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SECTION 9
Arbitrary Detention

Compilation of primary documents to assist in interpreting the public
meaning of Section 9 of the *Constitution Act, 1982*

Second Edition

August, 2025



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

Detention or imprisonment

Section 9 *Everyone has the right not to be arbitrarily detained or imprisoned.*

PART 1:

Drafting History of the Charter of Rights and Freedoms Pertaining to Section 9'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

November 21, 1980: Appendices: Some French Text and Corrections to Follow Draft (November 21, 1980)

November 24, 1980: Annexes to Memorandum to Cabinet from Minister of Justice Dated November 24, 1980 Respecting Possible Amendments to Proposed Resolution on Constitution of Canada (November 24, 1980)

November 25, 1980: Annexes to Memorandum to Ministers from Minister of Justice dated November 25, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada (November 24, 1980)

December 12, 1980: Draft [No Title]

December 19, 1980: Consolidation of Proposed Amendments to the Proposed Resolution Respecting the Constitution of Canada (December 19, 1980)

December 30, 1980: Regroupement des Modifications Éventuelles à Apporter au Projet de Résolution concernant la Constitution du Canada, Version Provisoire (December 30, 1980)

January 9-12, 1981: Briefing Book for Clause by Clause Consideration of the Resolution (January 1981)

January 12, 1981: Version formally presented to Special Joint Committee by Jean Chretien (January 12, 1981)

Statutes and International Agreements:

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

[This section is incomplete]

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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)

10. (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:

[...]

(c) the right not to be arbitrarily detained or imprisoned;

(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)

6. (1) In any criminal or penal matter, proceeding or process, 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:

[...]

(c) the right not to be detained or imprisoned except on grounds provided by law and in accordance with prescribed procedures;

(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)

6. (1) In any criminal or penal matter, proceeding or process, 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:

[...]

(c) the right not to be detained or imprisoned except on grounds provided by law and in accordance with prescribed procedures;

(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:

[...]

c) the right not to be arbitrarily detained or imprisoned except on grounds provided by law and in accordance with prescribed procedures;

(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 the following:

[...]

(c) the right not to be detained or imprisoned except on grounds provided by law and in accordance with prescribed procedures;

(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

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

(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

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

(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)

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

(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)

| 7. Everyone has the right not to be detained or imprisoned except on grounds provided by law and in accordance with prescribed procedures.

(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

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

(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

| 9. Everyone has the right not to be arbitrarily detained or imprisoned.

(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]

| 9. Everyone has the right not to be ~~arbitrarily~~ detained or imprisoned.

(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]

| 9. Everyone has the right not to be arbitrarily detained or imprisoned except on grounds, and in accordance with procedures, established by law.

(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

| 9. Everyone has the right not to be arbitrarily detained or imprisoned except on grounds, and in accordance with procedures, established by law.

(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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November 21, 1980: Appendices: Some French Text and Corrections to Follow Draft:

| 9. Everyone has the right not to be arbitrarily detained or imprisoned.

(Source: [Department of Justice?], Appendices: Some French Text and Corrections to Follow Draft (21 November 1980). Click [HERE](#).)

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November 24, 1980: Annexes to Memorandum to Cabinet from Minister of Justice Dated November 24, 1980 Respecting Possible Amendments to Proposed Resolution on Constitution of Canada

| 9. Everyone has the right not to be arbitrarily detained or imprisoned.

(Source: Annexes du Mémoire au Cabinet du Ministre de la Justice daté du 24 novembre 1980 concernant la possibilité d'apporter des modifications au Projet de résolution concernant la Constitution du Canada (24 novembre 1980). Click [HERE](#).)

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November 25, 1980: Annexes to Memorandum to Ministers from Minister of Justice dated November 25, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada

| 9. Everyone has the right not to be arbitrarily detained or imprisoned.

(Source: Annexes to Memorandum to Ministers from Minister of Justice dated November 25, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada (25 November 1980). Click [HERE](#).)

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December 12, 1980: Draft [No Title]

| 9. Everyone has the right not to be arbitrarily detained or imprisoned.

