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Canada

## 6 The Constitution and the Charter of Rights and Freedoms

### Chapter Outline

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  - The Charter Era and the Emergence of Rights Issues
- The Americanization of Canadian Politics
  - Reasonable Limits and the Charter
  - The Notwithstanding Clause: Section 33
- Applying the Charter
  - Scope and Authority
- The Charter's Legacy
- Summary

## Learning Objectives

After reading Chapter 6 in *Canadian Democracy*, you should be able to do the following:

- Differentiate between constitutional law and constitutional conventions and give examples of each.
- Outline some of the functions and principles of the constitution.
- List and briefly describe the categories of rights and freedoms found in the Charter.
- Explain the status and enforcement of rights in Canada before the Charter's passage.
- Discuss the principal characteristics of parliamentary government in Canada
- Briefly summarize the significance of the “reasonable limits” and “notwithstanding” clauses of the Charter.

- Distinguish between the procedures used to amend the Constitution before and after 1982.
- Identify and explain the significance of several major Charter rulings.
- Explain the major changes proposed by the Meech Lake Accord and the Charlottetown Accord, and discuss the reasons for the failure of these two attempts to amend the Constitution.
- Compose one or two paragraphs that use as many key concepts (listed below) as possible.

## Key Concepts

**Aboriginal rights** A recognition and a set of guarantees by the state the Indigenous peoples have certain rights such as civil rights and the rights to land, to preservation of culture, and to self-government (p. 190)

**Anarchy** Chaos and civil strife (p. 175)

**Bicameral legislature** A legislature comprising of two bodies: In Canada, an elected lower House of Commons and an appointed upper house (Senate) (p. 199)

**Canadian Bill of Rights** A statutory declaration of rights passed by the Canadian Parliament on 10 August 1960 (p. 213)

**Charlottetown Accord, 1992** A second attempt at constitutional reform called the “Canada round” of constitutional negotiations (p. 206)

**Civil liberties or civil rights** All the basic rights and freedoms of citizens (p. 212)

**Clarity Act** Response to the Supreme Court’s ruling on Quebec’s right to secede that empowers Parliament (1) to review the wording of any future referendum question to determine whether it is “unambiguously worded” and (2) to determine whether the margin of victory for the separatism option constitutes the “clear majority”—both requirements of the Court’s ruling (p. 211)

**Codified constitution** The powers of government, as well as the limits to government power, are recorded in a formal, written, unified document (p. 178)

**Constitutional amendment** Change some aspect(s) of the existing constitution, leaving the basic constitutional structure intact (p. 201)

**Constitutional conventions** Practices that emerge over time and are generally accepted as binding rules of the political system (p. 176)

**Constitutional supremacy** “The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.” (p. 195)

**Constitutionalism** Predictable governance that has its source in written rules rather than the arbitrary wills of individuals (p. 184)

**Coup d’état** The illegal overthrow of a government by violence or threat of violence (p. 201)

**Democratic rights** The right of citizens to vote in periodically held elections and to stand for public office (p. 188)

**Equality rights** Embodiment of the rule of law principle that everyone should be treated equally under the law (p. 189)

**Fundamental freedoms** Basic individual political rights (or liberties) that include freedom of religion, belief, expression, the media, assembly, and association (p. 188)

**Human rights** Defined by the Universal Declaration of Human rights (1948) as all the basic rights and freedoms of citizens (p. 212)

**Judicial independence** Judges are to be free from any and all interference in their decision making (p. 196)

**Judicial restraint** A legal concept expressed in the Charter that judges should defer to in the legislature when exercising their judicial power (p. 218)

**Language rights** Guarantees by the state that an individual or a group has the right to choose a particular language for use in private or in public, and to use that language in a given jurisdiction, for example in the educational system, in the government, or in the courts of a given territory (p. 189)

**Legal rights** Procedural rights intended to ensure the fair and equal treatment of individuals under the law (p. 188)

**Meech Lake Accord, 1987** An attempt to reform Canada's Constitution to recognize Quebec as a "distinct society" (p. 180)

**Ministerial responsibility** The obligation of a cabinet minister to explain and defend policies and actions carried out in her or his name (p. 193)

**Minority government** Those the depend on the support of another party's MPs in order to win votes in the legislature (p. 192)

**Mobility rights** The rights of citizens to move freely within a country's borders (p. 188)

**Notwithstanding clause** Either Parliament or a provincial legislature may expressly declare that a law shall operate even if it offends against section 2 or sections 7–15 of the Charter. (p. 195)

**Oakes test** Measurement of reasonable limits (p. 219)

**Parliamentary supremacy** Parliament's authority was considered superior to that of all other institutions of government (p. 184)

**Party discipline** A party's MPs generally vote as a unified block in the legislature (p. 192)

**Privy Council** Power that resides formally in the monarchy is in practice held by the Crown's advisers (p. 191)

**Reasonable limits** Reasonable legislative limits can be placed on human rights by legislation if it can be established that they are in the best interest of a free and democratic society (p. 218)

**Representation by population** The principle of "one person–one vote," where all elected members of the legislature should represent approximately the same number of voters (p. 176)

**Responsible government** The constitutional principle that the prime minister and cabinet require the confidence of the elected House of Commons in order to govern (p. 192)

**Reverse discrimination** Policies that shift the burden of injustice onto the shoulders of the qualified members of advantaged groups who are not personally responsible for the injustices suffered by minority groups (p. 186)

**Right** Something that a person is entitled to (p. 178)

**Rule of law** Guarantees that all public authority must be exercised in accordance with the law and that there will be one law for all persons (p. 184)

**Section 15** Section of the Charter that deals explicitly with equality rights (p. 189)

**Section 33** See “notwithstanding clause”

**Single-member constituency** An electoral system in which each constituency (riding) gets one representative in the House of Commons and/or provincial legislature (p. 177)

**Uncodified constitution** The powers of government, as well as the limits to government power, are unwritten or based on precedents, or embedded in the country’s laws, conventions, and traditions (p. 178)

## Critical Thinking Questions

1. What kinds of rights are normally included under the heading “human rights”? Does the Canadian Charter include these rights? Does it include others?
2. Is it true that judges come from predominantly upper-class backgrounds? Is there any significance in this question for Canadian politics and society?
3. How pervasive is the Charter in the daily lives of Canadians? Do a search for stories about the Charter over the past year. How prevalent are they?
4. What are the major issues and debates concerning the Constitution in the United States? What are the similarities and differences with the issues and debates surrounding the Canadian Constitution?
5. Take a look at the constitutions of other countries around the world, including relatively old and new ones. What are their characteristics? How do they compare to the Canadian Constitution?
6. Discuss the issue of self-determination. What does international law have to say about the right of self-determination? Does international law matter if a majority of Quebec citizens voted to secede from Canada?

## Additional Resources

CBC Archives, video clips on the Constitution <http://archives.cbc.ca/politics/constitution/>

CBC, [www.cbc.ca/knowyourrights/](http://www.cbc.ca/knowyourrights/)

CBC Archives, video clips on rights and freedoms [http://archives.cbc.ca/politics/rights\\_freedoms/](http://archives.cbc.ca/politics/rights_freedoms/)

CBC Archives, video clips on the Constitution <http://archives.cbc.ca/politics/constitution/>