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Annotated Language Laws of Canada: Constitutional, Federal, Provincial and Territorial Laws

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[Review of *Annotated Language Laws of Canada: Constitutional, Federal, Provincial and Territorial Laws* (Department of Public Works & Government Services Canada, 1998)]

Many of Canada's language laws represent an attempt by governments to articulate national or provincial linguistic identities. How fitting, therefore, that *Annotated Language Laws of Canada* is a work which is itself in search of an identity. There is, in fact, some dissonance between what this book claims to be and what it actually is. Although its cover suggests that it is part of a series of "New Canadian Perspectives," there is little that is new (in the sense of original) in the work, other than the actual compilation. As for perspectives—one of the most striking absences in this work is any kind of perspective. The authorial voice is singularly lacking. *Annotated Language Laws of Canada* is a bare compilation of language legislation which contains no overarching definitions of language or language legislation. The organizational structure, choice of materials and even annotations are, for the most part, unexplained, and the silence on these points may serve as a metaphor for the ambiguity and inconsistency that is reflected in much of Canadian federal and provincial language policy.

Before exploring these concerns in greater detail, I should state up front that I do not wish to dismiss entirely the value of this publication. Rather, while the book is not entirely what it claims to be, what it actually is has some merit. *Annotated Language Laws of Canada*, which is also published in a French language version,¹ is, in spite of its shortcomings, a relatively unique collection. I know of no other similar compilation in English, and only one other in French.² For those who are interested in language law and policy in Canada, this book is likely to prove a handy

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1. *Lois linguistiques du Canada annotées (Lois constitutionnelles, fédérales, provinciales et territoriales)*, (Ottawa: Department of Public Works and Government Services, Canada 1998).

2. The only similar compilation I know of in French is: Jacques Leclerc, *Recueil des législations linguistiques dans le monde, Tome 1: Le Canada fédéral et les provinces canadiennes* (Québec: Centre International de recherche en aménagement linguistique, 1994). The work by Leclerc is not annotated and it is, in many respects, less comprehensive.

desk reference tool. The collection is noteworthy in that it does not focus solely on laws specifically enacted to address language issues, but seeks to cover a range of statute law in Canada that addresses language issues in some manner. The book covers federal laws as well as provincial and territorial legislation, and the annotations provide a useful canvass of much relevant case law. Organized and indexed by jurisdiction, the book represents a systematic compilation which is likely to be of interest to academics and lawyers who work in this area, as well as to anyone who has an interest in language law or policy in Canada.

The authors do attempt to address some of the limitations of this work in the book's brief foreword. They state that "for administrative and financial reasons, the book does not reproduce the regulations and other delegated legislation made pursuant to these laws, to the exception of a few texts" (at iii). While it is understandable that such inclusion might be impracticable, some reference in the annotations to relevant regulations might have been desirable. Indeed, readers should be aware that in some cases, language rights, restrictions or limitations may occur in regulatory instruments rather than in actual statutes.³ In such cases, the book is of little assistance in identifying these issues. The authors also note that they do not reproduce "the laws related to education, with the exception of cases related to section 23 of the *Canadian Charter of Rights and Freedoms*" (at iii). Again, while understandable from a logistical point of view (the book could easily otherwise have been a multiple volume set), this does diminish its utility for any readers who are engaged in struggles for community-based language rights.

Within these limitations, *Annotated Language Laws of Canada* aims to be comprehensive in its coverage, and to some extent it succeeds. Not only does it include language laws *per se*, such as the federal *Official Languages Act*,⁴ or Quebec's *Charter of the French Language*,⁵ it also includes, for example, provisions from federal and provincial human rights legislation which do not expressly relate to language, but which have been interpreted as providing some protection against language-

3. To give one example, the compilation does not include the regulations passed pursuant to the *Official Languages of New Brunswick Act*, R.S.N.B. 1973, c. O-1. *The Regulation on the Official Languages*, 1973, elaborates the manner in which individuals charged with certain offences may request a trial in one of the official languages.

4. *An Act Respecting the Status and Use of the Official Languages in Canada*, R.S.C. 1985, c. O-3.01.

5. *Charter of the French Language*, R.S.Q., c. C-11.

related discrimination.⁶ At the constitutional level as well, the book includes more than just the overt language rights provisions such as s. 23 of the *Charter* or s. 133 of the *Constitution Act 1867*. It also includes a range of *Charter* provisions, including the freedom of expression (s. 2(b)) and the criminal process related rights from sections 7, 10, 11 and 14 of the *Charter*. Interestingly, the equality rights guarantee from s. 15 of the *Charter* is included, although the annotations for this section do not directly address the deliberate exclusion of language from the list of prohibited grounds of discrimination in that section.⁷ Instead, the bolding of the terms “race”, and “national or ethnic origin” (at 22) suggest that these are the bases which provide the link to language.⁸

However, in spite of some of the more interesting inclusions in the work, there are some notable omissions. For example, while s. 15 of the *Charter* is included in the compilation, suggesting a right to be free from discrimination on the basis of language, even where there is no express mention of language, s. 35 of the *Canada Act*,⁹ recognizing and affirming existing aboriginal and treaty rights, is not included, in spite of the fact that these rights may include aboriginal language rights. Some of the

6. For example, although the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, does not expressly prohibit discrimination on the basis of language, the prohibited grounds of discrimination under that Act are included, with the terms “race,” and “national or ethnic origin” highlighted. This is also done in some provincial human rights legislation, for example: the B.C. *Human Rights Code*, R.S.B.C. 1996, c. 210 (highlighting “race, colour, ancestry, place of origin”), and the Manitoba *Human Rights Code*, S.M. 1987-88, c. 45, (highlighting “ethnic” background or “origin”). The earlier compilation by Leclerc, *supra* note 2, does not include this type of provision.

