

Constitutional Cases 2000: An Overview

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ARTICLES

CONSTITUTIONAL CASES 2000: AN OVERVIEW

Patrick J. Monahan^{*}

I. INTRODUCTION

This book examines the constitutional decisions of the Supreme Court of Canada released in the calendar year 2000.¹ The Court handed down a total of 72 decisions in the 2000 calendar year, 13 of which were constitutional cases.² This overall output was comparable to the 73 decisions released in 1999 (including 18 constitutional cases), but far below the Court's output throughout the 1990s, when the Court handed down an annual average of approximately 110 decisions. The Court sat a total of 57 days in 2000, which was up from 55 sitting days in 1999,

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¹ For present purposes, a case is considered to raise a "constitutional" issue when it involves the interpretation of a provision identified in the definition of the "Constitution of Canada" in section 52 of the *Constitution Act, 1982*.

² The Supreme Court of Canada's constitutional cases in the year 2000 were as follows: *Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703; *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3; *Global Securities Corp. v. British Columbia (Securities Commission)*, [2000] 1 S.C.R. 494; *Lovelace v. Ontario*, [2000] 1 S.C.R. 950; *Reference re Firearms Act (Canada)*, [2000] 1 S.C.R. 783; *R. v. Morrisey*, [2000] 2 S.C.R. 90; *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307; *Winnipeg Child and Family Services v. K.L.W.*, [2000] 2 S.C.R. 519; *R. v. Darrach*, [2000] 2 S.C.R. 443; *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120; *Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, [2000] 2 S.C.R. 409; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, [2000] 1 S.C.R. 665; *Harper v. Canada (Attorney General)*, [2000] 2 S.C.R. 764.

but, again, significantly lower than the 1995-98 period, when the Court sat an average of 75 days per year.³

Of the 13 constitutional cases in the year 2000, 10 were Charter cases, and four raised federalism issues.⁴ There were no aboriginal constitutional cases released by the court in the year 2000.⁵

II. THE YEAR 2000 CONSTITUTIONAL CASES

1. Successful Versus Unsuccessful Charter Claims

Three of the 10 Charter claims succeeded in 2000. However, only one of the three successful Charter claims involved legislation (*Little Sisters*), and even there the claimant's success was rather limited. In *Little Sisters*, the majority of the Court struck down a "reverse onus" provision in the *Customs Act*, but upheld the remainder of the scheme from constitutional challenge. (The three dissenters, Iacobucci, Arbour and Lebel JJ., would have gone further and struck down a tariff classification prohibiting importation of obscene materials.) The fact that only a single statutory provision was ruled invalid in the year 2000 is consistent with the trends in recent years⁶ and reminds us that the majority of Charter litigation in the Supreme Court involves a challenge to government conduct or decisions, rather than the validity of an enactment of the legislature.

The other Charter challenges involving a challenge to legislation (as opposed to government decisions or action), all of which were rejected in 2000, were as follows: *Granovsky* (in which the Court upheld a provision in the *Canada Pension Plan* that included periods of mental or physical disability in a claimant's

³ Also of interest is the fact that the length of time that it took for the Court to dispose of cases in 2000 was the highest in a decade. On average, 23.7 months elapsed from the time of the filing of an application for leave to appeal and final judgment, as compared with 21.7 months in 1999 and 18.7 months in 1998. The greatest portion of this increased length of time over the past two years is due to two factors: the Court is taking longer to dispose of leave to appeal applications, and it is keeping decisions under reserve for significantly longer periods of time than was the case two years ago. For example, in 1998, the elapsed time between the hearing and judgment averaged 2.8 months, while in 2000 that number more than doubled, to 5.8 months.

⁴ The two categories total 14 since one case (*Lovelace*) is classified as both a Charter and a federalism case. The other federalism cases were: *Global Securities Corp. v. British Columbia (Securities Commission)*, *supra*, note 2; *Reference re Firearms Act (Canada)* and *Public School Boards' Assn. of Alberta*, *supra*, note 2. The Charter cases consisted of *Lovelace* as well as the remaining nine cases identified in footnote 2 above.

