

History of the canadian charter or rights and freedoms



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The Canadian Charter of Rights and Freedoms (also known as The Charter of Rights and Freedoms or simply the Charter) is a bill of rights entrenched in the Constitution of Canada. It forms the first part of the Constitution Act, 1982. The Charter guarantees certain political and civil rights of people in Canada from the policies and actions of all levels of government. It is designed to unify Canadians around a set of principles that embody those rights.

The Charter was preceded by the Canadian Bill of Rights, which was enacted in 1960. However, the Bill of Rights was only a federal statute, rather than a constitutional document. As a federal statute, it was limited in scope, was easily amendable by Parliament, and it had no application to provincial laws. The Supreme Court of Canada also narrowly interpreted the Bill of Rights and the Court was reluctant to declare laws inoperative. [1] The relative ineffectiveness of the Canadian Bill of Rights motivated many to improve rights protections in Canada.

The movement for human rights and freedoms that emerged after World War II also wanted to entrench the principles enunciated in the Universal Declaration of Human Rights. 2] The British Parliament formally enacted the Charter as a part of the Canada Act 1982 at the request of the Parliament of Canada in 1982, the result of the efforts of the Government of Prime Minister Pierre Trudeau. One of the most notable effects of the adoption of the Charter was to greatly expand the scope of judicial review, because the Charter is more explicit with respect to the guarantee of rights and the role of judges in enforcing them than was the Bill of Rights. The courts, when confronted with violations of Charter rights, have struck down

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unconstitutional federal and provincial statutes and regulations or parts of statutes and regulations, as they did when Canadian case law was primarily concerned with resolving issues of federalism. However, the Charter granted new powers to the courts to enforce remedies that are more creative and to exclude more evidence in trials.

These powers are greater than what was typical under the common law and under a system of government that, influenced by Canada's mother country the United Kingdom, was based upon Parliamentary supremacy. As a result, the Charter has attracted both broad support from a majority of the Canadian electorate and criticisms by opponents of increased judicial power. The Charter only applies to government laws and actions (including the laws and actions of federal, provincial, and municipal governments and public school boards), and sometimes to the common law, not to private activity.

Contents [hide] * 1 Features * 2 History * 3 Interpretation and enforcement * 4 Comparisons with other human rights instruments * 5 The Charter and national values * 6 Criticism * 7 See also 8 References o 8. 1 Notes * 9

External links [edit] Features Canadian Charter of Rights and Freedoms [v • d • e] Preamble Guarantee of Rights and Freedoms 1 Fundamental Freedoms 2 Democratic Rights 3, 4, 5 Mobility Rights 6 Legal Rights 7, 8, 9, 10, 11, 12, 13, 14 Equality Rights 15 Official Languages of Canada 16, 16. 1, 17, 18, 19, 20, 21, 22 Minority Language Education Rights 23 Enforcement 24 General 25, 26, 27, 28, 29, 30, 31 Application of Charter 32, 33 Citation 34 Under the Charter, persons physically present in Canada have numerous civil and political rights.

Most of the rights can be exercised by any legal person, (the Charter does not define the corporation as a “ legal person”),[3] but a few of the rights belong exclusively to natural persons, or (as in sections 3 and 6) only to citizens of Canada. The rights are enforceable by the courts through section 24 of the Charter, which allows courts discretion to award remedies to those whose rights have been denied. This section also allows courts to exclude evidence in trials if the evidence was acquired in a way that conflicts with the Charter and might damage the reputation of the justice system. Section 32 confirms that the Charter is binding on the federal government, the territories under its authority, and the provincial governments.

The rights and freedoms enshrined in the Charter include: Fundamental freedoms (section 2), namely freedom of conscience, freedom of religion, freedom of thought, freedom of belief, freedom of expression, freedom of the press and of other media of communication, freedom of peaceful assembly, and freedom of association. Democratic rights: generally, the right to participate in political activities and the right to a democratic form of government: Section 3: the right to vote and to be eligible to serve as member of a legislature. Section 4: a maximum duration of legislatures is set at five years. Section 5: an annual sitting of legislatures is required as a minimum. Mobility rights: (section 6): the right to enter and leave Canada, and to move to and take up residence in any province, or to reside outside Canada. Legal rights: rights of people in dealing with the justice system and law enforcement, namely: Section 7: right to life, liberty, and security of the person.

