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Fighting City Hall with the Equality Rights Provisions of the Canadian Charter of Rights and Freedoms

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The principal guaranty of equality to be found in the American Constitution is the clause in the Fourteenth Amendment which provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Since its ratification after the Civil War the "equal protection clause" has probably been invoked upon more occasions and thus subjected to more judicial analysis than any other constitutional guaranty.

The **Canadian Charter of Rights and Freedoms** (Part I of **Constitution Act** which is Schedule B of **Canada Act 1982, c. 11** (U.K.) has expanded the scope and importance of the concept of equality along American lines so that acts of the legislature may be declared unconstitutional.⁽¹⁾

There are three "equality rights" provisions in the Canadian **Charter of Rights and Freedoms**:

"15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons."

Section 15 does not come into effect until April 17th 1985. Since it is similar in wording to the 14th Amendment of the United States Constitution it is likely that Canadian Courts will consider American Decisions in matters of interpretation. An understanding of American theory and Decisions may help to predict the areas of attack on existing legislation.

SCOPE OF THE CHARTER'S EQUALITY RIGHTS PROVISIONS

Primacy of the Charter. By section 52(1) the Charter is given primacy over all other laws in Canada, including the Canadian Bill of Rights, and the anti discrimination laws of all provinces. By Section 32 (1) the Charter is made applicable to Parliament and the Provincial Legislatures. The Charter does not specifically prohibit the invasion of rights by private actions. It is not unlikely however that Courts will follow the American Courts in proscribing even private actions that are entwined with governmental policies and impregnated with a governmental Character.⁽²⁾

THE PRESUMPTION OF VALIDITY AND THE TEST OF REASONABLENESS

In cases dealing with fundamental constitutional rights a profound change in the presumptions surrounding municipal by-laws is underway making it easier to set aside a by-law.

The Ontario Court of Appeal has recently stated in **Ontario Film and Video Appreciate Society**⁽³⁾ that there is no presumption for or against legislation in any determination as to what is 'reasonable' under s. 1 of the **Charter**. The court sharply rejected the suggestion that Canadian 'Courts will exercise considerable restraint in declaring legislative enactments statutory or regulatory, to be unreasonable'.

This is in accord with the American rule stated in **Schad v. Borough of Mount Ephraim**⁽⁴⁾ as follows:

"First I would emphasize that the presumption of validity that traditionally attends a local government's exercise of its zoning powers carries little, if any, weight, where the zoning regulation trenches on rights of expression protected under the First Amendment . . . after today's decision it should be clear that where protected First Amendment interests are at stake, zoning regulations have no such 'talismanic immunity' from constitutional challenge."

Unreasonableness

Section 148 of the **Vancouver Charter**⁽⁵⁾ provides that a by-law or resolution passed by Council shall not be set aside, on account of "unreasonableness". This and other similar provisions may be short lived.

In the United States, the test of unreasonableness permeates the law in determining whether a right of equal protection has been infringed. Moreover, the standards of reasonableness vary with the area of rights that are infringed. Basic freedoms such as those of speech, religion, or association must meet an extremely rigorous test, while a less strict test is applied to taxation statutes.⁽⁶⁾

Unreasonableness — Taxation and Assessments

Section 719 of the **Municipal Act** which requires Council to take into consideration whether the prescribed charges are excessive appears to meet many of the requirements of equal protection and the decisions reached by our courts are consistent with those in some but not all of the States.⁽⁷⁾

Timing. The U.S. Supreme Court has held that there is a presumption of validity of state taxation systems. (**Lehnhhausen v. Lake Shore Auto Parts Co.**)⁽⁸⁾ However, in a series of decisions arising out of Florida where 'impact fees' (similar to our development cost charges) were considered a number of defects in municipal and enabling legislation came to light. The Courts determined that an ordinance should specify the time when monies are to be expended for capital improvements.⁽⁹⁾ Our **Municipal Act**⁽¹⁰⁾ has no such timing requirement.

Maximum Fees. Whereas Sec 719 of the **Municipal Act** provides that council shall take into consideration whether charges are excessive, another Florida court reviewing impact fees⁽¹¹⁾ held that the fee simply **cannot exceed** the cost of the improvements required by the new development and the improvements must adequately benefit the development which is the source of the fees.

