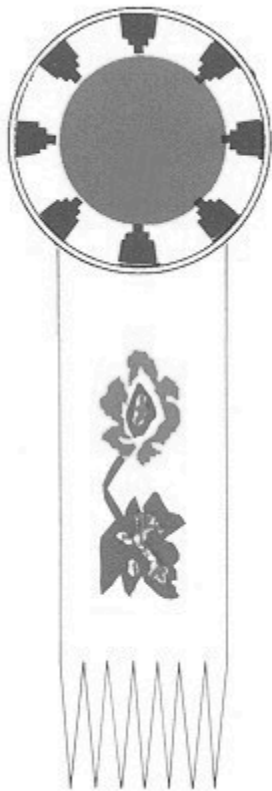


Native Women's Association of Canada



THE
CANADIAN
CHARTER OF
RIGHTS &
FREEDOMS
—
A
PLAIN LANGUAGE
VERSION

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An NWAC Discussion Paper

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The Canadian Charter of Rights and Freedoms

A Plain Language Version

The Constitution of Canada is made up of two principal documents, the Constitution Act, 1867 (which used to be called the British North America Act) and the Constitution Act, 1982. In these discussion papers we will be focusing only on Parts 1 and 2 of the Constitution Act, 1982. Part 1 of this document is called the Canadian Charter of Rights and Freedoms, and Part 2 is entitled Rights of the Aboriginal Peoples of Canada.

In this particular discussion paper we will provide you with a 'plain language version' of the Charter. For each section, we will provide you with the text of the section as it appears in the Charter in bold, followed by an explanation of that text.

- 1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in It subject only to such reasonable Omits prescribed by law as can be demonstrably justified in a free and democratic society.**

Rights in the Charter are not absolute. Once a court has found that there has been a violation of the Charter it must then decide whether that violation is justifiable considering the nature of the society in which we live. This means that a court must always balance the individual right protected against society's standards and collective interests. For instance, persons under the age of 18 cannot vote in Canada. This is certainly a violation of the section in the Charter which guarantees equality of all individuals. However it is not in the interests of Canadian society as a whole to have children vote when they may not yet be capable of reasonably deciding which candidates would be best suited to govern the Country. Therefore, this rule is considered to be a justifiable restriction of their rights in a free and democratic society such as Canada.

All of the rights that we discuss below are subject to this balancing act except where we indicate otherwise.

- 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.**

Everyone has the right to belong to any religion they choose, or to no religion should they so choose. Everyone in Canada has the right to hold any belief or opinion that they wish. And they have the right to express that belief orally or in writing. Everyone has the right to hold or attend a peaceful meeting. Finally, everyone has the right to belong to any group or association.

- 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.**
- 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 of a general election of its members.**
 - 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 or more than one-third of the members or the House or Commons or the legislative assembly, as the case may be.**
- 5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.**

These sections set out the democratic rights of the citizens of Canada: the right to vote in an election of a federal government or provincial government in your home province, the right to run for office. Sections 4 and 5 outline Canadians' fundamental rights to be able to choose a new government at least every five years and to have a government which is required to sit at least once a year.

- 6. 1) Every citizen of Canada has a right to enter, remain in and leave Canada.**
- 2) Every citizen of Canada and every person who has the status or 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 or a livelihood in any province.**
- 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.**
- 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.**

This is the mobility rights section of the Charter. Subsection (1) gives all citizens of Canada the right to enter and leave the Country. Subsection (2) applies to both citizens and permanent residents of Canada; they are entitled to move between and to work in any Province or Territory. The purpose of this section is to protect the right to move between provinces, and to keep the provinces from interfering with that right. Subsections (3) and (4) set out the circumstances in which a province can discriminate against someone from another province -- for instance by requiring that a person reside in the province for a "reasonable" period of time before being entitled to collect welfare.

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.

This is one of the most important sections of the Charter. The purpose of the section is to protect you from government conduct which would deny your rights to life liberty and security of the person. You have the right not to be denied those rights except in accordance with principles of justice. Although section 7 is most often used to protect people who are accused of crimes, it can be invoked by anyone who suffers a loss of these rights due to the conduct of the government, government agencies and the bodies in charge of administering the justice system.

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

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

10. Everyone has the right on arrest or detention

- a) to be Informed promptly of the reasons therefor;
- 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.

