

CONFIDENTIAL

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DISCUSSION DRAFT

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Canadian  
Charter of  
Rights and  
Freedoms

1. The Canadian Charter of Rights and Freedoms recognizes the following rights and freedoms subject only to such reasonable limits as are generally accepted in a free and democratic society.

Fundamental Freedoms

Fundamental  
freedoms

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; and
- (c) freedom of peaceful assembly and of association.

Democratic Rights

Democratic  
rights of  
citizens

3. Every citizen of Canada has, without unreasonable distinction or limitation, 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.

Duration of  
elected  
legislative  
bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date of the return of the writs for the election of its members.



Continuation  
in special  
circum-  
stances

(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 the period of five years, if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual  
sitting of  
legislative  
bodies

5. There shall be a sitting of Parliament and of each legislature at least once in every year and not more than twelve months shall intervene between sittings.

Legal Rights

Life, liberty  
and security  
of person

6. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except by due process of law.

Search and  
seizure

7. Everyone has the right to be secure against unreasonable search and seizure.

Detention or  
imprisonment

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

Invasion  
of privacy

9. Everyone has the right to be secure against arbitrary invasion of privacy.

Arrest or  
detention

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  
(c) to the remedy by way of habeas corpus for the determination of the validity of the detention and for release if the detention is not lawful.



Proceedings  
against  
accused in  
criminal and  
penal matters

11. Anyone charged with an offence has the right

- (a) to be informed promptly of the specific offence;
- (b) to be tried within a reasonable time;
- (c) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (d) not to be denied reasonable bail without just cause;
- (e) not to be found guilty on account of any act or omission that at the time of the act or omission did not constitute an offence;
- (f) not to be tried or punished more than once for an offence of which he or she has been finally convicted or acquitted; and
- (g) to the benefit of the lesser punishment where the punishment for an offence of which he or she has been convicted has been varied between the time of commission and the time of sentencing.

Treatment or  
punishment

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

Self-  
crimination

13. A witness has the right when compelled to testify not to have any evidence so given used against him or her in any subsequent proceedings, except a prosecution for perjury or the giving of contradictory evidence.

Counsel

14. A witness has the right not to be compelled to testify if denied the right to consult counsel.



Interpreter

15. A party or witness has the right to the assistance of an interpreter if that person does not understand or speak the language in which the proceedings are conducted.

Mobility Rights<sup>(\*)</sup>

Rights of  
citizens

16. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights of  
citizens and  
permanent  
residents

(2) Every citizen of Canada and every person who has the status of a permanent resident has the right

(a) to move to and take up residence in any province; and

(b) to acquire and hold property in, and to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to 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.

Non-discrimination Rights

Equality  
before the  
law and  
equal  
protection  
of the law

17. (1) Everyone has the right to equality before the law and to equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex.

Affirmative  
action  
programmes

(2) This section does not preclude any programme or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

(\* This section is subject to revision in light of discussions in the "Powers over the Economy" committee respecting amendments to section 121 of the BNA Act.)



Official Languages

Official  
languages  
of Canada

18. (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. (\*)

Status of  
languages  
and  
extension  
thereof

(2) In addition, English and French have the status set forth in this Charter, which does not limit the authority of Parliament or a legislature to extend the status or use of the two languages or either of them.

Language Rights

Proceedings  
of Parliament

19. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

Debates of  
legislatures

(2) Everyone has the right to use English or French in the debates of the legislature of any province.

Statutes,  
etc. of  
Parliament

20. (1) The statutes, records and journals of Parliament shall be printed and published in English and French.

Statutes,  
etc. of  
certain  
legislatures

(2) The statutes, records and journals of the legislatures of Ontario, Quebec, New Brunswick and Manitoba shall be printed and published in English and French.

(\* New Brunswick may wish special provision added respecting status of English and French in that province.)



Idem

(3) The statutes, records and journals of the legislature of each province not referred to in subsection (2) shall be printed and published in English and French to the greatest extent practicable accordingly as the legislature of the province prescribes.

Both versions of statutes authoritative

(4) Where the statutes of Parliament or a provincial legislature are printed and published in English and French, both language versions are equally authoritative.

Proceedings in Supreme Court and courts established by Parliament

21. (1) Either English or French may be used by any person in, or in any pleading or process in or issuing from, the Supreme Court of Canada or any court established by Parliament.

Proceedings in courts of certain provinces

(2) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of Ontario, Quebec, New Brunswick or Manitoba.

Idem

(3) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of a province not referred to in subsection (2), to the greatest extent practicable accordingly as the legislature prescribes.

Rules for orderly implementation and adaption

(4) Nothing in this section precludes the making of such rules by any competent body or authority for the orderly implementation and operation of this section.



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Communications  
by public  
with govern-  
ment of  
Canada

22. (1) Any member of the public in Canada has the right to communicate with and to receive 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 that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by Parliament, that a substantial number of persons within the population use that language.

Communications  
by public  
with govern-  
ment of a  
province

(2) Any member of the public in a province has the right to communicate with and to receive services from any head, central or principal office of an institution of the legislature or government of the province in English or French to the greatest extent practicable accordingly as the legislature prescribes. (\*)

Rights and  
privileges  
preserved

23. Nothing in sections 18 to 22 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the commencement of this Charter with respect to any language that is not English or French.

(\* New Brunswick may wish special provision added respecting language of services to the public.)



Language of  
educational  
instruction

24. (1) Citizens of Canada in a province who are members of an English-speaking or French-speaking minority population of that province have a right to have their children receive their education in their minority language at the primary and secondary school level wherever the number of children of such citizens resident in an area of the province is sufficient to warrant the provision out of public funds of minority language education facilities in that area.

Provisions  
for deter-  
mining where  
numbers  
warrant

(2) In each province, the legislature may, consistent with the right provided in subsection (1), enact provisions for determining whether the number of children of citizens of Canada who are members of an English-speaking or French-speaking minority population in an area of the province is sufficient to warrant the provision out of public funds of minority language education facilities in that area.

Undeclared Rights

Undeclared  
rights and  
freedoms

25. The enumeration in this Charter of certain rights and freedoms shall not be construed to exclude, or to derogate from, any other rights or freedoms that may exist in Canada, including any rights or freedoms that may pertain to the native peoples of Canada.

General

Laws, etc.  
not to apply  
so as to  
abrogate  
declared  
rights and  
freedoms

26. Any law, order, regulation or rule that authorizes, forbids or regulates any activity or conduct in a manner inconsistent with this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.



Enforcement  
of declared  
rights and  
freedoms

27. Where no other legal recourse or remedy is available, anyone whose rights or freedoms as declared by this Charter have been infringed or denied to his or her detriment has the right to apply to a court of competent jurisdiction to obtain relief or remedy by way of declaration, injunction, damages or penalty, as may be appropriate and just in the circumstances.

Application  
to territories  
and  
territorial  
institutions

28. 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 or the Northwest Territories or to the appropriate legislative authority thereof, as the case may be.

Legislative  
authority  
not  
extended

29. Nothing in this Charter confers any legislative power on any body or authority except as expressly provided by this Charter.

Continuation  
of existing  
constitutional  
provisions

30. Nothing in sections 19 to 21 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. (\*)

Application  
of sections  
20 and 21

31. A legislature of a province to which subsections 20(2) and 21(2) do not expressly apply may declare that one or both of those subsections shall have application, and thereafter any such provision shall apply to that province in the same terms as to any province expressly named therein.

(\* Transitional provisions will be required for repeal of these provisions at an appropriate time.)