

A CHARTER OF RIGHTS OR A CHARTER OF WRONGS?

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SPEECH TO THE SYDNEY INSTITUTE, 10 APRIL 2008

Deprived of the protection of a human rights charter, Australia descends into tyranny. The M5 and Federal highways become clogged with refugees from the other states fleeing to Victoria and the ACT, the last oases of protection against the cruel abuses of the governments without a charter. The only things standing between totalitarianism and the Australian people are the paper-thin texts of the Victorian Charter of Rights and the ACT's Human Rights Act.

This is, of course, a fantasy. But it is not far from the vision of the future contained in the new orthodoxy propounded by those who tell us that Australia must have a Charter of Rights.

The election of the Rudd government last November has brought renewed focus to the issue of rights protection in this country. That focus, and the interpretation given to it, has in many cases ignored a significant change in Labor's position as reflected in the 2007 national platform.

Whereas in previous times Labor had specifically committed itself and campaigned on the concept of a Charter of Rights, in 2007 it resolved instead to initiate a public inquiry about how to best protect human rights and freedoms. Specifically the new platform states:

Labor will establish a process of consultation which will ensure that all Australians will be given the chance to have their say on this important question for our democracy.¹

The change in Labor's position did not come about by accident. It came about because of a recognition that the party's previous position had failed to resonate with the electors and therefore the issue needed to be looked at afresh. The consultation process to be initiated by the Commonwealth Attorney General is an opportunity to do just this.

For my own part I support this process. What reasonable person would not? In fact the question of how to ensure that the rights of Australian citizens are adequately protected has been at the centre of public debate even preceding Federation.

The framers of the Australian Constitution had the US model of a constitutionally entrenched Bill of Rights before them during the Convention Debates of the 1890s. During the constitutional conferences of 1890 and 1891

¹ ALP 2007, *ALP National Policy and Platform 2007*, <http://www.alp.org.au/platform/index.php>

Tasmania's Attorney General Inglis Clark promoted the idea of constitutional protection of broad based rights and freedoms.²

Richard O'Connor (later a High Court Judge) argued at the Melbourne convention of 1898 for a constitutional protection of equality rights borrowed almost word for word from the fourteenth amendment to the United States constitution.³ Needless to say these efforts were defeated.

It is worth noting the subsequent efforts to constitutionalise further rights fared no better. A referendum proposal by Attorney General HV Evatt in 1944 to guarantee freedom of speech, expression and freedom of religion was defeated.⁴

The 1988 referendum sponsored by the Hawke Government to constitutionally extend to the States freedom of religion, the right to trial by jury and compensation on just terms as well as to provide fair and democratic elections across Australia were also defeated. Even an attempt by the Howard Government to have a non-justiciable preamble failed to arouse popular support.

These decisions of the Australian people reflect in my view a desire to retain the essential balances and separation of powers that have served our community well. Instead of a Bill of Rights, our founding fathers preferred the safeguards of responsible parliamentary government and the common law, typical of British Commonwealth nations.

The Australian Constitution is therefore informed by this older model of rights protection – where rights are secured through the constitutional order of a political regime of civil liberty. Our constitutional system combines a range of federal institutions with parliamentary responsible government. The effect of combining features of federalism and parliamentary responsible government with largely bicameral legislatures is to ensure a decentralised system of government with institutional features consistent with rights protection, diffusing political will and multiplying opportunities for democratic input.

Sir Harry Gibbs, ex-Chief Justice of the High Court of Australia encapsulates this when he said in 1991:

the most effective way to curb political power is to divide it. A Federal Constitution, which brings about a division of power in actual practice, is a more secure protection for basic political freedoms than a bill of

² *Official Record of the Proceedings and Debates of the Australasian Federation Conference*, Melbourne, 1890 and *Official Report of the National Australasian Convention Debates*, Sydney, 1891

³ *Official Report of the National Australasian Convention Debates (Third Session)*, Melbourne, 8 February 1898

⁴ Peter Breen 1999, *Advance Australia Fair: Reforming the Legal System with a Rights and Responsibilities Code*, Cape Byron Press

rights, which means those who have power to interpret it say what it means.⁵

Our institutions have exhibited remarkable stability and constituted a powerful force for ensuring the peaceful development of our nation within the context of maximum personal freedom. It is unsurprising therefore that in all my time in public life not one ordinary constituent whose door I have knocked on has pleaded for a Bill or Charter of Rights.