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 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.**

These sections protect your legal rights. Section 11 applies if you are charged with a crime, and the others apply to everyone no matter what the circumstances. For instance, you have a right to consult a lawyer; you have a right to be told why you are being arrested or detained and you can only be detained or imprisoned for a valid reason; you have the right to be presumed innocent until it is proven that you are guilty. These sections are meant to ensure that the people responsible for administering the justice system, such as the police and the courts, treat you fairly. For instance, a prosecutor cannot tell the public or the newspapers that you are guilty of committing a crime until it has been judged in a court of law that you are guilty. If those responsible for the administration of justice do not treat you in accordance with these guarantees then, whether or not you are guilty of the offence, your constitutional rights are violated.

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

This section also protects you against the people and bodies responsible for the administration of justice. It is worded more generally, and it is up to the Courts to decide whether a certain type of conduct constitutes cruel and unusual punishment. An obvious example is torture. No matter how severe the crime, a guilty party has the right not to be subjected to torture because it would constitute cruel and unusual punishment under the Charter.

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.

This section should be read together with section 11 (c) above. These two sections do not give you a right to refuse to answer questions in all cases (that right exists in the United States Constitution only). You have a right to refuse to answer questions and refuse to be a witness only in respect of a trial or proceedings against yourself. In most cases you can be forced to testify as a witness in somebody else's trial, however section 13 provides that any testimony that you give in that trial cannot be used against you in another trial.

- 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 all interpreter.**

This section provides that a person at a trial or hearing should always be able to understand everything that is said during that proceeding. If the person cannot understand the language being used against her then she has the right to have an interpreter.

- 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.**

- 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.**

15(1) This subsection ensures that the law will not discriminate against individuals because of their race, sex or on other grounds listed in this section, or similar to those listed. Section 12(1)(b) of the old Indian Act provided that an Indian woman who married a non-Indian man lost her status but that an Indian man marrying a non-Indian woman did not. This section was amended because it would not have been acceptable under this section of the Charter. Because this section applies only to individuals, only "natural persons" and not corporations are entitled to rely on section 15.

Not all different treatment is discrimination under this section. For instance, people who earn very little money are entitled to collect welfare; those who earn more money are not -- the government can treat these people differently. Discrimination exists when a distinction results in a loss of rights or on the imposition of burdens or obligations on certain individuals or groups as opposed to other members of society.

15(2) This subsection is designed to protect affirmative action programs from being challenged under the Charter. For instance, suppose that a government enterprise decided to establish a special program to hire women because there were so few women working in the enterprise. If a man seeking employment challenged this program it could be protected under section 15(2). This section is not used much at present, but it could be a powerful protection for programs designed to help aboriginal women, or other disadvantaged groups.

- 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.**

- 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 or New Brunswick.
 - 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.
17.
 - 1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.
 - 2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.
18.
 - 1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.
 - 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.
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.
 - 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.
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.
 - 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.
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.

- 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.**

These sections all guarantee the right to use, and to receive services in, the English or French language. These sections only apply to the federal government and the Province of New Brunswick. However, the guarantees in sections 17 to 19 already apply to the Province of Quebec in virtue of section 133 of the Constitution Act, 1867 and the Province of Manitoba in virtue of section 23 of the Manitoba Act, 1870. Both sections 133 and 23 contain similar wording to sections 17 to 19. Section 22 preserves the rights and privileges of languages other than English or French, including the protection of aboriginal rights to our own languages.

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.
- 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.**
- 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 wherever 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.

This section protects minority language educational rights in Canada -- it applies in all of the provinces, but it applies only to citizens of Canada. Those protected are entitled to have their children educated in the same official language in which they themselves were educated *even if it is not the language of the majority in the province*. Subsection

(3) provides that the right to publicly funded minority language education only exists if there is a sufficient number of students in the area to make it practical.

Subsection (1) sets out the two categories of people who are entitled to take advantage of this guarantee of minority language educational rights. It applies to citizens of Canada who themselves received their education, *in Canada*, in the minority language; for instance someone who was educated in French in Quebec and now lives in Manitoba. The guarantee also applies to citizens of Canada who received their education in the minority language in another country. However, this last basis of entitlement does not apply in Quebec since section 59 of the Constitution Act, 1982 exempts Quebec from that provision.

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.

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 proceedings would bring the administration of justice into disrepute.

This section gives the courts the authority to design appropriate remedies when faced with a violation of the Charter. Subsection (2) gives a concrete example of this authority: if evidence against a person is obtained in a manner which would infringe their Charter rights, for instance if it is obtained through an unreasonable search and seizure that violates section 8, then the court can refuse to consider that evidence at that person's trial.

