

In contrast to the largely theoretical nature of the first part of the book, later chapters deal with material of an intensely practical (even procedural) type. They contain much information that a practising lawyer would find useful on such topics as "standing" to raise constitutional issues (Can a taxpayer who is opposed to Medicare challenge its constitutionality in the courts?) and admissibility of evidence concerning the background of the legislation in question (Can a judge take judicial notice of information gleaned from history books?). Professor Strayer's careful analysis of such problems will be of considerable assistance to lawyers desiring to raise constitutional problems in the courts.

Several suggestions are made for improving the usefulness of judicial review. It is urged, for example, that better methods be developed for providing courts with the type of factual background information without which sound policy choices cannot easily be made; and that the confused rules relating to "standing" be rationalized. I hope that these proposals receive the legislative response they deserve.

I have only two criticisms of the book. First, it seems to me that a study of the courts' role in reviewing the constitutionality of legislation should contain a much fuller examination than Professor Strayer provides of the competence of the courts, as now constituted and staffed, to make the sophisticated type of policy decisions involved. He does make a few comments about these matters, but they have the tone of last-minute addenda, rather than the thorough-going study that is required. Second, at \$15.00 for 211 pages of text, the book is outrageously over-priced.

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ROYAL COMMISSION INQUIRY INTO CIVIL RIGHTS,
Report Number One, Commissioner James Chalmers McRurer;
(Queen's Printer, Ontario, Toronto), February 7, 1968;
volume 1, lix, pp. 1-497; volume 2, xv, pp. 499-956; and
volume 3, xii, pp. 957-1331.

By Bill 99, entitled An Act to amend The Police Act, presented to the 2nd Session, 27th Legislature, Ontario 12-13 Elizabeth II, 1964, the government of Ontario proposed, inter alia, to add a further investigative

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power to the general powers of the Ontario Police Commission¹; s. 14 of the Bill provided as follows:

"14. *The Police Act* is amended by adding thereto the following sections:

39c.—(1) The Commission may inquire into and report to the Attorney General upon any matter relating to,

- (a) the extent, investigation or control of crime;
- (b) the enforcement of law; or
- (c) its functions under this Act.

(2) For the purpose of an inquiry under subsection 1, the Commission may summon any person and require him to give evidence on oath, *in camera* or otherwise, and to produce such documents and things as the Commission deems requisite.

(3) Where evidence is taken *in camera* under subsection 2, no person, without the consent of the Commission, shall disclose any information or evidence obtained or the name of any witness examined or sought to be examined under subsection 2, and every person who contravenes this subsection is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or imprisonment for a term of not more than one year, or to both.

39d.—(1) The Commission has all the powers to enforce the attendance of witnesses and to compel them to give evidence and produce documents and things as are vested in any court in civil cases.

(2) Where a person, being present at an inquiry and being required by the Commission to give evidence,

- (a) refuses to be sworn;
- (b) having been sworn, refuses to answer the questions that are put to him;
- (c) fails to produce any writings that he is required to produce; or
- (d) refuses to sign his deposition,

without offering a reasonable excuse for his failure or refusal, the Commission may, by warrant, commit the person to prison for a period not exceeding eight clear days.

(3) Where a person to whom subsection 2 applies is again brought before the Commission and again refuses to do what is required of him, the Commission may again commit him to prison for a period not exceeding eight clear days and may commit the person to prison from time to time until the person consents to do what is required of him.

39e.—The chairman of the Commission may authorize one or more members of the Commission to conduct any inquiry that the Commission may conduct, and each member so authorized may exercise the powers and perform the duties of the Commission under section 39b, subsections 1 and 2 of section 39c, section 39d and section 48."²

1. The Commission was created by S.O. 1961-62, c. 105, s. 6, which amended *The Police Act*, R.S.O. 1960, c. 298 by adding thereto Part III-A and particularly s. 39a; the general powers of the Commission are to be found primarily in s. 39b (enacted by S.O. 1962-63, c. 106, s. 4)—see also ss. 40(3) and 48(1) as amended by S.O. 1961-62, c. 105, ss. 7 and 9.

2. The explanatory note to s. 14 of Bill 99 stated that "the new sections provide the machinery necessary for the Commission to investigate matters relating to the extent, investigation or control of crime in Ontario."

The uproar³ which followed First Reading of Bill 99 was of sufficient fury to topple the then Attorney General Mr. Frederick Cass,⁴ to result in the deletion of s. 14 of the Bill as presented from the Bill as enacted⁵ and to worry the government of Ontario into appointing the McRuer Inquiry into Civil Rights⁶ with the following terms of reference;

- "1. To examine, study and inquire into the laws of Ontario including the statutes and regulations passed thereunder affecting the personal freedoms, rights and liberties of Canadian citizens and others resident in Ontario for the purpose of determining how far there may be unjustified encroachment on those freedoms, rights and liberties by the Legislature, the Government, its officers and servants, divisions of Provincial Public Service, boards, commissions, committees, other emanations of government, or bodies exercising authority under or administering the laws in Ontario.
2. After due study and consideration to recommend such changes in the laws, 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."⁷

On February 7, 1968 Commissioner McRuer submitted Report Number One, with this explanation;

"In order that immediate legislation may be considered in relevant areas, which will be covered in our Report, we have come to the conclusion that it is desirable to submit two reports — Report Number 1 [more particularly described infra] . . . In Report Number 2 we shall deal specifically with the following subjects:

A Bill of Rights for Ontario;

A Legislative Commissioner or Ombudsman for Ontario;

The Continental system of providing safeguards against unjustified encroachment on civil rights through administrative courts such as the Conseil d'Etat; and

Compensation for damages suffered by specific individuals through the exercise of statutory powers.

