*The History and Role of the Supreme Court of Canada**

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ROLE OF THE COURT

The Court's jurisdiction

The Canadian court system may be seen as a pyramid, with the Supreme Court of Canada at its apex. Provincial and territorial courts whose judges are appointed by the provincial or territorial government form its base, next are superior courts whose judges are appointed by the federal government, followed by the provincial courts of last resort, the provincial or territorial courts of appeal. As well, there are the Tax Court of Canada and the Federal Court of Canada,[1] whose jurisdiction generally encompasses matters falling within the competence of the federal government.

The Supreme Court of Canada hears appeals from the provincial courts of appeal, and the Federal Court of Appeal. The hearings arise from three sources. In most cases, permission or leave to appeal must first be obtained from a panel of three judges of the Court. Cases for which leave to appeal is not required, primarily criminal cases and appeals from provincial references, are a second source. The third source of cases is the referral power of the federal government by which the Court is required to give an opinion on questions referred to it by the Governor in Council.

One of the first things to notice about the jurisdiction of the Court is how broad it is compared to final courts of appeal in other jurisdictions. It sits as a national appellate court for Canada not limited to federal matters or any class of cases. It

*Adapted from a presentation prepared for the Joint Study Institute hosted by the Canadian Association of Law Libraries / Association Canadienne des Bibliothèques de Droit, Victoria, British Columbia, 22–25 May 2002. The presentation included images and text drawn from the court web site at <http://www.scc-csc.gc.ca> at 10 September 2002. The author would like to thank the Registrar of the Court, Anne Roland, and General Counsel, Barbara Kincaid, of the Law Branch for reviewing the article and providing comments.

[1] Their structure will be modified by SC 2002 c 8, *Courts Administration Service Act.*

hears cases based on the civil law of Québec as well as those based on the common law of the other provinces and territories and functions as a bilingual institution in two official languages, English and French. It also performs an advisory function on matters referred to it by the Governor in Council, usually involving important constitutional issues. As well, it is final arbiter of the *Constitution*,[2] including the *Canadian Charter of Rights and Freedoms (Charter)*,[3] deciding constitutional and rights issues raised in appeals involving individuals or governments.

If a constitutional question is raised in an appeal, the federal and provincial governments having a special interest may intervene in the case to present an argument. Private parties or organisations may also intervene in any appeal if they can show an interest not represented by the parties which would be helpful to the Court.

Hearing of appeals

Appeals are heard once the parties and any interveners have prepared and filed the required documents with the Court. A tentative hearing date is assigned when the notice of appeal is filed and is confirmed some months later. The Supreme Court holds three sessions a year during which it hears up to 120 appeals. Each session lasts three months; the first begins in January, the second in April, and the third in October.

The Court sits only in Ottawa, although litigants can present oral arguments from remote locations by means of a videoconference system. The Court's hearings, which are in English or in French, are open to the public and most are taped for delayed telecast in both official languages. When in session, the Court sits from Monday to Friday, usually hearing two appeals a day. A quorum consists of five members for appeals, but most cases are heard by a panel of seven or nine justices. On the bench the Chief Justice or, in her absence, the Senior Puisne Justice, presides from the centre of the bench with the other justices seated to her right and left in order of seniority.

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[2] *Constitution Act 1867*, (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No. 5.
[3] *Canadian Charter of Rights and Freedoms*, part I of the *Constitution Act 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11.

Lawyers from any province or territory, or the litigants themselves, may appear before the Court. As a rule, the Court allows two hours for the hearing of an appeal, each side being given one hour to present arguments. Interveners are often given the opportunity to be heard as well. Any party not satisfied with the allotted time may apply to obtain more. During the argument of the appeal, any justice may question the lawyers.

The decision of the Court is sometimes rendered at the conclusion of the hearing, but more often judgment is reserved to enable the justices to write well-considered reasons. Decisions of the Court need not be unanimous; a majority may decide, with dissenting reasons given by the minority. Each justice may write reasons in any case if he or she chooses to do so.