⁵ *Lovelace v. Ontario* is classified as an equality rights case, since it involved the interpretation of section 15 of the Charter as opposed to section 35 of the *Constitution Act, 1982*. Further, while *Musqueam Indian Band v. Glass*, [2000] 2 S.C.R. 633, raised issues involving aboriginal peoples, it did not involve the interpretation of a constitutional provision, and thus is not included in the analysis here.

⁶ See the discussion of this point in Monahan, "The Supreme Court of Canada in the 21st Century" (2000), 80 Can. Bar Rev. 374.

contributory periods); *Lovelace* (in which the Court upheld a scheme for the division of proceeds from the Casino Rama project in Orillia, Ontario); *Morrissey* (in which the Court upheld certain minimum sentence requirements in the *Criminal Code*); *Winnipeg Child and Family Services* (in which the Court upheld statutory provisions permitting the apprehension of a new-born child); *Darrach* (in which the Court upheld provisions in the *Criminal Code* limiting the ability of an accused in a sexual assault case to introduce evidence of a complainant's sexual history); and *Harper* (in which the Court overturned an injunction that had been granted, barring enforcement of certain provisions of the *Canada Elections Act* during the 2000 federal election campaign).

In addition to *Little Sisters*, there were two other successful Charter claims in the year 2000 cases. Both involved a challenge to government action, rather than legislation. In *Arsenault-Cameron*, a minister's decision not to offer French language instruction was ruled invalid, while in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*, section 15 of the Charter was relied upon in concluding that a hiring policy adopted by the City of Montreal could be challenged under Quebec's *Charter of Human Rights and Freedoms*.

2. Equality and Freedom of Expression

A number of these cases are considered in some detail in the papers that follow. The paper by Chief Justice McLachlin considers the overall evolution of the Court's section 15 jurisprudence. The Chief Justice suggests that although section 15 has been in effect for 15 years, equality rights jurisprudence remains in its infancy. She argues that the Court's jurisprudence has been founded on three bedrock principles: substantive equality, equality of effect and equality expressed both through like treatment and unlike treatment. Yet the Chief Justice also acknowledges that each of these principles comes with its own problems. The challenge for the courts, she suggests, is to elaborate a meaning of equality — which she terms the “most difficult” of Charter rights — in a manner that preserves our commitment to the concept while providing reasonable guidance to individuals, groups and legislatures.

Many of the other papers in the first section of the book elaborate or comment upon specific aspects of the general themes introduced by the Chief Justice. The papers by David Corbett *et al.* and by Lori Sterling focus on the four equality rights cases handed down by the Supreme Court of Canada in the year 2000. Corbett *et al.* argue that the year's equality rights cases break no significant new ground in the Court's overall approach to section 15. However, Corbett *et al.* also argue that the cases reflect an overall deference for legislative choices, as contrasted with the more “activist” days of the Dickson and even Lamer Courts.

Lori Sterling, who focuses specifically on the *Lovelace* case, suggests that it affirms and elaborates the framework that the Court has developed for section 15 cases, most notably in *Law v. Canada (Minister of Employment and Immigration)*.⁷ But Sterling also raises questions as to the extent to which the Court's existing jurisprudence in this area provides sufficient guidance and clarity with respect to the meaning of equality.

The only freedom of expression case handed down in the year 2000 was *Little Sisters*, which is examined in detail in the paper by Jamie Cameron. Cameron argues that the Court's reasons in *Little Sisters* (as in the *Sharpe* case released in January 2001)⁸ displayed an ambivalence towards the Charter guarantee of free expression: having found a breach of section 2(b) rights, Cameron argues that the Court failed to grant the claimant an effective remedy. On the other hand, Cameron suggests that the reasoning in these cases unquestionably made an effort to accommodate expressive freedom, which is a positive sign for the future.

3. Legal Rights

The four papers in Part II of the volume consider the Court's recent Charter decisions in the legal rights area. The papers by Greenspan, Benedet and Paciocco vigorously debate the issue of whether the Court has been sufficiently vigilant in recent years in defending the rights of criminal accused. Both Greenspan and Paciocco argue that the Court has inappropriately moved away from its traditional role of defending criminal accused against the state and in favour of a model where the rights of victims are "balanced" against those of the accused, with the result that Charter protections are significantly weakened. In contrast, Janine Benedet argues that the Court's recent performance in this area can be justified as reflecting a commitment to contextualize the interpretation of legal rights. The Court is attempting to take into account interests beyond those of the immediate parties to the case, a trend that Benedet argues is justifiable from both a human rights and criminal law perspective.

