

# THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS: AN OVERVIEW\*

GERARD V. LA FOREST†  
*Fredericton, N.B.*

---

*Until now, fundamental rights have been judicially protected by the application of the rule of law to executive power and presumptions against legislative interference with private rights and property. This approach is not only reinforced by the Charter; a new era is inaugurated, one based, however, on an earlier higher law tradition. The Charter, while not having the impact of the United States Bill of Rights, will force a more direct approach to rights and lead us to seek guidance from foreign and extralegal sources.*

*A new dynamic will develop in the relationship between the courts and the legislatures. As laws are declared invalid, legislative re-assessment or reformulation will follow, leading to further judicial evaluation. The change, undramatic at first, will gradually extend to state action and possibly common law rules, and enforcement will come both through declarations of invalidity and other appropriate remedies.*

---

*Jusqu'à présent, les droits fondamentaux ont été judiciairement protégés par l'obligation de la part du pouvoir exécutif de se soumettre à la primauté du droit et la présomption de non-ingérence du pouvoir législatif dans les droits civils et la propriété. Non seulement la Charte renforce-t-elle cette attitude mais elle inaugure une ère nouvelle qui, il est vrai, tire ses sources d'une tradition juridique plus ancienne. Alors même que la Charte n'aura pas l'impact du Bill of Rights américain, elle nous forcera cependant à adopter une attitude plus éclairée vis-à-vis des droits et nous amènera à rechercher une certaine orientation dans des sources extralégales et étrangères.*

*On assistera à la naissance d'une nouvelle dynamique dans les rapports entre le pouvoir judiciaire et le pouvoir législatif. Dans la mesure où une loi sera déclarée inopérante, il faudra la ré-examiner, la reformuler, et la soumettre à nouveau aux tribunaux. Ce changement, lent au début, s'étendra peu à peu à bon nombre d'activités de l'Etat et peut-être aux règles de common law; la mise en vigueur de la Charte se fera par voie de déclaration d'invalidité et autres recours pertinents.*

After all the political travails, the Canadian Charter of Rights and Freedoms has at last become law—indeed part of the fundamental law of the land. Any law inconsistent with it is, to the extent of that inconsistency, of

---

\* This article is largely based on notes for a talk prepared for a seminar for judges sponsored by the Canadian Institute for the Administration of Justice.

† The Hon. Gerard V. La Forest, of the Court of Appeal of New Brunswick, Fredericton.

no force and effect; the Charter, as part of the Constitution of Canada, is supreme.<sup>1</sup>

Constitutional guarantees of rights are, on the whole, new to us, although the courts are experienced in declaring statutes void as falling outside the powers of Parliament or the legislatures, and there has since 1867 been a number of rights guaranteed by our Constitution, those requiring annual sessions,<sup>2</sup> and the maximum duration of Parliament,<sup>3</sup> and the group rights relating to denominational schools<sup>4</sup> and linguistic rights.<sup>5</sup> But these are of such restricted nature that for all practical purposes we really entered into a new stage of constitutional development when the Charter became law, a stage that will involve a new way of looking at law and the rights of the individual.

Thus far our basic rights have by and large been protected by our traditions of liberty and the political understandings that undergird the supremacy of Parliament and the legislatures. The courts, acting within the confines of these traditions, have long protected the citizen from arbitrary executive and administrative action by insisting that such action be authorized by law, including a series of principles of fair procedure falling under the rubric of "natural justice".

So far as legislative action is concerned, the courts are vigilant in reminding Parliament and the legislatures of the basic political understandings underlying our parliamentary democracy. The English Revolution was not intended to replace a personal despot by a legislative despot. The authors of our system of parliamentary democracy were actuated by a philosophy of individual freedom, a philosophy that continues to inform our fundamental political institutions. The courts through a series of presumptions designed "as protection against interference by the state with the liberty or property of the subject"<sup>6</sup> interpret statutes so as to ensure that individual freedom or private rights of property are not arbitrarily restricted or abridged. In doing this the courts exercise what is in essence a constitutional function. They are working along with the legislative branch to ensure the preservation of our fundamental political values. The legislature can, of course, by clear language overturn the court's ruling, but by insisting on such clarity the courts help to promote second thought and public debate, a debate that all recognize as an essential safeguard in a parliamentary democracy.<sup>7</sup> These thoughts are not new with me. Speaking

<sup>1</sup> Canadian Charter of Rights and Freedoms, s. 52, as enacted by the Canada Act, 1982, c. 11 (U.K.).