(Source: [Department of Justice?], [DRAFT], Constitution Act, 1980. Click [HERE](#).)

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December 19, 1980: Consolidation of Proposed Amendments to the Proposed Resolution Respecting the Constitution of Canada

| 9. Everyone has the right not to be arbitrarily detained or imprisoned.

(Source: Consolidation of Proposed Amendments to the Proposed Resolution Respecting the Constitution of Canada (19 December 1980). Click [HERE](#).)

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January 9-12, 1981: Briefing Book for Clause by Clause Consideration of the Resolution:

| 9. Everyone has the right not to be arbitrarily detained or imprisoned.

(Source: Canada, *Briefing Book for Clause by Clause Consideration of the Resolution* (January 1981). Click [HERE](#).)

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January 12, 1981: Version formally presented to Special Joint Committee by Jean Chretien¹

| 9. Everyone has the right not to be arbitrarily detained or imprisoned.

(Source: Canada, Parliament, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, 32nd Parl, 1st Sess, No 36 (12 January 1981). Click [HERE](#).)

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¹ See also [January 9-12, 1981: Briefing Book for Clause by Clause Consideration of the Resolution](#).

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 :

[...]

(c) le droit de ne pas être détenu ou emprisonné, si ce n'est pour des motifs et conformément à la procédure prévus par la loi;

(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

| 8. Toute personne a le droit de ne pas être détenue ou emprisonnée d'une façon arbitraire.

(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

| 9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.

(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]

| 9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.

(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]

Chacun a droit à la protection contre la détention ou l'emprisonnement dont les motifs ne sont pas fondés sur la loi et qui ne sont pas effectués dans les conditions que celle-ci prévoit.

(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

Chacun a droit à la protection contre la détention ou l'emprisonnement dont les motifs ne sont pas fondés sur la loi et qui ne sont pas effectués dans les conditions que celle-ci prévoit.

(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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November 21, 1980: Appendices: Some French Text and Corrections to Follow Draft

9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.

(Source: [Department of Justice?], Appendices: Some French Text and Corrections to Follow Draft (21 November 1980). Click [HERE](#).)

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November 24, 1980: Annexes to Memorandum to Cabinet from Minister of Justice Dated November 24, 1980 Respecting Possible Amendments to Proposed Resolution on Constitution of Canada

9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.

(Source: Annexes du Mémoire au Cabinet du Ministre de la Justice daté du 24 novembre 1980 concernant la possibilité d'apporter des modifications au Projet de résolution concernant la Constitution du Canada (24 novembre 1980). Click [HERE](#).)

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November 25, 1980: Annexes to Memorandum to Ministers from Minister of Justice dated November 25, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada

| 9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.

(Source: Annexes to Memorandum to Ministers from Minister of Justice dated November 25, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada (25 November 1980). Click [HERE](#).)

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December 30, 1980: Regroupement des Modifications Éventuelles à Apporter au Projet de Résolution concernant la Constitution du Canada, Version Provisoire

| 9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.

(Source: Regroupement des Modifications Éventuelles à Apporter au Projet de Résolution concernant la Constitution du Canada, Version Provisoire (30 décembre 1980). Click [HERE](#).)

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January 9-12, 1981: Briefing Book for Clause by Clause Consideration of the Resolution:

| 9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.

(Source: Canada, *Briefing Book for Clause by Clause Consideration of the Resolution* (January 1981). Click [HERE](#).)

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January 12, 1981: Version formally presented to Special Joint Committee by Jean Chretien:

| 9. Chacun a droit à la protection contre la détention ou l'emprisonnement arbitraires.

(Source: Canada, Parliament, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, 32nd Parl, 1st Sess, No 36 (12 January 1981). Click [HERE](#).)

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Statutes and International Agreements

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

7. In addition to the fundamental rights and freedoms declared by section 6, it is further declared that, in Canada, every individual shall enjoy and continue to enjoy:

[...]

—the right not to be arbitrarily detained, imprisoned or exiled;

(**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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