

# CHARTER VALUES DON'T EQUAL CANADIAN VALUES: STRONG SUPPORT FOR SAME-SEX AND PROPERTY RIGHTS

Nik Nanos



Canadians have long been known as supporters, and many political leaders have portrayed themselves as defenders, of the Charter. But how deep and informed is that support? In conjunction with the McGill Institute for the Study of Canada's conference, "The Charter @ 25," we asked Nik Nanos of SES Research to drill down on the attitudes of Canadians towards the Charter. What came back from this SES poll for *Policy Options* was not exactly the stuff of conventional wisdom. For example, only 5 percent of Canadians equate Charter values with Canadian values. And while Canadians are ambivalent about the notwithstanding clause in the Charter, Nanos writes, "only half of them are even aware of its existence."

Les Canadiens ont toujours soutenu la Charte des droits et plusieurs chefs politiques se sont même positionnés comme d'ardents défenseurs de celle-ci. Mais ce soutien est-il aussi approfondi et informé qu'on le croit ? En marge de la conférence de l'Institut d'études canadiennes de McGill sur le 25<sup>e</sup> anniversaire de la Charte nous avons demandé à Nik Nanos, de la maison SES Research, de scruter les attitudes de nos concitoyens. Et les résultats de cette enquête menée pour *Options politiques* sont assez étonnants. Par exemple, seuls 5 p. 100 des répondants assimilent les valeurs de la Charte aux valeurs canadiennes. Et bien qu'ils se disent ambivalents face à la fameuse « clause nonobstant », seuls la moitié d'entre eux en connaissent l'existence.

Canadians don't equate Charter values with Canadian values, while more than two Canadians out of three would support an amendment to include same-sex rights, as well as property rights, in the Charter of Rights and Freedoms. As for the most controversial component of the Charter, the notwithstanding clause, only half of Canadians have even heard of it.

These were the main findings of an SES Research poll, conducted exclusively for *Policy Options*, to coincide with the McGill Institute for the Study of Canada conference "The Charter @ 25."

We wanted to drill down deeper than previous polls which, to no one's surprise, found overwhelming support for the Charter. Who could be against rights and freedoms, especially the rights of individuals as opposed to the powers of government?

In November 2006, we asked further questions, such as whether Canadians thought the Charter was moving the country in the right direction or the wrong direction, and

why; whether the courts or Parliament should have the last word on rights issues; whether sexual orientation should be added to the equality rights clause; and whether property rights should be included in the Charter.

We also asked Canadians if they were aware of the notwithstanding clause allowing the legislative branch to override the courts, and whether Ottawa and the provinces should have this power. Only 49 percent said they knew about it, and nearly 48 percent said they were unaware of it.

Much has been made of equating Charter values to Canadian values, but we found that the Charter is by no means central to Canadian identity. Even among Charter supporters, unprompted, only 5.3 percent, one Canadian in 20, thought the Charter "makes Canada a great country." And among those who said the Charter was moving the country in the right direction, only 3.1 percent said it because the Charter "Reflects our values."

"Charter values equal Canadian values" simply doesn't resonate as a top-of-mind view for Canadians. And among critics, only 0.4 percent, fewer than one Canadian in 200, thought that the Charter makes Canada too much like the United States. So

was moving Canada in the wrong direction and 15.8 percent were unsure.

This is what we call the thumbs-up, thumbs-down question, and fewer than 6 Canadians out of 10 gave the Charter a thumbs-up, while 4 out of 10 gave it a thumbs-down or couldn't be sure.

try the wrong way. Regionally, support was strongest in the Atlantic and Quebec (66.5 percent and 60.9 percent, and weakest in the West at 54 percent).

When we asked Canadians why the Charter was moving the country in the right or wrong direction, we received a multitude of answers on both sides of the question.

Fully 28.8 percent said it protects rights and freedoms, while another 17.9 percent said it makes everyone equal or prevents discrimination, and 15.9 percent said, quite simply, it works. Another 12 percent said it keeps everyone accountable.

On the negative side of the ledger, we saw a laundry list of deficiencies and complaints against the Charter

and its consequences as opposed to the principles driving it.

Among negatives cited in the wrong direction, 14.3 percent said the Charter goes too far, 12.9 percent agreed it gave criminals too many rights, and another 11 percent said Canadians were losing rights to the rule of minority groups.