Indirect Benefits. Section 719 (4), (8) of the **Municipal Act** permits the imposition of Development Cost charges for capital costs that will **indirectly** serve the development. Although the Florida decisions did not rest entirely on equal protection grounds, they held that benefits could not be too indirect. Therefore, if benefits become too indirect and remote, this fact may become the basis of a constitutional attack on both Section 719 of the **Municipal Act** and any by-law enacted pursuant thereto. Our Supreme Court has already held in **Delsom Estates Ltd. v. Delta**⁽¹²⁾ that a Municipality could not relate a charge to the cost of acquisition of unrelated lands in the municipality.

Discrimination as to Localities

The broadest ground for attacking any provision of the **Municipal Act** or the **Vancouver Charter**, may be that there is no reasonable basis for applying these two separate acts to different areas of the Province. In so doing residents have been denied equal protection and equal benefit.

The rule stated in 16A C.J.S., **Constitutional Law (sec. 506)** is as follows:

"Legislation limited in its operation to a portion of the state or prescribing different rules for distinct areas is not invalid as denying the equal protection of the laws to individuals, where there is a reasonable basis for the limitation or differentiation and all persons similarly situated in the same place are treated alike;"

Since the difference in areas to which the **Vancouver Charter** and **Municipal Act** are

applicable are arguably not based upon population or any other rational factor, a resident of Burnaby, New Westminster or Vancouver, could under certain circumstances allege a denial of equal protection.⁽¹³⁾

PLANNING AND ZONING

Discretion

Vancouver's controversial discretionary zoning system promises to be a fertile field for constitutional challenge. **Vancouver Charter**, S. 565. Provides that Council may make by-laws designating zones in which there shall be no uniform regulations and delegating to any official of the city or to any board . . . such powers of discretion relating to zoning matters which to Council seem appropriate; similarly Section 717 of the **Municipal Act** empowers Council to regulate everything but density and use on a site specific basis.

If the Courts follow some American Authorities these sections of the Vancouver Charter and **Municipal Act** may be declared unconstitutional.⁽¹⁴⁾

The manner in which standards, rules and regulations are applied may present a problem for municipalities. Section 1 of the **Canadian Charter of Rights and Freedoms** guarantees rights and freedoms "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Where a zoning by-law is administered pursuant to departmental guidelines that have not been adapted by Council either by by-law or resolution, such guidelines may not constitute 'reasonable limits prescribed by law'.

CONTRACT ZONING, LAND USE CONTRACTS, DEVELOPMENT PERMITS AND COMPREHENSIVE DEVELOPMENTS

In American Zoning law 'contract zoning' refers to an arrangement which imposes different and usually additional restrictions on the land re-zoned, and (b) has been an inducement to the municipal authorities to rezone the land. Since a different deal is likely to be made on each occasion, this raises squarely the question of the uniformity rule and the constitutional question of equal treatment. The courts have frequently held such arrangements invalid, although there is a strong recent authority to the contrary and the count of states pro and con is now approximately even — so that there is no clear majority rule.⁽¹⁵⁾

Ordinances similar to Vancouver's Comprehensive Development by laws have been held violative of equal protection, as has the common practice of attaching special conditions to Development Permits.

In a Florida decision a Zoning amendment to permit a shopping center in Coral Gables was passed subject to several conditions e.g. — a "bay Point type" wall to be placed 40 feet from certain lot line, an agreement on suitable lighting etc. In an action brought by a neighbour across the street the court held that a municipality had no legal authority to enter into such a contract, in effect for amendment of the Zoning ordinance for the particular situation, and that the use of such arrangements would eliminate uniform and equal treatment in Zoning.

The court stated,

"in exercising its Zoning powers the municipality must deal with well defined classes of uses. If each parcel of property were zoned on the basis of variables that could enter into private contracts then the whole scheme and objective of community planning and zoning would collapse."

On the other hand cases favouring contract zoning have come down in New York and Massachusetts.⁽¹⁶⁾

Prohibition of Land Use

Section 2 of the **Vancouver Charter** allows the City to prohibit a particular use of land. The Court in **Romeo's Pizza & Steak House Ltd. v. City of Victoria**,⁽¹⁷⁾ held that since this power was not expressly provided in the **Municipal Act** Municipalities had no such power.

