



Environmental
Law Centre

ENVIRONMENTAL LAW LESSON PLAN: Introduction to the Canadian Charter of Rights and Freedoms

This lesson plan is designed to be used as a precursor to the *Climate Litigation Lesson Plan* or as a general overview of the Canadian Charter of Rights and Freedoms.

I. Goals

- a. Introduce students to the Canadian Charter of Rights and Freedoms;
- b. Learn more about the provisions and what was not included; and
- c. Gain awareness of environmental issues through a discussion of laws and hypothetical scenarios.

II. Objectives

a. Knowledge Objectives

- Understand the function of the Canadian Charter of Rights and Freedoms

b. Skills Objectives

- Better able to form and express opinions about the usefulness of the Canadian Charter; and
- Better able to develop persuasive arguments and orally advocate an opinion or point of view.

c. Attitude Objectives

- Become more inspired to think about the environmental consequences of various actions; and
- Understand that law is created through many ways including advocacy and civil debate.

III. What is the Canadian Constitution and the Charter?

Start by spending time reviewing the [Alberta EnviroLaws Website](#) section on [Constitutional Law](#).

Note that the Constitution is the most powerful law in Canada and comes before all other laws. This means that all other laws must align with the Constitution or they will be of no force and effect. Also make note of the fact that the *Canadian Charter of Rights and Freedoms* (also known as the Charter) was enshrined in the Constitution in 1982 when the Constitution was amended and patriated. Students can review the page [Constitutional Law](#) for a review of the history of the Constitution if necessary.

The Charter governs the relationships between individuals and the government, not between individuals. This is different than common law actions, which students can read more about on the page [Common Law](#), which governs relationships between individuals. In particular, the Charter sets out certain rights and freedoms and states that the government cannot pass laws or enact policies that infringe upon these rights and freedoms.

Students can take time to go over the “Charter of Rights and Freedoms Fact Sheet” as a class or in small groups and can use the fact sheet as well as the [Alberta EnviroLaws Website](#) to complete the Discussion Questions. These can also be completed as a class or in small groups. An answer guide is provided for teachers to reference as well.

Charter of Rights and Freedoms Fact Sheet

RIGHTS AND FREEDOMS

Different rights and freedoms are set out in different sections of the Charter.

Section 2 - Fundamental Freedoms

Fundamental freedoms can be understood as rights so basic and essential to the quality of life that they can only be infringed upon by government in the most important circumstances, or when their exercise threatens the fundamental freedoms of others.

This section protects:

- Freedom of conscience and religion (s. 2(a));
- Freedom of thought, belief, opinion and expression (s. 2(b));
- Freedom of peaceful assembly (s. 2(c)); and
- Freedom of association (s. 2(d)).

Sections 3-5 – Democratic Rights

These sections set out the rights and provisions concerning the Canadian political process and the exercise of democracy for Canadian citizens. These include:

- The right of citizens to vote and run for government office (s. 3);
- The guarantee that no legislative body or House of Commons will be in power for more than five years without a democratic election, except in very limited circumstances (s. 4); and
- The guarantee that Parliament and every other legislature will be working for a set period (a “sitting”) out of every 12 months (s. 5).

Section 6 – Mobility Rights

Mobility rights concern the freedom of Canadian **citizens** to be, and move within, Canada. **Citizens** have the right to:

- Travel in any province or territory;
- Work in any province or territory; and

- Enter, remain in, and leave Canada. Note that while the latter applies only to Canadian citizens, the provisions for travelling and working in Canada also apply to permanent residents. In some professions, such as teaching and practicing law, provincial standards and certifications vary, and individuals must meet these to work in these jurisdictions.

Note: These sections only apply to citizens and other sections apply to all individuals regardless of citizenship.

Sections 7-14 – Legal Rights

Legal rights refer to the ways in which persons in Canada are protected in encounters with the justice system. Covering eight individual sections of the Charter, these are multifaceted and complex. Among other protections, everyone has the right:

- To life, liberty and security of the person, and to not be deprived of these except under special circumstances (s. 7);**
- To be secure against unreasonable search or seizure (s. 8);
- To not be arbitrarily detained or imprisoned (s. 9);
- To retain and instruct a lawyer to represent them in justice proceedings (s. 10);
- To have a trial within a reasonable time period (s. 11(b));
- To be innocent until proven guilty (s. 11(d));
- To not be subjected to any cruel or unusual treatment or punishment (s. 12).

****Section 7 will be particularly important for the next lesson plan on climate litigation.**

Section 15 – Equality Rights

Individuals in Canada have a right not to be discriminated against by the government or government agents based on a set of grounds that relate to being members of certain communities and social identity groups. Many of these groups were originally included in this section (enumerated grounds) while others were added later, usually through court cases (analogous grounds).

- Enumerated grounds include race, national or ethnic origin, colour, religion, sex, age and mental or physical disability.
- Analogous grounds currently include sexual orientation, marital status, citizenship and Aboriginality-residence

Sections 16-22 – Official Languages

These sections guarantee the use of both English and French in federal government institutions and set out special provisions relating to the use of both official languages in New Brunswick, Canada's only officially bilingual province.

