

SECTION 12
Cruel & Unusual Punishment

Compilation of primary documents to assist in interpreting the public meaning of Section 12 of the *Constitution Act, 1982*

Third Edition

August, 2025



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The Constitution Act, 1982
Part I. Canadian Charter of Rights and Freedoms
Legal Rights

Treatment or punishment

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

PART 1:

Drafting History of the Charter of Rights and Freedoms Pertaining to Section 12's Public Meaning

Drafts of the Charter of Rights and Freedoms:

January 8, 1979: Canadian Charter of Rights & Freedoms, Federal Draft, tabled at Meeting of Officials on the Constitution, (January 11-12, 1979)

October 17, 1979: Rights and Freedoms within the Canadian Federation, Federal Draft, tabled at the Continuing Committee of Ministers on the Constitution (October 22-23, 1979)

November 5, 1979: Rights and Freedoms within the Canadian Federation, Federal Draft, tabled at the Meeting of Officials on the Constitution (November 15-16, 1979)

July 4, 1980: Continuing Committee of Ministers on the Constitution, Rights and Freedoms within the Canadian Federation, Discussion Draft (July 8-11, 1980)

July 4, 1980: Comité Permanent des Ministres sur la Constitution, Droits et Libertés à l'Interieur de la Fédération Canadienne, Document de Travail (July 8-11, 1980)

July 16, 1980: Revised Discussion Draft with Memo re Section 1 (July 18, 1980)

August 5, 1980: Revised Discussion Draft with Memo (August 5, 1980)

August 8, 1980: Formalities to Bill: Joint Resolution (August 8, 1980)

August 22, 1980: Discussion Draft (Federal) (August 26-29, 1980)

August 28, 1980: Provincial Proposal (In the event that there is going to be entrenchment) (August 26-29, 1980)

September 3, 1980: Revised Discussion Draft (September 8-12, 1980)

September 3, 1980 : Conference Fédérale-Provinciale des Premiers Ministres, Document de Travail, Charte Canadienne des Droits et Libertés (September 3, 1980)

September 24, 1980: Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada (September 24, 1980)

October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version1] (October 2, 1980)

October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version 2] (October 2, 1980)

October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

Statutes and International Agreements:

1960: An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms (Canadian Bill of Rights)

1978: Bill C-60: An Act to amend the Constitution of Canada

Drafts of the Charter of Rights and Freedoms

January 8, 1979: Canadian Charter of Rights & Freedoms, Federal Draft, tabled at Meeting of Officials on the Constitution, (January 11-12, 1979)

| [...] (h) the right not to be subjected to any cruel or inhuman treatment or punishment;

(Source: Meeting of Officials on the Constitution, *Canadian Charter of Rights & Freedoms, Federal Draft*, [January 8, 1979] (Ottawa: 11-12 January, 1979). Click [HERE](#))

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October 17, 1979: Rights and Freedoms within the Canadian Federation, Federal Draft, tabled at the Continuing Committee of Ministers on the Constitution (October 22-23, 1979)

| [...] (h) the right not to be subjected to any cruel and inhuman treatment or punishment;

(Source: Continuing Committee of Ministers on the Constitution, *Rights and Freedoms within the Canadian Federation Federal Draft*, [October 17, 1979] (Halifax: 22-23 October, 1979). Click [HERE](#))

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November 5, 1979: Rights and Freedoms within the Canadian Federation, Federal Draft, tabled at the Meeting of Officials on the Constitution (November 15-16, 1979)

| [...] (h) the right not to be subjected to any cruel and inhuman treatment or punishment;

(Source: Meeting of Officials on the Constitution, *Rights & Freedoms within Canadian Federation, Federal Draft*, [November 5, 1979], Doc 840-177/005 (Toronto: 15-16 November, 1979). Click [HERE](#))

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July 4, 1980: Continuing Committee of Ministers on the Constitution, Rights and Freedoms within the Canadian Federation, Discussion Draft

6. (1) Everyone has the right to life, liberty and security of his or her person and the right not to be deprived thereof except by due process of law, which process encompasses the following:

[...]

h) the right not to be subjected to any cruel and unusual treatment or punishment;

(Source: Meeting of the Continuing Committee of Ministers on the Constitution, *Rights and Freedoms within the Canadian Federation, Discussion Draft. Tabled by the Delegation of the Government of Canada, 4 July 1980*, Doc 830-81/027 (Montreal: 8-11 July 1980). Click [HERE](#).)

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July 16, 1980: Revised Discussion Draft with Memo re Section 1

6. (1) Everyone has the right to life, liberty and security of his or her person and the right not to be deprived thereof except by due process of law, which process encompasses:
[...]
h) the right not to be subjected to any cruel and unusual treatment or punishment;

(Source: Memo from Fred Jordan to Roger Tassé re Charter of Rights – Possible Modifications [with Possible Alternatives to Section 1 of July 4, 1980 Draft & Revised Discussion Draft (16 July 1980)] (18 July 1980). This text is found on p. 2. Click [HERE](#).)