<sup>2</sup> British North America Act, 1867, 30-31 Vict., c. 3, s. 20 (U.K.).

<sup>3</sup> *Ibid.*, s. 50.

<sup>4</sup> *Ibid.*, s. 94.

<sup>5</sup> *Ibid.*, s. 133.

<sup>6</sup> See Elmer A. Driedger, *The Construction of Statutes* (1974), p. 137.

<sup>7</sup> See Sir D.L. Keir and F.H. Lawson, *Cases on Constitutional Law* (3rd ed. rev., 1948), pp. 3-4.

of the presumption against the taking of property without compensation, Lord Radcliffe has articulated some of the things I have just said in this way:<sup>8</sup>

On the one hand, there would be the general principle, accepted by the legislature and scrupulously defended by the courts, that the title to property or the enjoyment of its possession was not to be compulsorily acquired from a subject unless full compensation was afforded in its place. Acquisition of title or possession was "taking". Aspects of this principle are found in the rules of statutory interpretation devised by the courts, which required the presence of the most explicit words before an acquisition could be held to be sanctioned by an Act of Parliament without full compensation being provided, or imported an intention to give compensation and machinery for assessing it into any Act of Parliament that did not positively exclude it. This vigilance to see that the subject's rights to property were protected, so far as was consistent with the requirements of expropriation of what was previously enjoyed in specie, was regarded as an important guarantee of individual liberty. It would be a mistake to look on it as representing any conflict between the legislature and the courts. The principle was, generally speaking, common to both.

Like other constitutional principles, however, the precise content of a right intended to preserve individual freedom must be adjusted to conform to evolving social realities. This is particularly true in relation to property rights where the courts must not place themselves in a position of frustrating the work of Parliament and the legislatures which, of course, have the primary burden of adjusting economic power in the state by reallocating rights and resources. It may have been to permit these bodies more flexibility in performing this task that property rights were not expressly inserted in the Charter. This places an additional obligation on Parliament and the legislatures to avoid arbitrary action in this field. This duty the courts will continue to assist our legislative bodies to perform by interpreting statutes so as not to arbitrarily or unjustly interfere with the liberty and property of the individual. This has the further benefit of reminding them, of their continuing duty in this regard. The Charter, as it seems to me, reaffirms this judicial function by underlining in section 26 that "the guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada". That section, of course, is not limited to this function.

It is, of course, not only this continuity of judicial tradition that has or will preserve our freedom. Nor can the entrenchment of particular rights in the Charter. Freedom is primarily protected by our traditions of liberty. And "liberty", as the Canadian Bar Association *Report* on the Constitution put it, "lies in the hearts of men . . . ; no constitution will make a free society".<sup>9</sup> We all know of totalitarian states with expansive Bills of Rights.

Nonetheless, it must not be thought that charters of freedom are alien to our Constitution. In fact they go back to such landmarks as Magna Carta and the English Bill of Rights. Both before and for a short time after the

<sup>8</sup> *Belfast Corpn v. O. D. Cars Ltd*, [1960] A.C. 490, at p. 523.

<sup>9</sup> *Towards a New Canada* (1978), p. 16.

English Revolution, some of the greatest English judges—Coke<sup>10</sup> and Holt<sup>11</sup> to name two—thought there were limits to what Parliament could do by legislation, an attitude still faintly echoing as late as Blackstone.<sup>12</sup> That portion of English tradition was emphasized in the United States Constitution,<sup>13</sup> though we in Canada followed the later British path, with necessary qualifications inherent in a federal system, of parliamentary supremacy. In a sense, therefore, we are reverting to an earlier tradition in enshrining a Charter of Rights and Freedoms in our Constitution.

