

The Canadian Charter of Rights and Freedoms

This guide explains the Canadian Charter of Rights and Freedoms (the Charter) and its importance in the daily lives of Canadians. This content is not legal advice and should not be taken as legal interpretation of the provisions of the Charter.

The legal text of the Charter is published online as "Constitution Act, 1982."

Contents

Part 1: Overview:

- What is the Canadian Charter of Rights and Freedom?
- How does the Charter work with other Canadian laws?
- Who does the Charter protect and what rights are protected?
- History of the Charter

What is the Canadian Charter of Rights and Freedoms?

The Canadian Charter of Rights and Freedoms sets out those rights and freedoms that Canadians believe are necessary in a free and democratic society.

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

How does the Charter work with other Canadian laws?

The Constitution is the supreme law of Canada; all other laws must be consistent with the rules set out in it. If they are not, they may not be valid. Since the Charter is part of the Constitution, it is the most important law we have in Canada.

However, the rights and freedoms in the Charter are not absolute. They can be limited to protect other rights or important national values. For example, freedom of expression may be limited by laws against hate propaganda or child pornography. Section 1 of the Charter says that Charter rights can be limited by law so long as those limits can be shown to be reasonable in a free and democratic society.

Who does the Charter protect and what rights are protected?

Any person in Canada – whether they are 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 – such as the right to vote (section 3) and the right “to enter, remain in and leave Canada”(section 6).

History of the Charter

The Charter came into force on April 17, 1982. One section of the Charter, section 15, came into effect three years after the rest of the Charter, on April 17, 1985, to give governments time to bring their laws into line with the equality rights guaranteed in section 15.

Section 16.1 was added to the Charter in 1993. It makes clear that the English-speaking 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.

Before the Charter came into effect, other Canadian laws protected many of the rights and freedoms that are now included in it. One example is the Canadian Bill of Rights, which Parliament enacted in 1960. It applies to legislation and policies of the federal government and guarantees rights and freedoms similar to those found in the Charter. However, the Bill of Rights is not part of the Constitution of Canada.

For decades, the Charter has been the source of change, progress and the affirmation of our society's values. Canadian courts have rendered hundreds of decisions in which they apply the Charter to bring Canadian laws into line with the principles and values of Canadian society. For example:

- With respect to language rights, the Charter has reinforced the rights of official language minorities.
- With regard to equality rights, the Charter has led to the recognition and enforcement of the rights of a number of minority and disadvantaged groups.
- In criminal matters, the Charter has clarified the state's powers with respect to the rights of the accused.

Examination of the Bill of Rights:

Regulations Respecting the Examination of Bills and Regulations Pursuant to the Canadian Bill of Rights.

Short Title:

1 These Regulations may be cited as the Canadian Bill of Rights Examination Regulations.

Interpretation:

2 In these Regulations, *Minister* means the Minister of Justice.

Examination of Bill:

3 In the case of every Bill introduced in or presented to the House of Commons by a Minister of the Crown, the Minister shall, forthwith upon receipt of two copies of the Bill from the Clerk of the House of Commons,

(a) examine the Bill in order to determine whether any of the provisions thereof are inconsistent with the purposes and provisions of the Canadian Bill of Rights, and

(b) cause to be affixed to each of the copies thereof so received from the Clerk of the House of Commons a certificate, in a form approved by the Minister and signed by the Deputy Minister of Justice, stating that the Bill has been examined as required by the Canadian Bill of Rights, and one each of the copies thereof so certified shall thereupon be transmitted to the Clerk of the House of Commons and the Clerk of the Privy Council.

— SOR/85-782, s. 1

Examination of Regulations:

4 The Clerk of the Privy Council shall, on receipt of a regulation transmitted to him for registration pursuant to the Statutory Instruments Act not examined as a proposed regulation in accordance with section 3 of that Act, forward a copy thereof to the Minister.

— SOR/85-782, s. 2

5 The Minister shall, forthwith upon receipt of a copy of a regulation forwarded to him by the Clerk of the Privy Council pursuant to section 4,

(a) examine the regulation in order to determine whether any of the provisions thereof are inconsistent with the purposes and provisions of the Canadian Bill of Rights, and

(b) cause to be affixed to the copy thereof so received from the Clerk of the Privy Council a certificate, in a form approved by the Minister and signed by the Deputy Minister of Justice, stating that the regulation has been examined as required by the Canadian Bill of Rights, and the copy so certified shall thereupon be returned to the Clerk of the Privy Council.

