

rights violations by drawing world attention to offending countries. The world as a whole has become increasingly concerned with the protection of human rights, and increasingly influential in effecting positive change. When the United Nations calls attention to human rights abuses, the global community responds by putting pressure on the offending countries (refer to specific examples in Chapter Eight).

### **C. HUMAN RIGHTS LEGISLATION IN CANADA**

In Canada, the federal government and all provinces have signed and ratified (made legal by a vote of the House of Commons) the Universal Declaration of Human Rights, and it is now binding upon Canada in international law. If a Canadian citizen feels that the government is not meeting U.N. standards, he/she can complain to the U.N.'s Human Rights Committee. Canada also has a set of civil rights, which virtually mirrors those set out in the U.N.'s Declaration. Civil rights are rights sanctioned by the laws of a country and upheld by its justice system. Canada's civil rights are enshrined (protected) in the Canadian Charter of Rights and Freedoms.

#### **1. THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS**

As part of the Constitution Act (refer to page 19), the **Canadian Charter of Rights and Freedoms** came into effect in 1982. Previously, civil rights were protected only through convention, common law, and statutes (laws passed by the government). Although a Bill of Rights existed previously, with the Charter for the first time civil liberties were enshrined in the Constitution. This means that before the creation of the Charter, Parliament had the ability to change any of the existing rights.

##### **a) Civil Rights in the Charter**

Most of the rights enshrined in the Charter fall into seven broad categories:

##### **(i) Fundamental Freedoms (freedoms considered basic to a free and democratic society)**

- Freedom of conscience (people can think and believe whatever they want) and religion
- Freedom of belief and expression (including freedom of speech and freedom of the press)
- Right to peaceful assembly
- Freedom of association

##### **(ii) Democratic Rights**

- Right to vote and run for office
- Right to federal elections every five years
- A sitting of Parliament and of each legislature at least once every 12 months

##### **(iii) Mobility Rights**

- Right to leave and enter Canada
- Right to work/live in any province – to discourage local hiring policies which allow only residents of a given province to work in certain industries

(iv) **Legal Rights** (intended to limit the power of government so that it can't interfere with personal liberty). Below is a list of the more basic legal rights:

- Right to life, liberty, and security of the person
- Right to a fair trial and lawyer
- Right to not be arbitrarily (i.e., without good reason) detained/imprisoned
- Right to be presumed innocent until proven guilty
- Right to not be subjected to cruel and unusual treatment

(v) **Equality Rights**

This section is the most debated section of the Charter and, in the end, the most far-reaching. Initially, there was much debate over the exact meaning of "equality." The main aspects of equality rights are as follows:

- Freedom from discrimination based on race, national or ethnic origin, religion, sex, age, or mental or physical disability.
- Permission for affirmative action programs, which allow preferential hiring for members of disadvantaged groups. Although employers cannot consider ancestry, gender or other prohibited grounds of discrimination in their hiring decisions (which would be a violation of the Charter), an employer can choose to consider a prohibited ground in the hiring process (e.g., hiring more females than males) for the purpose of developing a representative workforce. Many people disagree with this part of the Charter because they feel that people should be hired based only on their qualifications and abilities, not on race or gender. If people are hired simply because they are of a certain gender or race, then reverse discrimination could occur. However, affirmative action is designed to "equalize" the workplace—by hiring more people from disadvantaged groups, the workplace will more accurately represent the Canadian population. For example, historically women did not have the same education / opportunities as men, and so there were fewer women in the workforce in certain types of jobs. It eventually became more accepted for women to work outside the home, and for women to have the same careers as men, such as medicine and law. However, there were obviously fewer women in these positions to start with because they were previously unable to pursue these types of careers. Therefore, under the rules of affirmative action, an attempt is made to "make up" for this difference, and women are "preferentially" hired over men so that there is greater gender equality in most jobs. The same concept holds true for people of different races who previously faced discrimination and did not have equal opportunities.

(vi) **Official Language Rights**

- Recognizes the official bilingual status of Canada and the equality of the French and English languages.

**(vii) Minority Language Educational Rights**

- Right to education in English or French when there are significant numbers of students.
- Each province decides whether to provide education in a minority language other than English or French.

The Charter also contains rights specific to the aboriginal peoples of Canada, and rights regarding the multicultural heritage of Canada. The Charter states that the rights and freedoms therein cannot interfere with the treaty rights of the aboriginal peoples of Canada or with any land claims. It also guarantees the “existing rights” of aboriginal peoples. Interestingly, these existing rights are not listed in the Charter because Canadian politicians and aboriginal leaders could not agree.

