



John Humphrey Centre

*for Peace and Human Rights*

*pour la paix et les droits de la personne*



Youth guide to the

# Canadian Charter of Rights and Freedoms

# Acknowledgments

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# Introduction

Professor Ron Cheffins has written that a nation's constitution reflects the soul of the nation, mirroring the values that a country holds dear. In Canada, that soul is embodied in the content of the Canadian constitution – a fabric woven into the basic documents that embrace the Canadian landscape, the Canadian identity. Since Confederation, we have embraced the principles of democracy, rule of law, federalism, the independence of the judiciary and the protection of minorities.

More recently, however, with the entrenchment of the *Canadian Charter of Rights and Freedoms* in the Canadian constitution in 1982, we have formally recognized other values and principles that also reflect the national soul. They include fundamental freedoms, such as the freedoms of religion and expression, democratic rights (including the right to vote), and mobility rights. They also include legal rights in connection with those persons in contact with the criminal justice system, equality rights emphasizing the egalitarian nature of Canadian society, linguistic and language of education rights, aboriginal rights and multicultural rights. While promulgating these rights, the constitution also remains faithful to the principle of parliamentary sovereignty.

This Youth Guide to the Charter is a product of the belief shared by its sponsors, the *John Humphrey Centre for Peace and Human Rights* and the *Department of Canadian Heritage*, that informed Canadian youth will strive to ensure that constitutional values are more than abstract principles. Rather, these values serve to define the Canadian experience and Canadian life enjoyed by all of us. With that objective in mind, it is hoped that this Youth Guide will assist youth in the acquisition of a greater understanding and appreciation of the heritage that belongs to all generations of Canadians.

Gerald L. Gall, O.C.

President, *John Humphrey Centre for Peace and Human Rights*





Not Losing Passport

Carrying Passport

Equality Under Law

Religion

Language Rights

Respect Religious Choices of Others

Language Choices of

Being Positive Representative Of Canada

Leaving

Right To

anywhere

# It is about you!

## **An Overview of the *Canadian Charter of Rights and Freedoms***

### ***When did the Canadian Charter of Rights and Freedoms come into effect?***

April 17, 1982 was the day the *Canadian Charter of Rights and Freedoms* came into effect, and more than 100 years of hard fought rights and freedoms fell under the protection of Canada's supreme law – the Constitution. On this date, a majority of Canada's elected representatives felt it was important to include a list of our rights and freedoms that could not be easily infringed or denied. As a result of Canada's new Constitution, we, as Canadians, are free to think what we want, say what we want and make for ourselves the lives that we want. On this date, all but one of the thirty-four sections of the *Charter* were offered to protect individual rights and freedoms and to reinforce the values and beliefs upon which this country was built. One section, section 15, took effect on April 17, 1985.

### ***What is the purpose of the Charter?***

The purpose of the *Charter* is to limit government. The Supreme Court has stated that constitutional protections must, by their nature, be expressed in general terms. Once a protection has been enacted, it becomes the role of the courts, particularly the Supreme Court of Canada, to interpret, modify and extend this protection.

### **What is a right?**

A right is something that has been granted by statute (an Act passed by a governing body) or regulation.

### **What is freedom?**

Freedom is the power to act without unfair interference by an individual or the state. Freedom is neither created by law nor is it absolute. It can be limited by statute if the limitation is found by the courts to be justifiable (Section 1).

### **What is a civil liberty?**

A civil liberty is a right that an individual may exercise without interference by the state (i.e. without interference by any level of government).

### **What is the rule of law?**

The rule of law is the idea that neither the government nor the individual is above the law.

### **When does discrimination occur?**

Discrimination occurs when, for example, a person suffers disadvantages or is denied opportunities available to other members of society because of a personal characteristic such as age, race or religion.

### **What does the *Charter* describe?**

The Charter describes important rights and freedoms that belong to all Canadians. These rights cannot be taken away by anyone, not even federal and provincial governments. For example, we are all allowed to follow any religion we choose, we can meet and talk with anyone we want, we are entitled to feel safe, we get to vote for the people that represent us in government and we are all, regardless of race, gender or age, entitled to equal treatment. These are all tremendously important aspects of Canadian life and we are fortunate to live in a country which values and protects these rights and freedoms.

### **Is the *Charter* the same as the Canadian Constitution?**

Not entirely. The *Charter* is one part of the Canadian Constitution. The Constitution sets out rules explaining how our country works and is the supreme law of Canada. Every law made in Canada must follow these rules and if it does not, it may not be valid. Since the *Charter* is part of the Constitution, any law that limits the rights and freedoms it describes may not be permitted.

### **Can the government take away my *Charter* rights?**

Yes. Section 1 of the *Charter* says that even though a law may take away rights and freedoms, it may still be allowed so long as there is good reason for allowing such a law.

