

Understanding the *Charter*

The *Canadian Constitution* sets out of the fundamental rules and principles of Canadian society, including how the country will be governed, processes for making and changing laws, how resources and political power will be shared and even how the *Constitution* itself can be amended; it is the most powerful law in Canada, and apart from some rare exceptions (see below), all other laws must be consistent with these principles; it also sets out the fundamental rights and freedoms enjoyed by persons in Canada in a special section called the *Charter of Rights and Freedoms*.

The *Charter* enshrined in the *Constitution* with the passage of the *Constitution Act*, 1982. It governs the relationship between individuals and the government, ensuring that governments cannot pass laws or enact policies that infringe unfairly upon our rights and freedoms. Issues dealing with rights and freedoms in relationships between individuals—for example, in the workplace—are often protected by separate legislation, such as provincial human rights codes. In this sense, it acts as a restraint upon government power. Prior to the *Charter* there was no guarantee in Canada that rights and freedoms would not be taken away by government legislation.

Canada had the *Canadian Bill of Rights*, but as a **statute**,¹ it could be amended or repealed relatively easily by Parliament. In other words, if a given government was opposed to a particular right or freedom, it could simply vote in Parliament to have it changed or removed. By enshrining these rights and freedoms in the *Constitution*, they cannot simply be repealed by ordinary acts of Parliament or provincial legislatures; moreover, because the *Charter* is part of the *Constitution* it belongs to the highest most powerful authority in the country (and no authority, no individual, no court, etc. is above it so it cannot be changed, easily).

Amending the *Charter*

Despite being enshrined in the *Constitution*, the *Charter* can be modified. However, the rights and freedoms it guarantees were considered so vital to the fabric of Canadian society that its authors created a strict rule that governments must follow in order to do so. Often called the "amending formula," changes to the *Charter* require the federal government and seven of the ten provincial legislatures to approve of the change, and these provinces must account for 50% of the total Canadian population.

Discussion Questions

Use your copy of the *Charter of Rights and Freedoms* to answer the questions below. You can work in pairings or groups but you must write your own individual responses.

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 gather with others in peaceful protest?
3. True or false: the *Charter* protects the right to not face racial discrimination when seeking an apartment.
4. What is the most significant difference between the *Canadian Bill of Rights* and the *Charter*?
5. What is the main difference between an "individual" and a "citizen"?
6. Why do you think the authors of the *Charter* included the category "analogous grounds" in the section of

¹ **Statute:** is a law passed by a provincial or federal legislative body. Statutes set out rules that must be followed and are officially recorded in legal codes or acts. Statute law is below constitutional law in authority and application.

Equality Rights?

7. 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 (limitation) justified? b. Is this discrimination justifiable in your opinion?
8. In your opinion, is it a threat to the rights and freedoms of Canadian citizens that the *Charter* can still be overridden through *Section 33*? Explain.
9. Why is it significant that *Section 33* cannot ever apply to democratic rights, such as the right to vote in a democratic election, at least once every five years?
10. Review the formula for amending the *Charter*. Does it do enough to ensure that a proposed amendment has the support of the Canadian public?