

Teacher's Guide

Citizenship and Charters Program



L'ASSOCIATION DU
BARREAU CANADIEN
Division du Québec

THE CANADIAN
BAR ASSOCIATION
Québec Branch

The original French version of this guide was created by the Citizenship and Charters Committee of the Canadian Bar Association, Quebec Branch, in collaboration with Éducaloi.



The Citizenship and Charters Committee was responsible for the English translation.

WARNING

This document does not constitute a legal opinion by the judges and lawyers involved in its preparation and drafting.

This document provides general information about the Canadian Charter of Rights and Freedoms and the Charter of Human Rights and Freedoms. Some nuances have been omitted or simplified in order to make complex legal concepts more comprehensible. A certain amount of freedom has also been taken to adapt the judicial cases cited to the needs of the program. This document should be used only to teach Charters to high school students in the context of this program.

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PREFACE

Here are some of the reasons why I am pleased to sign the preface to this new version of our Program.

Like many members of the legal profession, I believe that every citizen should possess a basic knowledge of our judicial system, which is not perfect, but which deserves ample confidence and support. Our Program is designed with this in mind.

We all hear about the "Charters" and the clash of ideas (and values) when some demand that their fundamental rights be respected in the face of a more or less conciliatory majority. It is important to understand what the Canadian Charter and the Quebec Charter are, and the central role they play in our free and democratic society. Another objective of our Program is to demystify the Charters so that we may learn to appreciate their advantages and disadvantages.

In this regard, my basic reflection is that, with few exceptions, each and every one of us is part of a majority group somewhere, while also belonging to a potentially vulnerable minority because of a personal characteristic (age, language, religion, ethnicity, sexual orientation, etc.). In short, taking care of minority groups means taking care of yourself.

In addition, I am proud that the Canadian Bar Association - Quebec Branch has been supporting this program for over 20 years. Like the CBA-Quebec Branch, the Program brings together dedicated volunteers (lawyers and judges) who give their precious time to students who are eager to learn more.

Finally, the efforts of these volunteers are largely rewarded by the good reputation of the Program and by the warm welcome they receive in the schools and colleges visited.

The Honourable Pierre-C. Gagnon,
Judge of the Superior Court

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PRESENTATION OF THE PROGRAM

About the Program

First, we would like to **thank you** for your interest in the Citizenship and Charters Program of the Canadian Bar Association-Quebec Branch.

This program allows students in Secondary **IV and V** to become aware of the relationship between their **role as citizens** and the rights and obligations provided for in the **Canadian and Quebec Charters**.

The Program aims to:

General Objectives

- Introduce students to the **art of advocacy** and, more generally, to develop their oral argumentation skills;
- Introduce students to the workings of the **justice system** and **human rights and freedoms** in Canada;
- Invite students to consider **social issues** from a **legal perspective**;
- Give students an opportunity to **interact in person** with lawyers and judges.

Designated Subjects and Competencies

The program is designed to develop certain **subject-specific competencies** that can be found in the **Québec Education Program**:

ENGLISH LANGUAGE ARTS	ETHICS AND RELIGIOUS CULTURE	CONTEMPORARY WORLD
Competency 1 : <i>Uses language/talk to communicate and learn</i>	Competency 1 : <i>Reflects on ethical issues</i>	Competency 1 : <i>Interprets a contemporary world problem</i>
Competency 2 : <i>Reads and listen to written, spoken and media texts</i>	Competency 3 : <i>Engages in dialogue</i>	Competency 2 : <i>Takes a position on a contemporary world issue</i>

In addition, the program can easily integrate into the following subjects:

- **History;**
- **French, Second Language;**
- **Personal Orientation Project.**

Finally, participating in this program allows students to work on each of the four **general competencies** listed in the Secondary School Report Card, namely to **exercise critical judgment, organize work, communicate effectively and work in a team.**

Contents of Guide

The content of this Guide is presented by period in class. For each period, you will find:

- **Learning objectives;**
- The **required preparation** of the teacher and students for the beginning of the period;
- The plan to be **followed over the course of the period;**
- Suggestions for **complementary activities;**
- **Useful links** to external sources.

You will then find the **legal concepts** that must be presented during the period. These pages present the law in force today, popularized to help your students better understand it.

Most of the notions contained in the Teacher's Guide are also found in the **Student's Guide** (they form the body of the text). Information in **yellow boxes**, however, is in your Guide only. These are **complementary notions** that are not essential for the pleading exercise but help to deepen the material. Introduce them to your students if you have the time.

We suggest a minimum of **four (4) periods** of at least **55 minutes** to complete the program.

Detailed Program Presentation

If you have more time to devote to it, we **strongly** suggest that you add an **additional period** (between Courses 3 and 4) to help students prepare for the pleading exercise.



COURSES

1 & 2

Presentation of the Justice System and Charters

- Talk to your students about the **legal concepts** needed to understand fundamental rights and complete the pleading exercise.
- Your students will have the opportunity to **apply** their newly acquired knowledge through **practical exercises**.

Teacher
Only

COURSE

3

End of the Charter Presentations and Preparation for the Pleading Exercise

- The visiting lawyer will explain to the pupils the final necessary concepts and will review certain concepts if necessary.
- With the help of the visiting lawyer, students will work as a team to **develop the legal arguments** they will use during the pleading exercise.

Teacher
+
Lawyer

COURSE

4

Pleading Exercise

- Students will participate in the **simulation of a Supreme Court of Canada hearing**, inspired by the case you have chosen. Student advocates will plead the arguments developed and student judges will make a decision after listening to them.
- The guest judge and lawyer will direct the pleadings and answer questions from the students.

Teacher
+
Lawyer
+
Judge

Alternatives

The program also provides for the possibility that **the lawyer will be present in class beginning in Course 2**. In addition, the activity may be conducted **without the participation of a judge in Course 4**, if none are available on the days that suit you.

In this Guide you will find the adaptations to be made for either case, following the instructions for each period concerned.



PROGRAM PREPARATION

- 1 - Reading the Guides

Begin by **reading and understanding the legal content** of the Teacher's Guide. Afterwards, read the **summary of suggested cases**. Finally, review the **Charters' texts** (attached to this Guide) as well as the **Student's Guide**.

