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YOUR GUIDE TO THE

# **CANADIAN CHARTER** *of* **RIGHTS AND FREEDOMS**

**Including a complete text of the Charter,  
a discussion of its meaning and case examples.**



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a discussion of its meaning and case examples.

This booklet is published by the Human Rights Program of the Department of Canadian Heritage. Its aim is to increase understanding of the *Canadian Charter of Rights and Freedoms* and to heighten awareness of its importance in our daily lives.

**Note:** The discussion is for explanatory purposes only, and should not be taken as legal interpretation of the provisions of the Charter.

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©Minister of Public Works and  
Government Services Canada 1997  
Catalogue. No. S2-215/1997  
ISBN 0-662-62984-1

## FOREWORD

by The Right Honourable Jean Chrétien, P.C., Q.C., M.P., Prime Minister of Canada

The adoption of the *Canadian Charter of Rights and Freedoms* was a defining moment in our history, our identity and our equality as Canadians. After 115 years as a nation, Canadians turned our shared values into a document which serves as the guiding law of our land and entrenches the liberties of all of us who call Canada home.

The Charter embodies the central principles of our Canadian democracy. It is part of the fabric of who we are as a people. It is an affirmation of the decency of our society. It is a statement of the dignity and worth of the individual.

The Charter guarantees freedom of religion and freedom of thought. It safeguards our right to move freely in Canada and work anywhere in the country. It codifies equality before the law and equality between women and men. It protects the rights of Canadians who speak French and Canadians who speak English. It reflects our pride in our cultural diversity. The 1982 amendments to the Constitution also recognize and honour aboriginal and treaty rights of Aboriginal peoples.

Throughout the course of our history, we Canadians have built our society on the principles of fairness, justice, mutual respect, democracy and opportunity. Through the Charter, Canadians translated those basic values into the preeminent law of our land. Through the Charter, basic human rights became enshrined as the permanent foundation of the future of our nation.

As Canada approaches the twenty-first century, we are shaping our destiny in a world of rapid economic, social, environmental and technological change. There are many difficult challenges and many exciting possibilities ahead of us. *The Canadian Charter of Rights and Freedoms* ensures that whatever decisions we make, whatever paths we follow, we will do so with respect for the fundamental freedoms of each and every person who is blessed enough to live in Canada.

A handwritten signature in black ink, reading "Jean Chrétien". The signature is written in a cursive, flowing style with a long, sweeping underline.

## INTRODUCTION

by The Honourable Sheila Copps, P.C., M.P., Minister of Canadian Heritage

There are important dates in the history of a nation. April 17, 1982 is such a date for Canada. That was the day when the *Canadian Charter of Rights and Freedoms* came into force, and when more than a century of hard fought freedoms became enshrined within the highest law of the land.

There are many great individual achievements in the history of a nation, and certainly Canada has a heritage of heroes, innovators and pioneers. The Charter, however, is our greatest collective achievement as a society.

It is an affirmation that as Canadians we cherish individual rights for ourselves, and are determined to uphold the rights of others.

In Canada, we are free to think what we want, say what we want, go where we want and lead the lives we want. The thirty-four sections of the Charter are the guarantees that these realities of Canadian life remain true as we head into a new millennium.

The Charter is proof that Canadians believe the success of a society can only be built on the freedom of its people.

As you read through this Guide, remember that the Charter is the living legacy of generations of Canadians who came before us and established the values of this country. Today, the *Canadian Charter of Rights and Freedoms* belongs to us — it belongs to you, it belongs to me, and it belongs to generations of Canadians yet to come.

A handwritten signature in black ink, reading "Sheila Copps". The signature is fluid and cursive, with the first name "Sheila" written in a larger, more prominent script than the last name "Copps".