The idea of guaranteeing rights has been making inroads in this country for some time and in 1960 the Canadian Bill of Rights was enacted by Parliament.<sup>14</sup> The Bill, which is of course confined to the federal level, was, strictly speaking, not a constitutional statute. However, it did enjoin the courts to construe statutes so as not to violate the rights and freedoms set forth in the Bill, and as we saw in the *Drybones* case,<sup>15</sup> that could go so far as to permit the courts to declare a statutory provision inoperative. Generally, though, the courts and notably the Supreme Court, tended to interpret the Canadian Bill of Rights narrowly. In fairness, it must be said that we should not, having regard to our traditions, expect to find an excessive number of statutes that violate fundamental rights, but on any standard the effect of the Bill in terms of judicial protection of rights, has been modest indeed. It has, however, had a more significant impact in terms of executive and administrative protections.<sup>16</sup>

Since many of the rights in the Charter are similar to those in the Canadian Bill of Rights, should we also expect it to be equally narrowly interpreted?

I am inclined to think not. The difference, as I see it, is partially psychological. The Canadian Bill of Rights was known to be an expression of self-restraint by Parliament. It was an instruction by Parliament to the courts regarding the manner in which they should read Acts of Parliament. But the courts were quite naturally inhibited from cutting down an Act of Parliament that expressly enacted a provision that judges might otherwise have been inclined to think offended against a right protected by the Bill. As can be seen, I do not share the view of those who think the Bill was not sufficiently strongly worded. I do not see how a non-constitutional Bill of

<sup>10</sup> See *Dr. Bonham's Case* (1610), 8 Co. Rep. 1066, 77 E.R. 638.

<sup>11</sup> *City of London v. Wood* (1701), 12 Mod. 669, 88 E.R. 1592.

<sup>12</sup> Blackstone's Commentaries on the Law of England (1796), vol. 1, p. 91. For an account, see Corry, *The Interpretation of Statutes in Driedger*, *op. cit.*, footnote 6, p. 203.

<sup>13</sup> Corwin, *The "Higher Law" Background of American Constitutional Law* (1928), 42 Harv. L. Rev. 149, 365.

<sup>14</sup> S.C. 1960, c. 44; R.S.C. 1970, App. III, p. 457.

<sup>15</sup> *R. v. Drybones*, [1970] S.C.R. 282.

<sup>16</sup> By virtue of s. 3; see *supra*, footnote 14.

Rights could have been drafted except as a binding direction to the courts.<sup>17</sup> But the Charter is the basic law of the land to which Parliament and the legislatures themselves are subject.

The psychological difference to which I have referred also flows from a more general situation. The public is now being told in a fundamental document agreed upon by all—or almost all—our governments and all our federal political parties that there are individual and group rights beyond the reach of government. These will be looked at by the citizen, and the public will, if often only in a vague and inarticulate sense, expect both governments and courts to take this seriously.

Indeed, this educational function of the Charter is one of its major purposes. It strengthens and clarifies our inherited traditions of freedom as well as underlining the bilingual and bicultural, indeed multicultural, character of this country. But this educational function would be of little value if the public came to perceive the Charter as a hollow reed. The courts must, and do (by virtue of sections 24 and 52) have power to uphold these rights in appropriate cases. By righting wrongs, the courts also exemplify the underlying public values of our society.

We have a situation here similar to that recently adopted in Bermuda, about which Lord Wilberforce in *Minister of Home Affairs v. Fisher*,<sup>18</sup> had this to say:

Here . . . we are concerned with a Constitution, brought into force certainly by [an] Act of [the United Kingdom] Parliament . . . but established by a self-contained document . . . . It can be seen that this instrument has certain special characteristics. 1. It is . . . drafted in a broad and ample style which lays down principles of width and generality. 2. Chapter I is headed "Protection of Fundamental Rights and Freedoms of the Individual". It is known that this chapter, as similar portions of other constitutional instruments drafted in the post-colonial period . . . was greatly influenced by the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) . . . . It was in turn influenced by the United Nations' Universal Declaration of Human Rights of 1948. These antecedents, and the form of Chapter I itself, call for a generous interpretation avoiding what has been called "the austerity of tabulated legalism", suitable to give to individuals the full measure of the fundamental rights and freedoms referred to.