THE CANADIAN JUDICIAL SYSTEM

The constitutional framework

The organisation of Canada's judicial system is a function of its constitution and in particular the *Constitution Act 1867* which divides authority for the judicial system between the federal, or national, government and the ten provincial governments. The provincial governments have jurisdiction over 'the administration of justice' in the provinces, which includes 'the constitution, organisation and maintenance' of both civil and criminal courts, as well as civil procedure in those courts. However, the power to appoint the judges of the superior courts in the provinces – which includes the provincial courts of appeal as well as the trial courts of general jurisdiction – is given to the federal government.

The federal government is also given the authority to establish 'a General Court of Appeal for Canada and any Additional Courts for the better Administration of the Laws of Canada' (s 101). It has used this authority to create the Supreme Court of Canada as well as the Federal Court and the Tax Court. The result is a court system in which provincial governments have jurisdiction over the constitution, organisation and maintenance of the lowest level of courts and appointment of judges to those courts, while the federal government has authority over the constitution, organisation and maintenance of and the appointment of judges to the Supreme Court of Canada, the Federal Court and the Tax Court. Authority

over the superior courts in each province is shared between the provincial and federal governments, with the provinces having jurisdiction over their constitution, organisation and maintenance, and the federal government having authority to appoint the judges.

Organisation of courts

As described previously, the courts in Canada are organised in a four-tiered structure. The Supreme Court of Canada sits at the apex of the structure as 'a General Court of Appeal for Canada', and hears appeals from both the federal court system, headed by the Federal Court of Appeal, and the provincial court systems, headed in each province by that province's court of appeal. In contrast to its counterpart in the United States, therefore, the Supreme Court of Canada functions as a national, and not exclusively a federal, court of last resort.

The next tier down from the Supreme Court of Canada consists of the Federal Court of Appeal and the various provincial courts of appeal. Two of these latter courts, it should be noted, also function as the courts of appeal for the three territories in northern Canada, the Yukon Territory, the Northwest Territories, and Nunavut. The next tier down consists of the Federal Court (Trial Division) and the provincial and territorial superior courts of general jurisdiction. At the bottom of the hierarchy are the courts typically described as provincial courts, and generally divided into various divisions defined by the subject matter of their jurisdiction, such as Traffic Division, Small Claims Division, Family Division, and Criminal Division.

CREATION AND BEGINNINGS OF THE COURT

It was the *British North America Act 1867*, now called the *Constitution Act 1867*, that first created a united Canada (Ontario, Québec, Nova Scotia and New Brunswick) and defined the basic elements of the country's judicial system. Under the *Constitution Act 1867*, all existing provincial courts were to continue and bilingualism was guaranteed in the federal parliament and courts. At the time of confederation, decisions from provincial courts could be appealed directly to the Judicial Committee of the Privy Council in London for a final decision. The Act also made provision for the new Federal Parliament to create its own court of appeal which was used by Parliament a few years later to create the Supreme

Court of Canada. However, decisions of the new court still could be appealed to the Judicial Committee of the Privy Council for final judgment. The Judicial Committee's superior appellate jurisdiction over Canada did not end until 1933 for criminal appeals and 1949 for civil appeals.

The Supreme Court of Canada had an uncertain beginning.[4] Although bills to establish it were introduced in Parliament in 1869 and in 1870, it was not until 8 April 1875 that a statute was enacted. Members of this first court signed their oaths of office in the senate chamber on 8 November 1875, exactly one month after the swearing in ceremony for the first Chief Justice, the Honourable William Buell Richards, and the first Registrar, Robert Cassels. But at its first sitting, on 17 January 1876, there was not a single case to hear. In April its first 'case' was in fact a reference from the senate requesting the Court's opinion on a private bill. Having dealt with that, the Court next sat for one week in June 1876, disposing of three cases. It was not convened agai ntil the following January, when it began to hold regular sessions with a full agenda. It is reported[5] that the court's earliest cases ranged from the serious to the somewhat farcical. The first volume of the *Supreme Court Reports* (SCR) includes a decision of 62 pages, with six separate judgments, about the remedy to be awarded to a plaintiff whose church had taken away his favourite pew.[6] The pew holder was awarded 'reasonable but not vindictive' damages of $300.