The final paper in this section, by Richard Haigh, focuses on the recent *Burns* decision,⁹ in which the Court limited the discretion of the Minister of Justice to extradite fugitives to a death-penalty state. While Haigh welcomes the outcome of the case, he questions the reasoning employed by the Court, particularly its reluctance to expressly overrule earlier decisions which had reached a different result. Haigh uses the case as a springboard to discuss the general issue of the circumstances in which it is appropriate for the Supreme Court to overrule

⁷ [1999] 1 S.C.R. 497.

⁸ See *R. v. Sharpe*, [2001] 1 S.C.R. 45.

⁹ *United States of America v. Burns* (2001), 195 D.L.R. (4th) 1, 2001 SCC 7.

previous decisions, an issue that has rarely received any extensive consideration from the Court.

4. Evidentiary and Section 1 Issues

The two essays in Part III consider evidentiary and section 1 issues in recent Charter cases. The paper by Danielle Pinard notes the paradox that despite the Supreme Court's insistence on a "contextual" approach to Charter interpretation, it rarely considers empirical evidence of social context. Thus, while recent section 15 cases focus on the effects of legislative distinctions on a claimant's human dignity, the actual social or factual conditions experienced by claimants are apparently irrelevant to the Court's analysis. Pinard argues that the Court has been more receptive to reasoning based on "common sense" or in some cases on "reasonable hypotheticals," as opposed to empirical social facts.

The paper by Chris Bredt and Adam Dodek on the use of section 1 of the Charter argues that the significance of section 1 has been reduced through the development of internal balancing tests in the definition of many of the substantive Charter rights. Bredt and Dodek consider not just equality rights claims, but also section 7 and section 2 cases, showing how in a wide variety of areas the outcome turns on how the Court chooses to define the substantive right that is at issue. They also advance a related but distinct claim that the Court in recent years has severely weakened the evidentiary test for governments to justify infringements of rights under section 1.

5. Federalism and Constitutional Principles

Turning from the Charter to federalism, there were four federalism cases handed down by the Supreme Court of Canada in the year 2000. All four of these cases involved challenges to legislation (as opposed to government decisions or conduct), and none of the challenges was successful: the federal *Firearms Act* was upheld; a challenge to provisions in the B.C. *Securities Act* providing for co-operation with foreign securities regulators was rejected (*Global Securities*); a provincial scheme providing for the allocation of profits from a commercial casino located on First Nations lands was upheld (*Lovelace*); and a new scheme for funding public schools in Alberta was upheld (*Public School Boards' Assn.*).

The paper by Dean Hogg in this volume considers the Court's reasoning in the *Reference re Firearms Act* case more closely, noting that the Court in this case continued a recent trend toward expanding the federal criminal law power well beyond its traditional, conventional limits. Warren Newman's paper considers a development that has received increased emphasis in recent years, namely, the Court's reliance on unwritten constitutional principles (as opposed to express provisions of the Constitution) as a basis for holding legislation to be invalid. While Newman suggests that this reliance on constitutional principles may have

been taken too far in some instances, he also argues that reliance on unwritten constitutional principles is sometimes appropriate and consistent with our constitutional tradition.

6. The Role of the Supreme Court of Canada

(a) Activism and Restraint

The papers in the final section of the volume take up various aspects of the debate that has developed in recent years over the appropriate role of the Supreme Court of Canada in constitutional adjudication. The opening paper by Chief Justice McMurtry of the Ontario Court of Appeal draws on his experience as one of the key architects of the 1982 constitutional changes. McMurtry recalls that the Ontario government of the day believed that the entrenchment of a Charter of Rights was desirable and valid, since it represented a balance between Canada's dominant English and French legal traditions, and it reflected the plurality of the country as a whole. McMurtry also explains the role he played in early 1981 in lobbying the British government, with a view to encouraging the Canadian government to refer the proposed Charter to the Supreme Court of Canada for a ruling on its constitutional validity.