The referendum results and previous election results have shown the public have been unenthusiastic about such proposals. Instead the constituency for such change has come not from ordinary citizens but rather professional lobbyists and law school elites. Recognising that constitutional amendment is hopeless, the protagonists have turned their attention to a statutory charter model which it is argued gives the Courts an interpretive and/or declaratory role but nevertheless preserves parliamentary sovereignty.

A bill or charter of rights would move rights claims out of the political arena, turning them into legal claims

In essence whether one talks of Bills or Charters of Rights essentially one is discussing the degree to which the primary power for making decisions about rights will shift from legislatures to the courts. This to me is the crux of the problem.

Basic to our system of representative democracy is the identification and accommodation of conflicting social interests in the process of making laws and governing the state. The sophisticated electoral system of preferential and proportional representation, of our bicameral parliament, standing committees and inquiries together with institutions of a free press and ministerial accountability all work together to ensure that complex political conflicts are resolved smoothly and competing rights, values and interests are weighed up and decided in a democratic way.

To put it simply: parliaments are institutions specially designed for consultation on, discussion and resolution of difficult political questions. On the other hand, the judicial branch of government is set up in a different manner to achieve different ends: the adjudication of private conflicts and the application of law.

By transforming social and political questions into legal ones, a Charter of Rights threatens to harm the integrity of both institutions. It blurs the Parliament's authority to decide important political questions which the public has entrusted to it and for which it has evolved a sophisticated democratic infrastructure. It also forces the Courts to start making decisions on these

⁵ Harry Gibbs, "Courage in constitutional interpretation and its consequences" (1991) 14(2) *University of New South Wales Law Journal* 325 at 326.

same issues, responding to questions which they are ill-equipped to answer and for which they do not have the democratic legitimacy.

The NSW Solicitor General, Michael Sexton, has argued that bills or charters of rights are “*fundamentally anti-democratic*” because they transfer decision on issues like freedom of speech from parliaments to courts. He said in 2003:

The fundamental point [is] that law cannot be a substitute for politics. To hand these questions over to courts does not make them legal rather than social or economic questions.⁶

Furthermore, rights continue to expand and evolve over time. The rights we recognise today are wider than those recognised in the past and will continue to change into the future. Sydney University Associate Professor Helen Irving said last year:

[rights] should be able to evolve, and the best way to do this is through the political process. The political process is accountable, and it is flexible. It allows for compromise, where litigation is usually a matter of winning or losing.⁷

While some would argue that statutory Charters of Rights are not entrenched in the way as a constitutional Bill of Rights, the reality is that they become semi-rigid, a process akin to constitutionalisation.

A corollary of the shift of responsibility to the courts consequent on the adoption of a Charter of Rights is that different types of political resources and societal interests are privileged. Rights become legal battlefields with only those with the knowledge and resources to work the court system being able to participate.

Helen Irving has argued that the *outcomes* of litigation based on a Bill or Charter of Rights are not necessarily straightforward advances in social justice that many proponents may assume. She has provided the following examples from the Canadian experience:

- A law prohibiting the advertising of tobacco products without health warning was found to be in violation of the guarantee of freedom of expression;
- Legislation limiting cross-examination of a sexual assault complainant’s sexual history was struck down; and
- Freedom of association was held not to support the right to strike.⁸

Even in Australia, Professor Irving’s analysis of the implied freedom of political communication decisions discloses that those who have successfully invoked

⁶ Michael Sexton 2003, “A bill of rights would leave us all worse off”, *The Australian Financial Review*, 22 August .

⁷ Helen Irving 2007 “Bill of rights talk”, Fabian Society, 25 July

⁸ Helen Irving 2002 “Bill of rights could accelerate culture of litigation”, *The Australian*, 19 April, p.11

the freedom have been, in almost all cases, the big, well-resourced and powerful organisations, not individual rights campaigners.

It is interesting that a previous advocate for the enactment of human rights instruments, Chief Justice James Spigelman AC, has recently moderated his opinion on the desirability of a statutory Bill of Rights. Earlier this year, the Chief Justice observed that in the context of statutory bills of rights:

[r]eal issues about the proper role of the judiciary in a parliamentary democracy arise.⁹

Further,

[t]he range of legitimate opinion on this matter is wide and remains the subject of vigorous debate. I do not wish to be understood to take any particular position on the desirability, or otherwise, of a statutory human rights act.¹⁰

In expressing these views I do not mean to imply that the courts have no role to play.