Section 8: right from unreasonable search and seizure. Section 9: freedom from arbitrary detainment or imprisonment. Section 10: The right to legal counsel and the guarantee of habeas corpus. Section 11: rights in criminal and penal matters such as the right to be presumed innocent until proven guilty. Section 12: Right not to be subject to cruel and unusual punishment.

Section 13: rights against self-incrimination Section 14: rights to an interpreter in a court proceeding. Equality rights: (section 15): equal treatment before and under the law, and equal protection and benefit of the law without discrimination. Language rights: generally, the right to use either the English or French language in communications with Canada's federal government and certain provincial governments. Specifically, the language laws enshrined in the Charter include: Section 16: English and French are the official languages of Canada and New Brunswick.

Section 16. 1: the English and French-speaking communities of New Brunswick have equal rights to educational and cultural institutions. Section 17: the right to use either official language in Parliament or the New Brunswick legislature. Section 18: the statutes and proceedings of Parliament and the New Brunswick legislature are to be printed in both official languages. Section 19: both official languages may be used in federal and New Brunswick courts.

Section 20: the right to communicate with and be served by the federal and New Brunswick governments in either official language. Section 21: other constitutional language rights outside the Charter regarding English and French are sustained. Section 22: existing rights to use languages besides

English and French are not affected by the fact that only English and French have language rights in the Charter. Hence, if there are any rights to use Aboriginal languages anywhere they would continue to exist, though they would have no direct protection under the Charter.) Minority language education rights: (Section 23): rights for certain citizens belonging to French or English-speaking minority communities to be educated in their own language.

These rights are generally subject to the limitations clause (section 1) and the notwithstanding clause (section 33). The limitations clause in section 1 allows governments to justify certain infringements of Charter rights. Every case in which a court discovers a violation of the Charter would therefore require a section 1 analysis to determine if the law can still be upheld.

Infringements are upheld if the purpose for the government action is to achieve what would be recognized as an urgent or important objective in a free society, and if the infringement can be “ demonstrably justified. ”

Section 1 has thus been used to uphold laws against objectionable conduct such as hate speech (e. g.

, in *R. v. Keegstra*) and obscenity (e. g. , in *R.*

v. Butler). Section 1 also confirms that the rights listed in the Charter are guaranteed. The notwithstanding clause authorizes governments to temporarily override the rights and freedoms in sections 2 and 7–15 for up to five years, subject to renewal. The Canadian federal government has never invoked it, and some have speculated that its use would be politically costly.

In the past, the notwithstanding clause was invoked routinely by the

province of Quebec (which did not support the enactment of the Charter but is subject to it nonetheless).

The provinces of Saskatchewan and Alberta have also invoked the notwithstanding clause, to end a strike and to protect an exclusively heterosexual definition of marriage,^[4] respectively. Note that Alberta's use of the notwithstanding clause is of no force or effect, since the definition of marriage is federal not provincial jurisdiction. ^[5]) The territory of Yukon also passed legislation once that invoked the notwithstanding clause, but the legislation was never proclaimed in force. ^[6] Other sections help clarify how the Charter works in practice. These include, Section 25, which states that the Charter does not derogate existing Aboriginal rights and freedoms.

Aboriginal rights, including treaty rights, receive more direct constitutional protection under section 35 of the Constitution Act, 1982. Section 26, which clarifies that other rights and freedoms in Canada are not invalidated by the Charter. Section 27, which requires the Charter to be interpreted in a multicultural context. Section 28, which states all Charter rights are guaranteed equally to men and women.

Section 29, which confirms the rights of religious schools are preserved.

Section 30, which clarifies the applicability of the Charter in the territories.

