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The Charter protects several rights and freedoms

The *Charter of Rights and Freedoms* is part of Canada's Constitution. If a court or other tribunal decides that a law, or part of a law, violates the Charter, that law is not valid – unless the Canadian Parliament or a provincial legislature can justify the Charter violation, under section 1, as a “reasonable limitation” on the person's right or freedom. If the law cannot be justified as a “reasonable limitation” on the right or freedom, the law can still be valid – if Parliament or a provincial legislature overrides the Charter and says that the law operates in spite of the Charter (refer to script 230 for details of the “notwithstanding clause”). However, Parliament has never used its power to override the Charter. The Charter also governs the actions of state officials, such as the police. You can see both the Constitution and the Charter on the Canadian government website at <http://laws.justice.gc.ca/en>.

Legal Rights in the Charter

Sections 7 to 14 of the Charter guarantee everyone certain legal rights. Some of these rights require every person accused of a crime to be treated in a just and fair manner. And some of these rights existed long before the Charter. But they are now in the Constitution.

But these rights are not absolute. As the first paragraph explains, governments can limit these rights under section 1 of the Charter – if the limits are reasonable in a free and democratic society. Apart from these possible limits, the Charter protects the following rights. The Legal Rights described in the Charter most often apply in criminal cases, but they can also apply in other cases as well – for example, if you worked for a government agency and your employer attempted to search you before you left the premises after completing your shift. Only Parliament can pass criminal laws.

Section 7: the right to life, liberty, and security of the person

Section 7 of the Charter gives everyone the right to life, liberty, and security of the person, and the right not to lose these things unless they are taken away according to principles of fundamental justice. The Charter protects more than just the right to physical liberty – the right not to be held against your will. It also protects the right to be free from physical assault or interference, or the threat of them. It protects conduct that people are free to pursue. If the government interferes with these rights, it must follow fair laws and procedures.

For example, if a criminal law said you can go to jail for up to 6 months if your husband or wife commits robbery, a court would probably use section 7 to strike down this law, making it invalid. The court would say that the law takes away your liberty (you could go to jail) and it does not follow the principles of fundamental justice. One of those principles is that you must be personally responsible for a crime to be convicted; it is not enough just to know someone who did it.

Section 8: the right to be secure against unreasonable search and seizure

Section 8 gives everyone the right to be secure against unreasonable search or seizure. Section 8 affects the laws that permit the police to search your home or place of business, your car, or even you, in certain circumstances. It also affects the actions of individual police officers. Section 8 protects property if you have a reasonable expectation of privacy. So before police can search or seize, they must have a good reason to do so. For example, if the police believe that you have stolen TVs and cell phones, they cannot just enter your apartment and search you and your rooms. Such a search may well be unjustified if the police could have first

gotten a search warrant, but did not do so. The search without a warrant could be unreasonable, and therefore, violate section 8.

Section 9: the right not to be arbitrarily arrested

Section 9 gives everyone the right not to be arbitrarily arrested, held, or imprisoned. Something is arbitrary if there is no good reason for it or if it is done because of someone's opinion and there is no good reason for that opinion. The *Criminal Code* and other laws control powers of arrest and those laws must be consistent with section 9 of the Charter. For example, the police can arrest a person who they reasonably believe committed a murder. The person must be brought before a Justice of the Peace as soon as possible – normally within 24 hours – to see if they can be released from custody.

Section 10: the right to know why you're arrested

Section 10 applies if police arrest or detain you. It gives you the right to be told promptly why you are arrested or held. You also have the right to get a lawyer immediately and to be told that you have that right. The police must give you privacy to exercise your right to call a lawyer.

Section 11: your rights if you're charged with an offence

Section 11 puts several fundamental principles of Canadian criminal law into the Charter. It governs how a person charged with an offence is treated in a criminal case. Some of these rights, such as the right to be presumed innocent until proven guilty, and the right not to be a witness against yourself, existed long before the Charter. One important new right is the right to a trial within a reasonable time. Another is the right to be informed without unreasonable delay of the specific offence you are charged with. Section 11 also gives a person charged with an offence the right to reasonable bail unless there is just cause (a good reason) to deny it. Section 11 provides a right to trial by jury if an offence can be punished with imprisonment for five years or more (the *Criminal Code* also gives a right to trial by jury for some other serious offences).

Section 12: the right to avoid cruel and unusual punishment

Under section 12, everyone has the right not to be given cruel and unusual treatment or punishment. When courts decide whether a punishment is cruel and unusual, they often ask if the punishment is so harsh that it shocks the conscience of the Canadian public.

Section 13: protection against the use of your own testimony to prosecute you

At a criminal trial, the accused person can testify (give evidence) in their own defence or refuse to testify. Other people generally cannot refuse to testify: they must testify if they receive a subpoena (a document ordering them to come to court and give evidence). If they refuse to testify, they can be charged with contempt of court. And anyone who gives false testimony can be charged with perjury.

If a witness at the criminal trial of another person is asked about their own personal involvement in criminal activity, they must answer truthfully. But the witness's answers cannot harm the witness – under section 13, testimony showing the witness's own criminal activity cannot be used to prove the witness's guilt (except for perjury or giving contradictory evidence).

Section 14: the right to an interpreter

Section 14 gives everyone the right to an interpreter in any legal proceedings if they don't understand or speak the language being used, or if they're deaf.

Other rights if you are charged with an offence

Other sections of the Charter also have rights that apply to a person charged with an offence. Refer to script [232](#), called "*Charter of Rights and Freedoms: equality rights*," and script [230](#), called "*Charter of Rights and Freedoms: Overview*." The guarantee of equality in the Charter applies to criminal law and may affect criminal laws that discriminate on the basis of sex, for example. In addition to the legal rights in the Charter, other laws give rights to anyone charged with an offence. Some of these rights existed before the Charter and they

continue to apply, although the Charter does not mention them.

Remedies if your rights are violated

The Charter gives courts a lot of discretion about the kind of remedy they can use if a Charter right is violated. Section 24 of the Charter allows a person whose rights have been violated to apply to a court for a remedy the court considers appropriate and just in the circumstances. Whenever someone illegally interferes with your rights, you can always sue them to recover any losses you suffer as a result. But this does not help someone who is charged with an offence after an illegal search or after they confess to a crime without being advised of their right to speak to a lawyer. So in these cases, a court may exclude (not consider) evidence if it was obtained in a way that interfered with a Charter right. But a court will exclude evidence only if the accused person can show that using the evidence would bring the administration of justice into disrepute.

The type of remedy a court uses often depends on the type of Charter right that is violated. For example, if the right to a trial within a reasonable time has been denied, and it is no longer possible for a person to properly defend themselves, the court may simply “stay” the charges. That means the trial won’t proceed and the person won’t be convicted. Or, if a section of the *Criminal Code* discriminates on the basis of age or sex, a court may say that the section is not valid.

Summary

The Charter gives important new rights to people accused of a crime. These rights are in addition to traditional legal rights and, in some cases, improve those rights. The Charter now also gives remedies, which give strength and meaning to those rights. For more information on the Charter, refer to script 232, called “*Charter of Rights and Freedoms: equality rights,*” and script 230, called “*Charter of Rights and Freedoms: Overview.*”

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