Report of the Minister:

6 Where any of the provisions of any Bill examined by the Minister pursuant to section 3 or any of the provisions of any regulation examined by him pursuant to section 5 are ascertained by the Minister to be inconsistent with the purposes and provisions of the Canadian Bill of Rights, the Minister shall make a report in writing of the inconsistency and shall cause such report to be deposited with the Clerk of the House of Commons in accordance with the Standing Orders of the House of Commons at the earliest convenient opportunity.

— SOR/85-782, s. 3

— SOR/86-41, s. 1

7 A copy of every report made by the Minister pursuant to section 6 shall, where such report relates to a regulation, be transmitted to the Clerk of the Privy Council forthwith upon the making thereof.

* * * * *

Part II – Understanding the Charter:

This part of the guide sets out the actual text of each section of the Charter, followed by an explanation of its meaning and purpose.

- Guarantee of rights and freedoms – section 1
- Fundamental freedoms – section 2
- Democratic rights sections – 3 to 5
- Mobility rights – section 6
- Legal rights – sections 7 to 14
- Equality rights – section 15
- Official languages of Canada – sections 16 to 22
- Minority language educational rights – 23
- Enforcement – section 24
- General – sections 25 to 31
- Application of Charter – sections 32 and 33
- Citation – section 34
- Constitution Act, 1982 – section 52

Guarantee of rights and freedoms – section 1:

1. 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 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 (life, liberty and personal security)
- equality rights for all
- the official languages of Canada
- minority language education rights
- Canada's multicultural heritage
- Indigenous peoples' rights

The rights and freedoms in the Charter are not absolute. They can be limited to protect other rights or important national values. For example, freedom of expression may be limited by laws against hate propaganda or child pornography.

Fundamental freedoms – section 2:

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.

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 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 like a trade union.

These freedoms are set out in the Charter to ensure that Canadians are free to create and 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, freedom of expression may be limited by laws against hate propaganda or child pornography because they prevent harm to individuals and groups.

Democratic rights – sections 3 to 5:

- Democratic rights of Citizens – section 3

- Maximum duration of legislative bodies – section 4
- Annual sitting of legislative bodies – section 5

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

Section 3 - Democratic rights of citizens:

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.

Section 3 guarantees to all Canadian 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 stand for public office themselves.

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 Canadians 18 years of age or older.

Section 4 - Maximum duration of legislative bodies:

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.

Continuation in special circumstances:

1 (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 states that no Parliament or legislative assembly can continue to sit for longer than five years. Only under extraordinary circumstances, such as a war or national emergency, may a government stay in office for a longer period.

Section 5 - Annual sitting of legislative bodies:

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 guarantees that elected members and the public have a chance to question government actions on a regular basis.

Mobility rights – section 6:

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood.

1: (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.

Limitation:

- 1: (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.**

Affirmative Action Program:

- 1: (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 Canadian citizens to move from place to place, and subsection 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.

Subsection 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.

Subsection 6(3) makes clear that provinces and territories may decide to give social benefits, such as welfare, only to persons who have lived in the province or territory for a certain period of time. They may also pass employment laws that require workers to have the necessary qualifications to practice their profession or trade.

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

Legal rights – sections 7 to 14:

- Life, liberty, and security of person – section 7
- Search or seizure – section 8
- Detention or imprisonment – section 9
- Arrest or detention – section 10
- Proceedings in criminal and penal matters – section 11
- Treatment or punishment – section 12
- Self Incrimination – section 13
- Interpreter – section 14

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

Section 7 - Life, liberty and security of person:

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.

Section 7 guarantees the life, liberty and personal security of all Canadians. It also requires that governments respect the basic principles of justice whenever they intrude 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.

Section 8 - Search or seizure:

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

According to the Supreme Court of Canada, the purpose of section 8 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 clear legal 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 if government regulations are being observed.

Section 9 - Detention or imprisonment:

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

Section 9 says that government officials cannot take individuals into custody or hold them without a good reason. For example, a police officer 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 - Arrest or detention:

10. Everyone has the right on arrest or detention:

a: to be informed promptly of the reasons therefore;

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 quickly 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 - Proceedings in criminal and penal matters:

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, provincial or territorial law.

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

Anyone accused of breaking the law is considered 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 (section 11 d). A fair trial ensures that the rights of the accused are properly protected.