Section 33 of the *Charter* (the “notwithstanding” clause) allows the federal government and any provincial or territorial government to say in any law they pass that the laws are to operate even though they go against many of the rights and freedoms set out in the *Charter* in sections 2 and 7 to 15. This clause is not used very often and laws that limit *Charter* rights under this clause only last five years. This section cannot be used to overrule certain rights, such as the right to vote, minority language education rights and mobility rights.

Governments can also make changes to the *Charter* by adding or taking away some of the described rights and freedoms. However, because the rights included in the *Charter* are of such great significance, the rules for making such changes require that the federal Parliament (the highest national law-making body in Canada) and seven of the ten provincial legislatures agree to the change. As well, the population of those seven provinces must make up at least fifty per cent of the total population of Canada.

### **Who has *Charter* rights?**

Most of the rights and freedoms described in the *Charter* belong to any person in Canada, whether a Canadian citizen, a permanent resident or a newcomer. Some of the rights are given only to Canadian citizens such as the right to vote (section 3) and the right to enter, remain in and leave Canada (section 6).

### **Are there more rights than those described in the *Charter*?**

Yes. The rights and freedoms described in the *Charter* are those that must exist in a free and democratic society. They are given the best protection possible by being written into the Constitution. There are, however, other laws made by federal, provincial and territorial governments that protect rights. For example, laws that protect against refusing to hire a person for a job because of religion or race, laws that protect the environment, and laws that give rights to people accused of committing a crime.

### **Was there any protection for the rights of Canadians before the *Charter*?**

Yes. Prior to the *Charter*, Canadians relied on a mixture of federal and provincial statutes, common or judge-made law, and customs and conventions to define and protect their rights and freedoms. Statutes, however, may be amended by a simple majority vote of a legislature. For example, the *Canadian Bill of Rights*, 1960 guarantees many of the same rights and freedoms outlined in the *Charter*. A significant difference, however, between the two is that as an ordinary act of Parliament, the *Canadian Bill of Rights* can be changed at the will of a Parliamentary majority. As well, the *Charter* applies to both federal and provincial governments while the *Bill of Rights* only applies to areas which fall within the control of the federal government. Therefore, even though there was protection offered before the *Charter*, Canadian's rights and freedoms have been given far greater protection and security since the *Charter* came into effect.

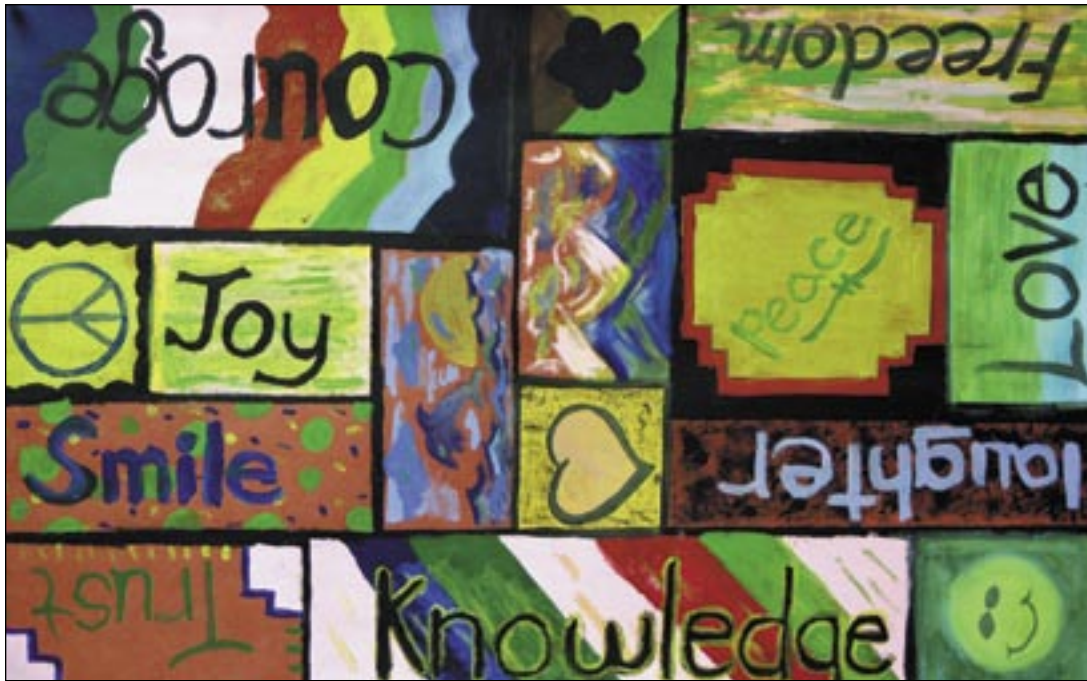
### **Does the *Charter* replace other sources of rights and freedoms, such as our tradition of civil liberties and human rights codes?**

No. Other sources of rights and freedoms, such as those contained in our tradition of civil liberties and human rights codes, remain in effect and of importance along with the *Charter*.

