

Canadian law criticized in recent release

By ARNOLD AGES

Canadians are fond of thinking that they live in a country where the rule of law and individual freedoms are sacrosanct. According to Alan Borovoy, however, there may be too much law and not enough freedom.

"I have long believed that Canadian law contains a number of measures that needlessly and excessively inhibit the right of effective dissent." With this sentence, found in Chapter 2 of *When Freedoms Collide* (Lester and Orpen Dennys, 419 pages, \$29.95), Torontonian Alan Borovoy sets the tone for the lengthy and provocative inquiry he conducts on the status of civil liberties in this country.

Borovoy, for many years the head of the Canadian Civil Liberties Association, feels that when competing rights collide, all too often the loser is freedom. This can be seen, he argues, in such areas as hate-literature legislation, the ambit of police powers, discretionary law enforcement, the administration of public welfare and in involuntary civil commitment.

In his strong polemic, author Borovoy extends the net of his criticism to include our courts, whose judges, he feels, are often coddled by the unnecessary protection of the "contempt of court" and "scandalizing the court" charges on the dubious grounds that our criminal justice system would crumble if criticism of it were permitted.

The boldness of Borovoy's argument may also be seen in his unrelenting attack on the amendments to the Canadian Criminal Code that make it illegal to espouse publicly certain forms of racial, religious and ethnic hatred. The aims of the anti-hate statutes may be very pious, says the author, "but the effect of such laws often exceeds their intent."

CHILLING EFFECT

Statutes such as these, Borovoy is convinced, exercise a chilling effect on freedom of speech and "the risk of having our speech chilled increases with the vagueness of the prohibitory legislation that might apply." The conviction of Ernst Zundel for denying the Holocaust is a dangerous precedent because it argues for the possibility of prosecuting "pro-Communists for denying the atrocities of Stalin, or pro-Catholics for denying the enormity of the Inquisition."

The same kind of logical consistency informs the author's views on pornography. He rejects the well known argument that prohibiting pornography is evoking the same principle as that regulating pollution. Borovoy says that chemical analysis applied in detecting air pollutants has no relevance to human psychology and sexuality.

With regard to CSIS, Canada's intelligence arm, Borovoy subjects the language of its mandate - which empowers the organization to monitor "activities... (that) support acts of serious violence for the purpose of achieving a political objective within Canada of a foreign state" - to a ferocious dissection. He shows that its words are broad enough "to have permitted intrusive eavesdropping on Canadian citizens who raised money for the state of Israel following the Yom Kippur invasion." Those who send funds to El Salvador, Namibia or Nicaragua could be the

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targets of CSIS as well.

Some of the most mordant criticism in this treatise is reserved for police departments who often incarnate what Borovoy calls "the power-hoarding fallacy." Citing examples of police roundups of people involved in drug-related or homosexual activities (Ontario especially), the author argues that "trivial pursuit" is at the heart of the matter.

To the argument habitually offered by the police - that they do not make the law; they merely enforce it - Borovoy thunders: "But police don't merely enforce the

law. They make choices, and they have always made choices, as to what laws they enforce, under what circumstances, and how they will do it... The fact is that the police cannot give every law the same amount of attention."

GRAVE RESERVATIONS

In his study of police powers, the author expresses grave reservations about the arbitrariness that surround them. In 1983, Toronto police carried out a raid against the Church of Scientology. No charges were laid for more than a year after the event. Why should the police not be forced to account for such an intrusion. "Regardless of the church's wishes, it may, nevertheless, be in the public interest to know what the police

did... Disclosure would make possible a public response which could protect everyone else's interests."

Borovoy is also concerned with the interest of those who are on public welfare. He cites numerous examples of the indignities foisted upon female recipients and questions the discretionary power enjoyed by social workers who often exploit the lack of knowledge a person has about his civil rights.

The major thrust of Alan Borovoy's treatise is the cultivation of a kind of healthy disrespect for such hallowed institutions as parliament, the courts and the police - all of whom he believes must answer for their errors and be held accountable to the public.

Ironically, there is one area in which the author feels that more government and police intrusion is necessary - in preventing discrimination against people on the basis of race or creed. "I believe it appropriate," he says, to restrict freedom of choice in public life to the extent that its exercise (otherwise) would be likely to inflict corrosive indignity and deny equal opportunity."









Borovoy doesn't seem to realize that the same argument could be used to defend Canada's anti-hate statutes.

-Arnold Ages, a professor at the University of Waterloo, is the author of five books.



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