

# The Charter 25 Years Later: The Good, the Bad, and the Challenges

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# THE *CHARTER* 25 YEARS LATER: THE GOOD, THE BAD, AND THE CHALLENGES<sup>©</sup>

REMARKS OF THE RIGHT HONOURABLE BEVERLEY MCLACHLIN \*

## I. INTRODUCTION

This year, as we celebrate the 25th anniversary of the adoption of the *Charter*,<sup>1</sup> journals and newspapers are replete with evaluations. Some are positive, some less so. Some are downright critical. Today, I would like to offer my reflections on the good news and the bad news about the *Charter*, a quarter-century on.

I will begin with a declaration of interest. Over the years I have said and written a lot about Canada's constitutional bill of rights. My first foray, written when I was still a callow law student, was an article arguing that Canada should not constitutionalize rights, based on a comparison of rights protection in the United States under an entrenched bill of rights and rights protection in Canada without one. As a judge appointed the year before the *Charter* was adopted, I initially approached the task of interpreting it and applying it with an attitude of disinterested curiosity: what would it produce? Gradually, as I watched the jurisprudence develop, I came to the conclusion, which I still hold, that on the whole the *Charter* has been a good thing for Canada.

But that does not mean that there are no concerns. The *Charter* has changed the Canadian legal and political landscape profoundly. Some of these changes have downsides, or at least consequences, that need to be managed. I proceed now on the basis that after twenty-five years of the *Charter*, it is time to look not only at what the *Charter* has improved, but also at what remains to be considered.

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\* The Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada. The Chief Justice's remarks were delivered at the 25th Anniversary of the *Charter*: A Tribute to Chief Justice R. Roy McMurtry, Toronto, Ontario, 12 April 2007.

<sup>1</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].

I will begin by reviewing some of the benefits that the *Charter* has brought. I will then turn to the concerns, discussing them under two heads: (1) what are not concerns; (2) what remain as legitimate concerns.

## II. THE BENEFITS

First, the benefits that the *Charter* has brought. We have heard much about the *Charter's* virtues, so I can be brief. In a nutshell, I believe that the *Charter* has fulfilled Pierre Elliott Trudeau's hope of making Canada a more just society. Maybe not *the* just society, or even always *a* just society; that is too much to ask of any document, however firmly it may be entrenched. But more modestly, a *more* just society.

The rights of those detained by the state are better protected because of the *Charter*. We have a fairer criminal justice system because of the *Charter*. The *Charter* has strengthened the protection of minority language rights and the mechanisms and attitudes that help our nation of diverse groups to live together. The *Charter* has brought the promise of a modest measure of accountability in the provision of medical and hospital services, under the rubrics of equality<sup>2</sup> and security of the person.<sup>3</sup>

The *Charter* stands, not just for constitutional governance, but for accountable constitutional governance. The *Charter* has introduced protections for minority and marginalized groups—protections that are of vital importance in this land. As former Prime Minister Jean Chrétien put so simply and so well, “the *Charter* makes everyone more comfortable as a citizen.”<sup>4</sup> And as Justice Frank Iacobucci discussed, the *Charter's* protection of minorities lies at its vital heart.<sup>5</sup>

In offering these protections, the *Charter* affirms two things. The first is much discussed, sometimes negatively: the need for tolerance of those who are different than us. The second is too often overlooked—the fundamental values that bind us to each other and

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<sup>2</sup> *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624.

<sup>3</sup> *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791.

<sup>4</sup> Jean Chrétien, Address (Remarks at the 25th Anniversary of the Charter: A Tribute to Chief Justice R. Roy McMurtry, Toronto, Ontario, 12 April 2007) [unpublished].

<sup>5</sup> Frank Iacobucci, Address (Remarks at the 25th Anniversary of the Charter: A Tribute to Chief Justice R. Roy McMurtry, Toronto, Ontario, 12 April 2007) [unpublished].

ground our identity as Canadians, the basic democratic rights: freedom of expression, freedom of association, liberty protections, and equality.

Most importantly, the *Charter* has created a forum for democratic debate on a host of subjects, from basic civil liberties to timely health care. This enriches and strengthens our democracy. We fight our battles and work out our differences with laws and words, not with guns and mallets.

Finally, the *Charter* has allowed Canada to stand tall in the world. The framers of our 1982 constitution bargained for a constitutional change that would affirm our status as an independent nation. They achieved that—and much more. We created a *Charter* that became the envy of the world, as former Prime Minister Chrétien put it, a *Charter* that stands as an example to the world, and a model upon which other countries have built and continue to build.