But while I believe that our courts will take the Charter more seriously than the Canadian Bill of Rights, I do not expect that they will—at least for the foreseeable future—play a role comparable to that of American courts. The reasons for this are also in part psychological, but they are as well in part traditional and in part owing to a different mix of institutions.

As a matter of psychology there is a world of difference between a constitution adopted following a war fought on the basis of well articulated principles and perceived by the citizen as one of liberation, as was the case

<sup>17</sup> For a discussion, see Elmer A. Driedger, *The Meaning and Effect of the Canadian Bill of Rights: A Draftsman's Viewpoint* (1977), 9 *Ottawa L. Rev.* 303.

<sup>18</sup> [1980] A.C. 127, at p. 154.

in the United States, and a long evolutionary process, seldom fully understood and replete with necessary political compromises. Secondly, our judges have been performing their roles in a traditional way for many years. They will not, and I dare say will not be expected to completely change their ways overnight.

I might add, interstitially, that the Charter forces us to look at questions differently than before. However clear a statute or its purposes may be, courts will be asked to make a value judgment about it, a duty that is very different from the traditional role of the court. This should profoundly affect the sources on which courts must rely for guidance. In particular, reference to judicial decisions in other jurisdictions, notably the United States, and under the United Nations Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Not that I think we should blindly follow these. Our courts must be guided by the felt needs and traditions of our own society. But they will be invaluable in raising the issues that must be considered. So often we fail to see that a course of action may unnecessarily infringe on the rights of the individual because we have simply become accustomed to that way of doing things.

I hope, too, that our search will also lead us to seek light from disciplines other than the law, for many of the questions we will have to consider transcend the legal system. Rights continue to emerge from the human experience.<sup>19</sup> All of this has implications for more mundane matters like libraries and the research assistance judges should have for the proper performance of their function.

I come back now to the reasons why I think the role of our courts will continue to vary substantially from that performed by the courts in the United States. As already mentioned, the institutions of our two countries are vastly different. The courts in the United States have brought about many social changes that could not otherwise have been effected because other branches of government were incapable, because of the checks and balances in the American system, of doing so. The United States Supreme Court's decisions respecting segregated schools constitute a classic example of what I am talking about. Congress could simply not bring desegregation about without prodding from the courts—prodding based on a constitutional power to define rights. Faced with the same situation Parliament and the legislatures would have been able to take the necessary action because of the power vested in our governments under the doctrine of responsible government.

From what I have already said you may have surmised that I do not think section 1 of the Charter is strictly necessary. That section reads:<sup>20</sup>

---

<sup>19</sup> For a development of this thesis, see Jacques Maritain, *Man and the State* (1951).

<sup>20</sup> *Supra*, footnote 1.

1. 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.

In any society, rights have to be balanced against one another. Absolute rights are virtually non-existent. The courts would in any event have to engage in balancing the rights set forth in the Charter against other rights, and in doing so they would naturally have recourse to what is reasonably justified in a democratic society. For that is the kind of society we live in and judges like other citizens feel the pulse of their own society.

The idea for such a clause probably came from the European Convention on Human Rights (see, for example, section 10) and the United Nations Covenant on Civil and Political Rights (see, for example, section 26) though these have a more detailed list of the possible limitations, a list that had been substantially reproduced in the Victoria Charter.<sup>21</sup> The express provision of these limitations is in line with European code traditions; the common law tradition assumes their existence.

The Canadian Bar Association, among other groups, objected to this provision because it feared it would dilute the educational value of the Charter,<sup>22</sup> which as I mentioned appears to me to be one of its prime functions. For essentially—I think it worth repeating—our rights and freedoms are protected by an alert citizenry and its traditions of liberty. The courts can protect, and thereby exemplify these freedoms in particular contexts, and so reinforce the tradition. But at the end of the day our rights and freedoms are dependent on public opinion. That tradition of freedom, however, is fortified by expression in our most fundamental political document.

In any event, the present section 1 is not as likely to encourage judicial *laissez faire* as the original section proposed, which made the rights and freedoms guaranteed by the Charter “subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government”. The existing section requires that exceptions to these rights “be demonstrably justified in a free and democratic society”.