The Court originally had six justices. In addition to Chief Justice Richards, five puisne (or ranked after) justices sat. They were William Johnston Ritchie, Samuel Henry Strong, Jean-Thomas Taschereau, Télesphore Fournier and William Alexander Henry. Each also became a judge of the simultaneously created Exchequer Court (now the Federal Court of Canada), which was soon given its own judges.

In 1927 the number of Supreme Court justices increased to seven and in 1949, with the abolition of appeals to the Judicial Committee of the Privy Council, the

[4] For a detailed history of the court see Snell, James G. & Vaughan, F. 1985, *The Supreme Court of Canada: history of the institution*, University of Toronto Press, Toronto.
[5] Lamer, Antonio 2000, 'A Brief History of the Court' in *The Supreme Court of Canada and its justices 1875–2000 / La Cour Suprême du Canada et ses juges 1875–2000*, Dundurn Group, Toronto, p. 11.
[6] *Johnston v Minister and Trustees of St. Andrew's Church, Montreal* (1877), 1 SCR 235.

Court reached its present total of nine members. By law, three of the nine must be appointed from Québec. By tradition, the federal government appoints three justices from Ontario, two from the West, and one from Atlantic Canada.[7]

The Court first sat in the Railway Committee Room at the House of Commons, then in several other rooms as they became available. In 1882 the Court moved to its own small, two-storey building at the foot of Parliament Hill on Bank Street. It would be another 60 years before construction of the building currently occupied by the Court would begin. The late Queen Mother, then Queen Elizabeth, laid the cornerstone in the presence of her husband, King George VI, on 20 May 1939. After delays caused by World War II and the government's use of the new building to meet wartime needs, the Court finally took possession in January 1946 and heard its first case there that same month.

During its history, the Supreme Court may be considered to have evolved through four stages. First, there was the period prior to 1949, when it was not a final court, but an intermediate appeal court under the Judicial Committee of the Privy Council. Not only could parties appeal judgments of the Supreme Court of Canada with leave of the Privy Council, but appeals directly from the provincial appeal courts to the Privy Council were possible. In 1949, the Supreme Court became truly supreme, and embarked on the development of a distinctive Canadian jurisprudence.[8]

In 1975, an amendment to the *Supreme Court Act* eliminated most appeals as of right, and gave the Court almost complete control over its docket. To appeal to the Court, litigants would be required to show a panel of three justices that the legal issues involved were of 'public importance' or raised an important issue of law or law and fact, warranting the Court's consideration. With the exception of certain criminal cases which could still be appealed as of right, the amendment gave the Court control over the issues coming before it, and effectively changed its role from a court of error, with that function being left to the provincial courts of appeal, to one of supervising the development of Canadian jurisprudence. Its role

[7] Crane, Brian A. & Brown, Henry S. c 1999, *Supreme Court of Canada practice 2000*, Carswell, Toronto, p. 5.

[8] The evolution of the court is described in Snell & Vaughan, fn 4 and in Crane & Brown, fn. 7. A study of its performance prior to 1975 is found in Weiler, Paul C. 1974, *In the last resort: a critical study of the Supreme Court of Canada*, Carswell Methuen, Toronto.

would now be to assure uniformity and consistency in the development and interpretation of legal principles throughout the judicial system.[9]

In 1982, the role of the Court in deciding constitutional issues was expanded, with the patriation of the constitution. The *British North America Act 1867*, formerly a UK statute, became the *Constitution Act 1867*, to which the *Constitution Act 1982* added an amending formula and the *Canadian Charter of Rights and Freedoms*. While the Court had been arbiter of the division of legislative powers between federal and provincial governments under sections 91 and 92 of the *British North America Act*, the *Charter* enshrined guarantees of individual rights and freedoms, requiring the Court to supervise any action on the part of federal or provincial governments to restrict basic rights and freedoms, unless 'reasonable' and 'demonstrably justified in a free and democratic society'(s 1).