To begin with, on the question of the direction in which the Charter is moving the country, 58.2 percent of Canadians thought it was moving in the right direction, while 26 percent said it was moving Canada in the wrong direction and 15.8 percent were unsure. This is what we call the thumbs-up, thumbs-down question, and fewer than 6 Canadians out of 10 gave the Charter a thumbs-up, while 4 out of 10 gave it a thumbs-down or couldn't be sure. We saw a clear generational divide on this question — younger Canadians tend to idealize the Charter more than middle-aged and older Canadians.

Canadians even more forcefully reject the suggestion of the Americanizing influence of the Charter.

We saw a clear generational divide on this question — younger Canadians tend to idealize the Charter more than middle-aged and older Canadians.

Fully 64.3 percent of the 18-to-29-year-old cohort believe the Charter is taking Canada in the right direction, while in the 60-plus cohort, 31.3 percent thought it was moving the coun-

To begin with, on the question of the direction in which the Charter is moving the country, 58.2 percent of Canadians thought it was moving in the right direction, while 26 percent said it

QUESTION 1. BASED ON WHAT YOU KNOW, WOULD YOU SAY THAT THE CHARTER OF RIGHTS AND FREEDOMS IN CANADA IS MOVING OUR SOCIETY IN THE RIGHT DIRECTION OR THE WRONG DIRECTION?

		Total responses (N)	Right direction (%)	Wrong direction (%)	Unsure (%)
Region	Total	1,002	58.2	26.0	15.8
	Atlantic	99	66.5	17.7	15.8
	Quebec	253	60.9	24.3	14.8
	Ontario	300	58.0	25.0	17.0
	West	350	54.0	30.4	15.6
Gender	Male	471	60.0	25.8	14.2
	Female	531	56.6	26.2	17.3
Age	18 to 29	204	64.3	18.1	17.6
	30 to 39	199	68.0	21.0	11.0
	40 to 49	214	50.7	30.9	18.4
	50 to 59	160	56.4	28.2	15.4
	60 plus	225	52.4	31.3	16.3
Home	Own	705	57.7	27.1	15.2
	Rent	296	59.3	23.3	17.4

Source: SES Research National Survey, [www.sesresearch.com](http://www.sesresearch.com)  
Note: 1,002 Canadians, +/- 3.1% 19 times out of 20, November 5-9, 2006.

When we asked Canadians whether the courts or Parliament should have the final say in rights issues, a clear majority, 54 percent, said the courts, while a significant minority, 31.2 percent, said Parliament should have the last word, and 14.8 percent were unsure.

Perhaps surprisingly, the strongest regional support for the courts having the final say was in Quebec at 68.5 percent. Yet this can also be interpreted as a classic response of a minority group — French-speaking Quebecers within Canada, and anglophones within Quebec — looking to the courts to protect their rights. In Quebec, 31.5 percent favoured Parliament over the courts,

while no one, 0.0 percent of our respondents, was unsure. Either this is a statistical anomaly, or everyone in Quebec has an opinion on this question. Support for the courts having the last word was weakest in the West at 48.2 percent, while 31.6 percent thought Parliament should have it, and 20.2 percent were unsure, for a total of 51.8 percent.

In effect, majority support for the courts holding sway nationally is delivered by Quebec, ironically the one province whose legislature has never signed on to the *Constitution Act* of 1982.

Another point on the question of courts versus the legislative branch: it

can also be read, beneath the surface, as a question of judges versus politicians. And clearly, the credibility of politicians is in decline, while judges are held in generally higher regard.

We then asked Canadians their views on whether the equality rights provisions of the Charter should be broadened to include specific reference to sexual orientation.