**b) Limitations of Rights****(i) The Notwithstanding Clause**

The **notwithstanding clause** is included in the Charter of Rights and Freedoms to serve as an “escape” clause for both the federal government and provincial legislatures. It allows the possibility for both levels of government to pass a law even if the law violates one of the rights guaranteed in the Charter. Governments may suspend a right in the Charter for a period of up to five years, but must then seek renewal. The notwithstanding clause is significant because it gives some power back to the government, and at the same time, it allows for the legal restriction of individual rights.

**(ii) Conflicting Rights**

In an ideal world, our rights would be inviolate (unquestionable). However, it happens on occasion that civil rights conflict. For example, take the issue of forced retirement at age 65. Some argue that this discriminates based on age, thereby violating the right to equality; however, this legislation also protects the right of young people to find employment. Whose rights take precedence (whose are most important)? The key is to balance the protection of the rights of individuals, with the rights and/or needs of society. Therefore, our individual rights are indeed protected through the Charter—but within good reason.

**(iii) Interpretation by the Courts**

When civil rights became entrenched in the Constitution, judges found themselves increasingly assuming the role of “interpreter.” In order to judge their cases fairly, they themselves had to interpret the fairness of laws. This put judges in the position of having to make some tough decisions about some very sensitive issues (e.g., pornography, abortion, etc.). Judges were now pressured to make “landmark” decisions, and set precedent for new laws. Many such decisions support limitations of individual rights in favour of the good of society. For example, in the case of “Irwin Toy Ltd. versus Quebec,” Irwin Toy Limited sought to use an aggressive marketing campaign targeting young children. However, the Supreme Court of Canada ruled that the needs of society outweighed Irwin’s right to freedom of expression. The court decided that the Consumer Protection Act of Quebec, which places limits on

commercial advertising “directed at persons under 13 years of age,” was more important than Irwin’s right to freedom of expression. It often happens that rights come into conflict, and it is up to the judges to make balanced decisions that serve the greater good of society, as well as protect the rights of individuals.

#### (iv) Language in the Charter

Parts of the Charter were deliberately written in a vague and general way (i.e., terms like “unreasonable search”—what exactly does this mean?) While this type of vocabulary gives the courts the ability to limit our rights, it also allows for the Charter to grow over time. This is an important feature of the Charter because it means that the Charter can change with the changing beliefs of a nation’s citizens.

#### c) The Issue of Gender Equity

Although section 15 of the Charter prohibits discrimination based on gender, women do not yet receive equal treatment in the workplace. In some instances, women continue to occupy the lower and middle ranks of organizations, have unequal access to training and promotion, encounter difficulty entering male-dominated professions, and are paid less than men for equal work. This is still the case despite the rapid increase in the number of women working outside of the home over the past two decades.

In order to encourage gender equity, section 15 of the Charter allows for special initiatives to correct traditional discriminatory practices in the workplace. These include affirmative action programs such as preferential hiring, which was discussed earlier.

### 2. THE IMPACT OF THE CHARTER SINCE 1982

This topic can become quite confusing if one moves into the complications of various court rulings and proceedings. That is not the intention here. This sub-section will attempt to look at how the Charter has affected Canadians.

First and foremost students must recognize the difference between human rights, on the one hand, that are merely a piece of legislation (an act of parliament) and, on the other hand, human rights that are protected in the constitution. Human rights that are written only as a set of laws can be changed on very short notice. Parliament, if it chooses, can change legislation within days if it so wishes. Thereby, one might say that one’s human rights in this situation exist in limbo (an ill-defined or temporary state). The main impact of placing the citizens’ rights in the constitution is that the constitution is (deliberately) difficult to amend. This is why so many who comment on the Canadian Charter of Rights and Freedoms use the term “enshrined” when they speak of placing our basic rights into the Constitution Act of 1982. “Enshrined” means to put something in a special place.

Another impact of the Charter has been limiting, to a large extent, the supremacy of parliament and then conversely enhancing the supremacy of the constitution. The Charter clearly states that the legislative bodies of the federal and provincial governments cannot pass laws which violate the charter. If they do, those laws will be overturned by the courts. (In typical Canadian fashion, an exception was made in the Notwithstanding Clause discussed earlier.) The courts of Canada have been entrusted with a greater responsibility regarding