7. Some of the excerpts from cases in the annotations may allude to this exclusion, (although the excerpt from *Eldridge v. British Columbia (A.G.)*, [1997] 3 S.C.R. 624, suggests, at least, that language might be an analogous ground). For example, the excerpt from *Mahe v. Alberta*, [1990] 1 S.C.R. 342 notes that s. 15 must be interpreted in a way that is not inconsistent with the granting of special status to French and English language minorities in section 23 of the *Charter*. The excerpt from *McDonnell v. Fédération des Franco-Colombiens* (1986), 26 C.R.R. 128 (B.C.C.A.), also suggests that official languages may be in some way exempted from s. 15(1): “Section 15 is a guarantee against discrimination and is a legal right. While discrimination based purely on language may be within s. 15, our concern is whether the concept of “official language” comes within it. Having regard to the provisions of ss. 16 to 22 and the other sections dealing with languages and the judgments of the majority in *MacDonald* and *Société des Acadiens*, I do not think that it does.” (from page 135 of the judgment, ALLC at 23.). It would have been useful to have some intervention from the authors of the book to provide more of a discussion of the issues raised by language under s. 15(1) of the *Charter*.

8. Note that the excerpt from *Eldridge* in the annotation suggests that the word “disability” should arguably have been bolded as well.

9. *Constitution Act*, 1982, Part II, s. 35.

choices for inclusion and exclusion of provisions are also puzzling. For example, the definitions of disability from the Nova Scotia *Human Rights Act*¹⁰ and the New Brunswick *Human Rights Act*¹¹ are included, while prohibitions of discrimination on the basis of disability are not listed for other jurisdictions. At the same time, the provisions of both the Nova Scotia and New Brunswick human rights legislation which deal with national or ethnic origin discrimination are not listed, whereas they are included for other jurisdictions. These inconsistencies make it difficult to rely entirely on the excerpts from statutes made by the authors.

The rather odd and inconsistent selection of language rights provisions suggests the possibility that the authors relied almost entirely on computer database searches for their selections. This is particularly the case with “secondary” language legislation, i.e., language related provisions in statutes that do not have language regulation as their primary purpose. The bolding of certain terms throughout the work, such as “translation”, “language”, “English”, “French”, “national origin” and “interpreter”, to offer a few, suggests that these key words were entered into a database or databases, and the results compiled in the book. This may explain some of the oddities discussed above: the definition of disability in the Nova Scotia *Human Rights Act* uses the phrase: “learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language”.¹² Similarly, the New Brunswick *Human Rights Act* contains a virtually identical definition under “mental disability”, using the word “language” in the definition. In both cases, the word “language” appears in bold type in the book. Where other human rights acts do not contain definitions of disability, or do not have ones which specifically refer to “language”, these provisions are not reproduced, even though a fairly basic interpretation of these provisions would likely give them the same scope as the New Brunswick and Nova Scotia legislation.

Another oddity which could be explained based on the choice of search terms is the bolding of only certain languages in certain excerpts contained in the book. For example, Nova Scotia’s *International Commercial Arbitration Act* contains a provision, excerpted in the book, which deals with language of authenticity. The excerpt in the book (at 312) reads:

10. *Human Rights Act*, R.S.N.S. 1989, c. 214.

11. *Human Rights Act*, R.S.N.B. 1973, c. H-11.

12. *ALLC* at 311, citing the Nova Scotia *Human Rights Act*, *supra* note 10, s. 3(1)(iv).

Article XVI

1. This Convention, of which the Chinese, **English, French**, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.¹³

Quite apart from the issue of whether excerpts of this nature really serve any purpose in the annotated collection, it is unclear why only English and French are bolded, when the other mentioned languages are all spoken in Canada, by Canadians. The problem is either one of a selective set of search terms, or a lack of clear definition of the meaning of “language” or “language laws” in the context of this work. In any event, if the collection is based on a computer search using selected key words, the introduction should, at the very least, indicate what those key words are, so that users who are looking for language-related laws that would not be caught by those key words will know to look elsewhere.

Most of the criticisms made to this point can perhaps be in part attributed to what I consider to be one of the major shortcomings of this work: the lack of an introduction. Because there is no introduction, there are, rather astonishing in such a compilation, no definitions of “language” or “language laws.” Thus the authors never discuss what they mean to include within the scope of these terms. It is not clear, for example, whether language impairment through disability falls within the scope of their collection, nor whether the compilation addresses such language related issues as accented speech. There is no discussion as to whether the compilation intends to address constitutional, statutory or treaty provisions which may raise issues of aboriginal language rights, nor is there any explanation of why such rights appear largely to be unaddressed. As a result, the book provides no assessment or survey of the range of language issues which exist in Canada.