In the end, however, this section leaves it to the courts, and not Parliament and the legislatures, to determine what the proper balance between rights should be. Yet, this has always seemed to me to be overstating the case. Courts in the United States and other countries that have Bill of Rights in the end give way to the sustained will of the legislative branch of government. The latter, after all, is elected by the people. What the Charter of Rights ensures is sober second thought. A

<sup>21</sup> The Charter is conveniently reproduced in the Final Report of the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada (1972).

<sup>22</sup> The Canadian Bar Association, *Submission to the Special Joint Committee of the Senate and the House of Commons of Canada* (Nov. 28th, 1980).

court can, after the heat of battle has died down, examine in specific context what Parliament or a legislature has authorized and reject it. If Parliament or the legislature insists, and it will often do so in a different form than that which originally reached the court, the courts will I am convinced, defer in fact, if not necessarily in form, to a legislative body's repeated view of the proper limits of a right.

That has, in any event, not been left to chance in the Charter. Section 33 reads as follows:<sup>23</sup>

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

My guess is that this provision will rarely be used. The political unpopularity of making declarations contrary to the Charter will militate against this. That certainly has been the experience with the Canadian Bill of Rights and with Quebec's Charter of Rights and Freedoms.<sup>24</sup> I am aware, of course, of Quebec's general attempt not to be bound by the Charter, but this was done in the context of a transcendent political situation that is not in its essence centered on questions of human rights.

It is not my purpose here to go into the substance of the Charter in any detail. Suffice it to say that, although there are important differences, it has much the same content as the existing Canadian Bill of Rights. Among others it seeks to protect the fundamental freedoms of conscience and religion, of opinion and expression, of peaceful assembly and of association, as well as the democratic rights to vote and to a maximum duration and an annual session of Parliament and the legislatures. Of these, the fundamental freedoms have interesting potential for development, particularly in the creation of zones of privacy. But what is likely to come most frequently before the courts are the legal rights such as, for example, the rights to the security of the person and against unreasonable search and seizure, as well as egalitarian and linguistic rights.

The Charter has already been extensively relied upon by counsel. Indeed Chief Justice Laskin has been reported as saying that lawyers appear to be "mesmerized" by the Charter. In many cases, there is likely to be

<sup>23</sup> *Supra*, footnote 1.

<sup>24</sup> R.S.Q. 1977, c. C-12.

little change from present positions on legal rights. Many of these, though not then at a constitutional level, had been finely honed over the centuries. But questions long thought to be settled will be raised again and we will have the opportunity of re-examining them. Close cases, particularly, will merit reconsideration. With the passing of the Charter, for example, will it be sufficient to inform a person who is being arrested that the arrest is being made under an outstanding warrant without informing that person of the charge with respect to which the warrant was issued?<sup>25</sup>

Where new departures are most likely, of course, is where constitutional standards have now in effect been imposed on legislation, for example, those regarding "unreasonable" searches and seizures (section 8), "arbitrary" detention and imprisonment (section 9) and "cruel and unusual" treatment or punishment (section 10), and the more general one requiring that an individual is not to be deprived of his right to life, liberty and security except in accordance with the principles of fundamental justice. These will, at times, raise squarely issues that were formerly couched in other terms. For example, the circumstances under which a suspected person can be questioned at a coroner's inquest (formerly discussed in terms of whether the inquest was a criminal procedure)<sup>26</sup> might well in some contexts now be raised in terms of the right not to be deprived of liberty except in accordance with the principles of fundamental justice.

I suspect that much of the work of the courts at the early stage will be concerned not so much with the letter of the law as with how it is administered. This will, of course, touch on administrative law, but here it is well to remember that the courts have long experience in supervising administrative action by means of the prerogative writs and other so-called extraordinary remedies when they thought such action violated natural justice or the doctrine of fairness.<sup>27</sup> In the criminal law field, however, while activities within the court system itself have been closely scrutinized, the Charter provisions may invite closer scrutiny over what may be called administrative criminal law—the actions of the prosecution.

