rights Quarterly* (Vol.26, No.4, 2004): 845-865.
- Russell, Peter H., "The Political Purposes of the Canadian Charter of Rights and Freedoms," *Canadian Bar Review* (V.61, 1983): 30-54.
- Schabas, William A., "Canada and the Adoption of the Universal Declaration of Human Rights," *McGill Law Journal* (Vol.43, 1998): 403-441.
- Shestack, Jerome J., "The Philosophic Foundations of Human Rights," *Human Rights Quarterly*, (Vol.20, No.2, 1998): 201-234.
- Smith, Jackie, Pagnucco, Ron and Lopez, George A., "Globalizing Human Rights: The Work of Transnational Human Rights NGOs in the 1990s," *Human Rights Quarterly* (Vol.20, No.2, 1998): 379-412.
- Stammers, Neil, "A Critique of Social Approaches to Human Rights," *Human Rights Quarterly* (Vol.17, No.3, 1995): 488-508.
- Stammers, Neil, "Social Movements and the Social Construction of Human Rights," *Human Rights Quarterly* (Vol.24, No.4, 1999): 980-1008.
- Tarnopolsky, Walter, "The Critical Century: Human Rights and Race Relations," *Transactions of the Royal Society of Canada. (series IX, Vol. XX, 1982).*
- Tarnopolsky, Walter, "The Supreme Court of Canada and the Canadian Bill of Rights," *Canadian Bar Review* (Vol.57, No.4, 1975).
- Walker, James, "The 'Jewish Phase' in the Movement for Racial Equality in Canada," *Canadian Ethnic Studies* (Vol.34, No.1, 2002): 1-23.
- Walker, James, "The Rights Revolution: Lessons from the Maritimes," *Stewart MacNutt Memorial Lecture*, 9 October 2003.
- Whitaker, Reg, "Apprehended Insurrection? RCMP Intelligence and the October Crisis," *Queen's Quarterly* (Vol.100, No.2, Summer 1993): 383-406.

Books:

- Abella, Irving, *Nationalism, Communism and Canadian Labour: the CIO, the Communist Party and the Canadian Congress of Labour*, Toronto: University of Toronto Press, 1973.
- Adamson, Nancy and Briskin, Linda and McPhail, Margaret, *Feminist Organizing for Change: The Contemporary Women's Movement in Canada*, Toronto: University of Toronto Press, 1988.
- Axelrod, Paul, *Scholars and dollars : politics, economics and the universities of Ontario, 1945-1980*, Toronto: University of Toronto Press, 1982.
- Bailey, Peter H., *Human Rights: Australia in an International Context*, Sydney: Butterworths, 1990.
- Banting, Keith G., *The Welfare State and Canadian Federalism*, Kingston: McGill-Queen's University Press, 1987.
- Barman, Jean, *The West Beyond the West: A History of British Columbia*, Toronto: University of Toronto Press, 1991.
- Bayefsky, Anne F., *Canada's Constitution Act of 1982 & Amendments: A Documentary History*, Toronto: McGraw-Hill Ryerson Limited, 1989.
- Bédard, Éric, *Chronique d'une insurrection appréhendée- Le crise d'Octobre et le milieu universitaire*, Sillery: Les Éditions du Septentrion, 1998.
- Berlin, Isaiah, *Four Essays on Liberty*, London: Oxford University Press, 1969.
- Berger, Thomas, *Fragile Freedoms: Human Rights and Dissent in Canada*, 2nd ed. Toronto: Irwin Publishing, 1982.
- Berger, Thomas, *One Man's Justice: A Life in the Law*, Vancouver & Toronto: Douglas and McIntyre, 2002.
- Bickenback, Jerome, *Physical Disability and Social Policy*, Toronto: University of Toronto Press, 1993.
- Borovoy, Alan, *When Freedoms Collide: The Case For our Civil Liberties*, Toronto: Lester & Orpen Denny's, 1988.

- Borovoy, Alan, *The New Anti-Liberals*, Toronto: Canadian Scholars Press Ltd., 1999.
- Borovoy, Alan, *Uncivil Disobedience: The Tactics and Tales of a Democratic Agitator*, Toronto: Lester Publishing Ltd., 1991.
- Botting, Garry, *Fundamental Freedoms and Jehovah's Witnesses*, Calgary: University of Calgary Press, 1993.
- Boyer, J. Patrick, *A Passion for Justice*, Toronto: University of Toronto Press, 1994.
- Brodie, Janine and Gavigan, Shelley and Jenson, Jane, *The Politics of Abortion*, Toronto: Oxford University Press, 1992.
- Brym, R. and Sacouman, R.J., eds., *Underdevelopment and Social Movements in Atlantic Canada*, Toronto: New Hogtown Press, 1979.
- Buechler, Steven M., *Social Movements in Advanced Capitalism: the political economy and cultural construction of social activism*, New York: Oxford University Press, 2000.
- Bushnell, Ian, *The captive court: a study of the Supreme Court of Canada*, Montreal: McGill-Queen's University Press, 1992.
- Callwood, June, *Emma*, Toronto: University of Toronto Press, 1988.
- Campbell, Charles, and Pauls, Naomi, *The Georgia Straight: What the Hell Happened?*, Vancouver: Douglas & McIntyre, 1997.
- Campbell, Tom, *The Left and rights: A conceptual analysis of the idea of socialist rights*, London: Routledge & Kegan Paul, 1983.
- Cairns, Alan C., *Charter versus Federalism: The Dilemmas of Constitutional Reform*, Montreal & Kingston: McGill-Queen's University Press, 1992.
- Cairns, Alan C. and Williams, Cynthia eds., *Constitutionalism, Citizenship and Society in Canada*, Toronto: University of Toronto Press, 1985.
- Cardin, Jean-François, *Comprendre Octobre 1970: Le FLQ, La Crise et le Syndicalisme*, Montréal: Éditions du Méridien, 1990.

- Carroll, William K., ed., *Organizing Dissent: Contemporary Social Movements in Theory and in Practice, Studies in the Politics of Counter-Hegemony*, Toronto: Garamond Press, 1997.
- Cherwinsky, W.J.C. and Kealey, Gregory, eds., *Lectures in Canadian Labour and Working Class History*, St. John's: Committee on Canadian Labour History, 1985.
- Clark, Rex, ed., *Contrary Winds: Essays on Newfoundland Society in Crisis*, St. John's: Breakwater, 1986.
- Claude, Richard Pierre and Weston, Burns H., *Human Rights in the World Community: Issues and Action*, 2nd ed., Philadelphia: University of Pennsylvania Press, 1992.
- Clawson, Dan, *The Next Upsurge: Labor and the New Social Movements*, Ithaca and London: ILR Press, 2003.
- Cloward, R.A. and Piven, F.F., *Poor Peoples Movements: How they Succeed, Why they Fail*, New York: Pantheon, 1977.
- Cohen, Andrew and Granatstein, J.L., eds., *Trudeau's Shadow: The Life and Legacy of Pierre Elliot Trudeau*, Toronto: Vintage Canada, 1998.
- Coleman, William D., *The Independence Movement in Quebec, 1945-1980*, Toronto: University of Toronto Press, 1984.
- Comeau, R. and Métivier, C., *La Revolution Tranquille- 40 Ans Plus Tard: Un Bilan*, Montréal: VLB Éditeur, 2000.
- Confederation of National Trade Unions, *Quebec Labour: The Confederation of National Trade Unions Yesterday and Today*, Montréal: Black Rose books, 1972.
- Cook, Ramsay, *Canada, Quebec, and the Uses of Nationalism*, 2nd ed., Toronto: McClelland and Stewart, 1986.
- Cottrell, Robert C., *Roger Nash Baldwin and the American Civil Liberties Union*, New York: Columbia University Press, 2000.