### **What can I do if my *Charter* rights have been denied?**

The *Charter* provides for three kinds of actions to persons whose rights have been denied. These actions allow persons to obtain legal 'remedies'. First, the *Charter*





states that a person who feels his or her rights have been denied can ask a court for a remedy that is “appropriate and just in the circumstances”. For example, a court may stop proceedings against a person charged with an offence if his or her right to a trial within a reasonable time has been denied.

(1) Anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.  
*Section 24*

A second remedy is available when persons carrying out investigations for the government (for example, police officers) violate an individual’s *Charter* rights. This may happen, for instance, when they search for evidence on private property and violate a person’s right to privacy. In this situation, the person can ask a court to order that the evidence not be used against him or her in a trial.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this *Charter*, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.  
*Section 24*

Finally, if a court finds that a law violates Charter rights, it can rule that the law has no force. Section 52 of our Constitution states that “the Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect”. This section makes it clear that the Charter, as part of the Constitution, is the supreme law of Canada and that all laws in Canada must meet the terms of the Charter to be valid. This clear statement that the Constitution is supreme over every law gives the courts great discretion.









# The Charter

## The Contents of the *Canadian Charter of Rights and Freedoms*

### Guarantee of Rights and Freedoms

#### *Section 1*

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be reasonably justified in a free and democratic society.

We, in Canada, have laws that give rights and freedoms we feel all Canadians are entitled to possess. Canada is a multicultural country and our laws protect and preserve the diversity of our races, faiths and nationalities. Along with our rights and freedoms come responsibilities.

The *Charter* applies to all governments, federal, provincial and territorial.

The following are some of the kinds of protections it offers:

- fundamental freedoms;
- democratic rights;
- the right to live and seek employment anywhere in Canada;
- legal rights: the right to life, liberty and personal security;
- equality for all;
- the official languages of Canada;
- minority languages of Canada;

- Canada’s multicultural heritage; and
- Aboriginal peoples’ rights.

In Canada even though great value is placed on civil and human rights, individual rights and freedoms are not considered absolute. We cannot be allowed to assert our own rights if doing so would take away another person’s rights. There are certain basic rights that are considered essential to a free and democratic nation but even these rights have some limits that can be imposed by government. The limits may be placed on certain rights to ensure other rights are also protected or to maintain Canadian moral values. For example, though we have freedom of speech, Parliament or legislatures have specified various limits to that freedom, such as the censorship of movies or not being allowed to slander another person (i.e., saying something that may unfairly destroy another person’s reputation).

Section 1 has become known as the “limitations” or the “reasonable limits” clause. It provides for laws that put “reasonable limits” on rights and freedoms, so long as the limits can be “demonstrably justified”. In almost every case where rights and freedoms have been violated, the court must consider section 1. In 1986 the Supreme Court of Canada explained what limit would be considered reasonable in a case called *Regina v. Oakes*:

To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures responsible for a limit on a Charter right or freedom are designed to serve, must be “of sufficient importance to warrant overriding a constitutionally protected right or freedom”. It is necessary, at a minimum, that an objective [or purpose] relates to concerns which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important.

Secondly, once a sufficiently significant objective is recognized, then the party invoking s. 1 must show that the means chosen are reasonable and demonstrably justified... First, the measures adopted

must be carefully designed to achieve the objective in questions...  
Second, the means, even if rationally connected to the objective in this first sense, should impair 'as little as possible' the right or freedom in question... Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of 'sufficient importance' ..."

This test is referred to as the "proportionality test" and is used to decide whether legislation that violates rights or freedoms can be justified. Governmental limitations on individual rights will be permitted so long as they:

- achieve an important social goal in a reasonable manner;
- obstruct individual rights as little as possible; and
- have an outcome that is not unequal to their purpose.

## Fundamental Freedoms

### *Section 2*

Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

Section 2 of the *Charter* grants Canadians the freedom to believe what they choose, to express their values and to form associations.

### **Freedom of Conscience and Religion**

Freedom of conscience and religion means that all Canadians are given the choice of whether they wish to hold religious beliefs, practice their beliefs or express their beliefs all without fear of punishment. Problems that arise in Canada that consider freedom of conscience and religion tend to be about laws that may place certain people at a disadvantage because of their religious beliefs. Examples

include the opening of businesses on Sundays, the education of children according to the religious beliefs of their parents and discrimination on the basis of religion by requiring people of certain faiths to work on their day of worship. In 1985 the Supreme Court of Canada carefully considered religious freedom in the case called *R. v. Big M Drug Mart Ltd.* and stated that freedom of religion extends to even subtle forms of discrimination.

