

Appendix A

Fact sheet: The Constitution of Canada

A constitution provides the basic rules and principles that govern a country. It creates many of the institutions and branches of government and defines their powers.

Did you know?

The Constitution of Canada includes the *Constitution Act, 1867*, and the *Constitution Act, 1982*. It is the supreme law of Canada. It also includes Indigenous rights and treaty rights.

What does our Constitution say?

The Constitution defines the powers of the three branches of government: the executive, the legislative, the judiciary.

The Queen has the executive power in Canada. Her powers are mostly ceremonial though. Together, the Prime Minister and other Ministers form the cabinet, which is responsible to Parliament for government business. Ministers are also responsible for government departments, such as the Department of Finance and the Department of Justice. When we say “the government,” we are referring to the executive branch.

Parliament is the legislative branch of the federal government. Parliament is made up of the Queen (who is usually represented by the Governor General), the Senate and the House of Commons. Bills are debated and passed by the House of Commons and the Senate. The Governor General must agree with a bill in order for it to become a law. This is called Royal assent. Royal assent is always given to bills passed by the Senate and the House of Commons.

The Minister of Justice is responsible for the Department of Justice. This Department offers legal services such as writing laws and giving legal advice to the government and its departments. The department develops criminal law and public law, as well as policies and programs for victims, families, children and youth criminal justice.

Our Constitution also has rules about the judicial branch of government. This branch is made up of judges. They must interpret and apply the law and the Constitution. Judges have to be impartial when they hear a case.

What is a federal system?

The Parliament of Canada and the provincial and territorial legislatures both make laws. Parliament can make laws for all of Canada, but only about matters the Constitution assigns to it. A provincial or territorial legislature can only make laws about matters within the province’s borders.

The federal Parliament deals mainly with issues that concern Canada as a whole:

- trade between provinces
- national defence
- criminal law
- money
- patents
- postal service

It is also responsible for the three territories: Yukon, the Northwest Territories, and Nunavut. Federal law allows territories to elect councils with powers like those of the provincial legislatures.

The provinces have the authority to make laws about:

- education
- property civil rights
- the administration of justice
- hospitals
- municipalities and other local or private matters within the provinces

There are also local or municipal governments. They are created under provincial laws. They can make bylaws that regulate a variety of local matters. Examples are zoning, smoking, pesticide use, parking, business regulations, and construction permits.

Indigenous Peoples

First Nations, Métis and Inuit in Canada have different types of government. For example, First Nations can have a range of governmental powers over reserve lands under the federal *Indian Act*. Other Indigenous governments, such as self-governments, have powers as a result of agreements they have negotiated with the federal and provincial or territorial governments.

It was only with the *Canadian Charter of Rights and Freedoms* (1982) that human rights in Canada were protected in the written Constitution.

VOCABULARY

Bill: a proposed law that is introduced in either the House of Commons or Senate. It must pass through various stages to become law.

Royal assent: granted by the Governor General (the Queen's representative in Canada). This is the final stage a bill must pass through before becoming an act of Parliament.

Legislature: an organized group of persons who have the power to make laws. Parliament is made up of the monarch, the Senate, and the House of Commons. Queen's Park in Ontario is the legislature of the province.

Treaty: agreements made between the Government of Canada, Indigenous groups and often provinces and territories. Treaties define ongoing rights and obligations on all sides.

Fact sheet: The *Canadian Charter of Rights and Freedoms*

The *Canadian Charter of Rights and Freedoms* protects your rights and freedoms. It is part of our Constitution – the highest law in all of Canada.

How does the Charter limit government action?

The Charter allows people to challenge government actions that are believed to violate rights or freedoms. The most complex and disputed Charter-based challenges may end up before the Supreme Court of Canada. In the past, these challenges have led to changes in federal, provincial and territorial laws.

The Charter makes sure that the government doesn't take away these rights or freedoms in an unreasonable way. The Charter recognizes that even in a democracy, rights and freedoms are not absolute. Section 1 of the Charter allows the government to put limits on rights and freedoms. This can only be done under certain and specific circumstances.

What does the Charter guarantee?

The rights and freedoms in the Charter govern how governments act. People in Canada have the right to equality, freedom of expression and the right not to be deprived of life, liberty or security of the person, except in accordance with the principles of fundamental justice. It also protects the rights of First Nations, Inuit, and Métis in Canada.