Section 31, which confirms that the Charter does not extend the rights of legislatures. Finally, section 34 states that the first 34 sections of the

Constitution Act, 1982 may be collectively referred to as the "Canadian Charter of Rights and Freedoms". [edit] History The Canadian Charter of

Rights and Freedoms The Canadian Charter of Rights and Freedoms Many of

the rights and freedoms that are protected under the Charter, including the rights to freedom of speech, habeas corpus and the presumption of innocence,[7] have their roots in a set of Canadian laws and legal precedents sometimes known as the Implied Bill of Rights.

Many of these rights were also included in the Canadian Bill of Rights, which the Canadian Parliament enacted in 1960. However, the Canadian Bill of Rights had a number of shortcomings. Unlike the Charter, it was an ordinary Act of Parliament, which could be amended by a simple majority of Parliament, and it was applicable only to the federal government. The courts also chose to interpret the Bill of Rights conservatively, only on rare occasions applying it to find a contrary law inoperative.

The Bill of Rights did not contain all of the rights that are now included in the Charter, omitting, for instance, the right to vote and freedom of movement within Canada. The centennial of Canadian Confederation in 1967 aroused greater interest within the government in constitutional reform. Such reforms would include improving safeguards of rights, as well as patriation of the Constitution, meaning the British Parliament would no longer have to approve constitutional amendments. Subsequently, Attorney General Pierre Trudeau appointed law professor Barry Strayer to research a potential bill of rights. While writing his report, Strayer consulted with a number of notable legal scholars, including Walter Tarnopolsky. Strayer's report advocated a number of ideas that were later incorporated into the Charter, including protection for language rights.

Strayer also advocated excluding economic rights. Finally, he recommended allowing for limits on rights. Such limits are included in the Charter's limitation and notwithstanding clauses. [8] In 1968, Strayer was made the Director of the Constitutional Law Division of the Privy Council Office and in 1974 he became Assistant Deputy Minister of Justice. During those years, Strayer played a role in writing the bill that was ultimately adopted.

Meanwhile, Trudeau, who had become Liberal leader and prime minister in 1968, still very much wanted a constitutional bill of rights. The federal government and the provinces discussed creating one during negotiations for patriation, which resulted in the Victoria Charter in 1971. This never came to be implemented. However, Trudeau continued with his efforts to patriate the Constitution, and promised constitutional change during the 1980 Quebec referendum. He would succeed in 1982 with the passage of the Canada Act 1982.

This enacted the Constitution Act, 1982. The inclusion of a charter of rights in the Constitution Act was a much-debated issue. Trudeau spoke on television in October 1980 [2], and announced his intention to constitutionalize a bill of rights that would include fundamental freedoms, democratic guarantees, freedom of movement, legal rights, equality and language rights. He did not want a notwithstanding clause.

While his proposal gained popular support, provincial leaders opposed the potential limits on their powers. The federal Progressive Conservative opposition feared liberal bias among judges, should courts be called upon to enforce rights. Additionally, the British Parliament cited their right to uphold

Canada's old form of government. At a suggestion of the Conservatives, Trudeau's government thus agreed to a committee of Senators and MPs to further examine the bill of rights as well as the patriation plan.

During this time, 90 hours were spent on the bill of rights alone, all filmed for television, while civil rights experts and interest groups put forward their perceptions on the Charter's flaws and omissions and how to remedy them. As Canada had a parliamentary system of government, and as judges were perceived not to have enforced rights well in the past, it was questioned whether the courts should be named as the enforcers of the Charter, as Trudeau wanted. Conservatives argued that elected politicians should be trusted instead. It was eventually decided that the responsibility should go to the courts. At the urging of civil libertarians, judges could even now exclude evidence in trials if acquired in breach of Charter rights in certain circumstances, something the Charter was not originally going to provide for. As the process continued, more features were added to the Charter, including equality rights for people with disabilities, more sex equality guarantees and recognition of Canada's multiculturalism.

