

# CANADA'S HUMAN RIGHTS SYSTEM

WILLIAM W. BLACK

# SUBJECTS

1. Overview of Human Rights System
2. International Covenant on Economic, Social and Cultural Rights (ICESCR)
3. International Covenant on Civil and Political Rights (ICCPR)
4. Possible Relevance of Canadian Experience to Taiwan

# Overview of Canadian Human Rights Protection

## ● History

- Until World War II, very little protection
- Discriminatory statutes
  - Immigration
  - Voting
  - Suppression of aboriginal culture

# First Steps After World War II

## ⦿ Anti-Discrimination Statutes

- Apply to both the public and private sectors
- Cover employment, housing and public services and facilities
- Prohibit discrimination on grounds such as race, religion, sex, disability, sexual orientation
- Human rights commissions – education and investigations
- Human rights tribunals – hear cases

# Second Stage: Canadian Charter of Rights and Freedoms -- 1982

- ⦿ Is part of Constitution
- ⦿ Applies to government, not private sector
- ⦿ Broad range of rights
- ⦿ Rights limited by Section 1
- ⦿ Enforced by courts
  - Can strike down a statute or give other remedies

# International Covenant on Economic, Social and Cultural Rights

- ⦿ Little has been done to incorporate it into Canadian Domestic Law
- ⦿ Challenges
  - Belief that it sets goals, not legal rights
  - Breadth of some of the rights
  - Courts reluctant to Impose positive obligations on governments

# Options

- ⦿ Develop formula for limiting rights based on Articles 2 and 4 of the Covenant
- ⦿ For example
- ⦿ “Achieves Progressively” equals “makes reasonable progress

# International Covenant on Civil and Political Rights (ICCPR)

- Implemented in Canada in three ways.
- 1. Covenant language used in drafting Charter
- 2. Review of all laws to find violations of Charter (and indirectly Covenant)
- 3. Later judicial cases citing Covenants



# Incorporation of Covenant Language Into Canadian Charter

- ⦿ S. 11:
- ⦿ Any person charged with an offence has the right ...
  - (d) to be presumed innocent until proven guilty in a fair and public hearing by an independent and impartial tribunal
- ⦿ Article 14, para 1
  - ...Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law
- ⦿ para. 2
  - Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law

**Canadian Charter**

**ICCPR**

# Review of statutes to identify violations of new rights

- ⦿ Similar to process now occurring in Taiwan
- ⦿ Did make some useful changes
- ⦿ But generally a failure – many violations overlooked
  - Very difficult process
  - Unlikely to catch all violations

# Court Decisions

- ⦿ Powerful tool to protect rights
- ⦿ Much more effective than review of statutes

# Court Decisions Referring to ICCPR and Other International Treaties

## ● Examples

- Freedom of association includes right of unions to collective bargaining
- Hate propaganda case
- Protection against death penalty
- Protection of children – narrow interpretation of statute allowing discipline of children

# Canadian Bill of Rights, 1960

- ⦿ Rights somewhat similar to later Charter
- ⦿ But failed to provide protection
- ⦿ Reason: Judges did not develop adequate techniques for appropriate interpretation of the new rights
- ⦿ Only when the Charter was later enacted did they do so.

# Relevance of Canadian Experience for Taiwan

- Mainly relevance of Canadian experience implementing ICCPR

# Possible Relevance of Canadian Experience for Taiwan

## ⦿ Review of Statutes

- Unlikely to identify all of inconsistencies with covenants
- Consider allowing cases under Article 2 of Taiwan Implementation Act to deal with unanticipated violations of rights

# Education and training

- ⦿ For judges to meet new challenges
- ⦿ For police and officials to avoid costly mistakes



# Possible Relevance of Canadian Experience for Taiwan

## ⦿ Access to Justice

- Canadian Experience suggests need for legal assistance to help those asserting covenant rights

# Possible Relevance of Canadian Experience for Taiwan

- ◎ Relevance of other international treaties
  - Canadian Court have examined many international treaties
    - European Convention on Human Rights as example
  - They have also examined court decisions of other Countries
  - This broader examination can be useful in interpreting meaning of the covenants