

mit new resources, tens of thousands of charges were stayed.

Enforcing the Charter has institutional consequences in a variety of contexts. What the courts must decide is whether enforcement should take priority over other objectives, including the institutional consequences of doing so. The Supreme Court of Canada had made enforcing the Charter its priority long before *Schacter* was decided.

EXPANDING THE ARSENAL

What then does "reading in" imply for institutional relations? Despite endorsing it, Chief Justice Lamer acknowledged that choice of remedy acquires a new dimension when an unelected judiciary reads new provisions into democratically

enacted legislation. He indicated that such a step should therefore be taken only in the clearest of cases.

Will the courts accept the Chief Justice's invitation to rewrite legislation, or will "reading in" be regarded as an exceptional remedy, available only in narrow circumstances? It all depends on how the judiciary assesses the relative importance of enforcing the Charter and preserving equilibrium between the legislatures and the courts.

Where reading in is perceived as intrusive of legislative function, the remedial issue can be pre-empted by a finding that the Charter has not been violated. It is doubtful that a violation would have been found in *Schacter*, had the issue been open to the court.

Yet *Schacter* has already been followed: in *Haig v. Canada*, the Ontario Court of Appeal granted a declaration adding "sexual orientation" to section 3 of the Canadian *Human Rights Code*, as one of its prohibited grounds of discrimination.

Reading in expands the arsenal of remedial tools the Supreme Court of Canada has employed to enforce the Charter. *Schacter* is consistent with a jurisprudence that seeks the attainment of that objective at the expense of democratic authority. Until the judiciary's powers are challenged, that trend can be expected to continue.

Jamie Cameron is Associate Professor and Assistant Dean at Osgoode Hall Law School. Legal Report is a regular feature of Canada Watch.



CW UPDATE

THE MONTH IN REVIEW

by David Johnson

FALL REFERENDUM ON NATIONAL UNITY DEAL

The national unity deal agreed to on August 22 in Ottawa will be put to a non-binding national referendum on October 26. Although the exact wording of the question has not yet been unveiled, it will probably consist of a single question asking whether voters approve of the entire reform package. Where provincial referenda are mandated by law, as in Quebec, Alberta, and British Columbia, the referendum will be conducted under provincial auspices; in all other areas, the new federal referendum legislation will operate. Though no referendum result can legally bind the provincial legislatures, the results of this vote

will undoubtedly be politically binding on the premiers and the prime minister.

For details of the national unity agreement, please see the overview by David Johnson on page 19 of this issue.

NAFTA AGREEMENT IN PRINCIPLE

On August 12, trade representatives for the governments of Canada, the United States, and Mexico agreed in principle to a North American free trade agreement (NAFTA). If the agreement receives legislative ratification, North America will become the world's richest trading bloc, bringing together 360 million persons into a U.S.\$6.6 trillion common market. The agreement builds on the Canada-U.S. Free Trade Agreement by calling for the general elimination of most tariffs between the countries over the next 10 to 15 years.

Canada currently exports slightly more than Cdn.\$500 million in goods to Mexico. Auto parts, newsprint, steel, and wheat constitute the bulk

of these goods. Canada currently imports some Cdn.\$2.6 billion in goods from Mexico. Cars, auto parts, computers, and crude petroleum constitute the bulk of this trade.

For analysis on the process of ratification and the impact that this agreement might have on Canada, see the articles by David Johnson and David Leyton-Brown beginning on page of this issue.

EQUALITY PARTY'S CLAIM REJECTED

On July 30, Mr. Justice Pierre Michaud of the Quebec Superior Court rejected a Charter challenge brought by the Equality Party against Quebec's referendum legislation. The court ruled that legislative provisions compelling all campaign participants to group together under one of two competing umbrella committees, with each committee subject to rigorous expenditure restrictions, infringed on freedoms of association and expression. The court held, however, that such infringements were reasonable and demon-

strably justifiable in order to ensure that the referendum was conducted on a level playing field. On August 13, the Equality Party announced that it would appeal this decision. Recall that the federal government refrained from imposing any restrictions within its referendum legislation on the campaign activities of "third parties" on the ground that such restrictions would constitute violations of the Charter.

LANDMARK CHARTER RULINGS

In two decisions released over this summer, the courts have reaffirmed the legitimacy of the practice of "reading in" — that is, the ability of courts to interpret legislation to extend rights and entitlements not explicitly enumerated in legislation.

In *Schachter v Canada*, released on July 9, the Supreme Court affirmed that the *Charter* permits courts to "read in" to legislation. In this case, though, the court refused to read into the Unemployment Insurance Act a right to natural fathers to claim U.I. benefits. The court held that natural fathers were numerically larger than adoptive fathers (who were already entitled to benefits) and thus "reading in" a right for natural fathers would substantially alter the legislative framework. Note that prior to this decision Parliament had already extended U.I. benefits to natural fathers, albeit for a shorter period than had hitherto been granted to claimants.

On August 6, the Ontario Court of Appeal, in following the *Schachter* doctrine, ruled in *Haig v. Canada*

that discrimination on the basis of "sexual orientation" was prohibited under the Canadian Human Rights Code notwithstanding the omission of this term as an illegal ground of discrimination within the legislation. The court took the initiative to read "sexual orientation" into the federal rights code as a necessary provision designed to protect a historically disadvantaged group — namely, homosexuals.

For additional commentary on these developments, please see the article by our legal analyst, Jamie Cameron, on page 25 of this issue.



CANADA WATCH CALENDAR

August 22	Agreement-in-principle on unity package by first ministers, territorial and aboriginal leaders after four-day conference	September 10	House of Commons resumes sitting. Tabling of constitutional agreement and national referendum question in House of Commons. Start of debate on referendum question.
August 29	Informal text of constitutional package agreed to in Charlottetown after two-day conference	September 15	Two Manitoba by-elections, with Premier Gary Filmon's legislative majority at stake
September 3	Quebec National Assembly to debate amendments to Bill 150; government proposes October 26 referendum on federal proposals rather than sovereignty	Mid-September	First Ministers' Conference expected to finalize formal legal text of unity deal
September 8	Last day to give notice of motion in House of Commons for text of national referendum question to be held on October 26	September 19	Federal referendum campaign formally begins
September 9	Last day to table question in Quebec National Assembly for Quebec's October 26 referendum	September 27	Quebec referendum campaign formally begins
	Notice of motion from the federal government of text of national referendum question to be held on October 26	Late September	Expected release of formal text of North American Free Trade Agreement
		October 26	Canada-wide referendum on unity proposals