The limitations clause was also reworded to focus less on the importance of parliamentary government and more on justifiability of limits in free societies; the latter logic was more in line with rights developments around the world after World War II. [9] In its decision in the Patriation Reference (1981), the Supreme Court of Canada had ruled there was a tradition that some provincial approval should be sought for constitutional reform. As the provinces still had doubts about the Charter's merits, Trudeau was forced to accept the notwithstanding clause to allow governments to opt out of certain

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obligations. The notwithstanding clause was accepted as part of a deal called the Kitchen Accord, negotiated by the federal Attorney General Jean Chretien, Ontario's justice minister Roy McMurtry and Saskatchewan's justice minister Roy Romanow. Pressure from provincial governments (which in Canada have jurisdiction over property) and from the country's left wing, especially the New Democratic Party, also prevented Trudeau from including any rights protecting private property. Nevertheless, Quebec did not support the Charter (or the Canada Act 1982), with "conflicting interpretations" as to why.

The opposition could have owed to the Parti Quebecois leadership being allegedly uncooperative, because it was more committed to gaining sovereignty for Quebec. It could have owed to Quebec leaders being excluded from the negotiation of the Kitchen Accord, which they saw as being too centralist. It could have owed to provincial leaders' objections to the Accord's provisions relating to the process of future constitutional amendment. 10] They also opposed the inclusion of mobility rights and minority language education rights.

[11] The Charter is still applicable in Quebec because all provinces are bound by the Constitution. However, Quebec's opposition to the 1982 patriation package has led to two failed attempts to amend the Constitution (the Meech Lake Accord and Charlottetown Accord) which were designed primarily to obtain Quebec's political approval of the Canadian constitutional order. Ironically, the only Non-Quebecer to sign the Charter into law was Queen Elizabeth II. While the Canadian Charter of Rights and Freedoms was

adopted in 1982, it was not until 1985 that the main provisions regarding equality rights (section 15) came into effect.

The delay was meant to give the federal and provincial governments an opportunity to review pre-existing statutes and strike potentially unconstitutional inequalities. The Charter has been amended since its enactment. Section 25 was amended in 1983 to explicitly recognize more rights regarding Aboriginal land claims, and section 16.1 was added in 1993. A proposed Rights of the Unborn Amendment in 1986–1987, which would have enshrined fetal rights, failed in the federal Parliament.

Other proposed amendments to the Constitution, included in the Charlottetown Accord of 1992, were never passed. These amendments would have specifically required the Charter to be interpreted in a manner respectful of Quebec's distinct society, and would have added further statements to the Constitution Act, 1867 regarding racial and sexual equality and collective rights, and about minority language communities. Though the Accord was negotiated among many interest groups, the resulting provisions were so vague that Trudeau, then out of office, feared they would actually conflict with and undermine the Charter's individual rights. He felt judicial review of the rights might be undermined if courts had to favour the policies of provincial governments, as governments would be given responsibility over linguistic minorities.

Trudeau thus played a prominent role in leading the popular opposition to the Accord. [12] [edit] Interpretation and enforcement The task of interpreting and enforcing the Charter falls to the courts, with the Supreme

Court of Canada being the ultimate authority on the matter. With the Charter's supremacy confirmed by section 52 of the Constitution Act, 1982, the courts continued their practice of striking down unconstitutional statutes or parts of statutes as they had with earlier case law regarding federalism. However, under section 24 of the Charter, courts also gained new powers to enforce creative remedies and exclude more evidence in trials. Courts have since made many important decisions, including *R. v.*

Morgentaler (1988), which struck down Canada's abortion law, and *Vriend v. Alberta* (1998), in which the Supreme Court found the province's exclusion of homosexuals from protection against discrimination violated section 15. In the latter case, the Court then read the protection into the law. Courts may receive Charter questions in a number of ways. Rights claimants could be prosecuted under a criminal law that they argue is unconstitutional.