A strong majority, 61.8 percent (50.8 percent support and 11 percent somewhat), supported the inclusion of gay rights among equality rights in section 15 of the Charter. While the framers of the Charter were notably silent on this question in 1981, the

## QUESTION 2. WHY?

	Total responses (N)	Right direction (%)	Wrong direction (%)	Unsure (%)
Protects rights/freedoms	168	28.8	0.0	0.0
Makes Canada a great country	31	5.3	0.0	0.0
Keeps everyone equal/prevents discrimination	104	17.9	0.0	0.0
Sets rules for us to follow	22	3.8	0.0	0.0
Liberalizing society	4	0.6	0.0	0.0
Increases our freedoms	10	1.6	0.0	0.0
Forces positive change (e.g. same-sex marriage)	33	5.6	0.0	0.0
It works	93	15.9	0.0	0.0
It evolves with society	21	3.6	0.0	0.0
Keeps everyone accountable	1	12.0	0.0	0.0
Reflects our values	18	3.1	0.0	0.0
People have too many rights	26	0.0	9.9	0.0
Keeps politicians in check	4	0.8	0.0	0.0
Goes too far	37	0.0	14.3	0.0
It's bad	8	0.0	3.0	0.0
Things are getting worse	9	0.0	3.3	0.0
Causing our taxes to go up	1	0.0	0.4	0.0
Don't need it/unnecessary	6	0.0	2.2	0.0
Gives criminals too many rights	34	0.0	12.9	0.0
Too vague/open to interpretation	3	0.0	1.1	0.0
Nothing is sacred anymore	4	0.0	1.5	0.0
Forced same-sex marriage on us	10	0.0	3.7	0.0
No one respects it	8	0.0	3.0	0.0
It doesn't work	20	0.0	7.6	0.0
Dividing society into groups/ no more Canadian identity	23	0.0	8.9	0.0
Takes power from elected officials	10	0.0	3.8	0.0
Losing our rights/minorities rule	29	0.0	11.0	0.0
No one is accountable anymore	7	0.0	2.6	0.0
Lets people express themselves	11	1.9	0.0	0.0
Becoming too much like USA	1	0.0	0.4	0.0
People abuse it	1	0.0	0.4	0.0
Unsure	237	9.1	9.9	100.0
Total	1,002	100.0	100.0	100.0

Source: SES Research National Survey, [www.sesresearch.com](http://www.sesresearch.com)

Note: 1,002 Canadians, +/- 3.1% 19 times out of 20, November 5-9, 2006.

courts have gradually been moving in this direction since then, particularly on the question of civil marriage.

Consistent with other surveys conducted by SES, support for same-sex equality rights was strongest in Quebec — nearly three in four

Quebecers, 73.1 percent, support (63.4 percent) or somewhat support (9.7 percent) compared to other regions of Canada. No surprise there. But in every region of the country, there was clear majority support for adding sexual orientation to the long list of categories

enjoying equality rights under the Charter.

Then we tested support for the inclusion of property rights in the Charter, an issue that hasn't been on the public opinion radar screen for

QUESTION 3. IN YOUR OPINION SHOULD THE COURTS OR PARLIAMENT HAVE THE FINAL DECISION RELATED TO RIGHTS ISSUES?

		Total responses (N)	Courts (%)	Parliament (%)	Unsure (%)
Region	Total	1,002	54.0	31.2	14.8
	Atlantic	99	50.9	31.2	18.0
	Quebec	253	68.5	31.5	0.0
	Ontario	300	49.5	30.6	19.9
	West	350	48.2	31.6	20.2
Gender	Male	471	51.2	35.4	13.4
	Female	531	56.4	27.6	16.0
Age	18 to 29	204	50.5	33.0	16.5
	30 to 39	199	57.5	29.3	13.3
	40 to 49	214	58.7	26.9	14.3
	50 to 59	160	54.8	33.5	11.7
	60 plus	225	48.9	33.9	17.2
Home	Own	705	54.3	31.0	14.7
	Rent	296	53.2	31.9	14.9

Source: SES Research National Survey, [www.sesresearch.com](http://www.sesresearch.com)  
Note: 1,002 Canadians, +/- 3.1% 19 times out of 20, November 5-9, 2006.

QUESTION 4. AS YOU MAY KNOW, THE CHARTER OF RIGHTS AND FREEDOMS INCLUDES EQUALITY RIGHTS BASED ON RACE, NATIONAL OR ETHNIC ORIGIN, COLOUR, RELIGION, SEX, AGE AND MENTAL OR PHYSICAL DISABILITY. DO YOU SUPPORT, SOMEWHAT SUPPORT, OPPOSE OR SOMEWHAT OPPOSE ADDING SEXUAL ORIENTATION TO THE EQUALITY RIGHTS SECTION OF THE CHARTER?

