

1. CHARTER OF RIGHTS

TABULAR COMPARISON OF CHARTERS - SUMMARY OF PROVISIONS

NOVEMBER 5, 1981
ACCORD

APRIL 24, 1981
PROPOSED RESOLUTION

REMARKS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Same provision.

Section 1 - Guarantee of Rights and Freedoms

1. Rights and freedoms guaranteed subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Same provision.

Section 2 - Fundamental Freedoms

2. (a) Freedom of conscience and religion

Same provision.

This section will be subject to the "notwithstanding clause".

(b) Freedom of thought, belief, opinion and expression, including freedom of press and other media

(c) Freedom of peaceful assembly

NOTE: Some provinces were concerned about how the courts might construe certain of the freedoms such as freedom of conscience.

(d) Freedom of association

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Sections 3-5 - Democratic Rights

3. Right of citizens to vote and to
qualify for election to House
of Commons or legislature

Same provision.

4. (1) Limits on maximum duration
of House of Commons and
legislatures (5 years)

Same provision.

(2) except in case of national
emergency

5. Requirement for annual sittings
of Parliament and legislatures

Same provision.

Section 6 - Mobility Rights

6. (1) Right of citizen to enter,
remain and leave Canada

Same provision.

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Section 6 - Mobility Rights

6. (2) Right of every citizen of Canada and every person who has the status of permanent resident to

Same provision.

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

(b) pursue a livelihood in any province

(3) Rights subject to (a) laws or practices of general application but without discrimination based on place of residence or previous residence or (b) laws providing for reasonable residency requirements for publicly provided social services

Same provision.

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6. (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.

No similar provision.

This section was included in the Charter following the November 2, 1981 First Ministers' Conference. The provision will allow a province to pass laws or establish programs designed to give priority to residents of the province. This local hiring preference can only be initiated by a province when the employment rate of that province in the preceeding year, as determined by Statistics Canada, was below the national average rate of employment in Canada.

Sections 7-14 - Legal Rights

7. Right to life, liberty and security of person and right not to be deprived thereof except in accordance with the principles of fundamental justice

Same provision.

This section will be subject to the "notwithstanding clause".

8. Right against unreasonable search and seizure

Same provision.

This section will be subject to the "notwithstanding clause".

9. Right against arbitrary detention or imprisonment

Same provision.

This section will be subject to the "notwithstanding clause".

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10. Right on arrest or detention

Same provision.

This section will be subject to the "notwithstanding clause".

- (a) to be told promptly of reasons therefor;
- (b) to retain and instruct counsel without delay and to be informed of that right
- (c) to remedy of habeas corpus

11. Right when charged with offence

Same provision.

This section will be subject to the "notwithstanding clause".

- (a) to be informed without unreasonable delay of the specific charge;
- (b) to be tried within reasonable time;
- (c) not to be called as a witness in own trial;
- (d) to presumption of innocence until proven guilty according to law in fair and public hearing before impartial tribunal;
- (e) not to be denied reasonable bail without just cause;

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- 11. (f) to trial by jury in respect of serious offences, other than those under military law that are tried before a military tribunal;
- (g) not to be found guilty of any act or omission unless at the time 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) to protection against double jeopardy;
- (i) to benefit of lesser penalty where law is changed before sentencing

12. Protection against cruel and unusual treatment or punishment

Same provision.

This section will be subject to the "notwithstanding clause".

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13. Right of witness who testifies in any proceedings not to have evidence used to incriminate him in subsequent proceedings, except prosecution for perjury or giving contradictory evidence

Same provision.

This section will be subject to the "notwithstanding clause".

14. Right of party or witness who does not understand or speak the language used at proceedings or who is deaf to assistance of interpreter.

Same provision.

This section will be subject to the "notwithstanding clause".

SECTIONS 7-14

NOTE: Some provinces were concerned about the scope of the legal rights. In particular they felt that American jurisprudence on due process of law and admissibility of evidence could be imported into Canadian law. They did not want the courts to have broad powers to define such terms as reasonable-ness and promptly.

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Section 15 - Equality Rights

15 (1) Rights of every individual to equality before and under the law and to equal protection and 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

Same provision.

This section will be subject to the "notwithstanding clause".

NOTE: Even with the three year delay provision included in the Charter some provinces were concerned with the impact these rights would have on provincial legislation.

15. (2) Exception

Those laws, programs or activities designed for "affirmative action" on behalf of disadvantaged individuals or groups including those disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

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Section 16 - Official Languages

- 16. (1) English and French official languages of Canada with equal status, rights and privileges re use in all federal institutions
- (2) English and French official languages of New Brunswick with equal status, rights and privileges re use in all provincial institutions
- 16. (3) Charter does not limit Parliament or legislatures from advancing the equality of status or use of English and French

Same provision.

