

CONTENT

Topic 1: Overview of the *Canadian Charter of Rights and Freedoms*

Introduction

The *Canadian Charter of Rights and Freedoms* (*Charter*) was enacted in 1984 and it effectively replaced the *Bill of Rights* of 1960. Although many of the same rights and freedoms are protected by the *Charter* as by the *Bill of Rights*, the *Charter* enhances the protections provided to Canadians by increasing the number and the extent of our rights and freedoms. In addition, the *Charter* now forms part of our Constitution, making it difficult for future governments to decrease or limit the rights and freedoms we currently enjoy. It applies when the government tries to infringe upon the rights of Canadians.



Why was the *Charter* Enacted?

A look back: In the 1960's and 1970's, Canadian political issues often focused on discontent in Quebec over language and social policy and the concern in the western provinces over natural resources. By May 1980, it seemed apparent to Prime Minister Pierre Trudeau that a renewed effort for constitutional change was needed – Quebec had issued a referendum on sovereignty-association. Many in the province wanted Quebec to become a separate country.

To keep Quebec within Confederation, Prime Minister Trudeau assured the province its rights would be protected under a new constitutional arrangement. In October of 1980, without the support of eight provinces, Prime Minister Trudeau requested that the British government amend the *BNA Act* by adding an amending formula and a *Canadian Charter of Rights and Freedoms*. By November 1981, the Prime Minister had brought nine provinces on board. Quebec, still not happy, held out. In April of 1982, the amendments were signed off by Queen Elizabeth I and the constitution of Canada officially became our own. The process of “bringing home” the Constitution from Britain is called patriation.

The constitution of Canada contains the *Canada Act, 1982*, which has two parts: the *Constitution Act, 1982* and the *British North America Act, 1867* (later renamed the *Constitution Act, 1867*).

It is the *Constitution Act, 1982* that contains the *Canadian Charter of Rights and Freedoms* (*Charter*). Because the *Charter* is part of the constitution, no part of it can be changed by a federal or provincial government. The House of Commons, the Senate

and two thirds of the provinces representing over 50 percent of Canadians must approve any changes to the *Charter* or any part of the constitution.

What is the *Canadian Charter of Rights and Freedoms*?

It is a document that protects the interests of Canadians and provides a way to challenge perceived abuses of basic rights and freedoms through our court system.

The *Charter* falls into seven distinct categories: fundamental freedoms, democratic rights, language rights, mobility rights, minority language educational rights, legal rights and equality rights.

Section 25 protects the rights, customs, traditions, and land claim agreements of the Aboriginal peoples, which includes Indian, Inuit and Métis. This section, however, confers no new rights but does recognize Aboriginal Rights as distinct from the *Charter* provisions.

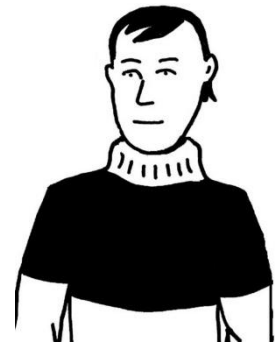
Definitions of a Right and a Freedom

A right is a legal, moral or social expectation that Canadians are entitled to from the government. For example, a person accused of committing an offence is entitled to a lawyer and a fair trial within a reasonable amount of time.

A freedom is a right to live your life without interference from the government unless you impinge on the freedoms of others.

Fundamental Freedoms: Section 2

- Freedom of conscience and religion
- Freedom of thought, belief and expression
- Freedom of peaceful assembly
- Freedom of association



Rights and freedoms are not without limits. Sometimes they have to be limited in order to protect the rights and freedoms of others. For example, prisoners have some of their rights and freedoms taken away because they have broken the law. An example occurred during the Stanley Cup Riots in downtown Vancouver in 2011. People gathered to celebrate (protected under "freedom of peaceful assembly") with other hockey fans (protected under "freedom of association"). However, when the assembly turned into a riot the freedoms of others (such as those of shopkeepers whose windows were broken) were compromised. The police had to arrest some rioters who were then charged with breaking the law. Freedoms are guaranteed only to such reasonable limits as can be justified in a free and democratic society.

Democratic Rights: Section 3

- Every Canadian citizen of age has the right to vote

- Every Canadian citizen of age has the right to run for public office
- Elections, both federal and provincial, must be called every five years
- Parliament and legislatures must sit at least once every 12 months

Right to Vote

Throughout much of history, people have been willing to fight and die for the right to vote in order to hold the government accountable for its actions. Today, countries voting in "free elections" for the first time (where an election has a true opponent) often invite representatives from other countries to oversee the administration of their polling booths in order to ensure that the votes are counted accurately. In Canada, our right to vote is a birthright or an automatic right when a person obtains citizenship status and becomes of age.

Mobility Rights: Section 3

Canadians are allowed to move freely within the country and they also have the right to enter and remain in Canada. Mobility rights affect those wanting to move from one province to another in order to seek employment. Wide mobility rights allow people to go anywhere to seek opportunities in their field of expertise. In some professions such as teaching and law, the applicant must meet the required standards of the province they are moving into in order to work there.

Some provinces had previously tried to limit these rights in order to guarantee that local residents would get available jobs first. They were concerned that people would move to provinces where there was easier access to social services, thereby increasing the tax burden on local residents.

Legal Rights: Section 7-14

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

The police must have reasonable grounds for searching you or your home and any evidence that is unlawfully obtained may be excluded at trial.

Everyone has the right not to be arbitrarily detained or imprisoned. A person must be held in custody on reasonable grounds and must be brought before a judge or justice as soon as possible or within 24 hours of detention to decide if the detention is lawful (*habeas corpus*).



Everyone has the right on arrest or detention to be informed promptly of the reasons and to consult counsel without delay and to be informed of that right. The police use the *Charter* warning to provide this information.

Everyone has the right to a fair trial within a reasonable time.

Everyone is innocent until proven guilty beyond a reasonable doubt. Crown counsel must present evidence to an unbiased judge or jury in an open court to prove the accused's guilt. The accused does not have to prove anything or call any evidence.



Everyone has the right to be tried by a judge and jury where the punishment for the offence charged is over five years imprisonment. This provision guarantees the right to be judged by one's peers and it keeps our justice system in touch with the opinions of ordinary people and with changing community standards.

Everyone has the right not to be compelled as a witness and to remain silent when accused of a crime.

Everyone has the right not to be subjected to any cruel and unusual treatment or punishment. The punishment should fit the crime and it should meet with the broad public standard of acceptability.

Equality Rights: Section 15

The *Charter* guarantees equality rights.

Every individual is equal before and under the law and has the right to equal protection and benefit of the law without discrimination based on race, nationality, or ethnic origin, color, religion, sex, age or mental or physical disability.



It may be surprising to note that this clause was one of the more controversial issues of the constitutional debate. Some provinces did not see the need for equality rights to be written into the *Charter*, since provincially human rights codes were seen as protection enough.

The phrase "before and under the law" is significant because it means that not only do people have equal access to the courts and to equal administration of justice (the "before" part) but that the laws that are discriminatory will be struck down by the courts (the "under" part).

Language Rights: Section 16-22

- Either English or French may be used in Parliament
- All documents of Parliament must be published in both languages
- Members of the public can communicate with the federal government in either language
- The federal government must provide services in English and French
- Either language can be used in court

Minority Language Education Rights: Section 23

Canadians have a right to have their children educated in French if:

- Their first language is French
- They received their own primary education in French
- They have a child already receiving education in French