- 2 - Contact with Volunteers

Ask the person in charge of the program to provide you with the names of the lawyer and the judge who will attend Courses 3 and 4. It is essential that you contact them at least **four weeks before starting the program** to provide them with the following information:

- Students' **academic year** (Secondary IV or V);
- The **group's characteristics** (number of students, international or enriched program, etc.);
- The **characteristics of some students**, if necessary (visual or auditory handicap, learning disability, etc.);
- The **dates and times of the courses** to which the lawyer and the judge concerned must present themselves;
- The **address of the school**;
- Your **personal contact information** (your home and school phone numbers and your email address);
- The **name of the case chosen** for the pleading exercise, if your choice has already been made;
- Any other information you deem relevant.

You can use your first contact with the guest lawyer to **clarify any questions** you may have regarding the legal content of the Teacher's Guide.

Make sure to **keep the contact information** of the lawyer and the judge invited in case you need to inform them of a change.

- 3 - Preparing the Students

Before Course 1, we suggest you prepare your students in the following way:

- A. Have students read pages **6 and 7 of the Student's Guide** (corresponding to pages 14-16 of the Teacher's Guide).



B. Ask them to **read the Charters** (attached at pages 39-50 of the Student’s Guide), paying particular attention to:

- **sections 1 to 15, 24 and 32(1)** of the Canadian Charter;
- **sections 1 to 10, 21 to 38, 49 and 52** of the Quebec Charter.

- 4 -
Choice of the case

As soon as possible (and at the latest before Course 2), **make sure to choose the case** that the students will have to plead.

- 5 -
Distribution of the roles

Decide in advance the **roles that students will play** during the pleading exercise. The roles to be distributed are the following (you can choose the number of students):

ROLES	DISTRIBUTION (EXAMPLE)
Appellant’s lawyers	4 students
Respondent’s lawyers	4 students
Judges	6 or 8 students
Clerk and Usher	1 student per role
Optional Roles : Journalist, Courtroom Sketch Artist	At your discretion
Members of the Public (students without roles)	The rest of the class

- 6 -
Distribution of the teams

Remember to divide the class into **teams of four to five students** in preparation for Course 3, where students will have to develop legal arguments (step 3.5 on page 38 of this Guide). In order for all students to participate and to know what arguments to work on:

- Divide the teams by roles (appellant's lawyers, respondent's lawyers and judges);
- Distribute the other students amongst the formed teams.



The Charters

COURSE

1

FUNDAMENTAL RIGHTS, CHARTERS AND THE JUSTICE SYSTEM

60 TO 75 MINUTES (1 PERIOD)

Learning Objectives

- Understand the concept of **fundamental rights**.
- Gain a surface level understanding of the Canadian and Quebec Charters and their role in the legal system.
- Introduce our **justice system**, paying particular attention to the **Supreme Court of Canada**.
- Understand the **roles** of **lawyers, judges** and the other people who work in the courtroom.
- Solve **practical cases** using newly acquired knowledge.

Teacher Preparation

- Review pages **14 to 22** of the Teacher's Guide.
- Read the questions and answers found in the ***Your Advice!*** exercise

Student Preparation

- See section 3 of the Program Preparation section of this Guide (pages 9 and 10).

In-Class Instructions

- 1.1. Briefly introduce the program to students. Be sure to tell them that a lawyer and judge will be invited to Courses 3 and 4 and talk to them about the pleadings (not more than 5 minutes).
- 1.2. In a large group, **introduce the concepts on pages 14-16** of your **Guide** that correspond to the pages your students have read at home (*at least 10 to 15 minutes*).

The Charters

COURSE

1



- 1.3. Have students read pages 8 to 12 of their Guide (*at least 5 to 10 minutes*).
- 1.4. In a large group, **present the concepts on pages 17 to 22** of your Guide, which correspond to the pages that the students have just read (*at least 20 to 25 minutes*).
- 1.5. Ask students to read the **introduction of the *Your Advice!* exercise and to answer question 1**. You may decide if students work individually or in teams of 3 or 4 (*at least 5 to 10 minutes*).

Overview of the period (over 60 minutes)

5	1.1. Welcome and presentation of the program	Instructions	Large group	5 min.
10	1.2. Presentation of concepts: fundamental rights and Charters Teacher's Guide: pages 14-16	Lecture	Large group	10-15 min.
15				
20	1.3. Reading the Guide Student's Guide: pages 8-12	Reading	Individually	5-10 min.
25				
30	1.4. Presentation of concepts: the justice system Teacher's Guide: pages 17-22	Lecture	Large group	20-25 min.
35				
40				
45				
50	1.5. Exercise: <i>Your Advice!</i> Question 1	Exercise	Teams or individually	10-15 min.
55				
60				

The Charters

COURSE

1

To do at home

- Before the end of the period, be sure to tell your students how to **prepare for Course 2** (see page 25 of this Guide).
- You **can** also ask them to answer all or some of **questions 2 through 5 of the *Your Advice!*** exercise. The questions cover the concepts that will be covered in Course 2.

Alternative

In the event that the guest lawyer confirms his presence in class in the second period, **modify Course 1 as follows:**

- At the end of the period, rather than starting the *Your Advice!* Exercise (**Step 1.5**), ask your students to **carefully read the summary of the case** that will be covered in the pleading exercise. They can finish reading at home.
- We invite you to ask them to answer **question 1 of the *Your Advice!*** exercise at home.

FUNDAMENTAL RIGHTS AND CHARTERS

I. Fundamental Rights

Quebec and Canadian laws contain many **rights** that protect people. Some of these rights, however, are considered more important than others because they ensure respect for **human dignity** and the **values of our free and democratic society**. These rights are called "**fundamental rights**." You certainly know a few: freedom of expression, the right to equality, the presumption of innocence ...



The terms "fundamental rights", "rights of man", "human rights" and "rights of persons" refer to **very similar concepts**.

Clearly, they are not Canadian inventions. These fundamental rights are found in several **international instruments** that Canada has signed, for example in the 1948 ***Universal Declaration of Human Rights***.

