

# Volume 11.1 (2005)

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## Articles

Between Despair and Denial: What to Do About the Canadian Senate

*Daniel Pellerin*

*Abstract*

Even in the 1880s, the Canadian Senate was mocked as “a bribery fund in the hands of the government, and paddock for the old wheel horse of the party.” Expressions of genuine interest in the institution that are not laced with derision or disdain remain rare; real enthusiasm there is none. Yet, if only it were done sensitively, by the consistent application of a clear, realistic, and historically validated principle, reform of the Senate might prove the best strategy for revitalizing Canada’s political system and for strengthening the ties that hold the country together. Rather than rendering to apathy, denial, and despair, or else dreaming of demolition or trusting oversold remedies that ignore all institutional context and tradition, we can find most of the materials for a stately renovation of the Red Chamber in its own founding principles.

Does the *Charter* Matter?

*Harry Arthurs and Brent Arnold*

*Abstract*

This article investigates whether Canada has changed in ways the ways that proponents of the Charter desired and anticipated. We examine the progress of groups that the Charter was intended to benefit (Aboriginal peoples, women, visible minorities, and immigrants); areas of state action that the Charter was intended to regulate (the criminal process and bureaucratic behaviour); and aspects of our communal and public life that the Charter was intended to animate and enhance (politics and inter-group cultural relations). We rely on a significant number of studies of Canadian social development during the period from 1982 to the present. Available evidence suggests that progress towards the vision of Canada inscribed in the Charter has generally been modest, halting, non-existent, and, in some cases, negative. What we claim is that the Charter does not much matter in the precise sense that it has not – for whatever reason – significantly altered the reality of life in Canada.

Adverse Effect Discrimination: Proving the *Prima Facie* Case

*Evelyn Braun*

*Abstract*

In an era where anti-discrimination principles have gained widespread acceptance, cases of

direct discrimination arise infrequently, and attention is increasingly drawn to the adverse effects of apparently neutral standards. Proof of adverse effect discrimination presents unique evidentiary challenges. The author focuses on the application of fundamental principles of adverse effect discrimination to proof of a prima facie case. This discussion is framed within an employment law context, with a particular focus on the example of adverse effect discrimination claims by part-time employees. European case law establishing that discrimination against part-time employees can amount to indirect discrimination against women is contrasted with a Canadian case. The Federal Court of Appeal decision in response to this claim by a part-time worker illustrates the need for a strong emphasis on the basic principles governing proof of a prima facie case of adverse effect discrimination. The author concludes that further guidance from Canadian courts is needed to elucidate the Canadian approach to proof of adverse effect discrimination.

*The Danger of Fighting Monsters: Addressing the Hidden Harms of Child Pornography Law*  
*Robert J. Danay*

### *Abstract*

This article seeks to expose and address some of the counter-intuitive harms that are currently being wrought by the operation of both Canadian and American child pornography laws. The author explores the way in which these laws serve to perpetuate the sexualization of children in society, and examines the myth of the “salivating pedophile” upon which the law is based. The author also considers the impact of zealous efforts to suppress child pornography on rights of freedom of expression, as well as their overshadowing effect with respect to other pressing social concerns. In light of these concerns, he proposes several recommendations for reform of the current pornography law. The author suggests that such reforms would criminalize actual harm to children rather than anachronistic notions of “moral corruption” that currently animate child pornography legislation.

## **Book Review**

*Ideology and Community in the First Wave of Critical Legal Studies*  
*Mark Tushnet*