



Session 12

Charter of rights 1

Bill of rights (1962)

Influenced by the Saskatchewan Bill of Rights was introduced with the purpose to have a formal written legislation, while consolidating a number of rights though to have ever existed. The impact of the Bill was limited for the following reasons:

- Was an ordinary statute therefore liable to amendment
- Was prone to a notwithstanding condition (i.e. that an Act may operate notwithstanding of the Bill)
- Was not entrenched (i.e. included in the constitution)
- Applied only to areas of federal jurisdiction and not provincial jurisdiction (as per the separate areas of responsibility)
- Was not well accepted by the judiciary

The Charter of rights (1982)

Considers that rights and freedoms are fundamental;

- these are ‘guaranteed’ while are ‘subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.’
- this means that any limit must meet the following criteria, in that the limit must be:
 - Important
 - Reasonable
 - Justifiable

ACTIVITY: read cases *R v. Oakes* (pp134-135) and *R v. Keegstra* (pp137-138) to comment on the conflict between the charter and other legislation.

- both cases show that any imposed limit needs to be balanced out against the well-being of society in general;
- it shows that by 'reasonable' is understood when it enforces an important state objective, limitation on rights and freedoms is minimal, it is clear and precise.

Categories of rights and freedoms of the Charter

- Fundamental freedoms: freedom of conscience and religion; of thought, belief, opinion and expression, including freedom of the press and other media of communication; of peaceful assembly; and of association.
- Democratic rights: 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; a maximum duration of the legislative bodies of five years unless there is continuation because of special circumstances; that there shall be a sitting of Parliament and of each legislature at least once every twelve months.
- Mobility rights: the right to enter, remain in and leave Canada; to move to and take up residence in any province; to pursue the gaining of a livelihood in any province.

Categories of rights and freedoms of the Charter (cont.):

- Legal rights: the right to life, liberty and security of the person; the right not to be deprived thereof except in accordance with the principles of fundamental justice; to be secure against unreasonable search or seizure; not to be arbitrarily detained or imprisoned.
- Equality rights: the right to the equal protection and equal benefit of the law without discrimination
- Official language rights: that 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.
- Minority language rights: the right to educate in a minority language.

The application of the Charter is limited by the 'notwithstanding clause' (i.e. the possibility to pass legislation in a province in spite of the fact that it might violate some rights).

ACTIVITY: compare the *Bill of Rights* (p131) with the *Charter of Rights* (appendix) to highlight the differences and similarities and to account for the criteria in use.

Because the Charter is entrenched, judicial review ensures that any law that brings about unwanted effects is challenged in two manners:

- Strike down the law: make the offending law no longer in effect
- Read down the law: although found to be generally acceptable, forcing it to comply with the Charter