Mary Dawson's paper considers the impact the Charter has had on the practical operations of government. Dawson acknowledges that most Canadians would agree that the enactment of the Charter has been a good thing for Canada. Yet, the emergence of a rights culture has made the task of governing more complex and, in some cases, has led governments to feel that they have lost control of their own agenda. This loss of control is a product of the sheer volume of rights cases, as well as of the fact that the cases appear to arise randomly and without sufficient advance warning. Dawson explores the nature of these and other concerns, and suggests that the central challenge is how to respect individual and group rights while at the same time maintaining the commitment of all citizens to their larger community and ensuring that governments can respond adequately to the needs of that community.

Finally, the papers by Ryder, Roach and Manfredi directly engage the debate over whether the Supreme Court has been unduly "activist" in its recent decisions. Both Ryder and Roach claim that while the Court has certainly been activist in a variety of areas, this activism has been a necessary by-product of the increased responsibilities that were thrust on the Supreme Court of Canada in 1982. In contrast, Manfredi argues that the defences of judicial power that have been advanced by judges and lawyers are often based on myths designed to disguise the fact that the growing public policy role of the Court is producing outcomes skewed in favour of judicial as opposed to legislative preferences.

(b) *Unanimity and Dissent on the Supreme Court*

The Supreme Court was unanimous in eight of the 13 constitutional decisions in the past year, which is consistent with the Court's established pattern of high unanimity in its decision-making, in both the constitutional and non-constitutional area. (The Court is unanimous in approximately 70% of its decisions generally, which is similar to the unanimity rate in the House of Lords, but is far higher than the 40% unanimity rate for the United States Supreme Court.) All four of the year 2000 federalism decisions were unanimous, and five of the 10 Charter cases were unanimous.

Closer analysis of the five Charter cases in which the Court was divided is useful for identifying differences in the constitutional philosophies of the different members of the Court. The first point of significance is that the Charter claimant enjoyed limited success in these five divided cases. In four of the five (*Morrissey*, *Winnipeg Child and Family*, *Blencoe*, and *Harper*), the Charter claim was rejected outright, while in the fifth, *Little Sisters*, the majority took a narrower view of the Charter claim than did the dissent. There were three members of the Court, namely, Justices L'Heureux-Dubé, Gonthier and Bastarache, who were in the majority in each of the divided cases in which they participated. Conversely, the dissents in these five cases were limited to Justice Arbour (dissented in three cases); Chief Justice McLachlin and Justice Lebel (dissented in two cases); and Justices Iacobucci, Major and Binnie (one dissent each). In all five cases in which the Court was divided, the "direction" of the dissent was in favour of the Charter claimant (*i.e.*, the minority took a more generous or expansive view of the Charter claimant's case than did the majority). Of some significance, perhaps, is the fact that the two newest members of the Court, Justices Arbour and Lebel, are clearly prepared to dissent from the majority, and would appear (at this early point in their careers on the Court) to be relatively strong advocates for the rights of Charter claimants.

7. **Intervenors in the Supreme Court of Canada**¹⁰

(a) *Frequency of Interventions*

The frequency and number of interventions in constitutional cases in the Supreme Court of Canada increased in 2000, despite a 1999 announcement by the Court that it would be limiting such appearances in the future.

Intervenors participated in 11 of the 13 constitutional cases in the year 2000, with 75 different entities appearing as intervenor a total of 107 times. That total was up significantly from 1999, when 52 entities had appeared a total of 81 times

¹⁰ Intervenors are governments, persons or groups that are not directly involved in a case, but who are given the right to file written materials and sometimes to make oral argument before the Court.

in 13 constitutional cases that year. In fact, as Table 1 below indicates, there were more interventions in constitutional cases in 2000 than at any time since 1996.

TABLE 1
INTERVENORS 1996-2000

YEAR	Separate Intervening Entities	Total Appearances
1996	38	109
1997	52	73
1998	51	89
1999	52	81
2000	75	107
1996-2000	190 ¹¹	458

As Table 2 below indicates, over the previous four-year period (1996-99), intervenors had appeared in just over one-half (60 of 112) of the constitutional cases handed down by the Court. Table 3 shows that there were a total of 352 interventions over the 1996-99 period, an average of approximately six for each case in which an intervenor was granted status. Those numbers increased in 2000, with an average of over nine interventions (107 interventions in 11 cases) for each constitutional case in which an intervenor participated.