To expand on the subject, fundamental rights can be grouped into **two main categories**:

- **Civil and political rights**, such as freedom of expression, which protect individuals against the actions of the state or others;
- **Economic and social rights**, such as the right to education, which, on the contrary, oblige the State to intervene.

With the exception of one section of the Quebec Charter (see page 30 of this Guide), the Charters exclusively protect the rights of the first category.

II. The Charters

The Charters are **very important laws** ("super laws") that protect the fundamental rights of all of us, no matter where we come from and whatever our living conditions may be. There are two in Quebec:

- the Canadian Charter of Rights and Freedoms (or "**Canadian Charter**");
- the Charter of Human Rights and Freedoms (or "**Quebec Charter**").

Be careful: certain other Canadian and Quebec laws are called "charters", such as the Charter of the French Language. These laws, however, **do not have the same legal status** and ambit as the Canadian Charter and the Quebec Charter. These other laws will not be addressed in this program.

The two Charters **do not exactly protect the same rights** and **do not apply to the same situations**. Let us examine these Charters in more detail.

CANADIAN CHARTER

The Canadian Charter has been in existence **since 1982** and applies **throughout Canada**. It is part of the **Constitution of Canada**.

The Constitution is a set of laws and rules that determine how Canada should be governed. It is paramount to the functioning of the country and is considered the "**supreme law**" of Canada. This means that **all other laws** in Canada and the provinces **must respect the Constitution**. And since the Canadian Charter is part of the Constitution, all other laws must respect the fundamental rights that are found in it.

The starting point of our Constitution is the **Constitution Act, 1867** (formerly the British North America Act), which created Canada. The Constitution now includes several other laws and rules that have been adopted since that date. The Constitution provides, among other things, **how laws must be enacted**, recognizes the existence of each **province and territory**, and determines the **division of powers** between federal and provincial legislatures.

The Canadian Charter was created in 1982, at the same time as the **patriation of the Constitution**. It was at that time that Canada obtained the power to amend its Constitution without the consent of the United Kingdom. It is recognized that the Canadian Charter and the Constitution apply in Quebec even though the province has opposed its repatriation.

Note that the Charter is not the first law that has protected fundamental rights in Canada. However, it is the first to be a part of the Constitution: fundamental rights are therefore better protected today than before 1982.



QUEBEC CHARTER

The Quebec Charter is a law passed in **1975** by the National Assembly. It applies only to the **territory of Quebec**.

Unlike the Canadian Charter, the Quebec Charter is **not part of the Constitution**. However, the Quebec Charter has a special stature and all other Quebec laws must respect the main rights it protects. Because of this particular status, the Quebec Charter is often described as a "**quasi-constitutional law**."

The Quebec Charter **created two bodies** that are responsible for promoting and protecting fundamental rights in the province. These bodies consist of the *Commission des droits de la personne et des droits de la jeunesse* ("Human and Youth Rights Commission") and the *Humans Rights Tribunal* (see box on page 45 of this Guide).

THE JUSTICE SYSTEM

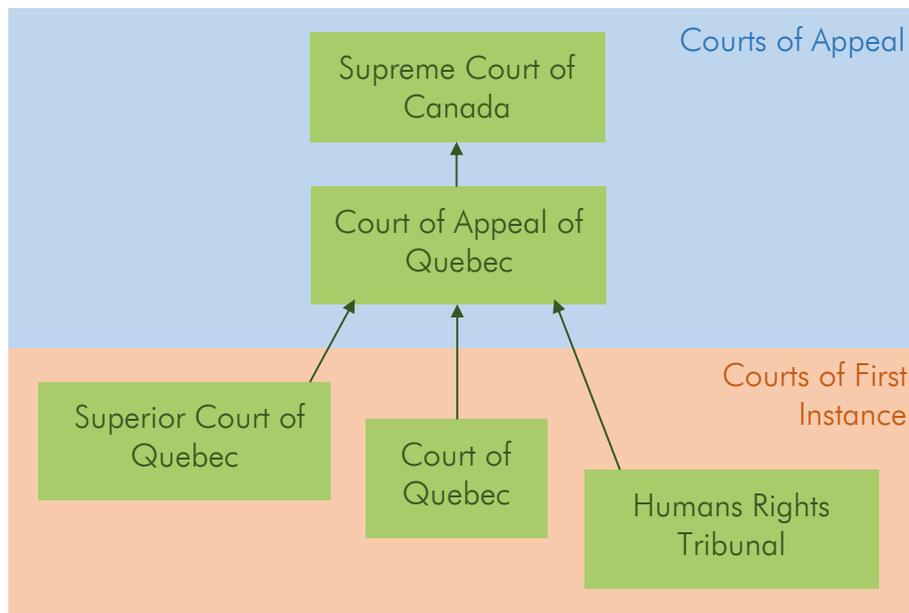
Persons involved in a court case are usually referred to as the "**parties**". A party may be an **individual**, but it can also be **legal entity** (such as a corporation or an organization) or the **state**.

The parties present their version of the story and their arguments in a trial. There are two main types:

- **Civil trials** where one of the parties involved in a dispute asks the court to decide the disagreement in its favor (e.g. to obtain an amount of money);
- **Criminal trials** where the state accuses the other party of having done something prohibited by law and asks the court to find him guilty and to impose a sentence.

I. Courts of Justice

The following diagram illustrates in a very simplified way the **hierarchy of courts** in Quebec:



Note that several courts are not represented in the above diagram: **municipal courts**, **the Federal Court**, **administrative tribunals** (e.g. the **Régie du logement** and the **Tribunal administratif du travail**), etc.

The "**courts of first instance**" are those where the first trial takes place in a case. How do you know which of these courts has the power to make a decision on a particular

Two examples :

- **In civil cases**, the Small Claims Division of the Court of Quebec can hear all sorts of cases, but only if the amount claimed is less than \$ 15,000.
- **In criminal cases**, the Superior Court always hears trials for murder. For some "less serious" crimes, the Court of Quebec may hear the case.

case? It depends among other things on the amount of money involved and the nature of the case (e.g. custody and access, outstanding debt, criminal offense, etc.).

The "**appeal courts**" are those to which the parties apply when they do not agree with the decision of the court of first instance. The media often use the terms "go to appeal", "appeal" or "bring a case to appeal".

