
Dominique Clément *Equality Deferred: Sex Discrimination and British Columbia's Human Rights State, 1953–84*. Vancouver: UBC Press, 2014, 332 pp.

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British Columbia's tumultuous politics and unique demographics provide fertile ground for examining the erratic trajectory of human rights in that province. Yet few books have explored that terrain from the place where social and legal histories intersect. This has changed with the publication of *Equality Deferred*.

Dominique Clément is a sociologist at the University of Alberta who claims membership in what he describes as a "small but growing cohort of human rights historians." *Equality Deferred* is one of three books published about human rights law and human rights systems in Canada in 2014.[1] Unlike the other two, *Equality Deferred* examines a single province and single area of human rights, namely BC and women's equality, respectively.

Told through narratives from leading human rights practitioners and litigants, *Equality Deferred* is a textured, granular account of the struggle for women's equality in BC, positioned alongside analyses of allied social movements, including organized labour and the civil rights movement.

The book begins with a description of the Canadian legal landscape in the nineteenth and early twentieth centuries and an alarming litany of the strictures on women. There were some pioneering exceptions, like BC's maternity protections for employees in the 1920s, but on the whole, women were effectively and explicitly discriminated against in every area of their lives. For women of colour, the discrimination was considerably worse.

The core of *Equality Deferred* is bookended by the introduction of fair practices laws in the 1950s and the regressive *Human Rights Act* in 1984.[2] What lies in-between are the precipitous and recurrent rise and fall of human rights law in BC, displaying a volatility unique in Canada. Repeated and politicized efforts to pare back human rights protections and institutions and then subsequently reinstate them are what most distinguish BC from other jurisdictions. This has occurred with little regard for the Supreme Court of Canada's landmark decision in *Heerspink*, a BC case that found that human rights legislation is "not to be treated as another ordinary law of general application" but rather as a "fundamental law."[3]

Clément describes with some astonishment the delayed arrival of the prohibition against sex discrimination, its failure to live up to expectations in specific cases, and the efforts of successive governments to restrict its ambit. He also examines the limitations of what he calls the "human rights state" in

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1 Shelagh Day, Lucie Lamarche, and Ken Norman, *14 Arguments in Favour of Human Rights Institutions* (Toronto: Irwin Law, 2014); Pearl Eliadis, *Speaking Out on Human Rights: Debating Canada's Human Rights System* (Montreal: McGill-Queen's University Press, 2014).

2 *Human Rights Act*, SBC 1984, c. 22.

3 *Insurance Corporation of British Columbia v Heerspink et al.*, [1982] 2 S.C.R. 145 at 158.

addressing systemic discrimination. In these respects, the slow development of gender equality and the particularities of BC are not as idiosyncratic or indicative of shortcomings as the book suggests.

The eminent Canadian jurist Roderick A. Macdonald once pointed out that it is ahistorical to view the evolution of legal remedies in any area of law through the lens of contemporary legal thought.[4] It is an important insight. The suggestion that the absence of women's rights (or disability rights, or LGBT rights, for that matter) from early anti-discrimination laws should be seen as surprising, anomalous, or even as a substantive limitation presupposes an inclusive legal framework and a broad concept of human rights that did not exist in the 1950s and only developed in a limited, incremental way afterwards.[5]

The limited success of systemic approaches to discrimination is a pan-Canadian phenomenon. Human rights decisions rendered by tribunals and boards do not create binding precedent unless they are confirmed by the courts. In fact, many human rights commissions and tribunals had been crafting systemic remedies for years, only to be told by the Supreme Court of Canada in the *Moore* case that they were casting the net too wide.[6] This is not a failure of human rights laws or systems, but rather a structural limitation in the ability of the courts to reconcile the role of administrative law systems designed to address the broader public interest, on the one hand, with traditional legal systems that only decide the issue between individual parties, on the other.

Human rights protections in Canada reflect struggles to introduce new rights, and to establish broad and purposive approaches to defining the contours and confines of existing ones. The social movements on which Clément focuses, as well as individual civil society groups and advocates, have been instrumental in doing so. The staggered sequences of rights recognition, starting with race, colour, and religion, followed by sex, disability, family and marital status, nationality, sexual orientation, and, most recently, gender identity, have been the rule in Canada and elsewhere. As well, most human rights victories have occurred despite the staunch opposition of governments.

None of this signals exceptionalism or failure of the "human rights state," but rather provides a chronicle of its iterative development. When one takes a long view, as historians should do, that chronicle is one of tremendous progress and, despite individual shortcomings, substantive areas of success.

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4 Interview with Roderick A. Macdonald, in Eliadis 2014 *supra* note 1 at 345, note 31.
5 *Ibid.*, at 64.
6 *Moore v British Columbia (Education)*, 2012 SCC 61.