Others may feel government services and policies are not being dispensed in accordance with the Charter, and apply to lower-level courts for injunctions against the government (as was the case in *Doucet-Boudreau v. Nova Scotia (Minister of Education)*). A government may also raise questions of rights by submitting reference questions to higher-level courts; for example, Prime Minister Paul Martin's government approached the Supreme Court with Charter questions as well as federalism concerns in the case *Re Same-Sex Marriage* (2004). Provinces may also do this with their superior courts.

The government of Prince Edward Island initiated the Provincial Judges Reference by asking its provincial Supreme Court a question on judicial independence under section 11. The building of the Supreme Court of

Canada, the chief authority on the interpretation of the Charter. The building of the Supreme Court of Canada, the chief authority on the interpretation of the Charter. In several important cases, judges developed various tests and precedents for interpreting specific provisions of the Charter. These include the Oakes test for section 1, set out in the case *R. v. Oakes* (1986), and the Law test for section 15, developed in *Law v.*

Canada (1999). Since *Re B. C. Motor Vehicle Act* (1985), various approaches to defining and expanding the scope of fundamental justice (the Canadian name for natural justice or due process) under section 7 have been adopted. (For more information, see the articles on each Charter section). In general, courts have embraced a purposive interpretation of Charter rights.

This means that since early cases like *Hunter v. Southam* (1984) and *R. v. Big M Drug Mart* (1985), they have concentrated not on the traditional, limited understanding of what each right meant when the Charter was adopted in 1982, but rather on changing the scope of rights as appropriate to fit their broader purpose. This is tied to the generous interpretation of rights, as the purpose of the Charter provisions is assumed to be to increase rights and freedoms of people in a variety of circumstances, at the expense of the government powers.

Constitutional scholar Peter Hogg has approved of the generous approach in some cases, although for others he argues the purpose of the provisions was not to achieve a set of rights as broad as courts have imagined. [13] Indeed, this approach has not been without its critics. Alberta politician Ted Morton and political scientist Rainer Knopff have been very critical of this

phenomenon. Although they feel the basis for the approach, the living tree doctrine (the classical name for generous interpretations of the Canadian Constitution), is sound, they argue Charter case law has been more radical.

When the living tree doctrine is applied right, the authors claim, “ The elm remained an elm; it grew new branches but did not transform itself into an oak or a willow. ” The doctrine can be used, for example, so a right is upheld even when a government threatens to violate it with new technology, as long as the essential right remains the same; but the authors claim that the courts have used the doctrine to “ create new rights. As an example, the authors note that the Charter right against self-incrimination has been extended to cover scenarios in the justice system that had previously been unregulated by self-incrimination rights in other Canadian laws. [14] Another general approach to interpreting Charter rights is to consider legal precedent regarding the United States Bill of Rights, which influenced the text of the Charter and has generated a great deal of thoughts on the extent of rights in a common law, democratic system and how bills of rights should be enforced by courts. However, American precedent is not considered infallible.

The Canadian Supreme Court has referred to the Canadian and American bills as being “ born to different countries in different ages and in different circumstances. “[15] Public interest groups frequently intervene in cases to make arguments on how to interpret the Charter. Some examples are the Canadian Civil Liberties Association, the Canadian Mental Health Association, the Canadian Labour Congress, the Women’s Legal Education and Action Fund (LEAF), and REAL Women of Canada. The purpose of such interventions

is to assist the court and to attempt to influence the court to render a decision favourable to the legal interests of the group.

A further approach to the Charter, taken by the courts, is the dialogue principle, which involves greater participation by elected governments. This approach involves governments drafting legislation in response to court rulings and courts acknowledging the effort if the new legislation is challenged. [edit] Comparisons with other human rights instruments The United States Bill of Rights influenced the text of the Charter, but its rights provisions are interpreted more conservatively. Canadian and American cases nevertheless sometimes have similar outcomes because the broader Charter rights are limited by section 1 of the Charter. The United States Bill of Rights influenced the text of the Charter, but its rights provisions are interpreted more conservatively.