II. The Supreme Court

The Supreme Court of Canada is the **highest court in the country**. It makes decisions on appeal on cases that have already gone through lower appeal courts across the country. It may hear civil or criminal cases on any subject.

The Supreme Court usually intervenes only if the matter is of **particular importance to the public** or for the **advancement of the law in Canada**. Moreover, the federal government may seek the Court's opinion on important questions of law even though there is no case or trial on these issues (this is called a "reference"). Therefore, the Supreme Court will often hear matters related to the Charters and fundamental rights.



A hearing before the Supreme Court is called an **"appeal"** (not a "trial") .

"References", are often used to clarify a passage of the Constitution or to determine if a law respects the Constitution. Famous references include: asking the Court to rule on the Quebec Secession Reference (1998) and more recently on the reform of the Senate (2014).

There are **nine judges** on the Supreme Court. However, there are not always nine sitting on the same file. There must always be a **minimum of five judges** and the **number of judges must always be odd**. The opinion of the majority of judges present prevails. Several historic judgments have been rendered by a difference of one vote!

The composition of the Supreme Court is provided for in the **Constitution**.

decisions of the Supreme Court are **final**. It is therefore no longer possible to appeal when the Supreme Court rules on a case!



Supreme Court of Canada Collection

There are frequently several appellants or respondents.

It is also possible that there are other participants in the appeal: the **"interveners"**. They are given special permission to participate in the proceedings because the decision may affect them, or because they have a different and relevant view on the issue discussed in court. For example, religious minority groups often intervene in matters relating to freedom of religion.

Finally, the Court itself may ask a person (often a lawyer) to participate in the appeal to clarify specific issues. This is called an **"amicus curiae"** (a Latin expression meaning "friend of the court").

The **title of a judgment** contains the names of both parties. Here are some details:

- Generally, the name of the appellant is first and that of the respondent is second (they are separated by the letter "v", which means "versus").
- In criminal law, the term "**The Queen**" (generally abbreviated to "**R.**") refers to the State.
- Sometimes we **protect the identity of a party** by designating them by their initials. This explains the title of some of the decisions addressed in the activity, such as "R v M" and "R v NS".

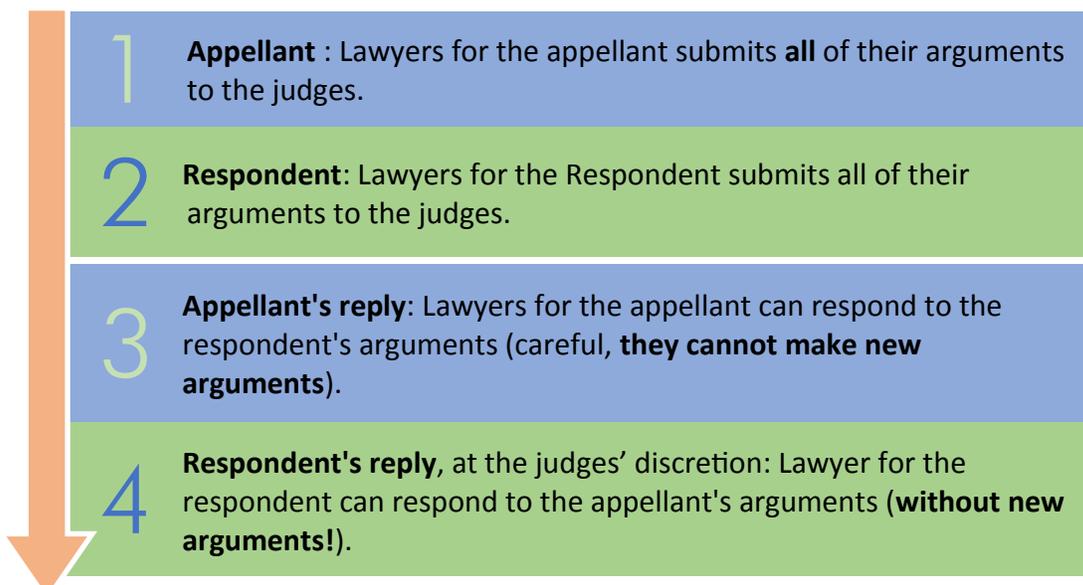
The parties **cannot present evidence when they appeal**. The Supreme Court therefore does not receive witnesses and must analyze the evidence that was presented during the first trial.

The judges of the Supreme Court may also make their decision on the basis of the **legal arguments** of the appellant and the respondent. These arguments are presented by lawyers for the parties in their "**pleadings**".

In some exceptional situations, judges may allow a party to present new evidence on appeal.

ORDER OF PLEADINGS

The lawyers plead in a **fixed order**. This rule avoids surprises and allows each party to have an equal opportunity to present its arguments.



Fact : **a judge may ask questions at any time**. The lawyer to whom the question is asked must then stop their presentation and answer the judge's question.

IV. The Actors on Appeal

LAWYER

The lawyer is a specialist in the laws and their application. They are hired by a party to **represent them in court** and **give them legal advice**. The lawyer who represents a party in lower courts may be the same lawyer who represents that party before the Supreme Court.

Before going to court to present their arguments, lawyers must invest a great deal of time and effort in **preparing their case**. They must, among other things, conduct legal research, prepare arguments and write several documents in a timely manner.



The lawyer wants the best possible decision for their client, but they must abide by many **ethical rules**. For example, they can not help their client commit illegal acts, such as lying to the court. At the same time, lawyers must maintain a professional distance from their client's file, that is, they must not treat the file as a personal matter.

To be a lawyer in Quebec, you must be a member of the *Barreau du Québec* (the "Quebec Bar"). It is a professional order whose mission is to protect the public by, among other things, enforcing the rules of ethical conduct of lawyers.

JUDGE

In order to render a fair and impartial decision, a judge must **listen, ask questions and analyze the legal arguments** presented by each of the parties. This decision must be based on evidence and law, not on personal feelings or opinions. The judge **can have no bias**.

Judges are appointed by the government, but they are always free to make their own decisions. The government and interest groups cannot intervene in their work and try to influence them. This is called "**judicial independence**".