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

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

Section 12 - Treatment or punishment:

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

Section 12 prohibits treatment and punishment by the state that are cruel and unusual. This includes torture, excessive or abusive use of force by law enforcement officials. Also, sentences of

imprisonment must match the seriousness of the crime committed. For example, an extremely long prison sentence is not appropriate for a very minor crime.

Section 13 - Self-incrimination:

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.

Section 13 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 – Interpreter:

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 hearing impaired 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.

Section 15 – Equality rights:

Equality before and under law and equal protection and benefit of law.

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.

Affirmative action programs:

1: (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.

Section 15 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 treated with the same respect, dignity and consideration. 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, marital status or citizenship.

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 when a person,

because of a personal characteristic, suffers disadvantages or is denied opportunities available to other members of society.

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

Official languages of Canada – sections 16 to 22:

- Official languages of Canada – section 16
- English and French linguistic communities in New Brunswick – section 16.1
- Proceedings of Parliament – section 17
- Parliamentary status and records – section 18
- Proceedings in courts established by Parliament – section 19
- Communications by public with federal institutions – section 20
- Continuation of existing constitutional provisions – section 21
- Rights and privileges preserved – section 22

Sections 16 to 20 make clear that official language rights apply in respect of both the federal government and the provincial government of New Brunswick. Canadians can use English or French when they deal with the Government of Canada. Residents of New Brunswick also have the right to use English or French when they deal with their provincial government.

Section 16 - Official languages of Canada:

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.

Official languages of New Brunswick:

1: (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.

Advancement of status and use:

(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.

Subsections 16(1) and 16(2) confirm that English and French are Canada's and New Brunswick's official languages. They also say that both of these languages can be used equally in the institutions of Parliament and the Government of Canada as well as all institutions of the legislature and Government of New Brunswick.

Note that the Charter guarantees that any member of the public can communicate with and receive service from the federal government in the official language of their choice. The Charter does not oblige any member of the public to become bilingual.

Section 16.1 - English and French linguistic communities in New Brunswick:

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.

Role of the legislature and government of New Brunswick:

1: (2) The role of the legislature and government of New Brunswick to preserve 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-speaking 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 - Proceedings of Parliament:

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

Proceedings of New Brunswick legislature:

1: (2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

Section 18 - Parliamentary statutes and records:

18. (1) The statutes, records and journal of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

New Brunswick statutes and records:

1: (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 - Proceedings in courts established by Parliament:

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.

Proceedings in New Brunswick courts:

1: (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 - Communications by public with federal institutions:

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.**

Communications by public with New Brunswick institutions:

(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.

Section 17 states that everyone has the right to use English or French in Parliament as well as the Legislature of New Brunswick. For example, a witness before a Parliamentary committee may use the official language of his or her choice.

Section 18 states that federal laws as well as those of the Government of New Brunswick, must be published in both English and French and that both versions are equally valid.

Section 19 states that everyone has the right to use English or French in any court established by Parliament, including the Supreme Court of Canada, or by the Government of New Brunswick.

Section 20 outlines the right of Canadians to communicate with the federal government or with the Government of New Brunswick in either English or French. These governments must provide services in both official languages at all of their central offices and other locations where there is a significant demand for them, or where it would be reasonable to expect them.

Section 21 – Continuation of existing constitutional provisions:

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. For example, section 133 of the Constitution Act, 1867 gives the people of Quebec the right to use either English or French in the Quebec legislature and before any of the courts of that province. It also provides the right to have the provincial laws printed and published in both English and French. The Manitoba Act, 1870 (confirmed in the Constitution Act, 1871) confirms the same rights for the people of Manitoba.

Section 22 – Rights and privileges preserved:

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 guarantees that the rights in respect of the use of English and French as set out in the Charter do not remove or reduce any right to use other languages that might be granted by other Acts or by custom.

Section 23 – Minority language educational rights:

Language of instruction:

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.

Continuity of language instruction:

- 1:** (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.

Application where numbers warrant:

- 1:** (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 whenever 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.

Section 23 of the Charter requires provincial and territorial governments to provide education to Canadians in the official language of their choice, even in areas where a minority of residents speaks that language.