- Courtis, M.C., *Attitudes to Crime and the Police in Toronto: A Report on Some Survey Findings*, Toronto: Centre of Criminology, University of Toronto, 1970.
- Cranston, Maurice, *What is a Human Right?*, New York: Basic Books, 1973.
- Crosbie, John (with Geoffrey Stevens), *No Holds Barred: My Life in Politics*, Toronto: McClelland and Stewart, 1997.
- Dagenais, Bernard, *La crise d'octobre et les médias: le miroir à dix faces*, Outremont: VLB Éditeur, 1990.
- Dean, Malcolm, *Censored! Only in Canada: The History of Film Censorship- the Scandal Off the Screen*, Toronto: Virgo Press, 1981.
- Dicey, A.V., *Introduction to the Study of the Law of the Constitution*, London: St. Martin's Press, 1962.
- Dion, Robert, *Crimes of the Secret Police*, Montreal: Black Rose Books, 1982.
- Djwa, Sandra, *The Politics of Imagination: The Life of F.R. Scott*, Toronto: McClelland and Stewart Ltd., 1987.
- Donnelly, Jack, *The Concept of Human Rights*, London & Sydney: Croom Helm, 1985.
- Donnelly, Jack, *Universal Human Rights in Theory and Practice*, 2nd ed., Ithaca and London: Cornell University Press, 2003.
- Drinan, Robert F., *The Mobilization of Shame: A World View of Human Rights*, New Haven: Yale University Press, 2001.
- Dworkin, Ronald, *Sovereign Virtue: The Theory and Practice of Equality*, Cambridge: Harvard University Press, 2000.
- Dudziak, Mary L., *Cold War Civil Rights: Race and the Image of American Democracy*, Princeton and Oxford: Princeton University Press, 2000.
- Fillmore, Charles K., *In Darkest Ottawa*, Vancouver: Rose, Cowan & Latta Ltd., 1954.

- Fournier, Louis, *F.L.Q. - The Anatomy of an Underground Movement*, Toronto: NC Press Ltd., 1984.
- Fournier, Marcel, *Communisme et Anticomunisme au Québec, 1920-50*, Laval: Les Éditions coopératives Albert Saint-Martin, 1979.
- Fraser, Graham, *René Lévesque and the Parti Québécois in Power*, 2nd ed., Montreal & Kingston: McGill-Queen's University Press, 2001.
- Freeman, Jo, ed., *Social Movements of the Sixties and Seventies*, New York & London: Longman, 1983.
- Gagnon, Alain and Bickerton, James, eds., *Canadian Politics: An Introduction to the Discipline*, Peterborough: Broadview Press, 1990.
- Gagnon, Alain and Montcalm, Mary Beth, *Quebec Beyond the Quiet Revolution*, Scarborough: Nelson Canada, 1990.
- Gamson, William A., *The Strategy of Social Protest*, Homewood: Dorsey Press, 1975.
- Gaze, Beth and Jones, Melinda, *Law, Liberty and Australian Democracy*, Sydney: The Law Book Company Ltd., 1990.
- Gibson, Frederick W., *Queen's University-V.II (1917-1961)*, Kingston: Queen's University Press, 1983.
- Gidney, R.D., *From Hope to Harris- The Reshaping of Ontario's Schools*, Toronto: University of Toronto Press, 1999.
- Giffen, P.J. and Endicott, Shirley and Lambert, Sylvia, *Panic and Indifference: The Politics of Canada's Drug Laws*, Ottawa: Canadian Centre on Substance Abuse, 1991.
- Godfrey, Stuart, *Human Rights and Social Policy in Newfoundland, 1832-1982*, St. John's: Harry Cuff Publications Ltd., 1985.
- Gwynn, Richard, *Smallwood: The Unlikely Revolutionary*, Toronto: McClelland and Stewart, 1999.
- Hannant, Larry, *The Infernal Machine: Investigating the Loyalty of Canada's Citizens*, Toronto: University of Toronto Press, 1995.

- Harvison, C.W., *The Horsemen*, Toronto: McClelland and Stewart, 1967.
- Heick, W.H. and Graham, Roger, eds., *His Own Man: Essays in Honour of A.R.M. Lower*, Montreal: McGill-Queen's University Press, 1974.
- Henkin, Louis, *The Age of Rights*, New York: Columbia University Press, 1990.
- Henshel, Richard L., *Police Misconduct in Metropolitan Toronto: A Study of Formal Complaints*, Toronto: LaMarsh Research Programme on Violence, 1983.
- Hiller, James, and Neary, Peter, *Twentieth Century Newfoundland: Explorations*, St. John's: Breakwater, 1994.
- Holt, Simma, *Terror in the name of God: The Story of the Doukhobours*, Toronto: McClelland and Stewart Ltd., 1964.
- Horn, Michiel, *Academic Freedom in Canada: A History*, Toronto: University of Toronto Press, 1999.
- Hospers, John, *Libertarianism: A Political Philosophy*, Los Angeles: Nash Publishing, 1971.
- Humphrey, John P. and Macdonald, R.St.J., eds., *The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms*, Toronto: Butterworth & Co., 1979.
- Ignatieff, Michael, *Human Rights as Politics and Idolatry*, Princeton: Princeton University Press, 2001.
- Ignatieff, Michael, *The Rights Revolution*, Toronto: House of Anansi Press Ltd, 2000.
- Johnston, Hank and Klandermans, Bert, eds., *Social Movements and Culture: Social Movements, Protest, and Contention, Vol.4*, Minneapolis: University of Minnesota Press, 1995.
- Johnston, Hank and Larana, Enrique and Gusfield, Joseph, eds., *New Social Movements: From Ideology to Identity*, Philadelphia: Temple University Press, 1994.
- Kallen, Evelyn, *Ethnicity and Human Rights in Canada, 2nd ed.*, Toronto: Oxford University press, 1995.

- Kallen, Evelyn, *Label Me Human: Minority Rights and Stigmatized Canadians*, Toronto: University of Toronto Press, 1989.
- Kamenka, Eugene and Erh-Soon Tay, Alice, eds., *Human Rights*, London: E. Arnold, 1978.
- Kaplan, William, *State and Salvation: The Jehovah's Witnesses and Their Fight for Civil Rights*, Toronto: University of Toronto Press, 1989.
- Kealey, Linda, ed., *Pursuing Equality: Historical Perspectives on Women in Newfoundland and Labrador*, St. John's: Institute for Social and Economic Research, 1993.
- Kinsman, Gary, ed. *Whose National Security? surveillance and the creation of enemies in Canada*, Toronto: Between the Lines, 2000.
- Knopff, Rainer (with Thomas Flanagan), *Human Rights and Social Technology: The New War on Discrimination*, Ottawa: Carleton University Press, 1989.
- Knopff, Rainer and Morton, F.L., *The Charter Revolution and the Court Party*, Peterborough: Broadview Press, 2000.
- Kostash, Myrna, *Long Way From Home: The Story of the Sixties Generation in Canada*, Toronto: James Lorimer & Company, 1980.
- Louis Kriesberg and Bronislaw Misztal, eds., *Research in Social Movements: Social Movements as a Factor of Change in the Contemporary World*, vol. 10, Greenwich: Jai Press, 1988.
- Kymlicka, Will, *Liberalism, Community, and Culture*, Oxford: Clarendon Press, 1989.
- Kymlicka, Will, *Multicultural Citizenship- A Liberal Theory of Minority Rights*, Oxford: Clarendon Press, 1995.
- Lambertson, Ross, *Repression and Resistance: Canadian Human Rights Activists, 1930-1960*, Toronto: University of Toronto Press, 2004.
- Landau, Tammy, *Public Complaints Against the Police: A View from the Complainants*, Toronto: Centre of Criminology, University of Toronto, 1994.