The Future of the **Vancouver Charter** Section is now uncertain.

In the U.S., the total exclusion of any one kind of land use may carry the strong taint of unlawful discrimination and a denial of Equal Protection as to the excluded use.⁽¹⁸⁾

Uniformity

Sub-Zones. Vancouver's Official Development Plan by-laws which permit in effect the creation of sub-zones within zones and which are subject to different procedural rules than ordinary zones, may be in for stormy times. Under the American equal protection clause, [and

Under Canadian Common law as well] where a zoning regulation applies in one part of a zoning district but not in another, it may be illegal.

Thus, a suburb of New York adopted a provision permitting retail on the ground floor only in one part of an apartment district; public garages were permitted in Knoxville only on U.S. highways (in effect, on one street in the district); and rendering was permitted in only one of four similar industrial districts mapped in a small city in Wisconsin. All these were held to be invalid, and the last to be a violation of equal protection as well.⁽¹⁹⁾

The lack of consistent policy in mapping. In Massachusetts zoning amendments may be found invalid for lack of uniformity; An amendment to legalize the manufacturing of ice, in a solidly residential area near Buzzards Bay, was held invalid. (**Whittemore v. Building Inspector of Falmouth**,⁽²⁰⁾) A special new funeral parlour district was established in Salem and a tract consisting of two lots was shifted into this district; the court held this invalid spot zoning.⁽²¹⁾

The Plan as a test of Reasonableness. In many United States jurisdictions the courts have held that a zoning map that does not follow a comprehensive plan is therefore unreasonable. British Columbia municipalities which fail to adapt plans may risk an attack on their zoning by-laws accordingly.

Variance and special Permits. Where variance and/or special or conditional permits are granted under a loosely defined set of guidelines and standards, they may in some states be held violative of the equal protection clause.⁽²²⁾

LAND USE CLASSIFICATION

The Vancouver Zoning by-law includes such distinctions as "public authority" use, and "office" use. In essence a government office may be treated differently from private office. Again, such favouritism may be unconstitutional.⁽²³⁾

RE-ZONING

In the case of **Vandy v. Corporation of Delta**⁽²⁴⁾ Mr. Justice Hinds reviewed the grounds for attacking a Council decision not to re-zone the petitioner's property. Essentially, the court stated that there must be proof of discrimination in fact and there must be an improper motive on the part of Council. The application of 'equal protection' arguments may provide additional ammunition i.e. unreasonableness and inconsistency.

In **Village of Arlington Heights v. Metropolitan Housing Development Corp.**⁽²⁵⁾ the Court held that downzoning of an area identified for integrated multifamily residential use may imply discriminatory intent and that a single decision to downzone, made in reaction to a development proposal, may be enough to support an attack on Equal Protection grounds. The proof of the discriminatory intent is to be found in the administration of the regulations, not the express criteria.

The authorities in Boston rezoned a single lot in Brighton for additional depth of business zoning. This was held invalid for the single lot, with the opinion pointing out that the facts cited showed if anything the need for rezoning a larger area. The rural college town of South Hadley rezoned to enlarge its commercial district, and this was also held invalid, on the ground that it was contrary to the recent trend towards residential construction in the area nearby and was also against the plan implicit in a recent comprehensive rezoning revision. (**Mitchell v. Board of Selectment of South Hadley**,⁽²⁶⁾

SUBDIVISION

Land Title Act⁽²⁷⁾ s. 86 confers broad discretionary powers upon an approving officer to approve or refuse a subdivision plan if he considers it to be against the public interest. The extent of these powers have been questioned by the B.C. Court of Appeal in **Clay v. Spaxman**⁽²⁸⁾. The 'equal protection argument' provides a further grounds for overturning decisions of Approving Officers when they are exercised without prescribed standards.

Moreover the practice of requiring the dedication of lands as a condition of subdivision (upheld in **Oak Bay Manor Ltd. v. Delta**⁽²⁹⁾) may be subject to challenge in the absence of specific standards relating to the kinds of conditions that may be required.

SELECTIVE ENFORCEMENT OF ZONING REGULATIONS

In **Polai v. Toronto**⁽³⁰⁾ the Supreme Court of Canada held that a municipality in seeking to

enforce a zoning bylaw was not precluded from the remedy of injunction merely because others guilty of similar violations have been placed on a list of persons against whom enforcement shall not proceed.

