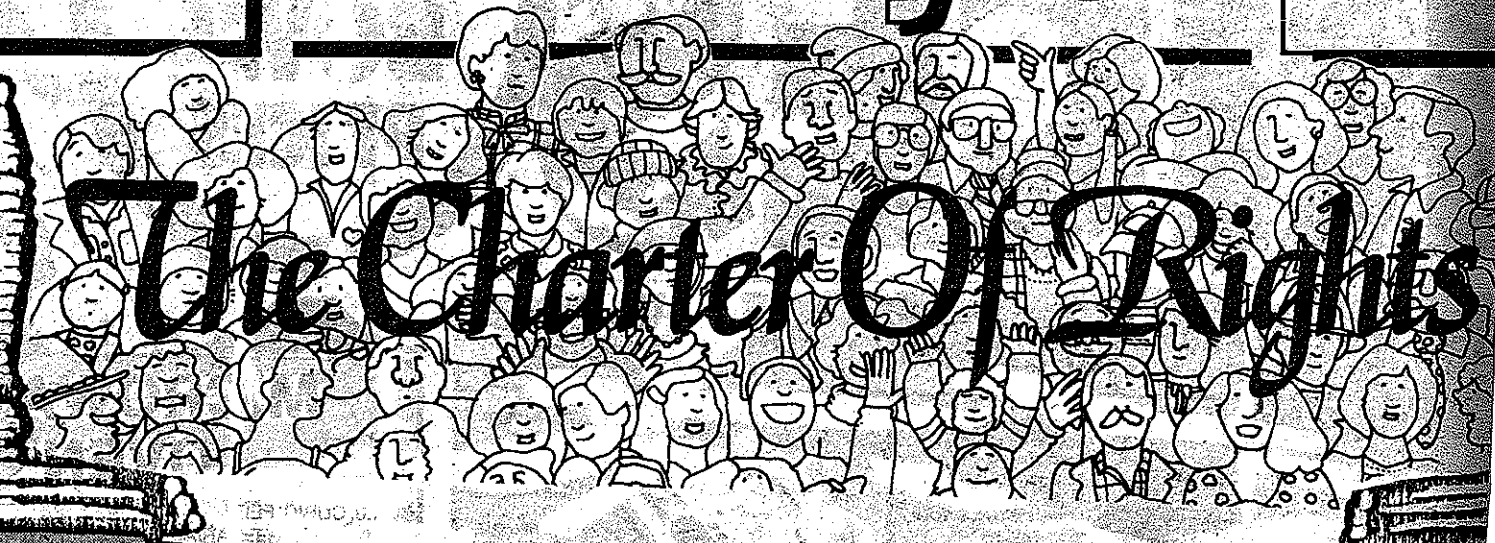


Lifestyle



By CAROL PICARD
Staff writer

It may have been an oversight, but one of the major newsmakers in Canada last year seems to have been left off most lists of momentous events that were. Canada's Charter of Right and Freedoms celebrated its third birthday last year with some headlines that deserve to be mentioned.

Most noteworthy of course was the proclamation of section 15 in April, guaranteeing (in theory) every Canadian citizen equality in the eyes of the law.

But last year was also the year Canada's top court began picking up steam on Charter rulings, giving lower courts five major decisions on how they feel the Charter is to be interpreted.

The final word has been that individual rights must be protected and respected.

While local lawyers describe Alberta courts' Charter rulings in terms like "tentative" and "inconsistent", they're starting to get the hang of it.

"The Supreme Court of Canada has gone a lot farther than people thought it would, and a lot faster," said Edmonton defence lawyer David Midanik.

U of A constitutional law professor Tim Christian said the big development this year is that "the Supreme Court has spoken."

During the first years under the Charter, lawyers took their arguments through provincial courts, Court of Queen's Bench justices and up to provincial appeal courts. Now those appeal court decisions are being challenged in Canada's top court, and "we as lawyers didn't really know until now how the Supreme Court was going to rule on the Charter," said Christian.

Charter off to a better start than Bill

"It sets the tone, it could either breathe life into the Charter or let it die. What they've told us is the Charter of Rights has not been stillborn like the Bill of Rights."

Midanik, who has used the Charter to win several important rights in Alberta courts, says the number and nature of judgments coming out of the Supreme Court this year has been surprising.

"Every court case is a struggle between the rights of the individual vs. the powers of the state, and the Supreme Court has been extremely civil libertarian in upholding those rights."

Canada's highest court has said citizens have the right to consult a lawyer before giving police a breathalyser sample, and must be informed of that right before the test is given.

It ruled that our federal cabinet is open to judicial

scrutiny and our federal government must act in accordance with the dictates of the Charter.

The peace group Operation Dismantle challenged Cruise missile testing over Alberta in May, arguing it violated our right to life, liberty and security of the person entrenched in section 7.

It lost the argument, but won a major decision for Canadians when the Supreme Court ruled 6-0 that courts have a right to review federal cabinet decisions that could infringe on rights guaranteed in the Charter.

Christian is ecstatic with these developments.

"The supremacy of Parliament has been severely limited. Judges now no longer have to rule on whether the procedure of the law is wrong, they can say the legislation is wrong. It is a very major development."

"The court has said you cannot have an unjust law, that no law can deprive you of the right to life, liberty and security of the person unless that law is fair and just. It's fantastic."

Alberta AG says 'wait and see'

Alberta Attorney General Neil Crawford is less enthusiastic, although he insists Canadians must maintain a "wait and see" approach to the Supreme Court's handling of the issue.

"One of the features of having a Charter is that the previous tradition of the supremacy of Parliament has been changed, and for people who believe in the supremacy of Parliament that can't be a good thing.

"But we need more time to see how the Supreme Court will interpret it in further decisions."

Another important Supreme Court ruling last April was the 9-0 decision to strike down The Lord's Day Act, legislation based on "a sectarian Christian ideal" and violating the freedoms of conscience and religion guaranteed by the Charter. Chief Justice Brian Dickson stated unequivocally that the Charter guarantees religious minorities freedom from "the tyranny of the majority," as the Alberta marketplace was thrown open to Sunday shoppers.

Crawford sees this as a situation where "most people would have turned to Parliament and said pass the law again in a more explicit form and override the court decision."

"But that can't be done, the law can only be changed by constitutional amendment. I think most people would be beginning to observe that the Charter in a way is a two-edged sword."

The process of challenging Canadian laws under the Charter will go on for years, some say decades. The Supreme Court of Canada has been given the power to reshape the Canadian legal system in bits and pieces with every ruling. **Continued on Page 35.**