

# Volume 2.1 (1994)

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## Articles

### **The Canadian Charter of Rights and Freedoms: Dawn of a New Era?**

*Chief Justice Brian Dickson (Retired)*

#### *Abstract*

This is the text of the Merv Leitch Q.C. Memorial Lecture, delivered by the Right Honourable Brian Dickson on November 15, 1993. The author poses the question whether the adoption of the Charter of Rights and Freedoms heralds the "dawn" of a new era in Canadian judicial history, particularly with regard to the relationship between government and the courts. In responding to this question, he concludes that the Charter has not radically altered the role of the judiciary. Rather, it has simply extended the responsibilities already exercised by the courts within their mandate of judicial review of legislation on constitutional grounds. In reaching this conclusion, the author examines the role of the judiciary in the pre-Charter context, the inter-relationship of the Charter, the judiciary and government, and the background of social and political values that form the context into which the Charter fits. Finally, the author states that if the Charter has in any way signalled the beginning of a new period in Canadian constitutional history, it has done so by forcing the government to live up to its responsibility under the Charter to enact legislation that is consistent with the rights and freedoms that it enshrines.

### **Child-Care and the Charter: Privileging the Privileged Claire**

*F.L. Young*

#### *Abstract*

In this article, the author cautions against the use of the Charter of Rights and Freedoms as an instrument of social reconstruction, notably with regard to child care. She examines the potential impact of the Symes case upon the cause of the child care lobby, finding that a positive result for Symes could have had negative repercussions for this group. The author states that while Symes' ultimate goal appears to have been the commendable one of increasing state subsidization of child care, the practical result of her success would have been to further privilege the already advantaged, and to lead to the further oppression of disadvantaged groups of women. She argues that it is more important that the state take action toward increased support for child care programs that benefit all women than for privileged business women to have the ability to deduct child care as a business expense under the Income Tax Act.

### **The Charter and Spousal Benefits: The Case of the Same-Sex Spouse**

*J.P. McEvoy*

## *Abstract*

The author discusses the issue of equality rights under section 15 of the Charter of Rights and Freedoms in terms of a particular 'discrete and insular minority': the gay and lesbian community. While the rights of this minority group have been acknowledged in a legal sense, the author points out that practical recognition, such as alteration in legislative practice, lags behind. The case of *Egan and Nesbitt v. Canada* is used to explore the circular reasoning that Canadian courts continue to engage in as a means of upholding legislation which violates the equality provisions of the Charter. The case concerns the controversial extension of benefits, under the Old Age Security Act, to same-sex couples. Rather than fulfilling the promise of the Charter's equality guarantees, the lower court decisions exhibit a marked reluctance to characterize as discriminatory governmental practices which prejudicially affect persons solely by reason of their sexual orientation.

## **Constitutional Contact with the Disparities in the World: Poverty as a Prohibited Ground of Discrimination Under the Canadian Charter and Human Rights Law**

*Martha Jackman*

## *Abstract*

While poverty is not a ground of discrimination expressly enumerated under section 15 of the Charter, it is a condition shared by several of the groups specified in that section. The author argues that the Charter's promise of substantive equality will remain meaningless for large numbers of the disadvantaged in Canada unless poverty is recognized as a prohibited ground of discrimination analogous to those expressly enumerated. In support of her argument, the author documents the magnitude of poverty in Canada and the intolerant attitudes which prevail regarding the poor, attitudes which translate into discriminatory practices. The systemic disadvantaging of the poor also has an impact on their ability to organize politically, all of which qualifies the poor as a "discrete and insular minority" deserving of Charter protection. The author concludes that poverty should be viewed in the same manner as the specified grounds in section 25 - as an equality and human rights issue.

## **Book Review**

Book Review of Leon E. Trakman

***New-Age Constitutionalism: A Review of Reasoning with the Charter***

Dale Gibson