### **Freedom of Thought, Belief, Opinion, and Expression**

This clause in the *Charter* applies to all forms of expression, including speech, art, film, and dance and written works. In 1989, the Supreme Court made clear in the case of *Irwin Toy Ltd. v. Quebec (Attorney General)* that even ideas many feel are wrong or with which they disagree still need *Charter* protection. This does not include every communication however, and some limits have been placed on freedom of expression. For example, laws against pornography, hate propaganda and slander are reasonable limits on freedom of expression because such limits prevent harm to individuals or groups.

### **Freedom of Peaceful Assembly and Freedom of Association**

This clause deals with the freedom of all Canadians to join with people of like minds to peacefully assemble, picket, or demonstrate. This includes the right of people to meet for any reason connected with government and includes meeting to voice disapproval over government policies. The word “peaceful” was included to make sure demonstrations that get out of hand are not protected. Furthermore, people are not allowed to assemble when their purpose is to cause fear in others or to disturb the peace.

These freedoms are set out in the *Charter* to make certain that Canadians are free to create and to express their ideas, gather to discuss them and communicate them widely to other people. These activities are basic forms of individual liberty. They are also important to the success of a free and democratic society like Canada. In a democracy, people must be free to discuss matters of public policy, criticize governments and offer their own solutions to community problems.



## Democratic Rights

Sections 3, 4 and 5 of the *Charter* contain rules that guarantee Canadians a democratic government (i.e. a nation governed according to “rule by the people”).

### *Section 3*

Every citizen of Canada has the right to vote in an election of members of the House of Commons or of the legislative assembly and to be qualified for membership therein.

Before 1982, no guarantee of voting rights existed in the *Canadian Constitution*. It gives Canadian citizens the right to vote in federal, provincial, municipal or territorial elections, along with the right to run for public office themselves.

The right to vote in public elections is often called “the franchise”. There are some restrictions placed on who may vote having to do with mental ability, age (persons 18 years of age or older), and residency. For example, each province requires a citizen to reside (or live) in that province for either 6 or 12 months before being able to vote. In 2002 the Supreme Court gave inmates in federal institutions the right to vote in federal elections in a case called *Sauvé v. Canada*.

### *Section 4*

- (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of writs at a general election of its members.
- (2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

This section limits the length of time during which a Parliament or legislative assembly can continue in power. Only in extraordinary circumstances, such as war or national emergency, may a government be allowed to stay in office for a period longer than five years.

### Section 5

There shall be a sitting of Parliament and of each legislature at least once every twelve months.

This clause was intended to make government explain its actions to the people. Section 5 of the *Charter* makes it clear that Parliament and the legislative assemblies must hold a session at least once a year. This rule makes certain that elected members and the public have a chance to question government policies on a regular basis.

## Mobility Rights

### Section 6

- (1) Every citizen of Canada has the right to enter, remain in and leave Canada.
- (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
  - (a) to move to and take up residence in any province; and
  - (b) to pursue the gaining of a livelihood in any province.
- (3) The rights specified in subsection (2) are subject to
  - (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
  - (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.
- (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

The rights to enter, remain in or leave the country are fundamental rights of a free democracy and are guaranteed, as are the rights to move freely, take up residence, and work anywhere within the country. It is important to note that subsection (1) refers to every citizen of Canada, while subsection (2) refers to every citizen of Canada and every person who has the status of a permanent resident

(i.e., landed immigrants who have been allowed to enter Canada to establish permanent residence). There is a limit on the right to move from place to place and the freedom to come and go as one pleases placed on certain individuals. For example, extradition laws state that people in Canada who face criminal charges or punishment in another country may be ordered to return to that country.

Basically, every province must open its doors to any Canadian to allow him or her to pursue a livelihood. Mobility rights (the right to move around within or leave the country) allow for a free flow of labour throughout Canada. Some provinces voiced concerns that unrestricted mobility rights would result in a rush of people to those provinces where social services were most generous or where the economy was particularly strong, causing a strain on the existing social services (such as hospitals). Subsection (3) makes it clear that provinces may decide to give social benefits, such as welfare, only to persons who have lived in the province for a certain period of time.

Subsection (4) allows each province to give preference to local persons and refuse people from other provinces entry for the purpose of getting a job if the employment rate in the province is below that for the whole country. Even though this might be considered a form of discrimination, the government is allowed to make such laws or create programs that favour its own citizens. This is an example of what is called employment equity.

## **Legal Rights**

Sections 7 to 14 explain rights that protect us in our dealings with the justice system. They make certain that people who are involved in legal proceedings are treated fairly, especially those charged with a criminal offence.

