

Charter a hit with most Canadians: poll

It may be a patriotic symbol, but the majority have only the vaguest idea of what it's all about

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OTTAWA -- If polls can be believed, most Canadians are delighted with the Charter of Rights and Freedoms, which became Canada's supreme law 25 years ago this Tuesday.

"It's what I'd call a big patriotic symbol for the country," says pollster Nik Nanos of Ottawa-based SES Research. "Most Canadians see it as a practical vehicle for protecting rights, keeping everyone equal and setting out rules for the country."

While some fret that the charter has given too much power to unelected judges, most Canadians -- particularly those under 40, who have grown up with the charter -- evidently think it's just hunky-dory.

A SES survey in February, for example, found nearly six in 10 Canadians believe the charter is moving our society in the right direction. Another poll reported last week that more than half think it has had a positive impact on Canada. Just 12 per cent say its influence has been negative. And the judges who interpret the charter consistently earn higher trust ratings than politicians.

Nowhere is the charter more popular than in Quebec -- an irony in that Quebec has yet to sign the Constitution, but perhaps not so surprising given the minority status of francophones.

"They need the charter and a strong Supreme Court in order to protect their rights within Canada," Nanos says. For that reason, "the charter actually might be a critical lynchpin in terms of keeping this country together."

The only problem is, a quarter century later, most of us have only the vaguest notion of what the charter is all about. "Canadians really need a civics lesson when it comes to the charter," Nanos says.

Peter Russell, a professor emeritus of political science at the University of Toronto, agrees. "We've done a lot of opinion polling on what people think is in the charter, and they haven't a clue," he says. "You tell them we've got a charter that guarantees your rights and freedoms forever, and they say, 'that's terrific.' When you point out that the biggest beneficiaries are people charged with criminal offences, their faces fall and they say, 'Really?' They're not thrilled."

Neither, for that matter, is Preston Manning, though unlike most people, he knows quite a bit about the charter. "Do Canadians enjoy more protection of their freedom because of a constitutionally entrenched charter than the British do without one?" asks Manning, the founder and onetime leader of the now-defunct Reform party. "I don't think it's made a quantum difference in that regard."

The Charter of Rights and Freedoms is a key part of the Constitution Act of 1982, the document that gave this country its own made-in-Canada Constitution. You can thank (or blame, if that's your wont) Pierre Trudeau, who fought to include the charter in the new Constitution.

First, though, he had to overcome the opposition of most provincial governments, who feared an entrenched charter would transfer too much power to appointed and unaccountable judges. But all except Quebec ultimately accepted it after Trudeau agreed to insert a "notwithstanding clause" that allowed legislators to override certain charter rights.

The charter sets out essential rights and freedoms. It applies only to governments and the laws they enact. It includes many fundamental rights, including freedom of expression, mobility and democratic rights, legal rights, equality rights, official language rights and protection of Canada's multicultural heritage.

Yet the charter is very much a product of its times -- one of Manning's critiques of it. "It froze the values and priorities that came out of the '60s and '70s into a constitutional form," he says.

If the charter was being written today, says University of Toronto law professor Kent Roach, "it would be a different document than it is." For example, he says, it would probably include a reference to victims' rights, which have come to the fore since the charter was adopted. It might also include property rights, which were omitted because of provincial opposition but now attract widespread public support.

"The problem is I think it's impossible to open up the charter for amendment without opening up the entire Constitution," says Roach. And, as he points out, the failed Meech and Charlottetown constitutional initiatives taught us how difficult that is.

The charter also forced courts to wade into contested social issues that politicians were unable -- or unwilling -- to resolve, such as abortion and, more recently, same-sex marriage.

Some of those decisions have sparked public consternation. One example is a 1994 case wherein the Supreme Court upheld a defence of extreme intoxication to acquit a man of sexual assault. Another is a charter ruling in British Columbia that struck down anti-possession provisions in Canada's child pornography law, but the Supreme Court defused that controversy by overturning the decision in 2001.

Another ruling this year that struck down the federal government's system of security certificates -- used to hold terrorism suspects indefinitely without charge -- is a precursor of what is likely to become the most controversial new charter battleground.

Given all this, the charter is unlikely to fade into irrelevance.

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