TABLE 2
CONSTITUTIONAL CASES WITH INTERVENORS 1996-2000

1996	1997	1998	1999	2000	1996-2000
20/46	11/23	16/25	13/18	11/13	72/125

¹¹ Note that this number refers to the number of separate entities that have appeared as an intervenor over the five-year period examined; an intervenor that appears in more than one year will only be counted once in the 1996-2000 total.

TABLE 3
APPEARANCES BY INTERVENORS 1996-2000

Year	Total Appearances	Gov't	Public Interest	Trade Unions	Corporations	Aboriginal Organizations	Individual
1996	109	58	22	0	3	14	12
1997	73	33	34	0	3	3	0
1998	89	51	29	1	0	4	4
1999	81	29	38	5	2	6	1
2000	107	70	30	1	0	5	1
TOTAL	459	241	153	7	8	32	18

(b) No Evidence of Court Crackdown on Intervenors

What makes these findings noteworthy is that in September of 1999, the Supreme Court of Canada had issued a "Notice to the Profession" indicating that in the future it would strictly enforce the time limits on the filing of applications to intervene. The Court's Notice also reminded proposed intervenors that they were required to "describe their interest in the appeal or reference and ... required to set out the submissions to be advanced, their relevancy to the appeal or reference and the reasons for believing that these submissions will be useful to the Court and different from those of the parties."¹² The Notice further reminded proposed intervenors that unless specifically ordered, an intervenor would be permitted to make written submissions only and not present oral argument. The Court concluded by noting that the "strict enforcement of Rule 18¹³ will ensure that the interests of both parties and intervenors are safeguarded."

In light of the September 1999 Notice, many observers had expected the Court to adopt a significantly more restrictive approach to the granting of intervenor status in the future. Yet thus far there is no evidence of any such shift, with the number of interventions in 2000 actually increasing slightly. Moreover, in 99 of the 107 appearances by intervenors this past year, the organization was given the right to make oral argument, in addition to filing written briefs.¹⁴ This was

¹² Supreme Court of Canada Bulletin of Proceedings, September 10, 1999, at 1313.

¹³ Rule 18 of the Supreme Court Rules sets out the rules and procedures for applications to intervene.

¹⁴ The following intervenors submitted written materials only in the year 2000: (i) in *Global Securities Corp. v. British Columbia Securities Commission*, *supra*, note 2, the Attorney General of Nova Scotia; (ii) in *Lovelace v. Ontario*, *supra*, note 2, the Council of Canadians with Disabilities, the Charter Committee on Poverty Issues and the Métis National Council of Women; and (iii) in *Public*

somewhat surprising in light of the Court's specific reminder to intervenors in 1999 that there would be no right to oral argument by an intervenor unless specifically ordered.

(c) *Who Are the Intervenors?*

As noted in last year's review of the Court's constitutional caseload,¹⁵ governments (as opposed to private parties) are in fact the most common intervenors in constitutional cases. This results from the fact that the Attorneys General of Canada, the provinces and territories have an automatic right to intervene in any Supreme Court case raising a constitutional question. Slightly more than one-half of the intervenors in the year 2000 (41 of 75 intervenors) were governments, including the Government of Canada (five interventions), eight of the provinces (Ontario and Manitoba with seven interventions each, B.C. with six, Quebec with five, Saskatchewan with three, New Brunswick and Nova Scotia each with two, and Alberta with one) and two territories (NWT and the Yukon with one intervention each). The remaining intervenors in the government category in 2000 were government agencies, tribunals, school boards or municipalities.

Over the past five years (1996-2000), the Attorney General of Quebec has been the most frequent government intervenor, appearing in 33 cases, followed by the Attorney General of Canada (30 appearances), British Columbia (29 appearances), Ontario (26 appearances) and Alberta (21 appearances). Clearly, these five governments have both the interest and the resources to vigorously defend their constitutional interests before the Supreme Court of Canada. The four Atlantic provinces, Nova Scotia (with four interventions over the past five years), Prince Edward Island (with three), New Brunswick (with three) and Newfoundland (with two) are the provincial governments least likely to intervene before the Supreme Court of Canada in constitutional matters.