### *Section 7*

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 7 guarantees all Canadians life, liberty and personal security. It clearly guarantees the right to security of the person but not the right to property. The courts may rule a law constitutionally valid (i.e., the law follows the rules set out in the Constitution) even though it denies life, liberty, or security of person so long as the denial of these rights is in keeping with the principles of fundamental justice. As an example of the effect of section 7, the Supreme Court of Canada has ruled that individuals may not be sent to prison unless there is some proof that they intended to commit an offense. To send someone to prison who did not intend to offend would go against the principles of fundamental justice.

The courts have defined the principles of fundamental justice by deciding what is fair and right in Canadian society. Section 7 recognizes that rights granted under this section are not absolute and can be removed by the state so long as doing so does not violate “principles of fundamental justice”. Fundamental justice includes a belief in dignity, the worth of the individual and the rule of law.

Many cases that are concerned with this section of the *Charter* occur in the area of criminal law, where an accused person clearly faces the risk that, if convicted, his or her liberty will be lost. In these kinds of cases, this section ensures protections such as the right against self-incrimination and the right to make a full answer and defence in a fair trial. Without section 7, the authorities could put a person in jail or take a person’s life without a fair trial. The protection offered by this provision applies to everyone in Canada, including visitors, foreign students and permanent residents.

### *Section 8*

Everyone has the right to be secure against unreasonable search or seizure.

Section 8 offers protection for individual integrity. Canadians are entitled to a reasonable expectation of privacy. This means that people who are acting on behalf of a government, such as police officers, must be fair and reasonable when carrying out their duties. They cannot enter private property (for example, a person’s home) or take things from an individual unless they can first show that they have good reason for doing so. In most cases, they must first get a search



warrant from a judge before they can enter private property to look for evidence or take something away from an individual.

### *Section 9*

Everyone has the right not to be arbitrarily detained or imprisoned.

Section 9 offers protection for an individual's right not to be taken into custody and detained (to keep someone in custody) by someone acting on behalf of government, such as police officers, without good reason for doing so. For example, a police officer must have reasonable grounds (i.e., some evidence to support the police officer's concerns) for detaining a person. It is important to note, however, that laws allowing officers to stop drivers for breath tests (i.e., tests that show whether the driver of a vehicle has been drinking alcohol) are reasonable and do not go against the *Charter*.

### *Section 10*

Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefore;
- (b) to retain and instruct counsel without delay and to be informed of that right;  
and
- (c) to have the validity of the detention determined by way of habeas corpus  
and to be released if the detention is unlawful.

Under Canadian law, police officers must be able to justify their actions. A person who has been detained by police is in a vulnerable position and needs the help of someone who knows and understands the law. The courts have been careful to make certain everyone who has been accused of committing a crime has had the opportunity to seek legal advice.

Section 10 offers a guarantee that a person who is arrested or detained is given the chance to challenge the fairness of the arrest (i.e., the arrest was done within the rules set out in law). The reason for the arrest must be made clear to the individual immediately. The police must also tell the person accused of

committing the crime that he or she has the right to speak with a lawyer in order to get advice about the situation. As well, the police must tell the accused what legal aid services are available in the area that provide legal counsel to people accused of committing a crime that may have no way of paying for legal services. Finally, under this section, people accused of committing a crime have the right to ask a judge to decide whether their arrest was legal and, if it was not, to order their release.

### *Section 11*

Any person charged with an offence has the right

- (a) to be informed without unreasonable delay of the specific offence;
- (b) to be tried within a reasonable time;
- (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (e) not to be denied reasonable bail without just cause;
- (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Some have said that “justice delayed is justice denied”. Section 11 sets out several important rules and time requirements that protect anyone charged with an

offence under federal or provincial law. If the right to be tried within a reasonable time did not exist, the accused could be held for a very long period of time even though he or she had not yet been found guilty.

Subsection (a) states that a person charged with an offence must be informed immediately of the exact nature of the charges. This allows the accused to determine whether the arrest was lawful and, if so, to allow the accused or his or her lawyer to prepare a defence. Subsection (b) states that the trial of the accused must take place within a reasonable time. Subsection (c) says a person charged with an offence cannot be made to testify (give evidence as a witness). This is the right against self-incrimination.

Subsection (d) explains that any person charged with an offence is presumed innocent unless the prosecution (the lawyer who represents the state in a criminal action) can show that he or she is guilty beyond a reasonable doubt. This 'beyond a reasonable doubt' standard is very high and requires a judge or a jury in a criminal trial to find the accused innocent unless guilt is so obviously proven that there can be no 'reasonable' doubt as to whether the accused committed the crime. The trial must be carried out in a fair manner before a court which is neutral and independent.