		Total responses (N)	Support (%)	Somewhat support (%)	Somewhat oppose (%)	Oppose (%)	Unsure (%)
Region	Total	1,002	50.8	11.0	6.1	22.4	9.7
	Atlantic	99	51.7	6.7	5.7	20.5	15.3
	Quebec	253	63.4	9.7	5.2	16.2	5.5
	Ontario	300	45.4	14.0	7.4	24.7	8.5
	West	350	46.1	10.6	5.9	25.4	12.1
Gender	Male	471	48.6	12.8	5.8	24.0	8.9
	Female	531	52.8	9.4	6.4	21.0	10.4
Age	18 to 29	204	56.6	8.8	5.5	17.6	11.5
	30 to 39	199	56.4	12.7	6.1	17.1	7.7
	40 to 49	214	52.5	9.9	7.6	21.1	9.0
	50 to 59	160	50.5	10.1	6.9	26.1	6.4
	60 plus	225	39.2	13.2	4.8	30.0	12.8
Home	Own	705	50.0	11.0	6.7	22.8	9.4
	Rent	296	52.6	10.9	4.9	21.3	10.3

Source: SES Research National Survey, [www.sesresearch.com](http://www.sesresearch.com)  
Note: 1,002 Canadians, +/- 3.1% 19 times out of 20, November 5-9, 2006.

years. We found a much greater appetite for including property rights than might have been assumed by the political class.

Even though the question of adding the right to own property to the Charter has not received prominent coverage in the news media, more than

two Canadians in three, 68.9 percent, support (57.7 percent) or somewhat support (11.1 percent), while only 14.8 percent oppose (10.5 percent) or somewhat oppose (4.3 percent) including property rights in the Charter.

Finally, on the notwithstanding clause — the legislative override of the

courts in section 33 of the Charter, only 49 percent of Canadians were aware of it, while 47.7 percent were unaware.

Awareness was lowest in Quebec at 41.6 per cent, as opposed to 58.4 percent who were unaware of the notwithstanding clause — again, ironic, in view of Quebec having been the major battle-

**QUESTION 5. DO YOU SUPPORT, SOMEWHAT SUPPORT, SOMEWHAT OPPOSE OR OPPOSE ADDING THE RIGHT TO OWN PROPERTY TO THE CHARTER OF RIGHTS AND FREEDOMS?**

		Total responses (N)	Support (%)	Somewhat support (%)	Somewhat oppose (%)	Oppose (%)	Unsure (%)
Region	Total	1,002	57.7	11.1	4.3	10.5	16.4
	Atlantic	99	48.1	13.0	1.0	11.0	26.9
	Quebec	253	59.7	11.7	5.4	9.1	14.1
	Ontario	300	61.9	10.9	4.5	12.2	10.5
	West	350	55.3	10.4	4.3	9.9	20.1
Gender	Male	471	62.1	10.7	2.9	8.9	15.4
	Female	531	53.8	11.5	5.6	11.9	17.3
Age	18 to 29	204	59.9	14.3	5.5	5.5	14.8
	30 to 39	199	55.8	11.0	5.5	11.0	16.6
	40 to 49	214	50.7	12.6	6.7	11.7	18.4
	50 to 59	160	59.0	12.2	2.1	12.8	13.8
	60 plus	225	63.0	6.2	1.3	11.9	17.6
Home	Own	705	59.2	10.0	3.7	10.9	16.2
	Rent	296	53.9	13.9	5.7	9.6	16.9

Source: SES Research National Survey, [www.sesresearch.com](http://www.sesresearch.com)

Note: 1,002 Canadians, +/- 3.1% 19 times out of 20, November 5-9, 2006.

**QUESTION 6. ARE YOU AWARE OR UNAWARE THAT THE PROVINCES OR FEDERAL GOVERNMENT CAN OPT OUT OF AN ELEMENT OF THE CHARTER OF RIGHTS AND FREEDOMS BY USING THE NOTWITHSTANDING CLAUSE?**

		Total responses (N)	Aware (%)	Unaware (%)	Unsure (%)
Region	Total	1,002	49.0	47.7	3.2
	Atlantic	99	45.3	47.8	6.9
	Quebec	253	41.6	58.4	0.0
	Ontario	300	48.8	47.0	4.1
	West	350	55.7	40.5	3.8
Gender	Male	471	54.3	42.4	3.3
	Female	531	44.4	52.4	3.2
Age	18 to 29	204	34.6	61.5	3.8
	30 to 39	199	46.4	51.4	2.2
	40 to 49	214	48.9	47.1	4.0
	50 to 59	160	60.6	38.3	1.1
	60 plus	225	56.4	39.2	4.4
Home	Own	705	54.3	42.6	3.1
	Rent	296	36.5	59.9	3.5

Source: SES Research National Survey, [www.sesresearch.com](http://www.sesresearch.com)

Note: 1,002 Canadians, +/- 3.1% 19 times out of 20, November 5-9, 2006.