### III. THE CONCERNS

Against the background of the *Charter*'s successes, I turn now to the concerns. As mentioned, I divide these concerns into two categories—non-concerns and legitimate concerns.

#### A. *What are Not Concerns*

First, what are *not* concerns. In this category I place matters that many people think are problems, but which—upon consideration—are revealed not to be problems. I call these the *Charter* myths.

The most persistent *Charter* myth is that the *Charter* has put law, order, and public safety at risk by making it harder to convict felons and by softening punishment. The belief that the courts are too soft on crime is not new. In 1979, just three years before the *Charter* became part of the Canadian constitution, a report prepared by the Solicitor General of Canada noted that seven out of ten Canadians were of the view that the courts did not deal harshly enough with those convicted of crime.<sup>6</sup> Perhaps the *Charter* has merely become the new

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<sup>6</sup> Solicitor General of Canada, *Selected Trends in Canadian Criminal Justice* (Prepared for Federal/Provincial Conference of Ministers Responsible for Criminal Justice) (Ottawa: 1979) at 32. It is also noted that "there is indication from in-depth studies on attitudes towards sentencing for specific offenders and specific crimes, that Canadians might be considerably more tolerant and in line with present court practices than the more superficial polls would indicate."

target for those with an old gripe. In fact, the statistics do not bear out the claim that the *Charter* has put law, order, and public safety at risk. Conviction rates, viewed as a percentage of prosecutions, vary from time to time, and those fluctuations may have nothing at all to do with judges, but may be, for example, the result of a legislative change or a change in government policy. While 2003-2004 rates are somewhat lower than those in 1999-2000, for example, there is no evidence that this is linked to the *Charter*, since the *Charter* was in force at both times.<sup>7</sup> In addition, our incarceration rates, while lower than those of the United States—as they historically have been—remain high by world standards. Canada ranked fifth out of fifteen nations in a recent comparison of incarceration rates.<sup>8</sup>

The second most persistent *Charter* myth is the notion that the *Charter* subordinates Parliament and the provincial legislatures to the will of the judiciary. It is true that a constitutional bill of rights places before the courts important issues that would formerly have been solely within the power of the legislative branch. It is also true that a constitutional bill of rights subjects legislation to judicial review and that sometimes courts set aside or modify laws adopted by the legislative branch. However, for the reasons that follow, this does not mean that the legislative branch is rendered powerless.

First, when a law is found to be unconstitutional, there is often ample room for a legislative response under section 1 of the *Charter*. Under section 1, it is unusual for a court to find that the objective

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<sup>7</sup> In 1999/00, the conviction rate in adult criminal courts was 61%, a rate which has remained relatively stable since 1994/1995. See Statistics Canada, *Adult Criminal Court Statistics, 1999/00* by Lisa Pent (Juristat 21:2) at 1, online: <<http://dsp-psd.pwgsc.gc.ca/dsp-psd/Pilot/Statcan/85-002-XIE/0020185-002-XIE.pdf>>. In 2003/04, the accused was found guilty in 58% of cases, and 3% were acquitted; about 1/3 (36%) of cases were either stayed, withdrawn, dismissed or discharged, and 4% were otherwise terminated by the court. See Statistics Canada, *Adult Criminal Court Statistics, 2003/04* by Mikhail Thomas (Juristat 24:12) at 1, online: <<http://dsp-psd.pwgsc.gc.ca/dsp-psd/Pilot/Statcan/85-002-XIE/0120485-002-XIE.pdf>>.

<sup>8</sup> Statistics Canada, *Criminal Justice Indicators, 2005* (Canada: Statistics Canada, 2005) at 76-77, online: <<http://www.statcan.ca/english/freepub/85-227-XIE/0000285-227-XIE.pdf>>. It is also interesting to note that, despite the introduction by Parliament of conditional sentences in 1996, which had the explicit goal of reducing incarceration rates, incarceration rates have actually *gone up* (not down) since 1982. In 1978/79, approximately 100 per 100,000 population were incarcerated in Canada, whereas in 2004/05, approximately 129 per 100,000 population were incarcerated; see Canada, *Selected Trends in Canadian Criminal Justice* (Ottawa: Solicitor General of Canada, 1981) at 15; and Statistics Canada, *Adult Correctional Services in Canada, 2004/2005* by Karen Beattie (Juristat 26:5) at 8, online: <<http://dsp-psd.pwgsc.gc.ca/dsp-psd/Pilot/Statcan/85-002-XIE/85-002-XIE2006005.pdf>>.