In addition we shall analyze and discuss the powers and procedures of boards and tribunals acting under the authority of provincial legislation. In this analysis and discussion we shall endeavour to apply the conclusions and recommendations contained in the relevant parts of Report Number 1. In Report Number 2 we shall recommend what additional safeguards should be provided in the legislation governing provincial boards and tribunals as will

3. See for example, *The Globe and Mail*, March 20, 1964, p. 1, "Queen's Park Plans 'Drastic, Dangerous' New Police Powers" and "Bill of Wrongs"; *ibid.*, March 21, 1964, p. 1, "World Judges' Body To See Police Bill" and "Bombshell Bill in Finished Form in Hands of Attorney-General by March 2," p. 6, "Leaders Have to Lead" and Letters to the Editor, p. 8, "Cass in the Spotlight," and also p. 10; *ibid.*, March 23, 1964, p. 1, "Clarify Police Bill: Robarts" and p. 6, Letters to the Editor; *ibid.*, March 24, 1964, p. 1, "Robarts Joins NDP To Kill Law—Cass Resigns From Cabinet," p. 6, "Day of Confusion" and Letters to the Editor and p. 8, "Accept Full Responsibility for Bill and Crime Report, Premier Tells Legislature."

4. Who is presently the Speaker of the Ontario Legislature; see also footnote 3.

5. See S.O. 1964, c. 92 and footnote 3; note, however, s. 17.

6. See *The Globe and Mail*, Toronto, May 2, 1964, p. 1, "McRuer to Probe Civil Rights, Study Authority of Commissions" and p. 6, "In Search of Tyrannies." The actual Commission was dated, and the Order-in-Council in connection therewith, May 21, 1964.

7. See volume 1, at p. viii; see also the General Introduction, at pp. 1-11.

adequately protect the civil rights of individuals affected by their decisions. Report Number 2 will contain an index to both reports.”⁸

Commissioner McRuer describes Report Number One in the General Introduction as follows;

“We have divided the Report into five parts:

Part I – The Exercise and Control of Statutory Powers in the Administrative Process;

Part II – The Administration of Civil and Criminal Justice in the Province;

Part III – Safeguards Against the Unjustified Exercise of Certain Special Powers;

Part IV – General Safeguards Against Unjustified Encroachments or Infringements;

Part V – Application of General Principles to Specific Statutory Tribunals.

In Part I we consider statutory powers that may give rise to ‘unjustified’ encroachment in governmental processes apart from processes relating to the administration of justice through our system of courts.

In Part II we discuss the encroachments or infringements on fundamental and basic rights arising within the provincial government’s field of responsibility in the administration of justice, both civil and criminal, in relation to the functions of the courts in operation.

In Part III we give separate and detailed consideration to the exercise of certain special statutory powers of broad application, i.e., Expropriation, Licensing, Family Benefits, Self-Government of Professions and Occupations, and Confinement of the Mentally Ill.

In Part IV we consider certain proposed general safeguards that are new to our legal system in this Province, e.g., a Bill of Rights, an Ombudsman, and Administrative Courts.

In Part V we survey the statutes of Ontario that confer powers of encroachment or infringement in detail with specific recommendations. In this Part we consider all the boards and commissions, established under statutes of Ontario, exercising statutory powers of encroachment, or those whose activities may infringe upon fundamental and basic rights.”⁹

It is not my intention in this review to highlight or criticize Report Number One. I leave it to you, and I urge you most earnestly, to read this truly momentous and monumental Report.¹⁰ Although Commissioner McRuer’s task was to review and make recommendations concerning the legislative and administrative situation in Ontario, a significant thing about the Report is that it undoubtedly mirrors the situation in the rest of Canada as well. The pattern utilized and the recommendations made by Commissioner McRuer could well be followed in other Canadian jurisdictions.¹¹

I look forward to Report Number Two.

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8. *ibid.*, at p. xviii.

9. *ibid.*, at pp. 9-10.

10. See however John Willis (Professor of Law, Univ. of Toronto), *The McRuer Report: Lawyer’s Values And Civil Servants’ Values*, (1968) 18 U.T.L.J. 351. See also O. H. Chartrand, *A County Court Judge Looks at the McRuer Report*, (1968) 11 Can. Bar J. 450.

11. Incidentally, for the law student and law teacher, Commissioner McRuer will have produced in Reports Number One and Two a comprehensive course in Administrative Law!

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