# CONTENTS

## PART I -

<b>AN OVERVIEW OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS .....</b>	<b>2</b>
---	----------

## PART II -

<b>THE CONTENTS OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS .....</b>	<b>5</b>
--	----------

### Guarantee of Rights and Freedoms

Section 1 .....	5
-----------------	---

### Fundamental Freedoms

Section 2 .....	5
-----------------	---

### Democratic Rights

Section 3 .....	6
Section 4 .....	6
Section 5 .....	7

### Mobility Rights

Section 6 .....	7
-----------------	---

### Legal Rights

Section 7 .....	8
Section 8 .....	8
Section 9 .....	8
Section 10 .....	8
Section 11 .....	9
Section 12 .....	10
Section 13 .....	10
Section 14 .....	10

### Equality Rights

Section 15 .....	11
------------------	----

### Official Languages of Canada

Section 16 .....	11
Section 16.1 .....	12
Section 17 .....	12
Section 18 .....	12
Section 19 .....	12
Section 20 .....	12
Section 21 .....	13
Section 22 .....	13

## Minority Language Educational Rights

Section 23	14
------------	----

## Enforcement

Section 24	15
------------	----

## General

Section 25	Aboriginal Rights	15
Section 26	Other Rights and Freedoms	16
Section 27	Multicultural Heritage	16
Section 28	Rights Guaranteed Equally to Both Sexes	16
Section 29	Rights Respecting Certain Schools Preserved	16
Section 30	Territorial Authorities	17
Section 31	Legislative Powers not Extended	17

## Application of Charter

Section 32	17
Section 33	18

## Citation

Section 34	18
------------	----

<i>Constitution Act, 1982</i> , Section 52	19
--	----

Further Reading	20
-----------------	----

Appendix – Cases Mentioned in the Guide	21
---	----

Where to Obtain Information About Human Rights	23
--	----

## PART I

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

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

The *Canadian Charter of Rights and Freedoms* is one part of the Canadian Constitution. The Constitution is a set of laws containing the basic rules about how our country operates. For example, it contains the powers of the federal government and those of the provincial governments in Canada.

The Charter sets out those rights and freedoms that Canadians believe are necessary in a free and democratic society. Some of the rights and freedoms contained in the Charter are:

- freedom of expression
- the right to a democratic government
- the right to live and to seek employment anywhere in Canada
- legal rights of persons accused of crimes
- Aboriginal peoples' rights
- the right to equality, including the equality of men and women
- the right to use either of Canada's official languages
- the right of French and English linguistic minorities to an education in their language
- the protection of Canada's multicultural heritage.

The way the Charter protects these rights and freedoms is explained in Part II of this Guide.

Before the Charter came into effect, other Canadian laws protected many of the rights and freedoms that are now brought together in it. One example is the *Canadian Bill of Rights*, which Parliament enacted in 1960. The Charter differs from these laws by being part of the Constitution of Canada.

#### **Why is it important that the Charter is part of the Constitution?**

The Constitution is the supreme law of Canada. Generally speaking, all other laws must be consistent with the rules set out in the Constitution. If they are not, they may not be valid. Since the Charter is part of the Constitution, laws that limit Charter rights may be invalid. This makes the Charter the most important law we have in Canada.

It is important to point out, however, that the Charter itself allows governments to put some limits on Charter rights. Section 1 of the Charter says that other laws may limit the rights and freedoms in the Charter so long as those laws are reasonable and justified in a free and democratic society. So, a law that limits a Charter right is nevertheless valid if it conforms with section 1.



The fact that the Charter is part of the Constitution also means that governments must try to make sure that new laws are consistent with it. For example, the federal Department of Justice must make sure that new laws proposed by the federal government comply with the Charter.

### **How long has the Charter been in force?**

The Charter came into effect on April 17, 1982. It was part of a package of reforms contained in a law called the *Constitution Act, 1982*. One section of the Charter, section 15, came into effect only 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 in section 15.

### **Are all of my rights contained in the Charter?**

No. The Charter contains those rights and freedoms that Canadians believe are essential in a free and democratic country. They have been set out in the Constitution as a way of making sure that they are given the greatest protection possible under the law.

There are, however, many other laws that create rights. The federal government and the provincial and territorial governments all have laws that provide rights and freedoms: laws against discrimination in employment and accommodation, consumer protection laws, environmental laws and, in the area of criminal law, laws that give rights to witnesses, victims and persons accused of crimes, to name only a few.

### **Who enjoys Charter rights?**

Generally speaking, any person in Canada, whether a Canadian citizen, a permanent resident or a newcomer, has the rights and freedoms contained in the Charter. There are some exceptions. For example, the Charter gives some rights only to Canadian citizens — the right to vote (in section 3 of the Charter) and the right “to enter, remain in and leave Canada” (in section 6 of the Charter).