being pursued by Parliament or the provincial legislature is not pressing and substantial. If a law is found unconstitutional, in the vast majority of cases it is because the law impairs the relevant right or freedom more than is reasonably necessary. It will usually be open to Parliament or the provincial legislature to craft a law that meets its objective, while avoiding the constitutional defect identified by the court. The record shows that Parliament and the provincial legislatures often do so.<sup>9</sup>

Second, under section 1, courts defer to Parliament and the legislatures in the exercise of their judgment on public policy. When a citizen claims that the state has violated his or her constitutional rights, the courts must referee the dispute; refusing to decide the case is not an option. However, in deciding the case, the courts act with deference to legislative and executive expertise in weighing the competing demands on the public purse, and competing perspectives on public policy.<sup>10</sup> This is why the courts have repeatedly ruled that the question is not whether the government's solution to a problem is the best or the optimal solution, but whether it is within the wider range of reasonable solutions having regard to the particular problem the government is attempting to address. There are, however, limits. Deference does not mean simply rubber stamping laws. Deference will vary with the context; but if a law is unconstitutional, it is the duty of the courts to say so.

Finally, the *Charter* contains the notwithstanding clause which permits Parliament and the legislatures to override judicial decisions for a five year term, in perpetuity if necessary.<sup>11</sup> The clause applies to all rights except the basic democratic and mobility rights and language and educational rights. Only Quebec has made significant use of the clause.<sup>12</sup> However, it is available as an ultimate guarantee of parliamentary supremacy for those rights to which it applies.

A third and related *Charter* myth is that the *Charter* wrongly enables courts to make decisions that go against popularly held moral

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<sup>9</sup> Peter W. Hogg & Allison A. Bushell, "The *Charter* Dialogue Between Courts and Legislatures (Or Perhaps the *Charter* Isn't Such A Bad Thing After All)" (1997) 35 Osgoode Hall L.J. 75.

<sup>10</sup> *Newfoundland (Treasury Board) v. N.A.P.E.*, [2004] 3 S.C.R. 381 at 416.

<sup>11</sup> *Charter*, *supra* note 1, s. 33.

<sup>12</sup> The notwithstanding clause was used to override a Supreme Court of Canada ruling on the use of English signs in Quebec: *Ford v. Quebec*, [1988] 2 S.C.R. 712.

views, thereby devaluing society's values and making Canada a "less good" place to live. I concede that some court decisions on some issues go against the moral views of some Canadians. However, with respect to those who believe otherwise, I believe it is simplistic to assume that this is a problem. More accurately, it is a reflection of the values stated in the *Charter* and of divided views of the populace on the extent to which the state should regulate private moral issues. In the eyes of some, such decisions—and the *Charter* that dictates them—are problems. But in the eyes of others, the decisions represent long-overdue justice.

For example, when a decision is made that seems to be at odds with a particular group's religious beliefs, members of that group are apt to label the result a travesty and blame the *Charter*. From their perspective it is a problem. But from the perspective of many others—indeed often the majority of Canadians polled on the issue—it is not a problem at all, but a necessary and just development. Short of repealing the *Charter* and opening the door to the imposition of particular moral views on the entire populace, there is no way to obviate this reality.

An objective viewer looking at the whole of society would not conclude that this is a problem, in the sense of something that is harming society and that should be corrected. It is rather simply the expression of diverse views held by different sectors of society and a commitment to a fair shake for everyone. We live together in a society comprising diverse cultural, racial, and social groups. We must confront these differences and deal with them as justly as we can for all concerned. Not everyone will like every result. That is the reality of democracy.

The result in particular cases may be problematic for some, but that is not a *Charter* problem as such. Indeed, writers such as Philip Pettit argue that instruments like the *Charter* perform a healthy function in allowing our differences to be aired and resolved in a peaceful way, rather than by oppression and violence.<sup>13</sup>

I am reminded of a quote from Voltaire about the English and their plethora of religious sects. He wrote, "If there were only one

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<sup>13</sup> Philip Pettit, "Depoliticizing Democracy" (Paper presented to the 21st Annual Internationale Vereinigung für Rechts und Sozialphilosophie Word Congress, Lund, Sweden, August 2003) (2003), 7 *Associations: J. Legal Soc. Theory* 23.