The impact of the Charter of rights on this decision has yet to be determined. If it should become dead letter, then a number of policies presently in effect in Vancouver and other municipalities will violate the concept of equal protection. These include the policy of non-enforcement of by-laws based on 'hardship' exemptions or other special deals with Council and enforcement of by-laws based only on complaints.

Where American courts have found that the Zoning authorities have enforced Zoning regulations in an intentionally discriminatory manner, they have held that such enforcement provides a defense to the current violation of the regulation under the equal protection clause. The contention that discriminatory enforcement of a law is unconstitutional had its origin in the decision of the United States Supreme Court in **Yick Wo v. Hopkins** (1886)⁽³¹⁾, in which the court stated that if a law is administered by public authorities

"with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights," the equal protection of the law is denied.

In prosecutions for violations of Zoning ordinances, courts have reversed convictions and dismissed prosecutions where the evidence showed that selective enforcement of the ordinance, by failure to enforce it against other violators while attempting to enforce it against the defendant, was intentional, arbitrary or unreasonable example include a series of cases where there was evidence that enforcement of the Zoning ordinance depended entirely on the institution of citizen complaints, where there was evidence of an intention on the part of Zoning authorities not to enforce zoning regulations against a class of violators expressly included within the terms of such regulation, and where the authorities not only allowed selective enforcement but additionally disregarded the restrictions and limitations of that ordinance.⁽³²⁾

PROVISION OF SERVICES

In one American case, **Johnson v. City of Arcadia**,⁽³³⁾ the Court held that once a municipality decides to provide services, it must do so equally. "The standard for service provisions in a municipal service equalization suit is the quality and quantity of services enjoyed by those citizens who are favored by discriminatory practices." The Court held for the plaintiffs and ordered improvements.

PERMITS AND LICENSES

Various discretionary powers relating to licensing are found in the **Vancouver Charter and Municipal Act**. For example sections 508 and 513 of the **Municipal Act** confer powers to refuse, suspend and revoke licenses. Standards are conspicuously absent.

British Columbia Courts already impose a test of 'reasonableness' and have held that a Municipal Council may, in its discretion refuse to issue a business licence, the only limit upon such discretion being that the Council must not act unreasonably.⁽³⁴⁾

Now, however, if Councils do not prescribe regulations and standards pursuant to which they exercise these powers of discretion, then administrative decisions and by-laws (even though they meet a test of reasonableness) may be swept aside.

In **Hornsby v. Allen**⁽³⁵⁾ a municipal liquor ordinance was declared unconstitutional. The Georgia Court stated:

"Mrs. Hornsby was not afforded an opportunity to know through reasonable regulations promulgated by the Board, of the objective standards which had to be met to obtain a license. The Court held that the board had a duty to give reasons for its decisions and that it had a duty to adopt reasonable rules and regulations and not to make arbitrary selections among those qualified."

Although Canadian Courts have arrived at similar results in licensing matters the decisions have usually turned on the fact that a Municipality in discriminating or in delegating a decision making power, had exceeded the powers delegated to it under Provincial Legislation.⁽³⁶⁾

The power of a municipality to ban young persons from Video Arcades may be curtailed. In **Bright v. Langley**⁽³⁷⁾ the B.C. Court of Appeals upheld a by-law which applied a minimum age to patrons of Arcades. The purpose of the by-law was to prevent the association of petty crime with the fact of operation of such business.

A different result occurred in one of the States. In **Aladdin's Castle Inc. v. City of Mesquite**⁽³⁸⁾ the Court knocked out an 'arcade' ordinance. It was held that singling out the machine business as a place where 17 year olds could not congregate in order to prevent truancy denied the owner of equal protection.

AFFIRMATIVE ACTION

Perhaps out of an abundance of caution Parliament expressly stated in Section 15(2) of the **Charter of Rights and Freedoms** that Affirmative Action programs are not precluded by the equal protection-equal benefit clause. The American Courts have been upholding such programs where there is evidence of an economic disparity between groups.

The kinds of challenges that may be expected include suits launched by minority groups against municipalities for alleged discrimination in hiring practices; against private contractors or Unions for discrimination on work 'infected with state action', and finally of course cases challenging affirmative action programs on the grounds that they do violate the right of 'equal protection' (notwithstanding the provisions of Section 15(2) of the **Charter**).