The rights and freedoms protected by the Charter can be divided into seven categories. These categories address Canadians' fundamental freedoms, democratic rights, mobility rights, legal rights, equality rights, official language rights and minority language educational rights.

Human rights protected in other laws

The Charter guarantees many basic human rights and fundamental freedoms. We have other human rights protections that come from federal, provincial, and territorial laws, common law, and international law.

In 1960, the parliament of Canada passed the Canadian Bill of Rights. This was the first federal human rights law in the country. It guaranteed basic rights and freedoms in federal law for the first time.

The *1977 Canadian Human Rights Act* prohibits discrimination in specific areas. These areas include federal employment and the provision of goods, services, facilities or accommodations available to the public. It prevents discriminatory practices based on several grounds. These grounds include race, national or ethnic origin, sex, and disability. The act applies to the Government of Canada, First Nations governments, and private businesses that the federal government regulates. These include banking, airline, telecommunications and broadcasting.

All provinces and territories have human rights laws. They apply within that province or territory.

Fact sheet: The Ontario Human Rights Code

The Ontario Human Rights Code (the Code) provides protection from discrimination or unfair treatment. It states that every person has a right to freedom from unfair treatment in the following areas:

- **Services, goods and facilities** - including schools, hospitals, shops, restaurants, sports and recreation organizations and facilities
- **Housing** - the place where you live or want to live, whether you rent or own
- **Contracts** - includes both written and oral agreements
- **Employment** - includes job ads, application forms, job interviews, work assignments, work environment, training, promotions, discipline, terminations, volunteer duties, etc.

Prohibited grounds of discrimination

The Code recognizes that unfair treatment occurs frequently because a person belongs to a certain group. In the four areas above, the Code protects people based on the following grounds, including:

- **Age** - 18-65 years (employment); 16+ years (housing); 18+ years (all other areas)
- **Ancestry** - family descent
- **Citizenship** - membership in a state or nation
- **Colour** - related to race
- **Creed** - religion or faith
- **Disability** - disability covers a broad range and degree of conditions, some visible and some not visible. A disability may have been present from birth, caused by an accident, or developed over time.
- **Ethnic origin** - social, cultural or religious practices drawn from a common past
- **Family status** - a parent/child relationship
- **Gender expression** - the behaviour, appearance, dress, etc. by which people express themselves and through which others perceive that person's gender
- **Gender identity** - a person's conscious sense of maleness and/or femaleness; this sense of self is distinct from biological sex
- **Marital status** - applies equally to common-law, same-sex and opposite-sex relationships; includes widowhood, separation, divorce
- **Place of origin** - country or region
- **Race** - common descent or external features such as skin colour, hair texture, facial characteristics
- **Receipt of public assistance** - in housing only
- **Record of offences** - provincial offences or pardoned federal offences (in employment only)
- **Sex** - unfair treatment can be sexual in nature, or because of pregnancy. This ground includes the right to breastfeed in public areas or in the workplace
- **Sexual orientation** - includes lesbian, gay, bisexual, heterosexual, two-spirited, questioning, etc.

It is possible for a person to experience unfair treatment based on many grounds (for example, sexual orientation and race). In some cases, a person may be exposed to a particular kind of discrimination because of a unique combination of identities. For example, there are stereotypes connected to “young Black males” that are not made about “older Black males” or “young Black females.”

Exceptions to the prohibited grounds

There are some exceptions to these prohibited grounds in the area of employment, such as:

1. An association that serves a group protected by the Code. Religious, educational, or social institutions serving ethnic groups, people with disabilities, religious groups, etc., may choose to employ only members of that group.
2. An employer may choose to hire or not hire, or to promote or not promote his or her own spouse, child or parent or the spouse, child, or parent of an employee.
3. An employer may discriminate based on age, sex, record of offences or marital status if these are genuine requirements of the job. For example, a shelter for abused women may choose to hire only women as counsellors. A club may hire only male attendants to work in the men’s locker room. A childcare centre may refuse to hire someone convicted of child molestation because that is a safety risk to the children. The employer must still consider whether any accommodation can be made to enable that person to work in the job.