In nine provinces and in the three territories, the official language of the majority is English. In these provinces and territories, Canadian citizens have the right to have their children educated in French if:

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

In Quebec, the language of the majority is French. In Quebec, Canadian citizens have the right to have their children educated in English if:

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

According to section 59 of the Constitution Act, 1982 (paragraph 23(1) (a) of the Charter) the criteria of “first official language learned and still understood” does not apply in Quebec. It cannot be brought into force without the consent of the National Assembly or government of Quebec. To date, such consent has not been given.

In all cases, the right to receive an education in a minority language applies only when there is a sufficient number of children to justify providing schooling in that language. Where those numbers do exist, governments must provide instruction in the minority language.

Section 24 – Enforcement:

Enforcement of guaranteed rights and freedoms:

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.

Exclusion of evidence bringing administration of justice into disrepute

1: (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.

Section 24 discusses the involvement of the court if an individual's Charter rights have been denied.

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.

For example, in criminal cases, a court may make an order to stop a trial if they decide that the person has been denied the right to a fair trial within a reasonable time. A special remedy is available under subsection 24(2) if the denial of a Charter right takes place during a government investigation. For example, if a government official improperly searches for evidence on private property (section 8), a court may order that the evidence not be used against the person in trial if it is clear that using the evidence would diminish public confidence in law enforcement and the justice system.

A court may also make an order that a law that violates a person's Charter rights is not valid. This power comes from section 52 of the Constitution Act, 1982.

General – sections 25 to 31:

- Aboriginal, treaty or other rights and freedoms – section 25
- Other rights or freedoms that exist in Canada – section 26
- Multicultural heritage – 27
- Gender equality rights – section 28
- Demonotional school rights and privileges – section 29
- Application to territories and territorial authorities – section 30
- Charter does not extend powers of legislatures – section 31

Sections 25 to 31 contain interpretative provisions.

Section 25 - Aboriginal, treaty or other rights and freedoms:

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 to protect their culture, customs, traditions and languages. The Aboriginal Peoples of Canada are also referred to as Indigenous Peoples, though constitutional provisions specifically refer to 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 Indigenous 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, Part II – Rights of the Aboriginal Peoples of Canada, states that the existing Aboriginal and treaty rights of the Indigenous Peoples of Canada are recognized and affirmed. The Supreme Court of Canada has ruled that section 35 means that Indigenous rights under treaties or other laws are now protected under the Constitution Act, 1982.

Section 26 - Other rights or freedoms that exist in Canada:

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.

Section 27 - Multicultural heritage:

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

Section 27 recognizes that Canada is home to many cultural groups and seeks to maintain and promote multiculturalism.

Section 28 - Gender equality rights:

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 - Denominational school rights and privileges:

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 operation 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 - Application to territories and territorial authorities:

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.

The Charter applies to the Yukon Territory, the Northwest Territories and Nunavut in exactly the same way as it does to the provinces. At the time the Charter was enacted, the Northwest Territories included the territory now called Nunavut.

Section 31 - Charter does not extend powers of legislatures:

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 territories, and the federal government. The powers of the provincial and federal governments are set out in the Constitution Act, 1867. The legislative, executive and judicial powers exercised in the three territories are contained in the Yukon Act, the Northwest Territories Act, and the Nunavut Act, which are federal statutes.

Application of the Charter – sections 32 and 33:

- Application of Charter – section 32
- Exception where express declaration – section 33

Sections 32 and 33 discuss the application of the Charter: what it applies to and the limits to its application.

Section 32 - 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.

Exception:

- 1:** (2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

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.

Section 33 - Exception where express declaration:

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:

1: (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:

1: (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:

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

Five year limitation:

1: (5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

The purpose of section 33 is to require a government that wishes to pass laws that limit Charter rights to say clearly what it is doing and accept the political consequences.

Section 33 is sometimes referred to as the "notwithstanding clause". It gives Parliament and provincial and territorial legislatures limited power to pass laws that may limit certain Charter rights – namely fundamental freedoms, legal and equality rights.

They can only do this if they clearly state that a particular law is exempt from the Charter. An exemption from the Charter lasts a maximum of five years, but may be re-enacted by Parliament or the legislature concerned.

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

Section 34 – Citation:

34. This Part may be cited as the Canadian Charter of Rights and Freedoms.

Section 34 simply means that the official name of Part I of the Constitution Act, 1982 (contained in sections 1 to 33) is the Canadian Charter of Rights and Freedoms.

Section 52 – Constitution Act, 1982 (Part VII – General):

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 itself is part of the Constitution.

While subsection 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.