religion in England, there would be danger of despotism, if there were only two they would cut each other's throats, but there are thirty, and they live in peace and happiness."<sup>14</sup> Canada is like Voltaire's England in this respect. It is composed of many different groups, holding many different views. It is founded not on a demand for conformity, but on a respect for difference. The *Charter* reminds us to respect that difference. And respecting that difference is important. As Will Kymlicka notes, "if there is a viable way to promote a sense of solidarity and common purpose" in a diverse country like Canada, "it will involve accommodating, rather than subordinating," different groups with different conceptions of the good.<sup>15</sup> Members of these groups "will only share an allegiance to the larger polity if they see it as the context within which [their differences are] nurtured, rather than subordinated."<sup>16</sup>

#### B. *What are the Real Concerns?*

Having cleared away the underbrush, we are left with concerns that I believe we should address seriously—whether we love the *Charter* or rue the *Charter*. The 25th anniversary of the *Charter* has spawned a rich collection of articles and thoughts on the effects of the *Charter*, from which I have drawn in compiling the following list of concerns we should consider.

##### 1. Canadians Do Not Understand the *Charter*

This is true, and it is a problem. A recent survey by SES Research<sup>17</sup> found that a clear majority of Canadians believe the *Charter* is moving the country in the right direction. But the same survey found that most Canadians do not know much about the *Charter* itself. Apparently, only 49 per cent of Canadians are aware

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<sup>14</sup> François Voltaire, "Letter 6: On the Presbyterians" in *Letters on England* (1732) trans. by Leonard Tancock (1980).

<sup>15</sup> Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995) at 189.

<sup>16</sup> *Ibid.*

<sup>17</sup> This research was conducted by SES Research, online: <<http://www.sesresearch.com>> exclusively for *Policy Options*. See Nik Nanos, "Charter Values Don't Equal Canadian Values: Strong Support for Same-Sex and Property Rights," *Policy Options* 28:2 (February 2007) 50 [Nanos, "Charter Values"].

that the federal and provincial governments have the power to override *Charter* protections by invoking the notwithstanding clause. The authors of the survey summed up their findings as follows: "What emerges is an environment where Canadians may be generally aware of the principles of the Charter but lack an understanding of the mechanisms that make it work."<sup>18</sup>

If we want the *Charter* to retain the relatively high degree of approval it presently enjoys, we should be concerned that Canadians know so little of its details. For example, the critique that the *Charter* takes the last word away from Parliament and gives it to the courts may be accepted by those who do not know that Parliament has the right to exercise the notwithstanding clause to override judicial opinions it does not like. Similarly, the commonly heard view that the *Charter* protects rights to the exclusion of collective interests may make easy headway with those who do not understand that section 1 proclaims that all the *Charter* rights can be limited by the governments of the country, provided they can show that such limits are justifiable.

Not only can better knowledge counter facile anti-*Charter* assumptions, it can also build positive support for the *Charter* and the values it enshrines. The SES survey also found that Canadians do not see the *Charter* as essential to their Canadian values or identity.<sup>19</sup> More could be done to ensure that people understand that the *Charter* protects their freedom of expression, their right to move about the country, their voting and democratic rights, their liberties, and their equality—rights that are essential in our democracy. I suspect that the explanation for the disconnect is that the respondents to the survey associate the *Charter* with protections for minorities and those caught up in the criminal system, which are not part of their personal identities, without associating the *Charter* with the basic rights and conditions of life that ordinary Canadians not only expect, but take for granted.

What can we do about the *Charter*-information deficit? Perhaps articles written to mark the *Charter*'s 25th anniversary and speeches such as this will help. But the most important thing, it seems to me, is to educate our children and young people. The basics of the Canadian constitution, including the *Charter*, should be mandatory learning in our

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<sup>18</sup> Nanos, "Charter Values," *ibid.* at 55.

<sup>19</sup> *Ibid.* at 50.

schools. They should be taught to every new Canadian. They should become part of our nation and its sense of itself.

## 2. The *Charter* Leads Politicians to Shunt Social Problems to the Courts

A constitutional bill of rights affects the democratic process. It places social issues before the courts that otherwise would have been within the exclusive purview of Parliament and the legislatures.

Some have suggested that this leads to legislators shuffling “hot potato” items off onto the courts through references on legal questions. Others suggest that legislators may be prone to waiting for the courts to tackle difficult questions that the legislators would rather avoid.