Canadian and American cases nevertheless sometimes have similar outcomes because the broader Charter rights are limited by section 1 of the Charter. Some Canadian Members of Parliament saw the movement to entrench a charter as contrary to the British model of Parliamentary supremacy. Others would say that the European Convention on Human Rights (ECHR) has now limited British parliamentary power to a greater degree than the Canadian Charter limited the power of the Canadian Parliament and provincial legislatures. Hogg has speculated that the British adopted Human Rights Act 1998, which allows the ECHR to be enforced directly in domestic courts, partly because they were inspired by the similar Canadian Charter. [16] The Canadian Charter bears a number of similarities to the European Convention, specifically in relation to the limitations clauses <https://assignbuster.com/history-of-the-canadian-charter-or-rights-and-freedoms/>

contained in the European document. Because of this similarity with European human rights law, the Supreme Court of Canada turns not only to the Constitution of the United States case law in interpreting the Charter, but also to European Court of Human Rights cases.

The core distinction between the United States Bill of Rights and Canadian Charter is the existence of the limitations and notwithstanding clauses. Canadian courts have consequently interpreted each right more expansively. However, due to the limitations clause, where a violation of a right exists, the law will not necessarily grant protection of that right. In contrast, rights under the US Bill of Rights are absolute and so a violation will not be found until there has been sufficient encroachment on those rights.

The sum effect is that both constitutions provide comparable protection of many rights. Fundamental justice (in section 7 of the Canadian Charter) is therefore interpreted to include more legal protections than due process, which is its US equivalent. Freedom of expression in section 2 also has a more wide-ranging scope than the First Amendment to the United States Constitution's freedom of speech. [17] In *RWDSU v.*

Dolphin Delivery Ltd. (1986), the Canadian Supreme Court considered picketing of the kind the US First Amendment did not permit, as it was disruptive conduct (though there was some speech involved that the First Amendment might otherwise protect). The Supreme Court, however, ruled the picketing, including the disruptive conduct, were fully protected under section 2 of the Charter. The Court then relied on section 1 to find the injunction against the picketing was just. [18] The limitations clause has also

allowed governments to enact laws that would be considered unconstitutional in the US.

The Supreme Court of Canada has upheld some of Quebec's limits on the use of English on signs and has upheld publication bans that prohibit media from mentioning the names of juvenile criminals. Section 28 of the Charter performs a function similar to that of the unratified Equal Rights Amendment in the US. While that proposed amendment had many critics, there was no comparable opposition to the Charter's section 28. 19] Still, Canadian feminists had to stage large protests to demonstrate support for the inclusion of the section. The International Covenant on Civil and Political Rights has several parallels with the Canadian Charter, but in some cases the Covenant goes further with regard to rights in its text.

For example, a right to legal aid has been read into section 10 of the Charter (the right to counsel), but the Covenant explicitly guarantees the accused need not pay " if he does not have sufficient means. "[20]The Canadian Charter has little to say, explicitly at least, about economic and social rights. On this point, it stands in marked contrast with the Quebec Charter of Human Rights and Freedoms and with the International Covenant on Economic, Social and Cultural Rights. There are some who feel economic rights ought to be read into section 7 rights to security of the person and section 15 equality rights to make the Charter similar to the Covenant. The rationale is that economic rights can relate to a decent standard of living and can help the civil rights flourish in a livable environment.

Canadian courts, however, have been hesitant in this area, stating that economic rights are political questions and adding that as positive rights, economic rights are of questionable legitimacy. [21] The Charter itself influenced the Bill of Rights in the Constitution of South Africa. [21] [edit] The Charter and national values The “ March of Hearts” rally for same-sex marriage equality under the Charter in 2004. The “ March of Hearts” rally for same-sex marriage equality under the Charter in 2004. The Charter was intended to be a source for national values and national unity. As Professor Alan Cairns noted, “ The initial federal government premise was on developing a pan-Canadian identity.