Sections 17-23 - Language Rights

- 17. (1) Right to use English or French in all debates and proceedings of Parliament
- (2) Right to use English or French in all debates and proceedings of the legislature of New Brunswick
- 18. (1) Statutes, records and journals of Parliament to be in English and French and both versions equally authoritative

Same provision.

Same provision.

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18. (2) Statutes, records and journals of the legislature of New Brunswick to be in English and French and both versions equally authoritative

19. (1) Right to use English or French in all proceedings of federally constituted courts

(2) Right to use English or French in all proceedings of any courts in New Brunswick

Same provision.

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20. (1) Rights of public to communicate with and receive services in English or French from head or central office of any federal government institution and from any other office of such institution where
- (a) there is significant demand
- (b) due to the nature of the office it is reasonable
20. (2) Right of public in New Brunswick to communicate with and receive services in English and French from any office of any institution of the government of New Brunswick

Same provision.

21. Preservation of rights, privileges or obligations for use of English and French that exist by virtue of other constitutional provisions

Same provision.

22. Preservation of legal and customary rights and privileges for use of languages other than French and English

Same provision.

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23. (1) Right of Citizens of
Canada

Same provision.

- (a) whose first language learned and still understood is the minority language of their province of residence or,
- (b) who received their primary school instruction in Canada in the minority language of the province in which they reside

to have their children receive their primary and secondary school instruction in that language

(2) Right of Citizens of Canada of whom any child has or is receiving primary or secondary school instruction in English or French in Canada to have all their children receive this instruction in the same language

(3) Rights in (1) and (2)

- (a) apply wherever numbers warrant
- (b) include the right to minority language educational facilities where numbers warrant

NOTE:

Quebec

Applied to Quebec-

Section 23 with the exception of subsection 23(1)(a). Section 23(1)(b), the "Canada Clause" and Section 23(2), the continuation of education right will provide reciprocity between Quebec and the other provinces. Mr. Levesque agreed to this reciprocity at the time of the St. Andrews and Montreal declarations of provincial First Ministers.

Opt-in for Quebec - A separate proclamation clause (Section 58) will provide a mechanism for Quebec to opt-in to Section 23(1)(a) once the National Assembly signifies its approval of this Section in respect of Quebec.

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Section 24 - Enforcement

24. (1) Anyone whose Charter rights have been infringed or denied may apply to a court to obtain remedy
- (2) When evidence is obtained in a manner that infringed or denied Charter rights the evidence will be excluded if its admission in proceedings would bring the administration of justice into disrepute

Sections 25-31 - General

25. Charter rights will not abrogate or derogate from any aboriginal treaty or other rights including
- (a) rights recognized by the Royal Proclamation of 1763;
- (b) rights that may be acquired by way of land claims settlement
26. Preservation of any rights not specifically mentioned in Charter
27. Charter interpreted to preserve and enhance multicultural heritage

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28. Notwithstanding anything in this Charter except section 33 the rights and freedoms referred to in it are guaranteed equally to male and female persons.

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

This section will be subject to the "notwithstanding clause".

29. Rights and privileges guaranteed by or under the Constitution in respect of denominational, separate or dissentient schools not affected by Charter

Same provision.

30. Charter provisions made applicable to Territories

Same provision.

31. Legislative authority is not affected except as expressly provided by the Charter

Same provision.

Section 32 - Application of Charter

32.(1) This Charter applies

32. (1) Charter applies

Technical amendment.

(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

(a) to Parliament and gouvernement of Canada and all matters within authority of Parliament including matters relating to Yukon Territories and Northwest Territories

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32. (1) (b) to legislature and government of each province in respect of all matters within the authority of legislatures.

32. (2) Section 15 will not have effect until three years after the Constitutional Act, 1981, except Part VI, comes into force

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, or section 28 of this Charter in its application to discrimination based on sex referred to in section 15.

(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.

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32. (1)(b) to legislature and government of each province and all matters within the authority of legislatures.

Same provision.

No. similar provision.

REMARKS

Technical amendment.

This section was included in the Charter following the November 2, 1981 First Ministers' Conference. The clause enables a legislative body to enact legislation that conflicts with the following provisions of the Charter of Rights and Freedoms:

Section 2 - Fundamental Freedoms
 Section 7 to 14 - Legal Rights
 Section 15 - Equality Rights
 Section 28 - Rights guaranteed to both sexes

Any notwithstanding enactment would expire five years from the date of enactment unless renewed by the legislative body.

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33. (4) Parliament or a 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).

Section 34 - Citation

34. Cited as the Canadian Charter of Rights and Freedoms

Same provision.