- Landreville, Pierre and Gagnon, Astrid and Desrosiers, Serge, *Les prisons par ici: Droits des détenus au Québec*, Montréal: Editions Parti-Pris, 1976.
- Lauren, Paul Gordon. *The Evolution of International Human Rights: Visions Seen*, Philadelphia: University of Pennsylvania Press, 1998.
- Laurin, Lucie, *Des Luites et Des Droits: Antécédants et histoire de la Ligue des Droits de l'Homme de 1936-1975*, Montréal: Éditions du Meridien, 1985.
- Leroux, Manon, *Les Silences D'Octobre- Le Discours Des Acteurs de la Crise de 1970*, Montreal: VLB Éditeur, 2002.
- Leyton, Elliot, O'Grady, William and Overton. James, *Violence and Public Anxiety: A Canadian Case*, St. John's: Institute of Social and Economic Research, 1992.
- Lichtenstein, Nelson, *State of the Union: A Century of American Labor*, Princeton and Oxford: Princeton University Press, 2002.
- Ligue des droits de l'homme, *La Société Québécois face à l'avortement*, Ottawa: Editions Leméac Inc., 1974.
- Ligue des droits et libertés, *Défendons nos libertés: Pas de Police dans les Syndicats*, 1979.
- Lilly, Mark, *The National Council for Civil Liberties: the first fifty years*, London: Macmillan, 1984.
- Lunan, Gordon, *The Making of a Spy*, Toronto: Robert Davies Publishing, 1995.
- MacDowell, Laurel Sefton, *Renegade Lawyer: The Life of J.L. Cohen*, Toronto: University of Toronto Press, 2001.
- MacLennan, Christopher, *Toward the Charter: Canadians and the Demand for a National Bill of Rights, 1929-1960*, Montreal: McGill-Queen's University Press, 2003.
- MacMillan, Margaret and McKenzie, Francine, *Parties Long Estranged: Canada and Australia in the Twentieth Century*, Vancouver: UBC Press, 2003.
- Macpherson, C.B., *The Rise and Fall of Economic Justice and Other Papers*, New York: Oxford University Press, 1985.

- Mahoney, Kathleen E. and Mahoney, Paul, eds., *Human rights in the twenty-first century: a global challenge*, London: Martinus Nijhoff Publishers, 1993.
- Mandel, Michael, *The Charter of Rights and the Legalization of Politics in Canada*, Toronto: Thompson Educational Publishing, 1994.
- Marquis, Greg, *Policing Canada's Century: A History of the Canadian Association of Chiefs of Police*, Toronto: University of Toronto Press, 1993.
- Matthews, Robert O. and Pratt, Cranford, eds., *Human Rights in Canadian Foreign Policy*, Kingston and Montreal: McGill-Queen's University Press, 1988.
- McInnis, Peter S., *Labour Confrontations: Shaping the Postwar Settlement in Canada, 1943-1950*, Toronto: University of Toronto Press, 2002.
- McKim, William A., ed., *The Vexed Question: Denominational Education in a Secular Age*, St. John's: Breakwater, 1988.
- McMahon, Maeve and Ericson, Richard V., *Policing Reform: A Study of the Reform Process and Police Institution in Toronto*, Toronto: University of Toronto, Centre of Criminology, 1984.
- McRoberts, Kenneth, *Quebec: Social Change and Political Crisis*, 3rd ed., Don Mills: Oxford University Press, 1993.
- McWhinney, Edward, *Canada and the Constitution, 1979-1982: Patriation and the Charter of Rights*, Toronto: University of Toronto Press, 1982.
- Melucci, Alberto, *Nomads of the Present- Social Movements and Individual Needs in Contemporary Society*, Philadelphia: Temple University Press, 1982.
- Minow, Martha, *Making All the Difference: Inclusion, Exclusion and American Law*, Ithaca and London: Cornell University Press, 1990.
- Molyneux, Maxine and Lazar, Sian, *Doing the rights thing: rights-based development and Latin American NGOs*, London: ITDG Publishing, 2003.
- Molyneux, Maxine and Razavi, Shahra, *Gender justice, development and rights*, Geneva: UNRISD, 2003.

- Neary, Peter, *Newfoundland in the North Atlantic World, 1929-1949*, Montreal & Kingston: McGill-Queen's University Press, 1996.
- Noel, S.J.R., *Politics in Newfoundland*, Toronto: University of Toronto Press, 1971.
- O'Brien, Patricia, *Out of Mind, Out of Sight: A History of the Waterford Hospital*, St. John's: Breakwater Books, 1989.
- Orend, Brian, *Human Rights: Concept and Context*, Peterborough: Broadview Press, 2002.
- Owram, Doug, *Born at the Right Time: A History of the Baby Boom Generation*, Toronto: University of Toronto Press, 1996.
- Pal, Leslie A., *Interests of State: The Politics of Language, Multiculturalism, and Feminism in Canada*, Montreal & Kingston: McGill-Queen's University Press, 1993.
- Palmer, Bryan, *Working Class Experience*, Montreal: McGill-Queen's University Press, 1992.
- Pelletier, Gérard, *The October Crisis*, Toronto: McClelland and Stewart, 1971.
- Penner, Norman, *The Canadian Left: A Critical Analysis*, Scarborough: Prentice-Hall of Canada, 1977.
- Petersen, Klaus and Hutchinson, Allan C., eds., *Interpreting Censorship in Canada*, Toronto: University of Toronto Press, 1999.
- Rankin, Harry, *Rankin's Law: Collections of a Radical*, Vancouver: November House, 1975.
- Rawls, John, *A Theory of Justice (Revised Edition)*, New York: Oxford University Press, 1999.
- Ross, Becki L., *The House that Jill Built: A Lesbian Nation in Formation*, Toronto: University of Toronto Press, 1995.
- Rouillard, Jacques, *Histoire du Syndicalisme au Québec: Des origines à nos jours*, Montreal: Boréal, 1989.

- Rowe, Frederick W., *Education and Culture in Newfoundland*, Toronto: McGraw-Hill Ryerson Ltd., 1976.
- Russell, John, ed., *Liberties*, Vancouver: New Star Books, 1989.
- Ryan, Alan, ed., *The Idea of Freedom*, Oxford: Oxford University Press, 1979.
- Ryan, Claude, ed., *Le Québec qui se Fait*, Montréal: Editions Hurtubise HMH, 1971.
- Salkany, Hon. Roger E., *The Origin of Rights*, Vancouver: The Carswell Company Limited, 1986.
- Sallot, Jeff, *Nobody Said No- The Real Story About How the Mounties Always Get Their Man*, Toronto: James Lorimer and Company, 1979.
- Saywell, John. *Quebec 70: A Documentary Narrative*. Toronto: University of Toronto, 1971.
- Saywell, John T., *The Lawmakers: Judicial Power and the Shaping of Canadian Federalism*, Toronto: University of Toronto Press, 2002.
- Saywell, John T., *The Rise of the Parti Québécois, 1967-1976*, Toronto: University of Toronto Press, 1977.
- Schmeiser, D.A., *Civil Liberties in Canada*, Toronto: Oxford University Press, 1964.
- Scott, Frank R., *Civil Liberties and Canadian Federalism*, Toronto: University of Toronto Press, 1959.
- Scott, Frank, *Essays on the Constitution- Aspects of Canadian Law and Politics*, Toronto: University of Toronto Press, 1977.
- Sharpe, Robert J. and Roach, Kent, *Brian Dickson: A Judge's Journey*, Toronto: University of Toronto Press, 2003.
- Smith, Miriam, *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995*, Toronto: University of Toronto Press, 1999.
- Stenning, Philip C., ed., *Accountability for Criminal Justice: Selected Essays*, Toronto: University of Toronto Press, 1995.

- Struthers, James, *The Limits of Affluence: Welfare in Ontario, 1920-1970*, Toronto: University of Toronto Press, 1994.
- Tarnopolsky, Walter Surma, *The Canadian Bill of Rights*, 2nd ed., Toronto: McClelland and Stewart Limited, 1978.
- Tarnopolsky, Walter Surma, *Discrimination and the Law*, Toronto: Richard DeBoo Limited, 1982.
- Teeple, Gary, *The Riddle of Human Rights*, New York: Humanity Books, 2005.
- Touraine, Alain, *The voice and the eye- An analysis of social movements*, Cambridge: Cambridge University Press, 1978.
- Trofimenkoff, Susan Mann, *The Dream of a Nation: A Social and Intellectual History of Quebec*, 2nd ed., Montreal & Kingston: McGill-Queen's University Press, 2002.
- Vallières, Pierre, *White Niggers of America*, Toronto: McClelland and Stewart Ltd., 1971.
- Waldron, Jeremy, ed., *'Nonsense Upon Stilts': Bentham, Burke and Marx on the Rights of Man*, London and New York: Methuen, 1987.
- Walker, James, "Race," *Rights and the Law in the Supreme Court of Canada: Historical Case Studies*, Toronto: Wilfrid Laurier University Press, 1997.
- Walker, Samuel, *In Defence of American Liberties: A History of the ACLU*, New York: Oxford University Press, 1990.
- Ward, W. Peter, *White Canada Forever: Popular Attitudes Toward Orientals in British Columbia*, Montreal & Kingston: McGill-Queen's University Press, 1990.
- Warner, Tom, *A History of Queer Activism in Canada*, Toronto: University of Toronto Press, 2002.
- Whitaker, Reg and Marcuse, Gary, *Cold War Canada: The Making of a National Insecurity State: 1945-1957*, Toronto: University of Toronto Press, 1994.