“[22] Trudeau himself later wrote in his Memoirs that “ Canada itself” could now be defined as a “ society where all people are equal and where they share some fundamental values based upon freedom,” and that all Canadians could identify with the values of liberty and equality. [23]The Charter’s unifying purpose was particularly important to the mobility and language rights. According to author Rand Dyck, some scholars believe section 23, with its minority language education rights, “ was the only part of the Charter with which Pierre Trudeau was truly concerned. “[24] Through the mobility and language rights, French Canadians, who have been at the centre of unity debates, are able to travel throughout all Canada and receive government and educational services in their own language. Hence, they are not confined to Quebec (the only province where they form the majority and where most of their population is based), which would polarize the country along regional lines.

The Charter was also supposed to standardize previously diverse laws throughout the country and gear them towards a single principle of liberty.

[25] Former premier of Ontario Bob Rae has stated that the Charter “ functions as a symbol for all Canadians” in practice because it represents the core value of freedom. Academic Peter Russell has been more skeptical of the Charter’s value in this field. Cairns, who feels the Charter is the most important constitutional document to many Canadians, and that the Charter was meant to shape the Canadian identity, has also expressed concern that groups within society see certain provisions as belonging to them alone rather than to all Canadians. [16] It has also been noted that issues like abortion and pornography, raised by the Charter, tend to be controversial.

[25] Still, opinion polls in 2002 showed Canadians felt the Charter significantly represented Canada, although many were unaware of the document’s actual contents. [26] The only values mentioned by the Charter’s preamble are recognition for the supremacy of God and the rule of law, but these have been controversial and of minor legal consequence. In 1999, MP Svend Robinson brought forward a failed proposal before the Canadian House of Commons that would have amended the Charter by removing the mention of God, as he felt it did not reflect Canada’s diversity. Section 27 also recognizes multiculturalism, which the Department of Canadian Heritage argues is prized among Canadians. [27] [edit] Criticism While the Charter has enjoyed a great deal of popularity, with 82% of Canadians describing it as a “ good thing” in opinion polls in 1987 and 1999,[16] the document has also been subject to published criticisms from both sides of the political spectrum. One left-wing critic is Professor Michael Mandel, who

wrote that in comparison to politicians, judges do not have to be as sensitive to the will of the electorate, nor do they have to make sure their decisions are easily understandable to the average Canadian citizen.

This, in Mandel's view, limits democracy. Mandel has also asserted that the Charter makes Canada more like the United States, especially by serving corporate rights and individual rights rather than group rights and social rights. He has argued that there are several rights that should be included in the Charter, such as a right to health care and a basic right to free education. [28] Hence, the perceived Americanization of Canadian politics is seen as coming at the expense of values more important for Canadians.

The union movement has been disappointed in the reluctance of the courts to use the Charter to support various forms of union activity, such as the "right to strike". Right-wing critics Morton and Knopff have raised several concerns about the Charter, notably by alleging that the federal government has used it to limit provincial powers by allying with various rights claimants and interest groups. In their book *The Charter Revolution & the Court Party*, Morton and Knopff express their suspicions of this alliance in detail, accusing the Trudeau and Chretien governments of funding litigious groups. For example, these governments used the Court Challenges Program to support minority language educational rights claims.

Morton and Knopff also claim that crown counsel have intentionally lost cases in which the government was taken to court for allegedly violating rights, particularly gay rights and women's rights. [29] Political scientist Rand Dyck, in observing these criticisms, notes that while judges have had

their scope of review widened, they have still upheld most laws challenged on Charter grounds. With regard to litigious interest groups, Dyck points out that “ the record is not as clear as Morton and Knopff imply. All such groups have experienced wins and losses. “[30]The political philosopher Charles Blattberg has criticized the Charter for contributing to the fragmentation of the country, at both the individual and group levels. In encouraging discourse based upon rights, the Charter is said to inject an adversarial spirit into Canadian politics, making it difficult to realize the common good.

Blattberg also claims that the Charter undercuts the Canadian political community since it is ultimately a cosmopolitan document. Finally, he argues that people would be more motivated to uphold individual liberties if they were expressed with terms that are much “ thicker” (less abstract) than rights. [31]