A person accused of committing a crime is entitled to bail (money or other security provided by the accused to make certain the accused will appear at every stage of the criminal proceedings). Subsection (e) says that no person charged with committing a crime may be denied bail without just cause. "Just cause" may be found if it is believed the accused will fail to return to court or will be a danger to society if he or she is released from custody. As well, an accused is entitled to trial by jury when a finding of guilt for the crime could result in a maximum punishment of five years or more.

Subsection (g) says that if the activity for which the accused has been arrested was not considered a crime according to the law at the time the activity took place, the accused cannot be charged with a crime. Also, subsection (h) points out that if a person is tried for a crime and found to be innocent, that person cannot

be tried on the same charge again. As well, if the person was found guilty and punished for the crime, he or she can never be tried or punished for that crime again.

Subsection (i) says that if there has been a change in the punishment between the time the crime was committed and the time the punishment (sentence) was assigned, the accused will get the benefit of the lesser punishment.

### *Section 12*

Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Section 12 protects people from punishment that is too harsh for the crime committed. Some laws require minimum jail sentences (the least amount of time a person must serve in prison) for specific offences. These requirements have been challenged under section 12 and some challenges have been successful. For example, in 1987, the Supreme Court stated in the case of *The Queen v. Smith* that a law creating a minimum sentence of seven years' imprisonment for the crime of importing narcotics into Canada, regardless of the quantity involved, imposed "cruel and unusual" punishment. While the Court did not settle on an exact definition of "cruel and unusual", a majority of the judges found that imposing a minimum sentence of seven years would, in many cases, be too severe and unfair.

Some challenges to minimum sentences, however, have not been successful. For example, in 1990 the Supreme Court said in the case of *The Queen v. Luxton* that it was acceptable to assign mandatory life imprisonment without eligibility for parole for twenty-five years for first degree murder (unlawful killing that is planned and deliberate or where the victim is a police officer or prison employee). As well, in 2001 the Supreme Court upheld a law that states that a person found guilty of second degree murder (all murder that does not come within the definition of first degree murder) is not eligible for parole for 10 years.

### *Section 13*

A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

This section protects witnesses who give evidence in court from having that testimony used against them at a later date. The only time evidence a person gives at another person's trial may be used against that person is if that person lied while under oath or perjured him or herself. In such instances, the original testimony can be used against a person at his or her trial for perjury.

### *Section 14*

A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

People who do not understand the proceedings of a trial because they do not understand or speak the language being spoken in court or because they are deaf may request the assistance of an interpreter. The underlying idea behind section 14 is that any person charged with a criminal offence has the right to hear the case against him or her and be given a fair chance to provide a proper defence.

## **Equality Rights**

### *Section 15*

- (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Section 15 came into effect on April 17, 1985, three years after the rest of the *Charter*. This delay gave governments time to bring their laws into line with the equality rights of section 15.

This section of the *Charter* makes it clear that every person in Canada – regardless of race, religion, national or ethnic origin, colour, sex, age or physical or mental disability – is to be considered equal. This means that governments must not discriminate for any of these reasons in their laws or programs. It is important to realize that these are not the only characteristics that are protected under this equality section. It is possible to claim discrimination on the basis of other characteristics not listed, such as sexual orientation.

The phrase “every individual,” which starts off this section, makes clear the intention of the drafters of the Charter is to exclude corporations from this protection. Equality “before the law” ensures every person has access to the courts. Equality “under the law” makes certain the legislation applies equally to all Canadians. There are exceptions to equality rights. For example, age requirements for drinking or for driving, retirement and pension have all been considered reasonable limitations on rights in a free and democratic society.

Section 15 says that every individual is entitled to equality without discrimination. In 1989, the Supreme Court considered a very important case on equality rights called *Andrews v. Law Society of British Columbia*. In this case, the Supreme Court stated that “the difference in treatment between individuals under the law will not necessarily result in inequality and, as well, the identical treatment may frequently produce serious inequality . . . the main consideration must be the impact of the law on the individual or group concerned”. In 1999 the Supreme Court went on to say that a disadvantaged person or group must also show that a discriminatory law has resulted in a loss to human dignity in a case called *Law v. Canada*. The Supreme Court has said that discrimination occurs when a person or group, for example, because of a personal characteristic such as age, sex or race, is denied an opportunity that exists for other members of society. This section is meant to protect those individuals or groups who suffer social, political, and legal disadvantage in Canada.

Subsection (2) recognizes the need for a policy that gives disadvantaged groups special help so that they will be able to obtain equality with other people; this is known as affirmative action. An example of an affirmative action program that the Canadian government might adopt is a hiring policy which involves setting aside a certain number of places for women, Aboriginal peoples, visible minorities, or those with mental or physical disabilities.