COURT BUILDING

The Supreme Court holds sittings in a building designed by Ernest Cormier, a Montréal architect of the Beaux-Arts school. Situated just west of the parliament buildings on a bluff high above the Ottawa River and set back from Wellington Street by an expanse of lawn, the building provides a dignified setting for the country's highest tribunal. There are two flagstaffs at the front of the building, with the one to the west hoisted daily. The other flag flies only when the Court is sitting. Two tall statues have been erected on the steps of the building, 'Truth' to the west and 'Justice' to the east. They were sculpted by the Toronto artist, Walter S. Allward, creator and architect of the Canadian War Memorial at Vimy Ridge in France. At the rear, there is a fountain and a terrace overlooking the Ottawa River. Two bronze doors give access to an impressive entrance hall, with walls of rubané marble and a floor of Verdello and Montanello marble. At each end of the Grand Entrance Hall is a courtroom used by the Federal Court of Canada.

The main courtroom, reserved for the use of the Supreme Court, occupies the centre of the building on the first floor. The courtroom has walls of black walnut with fluted pilasters. Six windows open to interior, naturally lighted courtyards,

[9] The effect of the amendment has been described in Bushnell, S. I. 1982, 'Leave of appeal applications to the Supreme Court of Canada: a matter of importance', *Supreme Court Law Reports* vol. 3, p. 479 and Laskin, Bora 1975, 'The role and functions of final appellate courts: the Supreme Court of Canada', *Canadian Bar Review/Revue du Barreau Canadien* vol. 53, p. 469.

remote from outside noise. The courtroom is equipped with simultaneous interpretation equipment and the videoconference system. Automatic cameras, sound activated, are used to record hearings.

The Court Registry and the chambers of the Registrar and Deputy Registrar and the Law Branch are located on this floor. The Justices' Conference Room is directly behind the courtroom. The second floor houses the private chambers of the nine justices and their private reading room. On the third floor, directly above the entrance hall, is the main reading room of the library.

THE JUSTICES

The Supreme Court consists of the Chief Justice of Canada and eight puisne justices[10] appointed by the Governor in Council from among superior court judges or barristers of at least ten years' standing. The justices must reside in the national capital region or within 40 kilometres of it. They hold office during good behaviour, until retirement or until attaining the age of 75 years, but are removable for incapacity or misconduct in office before that time by the Governor General on address of the Senate and House of Commons.

At sittings of the Court, the justices usually appear in black silk robes but they wear their ceremonial robes of bright scarlet trimmed with Canadian white mink in court on special occasions and in the senate at the opening of each new session of parliament. The Chief Justice divides the work of the Court by choosing the panels of justices to hear the cases and motions brought before it. She also assigns the judge who will prepare a draft judgment, in the absence of a volunteer.

The Chief Justice has certain extra-judicial functions as well. She is chairperson of the Canadian Judicial Council, composed of all chief justices and associate chief justices of superior courts in Canada. This body organises seminars for federally appointed judges, coordinates the discussion of issues of concern to the judiciary and conducts inquiries, either on public complaint or at the request of the federal Minister of Justice or a provincial Attorney General, into the conduct of

[10] At the time of writing, the court consisted of the Rt. Hon. Beverley McLachlin, Chief Justice of Canada; Hon. Claire L'Heureux-Dubé; Hon. Charles Doherty Gonthier; Hon. Frank Iacobucci; Hon. John C. Major; Hon. Michel Bastarache; Hon. William Ian Corneil Binnie; and Hon. Louis LeBel. Madame Justice L'Heureux-Dubé has since announced her retirement, effective July 1 2002.

any federally appointed judge. Should the Governor General die, become incapacitated or be absent from the country for a period of more than one month, the Chief Justice becomes the Administrator of Canada and exercises the powers and duties of the Governor General. The Chief Justice and the other justices of the Court also serve as deputies of the Governor General for the purpose of giving royal assent to bills passed by Parliament, signing official documents or receiving credentials of newly appointed High Commissioners and Ambassadors.

A GLIMPSE INSIDE THE COURT

The administration of the Court

Office of the Registrar

Answering directly to the Chief Justice, the Registrar exercises quasi-judicial functions and is responsible for all administrative work in the Court including the appointment and supervision of over 176 court staff, all members of the federal public service. Attached to the Registrar's office is the Executive Services Branch, which is responsible for management support for the justices' chambers, the law clerk program, the Registrar's correspondence and dignitary visits.