The seriousness of this problem is difficult to gauge. It is hard to prove that a particular reference is motivated by a desire to avoid dealing with an issue politically, or that legislative action would have been taken if there had been no constitutional bill of rights.<sup>20</sup>

Nevertheless, this much can be ventured. Parliament and the provincial legislative assemblies are the heart and soul of Canadian democracy. It is for them, as the elected branches, to legislate on the issues of the day. In the best of worlds, the legislative branch would initiate the laws, and the judicial branch would respond where called upon to ensure their constitutionality. Changing this relationship has the potential to harm both the legislative and the judicial branches of governance, and to undermine the people’s confidence in democracy.

While the evidence falls short, in my view, of showing that in fact the *Charter* has caused politicians to shunt difficult questions into the courts, the concern remains valid and the possibility that this might occur must be guarded against.

## 3. Criminal Justice Takes Longer and is More Costly

This is true. The *Charter* has made criminal trials longer and more complex by providing new grounds on which evidence can be challenged. Each challenge must be dealt with by the trial judge. These

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<sup>20</sup> It should also be noted that courts may on constitutional references decline to answer questions that they think inappropriate or unnecessary—although this power is sparingly exercised. See *Reference re Same-Sex Marriage*, [2004] 3 S.C.R. 698.

challenges take a great deal of time and pose particular difficulties in jury trials.

But the *Charter* is not the only source of this problem. Other developments have added to the delay and the cost of criminal trials. Modern investigative techniques often involve mountains of electronic and technical evidence. Often, many accused are tried together in one trial and sometimes on a plethora of charges, with the result that the trial may literally collapse under its own weight, as happened recently on a trial of alleged gang offences in Edmonton.<sup>21</sup> At the same time, the *Charter* guarantees a trial within a reasonable time.<sup>22</sup> This can place the state in a difficult situation—it must proceed with reasonable diligence, but it can take a long time to assemble the case and move it through stages of the pre-trial process.

The solution to this problem is as complex as the problem itself. At this point, twenty-five years after the adoption of the *Charter*, the time has come, I believe, to take a hard look at whether we can change the rules and procedures of the criminal justice system to deal more effectively with *Charter* challenges. Government, the bar, and the bench must work together on finding better ways to provide adjudication that is both fair and expeditious. Many have called for this, and there are signs that people are starting to respond.<sup>23</sup>

#### 4. Individual Rights are Replacing Individual and Collective Responsibility

Some have expressed concerns that the *Charter* has highlighted individual rights, to the detriment of individual and collective responsibility. The seriousness of this problem is hard to assess.

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<sup>21</sup> Department of Justice, News Release/Backgrounder, “Chan/Trang: Lessons Learned and Moving Forward” (February 2004), online: <[http://www.justice.gc.ca/en/news/fs/2004/doc\\_31132.html](http://www.justice.gc.ca/en/news/fs/2004/doc_31132.html)>.

<sup>22</sup> *R. v. Askov*, [1990] 2 S.C.R. 1199; *R. v. Morin*, [1992] 1 S.C.R. 771.

<sup>23</sup> Michael Moldaver, “The State of the Criminal Justice System in 2006: An Appellate Judge’s Perspective” (Remarks to the Justice Summit – 2006, Toronto, 15 November 2006), online: <[http://www.ontariocourts.on.ca/court\\_of\\_appeal/speeches/state.htm](http://www.ontariocourts.on.ca/court_of_appeal/speeches/state.htm)>; Michael Moldaver, “Long Criminal Trials: Masters of a System They Are Meant to Serve” (John Sopinka Lecture on Advocacy, Annual Conference of the Criminal Lawyers’ Association (2005), Toronto, 22 October 2005) 32 C.R. (6th) 316; and Ontario, *New Approaches to Criminal Trials - The Report of the Chief Justice’s Advisory Committee on Criminal Trials in the Superior Court of Justice*, (Toronto: May, 2006) (Chairpersons: David Watt & Bruce Durno), online: <[http://www.ontariocourts.on.ca/superior\\_court\\_justice/reports/CTR/CTReport.htm](http://www.ontariocourts.on.ca/superior_court_justice/reports/CTR/CTReport.htm)>.