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August 5, 1980: Revised Discussion Draft with Memo

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

(Source: Memo from Deputy Minister of Justice to Prime Minister, Charter of Rights incl. Discussion Draft, The Canadian Charter of Rights and Freedoms (5 August 1980). Click [HERE](#).)

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August 8, 1980: Formalities to Bill: Joint Resolution

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

(Source: Canada, Formalities to Bill, Draft Joint Resolution, An Act to Amend the Constitution of Canada (8 August 1980). Click [HERE](#).)

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August 22, 1980: Discussion Draft (Federal)

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

(Source: Continuing Committee of Ministers on the Constitution, *The Canadian Charter of Rights and Freedoms, Discussion Draft [Federal]*, (August 22, 1980), Doc 830-84/004 (Ottawa: 26-29 August 1980). Click [HERE](#).)

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August 28, 1980: Provincial Proposal (In the event that there is going to be entrenchment)

| 10. Everyone has the right not to be subjected to any cruel and unusual punishment.

(Source: Continuing Committee of Ministers on the Constitution, *Provincial Proposal: The Canadian Charter of Rights and Freedoms* (August 28, 1980), Doc 830-84/031 (Ottawa: 26-29 August, 1980). Click [HERE](#).)

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September 3, 1980: Revised Discussion Draft

| 11. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

(Source: Federal-Provincial First Ministers' Conference, *The Canadian Charter of Rights and Freedoms, Revised Discussion Draft, Federal*, [September 3, 1980] Doc 800-14/064 (Ottawa: 8-12 September 1980). Click [HERE](#).)

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September 24, 1980: Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada

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

(Source: Canada, Parliament, DRAFT, "Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada" (24 September 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version1]

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

(Source: Canada, Parliament, DRAFT, Proposed Resolution for Joint Address to Her Majesty the Queen Respecting the Constitution of Canada, Version 1 (2 October 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version 2]

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

(Source: Canada, Parliament, DRAFT, Proposed Resolution for Joint Address to Her Majesty the Queen Respecting the Constitution of Canada, Version 2 with Handwritten Notes (2 October 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

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

(Source: Canada, Parliament, "Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada" in *Sessional Papers* (1980). Click [HERE](#).)

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French:

July 4, 1980: Comité Permanent des Ministres sur la Constitution, Droits et Libertés à l'Interieur de la Fédération Canadienne, Document de Travail

6. (1) Toute personne ad liberté et a la sécurité de sa personne et a le droit de n'en être privée que par l'application régulière de la loi qui comprend nécessairement :

[...]

(h) le droit de n'être soumis à aucun traitement ou châtiment cruels et inusités;

(Source: Comité Permanent des Ministres sur la Constitution, *Droits et Libertés à l'Interieur de la Fédération Canadienne, Document de Travail*, Doc: 830-81/027 (Montréal: 8-11 juillet 1980). Click [HERE](#).)

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September 3, 1980 : Conference Fédérale-Provinciale des Premiers Ministres, Document de Travail, Charte Canadienne des Droits et Libertés

11. Toute personne a le droit de n'être soumise à aucun traitement ou peine et inusités cruels.

(Source: Conference Fédérale-Provinciale des Premiers Ministres, *Document de Travail, Charte Canadienne des Droits et Libertés* (3 septembre 1980). Click [HERE](#).)

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September 24, 1980: Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada

12. Chacun a le droit de n'être soumis à aucun traitement ou peine cruels et inusités.

(Source: Canada, Parliament, DRAFT, "Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada" (24 September 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version1]

12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.

(Source: Canada, Parliament, DRAFT, Proposed Resolution for Joint Address to Her Majesty the Queen Respecting the Constitution of Canada, Version 1 (2 October 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version 2]

| 12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.

(Source: Canada, Parliament, DRAFT, Proposed Resolution for Joint Address to Her Majesty the Queen Respecting the Constitution of Canada, Version 2 with Handwritten Notes (2 October 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

| 12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.

(Source: Canada, Parliament, "Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada" in *Sessional Papers* (1980). Click [HERE](#).)

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Statutes and International Agreements

1960: An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms (Canadian Bill of Rights)

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

[...]

(b) impose or authorize the imposition of cruel and unusual treatment or punishment;

[...]

(Source: *An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms*, SC, 1960, c 44).

Click [HERE](#))

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June 20, 1978: Bill C-60: An Act to amend the Constitution of Canada

| 7. [...] –the right not to be subjected to any cruel and unusual treatment or punishment.

(Source: Bill C-60, *An Act to amend the Constitution of Canada with respect to matters coming within the legislative authority of the Parliament of Canada, and to approve and authorize the taking of measures necessary for the amendment of the Constitution with respect to certain other matters*, 3rd Sess, 30th Parl, SC, 1978 (June 20, 1978). Click [HERE](#))

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