Two points should be made at the outset. Section 15(2) of the **Charter of Rights** does not make all affirmative action programs immune to the requirements of 15(1). Such programs may still be subject to attack depending on how they are prepared and implemented.

Secondly, the American cases have generally required evidence of an 'economic disparity' between the majority group and the minority group. If in British Columbia an Affirmative action program was implemented to require the hiring of members of a minority group, and the only evidence was that the minority was under represented in the work force of the bureaucracy, but there was no evidence that the group was economically disadvantaged, there is some question as to whether the program could resist attack under the equal protection clause.⁽³⁹⁾

CULTURAL GRANTS

Section 269 of the **Municipal Act** and Section 206 of the **Vancouver Charter** provides that a Council may grant aid to a variety of causes including cultural organizations.

A claim could be made for equal benefits. Individuals who belong to ethnocultural groups which do not receive grants equivalent to those received by the English, French, or others might be able to invalidate the giving of disproportionate grants to such more fortunate groups. If grants are made pursuant to laws which do not meet the test of "equal benefit" with respect to race, national or ethnic origin, or religion, then an application to set aside such grants might be sought.

CONCLUSION

The enactment of the 14th Amendment to the U.S. Constitution with its 'equal protection clause' has been called the 'Second American Revolution'.

When Section 15 of the **Canadian Charter of Rights and Freedoms** comes into effect in April 1985, it should have a substantial impact. Canadian lawyers will be able to draw on one hundred and twenty years of American jurisprudence dealing with the term 'equal protection'. Since at least one case can be found to support virtually any proposition in the United States, innovative grounds for challenging statutes and by-laws will be available.

Some of the areas vulnerable to attack should include the following:

- (1) Unreasonableness in any by-law or statute relating to classifications.
- (2) By-laws or statutes affecting fundamental freedoms.
- (3) Assessments that do not fairly relate to or that are too remote from benefits.
- (4) Discrimination as to localities.
- (5) Discretionary and spot zoning.
- (6) Lack of uniformity in zoning.
- (7) Conditional uses without adequate guidelines.
- (8) Discretion exercised by approving officers in refusing subdivisions on the grounds of 'public interest'.
- (9) Selective enforcement of zoning or other by-laws.
- (10) Uneven provision of services.
- (11) Discrimination even if authorized by statute with respect to Licensing matters.
- (12) Affirmative action programs.
- (13) Unequal treatment in providing civic grants.

(14) Language rights in schools.