Williams, George, *Human Rights Under the Australian Constitution*, Melbourne: Oxford University Press, 1999.

Winks, Robin, *The Blacks in Canada: A History*, 2nd ed., Montreal & Kingston: McGill-Queen's University Press, 1997.

Woodcock, George and Avakumovic, Ivan, *The Doukhobours*, Toronto: Oxford University Press, 1968.

Zald, Mayer and McCarthy, John D., eds., *Social Movements in an Organizational Society*, New Brunswick: Transaction Publishers, 1987.

Zald, Mayer N. and McCarthy, John D., eds., *The Dynamics of Social Movements: Resource Mobilization, Social Control and Tactics*, Cambridge: Winthrop Publishers, 1979.

Theses and Dissertations:

Anderson, Donald, "The Development of Human Rights Protections in British Columbia," (MA, University of Victoria, 1986).

Bangarth, Stephanie, "The Politics of Rights: Canadian and American Advocacy Groups and North America's Citizens of Japanese Ancestry, 1942-9," (PhD, University of Waterloo, 2004).

Campbell, Laurie, "The Royal Commission on Inquiry into the Confidentiality of Health Records in Ontario and Access to Government Information," (MA, Carleton University, 1999).

Cook, Ramsay, "Canadian Civil Liberties in Wartime," (MA, Queen's University, 1955).

Clément, Dominique, "The Royal Commission on Espionage, 1946-8: A Case Study in the Mobilization of the Early Civil Liberties Movement," (MA, University of British Columbia, 2000).

Gillespie, William, "A History of the Newfoundland Federation of Labour, 1936-1963," (MA, Memorial University of Newfoundland, 1980).

Lambertson, Ross, "Activists in the Age of Rights: The Struggle for Human Rights in Canada, 1945-60," (PhD, University of Victoria, 1998).

MacLennan, Christopher, "Toward the Charter: Canadians and the Demand for a National Bill of Rights, 1929-1960," (PhD, University of Western Ontario, 1996).

Moore, Dorothy Emma, "Multiculturalism- Ideology or Social Reality?," (PhD, Boston University, 1980).

Petryshyn, Jaroslav, "A.E. Smith and the Canadian Labour Defence League," (PhD, University of Western Ontario, 1977).

Skebo, Suzanne, "Liberty & Authority: Civil Liberties in Toronto," (MA, University of British Columbia, 1968).

Stasiulis, Daiva Kristina, "Race, Ethnicity and the State: The Political Structuring of South Asian and West Indian Communal Action in Combating Racism," (PhD, University of Toronto, 1982).

Websites:

Alberta Civil Liberties Association: www.aclrc.com

British Columbia Civil Liberties Association: www.bccla.org

Canada's Rights Movement: A History: www.HistoryofRights.com

Canadian Civil Liberties Association: www.ccla.org

Civil Liberties Association, National Capital Region: <http://civil-liberties.ncf.ca>

Ligue des droits et libertés: www.liguedesdroits.ca

Manitoba Association for Rights and Liberties: www.marl.bc.ca

Newfoundland-Labrador Human Rights Association: www.nlhra.org

Appendix A: The Proliferation of Rights Associations in the 1960s and 1970s

Between 1960 and 1982, 41 separate rights associations, including the Federation and the CCLA, were born in Canada.¹ Some groups barely lasted a year whereas others survived for more than forty years. The following section provides an overview of the emergence of rights associations in each province across Canada in the 1960s and 1970s.

The origins of individual rights associations varied considerably. Civil liberties organizations were most often created in reaction to specific rights abuses by the state whereas the bulk of Canada's human rights groups emerged out of International Year for Human Rights. Several rights associations, including the four case studies in this work, sought to create chapters in their respective provinces. In a few cases they were successful in creating associations which would stand the test of time and would eventually become independent from their parent organizations. By and large, however, such efforts proved ineffective. Only four of the ten chapters formed by the BCCLA lasted for more than a handful of years and chapters formed by the NLHRA and the LDH all became defunct soon after their creation. No group was more prolific in the formation of chapters or in encouraging other associations to become affiliates than the CCLA. By 1972, however, only five chapters remained active and most of these were affiliated organizations which had only minimal contact with the Toronto association. According to the 1972 Secretary of State report on rights associations in Canada, the failure of the CCLA to effectively operate chapters

outside Toronto was attributable to its use of chapters simply as free labour and as part of its attempt to be perceived as a national organization. Most telling was the CCLA's unwillingness to provide affiliates or chapters with a strong voice within the organization's executive or with sufficient financial resources.² In most cases, however, it was simply a question of insufficient resources or lack of leadership and volunteers. As a result of the failure of most rights associations to expand through chapters across the province, the history of rights associations is largely dominated by groups scattered across major urban areas.

British Columbia's first rights association was the Vancouver branch of the Canadian Civil Liberties Union in the 1930s under the leadership of a well known academic and social democrat, George G. Sedgewick. By the late 1950s, both the Association for Civil Liberties (ACL) and the League for Democratic Rights (LDR) had become inactive and there were no remaining rights associations in Canada. Nonetheless, there were anti-discrimination associations in Vancouver throughout the 1950s including a JLC committee and the Vancouver Civic Unity Association, an organization with a mandate to "improve intergroup relations and to strive for the elimination of prejudice."³ But neither group had inherited the mantle of a 'rights association' in the wake of the Vancouver CCLU's demise. The first group to emerge from this vacuum was the BCCLA in 1962.

Following the formation of the BCCLA, a host of other rights associations appeared throughout the province. In addition to the provincial and municipal human

rights labour committees, a British Columbia Human Rights Council materialized in the wake of International Year for Human Rights.⁴ Its Chair was a well known academic from the Faculty of Education in the University of British Columbia, Joseph Katz, who chaired the B.C. Human Rights Committee, the temporary body organizing the province's activities for 1968.⁵ Katz was acknowledged nationally for his human rights work in British Columbia; his organization was one of the few to receive a large grant from the Secretary of State in 1970 and, in the following year, was invited to Ottawa to advise the Secretary of State on its human rights program with a group of rights activists across Canada. Unlike the BCCLA, the Council was a collection of associations, not individuals, and acted in a complementary role to the provincial human rights commission; the Council conducted educational work and brought human rights violations to the attention of the commission. While the Council was involved in a variety of activities, its main focus was promoting non-discrimination and tolerance. As a result, it sometimes came into conflict with the BCCLA whose civil libertarian positions would favour free speech, even when such speech was hateful.⁶ It was this incompatibility which led the Council to hesitate joining the Federation fearing civil liberties and human rights groups could never cooperate. In the end the Council chose to join the Federation and became an enduring member until the Council's demise in the early 1980s.⁷

While the BCCLA and the B.C. Human Rights Council were centred in Vancouver, a large number of rights associations emerged around the province

throughout the late 1970s. An attempt to form a rights association in Victoria in 1969 was unsuccessful but another group finally emerged in the 1979 and continues to operate today as a discussion group.⁸ At one point in time there were groups in Powell River, Kamloops, Penticton, Quesnel, Prince George, Comox-Strathcona Courtnay, Kelowna, Williams Lake and in the North-Central and South Okanagan regions. Some of the groups were organized by the B.C. Human Rights Council but most of them were created by field workers sent out by the BCCLA. Through a grant provided by the province in 1973 (later funded by an Local Initiatives Program grant from the federal government), the BCCLA's Community Information Project was designed to send field workers around the province to provide legal counseling services, promote good relations between the police and citizens, and encourage the formation of independent rights associations.⁹ Although the BCCLA had been instrumental in the formation of these groups, there was no official linkages between them outside the Community Information Project; none of these groups had representation on the BCCLA Board of Directors and the only financial relationship was the salaries provided to the field workers through the BCCLA's government grants. Unfortunately, the core weakness of each group was a dependance on the field worker and many of them became defunct once the field workers departed. Only the South Okanagan and Quesnel groups remain active today.