The rights and liberties granted by the *Charter* come with correlative responsibilities. The cases have affirmed this. Freedom of religion entails the responsibility of not abusing that freedom to harm others or to interfere with the religious freedom of others.<sup>24</sup> Similarly, freedom of expression comes with the responsibility not to use the expression to hurt or silence others.<sup>25</sup> The section 7 right not to be deprived of life, liberty and security of the person, except in accordance with the principles of fundamental justice, requires respect for the section 7 rights of others.<sup>26</sup> And section 1 subjects the exercise of all rights to reasonable and demonstrable limits in a free and democratic society. All rights are embedded in a social context, and must be exercised with due respect for that context, for the rights of others, and for the fundamental values that animate Canadian society and Canadian identity.

There is a danger with any entrenched bill of rights that some people will attempt to use it to affirm their own rights while ignoring the responsibility to respect the rights of others. The words of Chief Justice Dickson remain apt: “[T]he courts must be cautious to ensure that [the *Charter*] does not simply become an instrument of better situated individuals to roll back legislation which has as its object the improvement of the condition of less advantaged persons.”<sup>27</sup>

It can be argued that such attempts, by and large, have not succeeded in Canada. This said, we must guard against the *Charter* being misused to trample on the rights of others or to permit people to avoid assuming the responsibilities of citizenship in a free and democratic society.

## 5. Legal Reasoning and Teaching Has Changed for the Worse

Professor Roderick A. Macdonald at McGill University has authored a thoughtful paper, in which he lists twenty-five—one for every year of the *Charter’s* existence—“significant institutional, social, judicial

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<sup>24</sup> *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 [Ross].

<sup>25</sup> *Irwin Toy v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927; *R. v. Keegstra*, [1990] 3 S.C.R. 697; and *Ross, ibid.*

<sup>26</sup> *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 [preliminary version].

<sup>27</sup> *R. v. Edward Books and Art Ltd.*, [1986] 2 S.C.R. 713 at 779.

or legal cultural changes” brought about by the *Charter*.<sup>28</sup> These, he argues, have changed legal thinking and teaching, not always for the better. Without suggesting that all of these developments are negative or conceding that all of them are solely consequences of the *Charter*, I believe we should consider them and be alive to such concerns as they may raise. Professor Macdonald’s list is too long to recite here; I highlight just some of his concerns.

One is that conceptual classifications that used to focus legal reasoning have been replaced by broad, purposive, pragmatic and functional reasoning. This has led to longer judgments; as Professor Macdonald puts it, “[p]roliferity is that fellow-traveler of pragmatic and functional reasoning.”<sup>29</sup> Judgments, in his view, are too long, and too often rely on *ex post facto* rationales rather than on rigorous analysis. The “place of craft and technique and a respect for legal form have been displaced by attention to abstract argument and symbols.”<sup>30</sup>

Further, he believes that the emphasis on the *Charter* means that “vast domains of legal regulation meant to enhance citizen agency have been consigned to the margins of legal consciousness.”<sup>31</sup> He claims, as a result, that “[l]egal analysis grounded in abstract binary claims about the meaning of words has flourished at the expense of interdisciplinary legal research.”<sup>32</sup>

These are legitimate concerns worth reflecting on. Vigorous rejoinders can be offered to many of them, but it is indisputable, I think, that we should reflect on how the *Charter* has affected legal thinking, teaching, and scholarship as we move into the *Charter*’s second quarter-century.

#### IV. CONCLUSION

When the *Charter* was adopted in 1982, many Canadians felt that they were embarking on a new adventure, one that would define and change their nation. Few, however, would have predicted that the

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<sup>28</sup> Roderick A. Macdonald, “Post-*Charter* Legal Education: Does Anyone Teach Law Anymore?” *Policy Options* 28:2 (February 2007) 75.

<sup>29</sup> *Ibid.* at 77.

<sup>30</sup> *Ibid.* at 79.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

adventure would be as exciting and transformative as it has turned out to be, both for Canadians as individuals and for the nation as a whole.

Twenty-five years later, I believe we can say with confidence that the *Charter* has given us a reason for pride. Canadian justice is richer and more secure than it was before the *Charter*. The world has come to see Canada as a leader in rights jurisprudence and as that rare thing in today's world—a just society. We should not, however, allow our justifiable pride in the *Charter* to blind us to the concerns that still remain. This year's retrospective on our constitutional bill of rights provides us with the opportunity to reflect, not only on what has been accomplished, but also on what remains to be done. The challenges posed by and under the *Charter* will continue. I hope that when lawyers, scholars, and judges gather in 2032 to celebrate the *Charter's* 50th anniversary, they will conclude that this next generation, like the generation that shaped the *Charter's* first twenty-five years, has risen to that challenge.