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

Section 1 of the Charter says that governments may limit Charter rights so long as those limits are ones that a free and democratic society would accept as reasonable.

It is also possible for governments to pass laws that take away some rights under the Charter. Under section 33 of the Charter (sometimes called the “notwithstanding clause”), Parliament or a legislature can make a particular law exempt from certain sections of the Charter — the fundamental freedoms (in section 2), the legal rights (in sections 7 to 14) and the equality rights (in section 15). However, a law that limits Charter rights under the notwithstanding clause expires after five years. This clause is used very rarely.

Governments can also make changes to the Charter to add to or subtract from the rights that it contains. However, this is very difficult. To make a change to the Charter, the federal Parliament and seven of the ten provincial legislatures must agree to it. The population of those seven provinces must also make up at least 50 per cent of the total population of Canada. The Charter has been amended only twice since 1982.

### **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 are referred to as legal “remedies”. First, the Charter says that a person can ask a court for a remedy that is “appropriate and just in the circumstances”. For instance, 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.

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 example, when they improperly 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 the person in a trial. A court will make an order like this if it is clear that using such evidence at trial would “bring the administration of justice into disrepute” (under section 24 of the Charter).

Finally, if a court finds that a law violates Charter rights, it can rule that the law has no force (under section 52 of the *Constitution Act, 1982*).

## PART II

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

This Part of the Guide sets out the actual text of each section of the Charter, along with a discussion of its meaning and purpose. Sometimes, the discussion will refer to a specific ruling by the Supreme Court of Canada. These cases are numbered and described briefly in the Appendix to this Guide (page 21).

#### 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 demonstrably justified in a free and democratic society.

The Charter of Rights protects those basic rights and freedoms of all Canadians that are considered essential to preserving Canada as a free and democratic country. It applies to all governments — federal, provincial and territorial — and includes protection of the following:

- 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 rights for all,
- the official languages of Canada,
- minority language education rights,
- Canada's multicultural heritage, and
- Aboriginal peoples' rights.

The rights and freedoms in the Charter are not absolute. They can be limited in order to protect other rights or important national

values. For example, freedom of expression may be limited by laws against hate propaganda or pornography.

Section 1 of the Charter says that Charter rights can be limited by other laws so long as those limits can be shown to be reasonable in a free and democratic society.

The Supreme Court of Canada has stated that a limit on Charter rights is acceptable if:

- the limit deals with a pressing and substantial social problem, and
- the government's response to the problem is reasonable and demonstrably justified.



(See Case #1 in the Appendix to this Guide.)

#### 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.

The Charter guarantees certain freedoms for everyone in Canada. Canadian traditions and laws have reflected the freedoms set out in section 2 for many years. Since 1982, the Charter has given these freedoms constitutional protection.

Under section 2 of the Charter, Canadians are free to follow the religion of their choice. In addition, they are guaranteed freedom of thought, belief and expression. Since the media are an important means for communicating thoughts and ideas, the Charter also protects the right of the press and other media to speak out. Our right to gather and act in peaceful groups is also protected, as is our right to belong to an association such as a trade union.

These freedoms are set out in the Charter to ensure 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 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 social problems.

Even though these freedoms are very important, governments can sometimes limit them. For example, laws against pornography and hate propaganda are reasonable limits on freedom of expression because they prevent harm to individuals and groups.

## Democratic Rights

### Section 3

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

Sections 3, 4 and 5 of the Charter contain rules that guarantee Canadians a democratic government.

Section 3 guarantees to all citizens the right to be involved in the election of their governments. It gives them the right to vote in federal, provincial or territorial elections, along with the right to run for public office themselves.

Again, some limits on these rights may be reasonable even in a democracy. For example, the right to vote or stand for election is limited to persons 18 years of age or older.

### 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 the 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.

It is a basic principle in a democracy that a government must consult the voters and stand for re-election at regular intervals. Section 4 reflects this principle. It says that no Parliament or legislative assembly can continue in power for longer than five years. Only under extraordinary circumstances, such as a war or national emergency, may a government 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.