Footnotes

- (1) (See Tamopolsky, **Equality Rights in the Canadian Charter of Rights and Freedoms** 61 Can Bar Rev.242 (1983).
- (2) **Gilmore v. City of Montgomery** 417 US 556, 41 L Ed 2d 304, 94 S Ct. 2416.
- (3) **Ontario Film and Video Appreciate Society** (1983) 41 O.R. 583.
- (4) **Schad v. Borough of Mount Ephraim** 68 L. Ed. 2d 671 (1981).
- (5) **Vancouver Charter** S.B.C. 1953, c.55.
- (6) In **Bell v. the Queen** (1980) 9 M.P.L.R. 103 the Supreme Court of Canada stated that the doctrine of unreasonableness although proscribed by statute still exists.
- (7) The examination of these factors by Paris, J. in **Dorad Construction Ltd. v. Corporation of the District of Surrey** [1982-S.C.B.C. 821107 is similar to the American result in **Associated Home-builders of Great East Bay, Inc. v. City of Walnut Creek** [5 Cal. 3d 633, 484 P. 2d 606 (1971), appeal dismissed, 404 U.S. 878 (1971)].
- (8) **Lehnhhausen v. Lake Shore Auto Parts Co.** 410 US 356, 35 L Ed 2d 351).
- (9) **Broward County v. Janis Development Corp.**, 311 So. 2d 371 (Fla. 4th DCA 1975); Our Municipal act has no such timing requirement.
- (10) **Municipal Act** R.S.B.C. 1979, c. 290.
- (11) **Home Builders and Contractors Association of Palm Beach County Inc. v. Palm Beach County**, 8 Florida Law Weekly 2515 (Fla. 4th DCA 1983).
- (12) **Delsom Estates Ltd. v. Delta** (1981) 26 B.C.L.R. 263, 14 M.P.L.R. 239, 239 (B.C.S.C.).
- (13) But see **Town of Lockport New York, et al v. Citizens for Community Action At The Local Level** 97 S.Ct. 1047 holding that the state could reasonably view the interests of voters within city limits and voters outside city limits as being different with respect to adoption of county charter and that the provisions for adoption of county charters do not deny equal protection.
- (14) see generally 16A C.J.S., **Constitutional Law** ss 506,535.
- (15) Williams, **American Land Planning Law** sec. 29.01.
- (16) *ibid.* sec. 29.03.
- (17) **Romeo's Pizza & Steak House Ltd. v. City of Victoria**, 19 M.P.L.R. 129 (B.C.S.C.) (Ruttan J).
- (18) **Kropf. v. City of Sterling Heights**, 215 NW 2d 179, 185 (Mich. 1974).
- (19) **Gilchrist Realty Corp. v. Village of Great Neck Plaza**, 300 NY 619, 90 NE 2D 485 (1949); **Henry v. White**, 194 Tenn 192, 250 SW2D 70 (1952); **Boerschinger v. Elkay Enterprises, Inc.**, 32 Wis 2d 168, 145 NW 2d 108.
- (20) **Whittemore v. Building Inspector of Falmouth**, 313 Mass 248, 46NE2d 1016 (1943;).
- (21) 313 Mass at 624, 48NE2d at 621.
- (22) Williams *op. cit.* 31.06 citing **Broadway, Laguana, Vallejo Ass'n v. Board of Permit of City & County of San Francisco**, 59 Cal Rptr 146, P2d 810 (1967).
- (23) (**State v. North Western Preparatory School**, 288 Minn. 363, 37 NW2d 370 (1949); Williams, **American Land Planning Law** ss 76.07 [for cases upholding a distinction between public and private uses see **Kavanaugh v. London Grove Township**, 404 A 2d 393 (Pa. 1979); **Gerzeny v. Richfield Township**, 405 N.E. 2d 1034 (1980).
- (24) **Vandy v. Corporation of Delta** S.C.B.C. A82234B October 1982 (Vancouver Registry).
- (25) **Village of Arlington Heights v. Metropolitan Housing Development Corp.** 429 U.S. 252 (1977).
- (26) **Mitchell v. Board of Selectment of South Hadley**, 346 Mass 158, 190 NE2d 681 (1963).
- (27) **Land Title Act** R.S.B.C. 1979, c.219 s. 86.
- (28) **Clay v. Spaxman** (1984) 24 M.P.L.R. 67 (B.C.C.A.).
- (29) **Oak Bay Manor Ltd. v. Delta** (1981) 15 M.P.L.R. 40 (B.C.S.C.).
- (30) **Polai v. Toronto**⁽³⁰⁾ (1973) S.C.R.38, affirming 8 DLR (3d) 689.
- (31) **Yick Wo v. Hopkins** (1886) 118 U.S. 356, 30 L ED 220.
- (32) **Selective Enforcement of Zoning Regulation** 4 ALR4th 402.
- (33) **Johnson v. City of Arcadia**, 450 F. Supp. 1363 (1978).
- (34) See **Conmac Stages Ltd. v. Town of Sydney**, 15 M.P.L.R. 165 (B.C.S.C.); **Hutfeller v. Corporation of District of Surrey** (S.C.B.C. A812679 October 2, 1981).
- (35) **Hornby v. Allen** 326 F2d 605 (1964 5th cir).
- (36) *eg.* **Vic Restaurant Inc. v. City of Montreal** (1959) S.C.R. 58, 17 D.L.R. 2d 81).
- (37) **Bright v. Langley** (1982) 17 M.P.L.R. 109 (B.C.C.A.).
- (38) **Aladdin's Castle Inc.v. City of Mesquite** 630 F2d 1029 (1980) (CA 5th Cir).
- (39) For a general discussion of affirmative Action programs in Municipalities see the recent cases of **South Florida Chapter of the Associated Contractors of America, Inc.**, 723 F.2d 846 (11th cir. Jan. 27, 1984) and **Local Union No. 35 of the International Brotherhood of Electrical Workers v. City of Hartford, et al** 625 F.2d 416 1980.