Alberta lacked a strong presence among first generation of rights associations with the exception of five small chapters of the LDR, and the province did not

become active in the second generation until International Year for Human Rights. A year earlier the government had set up a provisional human rights committee with the goal of establishing a provincial group to work with voluntary organizations on human rights programs. It was part of the nation-wide effort to promote awareness of human rights in anticipation of the anniversary in 1968. In the same year the provincial government hired a full time human rights officer to bring provincial human rights legislation to the attention of the public.¹⁰ The provisional committee eventually evolved into the Alberta Human Rights Association which was incorporated in 1968 under the leadership of F.C. Brodie, secretary of the Alberta Federation of Labour, and was centered in Edmonton. The group struggled in its early years, kept alive predominantly by the efforts of government officials.¹¹ Within a few years the group was forced to release its secretary due to lack of funding, but in 1971 it was able to secure funds from both the Secretary of State and the provincial government to stay afloat. By 1972 the group enjoyed greater stability with about 200 members and a new president who took an active interest in cases of discrimination and the need for an independent review board for police complaints.¹² It was soon renamed the Alberta Human Rights and Civil Liberties Association to broaden the group's appeal.¹³

In 1973 the Alberta Human Rights and Civil Liberties Association established its first successful chapter (a previous attempt in Calgary had failed) with the Lethbridge Civil Liberties Association in reaction to local concerns about the use of

corporal punishment in public schools. This led to a successfully lobbying campaign by the Lethbridge association against the school board to have the regulations for corporal punishment removed.¹⁴ A group of academics, including Ed Webking, a political science professor at the University of Lethbridge, founded the organization and kept it active until the group folded in 1983.¹⁵ Within a year of its founding, however, the Lethbridge group became independent and changed its name to the Lethbridge Citizens Human Rights Council in order to qualify for Secretary of State grants under the program for new groups.¹⁶ Through state funding it was able to operate a downtown office for screening and referral services and spent most of the 1970s organizing education programs funded by provincial and federal grants. It remained active until 1982 when Ed Webking left the group for Ottawa and the driving force behind the organization was lost.¹⁷ Additional rights associations were formed in Fort McMurray and Grand Prairie in 1977, but they only managed to stay alive for a handful of years and never numbered more than a couple of dozen people.

The most enduring rights association to emerge from Alberta appeared in 1973 as the Calgary Civil Liberties Association. Its founder was Sheldon Chumir, a tax lawyer and former Rhodes scholar from Calgary who was independently wealthy thanks to a small oil and gas company. Chumir established a private practice in 1975 and became noted for his civil liberties work in Alberta and chaired the civil liberties section of the provincial wing of the Canadian Bar Association.¹⁸ The fledgling rights association began meeting informally at a Chinese restaurant every second Friday to

discuss issues of interest until its members decided to incorporate themselves into a formal organization in 1977 under the Societies Act.¹⁹ Among its founders was Gary Dickson (lawyer), David Cruickshank (law professor, University of Calgary), Ed Wolfe (Calgary oil patch worker) and Joan Ryan (anthropology professor, University of Calgary). Most of their early work involved drawing attention to local human rights abuses to the media and writing letters to the provincial government. In fact, despite the presence of a few non-lawyers, by 1982 the Calgary Civil Liberties Association was in effect little more than a small group of lawyers lobbying and litigating cases. Once they were incorporated, the association developed a working relationship with the CCLA although never formally affiliated. Among the issues the group concerned themselves with were free speech and municipal bylaws dealing with parade permits and public signs, discrimination against aboriginals by Calgary landlords, various breaches of privacy access regulations and prayers in public schools.²⁰ Once the Alberta Human Rights and Civil Liberties Association had become defunct in the mid-1980s the group changed its name to the Alberta Civil Liberties Association. It had also recently founded the Alberta Civil Liberties Research Centre in 1982 (with the help of a grant from the Alberta Law Foundation) to receive donations and conduct civil liberties educational programs and research. Both the Alberta Civil Liberties Association and the research centre continue to be active today.

Saskatchewan also had virtually no presence among rights associations before the 1960s except for branches of the LDR in Regina, Saskatoon and Moose Jaw. As was the case in Alberta, the Saskatchewan Association for Human Rights (SAHR) was a direct result of celebrations surrounding International Year for Human Rights in Saskatoon.²¹ Its founding president was Reverend G.E. Hobson, with executive secretary John D. Statychuk, a leading figure in the Saskatchewan Ukrainian community working for the provincial wheat pool.²² Statychuk was also one of the key founders of the Federation and helped recruit D.A. Schmeiser, a well known Canadian legal scholar, to the SAHR's Board of Directors. By 1972 the group had 72 members. As was the case with many of the associations formed in 1967-8, one of the first priorities of SAHR was securing a provincial human rights commission with a human rights act.²³ The group worked closely with the government in preparing the legislation and successfully lobbied for significant amendments. According to the *Regina Leader Post*, the "government has bowed to pressure from the Saskatchewan Association of Human Rights and will change its proposed human rights commission legislation to allow the commission to enforce its own decisions and to allow persons affected the right of appeal."²⁴

Three chapters of the SAHR were formed in the 1970s in Regina, Moose Jaw and Esterhazy, none of which lasted for very long. The only other rights organization to emerge during this period in Saskatchewan was the Regina Civil Liberties Association, a branch of the CCLA. It was created in 1970 and was predominantly a

collection of university professors, unionists and lawyers led by John Beke. Several committees were initially set up to study various issues in the province including the status of inmates of public health institutions and prisons, the rights of juveniles and in the administration of justice.²⁵ The Regina branch remained active until 1980.

Unlike Saskatchewan and Alberta, there was an active rights association in Manitoba before the 1960s called the Civil Liberties Association of Winnipeg. The LDR had established branches in Brandon and Winnipeg, and Winnipeg was also home to one of the JLC's human rights committees. Surprisingly, there was little activity in Winnipeg during the 1960s and 1970s. The Winnipeg branch of the Jewish Labour Committee was only marginally active, doing some educational work and taking on a few specific cases of discrimination. In 1967 a Manitoba Human Rights Association was formed and changed its name to the Manitoba branch, CCLA, when it affiliated with the CCLA in 1969. The affiliation allowed the organization to receive \$20 000 of the CCLA's Ford grant, and it managed to raise an average of \$12 000 to \$14 000 each year afterwards to stay active.²⁶ More than 400 people attended the chapter's founding in 1969 when Pierre Burton, who sat on the Board of Directors for the CCLA, gave a talk. Jerry Fast, a graduate student in economics, was appointed the group's first staff director.²⁷ Within a year the newly christened association presented a brief to the provincial government demanding significant revisions to the human rights code asking for the commission to report directly to the legislature and not the minister, and called for the inclusion of sex, property status,

social origin, social status or other status as prohibited forms of discrimination.²⁸

Unfortunately the Manitoba CCLA did not enjoy the success of its Saskatchewan counterpart and the recommendations were not accepted.

An attempt to form a chapter in Brandon was unsuccessful and the branch itself became defunct by 1975. It had already lost its director in 1971 due to lack of funding. By focusing on the CCLA's due process research the Manitoba group had neglected its own needs and eventually became inactive. It was quickly replaced, however, by a new Manitoba Civil Liberties and Human Rights Association which experienced a variety of name changes, from the Winnipeg Civil Liberties and Human Rights Association in 1976 to the Manitoba Association for Rights and Liberties (MARL) in 1978. There was some fluidity between the fall of the original CCLA branch and MARL, which also affiliated itself with the CCLA; the cash balance held by the original group was passed on the MARL when it was incorporated. MARL's first president was Dr. Ralph E James, past president of the Carribean Canadian Association of Winnipeg and an active member of the Canadian Council of Christian and Jews. Judge C. Rhodes Smith, former Chief Justice of Manitoba, served as honorary president. MARL's first public action was to brief the provincial Law Amendment's Committee to oppose amendments to the Human Rights Act (Bill 65) which would have allowed discrimination in employment on grounds of race, religion, physical disability or colour where they were considered occupational requirements for work. Bill 65 further proposed to exempt the Manitoba Insurance

Company from the Human Rights Act. Eventually the government chose not to amend the legislation in regards to race, colour, religion and handicap.²⁹ By 1981 MARL had over 350 members, although it was experiencing financial difficulties and had to be bailed out by the CCLA with an annual grant of \$5000.³⁰ Nonetheless, the organization overcame its difficulties and continues to be active today.

