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THE CHARTER OF RIGHTS IN LITIGATION Gerard J. Kennedy Release No. 3, June 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in June 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the June 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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What's New in this Update:

- **Application of the Charter — Application of the Charter to Interpret Legislative Provisions** — In *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43, Wagner C.J. and Côté J., for a majority of the Court (Moldaver, Brown, and Rowe JJ.) noted that while there is overlap between the Charter and the Quebec Charter of human rights and freedoms, CQLR, c. C 12 (“Quebec Charter”), there are differences. The Quebec Charter is, to some extent, broader in the scope of protection it grants, as it binds all legal and natural persons, and not just the state. Dignity, though underlying the Charter, is not expressly guaranteed as its safeguard is in the Quebec Charter. But the Quebec legislature did not intend for the Quebec Charter to advance equality as under the Charter, with equality per se not being protected. Recognizing these differences between the Charter and the Quebec Charter was important to frame the issues in this case, not as a contest between equality and freedom of expression, but between the right to safeguard one’s dignity and freedom of expression. Case law under s. 2(b) of the Charter, particularly from *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, [2013] 1 S.C.R. 467, was nonetheless quite helpful in resolving a conflict between rights to freedom of expression and the safeguard of dignity under the Quebec Charter.
- **Practice and Procedure — Evidentiary Considerations — Need for Full Factual Record Before the Court in Order to Show the Presence of a Rights Violation** — In *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33, Kasirer J. held that media will frequently be granted standing to challenge publication bans or sealing orders given that such orders can affect rights to freedom of expression and freedom of the press guaranteed by s. 2(b) of the Charter.
- **Principles of Interpretation — General Approaches to Interpretation of Charter Provisions — Textual Approach** — *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 disposed of a challenge to Ontario legislation that reduced the number of wards in a municipal election after the campaign had begun. For the majority, Wagner C.J. and Brown J. (with whom Moldaver, Côté, and Rowe JJ. agreed) re-emphasized that text is the beginning of a purposive approach to constitutional interpretation. They noted that the text of s. 3 of the Charter indicates that it is not applicable to municipalities and it was inappropriate to import principles from s. 3 into s. 2(b) analysis. They added that using unwritten constitutional principles such as the principle of democracy to invalidate legislation would be inconsistent with the

negotiation that led to the constitution's text and, as such, the framer's intentions.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Footnote text only appears in ProView-generated PDFs of entire sections and pages