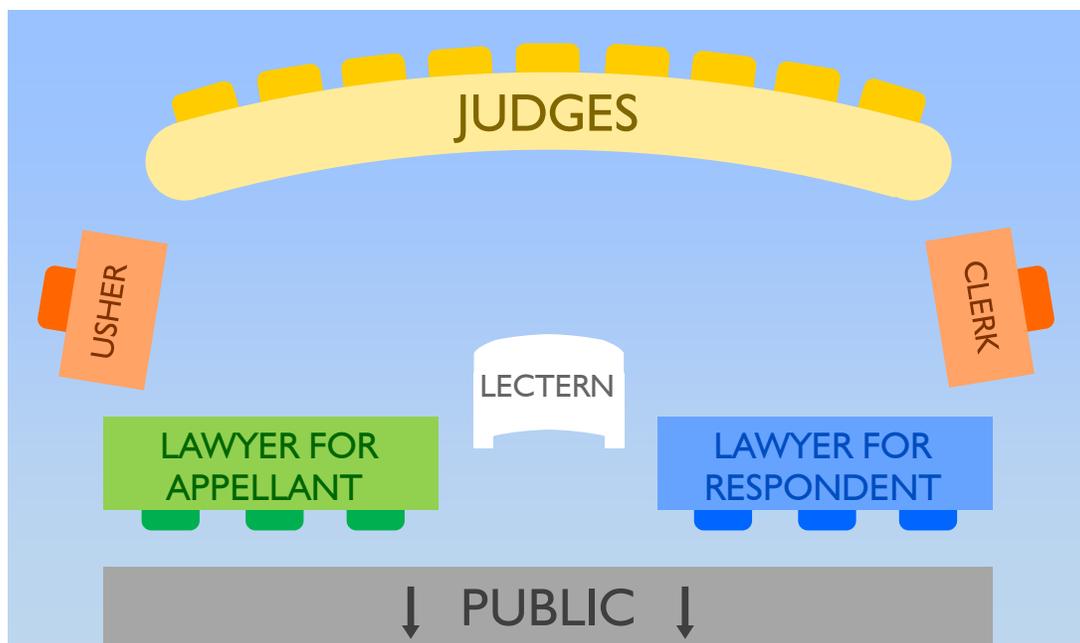
In Quebec, you must have been a legal practitioner for at least **10 years** to become a judge. Being appointed to the Supreme Court is very prestigious and the judges who are chosen usually have far more years of experience, both as a lawyer and as a judge in lower courts.



OTHER ACTORS

- The "**clerk**" fixes the time and date of the appeals to be decided by the Court. They **take note of what is happening** in the file and assist the judges outside the courtroom.
- The "**usher**" ensures that the judges have all the documents they need. They also **maintain order in the courtroom** during the appeal.

Here is what the main hall of the Supreme Court looks like:



USEFUL LINKS

Fundamental Rights

- Éducaloi: [What is the Law?](#)
- Éducaloi: [What is International Law?](#)
- ONU: [Universal Declaration of Human Rights](#)
- CDPDJ: [L'enseignement des droits et libertés](#) (only available in French)
- Justice Canada: [Rights and freedoms in Canada](#)

Charters

- Parliament of Canada: [Our Country, Our Parliament](#)
- Justice Canada: [Constitution Acts, 1867 to 1982](#)
- CDPDJ: [History of the Charter](#)
- CDPDJ: [Les 40 ans de la Charte québécoise](#) (only available in French)
- Le droit de savoir: [Histoire des chartes \(vidéo\)](#) (only available in French)
- Cliquez Justice: [Introduction à la Charte canadienne des droits et libertés \(vidéo\)](#) (only available in French)

Courts of Justice

- Éducaloi: [The Court System](#)
- Éducaloi: [Understanding Civil Law](#)
- Éducaloi: [Understanding Criminal Law](#)
- Éducaloi: [Lower Courts](#)
- Éducaloi: [Higher Courts](#)
- Court of Appeal of Quebec: [About the Court](#)

The Supreme Court

- Supreme Court of Canada: [Resources for Teachers](#)
- Supreme Court of Canada: [Creation and Beginnings of the Court](#)
- Supreme Court of Canada: [Role of the Court](#)

The Actors of Appeal

- Édoucaloi: [Lawyer](#)
- Édoucaloi: [Judge](#)
- Édoucaloi: [Court Usher](#)
- Édoucaloi: [Court Clerk](#)

The Charters

COURSE

2

CONTENT OF THE CHARTERS AND LIMITS TO RIGHTS

60 TO 75 MINUTES (1 PÉRIOD)

Learning Objectives

- Know more about characteristics of the Charters:
 - ◆ Identify **principal fundamental rights** protected by the Charters;
 - ◆ Understand **to who and in which situations** the Charters apply;
 - ◆ Appreciate that fundamental rights also have **certain limitations**.
- Solve a **pleading exercise** using newly acquired knowledge.
- Learn about the case for the pleading exercise.

Teaching Preparation

- Review pages **28 to 35** of the Teacher's Guide.
- **Choose the case** for the pleading exercise and review the summary, if you have not already done so.
- Ensure that you have **assigned roles** to students (see page 10 of this Guide). **Prepare a list** of student's names and their respective roles for them to consult.

Student Preparation

- Have your students read **pages 13 to 17** of their Guide.

In-Class Instructions

- 2.1. In a large group, **share your answers** to question 1 of the exercise *Your Advice!* and talk about them for a few minutes (*maximum 5 to 10 minutes*).

The Charters

COURSE

2

- 2.2. In large group, **present the concepts on pages 28 to 35** of your Guide that correspond to the pages your students read at home (*at least 15 to 20 minutes*).
- 2.3. Ask your students **to answer questions 2 to 4 of the exercise *Your Advice!*** As in the previous period, students can work individually or in teams of 3 or 4 (*at least 15 minutes*).
- 2.4. In large group, **share your answers** and discuss in them for a few minutes (*at least 5 minutes*).
- 2.5. Tell your students which case will be covered in the pleading exercise and ask them to read the **facts and the questions carefully** (*at least 10 minutes*).
- 2.6. At the end of class, announce the roles the students will play during the pleading exercise and the composition of the teams for next period (*5 minutes*).