Ontario, as the largest province in Canada and home to the nation's capital and the largest urban area, has always played host to several rights associations. Several organizations operated from Ottawa and Toronto in the 1930s and 1940s, and the Association for Civil Liberties and the LDR (which also formed chapters in Ottawa, Toronto, Hamilton, Niagara Peninsula, London, Windsor, Sault St. Marie, Timmins, Port Arthur, and Fort William) operated out of Toronto. It was the CCLA, with its ties to the Association for Civil Liberties through Irving Himmel, which was the first group to emerge in the 1960s in Ontario. At the time, the Jewish Labour Committee had been active in both Toronto and Windsor with committees to combat racial intolerance. Between 1968 and 1982, chapters of the CCLA were formed in Windsor and London while other groups were formed in Ottawa, Hamilton, Owen Sound, Cornwall, and Kenora. Although devoid of chapters, the CCLA remains one of the most active rights associations in the country today and is unquestionably the most recognizable.

Another organization was founded in Ontario around 1968 in Ottawa as a chapter of the CCLA but it soon disaffiliated and became an independent

organization. Although it was formed during the International Year for Human Rights, the Civil Liberties Association National Capital Region (CLA NCR) was in actuality created in response to police harassment of youths selling the alternative newspaper, the *Free Press*.³¹ Police had decided to harass and seize copies of a paper called 'Octopus' being distributed on the Sparks Street mall, a pedestrian walkway in downtown Ottawa. Although in theory no one could peddle or conduct business on the mall without a permit from the Pedestrian Mall Authority, in practice the mainstream newspapers never bothered to obtain one. Only Octopus was targeted by officials who harassed, seized and prosecuted distributors of the paper for illegal distribution on the mall. After 20 months of negotiations with the mall authority, the CLA NCR was finally able to get them to agree to allow Octopus to be distributed so long as the vendors did not harass people in the mall.³² Among its founders was Don Whiteside, a member of the Secretary of State's Group Understanding and Human Rights Section, and most of its initial membership were local university professors. Its president was professor Hugh Martha and its general counsel was a lawyer, Len Shore. Whiteside became the key link between the CLA NCR and the Federation which he helped found and eventually became the leading force in the latter, using the resources and offices of the CLA NCR to help keep the Federation active.

In Cornwall, a group was constituted in 1971 and soon became a member of the Federation. Thanks to funding from the Secretary of State, it was able to establish a permanent office and open a storefront office in the downtown to provide advice

and referral services to the local community.³³ Its work by the mid-1970s included organizing seminars on discrimination, publishing a pamphlet on youth and the law, and helping people who were confused with the complicated process of claiming unemployment insurance and using income tax forms.³⁴ The Cornwall Civil Liberties Associations managed to stay active until 1981. In the Kitchener-Waterloo region a Kitchener-Waterloo County Human Rights Association was organized in 1970 only to become inactive by 1972; it was quickly replaced, however, by the Kitchener Waterloo Human Rights Caucus in 1972 which remained active until 1981. In its first years of operation, the Human Rights Caucus complained to the Waterloo County Board of Education when it refused to hire a woman out of concern she might become pregnant, and supported a boycott by the Dare Foods workers in Kitchener who were on strike. The strike was initiated because of differential wages between men and women in the factory, and the difficult working conditions where seven women per week on average were fainting in a building which could reach up to 130 degrees.³⁵

In Hamilton, the local civil liberties association led by university professor Harry Penny began in 1970 with 85 members and would continue operating until sometime in the 1980s. It refused to join the Federation based on “irreconcilable differences in ideology” because the Federation accepted government funding which, as was the case with the CCLA, the Hamilton group adamantly opposed.³⁶ For the next 12 years the association concerned itself with a wide range of civil liberties issues, from RCMP record keeping for people found innocent of crimes to the rights

of patients and immigrants. A London rights association originally began as a chapter of the CCLA but became an independent association in 1972 with Dr. Carl Grindstaff, a law professor at the University of Western Ontario, as its president. It was formed when police in London decided to arrest ten people for shoplifting near Christmas and keep them in jail over the holidays as an example to other potential shoplifters.

Outraged at the decision to imprison people for stealing \$40 in merchandise, Grindstaff called together a group of leading activists in the city to form a London branch of the CCLA which unsuccessfully sought a Writ of Prohibition to prevent further detentions for shoplifting.³⁷ Other groups were also formed around Ontario in the 1960s and 1970s in Owen Sound, Sudbury, Windsor, Kingston and Kenora, most of which lasted for only a few years.³⁸

While rights association proliferated in Ontario, there were surprisingly few associations in Quebec. Montrealers have always been active among rights associations, beginning with a chapter of the CCLU in the 1930s and, years later, the Montreal Civil Liberties Association. There were also chapters of the LDR in Montreal and Quebec city, and the Jewish Labour Committee was headquartered in Montreal as was the United Council for Human Rights. Outside the labour committees, however, the only enduring rights association in Quebec was the LDH.

For a brief period the LDH toyed with the possibility of having chapters. There was some correspondence with people in Sherbrooke as early as 1965 thinking of setting up a branch of the LDH but nothing materializing from the initiative.³⁹ For

the first time a branch was set up in 1973 in Quebec City which barely last a year. Little is known about the branch and why it failed except for difficulties it encountered in encouraging people to become active in the group.⁴⁰ The most lasting branch of the LDH was a group in Sept-Îles called the Comité Regionale du Côte Nord, which was active between 1976 and 1980. Inspired by the activities of the LDH, a group of residents fighting against exploitation by landlords decided to form the branch and spent most of its time sending letters to politicians on key issues, preparing teaching aids, distributing press releases and organizing petitions.⁴¹ Another branch in Estrie formed in 1978 also became defunct within a handful of years. From the minutes of the LDH it is clear the failure of the branches was likely a result of simple disinterest on the part of most members of the LDH executive council. The branches were a product of local initiative and not the executive; the LDH offered the groups no financial support nor a place in its own council, and took little interest in the initiatives these groups were undertaking. The LDH itself remains one of the largest and most active rights associations in Canada today.

New Brunswick, as with its fellow Atlantic provinces, had no presence among the first generation of rights associations, not even a branch of the LDR. A branch of the CCLA was formed in Fredericton in 1969 under president John Oliver with about 60 members and continued to operate until 1975. In its first year of operation the organization established a legal aid office and, in the same year, came to the defence of Tom Murphy, a writer for the student newspaper at the University of New

Brunswick. Murphy had written a column on the recent barring of a professor from the university, Norman Strax, accusing the courts of perpetrating a mockery of justice and being tools of the corporate elite. Borovoy was flown in from Toronto by the Fredericton CCLA to challenge the charge against Murphy of scandalizing the courts. Borovoy argued that the Crown had to prove actual interference in the administration of justice but he lost the case and Murphy spent ten days in jail.⁴²

An additional group was formed in Bathurst (Comité des droits de l'homme du nord-est du Nouveau Brunswick) in 1971 with 300 members which was defunct by 1980 although it had been effectively inactive since 1975.⁴³ Jean-Marie Nadeau of the New Brunswick Federation of Labour was the group's first executive secretary and its founding president was Théo Gagnon, provincial director for welfare services in the north-east region (many of the group's early founders eventually became the leaders of New Brunswick's francophone labour movement). Within a year the group had applied for Secretary of State funding and established an office in Bathurst with seminars to discuss the role of the provincial ombudsman, legal aid and the human rights commission. Of all the New Brunswick rights associations, the Bathurst organization was the most active, offering a referral service and working with the ombudsman and human rights commission to establish offices in the region. This organization emerged as a result of the social and economic problems of the region, specifically high unemployment and lack of services for Acadians in French. The group's primary goals and accomplishments were lobbying the government to extend

unemployment benefits and services to this largely poor region of New Brunswick and improving access to French services in the north-east.⁴⁴