The lack of introduction means that there is also a lack of explanation of some of the other choices made in the compilation. For example, the choice was clearly made to organize the book by jurisdiction, beginning with the federal government and moving on to consider the laws of each province and territory in alphabetical order. While this makes some organizational sense, it would also have been open to the authors to organize the book more thematically; for example, to create categories such as: language of work, language before the courts, language in education, language and disability, and so on. This would have avoided some unnecessary and space-wasting repetition: The excerpt quoted above from the Nova Scotia *International Commercial Arbitration Act*,

13. *International Commercial Arbitration Act*, R.S.N.S. 1989, c. 234, article XVI.

is reproduced in the book for every equivalent piece of provincial legislation. Thus, an entry of questionable worth is reproduced multiple times throughout the work, where, at most, one general reference would suffice.¹⁴ One cannot help but wonder if many fairly meaningless provisions such as this could have been eliminated from the collection entirely, or dealt with in an introduction which explained the existence of such provisions, as well as the decision to exclude them. Quite apart from the failure to address the organizational choices made, it is unfortunate that the authors did not seek to provide a system of indexing or cross referencing so that readers interested in a particular language issue across jurisdictions could have easily located all relevant references.

The lack of introduction is not the only significant lack of authorial intervention. The title of the work lays claim to it being an annotated work. "To annotate" means "to note, mark . . . to provide critical or explanatory notes for (a literary work, etc.)."¹⁵ However, the annotations in this work consist almost entirely of excerpts from cases. While this can be of great assistance in understanding how particular provisions have been interpreted in the courts, the reasoned intervention of an author in evaluating the provisions and the related case law would have been preferable.¹⁶ There is no attempt at synthesis, explanation or critique. It should also be noted that the annotations are incomplete; in some instances, relevant case law is not referenced. For example, there are human rights cases which address the relationship of language to the grounds of national origin or ethnicity. However, with the exception of the entry for British Columbia, statutory provisions including these terms are excerpted in the book without any reference to case law. One is left to wonder a) if there have been no similar cases in other provinces (where in fact, there have);¹⁷ and/or b) whether the B.C. interpretation is one

14. It should be noted that this is only one example of this kind of entry. A similar provision is included for the *International Sale of Goods Act*, S.N.S. 1988, c. 13 (at 312), the *Succession Law Reform Act*, R.S.O. 1990, c. S.26 (at 366), and the *International Conventions Implementation Act*, R.S.A., 1980, c. I-6.8 (at 210), to give just a few examples.

15. *Webster's New World College Dictionary*, 3rd Edition, (N.Y.: Simon & Schuster Inc., 1997).

16. For example, see: Normand Tamaro, *Loi sur le Droit d'auteur, 4^e Édition* (Toronto: Carswell, 1998). This annotated *Copyright Act* integrates excerpts from cases with the author's own extensive annotations and explanations. Similarly, David Walt & Michelle Fuerst, *1994 Tremear's Criminal Code* (Toronto: Carswell, 1993) provides annotations which include commentary, case law, and notes on related provisions.

17. For example, *Romano v. Board of Education for City of North York*, [1987] 8 C.H.R.R. D/4347 (Ontario); *Fazal v. Chinook Tours Ltd.*, Decision of the Board of Inquiry Appointed under the Alberta *Individual Rights Protection Act*, June 26, 1981 (unreported).

which is accepted across the country. If the annotations for the B.C. entry are meant to represent the state of the law generally, it would be useful to have some cross referencing, with the other jurisdictions, and some explanation that this is believed to be the case. Interesting cases addressing language and disability issues are similarly not noted in the annotations.¹⁸ Finally, the annotations do not provide any references to the wealth of Canadian scholarship on language law and policy.

In the end, I return to the dichotomy between what the book promises and what it is. On one level, it represents a fairly unique compilation, which, provided it is updated regularly, can serve as a handy reference tool. So long as its limitations are recognized, and so long as it is not a sole source of information on language law and policy, it can be a good departure point in any exploration of such issues in Canada. Ultimately, this amounts to less than what the book promises to be, and it is disappointing as a result. The work, is really not much more than an organized printout of a series of computer database key-word searches. One can only wonder if the automation of legal research will facilitate and encourage the generation of texts such as this, which are useful on some levels, but which remain strangely lacking the engaged and critical mind that separates a computer printout from an intellectual contribution to an area of law.

18. For example, in *Matlock v. Canora Holdings Ltd.*, [1983] 4 C.H.R.R. D/1567 (Ontario), the complainant was refused a job as a filing clerk because of a speech impairment. While this is an issue of disability, it is not that far removed from accent-related language issues in human rights law. Links between ethnic language issues and disability issues are also apparent in *Eldridge, supra*, from which an excerpt is provided in the annotation to s. 15(1). Curiously, though, this annotation would seem to be included to make a point about ethnic languages and s. 15, rather than about the relationship of language and disability.