Section 23 – Minority Language Education Rights

This provides a right for speakers of either official language to have their children receive primary and secondary instruction in that language, even if they are a linguistic minority in their community. Furthermore, wherever an official linguistic minority community comprises a large enough proportion of students, that community has the right to have that education paid for by public funds.

Sections 24 and 52 – Enforcement of Guaranteed Rights and Freedoms

Section 24 allows parties to bring forward a claim to the courts when they feel their rights are being violated, and section 52 states that the Constitution of Canada is the supreme law of the land, meaning that “any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect”.

WHAT/WHO DOES THE CHARTER APPLY TO?

Section 32 of the Charter states that it applies to “the Parliament of Canada in respect of all matters within the authority of Parliament...” and “to the legislature and government of each province in respect of all the matters within the authority of the legislature of each province.” This means that it does not apply to problems you may have with your boss or with your neighbour but rather it applies to problems that you encounter with laws (or the lack of a law) in your province or across the country.

It can also apply to government actors – those people who are controlled by the government and who undertake functions of the government such as police.

Being able to claim a Charter right will also depend on which right is being cited. Some of the rights apply only to individuals while others can be used by corporations. Some are also limited to citizens, such as mobility rights, while others apply to everyone regardless of citizenship.

LIMITATIONS TO THE CHARTER

Section 1 of the Charter of Rights and Freedoms states: “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” This section is designed to balance the rights of individuals with the interests of society as a whole. This is done by allowing certain limits on otherwise guaranteed rights and freedoms. The test to determine whether or not section 1 applies in any given situation is known as the Oakes test – named after an important Supreme Court of Canada decision *R v Oakes*.

To use this section as an exemption to an otherwise guaranteed right, first it must be shown that a right has been infringed upon. Then the government (the party infringing upon the right) will be required to prove that the infringement is justifiable under the circumstances. The standard of proof is the civil standard or balance of probabilities – 50% plus 1.

Further, in order for a section 1 Oakes Test to apply, the limit must be “prescribed by law”. This means that it must be written in a statute or regulation; in a government policy; or in a common law limit.

The test asks:

1. Is the legislative goal pressing and substantial? i.e., is the objective sufficiently important to justify limiting a Charter right?
2. Is there proportionality between the objective and the means used to achieve it?

For a more in depth look at the Oakes test, go to the Canadian Department of Justice’s page [Section 1 – Reasonable Limits](#) and the Ontario Justice Education Network’s [In Brief Teacher Resource on Section 1](#).

INTERPRETING THE CHARTER

Chief Justice Dickson in the case *R v Big M Drug Mart* (another Supreme Court of Canada decision)

[T]he purpose of the right or freedom in question is to be sought by reference to the character and the larger objects of the Charter itself, to the language chosen to articulate the specific right or freedom, to the historical origins of the concepts enshrined, and where applicable, to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the Charter

This means that interpretations of the Charter need to be done in context of the whole document and its overall purposes. This can often mean that interpretations are more generous than they may be in other statutes.

Discussion Questions

1. When was the *Canadian Charter of Rights and Freedoms* made law in Canada?
2. Which section of the Charter guarantees the right of Canadians to practice any religion they choose?
3. True or false: the Charter protects an individual when they face racial discrimination at their job.
4. What is the most significant difference between the Charter and other federal laws?
5. Why do you think the authors of the Charter included the category 'analogous grounds' in the section on equality rights?
6. The Charter specifically prohibits government discrimination on the basis of age, yet there are laws against drinking, driving and voting that clearly discriminate against young people.
 - a. Under what section of the Charter is this infringement saved?
 - b. Is this discrimination justifiable in your opinion?
7. What are some rights that you think are missing from the Charter?

Answer Guide

1. In 1982 as part of the Constitution Act, 1982.
2. Section 2(a)
3. False – the Charter applies to relationships between people and the government, not between private individuals. One exception might be if the employer in question was a government agency. Discrimination in employment would be dealt with under provincial human rights codes or employment codes.
4. A regular federal law could be repealed by an Act of Parliament which means that one government may enact a law protecting certain rights but if they were voted out in the next election, a new government could easily remove this law. In contrast, the Charter can only be changed through the constitutional amending formula which is much more difficult.
5. This allows the Charter to evolve as time goes on and as society deems new forms of discrimination to be unacceptable.
6. These infringements are justifiable under section 1. Student's answers may vary about whether this infringement is justifiable.
7. Answers may vary; however, this may be a good time to bring up the fact that the Charter does not guarantee the right to a healthy environment. Refer to the pages Should we include the environment in the Canadian Constitution? and Why should we include the environment in the Constitution? of the Alberta EnviroLaws Website for more information.

Need help or want to provide some feedback? Contact elc@elc.ab.ca or 780-424-5099

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