Overview of the Period (over 60 minutes)

5	2.1. Welcome and revision of the exercise Question 1	Lecture	Large group	5-10 min.
10	2.2. Presentation of the concepts: the Charters Teacher's Guide: pages 28-35	Lecture	Large group	15-20 min.
15				
20				
25				
30				
35	2.3. Exercise: <i>Your Advice!</i> Questions 2-4	Exercise	Teams	15 min.
40	2.4. Revision of the exercise Questions 2-4	Lecture	Large group	5 min.
45				
50	2.5. Reading of the case	Reading	Individually	10 min.
55	2.6. Assignment of roles	Instructions	Large group	5 min.
60				

The Charters

COURSE

2

To do at home

- Before the end of the period, don't forget to explain how the students should **prepare for Course 3** (see page 37 of this Guide).
- The student must also **finish reading the case** if they didn't have time to read it in class.
- There is no classroom time scheduled for **questions 5 and 7 in Exercise *Your Advice!***, which related to the concepts seen in Courses 2 and 3. If you would like, you can give some to do for next period, for Course 4 or later. These questions are optional.

Alternative

In the case where the invited lawyer confirms his presence in class in the second period, **modify Course 2** as follows:

- At the beginning of the period, rather than revising the exercise *Your Advice!* (**step 2.1**), take a few minutes to **introduce the guest lawyer**. He can **review the concepts** covered in Course 1.
- Allow **5 to 10 additional minutes** to present the concepts (**step 2.2**), to be done by the lawyer.
- If the guest lawyer prefers, do questions 2 to 4 of the exercise *Your Advice!* (**step 2.3**) in a **large group**. Review the exercises completed at home at the same time, if necessary.
- If there is enough time remaining, take advantage of the time reserved for the reading of the case (**step 2.5**) to **start Course 3 early**. The lawyer can start presenting the concepts on **pages 40 to 45** of the Teacher's Guide.

Do not forget to announce the **roles** by the end of the period.

THE CHARTERS

I. Charter Protected Rights

You may have noticed that the **terms** used are very **general** when reading the sections of the Canadian and Quebec Charters. This allows the Charters to cover **multiple situations** and to adapt to the **evolution of our society**.



Here are some of the main rights protected by **both Charters**:

Judges often compare the Canadian Constitution to a "living tree" that adapts to meet the realities of modern life. In other words, the interpretation of a section of the Canadian Charter is **not fixed to the time of its writing**, and it changes with the values of our society. In addition, rights must be interpreted "**broadly and liberally**" to provide the best possible protection for people.

These principles are the same for the Quebec Charter.

Canadian Charter	PROTECTED RIGHTS		Quebec Charter
Section 7	→	Right to life, liberty and security of the person	← Section 1
Section 2	→	Fundamental freedoms: Freedom of religion Freedom of expression Freedom of association and peaceful assembly	← Section 3
Section 3	→	Right to vote and to stand for election	← Section 22
Section 15	→	Equality Rights Right not to be discriminated against based on race, origin, colour, religion, sex, etc.	← Section 10
Section 8	→	Protection against abusive searches .	← Section 24.1

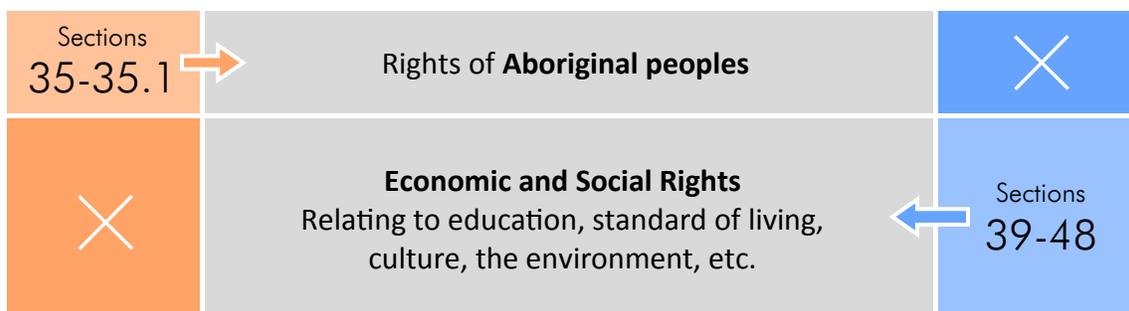
Section 9-10	Protection in the event of detention or arrest	Section 25-32
Section 11d	Right to be presumed innocent , in a criminal trial	Section 33

Some interesting details about protected rights :

- **Freedom of expression** includes freedom to engage in commercial expression, such as the right to advertise.
- **Freedom of religion** includes the right to practice religion openly and without fear. It also includes the right not to practice religion. Parents are free to educate their children according to their religious beliefs.
- **Freedom of association** includes the right to associate with others to negotiate work conditions collectively with the employer. Since a 2015 case, this includes the right for employees to strike.
- People may be detained even if the police doesn't restrain them physically. The Charter also applies to psychological restraint.

Some rights are **only** protected **by one of the Charters**:

Canadian Charter	PROTECTED RIGHTS	Quebec Charter
×	Right to dignity, honour and reputation Right to respect for one's privacy	Sections 4-5
Sections 16-23	Rights relating to the official languages Right to receive education in the language of the linguistic minority of the province (French or English)	×
×	Rights relating to property (protection of one's home, etc.)	Sections 6-8



Despite their great importance, **economic and social rights** guaranteed in the Quebec Charter are **more difficult to enforce** than other rights. In fact, the Charter often limits the scope of these rights.

For example, the right to free public education is "**to the extent and according to the standards provided for by law**" (section 40). Due to this **internal limit** (see page 34 of this Guide), education may be provided with cost from CEGEP. In fact, the law guarantees only free primary and secondary education.

More generally, the sections concerning economic and social rights do not have the "quasi-constitutional" status of the rest of the Quebec Charter (see page 16 of this Guide).

II. Application of the Charters

You will understand that it is not because the Charters list fundamental rights that these will necessarily be respected! In the event of conflict, the Charters allow individuals and legal entities (e.g., a company) to **apply to a court** to rule on the matter.