Justices' chambers

Each justice of the Court has three law clerks, usually recent law school graduates, who provide them with research assistance, meeting in whole or in part the articling requirements set by the various provincial law societies as a condition for admission to the bar. A judicial assistant and a court attendant are also attached to each chamber. An executive legal officer, an executive assistant, a legal officer, and two support staff are attached to the chambers of the Chief Justice as well.

One of the most important roles of the law clerk is in the drafting of pre-hearing or bench memoranda.[11] Law clerks are asked to sift through the appeal books of both parties and any intervening parties. They summarise the relevant arguments,

[11] The work of the law clerks for the court has been described in Herman, Michael John 1975, 'Law clerking at the Supreme Court of Canada', *Osgoode Hall Law Journal*, vol. 13, p. 279; McInnes, Michael, Bolton, Janet and Derzko, Nathalie 1994, 'Clerking at the Supreme Court of Canada', *Alberta Law Review*, vol. 33, p. 58; Soussin, Lorne 1996, 'The sounds of silence: law clerks, policy making and the Supreme Court of Canada', *University of British Columbia Law Review*, vol. 30, p. 270; Sopinka, John 1991, '*Procedures for law clerks*' [unpublished].

the judgment below and the evidence, and offer recommendations based on a thorough review of the applicable law. The intent of the bench memorandum is to prepare the judge for oral argument without the necessity of reading the entire record, which may take up several volumes. The law clerk is also expected to be familiar with the authorities referred to by counsel.

Preparing post-hearing memoranda and assisting with the draft judgment is another major responsibility. If a justice is writing a majority, concurring or dissenting opinion, the law clerk who prepared the bench memorandum will frequently be asked to undertake some supplementary research on particularly complex issues and to draft one or several memoranda, or to edit and critique a draft judgment.

Court operations[12]

Other judicial support functions are provided by the Court Operations Sector and the Library. Reporting to the Deputy Registrar, the Court Operations Sector includes the Registry Branch, responsible for case management and hearings, and the Law Branch, responsible for legal support to the Court, editing and summaries of reasons for judgment, translation and publication of court judgments.

Process

Most cases come to the Court by way of application for leave to appeal, although there are still appeals as of right in criminal matters where there is a dissent in law or the reversal of an acquittal or conviction and no trial ordered. A reference to a court of appeal can be appealed as of right as well. Approximately 600 leave applications and appeals as of right are filed with the Court each year.

Applications for leave to appeal are made in writing, although a hearing may sometimes be ordered. Once a notice of appeal has been filed or leave granted, the following must be filed: notice of appeal, record of proceedings and evidence in the case, appellant's factum, respondent's record and factum, intervener's factum and books of authorities. In addition, there may be several motions in a case,

[12] Descriptions are based on a staff orientation document, Supreme Court of Canada 2001, Court Operations Sector: Office of the Deputy Registrar, Registrar Branch, Law Branch / Cour Suprême du Canada 2001, Secteur des opérations de la Cour, Bureau du registraire adjoint, Bureau du registraire, Direction générale du droit [unpublished].

usually dealt with on the basis of written submissions. These may include motions for extension of time, appointment of counsel, adding or substituting parties, intervention, stay, fresh evidence, or motion for directions.

Each member of the Court, except the Chief Justice, sits as rota judge on a regular basis and will deal with all motions during this time. The Chief Justice in most cases hears motions to state constitutional questions where an issue of constitutional validity of a law is raised. Applications for leave to appeal are dealt with by a panel of three judges, whether or not an oral hearing has been ordered.

The Registry

The Registry is the hub of all procedural and documentary activities at the Court. registry staff process, record and direct the flow of all documents filed by the parties and record all events which take place during the life of a case using a form of 'electronic docket' called the Case Management System (CMS).

The registry also provides assistance in scheduling the Court's sittings, and finalises the documentation for cases after judgments have been rendered. The registry staff prepare a draft agenda or docket for the approval of the Chief Justice and a second confidential list called the corams list is prepared by the Chief Justice, showing which judges have been assigned to hear the cases.