Another basic democratic principle is that a government must 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 ensures that elected members and the public have a chance to question government actions 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.

Section 6 protects the right of Canadians to move from place to place, and section 6(1) ensures that all Canadian citizens are free to come and go as they please. Extradition laws place some limits on these rights. These laws state that persons in Canada who face criminal charges or punishment in another country may be ordered to return to that country.

Section 6(2) gives all Canadian citizens and permanent residents the right to move to and live in any province or territory. They may also look for work or set up a business there. Section 6(3) makes 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. They may also pass employment laws that require workers to have the necessary qualifications to practise their profession or trade.

In addition, section 6(4) allows a province that has an employment rate below the national average to create programs that favour its own residents.

## Legal Rights

### 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.

Sections 7 to 14 set out rights that protect us in our dealings with the justice system. They ensure that individuals who are involved in legal proceedings are treated fairly, especially those charged with a criminal offence.

Section 7 guarantees us life, liberty and personal security of all Canadians. It also demands that governments respect the basic principles of justice whenever it intrudes on those rights. Section 7 often comes into play in criminal matters because an accused person clearly faces the risk that, if convicted, his or her liberty will be lost.

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 did something wrong. To imprison a person who had acted reasonably would offend the principles of fundamental justice.



(See Case #2 in the Appendix to this Guide.)

### Section 8

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

The purpose of section 8, according to the Supreme Court of Canada, is to protect a reasonable expectation of privacy. This means that those who act on behalf of a government, such as police officers, must carry out their duties in a fair and reasonable way. They cannot enter private property or take things from others unless they can show that they have a good reason. In most cases, they are allowed to enter private property to look for evidence or to seize things only if they have been given a search warrant by a judge. On the other hand, government inspectors may enter business premises without a warrant to check whether government regulations are being observed.



(See Case #3 in the Appendix to this Guide.)

### Section 9

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

This section says that government officials cannot take individuals into custody or hold them there without a good reason. A police officer, for example, must have reasonable grounds for detaining a person. However, courts have stated that laws allowing officers to stop drivers for breath tests are reasonable and do not violate the Charter.

### Section 10

Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefor;



- (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 not lawful.

The rights in section 10 apply when a person is arrested or detained. They ensure that people under arrest have a chance to challenge the lawfulness of their arrest. The police must tell them immediately the reasons for their arrest. These people also have the right to talk to a lawyer to get legal advice about their situation, and the police must tell them what legal aid services are available in their area. Persons under arrest also 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.

Section 11 sets out several important rules that protect anyone charged with an offence under federal or provincial law.

Persons accused of a crime must be told promptly what offence they are charged with (s. 11(a)); their trials must take place within a reasonable time (s. 11(b)); and they cannot be forced to testify at their own trials (s. 11(c)).

Anyone accused of breaking the law is presumed to be innocent until proven guilty. This means that the prosecution must prove beyond a reasonable doubt that the person committed the offence, before he or she can be found guilty. The trial must also be conducted

fairly before a court which is unbiased and independent of political or any other influence (s. 11(d)). A fair trial ensures that the rights of the accused are properly protected.

An accused person is entitled to reasonable bail (s. 11(e)) and, for very serious charges, has the right to trial by jury (s. 11(f)).

A court cannot convict a person of a crime unless the law in force at the time of the offence specifically stated that the actions in question were illegal (s. 11(g)).

If a person is tried for an offence and found not guilty, he or she cannot be tried on the same charge again. Moreover, if the person is found guilty and punished for the offence, he or she cannot be tried or punished for it again (s. 11(h)).

In a situation where a person commits an offence and, before he or she is sentenced, a new law alters the fine or term of imprisonment that applies, that person must be sentenced under whichever law is the more lenient (s. 11(i)).

## Section 12

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

Section 12 means that governments cannot treat individuals or punish them in an excessively harsh manner. For instance, the Supreme Court of Canada held 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.



(See Case #4 in the Appendix to this Guide.)

## 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 states that witnesses who give evidence in court cannot have their testimony used against them in other proceedings. In other words, if the testimony of a witness shows that he or she has committed a crime, that evidence cannot be used by the prosecution to prove that the witness committed an offence. The exception is where a witness commits the crime of "perjury", which is the offence of lying to the court. In that case, the testimony of the witness may be used to show that he or she lied in court.