I have already remarked on our constitutional framework. Chief Justice Spigelman argued that the common law rules of statutory interpretation provide systematic protection of human rights at the judicial level. According to His Honour this “common law bill of rights” comprises rebuttable presumptions that the Parliament does not intend to:

- retrospectively change rights and obligations;
- infringe personal liberty;
- interfere with freedom of movement;
- interfere with freedom of speech;
- alter criminal law practices based on the principle of a fair trial;
- restrict access to the courts;
- permit an appeal from an acquittal;
- interfere with the course of justice;
- abrogate legal professional privilege;
- exclude the right to claim self-incrimination;
- extend the scope of a penal statute;
- deny procedural fairness to persons affected by the exercise of public power;
- give executive immunities a wide application;
- interfere with vested property rights;
- authorise the commission of a tort;
- alienate property without compensation;
- disregard common law protection of personal reputation; and
- interfere with equality of religion.¹¹

⁹ James J Spigelman, 2008 “The Common Law Bill of Rights”, first lecture in the 2008 McPherson Lectures, *Statutory Interpretation and Human Rights*, University of Queensland, Brisbane, 10 March, p.3.

¹⁰ Ibid.

¹¹ Ibid pp. 24-25

The key to all this however is that these presumptions operate at the judicial level and leave to the people's representatives decisions on their scope and their balance with competing values.

When this democratic role is diluted or removed then there is also an inevitable impact on judicial independence.

In the United States this ideological and political conflict has affected the Supreme Court with attitudes to social policy issues such as gun control, affirmative action, race relations and capital punishment being influential in the selection and confirmation process.

Professor Yves-Marie Morissette in an article published in the Australian Law Journal said this in relation to the Charter of Rights in Canada:

We see a pronounced devolution of power from legislatures to the courts – at the request of almost anyone, really, every provision of every enactment may be subjected to review by the lawyers and by the judges, themselves all former lawyers, on grounds which are broader and vaguer than ever before...

With this devolution comes the inevitable politicisation of the judiciary. Concerns are now expressed about judicial appointments which previously were only heard in the electoral process.¹²

The 'dialogue' between the Courts and the Parliament

I appreciate that many Australian proponents would distinguish these experiences arguing that a Charter would operate in a different way; to assist in interpretation and to promote a dialogue between the legislature and judiciary.

The benefits of such a dialogue are not clear. The primary dialogue that a Parliament must have is with the public. Prioritising a conversation with the judiciary over one with the people who elected it is a strange and undemocratic path for a Parliament to take.

This would transform the relations between the institutions of governance, creating a special role for the judiciary to comment on and determine important matters of public policy. Courts would become a social laboratory where the balancing of rights and interests would be undertaken according to the political leanings of the bench.

Bret Walker SC, the then Senior Vice President on behalf of the NSW Bar Association, addressed the absurdity of this situation in his submission to the 2001 Legislative Council Inquiry:

¹² Morissette 1998, 'Canada as Postmodern Kritarchy' 72 ALJ 294 at 296

The notion that you remove difficulties by giving to the courts a power to say to the legislature “Do it again, and do it better” is, to my mind, politically, a very frightening one...

It seems to me that we must never move away from the tradition of positive law-making, which is that a text in the vernacular which people can understand emerges from the law-making organ which can then be read. You do not cross Macquarie Street, then, to ask the Court of Appeal “Does it work?”¹³

The creation of a dialogue deprives legislation of its authority and finality, creates uncertainty around its meaning, and removes the ability of Parliament to finalise political questions by enacting laws. The dialogue envisaged by the Charter advocates could take years to resolve and will lead to political conflicts that should have been worked out in the parliamentary process being drawn out in ongoing litigation.

Australia is the only English-speaking democracy without a judicially enforceable bill or charter of rights - is this “exceptionalism” problematic?

Many proponents of constitutional or statutory Bills or Charters of Rights argue that Australian exceptionalism in not enacting a Bill or Charter evidences grave deficiency in rights protection in Australia with the consequence that the international jurisprudential developments are unintelligible to Australian practitioners.

