



# **The Charter of Rights and Freedoms**

***Part of our written constitution***

***The text for this document was taken from the “Youth Guide to the Canadian Charter of Rights and Freedoms - English Edition” published by the John Humphrey Centre.***

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.

## **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.

## **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 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.

## **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;**
- **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.

### *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;**
- (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.

## 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”).



## **Mobility Rights**

Section 6 deals with 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.

## **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 guarantees all Canadians life, liberty and personal security.

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.

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.

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 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.

## **Equality Rights**

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.

## **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.

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.

## **First Nations Rights**

### **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

- any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- 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.



Her Majesty Queen Elizabeth II, Queen of Canada, signs the proclamation of the Canada Act (1982) and the Charter of Rights and Freedoms. (from left to right: Gerald Regan, Minister of Labour; Jean Chrétien, Minister of Justice; Pierre Elliott Trudeau, Prime Minister of Canada; André Ouellet, Registrar General; Her Majesty Queen Elizabeth II; Michael Pitfield, Clerk of the Privy Council), April 17, 1982.

### Section 33 – the “Notwithstanding Clause”

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.