## 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.

Persons who are deaf or do not understand or speak the language being spoken in court have the right to be assisted by an interpreter. This right applies regardless of which language is involved.



## 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.

This section of the Charter makes it clear that every individual 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 on any of these grounds in its laws or programs.

The courts have held that section 15 also protects equality on the basis of other characteristics that are not specifically set out in it. For example, this section has been held to prohibit discrimination on the grounds of sexual orientation.

The Supreme Court of Canada has stated that the purpose of section 15 is to protect those groups who suffer social, political and legal disadvantage in society. Discrimination occurs where, for example, a person, because of a personal characteristic, suffers disadvantages or is denied opportunities available to other members of society.



(See Case #5 in the Appendix to this Guide.)

At the same time as it protects equality, the Charter also allows for certain laws or programs that favour disadvantaged individuals or groups. For example, programs aimed at improving employment opportunities for women, Aboriginal peoples, visible minorities, or those with mental or physical disabilities are allowed under section 15(2).

## Official Languages of Canada

### 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.

Section 16(1) confirms that English and French are Canada's official languages. It also says that these languages have equal status in terms of their use within and by all federal institutions.

The province of New Brunswick is also officially bilingual.

## 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.

Section 16.1 was added to the Charter in 1993. It makes clear 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.

## 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 legislature of New Brunswick.

## 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.

## 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.

## 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.

Sections 17, 18, 19 and 20 all deal with similar issues; the equality of the French and English languages in particular situations. For example, everyone has the right to use English or French in Parliament (section 17). This means that, for example, a witness before a Parliamentary committee may use either official language.

Furthermore, federal laws must be published in both English and French (section 18), and everyone has the right to use French or English in any court established by Parliament, including the Supreme Court of Canada (section 19).

Members of the public have the right to communicate with the federal government in either English or French. The government must provide services in both languages at all of its central offices and in other locations where there is a significant demand for them or it would be reasonable to expect them (section 20).

Sections 16 to 20 make clear that official languages rights apply both to the federal government and to the provincial government in New Brunswick. Residents of

New Brunswick also have the right to use French or English when they deal with their provincial government.

## Section 21

Nothing in sections 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.

The purpose of section 21 is to protect language rights that already exist in other parts of the Constitution. In particular, the Constitution gives the people of Québec and Manitoba the right to use either English or French in the legislatures and before the courts of those provinces, and the right to have provincial laws adopted in both English and French.

## Section 22

Nothing in sections 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 ensures that the rights in the Charter to use English or French do not create a limit on rights to use other languages that may exist under other laws.

## 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.

This section of the Charter requires provincial governments to provide education to Canadians in the official language of their choice, even in areas where a minority of residents speak that language.

In nine provinces and in the Yukon and the Northwest Territories, most people speak English. In these areas, Canadian citizens have the right to have their children educated in French if any of the following three situations apply:

- their first language is French,
- they received their own primary education in Canada in French, or
- they have a child who has received or is receiving his or her education in French in Canada.

In Québec, where most people speak French, Canadian citizens have the right to have their children educated in English:

- if they received their own primary instruction in Canada in English, or
- if they have a child who has received or is receiving his or her education in English in Canada.

According to section 59 of the *Constitution Act, 1982*, the right of persons whose first language is English, who wish to have their children receive English-language instruction, does not apply in Québec until permitted by the legislative assembly or government of Québec.

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 schooling in that language. Where those numbers do exist, governments must provide the necessary facilities.

## 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 is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Anyone who believes his or her rights or freedoms under the Charter have been infringed by any level of government can go to court to ask for a remedy. That person then must show that a Charter right or freedom has been violated. If the limit is one that is set out in the law, then the government will have an opportunity to show that the limit is reasonable under section 1 of the Charter. If the court is not convinced by the government's argument, then it can grant whatever remedy it feels is appropriate under the circumstances.

The court may also make an order that the law in question is of no force or effect. This power comes from section 52 of the *Constitution Act, 1982* (on page 19).

