

Application  
of Charter

### *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

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

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

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

Five year  
limitation

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

Except for section 15, dealing with equality rights, which will come into effect three years after actual patriation, all the other sections of the Charter apply at the time of patriation throughout Canada at the federal, provincial and territorial levels.

The reason for delay in applying the equality provisions is to give the federal, provincial and territorial governments time to review and change any laws that may not conform to the safeguards that will be provided by that section. This will eliminate a considerable amount of unnecessary and expensive legal action.

Under the agreement that broke the constitutional deadlock, both Parliament and provincial legislatures will retain a limited power to pass laws that may conflict with parts of the Charter of Rights concerning fundamental freedoms, legal rights and equality rights.

However, in order to do so, Parliament or a legislature will have to insert a clause declaring specifically that it is passing the law *notwithstanding* specified provisions of the Charter of Rights.

In addition, any federal or provincial law containing a "notwithstanding," or override clause, will have to be reviewed and the declaration re-enacted at least every five years or it will not remain in force.

In other words, if a government should propose a law that may limit some of the rights and freedoms set out in the Charter, it will have to say clearly that this is what it is doing and accept full responsibility for the political consequences.