## Official Languages of Canada

Sections 16 to 22 outline the status of English and French as official languages in Canada. These sections establish that Canadians have the right to use either language when communicating with or receiving services from federal government offices, so long as there is enough demand for such a service. These provisions cannot be overridden by the “notwithstanding clause” in section 33.

### *Section 16*

- (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.
- (2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.
- (3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

Subsection (1) explains that both English and French are the official languages of Canada and that these languages are given equal status in all institutions of Parliament and government of Canada. Either official language may be used in Parliament, in any federal court and at any location served by the federal civil service. This right also exists in the legislature and courts of New Brunswick and at any location served by that province’s civil service.



New Brunswick is officially a bilingual province and as such, both languages are given equal status in the institutions of the legislature and government of that province.

#### *Section 16.1*

- (1) The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.
- (2) The role of the legislature and government of New Brunswick to reserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.

This section was added to the *Charter* in 1993. It explains that the English and French speaking communities of New Brunswick have equal rights, and that the government of New Brunswick has a duty to protect and promote those rights.

Sections 17, 18, 19 and 20 all deal with the equality of the French and English languages in particular situations.

#### *Section 17*

- (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.
- (2) Everyone has the right to use English or French in any debates and other proceedings of the legislatures of New Brunswick.

Every Canadian has the right to use English or French in debates and other proceedings of Parliament and the New Brunswick legislature. For example, a witness before a Parliamentary board may use either official language.

### *Section 18*

- (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.
- (2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

This section guarantees that federal laws and those of the New Brunswick legislature must be published in both languages and states that both versions possess equal legal status.

### *Section 19*

- (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.
- (2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

This section protects the right to use either French or English in pleadings of federal courts, including the Supreme Court of Canada, as well as in the courts of New Brunswick.

### *Section 20*

- (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where
  - (a) there is a significant demand for communications with and services from that office in such language; or
  - (b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

- (2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

Section 20 states that we have the right to communicate with the federal government in either official language. As well, the government must provide services in either French or English to allow an individual to communicate with any Canadian government office where there is “significant demand for communication with and services from that office” if it would be reasonable to expect communication to be available in both languages. This section also allows an individual in New Brunswick to communicate with the New Brunswick government offices in either English or French.

These official language rights apply to the federal government and to the provincial government of New Brunswick.

#### *Section 21*

Nothing in section 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

This section protects language rights that already exist in other parts of the Constitution. For example, the Constitution gives the people of Quebec and Manitoba the right to use either English or French in the legislatures and before the courts of those provinces.

## Section 22

Nothing in section 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this *Charter* with respect to any language that is not English or French.

Section 22 allows governments to offer services in languages other than French or English.

## Minority Language Educational Rights

### Section 23

- (1) Citizens of Canada
  - (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
  - (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.
- (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.
- (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province
  - (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
  - (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

The language rights contained in section 23 of the *Charter* only apply to Canadian citizens. This section requires provincial governments to provide education to Canadian citizens in the official language (i.e., French or English) of their choice where there is sufficient number of eligible children to justify the service. The term “sufficient number” is not defined, but rather, it is a local matter whether sufficient numbers exist to provide education to minority groups.

Canadian citizens have the right to have their children educated in either French or English so long as at least one of the following three conditions is met:

1. The first language learned and still understood is the one in which instruction is being requested. For instance, a child living outside of Quebec is entitled to receive French instruction so long as French is that child’s mother tongue.
2. The language that the parents are requesting for their child is the one in which either parent was educated. For example, if either parent has been educated in French, the parents have the right to have their children educated in French. This stipulation applies in all provinces and territories.
3. The language the parents are requesting for their child is the same one in which another child in the family has received or is receiving education. For example, if one child is educated in English, all children in the family are entitled to receive education in English. This stipulation applies throughout Canada.

In all cases, the right to receive an education in a minority language applies only when there is a sufficient number of eligible children to justify providing the necessary facility. Where such numbers do exist, the province must provide education in the minority language out of public funds. As well, these rights apply to both primary and secondary education. The term “sufficient number” is not defined, but rather, it is a local matter whether sufficient numbers exist to provide education to official language minority groups.



## Enforcement

### Section 24

- (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
- (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Subsection (1) states that any individual who believes his or her rights or freedoms have been violated by any level of government can go to court and ask for a remedy (anything a court can do for a person who has had a right or freedom denied). That person must then show that a *Charter* right or freedom has been denied. If a judge decides that a particular law is not in keeping with the *Charter*, he or she can strike down the law (i.e., say the law cannot apply because it violates a right or freedom that is protected by the *Charter*) or provide another remedy that is appropriate in the circumstances.

