

The Charter of Rights



The Charter of Rights is now an integral fact of Canadian life. It spells out fundamental freedoms and democratic, legal, language, equality and mobility rights.

A Canadian Bill of Rights was passed by the House of Commons at the urging of the then Prime Minister John Diefenbaker in 1960, but it applied only in areas of federal jurisdiction and could be repealed by Parliament at any time. The Charter is entrenched. It can be amended only through the united action of the federal government and at least seven provinces, which together have at least half the country's population.

It is a complex document, painfully arrived at. It was proposed by the government to the House of Commons in 1980 and then debated during 267 hours of parliamentary time, amended and reshaped. The final document is not precisely what any one of the negotiators sought, but it has significant value for all.

A provincial legislature or parliament may pass laws overriding some Charter provisions. Such a law would apply only to that province and would die automatically in five years unless it was passed again.

The Charter has a short Preamble – 'Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law' – followed by thirty-four sections.

Most sections spell out rights long established under British (and Canadian) common law, but occasionally strained in the past. For example, the sixth section says that every citizen or permanent resident 'has the right to enter, remain in or leave Canada.' During World War II the Canadian government interned Japanese-Canadians. It could not now legally do so. This section also gives citizens and permanent residents the right to 'move to and take up residence

in any province' and to 'pursue the gaining of a livelihood' there. A subsection permits a province with above average levels of unemployment to pass laws giving preference to disadvantage persons already there.

The fifteenth section is basic. It provides equality 'before and under the law' for everyone, whatever their 'race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.' A subsection does, however, permit special affirmative action programmes such as priority for some jobs being given to the physically or mentally handicapped.

The sixteenth to the twenty-second are among the most vital sections. They deal with language rights, including the rights of linguistic minorities to education in their own language.

Section twenty-five assures that the rights of native peoples of Canada will not be diminished by the Charter.

Section twenty-seven adds further that its interpretation must be 'consistent with the preservation and enhancement of the multicultural heritage of Canadians.' This has significance since Canada has always emphasized its cultural diversity. The United States in the nineteenth and early twentieth centuries considered itself a 'melting pot' in which immigrants became culturally homogenous. Canada pursued a different image, a 'mosaic' in which distinct cultures – French, English, Ukrainian, German, Scottish, Irish and many others – remained distinctive but harmonious. This section assures its citizens that Canada is still committed to the mosaic.

The last section, thirty-four, gives the Charter its full and proper name: The Canadian Charter of Rights and Freedoms.

How many times have people said to me, why can't you settle all your problems at home and then come here? and how many times have I tried to explain that in a federation it doesn't work that way, that there is, in Canada, no totally sovereign Westminster to make final disposition of the great matters of state. Federations live and thrive on tension. The federal form of government does not create the tension. Fundamental differences in interest characterize the country. The federal form of government exists to manage and control tensions.

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