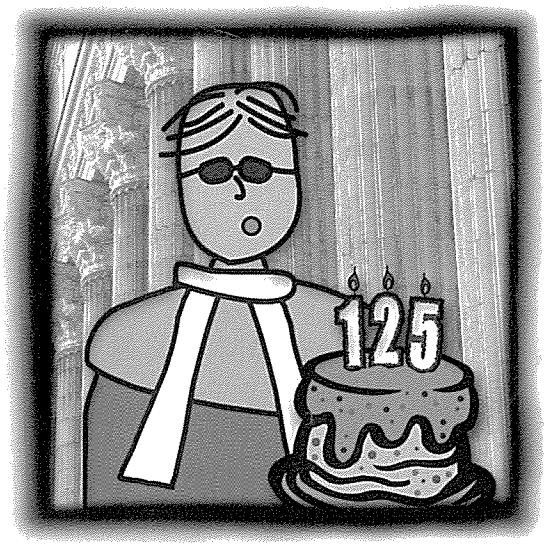
125th Anniversary of the Supreme Court of Canada



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The turn of the millennium marks the 125th anniversary of the Supreme Court of Canada ("SCC") and the 50th anniversary of the abolition of appeals to the Judicial Committee of the Privy Council in England. In recent years, particularly since the 1982 introduction of the Canadian Charter of Rights and Freedoms, the SCC has become a more active participant in the development of Canadian public policy, and in the shaping of Canadian attitudes. The following collection of articles explores this new found influence of the SCC, along with the issues and controversy that have naturally arisen with its increasing role in defining modern Canadian values.



The article by Andrew J. Hladyshevsky underlines that the role of the SCC in shaping Canadian attitudes, government policy and national consciousness regarding all Aboriginal issues has never had as high a profile or as controversial a role as it does today. Hladyshevsky discusses the SCC's increasingly flexible approach to the interpretation of Aboriginal Rights and Treaties in light of the Charter. The author is optimistic that the SCC will redefine the special fiduciary relationship of the Crown to Aboriginal Peoples on the basis of the principles governing the interpretation of Treaty and Aboriginal Rights that Chief Justice Beverley McLauchlin set out in dissent in R. v. Marshall. These principles include a historical recognition of 500 years of alliance and cohabitation. The article by F. Pearl Eliadis and Reema Khawja discusses the early failures of the SCC to recognize the human rights of women and how the Charter provided the impetus for the SCC to recognize women's human rights as part of the equality equation. The authors argue that the voices of women jurists in the SCC have contributed to an evolution of the legal concept of equality so as to include recognition that certain aspects of women's lives are not similarly experienced by men. The SCC's decisions of the past decade have effectively moved women into a circle of norms that had previously been dominated by a male perspective. William A. Schabas discusses how international law on human rights, specifically the Universal Declaration of Human Rights, has influenced and inspired the SCC's interpretation of the Charter. Schabas points out that, since Trudeau's White Paper of 1969, the protection of economic and social rights has taken a back seat to that of civil and political rights. Change is afoot, Schabas argues, and suggests that international law may provide a rich source of norms that can help the living tree of constitutional law to grow to protect these other basic human rights. Although the SCC has been largely preoccupied with Charter cases, Donald Bisson emphasizes the less obvious yet important influence that its decisions over the past decades have had on commercial law. The SCC appears to have infused the law with a certain "commercial morality" based on equity and fair play.

The SCC's role as final arbiter of the meaning and effect of the Charter has given the SCC, and its individual judges, considerable influence on Canadian politics and policy. Christopher P. Manfredi's article discusses how the SCC has used the Charter as a wedge to assert jurisdiction over policy vacuums. Manfredi shares the concern of many critics that the SCC may be overstepping its bounds and usurping power from the legislatures and executives. Governments increasingly base policy on their predictions of what will survive judicial review, and the wording of legislative amendments often appears to have been borrowed directly from SCC judgements.

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Manfredi claims that external checks on the power of the SCC are necessary, and suggests re-legitimizing the notwithstanding clause of the Charter. Controversy over the formidable power asserted by the SCC has lead Jacob S. Ziegel to contribute to the renewed debate over the suitability of the present system of appointments of judges to the SCC. In his article, Ziegel argues that the present system is incompatible with the values of democracy, accountability and transparency. Zeigel advocates an open confirmation procedure, perhaps involving the House of Commons. Gerald L. Gall and Rebecca Soberl explore how recent controversial decisions have drawn public attention and scrutiny to the judges who sit on the bench of the SCC. The authors highlight the recent public appearances of SCC judges and note that the judges seem far less wary of extra-judicial writing and speeches. Although these extra-judicial pronouncements occasionally attract controversy of their own, Gall and Soberl argue that they largely serve the positive purpose of demystifying the workings of the court and enhancing the administration of justice.

It appears from all of the articles that the SCC's role in defining Canadian values and shaping public policy in this country will only become more important and thus more controversial. The SCC and its members have to be congratulated for the remarkable contributions they have made to our history. The SCC is one of the leading judicial authorities in the world and an international example of integrity and vision which makes all Canadians proud. ■

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