Former NSW Supreme Court Justice the Hon Malcolm McLelland QC responded to this argument before the 2001 NSW Legislative Council Inquiry by drawing attention to the fact that rights instruments around the world are all different and nearly always the product of significant historical events, causing difficulties in making straightforward applications of international decisions to local contexts. Mr McLelland stated:

Those different historical circumstances produced different kinds of Bills of Rights, that is one of the reasons why they are all different but the fact is that they are all different. I would take the view that the public interest in Australia would be better served by avoiding the confusion, the difficulty, the time and expense involved in Australian courts and lawyers trying to understand these various different provisions and instead trying to be consistent with their own national culture and traditions.¹⁴

The NSW Chief Justice has not repeated his emphasis on Australia’s “intellectual isolation” as the only common law country without a Bill or Charter

¹³ NSW Legislative Council Standing Committee on Law and Order 2000, ‘Report of Proceedings of Inquiry into a Bill of Rights’, 25 July.

¹⁴ NSW Legislative Council Standing Committee on Law and Order 2000, ‘Report of Proceedings of Inquiry into a Bill of Rights’.

of Rights; rather His Honour's emphasis has shifted in part to the role of Australian institutions and jurisprudence in Asia.¹⁵

In many countries, constitutionally entrenched rights protection followed long periods of civil war, and were intended to heal rifts and restore trust and the rule of law:

- The Bill of Rights was enacted in 1791, 8 years after the War of Independence, and the fourteenth amendment to the US Constitution (that includes the due process and equal protection clauses) became law in 1868, three years after the Civil War ended. These rights protections were introduced in order to ensure that African-Americans were not subject to continual marginalisation after the abolition of slavery.
- The Declaration of the Rights of Man and of the Citizen provided the basis of the French constitution following the French Revolution. The Declaration is still referenced in the preamble to the current French Constitution.
- The Constitution of South Africa, enacted in 1996, was intended to contribute to nation building, reconciliation, and the cultivation of an inclusive non-racial citizenship in post-Apartheid South Africa. Section 7 in Chapter 2 provides: "This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom."
- Canada's adoption of a Charter of Rights arises against a background of disputes between Anglophones and Francophones

The UK *Human Rights Act 1998* gives legal effect to the European Convention on Human Rights. The Government White Paper *Rights Brought Home: The Human Rights Bill* unambiguously states that the impetus behind the Act was to retain power to interpret British laws in UK courts, stating:

the time has come to enable people to enforce their Convention rights against the State in the British courts, rather than having to incur the delays and expense which are involved in taking a case to the European Human Rights Commission and Court in Strasbourg.¹⁶

There is no comparable international court to which Australian laws are tied and therefore no need for a similar human rights instrument to keep Australian courts in control of our laws.

¹⁵ James J Spigelman, "The Rule of Law in the Asian Region", International Legal Services Advisory Council Conference, Sydney, 20 March 2003.

¹⁶ Human Rights Unit, Home Office 1997, *Rights Brought Home: The Human Rights Bill*, Government of the United Kingdom, 24 October, available at <<http://www.archive.official-documents.co.uk/document/hoffice/rights/rights.htm>> (last accessed 26 March 2008). at 1.18-1.19

I know some point to New Zealand as an example where a country adopted a Charter of Rights without a background similar to that which I have described above. However it is worth remembering that the Charter in that country arose against a background of an unwritten constitution with a unicameral legislature with concerns about an over concentration of power in the elected government.

The introduction of multimember constituencies and the Charter were in part attempts to diffuse power and create checks and balances in that country's structures. To put it simply: a Charter or Bill of Rights is not a prerequisite for effective rights protection. Separation of powers and strong institutional governance are.

Nazi Germany had what purported to be an excellent Bill of Rights that provided for a "dignified existence for all people". As did the Soviet Union under Joseph Stalin.

Since 1973 Pakistan has had constitutionally entrenched fundamental rights. The Pakistani Constitution empowers the President to suspend fundamental rights during a declared emergency, which is what occurred in Pakistan last November. The newly-elected government is yet to restore the Constitution and thereby restore constitutional rights of the people of Pakistan.

Other jurisdictions

The Australian Capital Territory and Victoria have implemented rights charters. The ACT conducted a 12 month review of its *Human Rights Act* in June 2006.