In criminal cases, a court may make an order stopping or delaying the trial of a person whose rights have been denied. A special remedy is available under section 24(2) if the denial of a Charter right takes place during a government investigation. If, for example, a government gets evidence through an unreasonable search or seizure (section 8), then a court may order that the evidence not be used in court. A court will only make an order of this kind if use of the evidence "would bring the administration of justice into disrepute".

## 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 Constitution recognizes the rights of Aboriginal peoples of Canada (which include Indian, Inuit and Métis groups) in order to protect the culture, customs, traditions and languages of Aboriginal peoples.



Section 25 makes it clear that other rights contained in the Charter must not interfere with the rights of Aboriginal peoples. For example, where Aboriginal peoples are entitled to special benefits under treaties, other persons who do not enjoy those benefits cannot argue that they have been denied the right to be treated equally under section 15 of the Charter.

In addition to section 25 of the Charter, section 35 of the *Constitution Act, 1982* states that the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are recognized and affirmed. The Supreme Court of Canada has ruled that section 35 means that Aboriginal rights under treaties or other laws are now protected under the *Constitution Act, 1982*.



(See Case #6 in the Appendix to this Guide.)

## Section 26

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

Canadians have rights under laws other than the Charter. For example, rights may also be created under federal, provincial and international law.

The purpose of section 26 is to make clear that Parliament and the legislatures are free to create rights beyond those that are in the Charter. By entrenching basic or minimum rights, the Charter does not restrict the creation or enjoyment of other rights.

## Section 27

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

Canadians are proud of the fact that Canada is home to many cultural groups. This feature of our country is officially recognized in section 27.

## 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 makes it clear that both women and men are equally protected under the Charter. This principle is also found 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 Charter does not affect the creation and running of religious schools that are protected elsewhere under the Constitution.

More specifically, the freedoms of conscience and religion in section 2 of the Charter and the equality rights in section 15 do not limit the right of Canadians under the *Constitution Act, 1867* to establish religious or denominational schools.

### 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 the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

This provision makes it clear that the Charter applies to the Yukon and the Northwest Territories in exactly the same way as it does to the provinces.

### Section 31

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

The Charter in no way affects the sharing of responsibilities or the distribution of powers between the provinces and the federal government. The powers of each level of government are set out in the *Constitution Act, 1867*.

## 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.

The purpose of this section is to make it clear that the Charter only applies to governments, and not to private individuals, businesses or other organizations.

As mentioned earlier, section 32(2) was necessary in order to give governments a chance to amend their laws to bring them into line with the right to equality. Section 15 of the Charter did not come into force until three years after the rest of the Charter became effective on April 17, 1982.

## 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).

Both Parliament and provincial legislatures have a limited power under section 33 to pass laws that are exempt from certain Charter provisions — those concerning fundamental freedoms and legal and equality rights. This section is sometimes referred to as the “notwithstanding clause”.

In order to rely on this section, Parliament or a legislature must state specifically that a particular law is exempt from the Charter. It must also state which sections of the Charter do not apply.

An exemption from the Charter lasts a maximum of five years. After that, if Parliament or the legislature concerned wishes it to continue to be exempt from the Charter, it must make a new declaration under this section.

The purpose of this section is to require a government that wishes to limit Charter rights to say clearly what it is doing and accept the political consequences of it.

It also ensures that Parliament and the legislatures, not the courts, have the final say on important matters of public policy. If, at a certain point, the rights in the Charter no longer reflect Canadian values, then democratically-elected bodies like Parliament and the legislatures can make laws that are not bound by the Charter.

To date, provincial legislatures have used this section rarely. It has never been used by the federal Parliament.

## Citation

### Section 34

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

This means simply 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 gives the courts the power to rule that a particular law is not valid if it violates the Charter, which is itself part of the Constitution. While section 52(1) is not part of the Charter, it provides courts with an important power to strike down laws that violate Charter rights. If only part of the law violates the Constitution, only that part will be ruled invalid.

## FURTHER READING

Beaudoin, Gérard, and Errol Mendes.

*The Canadian Charter of Rights and Freedoms*,  
3rd ed. Toronto: Carswell, 1996.

Canada. Department of Justice.

*A Consolidation of the Constitution  
Acts 1867-1982*. Ottawa, 1983.

