

UNDERSTANDING

THE CHARTER OF  
RIGHTS

THE BILL OF RIGHTS



# **CONSTITUTION ACT, 1982**

## **PART I Canadian Charter of Rights and Freedoms**

Whereas Canada is founded upon principles that recognize the supremacy of  
God and the rule of law:  
Guarantee of Rights and Freedoms

The Charter guarantees broad equality rights as well as fundamental freedoms, democratic rights, mobility rights, legal rights and language rights. It applies to all government action, meaning to the provincial legislatures and Parliament, and to everything done under their authority. This means that governments must take the Charter into account in developing all laws and policies.

**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 Oakes test (R. v. Oakes (1986)) consists of two broad criteria as a guiding framework in deciding if a limitation is demonstrably justified. The first criterion is that the objective, the limit is designed to achieve, must be of sufficient importance to warrant overriding the constitutional right or freedom. The second criterion is that the measures chosen to achieve the objective must be proportional to the objective. This test is one of sufficiency, connection and proportionality regarding the limits imposed on section 2 Charter rights and freedoms. The limit, prescribed by law, must not be arbitrary, unfair or based on irrational considerations. In short, limits must be rationally connected to the objective. The means used, even if rationally connected to the objective in this first sense, should impair "as little as possible" the right or freedom in question. There must also be a proportionality between the effects of the measures taken, which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance".*

**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.**

*Anyone who believes his or her rights or freedoms under the Charter have been violated by any level of government can go to court to ask for a remedy. That person must show which Charter right or freedom has been violated. If a limit to the right or freedom is set out in the law, 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 a remedy that is just and appropriate in the circumstances*

**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 and freedoms under laws other than the Charter. The purpose of section 26 is to ensure that these rights or freedoms are not extinguished because they are not expressly spelled out in the Charter. It also makes clear that Parliament and the legislatures are free to create rights beyond those that are in the Charter. By establishing basic or minimum rights, the Charter does not restrict the creation or enjoyment of other rights.*

## **Application of Charter**

### **32 (1) This Charter applies**

**(a) to the Parliament and government of Canada in respect of all matters 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.**

*The purpose of section 32 is to make it clear that the Charter only applies to governments, and not to private individuals, businesses or other organizations.*

*Subsection 32(2) was necessary to give governments a chance to amend their laws to bring them into line with equality rights. 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.*

**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.**

Operation of exception

(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.

Five year limitation

(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.

Re-enactment

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

*Once invoked, section 33 effectively precludes judicial review of the legislation under the listed Charter sections. A section 33 declaration is only valid for 5 years. After this time period, it ceases to have any effect unless it is re-enacted.*

*Section 33 lays down a requirement of form only. In invoking section 33, the legislature does not need to identify the provisions of the Act in question which might otherwise infringe specified guaranteed rights and/or freedoms, nor does the legislature need to provide a substantive justification for using the override (Ford v. Quebec (Attorney General), [1988] 2 S.C.R. 712, paragraph 33).*

*A declaration under section 33 is valid if it generally names all of sections 2 and 7 to 15, without specifying the possible provisions to which the override may apply. Omnibus legislation will not affect the validity of the declaration (Ford, supra).*

*Where the legislative intent is to override only part of the provision or provisions contained in a section, subsection or paragraph of the Charter, there must be a sufficient reference in words to the part to be overridden (Ford, supra).*

*Use of section 33 by the government*

*To date, the federal government has not invoked the notwithstanding clause.*

*Section 33 has been invoked on occasion by provincial governments. The clause was first invoked in 1982 when Quebec passed an omnibus enactment that repealed all pre-Charter legislation and re-enacted it with the addition of a standard clause that declared the legislation to operate notwithstanding section 2 and sections 7 to 15 of the Charter. The legislation also inserted the standard clause into all post-Charter enactments. The declaration in the omnibus legislation purported to have retroactive effect to April 17, 1982. This omnibus legislation was the subject of the decision in Ford, supra. It was not re-enacted when it expired.*

*Saskatchewan, the Yukon, Ontario, and Alberta have also made section 33 declarations. Not all of the laws in which these declarations were made were brought into force.*



**Canadian Bill of Rights**  
**S.C. 1960, c. 44**

**Assented to 1960-08-10**

**An Act for the Recognition and Protection of Human Rights and  
Fundamental Freedoms**

Preamble

The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions;

Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a Bill of Rights which shall reflect the respect of Parliament for its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada:

## Jurisdiction of Parliament

**(3) The provisions of Part I shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada.**

The Bill, still in effect, applies only to federal laws and government actions. This is because the requisite provincial consent was not obtained. The Bill recognizes the rights of individuals to life, liberty, personal security, and enjoyment of property. (It does not recognize “possession” of property, since that is a matter of provincial jurisdiction.) Being deprived of these rights is forbidden, “except by due process of law.”

Although the Bill of Rights remains in effect, many of its provisions were superseded by the Canadian Charter of Rights and Freedoms in 1982. The Charter is a much broader human rights law. It also has greater power because it applies to both federal and provincial laws and actions. And unlike the Bill of Rights, the Charter is part of the Constitution — the highest law of the land.

The Bill was cited 35 times in court cases between 1960 and 1982; thirty were rejected. The Drybones case was the only one to change a law.

**The Queen v. Drybones, 1969 CanLII 1 (SCC), [1970] SCR**

[Ontario \(Attorney-General\) v. Dieleman](#), 1994 CanLII 7509 (ON SC)  
Superior Court of Justice — Ontario

[R. v. Engler](#), 1978 ALTASCAD 282 (CanLII)  
Court of Appeal of Alberta — Alberta

[Re Isabey and Manitoba Health Services Com'n](#), 1986 CanLII 4002 (MB CA)  
Court of Appeal of Manitoba — Manitoba

[Constitutional Jurisprudence, Politics, and Minority Language Rights](#), 1980 CanLII Docs 75  
Donald J Lange — [Manitoba Law Journal](#)

[The United Kingdom Parliament and the British North America Acts](#), 1981 CanLII Docs 41  
Geoffrey Marshall — [Alberta Law Review](#)

[Malartic Hygrade Gold Mines Ltd. v. Quebec](#), 1982 CanLII 2870 (QC CS)  
Superior Court — Quebec

[Decision No. 2072/03](#), 2005 ONWSIAT 936 (CanLII)  
Ontario Workplace Safety and Insurance Appeals Tribunal — Ontario

[Decision No. 2072/03R](#), 2005 ONWSIAT 1603 (CanLII)  
Ontario Workplace Safety and Insurance Appeals Tribunal — Ontario

## REFERENCES:

<https://laws-lois.justice.gc.ca/eng/const/page-12.html>

<https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/checked/art33.html>

<https://laws-lois.justice.gc.ca/eng/acts/c-12.3/page-1.html>

<https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html>

<https://www.canlii.org/en/#search/text=%20%22bill%20of%20rights%22%20%2F100%20%22does%20not%20apply%20to%20provincial%22&includeSccJudgments=true>

<https://www.thecanadianencyclopedia.ca/en/article/canadian-bill-of-rights>