QUESTION 7. WHO SHOULD HAVE THE ABILITY TO USE THE NOTWITHSTANDING CLAUSE TO OPT OUT OF AN ELEMENT IN THE CHARTER OF RIGHTS AND FREEDOMS? SHOULD IT BE THE PROVINCES AND THE FEDERAL GOVERNMENT, THE PROVINCES ONLY, THE FEDERAL GOVERNMENT ONLY OR DO YOU THINK THAT NEITHER THE PROVINCES NOR THE FEDERAL GOVERNMENT SHOULD BE ABLE TO USE THE NOTWITHSTANDING CLAUSE TO OPT OUT?

		Total responses (N)	Provinces and federal government (%)	Provinces only (%)	Federal government only (%)	Neither provinces nor federal government (%)	Unsure (%)
Region	Total	1,002	30.3	13.5	12.0	32.1	12.2
	Atlantic	99	19.7	21.9	19.1	19.7	19.6
	Quebec	253	27.8	19.7	11.3	41.1	0.0
	Ontario	300	23.1	10.2	10.8	38.8	17.0
	West	350	41.2	9.3	11.4	23.3	14.8
Gender	Male	471	33.9	15.4	11.1	29.6	10.0
	Female	531	27.0	11.8	12.8	34.3	14.1
Age	18 to 29	204	30.2	13.2	11.5	29.1	15.9
	30 to 39	199	29.8	12.2	12.2	35.4	10.5
	40 to 49	214	28.3	14.8	11.7	35.4	9.9
	50 to 59	160	30.3	12.8	11.7	34.6	10.6
	60 plus	225	32.6	14.1	12.8	26.9	13.7
Home	Own	705	30.7	13.2	12.2	31.5	12.4
	Rent	296	29.2	14.1	11.4	33.5	11.8

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 Note: 1,002 Canadians, +/- 3.1% 19 times out of 20, November 5-9, 2006.

ground on this issue when the Bourassa government invoked the override in Bill 178 to set aside a 1988 Supreme Court

provinces alone, and 12 percent thought Ottawa alone, should be able to use the notwithstanding clause.

interpreting the Charter, but an important minority believe Parliament should; there is strong support for including gay equality rights in the Charter, as well as for adding property rights. And Canadians are ambivalent about the notwithstanding clause, while only half of the population even knows of its existence. What emerges is an environment where Canadians may be generally aware of the principles of the Charter but lack an understanding of the mechanisms that make it work.

**To sum up, Canadians generally support the Charter, but don't see it as essential to their Canadian values or identity; a clear majority believe the courts should have the final say in interpreting the Charter, but an important minority believe Parliament should; there is strong support for including gay equality rights in the Charter, as well as for adding property rights. And Canadians are ambivalent about the notwithstanding clause, while only half of the population even knows of its existence. What emerges is an environment where Canadians may be generally aware of the principles of the Charter but lack an understanding of the mechanisms that make it work.**

ruling on the language of signs.

And when we asked whether governments should have the weapon of the notwithstanding clause in their arsenal, one Canadian in three, 32.1 percent, said neither the provinces nor the federal government should have it, while 30.3 percent thought they both should. Equally, only 13.5 percent thought the

The public has no clear view on the legitimacy of the notwithstanding clause, of which only half of them are aware.

To sum up, Canadians generally support the Charter, but don't see it as essential to their Canadian values or identity; a clear majority believe the courts should have the final say in

Perhaps after 25 years we all need a civics lesson on the Charter.

*Nik Nanos is president of SES Research, which conducted this poll exclusively for Policy Options. SES Research, one of Canada's foremost research organizations, has been the most accurate polling firm in the last two federal elections. [nnanos@sesresearch.com](mailto:nnanos@sesresearch.com)*