All active court files, which include all documents filed in appeals and applications for leave, are kept in the Court Records Office. Files are closed once judgment is rendered or the matter discontinued and, after ten years, are transferred to the National Archives. The contents of all court files from 1876 to 1995 have been microfilmed.

Rules

New Rules of Practice were recently enacted. The *Rules of the Supreme Court of Canada* were registered as SOR/2002–156, published in Part II of the *Canada Gazette* on 24 April 2002, and came into force on 28 June 2002. The rules have been rewritten to simplify procedures, to reflect the current practices of the Court

and to make case management more efficient. Rule 44(3) and (4) provides for citation of reasons for judgment available electronically.[13]

The Law Branch

More than 30 legal counsel, law editors, jurilinguists, technical revisers and editorial assistants provide legal and editorial services. When a case reaches the Court by way of a leave application or as of right, a staff lawyer prepares a factual summary outlining the case which is part of the public record. At the same time, a confidential memorandum is prepared for the panel which analyses the leave application with a view to the 'public importance' or 'nature or significance' criteria required to be met, and makes a recommendation. The memorandum will also note whether similar issues have been raised in the past, to avoid the possibility of inconsistent decisions. Staff lawyers also prepare objective summaries of all appeals before the start of the session in which the appeal is to be heard.

Editing and translating of decisions begins as soon as the first draft of a judgment is circulated to the other judges. Copies are also given to the lawyer responsible for editing the reasons and drafting a headnote, and to a jurilinguist responsible for reviewing translations prepared by the federal Translation Bureau. All authorities cited are checked for accuracy by technical revisers. Changes may be made at any point prior to the date set for release by the Chief Justice and these must be incorporated into both the French and English versions of the judgment and headnote.

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[13] The sections read: 44(3) In the case of reasons for judgment of the Court, the book of authorities shall contain only the relevant excerpts from the Canada *Supreme Court Reports* or from an electronic database if the reasons were delivered after 1994 and the paragraph numbering in the reasons is consistent with the numbering in the Canada *Supreme Court Reports*.
(4) In the case of all other reasons for judgment, the book of authorities may contain printouts from electronic databases and shall
(a) if the reasons for judgment are available electronically, contain only the relevant excerpts including the headnote, if any, the pages immediately preceding and following the page which contains the excerpt, and the reference to the electronic database clearly marked on the page containing the excerpt; or
(b) if the reasons for judgment are not available electronically, contain ... the reasons for judgment in full.
The new rules and forms and a summary of major changes are available on the court's web site at <http://www.scc-csc.gc.ca>.

Upon release, a set of reasons is deposited with the Registrar, printed and electronic copies are distributed. The original reasons, signed on the last page by the judge who wrote them, and on the front by concurring judges, are sent to the registry for filing. The final step is publication in the official reports, which occurs within three months of release of judgments. The judgments are rechecked by technical editors who prepare the indexes and tables for printing as well, and any change or omission is brought, before publication, to the attention of the judge who wrote the judgment.

Public information

There is also a public information function within the Office of the Deputy Registrar, including responsibility for information posted on the Court's web site and a tour program providing guided tours for the almost 35,000 people who visit the Court each year.

Library

The library provides the research base for the Court in its role of deciding questions of national importance. With 20 staff and an extensive collection of both primary and secondary materials from major common and civil law jurisdictions (Canada, United Kingdom, United States, Australia, New Zealand, France and Belgium), it is open to those pleading before the Supreme Court of Canada and the Federal Court of Appeal, to the Canadian judiciary, to members of the Bar and to others by permission.

Corporate Services

Administrative and operational support for the judges and court staff is provided by the Corporate Services Sector, responsible for accommodation, finance, security and informatics and the human resources management for the Supreme Court of Canada.

A SELECTION OF CHARTER DECISIONS AFFECTING THE LIVES OF CANADIANS

On 17 April 2002, the *Canadian Charter of Rights and Freedoms* celebrated its 20th anniversary. The Canadian press at that time carried accounts of experts' picks of the 'top 20' rulings that changed Canada. While not necessarily the most significant from a jurisprudential standpoint, the following ten are offered as examples of those that most affected our lives.