Subsection (2) states that judges should not accept evidence that was obtained in a manner that violates Charter rights and freedoms if such evidence “would bring the administration of justice into disrepute”. That is, the judge must determine if the admission of the evidence would cause the public to lose trust and belief in our system of justice. For example, if police officers get evidence through a search for which there were no reasonable grounds on which to base the search, then a judge may order that evidence not be used in court.

## General

### Section 25

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including



- (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

The rights and freedoms of the Aboriginal peoples of Canada (which include Indian, Inuit and Métis groups) are recognized in both section 25 of the *Charter* and in section 35 of the *Constitution Act, 1982*. The purpose of these sections is to protect the culture, customs, traditions and languages of Aboriginal peoples and to recognize their unique status. The special status granted Aboriginal peoples is based on agreements between native people and the government under which native people gave up a large portion of their land.

Section 35 of the *Constitution Act, 1982*, guarantees the protection of “existing rights” of Aboriginal peoples of Canada. The limitations in section 1 of the *Charter* do not apply to these Aboriginal rights because section 35 is not part of the *Charter*.

Section 25 of the *Charter* says that no other *Charter* right may take away from or interfere with the rights of Aboriginal peoples. For example, where Aboriginal peoples are entitled to special benefits under treaties, other people who do not enjoy these same benefits cannot argue they have been denied the right to be treated equally under section 15 of the *Charter*.

#### *Section 26*

The guarantee in this *Charter* of certain rights and freedoms shall not be construed as denying the existence of any other rights and freedoms that exist in Canada.

The *Charter* is not the only source for protection of individual rights offered Canadians. Parliament and the legislatures can create laws that protect rights beyond those listed in the *Charter*.

### Section 27

This *Charter* shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

The fact that Canada is home to many cultural groups is a source of great pride for Canadians. Section 27 of the *Charter* recognizes the value this diversity offers all Canadians and makes certain that the courts and governments interpret the *Charter* in a way that promotes our multicultural heritage.

### Section 28

Notwithstanding anything in this *Charter*, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Section 28 offers the guarantee that both women and men are to receive equal protection under the *Charter*. This principle coincides with the equality provisions outlined in section 15.

### Section 29

Nothing in this *Charter* abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

The rights of religious schools to choose students and teachers based on their religion are protected under section 29 of the *Charter*. This section guarantees the *Charter* does not affect the creation or operation of religious schools provided for under the Constitution. This means that section 2 (freedom of expression) and section 15 (equality rights) do not take away from the right to create religious or denominational schools given to people under the Constitution Act, 1867.

### Section 30

A reference in this *Charter* to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

This section explains that the *Charter* applies equally to all provinces and territories within Canada.

### Section 31

Nothing in this *Charter* extends the legislative powers of any body or authority.

The powers given to the federal and provincial governments are set out in the Constitution Act, 1867. This section emphasizes that nothing in the *Charter* changes the sharing of responsibilities or the distribution of powers between the provincial and federal governments.

## Application of *Charter*

### Section 32

- (1) This Charter applies
  - (a) to the Parliament and government of Canada in respect of all matter within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
  - (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.
- (2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

Subsection (1) emphasizes the fact that the *Charter* only applies to governments. It does not apply to actions of private individuals, businesses or other organizations.

Subsection (2) permitted governments a three year delay in order to allow them time to bring their laws into line with the equality rights of section 15. This meant that section 15 of the *Charter* came into effect on April 17, 1985.

### *Section 33*

- (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.
- (2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.
- (3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.
- (4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).
- (5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

Section 33 is sometimes called the “notwithstanding clause”. This section of the *Charter* says that the federal government and any provincial or territorial government is able to pass laws that take away some rights under the *Charter*. Under this provision, Parliament or the provincial legislatures are permitted to pass a law that is contrary to the fundamental rights and freedoms set out in sections 2 and 7 to 15. Although government is able to limit *Charter* rights under this section, it must provide clear reasons for limiting these rights and accept full responsibility for the consequence of its actions.

This clause is not used very often and laws that limit *Charter* rights under this section are allowed to operate for a period not greater than five years. After that time, if Parliament or the legislature involved wishes the law to be exempt from the *Charter*, that government must make a new declaration under this section.

This section cannot be used to overrule certain rights, however, such as the right to vote, minority language education rights and mobility rights.

## Citation

*Section 34*

This part may be cited as the *Canadian Charter of Rights and Freedoms*.

This means the official name of this part of the Constitution (contained in sections 1 to 33) is the *Canadian Charter of Rights and Freedoms*.

*Constitution Act, 1982, Section 52*

(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

This section of the *Constitution Act, 1982*, makes it clear that the *Charter*, as part of the Constitution, is the supreme law of Canada and that all laws in Canada must follow the terms of the *Charter* to be valid. This section gives courts the power to strike down any law (i.e., say a law is no longer in effect) that violates *Charter* rights.



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