In her twelve-month survey, Dr Helen Watchirs, the Human Rights Commissioner, noted that the Act had

only a small impact in a handful of cases where parties have specifically argued human rights issues.¹⁷

Mr Richard Refshauge SC, the former Director of Public Prosecutions and now a Supreme Court Justice, observed that:

The decisions [in the criminal sphere] were all ... made on the basis of principles of law or the exercise of a discretion that were unexceptional applications of the common law and which were unaffected by or independent of the [Act]... The same seems true of those decisions in the civil area also.¹⁸

Based on this observation, he found the present record to be "a little disappointing".

¹⁷ ACT Department of Justice and Community Safety 2006, *Human Rights Act: Twelve-Month Review - Report* June, available at http://acthra.anu.edu.au/Primary%20documents/twelve_month_review.pdf last accessed 11/04/08 at 11

¹⁸ Ibid. at 11-12

Although the ACT foreshadowed amendment to introduce a direct action for breach and expanded rights it has not done so.

While the Victorian experience was significantly shorter it is noteworthy that one of the earliest users of the new Charter is Tony Mokbel, whose lawyer has argued that he can use the Charter's fair trial provisions to avoid facing charges if he is extradited back to Australia.¹⁹

The sorts of Rights protected in these Charters appear unobjectionable and so generally phrased to the point of not making clear their real impact. The right to freedom of thought, for instance, or to freedom of movement within the Australian Capital Territory are no doubt good things, but it is hard to imagine a situation where they would be a pivotal element of a legal claim.

But these apparently benign instruments are not going to be the end of the process. The Mokbel case suggests there is still potential for aberrant results.

The ACT has foreshadowed the introduction of more substantive social and economic rights into its *Human Rights Act* in the future. Victoria will also be reviewing its charter after one year and there is the potential for its rights to be similarly expanded.

Western Australia and Tasmania have both also recently undertaken inquiries into having a Charter of Rights. The Western Australian study involved a somewhat predetermined agenda which sought comment on a draft *Human Rights Act*.

The Government identified several "essential issues" that it wanted to form the basis of the inquiry, including which human rights should go into the Act, the form it should take, and how a Human Rights Act could "create greater respect for human rights".²⁰

In all the Committee attracted 377 written submissions. Despite these low numbers the Committee did not recommend putting this major political change to the people of the state through a referendum.

It appears to have preferred the suggestion of Sven Sorenson, in respect of whom the report said:

He considered that a WA Human Rights Act was overdue, and would need to be done in discussion with [the] community but not by a

¹⁹ Rick Wallace, 2008, "Mokbel to claim trial 'unfair'" *The Australian*, January 10, available at <<http://www.theaustralian.news.com.au/story/0,25197,23030591-2702,00.html>> last accessed 11 April 2008.

²⁰ Chaney, Baker, Carnley and Hawyard 2007, *A WA Human Rights Act: Report of the Consultation Committee for a Proposed WA Human Rights Act*, The Attorney General's Department, Government of Western Australia, November, at 3, available at <http://www.humanrights.wa.gov.au/documents/Human_Rights_Final_Report.pdf> last accessed 11/04/08

popular vote. WA people are very conservative and ultimately intolerant of change that can affect them (eg daylight savings, shopping hours, a republic).²¹

So, because they did not like the views of the public they would be ignored.

The Tasmania Law Reform Institute also asked a number of pointed questions in its inquiry:

If change is needed to better protect human rights in Tasmania, how should the law be changed to achieve this?

Would a Charter of Human Rights enhance human rights protection in Tasmania?

Should some rights be included at first with other rights being considered for inclusion subsequently after review of the Charter?²²

The Institute received a total of 407 submissions

When confronted by leading questions of this kind, it is hard for members of the public to express an opinion that looks at alternatives to a new Charter. It is noteworthy that notwithstanding favourable recommendation both Western Australia and Tasmania have decided not to go ahead with the implementation of a Charter of Rights at this time.

A bill or charter of rights will not serve as a simple educative tool that will clarify the law and help Australian's to understand their legal rights; it will impose an additional layer of interpretation over all legislation

Many proponents of a bill of rights cite the educative value of having rights gathered together in a bill or charter. The second reading speeches for both the ACT *Human Rights Act* and the Victorian *Charter of Human Rights and Responsibilities* invoke the educative value of the legislation.

Depending on its form, a Charter of Rights may in fact operate to distance Australians from the legal system by imposing an additional layer of interpretation over all legislation, so it can no longer be understood at face value.