Apart from governments, non-profit organizations, including registered charities, political advocacy groups, industry associations and other non-profit groups, are the single largest category of intervenor. In the year 2000, there were 27 non-profit organizations that intervened before the Supreme Court in constitutional cases. Within this category there are two organizations that stand out in particular as frequent intervenors: the Canadian Civil Liberties Association (CCLA, a non-profit organization, and the Women's Legal Education and Action Fund (LEAF), a charity registered under the *Income Tax Act* (Canada). These two organizations have intervened in a total of 17 cases over the past five years (the CCLA nine times, and

School Boards' Assn. of Alberta v. Alberta (Attorney General), *supra*, note 2, the Attorneys General of B.C., Manitoba, Quebec and New Brunswick.

¹⁵ See Monahan, "The Supreme Court of Canada in 1999: The Year in Review" (2000), 8 *Canada Watch* 3.

LEAF eight times); in contrast, no other non-government organization has appeared in more than five cases over this time period. Moreover, what distinguishes both the CCLA and LEAF from all other intervenors is the fact that they appear in a wide range of constitutional litigation, including both criminal and non-criminal matters, and litigation raising a wide variety of different constitutional provisions. Other organizations that have appeared in more than a single case have restricted their interventions to a particular category or class of litigation falling within some area of specialized interest or expertise.

The other significant category of intervenor before the Supreme Court is aboriginal organizations. There were five aboriginal organizations that intervened in constitutional cases last year, bringing the total interventions by aboriginal organizations over the past five years to 32.

Also in the year 2000, there was one intervention by a trade union, and one by an individual.

(d) Intervenors More Successful than Charter Claimants

An important question that arises is whether the presence of intervenors makes a difference to case outcomes. While it is extremely difficult to accurately measure such a variable, one approximation is to examine the extent to which the positions taken by non-government intervenors are accepted by the Court, and compare that to the success rate of individuals asserting Charter claims.¹⁶ On this measure, non-government intervenors appear to enjoy considerably more success than do Charter claimants. For example, over the past two years, the position taken by non-government intervenors in constitutional cases has been accepted by the Court approximately 58% of the time (51.5 of the 89 interventions by non-government intervenors in 1999-2000 were accepted by the Court). This can be contrasted with the overall success rate for Charter claimants, which stands at 33%. In short, over the past two years the Court has been significantly more likely to accept the position taken by an intervenor than it has that of a Charter claimant.

TABLE 4
SUCCESS RATE OF INTERVENORS 1999-2000

YEAR	GOVERNMENT INTERVENORS	NON-GOVERNMENT INTERVENORS	CHARTER CLAIMANTS
1999	21/29	28/52	5/14

¹⁶ Restricting the comparison to non-government intervenors is appropriate, since Charter claimants are all non-government entities.

2000	44.5/70	23.5/37	3/10
TOTAL	65.5/99 (66%)	51.5/89 (58%)	8/24 (33%)

Significantly, intervenors are more likely to oppose than support the position put forward by the primary litigant in a constitutional case. For example, in the year 2000 cases, the intervenor supported the claimant in only 41 of the 107 appearances by intervenors. This partly reflects the fact that the majority of intervenors are governments, which will tend to support the position adopted by a government defendant in a constitutional case. But even private intervenors will frequently oppose the position put by a claimant and argue in support of the government's position that the legislation or government action under consideration is constitutionally valid. For example, in *Blencoe*, all three of the private intervenors (along with the seven government intervenors in the case) opposed the position put forward by the Charter claimant in that case. Similarly, in *Darrach*, the four private intervenors, along with the four government intervenors, took the position that the Charter claim should not be accepted by the Court.

III. CONCLUSION

Stepping back and considering the Court's overall work product, the message from the Court's year 2000 constitutional cases is one of restraint and caution. In controversial or divided cases, the view that prevailed was the view less favourable to the Charter claimant. There was little evidence of the sort of activism that has prompted critics in previous years to complain that the Court was encroaching on the prerogatives of the legislature. Nevertheless, as has been made plain in the recent past, the trend of the Court's decisions in a particular year is not necessarily indicative of how the Court will rule in the future, which suggests that the public and academic debate over the Court's role is likely to continue in the years ahead.