Section 24 of the Charter must be read together with subsection 52(1) of the Constitution Act, 1982 (remember, the Charter is part of the Constitution Act, 1982).

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 and effect.

If a court finds that a law, or a section of a law, violates the Charter then one of the options open to it is to declare that section, or that law, of no force and effect. For instance, suppose that in the law governing elections there was a section which stated that all men over the age of eighteen could vote, but that only women over the age of twenty-one could vote. This would constitute discrimination against women between the ages of eighteen and twenty-one. A court challenge to this section would proceed as follows.

- i) The court would have to decide whether the section constituted discrimination under section 15 of the Charter.
- ii) Once a court found that this discrimination was contrary to section 15, that court would then have to decide whether that discrimination was in the interests of society as a whole under section 1.
- iii) If the court decided that this discrimination could not be justified in a free and democratic society then under sections 24 and 52 it would have the right to strike out the offending section, or it - could modify the section to give both men and women over the age of eighteen the right to vote.

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 purpose of this section is to ensure that the rights and freedoms given to the people of Canada under the Charter cannot be used so as to interfere with or take away from aboriginal, treaty or other rights. For instance, under many treaties, Indians have the right to hunt on unoccupied Crown land, this right may not extend to non-Indians. If a non-Indian tried to challenge this difference in treatment under section 15 of the Charter, section 25 would protect the treaty right to hunt.

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.

There are other laws which protect the rights and freedoms of the people of Canada, for instance every province has enacted a human rights act to protect its inhabitants, as has the federal government. The existence of the Charter does not take away from the importance and usefulness of these laws.

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

This is another interpretive clause. It ensures that judges take into account the multicultural nature of Canadian society when they interpret the Charter.

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

The general guarantees of equality as between men and women are found in section 15. Section 28 strengthens these guarantees because of the words "notwithstanding anything in this Charter". This means that this section applies in spite of anything else that is written in the Charter. Therefore, while the override power in section 33 (please see below for a discussion of section 33) applies to section 15, it does not apply to section 28; the government can never take away this right to equality. It is also possible that the grounds in section 1 could not be used to justify an infringement of this equality right.

The relation between section 25 and section 28 is unclear. While section 28 applies *regardless of anything else* in the charter, section 25 states that the *guarantees in the Charter cannot be interpreted* so as to derogate from aboriginal or treaty rights. In a case of conflict between the two it is not clear which would prevail (please see the paper on "Native Women and the Charter" for a more detailed analysis of this conflict).

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.

By section 93 of the Constitution Act, 1867 the provinces anything which would harm the acquired rights of the denominational, that is the religious, schools which existed at that time. Section 29 protects that right. This means that if a denominational school had a right to instruct in a particular language at the time of confederation or admission of the province into confederation, then the province could not force that denominational school to instruct in another language.

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.

This section ensures that the provisions of the Charter apply to the territorial governments in the same manner as they apply to the provincial governments.

31. Nothing in this Charter extends the legislative powers of any body or authority.

Legislative powers are presently divided up between the federal government and the provinces in the Constitution Act, 1867, mainly in sections 91 and 92. This section ensures that no one will interpret anything in the Charter as affecting this distribution of powers.

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.**

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

Subsection (1) sets out the scope of the Charter, that is which organizations and entities are bound by its requirements. The Charter does not apply to private organizations or individuals. It applies to all types of decisions and laws by all levels of government, federal, provincial and territorial. The Charter also applies to organizations which are created by the government such as band councils under the Indian Act.

Subsection (2) is no longer of any importance. The charter came into force in 1982, however this did not give the governments enough time to amend laws that would have violated section 15, therefore subsection (2) was inserted to give the government enough time to amend these laws. The Indian Act was, of course, one of the laws amended.

- 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.**

- 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.**

- 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.**

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

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

This section gives the government the right to 'override' certain sections of the Charter. This means that a law which infringes section 2 or sections 7 to 15 could still be made valid and applicable if it is stated in it that it applies "notwithstanding" that section.

Subsection (3) provides that a law enacted in this manner is only valid for five years. If the government wishes to continue the law in force in spite of its violation of the Charter right it must re-enact the "notwithstanding" statement every five years. Since governments often change in a five year period, a law which is enacted with the "notwithstanding" provision is not necessarily going to be re-enacted by a different government five years later.