

In any civilized community, private rights should cease when they become public wrongs.

William Lyon Mackenzie King (1906-1907)

Activity 4: The Canadian Charter of Rights and Freedoms – Judicial Interpretation

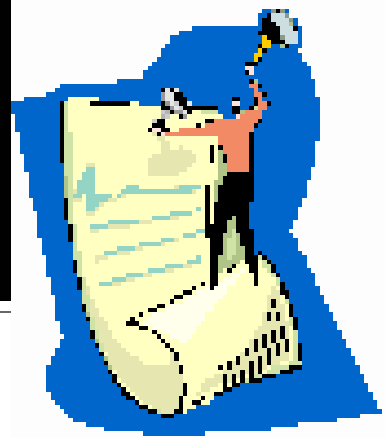
Fundamental Freedoms - Section 2

- Fundamental freedoms are civil liberties that are important to the proper operation of a liberal democracy. Section 2 of the *Charter* protects the following fundamental freedoms:
 1. conscience and religion,
 2. thought, belief, opinion, and expression (including freedom of the press and other media of communication),
 3. peaceful assembly, and
 4. freedom of association.

- Our fundamental freedoms support a healthy democracy by encouraging Canadians to live a free and healthy life while recognizing that our rights are not absolute but rather are accompanied by corresponding responsibilities. Our rights are subject to “reasonable limits” as defined by section 1 of the *Charter*.

- For example, we have the freedom of conscience and religion which includes the right to choose, practice, believe, and worship without fear of reprisal. However one person's right to religion is limited by the rights and freedoms of others. In [Big M Drug Mart Ltd., \[1985\] 1 S.C.R. 295](#) the *Lord's Day Act* prohibited the Sunday sale of goods. The Supreme Court of Canada struck down this act deeming it contrary to Sec. 2. It required Sunday observance as a day of rest expecting all Canadian's to abide by a single Christian tradition to the exclusion of all other religious traditions (e.g. Jews and Muslims).

- We have the right to freedom of thought, belief, opinion, and expression. However, this freedom does not give us the right to say anything we want at anytime.
- In [Regina v. Keegstra, \[1990\] 3 S.C.R. 697 \(Supreme Court of Canada\)](#) the Supreme Court of Canada had to weigh in on a high school teacher's right to freedom of expression (anti-Semitic remarks) against the *Criminal Code* offence of wilfully promoting hatred. The court ruled that limiting hate speech justifiable.



- We have freedom of the press, but the courts recognize that judges should be able to enforce certain restrictions, such as access to the courts and publication bans on information that might affect an individual's right to a fair trial.
- We are free to gather together and to associate with whomever we wish, but such assembly must be done peacefully and lawfully.

DEMOCRATIC RIGHTS SECTION 3-5

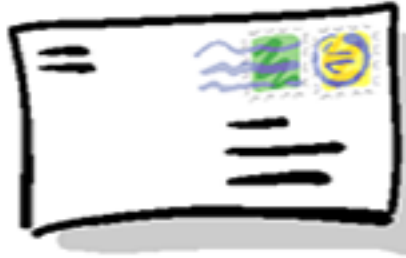
- Democratic rights regulate the functioning of the Canadian democratic system. Sections 3 to 5 of the *Charter* guarantee these rights:
 - 1. The right of every citizen to vote in federal and provincial elections.
 - 2. The right of every citizen to qualify for membership in the House of Commons and provincial legislatures.
 - 3. No more than five years may elapse between general elections for the House of Commons or provincial legislatures.
 - 4. "In time of real or apprehended war, invasion, or insurrection," a two-thirds vote can continue the life the House of Commons beyond five years.

The Right to Vote



- The right to vote is subject to certain restrictions such as age, mental capacity, residence, registration, and affiliation. In the case of [Sauvé v. Canada \(Chief Electoral Officer\), \[2002\] 3 S.C.R. 519 \(Supreme Court of Canada\)](#), the Canadian government argued that denying inmates in federal penitentiaries the right to vote constituted a reasonable limit according to sec. 1 of the *Charter*. A slim majority of the Supreme Court agreed with Sauvé and argued that s. 51(e) of the *Canada Elections Act* did violate the constitutional right to vote and could not be justified by sec. 1 of the *Charter*.

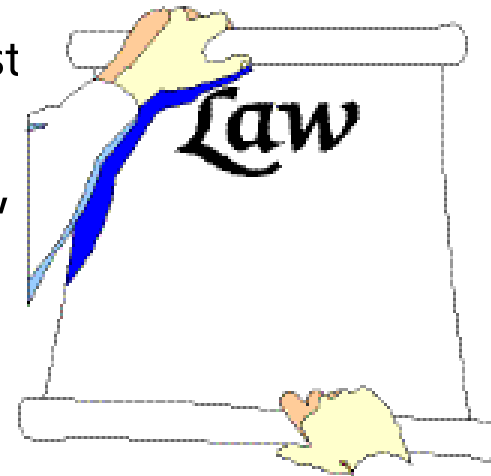
MOBILITY RIGHTS – SECTION 6



- Mobility rights are aimed at making it easier for Canadians to move from one province to another to find work. These rights are important considering the number of restrictions provincial governments place on inter-provincial mobility (i.e. residency requirements for provincial benefits and hiring practices favouring current residents). Section 6 of the *Charter* provides for the following rights.
- Every citizen has the right to enter, remain in, and leave Canada.
- Every citizen (with permanent residence status) has the right to move and pursue a livelihood in any province.

