

Activity 8

JUDGING YOUR RIGHTS

Objectives

To become familiar with:

- the powers of the Supreme Court;
- the *Charter of Rights and Freedoms*, how it has affected the laws of Canada overall, and how it has affected the lives of individual Canadians; and
- how the powers of the Supreme Court have been changed by the *Charter*, particularly in the area of criminal law.

Suggested Sources:

http://canada.justice.gc.ca/loireg/carte/const_en.html for many versions.

Information on the Magna Carta, http://www.archives.gov/exhibit_hall/featured_documents/magna_carta/magna_carta.html;

<http://www.law-faqs.org/nat/char.htm>; and

The Supreme Court's Statistics Report can be downloaded in PDF format from http://www.scc-csc.gc.ca/information/statistics/index_e.html.

Directions

1. Make enough copies of the *Canadian Charter of Rights and Freedoms* for each member of the group. There are many versions which you can download from the Internet.
2. Discuss the opening sentence of the *Charter* ("Whereas Canada is founded..."). The "rule of law" refers to the long evolution of our laws, which have their roots in Roman Law and English Law. In particular, the English *Magna Carta* ("Great Charter") of 1215 established, almost 800 years ago, that even the ruler of the nation has to obey its laws. No person or group is "above" the law in our society.
3. List the subjects into which the *Charter* is divided, clarifying any terminology that users might find difficult.

Fundamental Freedoms

Democratic Rights

Mobility Rights

Legal Rights

Official Languages of Canada

Minority Language Educational Rights

Enforcement

General

Application of the *Charter*

Note: The Charter is subdivided into 34 Sections, some of which are broken down into even shorter sections.

4. If appropriate for the level of the group, discuss the *Charter's* direct impact on criminal law. For example, how does it affect the:
 - investigation of a crime
 - procedural fairness at trial
 - decisions about the use of evidence
 - sentencing of convicted individuals
 - use of criminal laws that contradict rights listed in the *Charter* (the "notwithstanding" clauses)

Note: The Charter's effect has been enormous. The Supreme Court has made hundreds of landmark rulings based on it since 1982, especially due to Sections 2, 7 to 15, and 24.
5. Make copies of the *Judging Your Rights* activity sheet. Have users answer the questions following each case summary. Brief answers are given after the activity sheet.

ACTIVITY 8: JUDGING YOUR RIGHTS (Cont.)

6. You may wish to have an advanced group, individually or in pairs, invent or find cases in the news in which a Canadian's rights may or may not have been infringed upon. To make sure they study the *Charter* thoroughly, assign a section or subsection to each individual or pair. They should also predict or find out the outcome of the cases, based on the *Charter*. These can be presented to the class in a variety of ways:
 - a) Each case is printed on a piece of paper. The case is passed around the group, and each individual or pair has to make a "ruling" on the case, and record it. Everyone rules on everyone else's cases and records their decisions. These decisions can be presented orally, in discussion, or on paper.
 - b) Each case is presented orally and discussed in small groups or the group as a whole. When the discussion is complete, the ruling is "revealed."

Activity Sheet

JUDGING YOUR RIGHTS

The *Canadian Charter of Rights and Freedoms*, commonly known as the *Charter*, is a vitally important document contained in the *Constitution Act, 1982*. It guarantees to all Canadians the right to liberty, equality under the law, and freedom of religion, expression, association, and peaceful assembly, among other things. It is the supreme law of the land. This means that, normally, it takes priority over any federal or provincial law. Therefore, if any legislation, either provincial or federal, conflicts with the rights guaranteed in the *Charter*, it must be revised appropriately or it is likely to be struck down by the courts.

1. A sick baby needs an operation that will require a blood transfusion. Her parents will not authorize the transfusion, because it goes against their religion.

Which sections of the Charter apply to either the child's or the parents' rights in this situation?

2. A TV camera crew videotapes people breaking into a government building and damaging it, and shows it on the evening news. The police get a warrant to search the TV station and seize the tapes. The TV station argues that this is an unreasonable search and that the police should have used other methods to get the information they needed.

What section of the Charter deals with this issue? Who do you think won this case, and why?

ACTIVITY SHEET: JUDGING YOUR RIGHTS (Cont.)

3. Victims of a burglary spot a group of three young men drinking in a back yard, two of whom match a witness' description of the men who stole their television. They call the police. The officer asks the two men to sit in the back of the police car and answer questions. The police officer asks one of the young men to just tell him where the TV set is. One of the men spontaneously answers, incriminating himself. The two men are given the customary caution and told they have a right to counsel. Back at the police station, both men admit to having been involved in the break-and-enter, and the television is found at one man's home with both their fingerprints on it.

Did the police violate any of the burglars' rights under the Charter, making the evidence inadmissible (useless) to the courts?

4. Two gay men, who have been living together for decades, reach retirement age. One of the men has considerable pension benefits and thinks his partner should have the same access to these benefits as a wife would.

Does any section of the Charter support this claim?

5. A francophone is stopped for speeding in Alberta and criminal charges are laid against him. He insists on having all legal proceedings — including cautions, interrogations, his trial and appeal — conducted in French and will not merely accept the services of a translator.

Does he have the right to insist the proceedings be conducted in French?

Answer Sheet: JUDGING YOUR RIGHTS

Note: Detailed information about all of these cases can be found at: <http://canada.justice.gc.ca/en/dept/pub/ccrdd/tableofcases.htm#A> and <http://www.lexum.umontreal.ca/csc-scc/en/index.html>. The first site lists cases that were affected by the Charter; the second gives a full description of cases from 1985 onward, including the Supreme Court Justices' comments.

1. Two in particular apply in this situation. Under Section 2, the parents have the right to freedom of conscience and religion. On the other hand, under Section 7, the child has the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice. The child was temporarily taken into care by the Children's Aid Society for the period of medical treatment, a decision which the parents appealed. The ruling of the Supreme Court went in favour of the parents' rights to appeal. (*B. (R.) v. Children's Aid Society*, 1995)
2. Although the TV station's case was weakened by the fact that they'd shown the tapes, the final ruling was in their favour. Section 8 prevents "unreasonable search and seizure." and Section 2(b) guarantees the "freedom of the press." Traditionally, the press are allowed to protect their information so that they do not become an arm of the police. (See *Canadian Broadcasting System v. Lessard*, 1991)
3. Yes, the police violated Section 9 by "arbitrarily detaining" the two men in the car. So, according to Section 24 (2) all the evidence the police got from this detention — the confession, finding the TV set, the fingerprints — was improperly obtained. In a similar case, the men's appeal was allowed, but a new trial was ordered in which they were convicted. (See *R. v. Duguay and Sevigny*, 1989).
4. The focus of these kinds of cases is on Section 15, which guarantees equality without discrimination based on (among other things) sex. As well, this Section does not prevent any laws being made that improve conditions for people who are suffering under racial, sexual and other forms of discrimination. Some of these cases have not extended full spousal benefits in same-sex relationships, because they do not fit society's definition of marriage and therefore are not granted the protection we give heterosexual couples and by extension, their children. This case was tried before the Federal Court, because the pension in question belonged to a federal civil servant and so the claim was against the federal government. (See *Egan v. Canada*, 1995).
5. Several sections of the *Charter* apply to this case. Section 7 guarantees him the right to "fundamental justice," but the more important sections are 14, 16, 17, 18, 19, and 20 which guarantee him his right to services and to communicate in French in institutions and courts of the government of Canada. Since he is charged with a criminal offence, and criminal law is under federal jurisdiction, he has the right to have legal proceedings conducted in French. (See *R. c. Mercure*, 1988.)