The Canadian and Quebec Charters do not, however, address exactly the same situations: they are said to have a different "**scope**".

A) WHEN A LAW INFRINGES A PROTECTED RIGHT

The Parliament of Canada and the National Assembly of Quebec **vote and adopt** many laws. As we have seen, these laws must respect the Charters. A law is said to "**infringe**" a protected right when it fails to comply with a section of one of the Charters. It is then possible to challenge this law before the courts.



The **Canadian Charter** may be used to challenge the laws of Canada and those of Quebec. On the other hand, the **Quebec Charter** applies only to provincial laws.

B) WHEN THE GOVERNMENT INFRINGES ON A PROTECTED RIGHT

Sometimes it is not the law itself that infringes a protected right but the decision or actions of a person who is responsible for enforcing the law. The Charters then make it possible to challenge "**the action of the government**".

In addition to ministers and officials, the term "government" includes **cities, police services, public schools**, etc. The arrest by a police officer or the search of a pupil by a principal may therefore be challenged if they infringe a fundamental right.



The above paragraph offers only a few examples, the complete list is much longer. In fact, it is not always easy to determine whether a person or organization is part of the "government." To do so, the courts must assess the level of control exercised by the government and also the nature of the acts performed. The Canadian Charter **only** applies when the **State** is involved (see point C below).

C) WHEN A PRIVATE PERSON INFRINGES A PROTECTED RIGHT

The Quebec Charter applies to the acts of "private persons" as well. It applies to the acts of individuals, organizations and enterprises that **are not part of the government**. This is a crucial difference between the two Charters. For example, the Quebec Charter makes it possible to challenge discrimination by a private employer, a merchant or a property owner.

... or even to challenge discriminatory statements made by a stand-up comedian, which happened in a high-profile case in 2016.

The Quebec Charter provides a **broader protection of the right to equality** since it allows remedies against private persons. Moreover, section 10 is supplemented by sections 10.1 to 19, which prohibit different situations of discrimination.

Non-Citizens and the Charter

Be careful! Words are important in law! Several articles in the Charters use terms such as "everyone," "every human being" or "every person" rather than "citizen." These sections also apply to those who are not Canadian citizens.

For example, section 7 of the Canadian Charter applies to a refugee who risks being deported to a country where his or her life is in danger.

Clarification: Section 7 does not require Canadian authorities to grant refugee status to all asylum seekers. However, it ensures that their claim will be treated fairly and transparently when their right to life or security is at stake.

On the other hand, other sections protect only those who have citizenship status. This is the case with the right to vote (section 3 of the Canadian Charter).

III. The Limits to Protected Rights

Our fundamental rights are generally well-protected by the Canadian and Quebec Charters. However, these rights are not absolute. Every protected right has its limits and it is sometimes possible to infringe it.



It is said that "your rights end where the rights of others begin." For example, when a conflict involves one of the Charters, judges often have to **find a balance** between rights and interests that are different, but legitimate on their own terms.

When a law or the action of the government is at issue, the judge balances the **individual's right** with **collective interests** that the state is expected to promote in behalf of society.

Consider the following example:

A **university punishes two of its students** for using harsh words to criticize a teacher on Facebook. Students decide to challenge their punishment before the courts.



- According to them, the university's decision does not respect their **right to freedom of expression**, which is protected by the Charters;
- According to the university, it is important to punish lapses in conduct to **ensure a respectful and safe academic environment**.

This example is **based on a real judgment** of the Alberta Court of Appeal. In applying section 1 of the Canadian Charter (see pages 40-43 of this Guide), the Court held that a university may limit freedom of expression in certain circumstances. In this particular case, however, the sanction was too harsh and did not comply with the Charter.

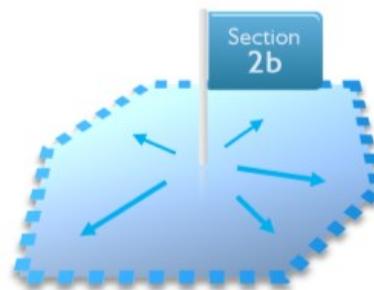
In such a situation, the judge must strike a balance between the rights of one party (the students) and of the other (the university), which are different from each other but

There are **three main limits** to the rights protected by the Canadian and Quebec Charters. Let's start with the **first two** (we will see the third in the next class).

A) THE SCOPE OF RIGHTS

Since the adoption of the Charters, judges have clarified the rights the Charters guarantee. For example, each right has a "**scope**" that covers certain situations and excludes others.

For example, the courts have decided that, clearly, **freedom of expression** doesn't include **violent acts**. An individual who strikes his neighbour could claim to have only wanted to express his thoughts by doing so... but he will not be able to invoke the Charters in his defence!



Another interesting example: **freedom of religion** only protects practices linked to **sincere beliefs** according to the courts. To invoke this right, a person must therefore demonstrate that he or she really believes what she claims to believe. However, this is a **fairly broad** criterion: it is not necessary for the belief to be widespread or consistent with the teachings of a recognized religious authority.

B) INTERNAL LIMITS TO RIGHTS

The scope of a right may be **limited by the very wording of the section** of one of the Charters. This is called an "**internal limit**" or an "**inherent**" limit to a right.

For example, sections 8 of the Canadian Charter and 24.1 of the Quebec Charter protect against "**abusive**" searches. Therefore, a police officer may legally search a person if he does so in a reasonable manner or, in other words, a non-abusive manner.

Section 7 of the Canadian Charter also contains an internal limit. It allows the state to infringe on the right to life, liberty and security of a person if it respects "**principles of fundamental justice**". This requirement is imprecise and varies according to the type and degree of infringement.

For example, the Supreme Court decided whether the federal law that allows the **corporal punishment of a child** violates section 7. According to the judges, this law is consistent with fundamental justice since it provides that punishment must be given with reasonable force and in certain specific circumstances. The law therefore respects the right to security under the Charter.

Are there any "external" limits to rights? Yes, and they are important! We will talk about them in our next class.

Can the Charters be modified?

Similarly to other laws, the Charters can be modified by the legislatures that adopted them. However, it is **more difficult than for ordinary laws**. This contributes to a better protection of our fundamental rights.