Hogg, Peter. *Constitutional Law of Canada*,

3rd. ed. Toronto: Carswell, 1992.

Salhany, Roger. *The Origin of Rights*.

Toronto: Carswell, 1986.

## APPENDIX –

### Cases Mentioned in the Guide



**Case #1** is called *The Queen v. Oakes*. In that case, decided in 1986, the Supreme Court of Canada ruled that a section of the *Narcotic Control Act* violated the right to be presumed innocent which is protected in section 11(d) of the Charter. The Court then considered whether the law was a reasonable limit on that right under section 1 of the Charter. It concluded that the law was not a reasonable limit and, relying on section 52 of the *Constitution Act, 1982*, declared the law to be of no force or effect, that is to say invalid.

**Case #2** is called the *Motor Vehicle Reference* and was decided in 1985. This case involved a British Columbia law which imposed a mandatory jail term on people who drove motor vehicles while their driver's licences were suspended, even if they were not aware of the suspension. The Supreme Court ruled that such a law violates section 7 of the Charter because it is a principle of fundamental justice that individuals should only be punished by a jail term if there is some proof that they did something wrong. Someone who drives a car not knowing that his or her licence has been suspended is not doing anything that should be punished by a jail term. The Court declared the law to be of no force or effect under section 52 of the *Constitution Act, 1982*.

**Case #3** is called *Hunter v. Southam, Inc.* and was decided by the Supreme Court in 1984. Southam Inc. argued that a search carried out at its offices by government investigators was unreasonable and in violation of section 8 of the Charter. The Court stated that section 8 protects reasonable expectations of privacy. These expectations can usually be protected by requiring police officers or other investigators to get a search warrant before they enter private property to look for or seize evidence. The Court also stated that warrants must be issued by judges or other impartial officials. It concluded that the search of Southam Inc.'s offices was unreasonable because the search warrant used by the investigators was not issued by a judge or an impartial official.

**Case #4** is called *The Queen v. Smith*, and was decided in 1987. In that case, a person accused of importing a narcotic into Canada argued that the penalty for that offence amounted to cruel and unusual punishment. The *Narcotic Control Act* required that anyone convicted of that offence serve a minimum of seven years in jail. The quantity of narcotic involved did not affect the minimum sentence. The Supreme Court of Canada concluded that this law violated section 12 of the Charter. A person who imported a very small amount of a narcotic should not receive such a severe punishment. The Court therefore ruled that the law was of no force or effect according to section 52 of the *Constitution Act, 1982*.

**Case #5** is known as *Andrews v. The Law Society of British Columbia*. Decided by the Supreme Court in 1989, this case involved a challenge to a rule in British Columbia that required persons who wanted to practise law in that province to be Canadian citizens. The Court found that this rule violated section 15 of the Charter, even though discrimination based on citizenship is not specifically mentioned in that section. It stated that discrimination occurs in situations where a person suffers disadvantages or is denied opportunities available to other members of society. By denying people who were not Canadian citizens the opportunity to practice law, the British Columbia rule discriminated against them. The Court went on to conclude that the B.C. law was not a reasonable limit under section 1 of the Charter, and it therefore declared that the B.C. law was invalid under section 52 of the *Constitution Act, 1982*.

**Case #6** is called *Sparrow v. The Queen*, and was decided in 1990. The issue in this case was whether limits imposed on the fishing rights of Aboriginal peoples were inconsistent with section 35 of the *Constitution Act, 1982*. The Supreme Court of Canada held that the treaty rights of Aboriginal peoples should be interpreted broadly. The government, on the other hand, must show that limits on those rights are justified and consistent with its special relationship with and responsibility for Aboriginal peoples.

## WHERE TO OBTAIN INFORMATION ABOUT HUMAN RIGHTS

If you would like more information about your rights, you may first contact your federal Member of Parliament, your Member of the provincial Legislative Assembly or any of the following federal agencies for guidance. Please note that national office addresses are given. Check your local telephone book under the Government blue pages for the regional office nearest you.

### Department of Canadian Heritage

The Department of Canadian Heritage promotes the rights, responsibilities and privileges of Canadian citizenship and is responsible for the federal government's domestic interest in human rights. The Department also prepares Canada's reports to the United Nations and is represented on Canada's delegations to various international bodies.

