JUDICIAL REVIEW OF LEGISLATION IN CANADA,
By B. L. Strayer; (University of Toronto Press: Toronto),
1968; 275 pp.

It is beginning to look as if a really comprehensive textbook of
Canadian constitutional law may never be written. The complexity of
the subject and the economic problems involved in publishing a highly
technical book in a small country, may present insurmountable obstacles
to such an undertaking. This is a shame; the presence of a thorough
and reliable study of the Canadian constitution might, among other
things, expose some of the nonsense that is being talked by some of
the participants in the current constitutional debates.

A typically Canadian solution for this difficulty appears to be in the
making, however. A number of specialized monographs on limited
aspects of constitutional law have been published in recent years which
may, if the trend continues, eventually obviate the need for a single
comprehensive treatise. It is perhaps worthy of comment that most
of these studies have been products of the prairies (Alberta: The
Commerce Power in Canada and the United States, A. Smith, 1963;
Saskatchewan: Civil Liberties in Canada, D. A. Schmeiser, 1964; The
Canadian Bill of Rights, W. Tarnopolsky, 1966; and the book under
review), a contribution out of all proportion to the role being played
in constitutional reform by prairie politicians.

The author of the book under review is a professor of law at the
University of Saskatchewan and has served as constitutional advisor to
the governments of Saskatchewan and Canada. His book reflects this
combination of academic and practical interests.

Much of the material in the early chapters of the book—the concept
of judicial review, a comparison of British and American practice, the
history of the concept's development in Canada—will be of primary
interest to scholars; although it is to be hoped that it will at least have
the practical effect of destroying the widespread misconception (created
by the statement in the preamble of the British North America Act
that Canada should have a constitution "similar in principle" to that
of Great Britain) that Canada has inherited the principle of parliamentary
sovereignty full-blown from Britain. Professor Strayer demonstrates
clearly that although there was once room for doubt, it has now been
firmly established that Canadian courts, unlike their British counterparts,
have the power to invalidate the statutes of either federal or provincial
legislatures for failure to comply with the constitution. The notion of
parliamentary supremacy has yielded vastly more ground to judicial
review in Canada than it has in Britain.
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.

DALE GIBSON*

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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Peter W. Hutchins. Published 1970. History. View via Publisher. erudit.org. Save to Library. Gall, G., Judiciary in Canada (2021). In The Canadian Encyclopedia. Retrieved from https://www.thecanadianencyclopedia.ca/en/article/judiciary. Copy. CHICAGO 17TH EDITION. Gall, Gerald L., "Judiciary in Canada". In The Canadian Encyclopedia. Historica Canada. Provincially appointed judges deal with both provincial and federal laws and legislation. Role of the Judiciary. Judges do not legislate or enforce the law; that is the role of the legislative and executive branches of government and its departments and agencies. The judicial advisory committees were established after major reviews of the judicial appointment process were conducted in the 1980s. These reviews were done by the Canadian Bar Association and the Canadian Association of Law Teachers. What is judicial review? What kind of decisions can be reviewed? There need not be legislation that specifically grants the right to judicial review. When to Apply for Judicial Review. Sometimes, legislation directly sets out the standard of review that applies. For example, the Human Rights Code, s.45.8 provides that in most cases, a decision of the Human Rights Tribunal of Ontario shall not be set aside unless the decision is patently unreasonable – in other words, the legislation requires the Divisional Court to take a very deferential approach to decisions of this Tribunal. The Notice of Constitutional Question must be served on the Attorney General of Ontario and the Attorney General of Canada.
This power of “judicial review” of legislation by the courts was not restricted to situations involving competing jurisdictional claims by governments. Long before the Charter of Rights, individuals had challenged laws which infringed upon or denied them basic civil rights and liberties. One of the first “and certainly one of the most famous” was the so-called Persons Case which was decided in 1929. Another series of pre-Charter decisions led to the suggestion that, in Canada, there was an “Implied Bill of Rights”. In 1938 the Supreme Court struck down an Alberta law which required newspapers to publish government responses to criticism. In Canada, there is a collection of written documents that form an important part of the broader constitution and, because they originated as or resemble positive law, are given particular significance in the Canadian legal system. Of foundational importance is the Constitution Act, 1867 (which, until 1982, was called the British North America Act, 1867). Further, not long after this system was established, the practice of Judicial Review evolved, principally to adjudicate disputes over the division of legislative powers between the federal government and the provinces (for more on the Division of Powers, see Reading #1, below). In the Canadian legal system the two main sources of law are legislation and case law. What is judicial review? What kind of decisions can be reviewed? When to apply for judicial review urgent applications remedies. Where legislation does not directly set out the standard of review, the Divisional Court’s approach will be guided by precedent, the overall legislative scheme, and the nature of the issues. Reasonableness. Reasonableness is a deferential standard of review. The decision has to be one that “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” The reasonableness standard recognizes that there may be more than one reasonable interpretation or more than one reasonable decision. Canada’s judicial system is made up of the hundreds of judges who assign punishments for breaking the laws of Canada, as well as ensuring the laws passed by the federal and provincial governments adhere to the rules and limitations of the Canadian Constitution. Pam Davis. Courtroom Art. In most provinces, it is against the law to film court proceedings, and even when it is allowed, the regulations are extremely strict. As a result, media outlets often pay artists for drawings of particularly interesting trials. Seen here, a sketch of a high-profile 2015 drunk driving case in the Ontario Superior Court. The legal system of Canada functions on the basis of written laws that are enacted by the Parliament. The legislative structure of the government introduces bills or draft legislation which requires the consent of the Senate, House of Commons, and the Crown in order to be enacted as a piece of legislation. This piece of legislation also establishes the terms and requirements, under which Canadian citizens and permanent residents may go to the polling stations and cast their vote for local or federal governors.