

Chronicling the evolution of Canada's rights and freedoms

Fifth edition of Charter analysis includes new section on Aboriginal and treaty rights

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The Lawyers Weekly

**Vol. 33, No. 33
(January 17, 2014)**

2014

SPECIAL INFORMATION FEATURE

Beverly McLachlin, chief justice of the Supreme Court of Canada, recalls a cold, damp day in the spring of 1982 when this country broke with tradition and forged its own path. On that day, now more than 30 years ago, the Canadian Charter of Rights and Freedoms became reality.

In a new book on the aftermath of that historic day, Chief Justice McLachlin and numerous other legal experts look back over the three decades since Queen Elizabeth II signed the rain-kissed document and Canada became a country with its own Constitution.

Much has changed, and not unexpectedly, Chief Justice McLachlin wrote in one of two prologues to the fifth edition of the Canadian Charter of Rights and Freedoms, published by LexisNexis Canada. "Enriched by the jurisprudence of the past 30 years, today's Charter presents a more sophisticated and nuanced vision of the rights and freedoms than it did at the time of its enactment."

That enhanced and informed vision is explored over more than 1,400 pages that build on and update judicial thinking since the previous edition of the book and its predecessors. "It was time for a new edition. A lot has changed," said Danann Hawes, director of content development with LexisNexis Canada in Toronto.

Those changes, discussed in detail in the book, affect the fabric of the country, its citizens and its legal community. "As was predicted in the very first edition, the Charter has become the very soul of Canada's legal tree," said Errol Mendes, a law professor at the University of Ottawa and co-editor of the three most recent editions of the book. (Stéphane Beaulac, a professor of law at the University of Montreal, is also a co-editor of the current book.)

The new work was formally launched at the Quebec Court of Appeal in Montreal recently.

Former Supreme Court of Canada Chief Justice Brian Dickson looks closely at the context and evolution of the Charter in his prologue and determines that although a final assessment on its impact is not possible at this early stage in its history, four tentative conclusions can be drawn.

First, the Charter was a natural extension of developments both at home and on the international stage. Secondly, it has not radically altered the balance of power between courts and the legislature. Third, it does not mark an abrupt departure from this country's values. And finally, the Charter was designed for governments to live up to certain fundamental responsibilities.

In the end, wrote former Chief Justice Dickson, "[t]he Charter protects those basic values which most Canadians share and cherish."

Such reflection is essential, believes Mendes, who is also editor-in-chief of the National Journal of Constitutional Law. Although the new edition examines the interpretation and application of the Charter by Canadian courts in both the private and criminal law spheres, as well as its impact on the Canadian legal system, it goes beyond a mere update. "It's not about developments. It's about the impact the Charter has had. This is both a reference book and a book to ponder," said Mendes.

It is also a practical tool. "This book can provide huge fodder to litigators," said Mendes. "It could be a very powerful tool for those who are practising Charter [law]."

More than 30 legal scholars and experts from across the country, including Harry LaForme, the only sitting Aboriginal appellate court judge in Canada, offer their insights from a range of regional, linguistic and other perspectives and in both official languages.

In addition to an up-to-date analysis of the Supreme Court of Canada Charter decisions released since the fourth edition was published in 2005, a new section examines Aboriginal and treaty rights in Canada in the context of the Charter, and its authors conclude more change born of necessity looms in the Charter's next 30 years.

In his article "Aboriginal and Treaty Rights in Canada," Bradford Morse, a professor in the faculty of law at the University of Ottawa, noted that, "[W]ith the judicial approach to dealing with Aboriginal and treaty claims on a case-by-case basis, it is apparent that quick and cost-efficient avenues of dealing with such issues through the litigation may not be available. If this pattern remains, it is obvious that the elaboration of treaty rights, particularly those based on historical treaties, will be a long, expensive, and potentially disappointing process for many of the parties involved."

Canadian Charter of Rights and Freedoms, 5th Edition is available at lexisnexis.ca/store.