The ACT Act specifically provides that the rights in the legislation are not absolute but they are limited to the extent that is demonstrably justified in a free and democratic society. The Victorian Act is also subject to such limits as are demonstrably justified in a free and democratic society.

²¹ Ibid. at 21

²² Tasmania Law Reform Institute 2007, "A Charter of Rights for Tasmania: Issues Paper No. 11" August, at 3-4, available at <<http://acthra.anu.edu.au/articles/Tasmania%20-%20issues%20paper.pdf>> last accessed 11/04/08.

Section 3(1) of the British *Human Rights Act* provides that “so far as it is possible to do so”, all legislation “must be read and given effect in a manner which is compatible with the Convention rights.”

The leading British case on the interpretation of their *Human Rights Act*, *Ghaidan v Godin-Mendoza* established that:

Section 3 may require the court to depart from this legislative intention, that is, depart from the intention of the Parliament which enacted the legislation. ...

[Section 3] is also apt to require a court to read in words which change the meaning of the enacted legislation, so as to make it Convention-compliant. In other words, the intention of Parliament in enacting section 3 was that, to an extent bounded only by what is 'possible', a court can modify the meaning, and hence the effect, of primary and secondary legislation.²³

Perhaps it is here that the “real issues about the proper role of the judiciary in a parliamentary democracy” alluded to by the Chief Justice arise.

In 2001, I sat on the NSW Parliamentary Standing Committee on Law and Justice when it determined that it was not in the public interest to introduce a Bill or Charter of Rights, even in a statutory form. The primary concern that guided this conclusion was that a bill would undermine the roles of both Parliament and the Courts. The Committee concluded that such instruments would:

- undermine parliamentary supremacy;
- require judicial policymaking, and therefore inevitably legalise political decisions; and
- lead to the politicisation of the judiciary.²⁴

Nothing I have seen or heard since has led to me changing my opinion.

One person who has seen the a Charter of Rights in action is Justice Strayer of the Federal Court of Canada, who gave this warning about his own country's experience:

There is a belief shared by some academics, lawyers, journalists and an increasing number of citizens, that every ill must have a Charter cure. In other words it is assumed in some quarters that the Charter is a total guarantee of good government and that the courts and that the courts must act wherever legislators are negligent, indolent, or downright wrong-headed in the legislation they pass or refrain from passing. This creates a certain temptation for many of us on the bench to try to set aright all the injustices brought to our attention. But it was never understood by those who gave the Charter the necessary

²³ *Ghaidan v Godin-Mendoza* [2004] UKHL 30 at [29]-[32].

²⁴ Standing Committee on Law and Justice, “Report 17 A NSW Bill of Rights”, *NSW Parliamentary Library*, 3 October 2001.

approval that it was to be a substitute for the primary responsibility of elected representatives to provide good government for Canadians.²⁵

In summary let me say this. There are several reasons why adopting a Charter of Rights is a wrong decision for Australia to make.

A Charter is wrong because it moves debate about rights out of the political arena and places it into the judicial sphere. It is wrong because it removes it from democratic Parliamentary processes and distances ordinary citizens from an important part of political life. It is wrong because it threatens judicial independence and blurs our institutional governance. It is wrong because it generates uncertainty about the meaning of laws and deprives legislation of its finality.

It is wrong because, rather than being a simple educative tool, it creates a new level of interpretation over and above the vernacular meaning of the legal text. This distances non-lawyers from the legal and political process, depriving them of the ability to read and understand a law without applying the complex apparatus of the court's interpretation.

I have stated at the outset that I have no objection to a consultative process subject to it being a fair and honest consultation with the public in general. The consultation process must look at alternative models to the Charter, including ones that recognise the principle of parliamentary sovereignty and seek to better inform it of potential human rights violations.

Lawyers bear the scars of litigation. To suggest that advancement can come about through adversarial litigation where community values are converted to legal battlefields is, with respect, both ludicrous and dangerous.

We do not live in a perfect society and never will. There may well be laws perceived by some in our community to be unjust. It is however wrong to suggest that they can be remedied by enacting Charters with wide ranging values and all will be well. The remedies and accountability should rest with the democratically elected Parliament preserving and respecting the traditional role of the Courts and the balance between our institutions of governance.

²⁵ B.L. Strayer 1988, "Life Under the Canadian Charter: Adjusting the balance between legislatures and courts" in *Public Law* 347.