***R v Big M Drug Mart Ltd* [1985] 1 SCR 295**

In defining the scope of religious freedom in s 2(a) of the *Charter*,[14] the Court struck down the federal *Lord's Day Act*[15] as inimical to its spirit, and giving the appearance of discrimination against non-Christian Canadians. Stores are allowed to be open on Sundays as a result.

***Singh et al v Minister of Employment and Immigration* [1985] 1 SCR 177**

The Court extended *Charter* protection to all persons physically present in Canada and established the right of refugees such as Singh to a full oral hearing to determine whether they could stay in the country.

***R v Morgentaler* [1988] 1 SCR 30**

The Court struck down s 251 of the federal *Criminal Code*,[16] which restricted doctors from performing therapeutic abortions, as violating a woman's s 7 right to 'life, liberty and security of the person'.[17] The provision has never been replaced, thus lifting the restrictions on therapeutic abortions.

***R v Askov* [1990] 2 SCR 1199**

The Court established the right of a person charged with an offence to be tried within a reasonable time and the factors to consider in determining whether there

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[14] Section 2 reads:
2. Everyone has the following fundamental freedoms:
(a) freedom of conscience and religion;
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communications;
(c) freedom of peaceful assembly; and
(d) freedom of association.

[15] RSC 1970, c L–13.

[16] RSC 1970, c C–34.

[17] Section 7 reads: Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

has been an unreasonable delay. This decision caused thousands of criminal charges to be dropped in Ontario.

***Lavigne v Ontario Public Service Employees Union* [1991] 2 SCR 211**

The Court defined the scope of the *Charter*'s s 2(d) rights to freedom of association in this challenge to mandatory union dues by finding that while it did interfere with freedom from compelled association, the violation was justifiable under s 1.[18]

***Rodriguez v British Columbia* [1993] 3 SCR 519**

Even though suicide is lawful, the *Charter* provisions were found not to include the right of a terminally ill person to doctor-assisted suicide.

***RJR-MacDonald v Canada (Attorney General)* [1995] 3 SCR 199**

The Court struck down a federal act prohibiting commercial advertising of tobacco products as an unjustified infringement of a corporation's freedom of expression.

***R v Keegstra* [1996] 1 SCR 458**

The Court set limits on *Charter* protection of freedom of expression by upholding the conviction of a former teacher for promoting racial hatred against Jews in his classes. While s 2 (b) protects all expression including hate propaganda, its prohibition under the *Criminal Code* is justifiable under s 1.

***Vriend v Alberta* [1998] 1 SCR 493**

The Court 'read in' sexual orientation as a ground for discrimination under sections of the Alberta *Individual's Rights Protection Act*[19] overturning a termination of employment based on an employee's public declaration of homosexuality. The omission of sexual orientation as a protected ground in the Alberta statute constituted an unjustifiable violation of the s 15 equality provisions of the *Charter*.[20]

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[18] *Guarantee of Rights and Freedoms*. 'The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society'.

[19] RSA 1980, c I–2, as am.

[20] Section 15(1) reads: 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.

***Reference Re Secession of Québec* [1998] 2 SCR 217**

Although not explicitly a *Charter* case, the reference to the Court did have its origin in a claim by Québec City lawyer Guy Bertrand that his *Charter* rights were threatened by Québec's Bill 1, An Act Respecting the Future of Québec.[21] The Act grants the Québec National Assembly the power to proclaim Québec an independent country without a constitutional amendment. The federal government referred the question of the province's secession to the Court.

In a unanimous decision, the Court found that while Québec did not have a right in international law to secede unilaterally, a clear majority vote in Québec on a clear question in favour of secession would invoke a right of self-determination and an obligation on the part of Québec and the federal government to negotiate the terms. On the basis of the reference, the federal government passed the *Clarity Act* in 1999.[22]

[21] Projet de loi 1, Loi sur l'avenir du Québec, was introduced by Prime Minister Jacques Parizeau in the National Assembly on 7 September 1995. The plaintiff obtained a declaration against the draft bill, but not an injunction against a Québec referendum which was subsequently held, and narrowly defeated, approving sovereignty negotiations. See *Bertrand v Québec* [1995] 127 DLR (4th) 408.

[22] 10 SC 2000, c 26.