LEGAL RIGHTS SECTION 7-14

- Legal rights are provided to any person or entity affected by provincial or federal authorities. Legal rights are thus provided to permanent citizens, temporary citizens, refugees, tourists, and even corporations. Sections 7 to 14 of the *Charter* guarantee the following:
 - the right to life, liberty, and security of person (except when the deprivation of these rights is done in accordance with the principles of fundamental justice),
 - security against unreasonable search and seizure,
 - no arbitrary detention or imprisonment,
 - to be informed promptly for the reasons for any arrest
 - retain and instruct council or arrest,
 - trial within a reasonable time by an impartial tribunal,
 - the presumption of innocence,
 - no cruel and unusual punishment, and
 - the right to a court-appointed interpreter



- **Section 7** informs us of our 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 demands that governments respect the principles of justice whenever it intrudes on those rights. Often this section of the *charter* deals with criminal matters, where if the accused is incarcerated, liberty is lost. The [United States v. Burns, \[2001\] S.C.R. 287](#) highlights the notion that extraditing Canadians to the United States without assurances that the death penalty will not be imposed violates their right to life, liberty, and security of person (sec. 7).
- The rights under section 7 are not just about criminal law. The right to life might involve our health care system, [Chaoulli v. Quebec \(Attorney General\) \[2005\] 1 S.C.R. 791](#). The right to liberty might involve an individual's desire to choose when to die, *Rodriguez v. British Columbia (Attorney General) [1993] 3 S.C.R. 519* or a woman's desire to choose to end her pregnancy [R. v. Morgentaler, \[1988\] 1 S.C.R. 30](#).
- This element presented many challenges for the courts and proved very controversial. Often the separation between church and state is most evident when dealing with issues of "personhood". For example, according to Catholic teaching, life starts at the moment of conception and ends at natural death. However, the courts do not define "life" to include the fetus (a child within the womb), despite Catholic teaching.

- Security of person is about protecting people from serious harm to their well-being. This element of section 7 might involve the state taking children from parents, [B. \(R.\) v. Children's Aid Society of Metropolitan Toronto \[1992\], 10 O.R. \(3d\) 321](#) or the deportation of a Canadian to another country where torture may exist.
- **Section 8** highlights your right to expect reasonable privacy. Specifically, how and when the police can conduct an investigation of both your property and your "person". Search warrants are often required from a judge before a search and seizure may even begin. [R. v. M.R.M \[1998\] 3 S.C.R. 393](#) illustrates the principal of search and seizure.
- **Section 9** informs us that each Canadian has the right not to be arbitrarily detained or imprisoned. Essentially, this right tells us that no citizen can be detained, arrested, or incarcerated unless the police have good reason to do so.
- Authorities must give you a reason for your arrest or detention and you must be told of your right to seek a lawyer under **Section 10** of the *Charter*. **Section 11** indicates one's basic rights when charged with an offence, such as, the presumption of innocence, the right to a speedy trial, and the independence of the courts.
- **Section 12** reminds us of the protection all Canadian's have from cruel and unusual punishment such that it degrades human dignity, is out of proportion to the offence, or shocks the public conscience. [Kindler v. Canada \(Minister of Justice\) \[1991\] 2 S.C.R. 779](#) demonstrates how the government defines the death penalty as cruel and unusual punishment.
- **Section 13**, and **Section 14** remind us that what one says in court can not be used to incriminate in another court case, and that all Canadians have the right to an interpreter.

EQUALITY RIGHTS

– SECTION 15



Equality rights involve the right to equality, free from discrimination. Section 15 of the *Charter* provides for the following:

1. equal treatment before and under the law,
 2. equal benefit and protection of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability (or on any grounds that is analogous), and
 3. subsection (2) explicitly states that section 15 does not preclude affirmative action programs that has as their object the amelioration of conditions of disadvantaged individuals or groups.
- As almost every law discriminates amongst individuals or groups in one way or another, section 15 has a large impact on federal or provincial legislation and procedures.
4. This potential recognized from the outset, as section 15 did not come into force until 1985 (three years after the rest of the *Charter*).

LANGUAGE RIGHTS – SECTION 16-22

- English and French are the official languages of the federal government of Canada. Both languages have equal status and equal rights and privileges as to their use.
- English and French are also the official languages of the provincial government of New Brunswick (which is the only bi-lingual province in Canada). Under the *Charter*, both languages have equal status and equal rights and privileges as to their use.
- The right of the public to communicate with and receive services from the federal government in French or English if certain conditions are met.
- The rights of Canadian citizens to have their children receive primary and secondary instruction in either English or French if certain conditions are met.