Another association called the Comité pour les droits de l'homme du sud-est du Nouveau Brunswick, emerged in 1972. Little is known about the latter except that it joined the Federation in 1972 when it was formed and remained active in the Federation until 1975 when the sud-est group dropped off the map. According to the Federation, the sud-est group fell from a remarkable 1500 members to 10 within a year and became inactive by 1975. It most likely emerged as a result of a particular event which mobilized the local populace and soon became defunct after the issue was concluded. Finally, in 1975 (around the time the Fredericton chapter of the CCLA became defunct), a fourth rights group emerged in New Brunswick called the New Brunswick Human Rights and Civil Liberties Association. It was formed at the initiative of Norville Getty, a former leader of the Prince Edward Island Civil Liberties Association, who was traveling to Fredericton in his capacity as President of the Federation. Getty encouraged a small group of local young professionals, mainly professors and civil servants, to form an association and join the Federation. The group (mostly anglophones from the south of the province) was led by Cynthia Davis, a civil servant with the provincial government, and most of their time was spent responding to phone calls from people unsure about their rights. It became defunct in 1983.⁴⁵

Sydney, Nova Scotia, was briefly home to a chapter of the LDR but the province had no active rights association until 1962 with the creation of the Halifax Advisory Committee on Human Relations (although there was a human rights committee with the Halifax and District Labour Council and the Cape Breton Labour Council). In its fourteen year history it experienced more name changes than any other rights association, including the Halifax Advisor Committee on Human Rights (1963), Nova Scotia Human Rights Association (1966), Nova Scotia Civil Liberties and Human Rights Association (1969) and the Nova Scotia Civil Liberties Association (1972).⁴⁶

In its original form, the creation of the Human Rights Advisory Committee on Human Relations was a product of the JLC. Sid Blum, Director of the JLC, sent his most effective employee, Alan Borovoy, to Halifax in 1962 to work with the labour federation and other community groups to see if there was anything they could do to help the black population of Africville. The all-black suburb of Halifax had long been an issue of concern for both local and national minority rights activists.⁴⁷ It was a dilapidated and run down part of the city with approximately 80 families (400 people), many of whom lived in hovels with no running water and used outdoor toilets.⁴⁸

Working with Joe Gannon, a vice-president of the Canadian Labour Congress headquartered in Nova Scotia, Borovoy mobilized a group of activists to agitate for the rights of blacks in Africville who eventually took the name of the Halifax

Advisory Committee on Human Relations.⁴⁹ Within a few years, the group had Chief Justice of Nova Scotia, Gordon S. Cowan, as its president and H.A.K. 'Gus' Wedderburn, president of the Nova Scotia Association for the Advancement of Coloured People, as its Vice-Chairman. By 1972 it had approximately 230 members. Wedderburn was the real mover behind the organization. A tireless black activist born and raised in Nova Scotia who was employed as a high school principle (and became a lawyer in the 1970s), it was Wedderburn who became the JLC representative in Halifax. For the next ten years, the Halifax group would function in much the same capacity as the Ontario Labour Committee for Human Rights and receive funding from the JLC; however, the group operated independently and never formally worked with the provincial labour federation as was the case in Ontario and British Columbia. An attempt to form chapters in Pictou County, Truro, Cape Breton and Yarmouth did not last for very long and these groups quickly became defunct.

The Nova Scotia organization had only been linked to the JLC through Wedderburn and did not depend on them, as the Ontario group had, for all its funding. When the JLC became defunct in the mid-1970s, the group was able to continue functioning with little hindrance. But by this stage the organization was in decline. It had changed its name to the Nova Scotia Civil Liberties Association to reflect its new mandate. The group no longer dealt with cases of discrimination, which it felt best belonged to the human rights commission. At this stage Wedderburn had retired from the organization and it fell into the hands of a group of lawyers and academics mostly

from Dalhousie University.⁵⁰ The name change also reflected the organization's decision to affiliate with the CCLA. For the next three years, before the organization became defunct in 1976, most of its energies were directed towards dealing with complaints against the police, reviewing legislation and offering legal advice. It began receiving grants from the federal government as well, including a \$16 400 grant from the Canadian Mortgage and Housing Corporation to organize tenants associations across the province in 1971 and a \$57 000 grant from the Secretary of State to study doctor-patient relations in 1973.⁵¹ The group also vigorously studied the McRuer report and attempted to apply the same recommendations to Nova Scotia by making presentations to the legislature's Law Amendments Committee in such areas as tenants rights and police practices. By 1976 the leadership of the group had turned to a local lawyer, Walter Thompson, and once he was unable to continue organizing the association's meetings, the Nova Scotia Civil Liberties Association ceased to be an active force in the province.⁵²

Prince Edward Islanders formed their first rights association in 1971. Before the Prince Edward Island Civil Liberties Association (PEI CLA) there had been no rights association in the province; a committee had been formed to celebrate the anniversary of the UDHR and did not develop into an independent association as had been the case in Saskatchewan, Alberta and Newfoundland. The new organization was founded in reaction to the use of the War Measures Act and helped found the Federation. One of its founders and future president was Norville Getty, a senior civil

servant in the Department of Development, and the remaining directors were predominantly professors from the University of Prince Edward Island. The group began with a small membership of 50 and had 100 by 1972.⁵³ Among its earliest successes was a report on the poor state of the prison system which led to the building of a new provincial prison in Sleepy Hollow, just outside of Charlottetown.⁵⁴ Perhaps the most enduring success of the PEI CLA by 1982, however, was convincing the government to establish a permanent human rights commission in 1975.⁵⁵ Although the province had enacted human rights legislation in 1968, it lacked a full time commission to enforce the legislation. Since its founding the PEI CLA had also been an active member of the Federation and remained so until both organizations became moribund in the 1990s.

Newfoundland, which was not even a province of Canada when the first rights associations emerged, did not have its own rights association until the 1960s. As was the case with Saskatchewan and Alberta, the anniversary of the UDHR stimulated the creation of a rights association in Canada's easternmost province. It would later become one of the founding members of the Federation and a stalwart supporter of the organization until the Federation became defunct in 1990. Despite being a small group in an isolated region, the NLHRA continues to operate today after more than thirty years.

Endnotes for Appendix A

1. This number does not include the large numbers of small chapters formed by various rights associations which only lasted for a few years. Don Whiteside's report which documented forty-six groups in 1972 referred to in chapter one included not only these small chapters in its analysis but several human rights committees set up by mayors in cities such as Kenora and Sudbury which are not discussed here.
2. There is a clear bias against the CCLA in the report written by Don Whiteside for the Secretary of State. Interviews with rights activists across Canada confirmed that Whiteside had always been hostile to the CCLA; Whiteside was one of the key architects of the Federation, the only rival national rights association to the CCLA. In fact, the CCLA later wrote to Pelletier directly as Secretary of State criticising the inaccuracies in the report, noting that "in view of our past differences with him, it is perhaps understandable that he should wish to extend these polemics to the preparation and dissemination of such a document. What is disconcerting to us, however, is that the Government of Canada should officially sponsor the publication and dissemination of such inaccuracies." Sidney Midanik to Gerard Pelletier, n.d., NAC, CCLA, vol.181, f.23; NAC, Kalmen Kaplansky Papers, MG30, A53, vol.7, f.3, A Brief Historical Analysis of the Development of Human Rights and Civil Liberties Associations in Canada, 6 June 1972.
3. The Vancouver Civic Unity Association was created in 1950 with leaders from church, labour and ethnic groups in Vancouver. Despite the fact that it was not a self-identified civil liberties or human rights association, the Association did not represent any specific constituency but was truly representative of the community. However, it was clearly issue-specific, with a mandate to focus on anti-discrimination campaigns, and thus falls outside the rubric of a 'rights association.' NAC, Walter Tarnopolsky Papers, MG31, E55, v.8, f.12, International Year for Human Rights, Reference Materials, n.d.
4. According to William Giesbrecht, chair of the Vancouver Labour Committee for Human Rights, the B.C. Human Rights Council was "mainly an organization arising out of the individuals who were on the International Year for Human Rights, B.C. Commission, an organization primarily carrying out the same functions that the Vancouver Civic Unity Association had done for some years- or were supposed to do." William Giesbrecht to R.C. Haynes, 15 April 1970, vol.37, f.17, University of British Columbia, Rare Books and Special Collections, University of British Columbia, British Columbia Federation of Labour Papers.