For information on human rights activities of the Department, including support to community initiatives in the area of human rights, contact:

Department of Canadian Heritage  
Citizens' Participation Directorate  
15 Eddy Street  
Hull, Québec  
K1A 0M5  
Telephone: (819) 953-6112  
Fax: (819) 994-5252  
E-mail: [rights-droits@pch.gc.ca](mailto:rights-droits@pch.gc.ca)  
Internet: <http://www.pch.gc.ca/ddp-hrd>

### Court Challenges Program

The Court Challenges Program provides financial assistance for test cases of national significance to individuals and groups seeking to establish and advance equality rights provisions under sections 15 and 28 of the *Canadian Charter of Rights and Freedoms*, and section 27 (multiculturalism) where an equality rights dimension is argued. The Court Challenges Program also provides support for test cases involving language rights protected by the *Constitution Act, 1867* (sections 93 or 133), the *Manitoba Act, 1870* (section 23), the *Constitution Act, 1982* (sections 16 to 23 inclusive), or parallel constitutional provisions. The address is:

Court Challenges Program of Canada  
616-294 Portage Avenue  
Winnipeg, Manitoba  
R3C 0B9  
Telephone: (204) 942-0022  
Fax: (204) 946-0669  
E-mail: [info@ccppcj.ca](mailto:info@ccppcj.ca)

For information concerning the elimination of discriminatory attitudes and practices:

### **Canadian Human Rights Commission**

The Canadian Human Rights Commission administers the *Canadian Human Rights Act* which prohibits discrimination on the grounds of race, colour, national or ethnic origin, religion, age, sex or sexual orientation, marital status, family status, disability or pardoned conviction. The Act promotes fair treatment in employment and in the supply of goods and services by public and private sector organizations under federal jurisdiction. The Canadian Human Rights Commission resolves complaints of discrimination and consults with employers, unions and advocacy groups etc., to establish policy decisions and guidelines. The address is:

Canadian Human Rights Commission  
320 Queen Street, 13th Floor  
Place de Ville, Tower A  
Ottawa, Ontario  
K1A 1E1  
Telephone: (613) 995-1151  
Fax: (613) 996-9661  
E-mail: [info@chrc.ca](mailto:info@chrc.ca)  
Internet: <http://www.chrc.ca>

### **Department of Justice Canada**

The Department of Justice assumes leadership in the planning, developing and implementation of government policies in areas related to the administration of justice. The Department also provides a full range of legal services to the Government of Canada and ensures that the administration of public affairs is carried out in accordance with the law. In addition, the Department is mandated to ensure that all government bills and regulations are consistent with the *Canadian Bill of Rights* and the *Canadian Charter of Rights and Freedoms*. The Department is also responsible for the development of human rights policy, including the *Canadian Human Rights Act*. At the international level, the Department of Justice advises the government of Canada's international human rights treaty obligations.

Department of Justice Canada  
Justice Building  
239 Wellington Street  
Room 401  
Ottawa, Ontario  
K1A 0H8  
Telephone: (613) 957-4222  
Fax: (613) 954-0811  
Internet: <http://canada.justice.gc.ca>

### **Status of Women Canada**

For information on the rights of women, contact Status of Women Canada.

The address is:

Status of Women Canada  
Constitution Square  
360 Albert Street, Suite 700  
Ottawa, Ontario  
K1A 1C3  
Telephone: (613) 995-7835  
Fax: (613) 947-0530  
E-mail: [vilas@swc-cfc.gc.ca](mailto:vilas@swc-cfc.gc.ca)

For information concerning official languages in the federal public service, including language of work and service to the public:

Treasury Board Secretariat  
Official Languages Division  
300 Laurier Avenue West  
Ottawa, Ontario  
K1A 0R5  
Telephone: (613) 952-2865  
Fax: (613) 952-2876

### **Commissioner of Official Languages**

For information on official language rights:

Office of the Commissioner  
of Official Languages  
110 O'Connor Street  
Ottawa, Ontario  
K1A 0T8  
Telephone: (613) 996-6368  
Fax: (613) 993-5082  
E-mail: [ocolo-ocol@synapse.net](mailto:ocolo-ocol@synapse.net)