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## Lamer remembered as defender of rights

By Cristin Schmitz  
Ottawa  
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Prime Minister Stephen Harper, Liberal leader Stephane Dion, Lieutenant-General Andrew Leslie and a host of legal luminaries filed by Antonio Lamer's flag-draped coffin as the 16th Chief Justice of Canada reposed in the Grand Hall of the court where he presided over the Charter revolution for 18 years.

With five Governor General's Foot Guards standing vigil Nov. 28 around their late honorary colonel in the austere marble foyer of the Supreme Court, more than two hundred people offered their condolences to Lamer's spouse, Federal Court Justice Daniele Tremblay-Lamer, his son Stephane, and step-children Jean-Frederick and Melanie.

Chief Justice Beverley McLachlin, Justice Minister Rob Nicholson as well as dozens of other judges and lawyers paid their respects to Lamer who was the country's longest-serving judge when he retired in 2000 after nearly 30 years on the Bench.

Lamer died Nov. 24 in Ottawa at age 74. He had had a history of heart trouble dating back to 1982, including two heart attacks in recent years. A funeral was to be held in Montreal Nov. 30. Judges and lawyers told *The Lawyers Weekly* Lamer will be remembered for his seminal Charter jurisprudence, as well as his leadership in promoting judicial independence here and abroad.

"A great defender of rights and liberties... his most enduring legacy will be his advocacy for individual rights under the Charter," Canadian Bar Association president Bernard Amyot said.

Pointing to groundbreaking Lamer judgments that bolstered the rights of aboriginal people, the criminally accused, and the mentally disabled, Montreal Liberal MP and ex-justice minister Irwin Cotler said his friend of more than 30 years had "a transformative impact, not only on the law, but on people's lives."

Retired Supreme Court Justice Frank Iacobucci, who spent nine years on the court with Lamer, remembered his friend and colleague as "a wonderful raconteur who loved to laugh, and certainly enjoyed making other people laugh."

Iacobucci called Lamer's criminal law and Charter jurisprudence "outstanding... He had a wonderful understanding of the balance between societal interests and individual rights and freedoms. In my view there was no one better in that respect," said Iacobucci. "We owe him a lot."

In an exclusive interview in 2002, Lamer said his two decades at the high court, including 10 years as chief justice, were probably the most arduous in that institution's history. "I arrived just a few months before [the Reference on] Patriation [of the constitution] and left a few months after [the Reference on Quebec] Secession, with the Charter in the middle," he recalled. "It was an upheaval of our whole concepts of rapport between the judiciary, the legislative, the executive."



**Mourners pay their respects at the coffin of the 16th Chief Justice of Canada, Antonio Lamer, in the Supreme Court Nov. 28 in Ottawa. Philippe Landreville for The Supreme Court of Canada ©2007**  
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Lamer took a robust approach to Charter rights. “The document is full of words that have to be defined like ‘liberty’ and ‘security of the person’ and ‘equality’ and ‘freedom of the press,’” he told *The Lawyers Weekly*. “I figured that it should be given a life, and not stifled, and it should develop and grow. There is always s. 1 to curtail it, and all the state has to prove, on a balance of probabilities, is that the curtailment to the right was demonstrably justified in a free and democratic society.”

Legal landmarks he penned included *Re B.C. Motor Vehicle Reference* (minimum mens rea), *Delgamuukw v. B.C.* (aboriginal title) and *Re Provincial Court Judges* (judicial independence).

“As a judge, I think that my most satisfying moment was when I got a majority in *Re B.C. Motor Vehicle Act* [which ruled that the Charter empowered courts to review the substantive policy content of laws] because we had come to a crossroads,” Lamer explained. “If you went that way, you went towards the Lavell approach [that emasculated] the Canadian Bill of Rights, and if you went the other way, well you took a Laskin [*R. v. Drybones*] approach. I think *B.C. Motor Vehicle Act* announced that a majority of the court, at least, would take a post-modernist approach – a contextual approach – to interpreting the Charter and applying it, while if we had gone the other way, it would have been more of a black-letter-law approach to the Charter. I think to me that is the most satisfying moment on the court.”

Lamer said the *Charter’s* most salutary effect was its promotion of “a human rights culture.” “People don’t just lie down and say, ‘I can’t fight city hall’. The *Charter* has alerted people to the fact that people are more important than the state,” he said.

As chief justice, Lamer counted the Supreme Court’s unanimous judgment on the volatile *Quebec Secession Reference* as a high point. “Unanimity on an issue like that is not necessarily something that comes easily,” he observed. “I have heard criticisms of it since, but nobody says that the court failed the country at that moment.”

As Canada’s top judge, Lamer’s achievements included modernizing the backlogged SCC and turning it into a model of speed and efficiency, forging strong and supportive links with the judiciary in emerging democracies, and convincing reluctant members of the nation’s council of chief justices to agree to devise written ethical guidelines for federal judges.

The only child of a French-Canadian lawyer and a half-Irish mother, Lamer grew up in a working class neighbourhood of east Montreal. He earned his civil law degree from the University of Montreal, and was called to the Quebec Bar in 1957. As a founding member of Cutler, Lamer, Bellemare and Associates, which eventually grew to more than 30 lawyers including such prominent barristers as Quebec Court of Appeal Chief Justice Michel Robert, Lamer earned a reputation as one of Montreal’s best criminal lawyers. He founded the Association of Defence Counsel in Quebec and helped set up Montreal’s legal aid program, which was totally funded in those days by the Bar. At age 36, he became one of the youngest judges in the country. After two years on the Quebec Superior Court, Lamer took a seven-year leave of absence to act as vice-chair, and then chair, of the Law Reform Commission of Canada which he helped create. That job paved the way to his 1978 appointment to the Quebec Court of Appeal and to the Supreme Court of Canada in 1980.

After stepping down from the Supreme Court, Lamer joined Stikeman Elliott in Ottawa where he gave advice, did pro bono work, and led an independent inquiry into wrongful convictions and police conduct in Newfoundland.

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