5. Katz and the original members of the B.C. Human Rights Council were originally drawn from the Vancouver Unity Association. NAC, CCLA, vol.4, f.3, Civil Liberties and Human Rights Associations- Report on Voluntary Organizations by Gilles Thériault and Michel Swinwood, 10 March 1972.
6. As Katz noted in a meeting of the Undersecretary of State's Advisory Committee on Human Rights, the "Council has some concern about the stance that civil liberties takes that strike the public, in many cases individuals as sort of a negative or regressive stance which tends to try to show the negative side in order to elicit the positive. On the other hand human rights is concerned with cultivating and developing a positive relationship." UQAM, SAGD, LDL, 24P2b/14, Under-Secretary of State's Advisor Committee- Human Rights, 25 January 1971.
7. Around the same time the British Columbia Human Rights Council was folding, a new organization was emerging in the province to take its place: the British Columbia Human Rights Coalition. As was the case with the Council, the Coalition was more an umbrella organization for rights associations than a membership of individuals. In addition, the Coalition favoured a broad human rights approach compared to the BCCLA's civil liberties viewpoint on issues such as pornography and hate propaganda. Ross Lambertson, interview by Dominique Clément, 26 August 2003.
8. The Victoria Civil Liberties Association was a product of the BCCLA field workers. For most of its history the Victoria group remained only marginally active, organizing public forums and supporting the BCCLA on specific issues. It remains active today, but only through the participation of a small group of individuals meeting irregularly in Victoria. Lambertson, interview.
9. Robson to field workers, June 1974, LSBICA, BCCLA, vol.2, f.4.
10. NAC, Franks Scott Papers, vol.103, list of events and plans undertaken by various organizations for International Year for Human Rights, 15 December 1967.
11. NAC, Kalmen Kaplansky Papers, MG30, A53, vol.7, f.3, A Brief Historical Analysis of the Development of Human Rights and Civil Liberties Associations in Canada, 6 June 1972.
12. National Bulletin, Vol.1, No.2, August 1972.
13. National Bulletin, Vol.1, No.2, August 1972.

14. Ed Webking, interview by Dominique Clément, 26 August 2003.
15. By the late-1970s Ed Webking had become the driving force behind the Lethbridge association. When he went on sabbatical in 1982 and moved to Ottawa to help Walter Tarnopolsky found the Human Rights Research Centre at the University of Ottawa, the group became defunct. Upon his return to Lethbridge Webking decided not to revive the organization, but became active instead in the Calgary Civil Liberties Association. Webking, interview.
16. National Bulletin, Vol.3, No.4, July 1974.
17. Rights and Freedoms, No.25, March 1977; Rights and Freedoms, No.32, September-October 1979.
18. Glenbow Archives, Sheldon Chumir Fonds, biographical summary.
19. Gary Dickson, interview by Dominique Clément, 4 April 2003.
20. Dickson, interview; Janet Keeping, interview by Dominique Clément, 19 March 2004.
21. NAC, Frank Scott Papers, v.52-3, provincial report from Saskatchewan for International Year for Human Rights, 1968.
22. Another Ukrainian who was among the key leaders of the SAHR was Zenon Pohorecky, a professor of archeology at the University of Saskatchewan.
23. Canada. *Report of the Proceedings, National Conference on Human Rights and Activities of the Canadian Commission*, 1969
24. Quoted in: National Bulletin, Vol.1, No.1.
25. Civil Liberties, Vol.3, No.1, May 1971.
26. UQAM, SAGD, LDL, 24P2b/11, Canadian Civil Liberties Association-Manitoba Branch, 1970.
27. Civil Liberties, Vol.2, No.1, September 1969.
28. Civil Liberties, Vol.2, No.1, August 1970. In 1968 it had been the Manitoba Civil Liberties Association which had taken charge of the province's activities during International Year for Human Rights.

29. In defence of human rights and civil liberties (MARL newsletter), 17 December 1978, No.1.
30. NAC, Walter Tarnopolsky Papers, vol.3, f.5, minutes Board of Directors of the CCLA, 16 December 1981.
31. NAC, Kalmen Kaplansky Papers, MG30, A53, vol.7, f.3, A Brief Historical Analysis of the Development of Human Rights and Civil Liberties Associations in Canada, 6 June 1972.
32. Civil Liberties, Vol.2, no.1, August 1970.
33. National Bulletin, Vol.2, No.1, February 1973.
34. National Bulletin, Vol.2, No.2, April 1973.
35. National Bulletin, Vol.2, No.2, April 1973.
36. National Bulletin, Vol.1, No.3, October 1972.
37. Civil Liberties, Vol.2, No.1, September 1969.
38. The Owen Sound group was an initiative of the local United Church and had about 20 members; it focussed its efforts on organizing seminars. In Windsor, professors Saul Nosanchuck and John Spellman formed the group and dealt with some minor issues such as getting a young man, who refused to cut his hair, back into the high school which had expelled him. Sudbury's Mayor's Committee on Human Rights was an initiative of the local 6500 of the Steelworker's Union with a union member, Bob Chartrand, as the committee's president. The union had decided to form the committee in the hope of attracting prominent members of the community, such as the mayor and police chief, to contribute to the union's human rights program. NAC, CCLA, vol.4, f.3, Civil Liberties and Human Rights Associations- Report on Voluntary Organizations by Gilles Thériault and Michel Swinwood, 10 March 1972.
39. Jean Louis Beaudoin, to Pierre Paul Rioux, 10 December 1965, 24P3/1, UQAM, SAGD, LDL.
40. Pierre Dupuis to Maurice Champagne, 27 August 1974, 24P3/3, UQAM, SAGD, LDL.
41. UQAM, SAGD, LDL, 24P3, Les droits et libertés sur la Côte Nord- Recherche Action présentée par le Comité régional Côte Nord de Ligue des droits et libertés, 1979.

42. Civil Liberties, Vol.2, No.1, September 1969.
43. The first meeting of the Comité des droits de l'homme du nord est du Nouveau Brunswick was held on 16 May 1971 where a provisional committee was established to draft a constitution. On 17 December 1972 the constitution was approved and the organization formally created. It was organized along the regions established in the province for educational purposes (six in total), with 3 directors from each region being elected alongside 9 at-large members. The original impetus behind the organization was simply a group of friends who were active in other francophone community groups and who were inspired by the ideas of the UDHR and the Bill of Rights. Théo Gagnon, interview by Dominique Clément, 20 November 2003.
44. Gagnon, interview.
45. Norville Getty, interview by Dominique Clément, 14 October 2003.
46. The name change in 1969 reflected the leadership's desire to narrow the group's activism to civil liberties issues after the province appointed a full time director for the human rights commission. Human rights legislation had been passed in Nova Scotia in 1963 but the association at that time continued to play a key role in publicizing the legislation and bringing cases before the commission which had a small staff operating out of the Ministry of Labour. Public Archives of Nova Scotia, Nova Scotia Human Rights Association Papers, MG20, vol.421, summary of activities of the Nova Scotia Civil Liberties and Human Rights Association, no date.
47. Walter Thompson, interview by Dominique Clément, 1 June 2003.
48. NAC, Jewish Labour Committee Papers, MG28, V75, vol.2, f.7, A Report of Recent Activities, 1965.
49. NAC, Jewish Labour Committee Papers, MG28, V75, vol.40, f.16, memorandum from Borovoy to the Joint Advisory Labour Committee, 31 January 1967.
50. According to an article covering the February 1972 meeting of the Nova Scotia Civil Liberties Association, much "of the energy of the organization in the past went into fighting for the rights of minority groups, especially black and Indians. But now that the Human Rights Commission and the Black United Front are operating many members feel the Civil Liberties Association can better serve the community by working to protect the civil liberties of all citizens." The 4th Estate, 3 February 1972.

51. Public Archives of Nova Scotia, Nova Scotia Human Rights Association Papers, MG20, vol.421, minutes of a meeting of the Nova Scotia Human Rights and Civil Liberties Association, 30 September 1971; Walter Thompson, interview by Dominique Clément, 1 June 2003.
52. Thompson, interview.
53. UQAM, SAGD, LDL, 24P2b/12, union of human rights and civil liberties newsletter, Vol.2, no.1, January 1972.
54. Getty, interview.
55. NAC, Canadian Labour Congress Papers, MG28, I103, f.15, vol.662, report from the 1974 annual general meeting of the CLA NCR, 22 October 1974.