Finally, a word on the application and enforcement of the Charter. The Charter by section 32 expressly applies to Parliament and the provincial legislatures and the governments at both these levels. From this, it is easy to argue that the Charter is not meant to apply to purely private action. However that may be, where the application of laws is vested in bodies other than the government, I would think an argument can be made that Parliament and the government have a duty under the Charter to see that these laws are applied consistently with the Charter. Are these not matters within their authority for the purposes of section 32? Certainly I cannot see

<sup>25</sup> *Gamracy v. The Queen*, [1974] S.C.R. 640; see the Charter, *supra*, footnote 1, ss 10(a), 11(a).

<sup>26</sup> *Faber v. The Queen*, [1976] 2 S.C.R. 9.

<sup>27</sup> See *Re State of Wisconsin v. Armstrong* (1973), 10 C.C.C. (2d) 271.

that these bodies can in all cases delegate themselves out of this duty. The sentiment of Lord Atkin in speaking of a constitutional prohibition addressed solely at the legislative branch is relevant here: "The Constitution", he stated, "is not to be mocked by substituting executive for legislative interference with freedom."<sup>28</sup> The constitutional limits of legislative and governmental power can no more be evaded by authorizing someone else to do the constitutionally forbidden act or by leaving the doing of what is forbidden to someone's discretion.<sup>29</sup> This may have application to section 6(3) of the Charter providing that the mobility rights accorded by that section are subject to laws of general application. The use of a discretionary power given under such laws may require examination in terms of conformity with the Charter. It is even possible, following American thinking on state action, that activities supported by governmental funds may be affected by the Charter.

And, what of the common law? Section 52 provides that any law that is inconsistent with the Constitution, of which the Charter is a part, is of no force and effect. No mention is made of the nature of the law. If the common law were exempted from the Charter one would be faced with the anomaly that comparable rules in the Quebec Civil Code would be governed by the Charter. How far the courts should go to invalidate action done pursuant to a common law rule raises very complicated issues. Not least of these is the application of a common law rule defined in terms of public policy, for the Charter surely constitutes an authoritative statement of Canadian public policy.<sup>30</sup>

The Charter appears to envisage two separate routes for the enforcement of its provisions. Enforcement could arise in the ordinary course of any proceeding. If it is established that a view of the law advanced by a party runs counter to a provision of the Charter, that view cannot be given effect to, for section 52 expressly provides that the Constitution (including the Charter) is the supreme law of the land. That is exactly the same situation we have always had with respect to the British North America Act, although that was by virtue of its being a British statute.<sup>31</sup>

The second means of enforcement is by virtue of section 24 which provides that anyone whose rights and freedoms under the Charter have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. Efficiency offers a forceful argument for saying that a

<sup>28</sup> See *James v. Cowan*, [1932] A.C. 542, at p. 548.

<sup>29</sup> See *Ulster Transport Authority v. James Broon & Sons Ltd*, [1953] N.I. 79.

<sup>30</sup> For the pre-Charter situation, cf. *Re Drummond Wren*, [1945] 4 D.L.R. 674; *Bhadauria v. The Board of Governors of the Seneca College of Applied Arts and Technology* (1981), 124 D.L.R. (3d) 193.

<sup>31</sup> Colonial Laws Validity Act, 1865, 28-29 Vict., c. 63 (U.K.), the application of which was continued in respect of Canada by the Statute of Westminster 1931, 22 Geo. 5, c. 4, s. 7 (U.K.).

court, which is in the course of dealing with an issue in respect of which such a right or freedom is alleged to have been infringed or denied, should be able to deal with that application. But this would depend on the nature of the obligation. In any event, jurisdiction to hear such an application would inherently reside in the superior courts in the provinces that exercise the jurisdiction vested in England in the Court of Queen's Bench, that is the trial division of the superior courts in the provinces. What effect this may have on matters placed by federal statute within the exclusive jurisdiction of the Federal Court of Canada it will be interesting to see.

A final word. As already mentioned, many counsel too readily tend to rely on the Charter whenever there is even the most tenuous ground for resorting to it. Faced with this approach, courts routinely find ways to avoid discussing the Charter. There is a danger that this may tend to trivialize the Charter. We may all too easily slip into the habit of developing techniques to avoid arguments based on the Charter and in time fail to see issues that really require testing against the Charter's imperatives. The Charter is too important, and the rights it guarantees too sacred, to be relegated to the role of simple make weight.

---