

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.

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 10 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.

For more information, check out
www.pch.gc.ca/progs/pdp-hrp