THE CANADIAN CHARTER

It is possible to modify (or "**amend**") the Canadian Charter. However, the process is complicated because it is part of the Constitution. The assent of the Canadian Parliament and **seven provinces** that together represent at least **half of the Canadian population** is required.

This has only happened **twice** since 1982. These amendments concerned the rights of Aboriginal peoples (in 1984) and of linguistic communities in New Brunswick (section 16.1, 1993).



THE QUEBEC CHARTER

In theory, it is **easier to amend the Quebec Charter** than the Canadian Charter. The National Assembly must only adopt another law which specifies the changes to be made.

However, the Quebec Charter plays such an important role that any proposed amendment is discussed and studied thoroughly. It is often the subject of societal debate. A recent example of an amendment is the addition of "**gender identity and expression**" as a new ground of discrimination introduced in **June 2016** under section 10.

What is the famous "notwithstanding clause"?

This may seem surprising, but both Charters provide in their very text a way for legislatures to circumvent certain rights they protect. When adopting a new law, it is possible to write **explicitly** that a law can be applied without a limitation found in the Charters.

This rule is provided for in **sections 33** of the Canadian Charter and **52** of the Quebec Charter. This is what we call the "**notwithstanding clauses**". In reality, the Canadian Parliament and the National Assembly **hardly ever** use them: doing so would come at a high **political cost**.

USEFUL LINKS

Rights protected by the Charters

- Canadian Government : [Guide to the Canadian Charter](#)
- CDPDJ : [La Charte québécoise simplifiée](#) (only available in French)
- CDPDJ : [Your Rights under the Charter](#)
- Éducaloi : [Suspected of a Crime? You Have Rights](#)
- Cliquez Justice : [Discrimination in Canada](#) (only available in French)
- Cliquez Justice : [Legal Guarantees](#) (only available in French)

Application of the Charters

- CDPDJ : [Who must comply with the Charter?](#)

Limits to Protected Rights

- [Pridgen v. University of Calgary](#)
- Éducaloi : [Physical Punishment](#)
- Freedom of Expression : [Freedom of Expression and Defamation](#) (only available in French)

Educational Resources

- Éducaloi : [Discrimination in school?](#) (educational package only available in French)
- Éducaloi : [Right to Privacy](#) (educational package only available in French)

The Charters

COURSE

3

LIMITS ON FUNDAMENTAL RIGHTS AND PREPARATION FOR THE PLEADING EXERCISE (CONTINUED)

60 TO 75 MINUTES (1 PERIOD)

Learning Objectives

- Meet with a **lawyer** in person.
- Understand and apply the **test** to determine **whether or not an infringement of a right is justified**.
- See briefly how the courts **remedy** the infringement of a right.
- Initiate the development of a **legal argument** and prepare the pleading exercise.

Teacher Preparation

- Review **pages 40 to 49** of the Teacher's Guide. Pay particular attention to the test found on page 41 of the Guide, as well as to the method of developing a legal argument at **pages 46 to 47**.
- Invite the guest lawyer and share any **relevant observations** regarding the progress of the activity to date. For example, identify ideas that are more difficult for your students.

Student Preparation

- Ask your students to read **pages 18 to 26** of their Guide. Also, ask your students to read the **fact sheet for their role**, if they have one (between pages 29 and 38 of the Student's Guide).

The Charters

COURSE

3

In the Classroom

Overview of the Period (60 minutes)

5	3.1. Welcome, introduction of the guest lawyer and review of courses 1 and 2	Lecture	Large group	5-10 min.
10				
15	3.2. Presentation of concepts by the lawyer: the Charters (continued) Teacher's Guide: pages 40-45	Lecture	Large group	15-25 min.
20				
25				
30	3.3. Exercise: <i>Your Advice!</i> Question 6	Exercise	Large group	5-10 min.
35	3.4. Presentation of concepts by the lawyer: preparation for pleading Teacher's Guide: pages 46-49	Lecture	Large group	15 min.
40				
45				
50	3.5. Development of legal arguments	Exercise	Teams	15-20 min.
55				
60				

- 3.1. Allow the guest lawyer to introduce himself or herself to your students and mention the topics he or she will address in class. Provide him or her with a few minutes to review some of the concepts from the previous periods (*5 to 10 minutes*).
- 3.2. **Assist the lawyer** during his or her presentation on the concepts on **pages 40 to 45** of the Teacher's Guide on the **limits on fundamental freedoms** (*minimum 15 to 25 minutes*).
- 3.3. In the middle of the presentation, complete **question 6** of *Your Advice!* as a group. Allow the guest lawyer to lead the discussion (*5 to 10 minutes*).
- 3.4. Once the exercise is over, the lawyer must present the concepts on **pages 46 to 49** of the Teacher's Guide on **legal arguments** (*minimum 15 minutes*).
- 3.5. Have the students regroup into assigned teams (see page 10 of this Guide). They have the rest of the period to **develop legal arguments**, based on the issues of the chosen case and on pages 6 to 26 of their Guide. The lawyer should circulate in the classroom to help the teams.

The Charters

COURSE

3

N.B.: It is at this stage that the student lawyers start preparing their **pleadings**. Their teams must therefore develop the arguments of their respective parties (appellant or respondent). The student judge teams work equally on the arguments of both parties.

In your instructions, tell your students how many minutes they can take per argument, which will depend on how much time you would like to spend on this exercise. The arguments may be less elaborate if you run out of time (at least 15 to 20 minutes during the period, more if possible).

Additional Period (recommended)

- Course 3 is likely insufficient for the preparation of your students in the pleading exercise. We therefore strongly recommend that you allocate **more time in class** to **develop their legal arguments**, between courses 3 and 4 .
- We suggest that you provide time in the classroom for the student lawyers of each party to **pool their arguments**.
- If necessary, use this additional time to **return to concepts** that your students may have misunderstood.

You can also do so for a few minutes over several periods, or ask your students to complete their preparation at home.

Suggestions for Complementary Activities

- See the additional activities recommended at **page 54** of this Guide. You can ask your students to start preparing them if you wish.

THE CHARTERS

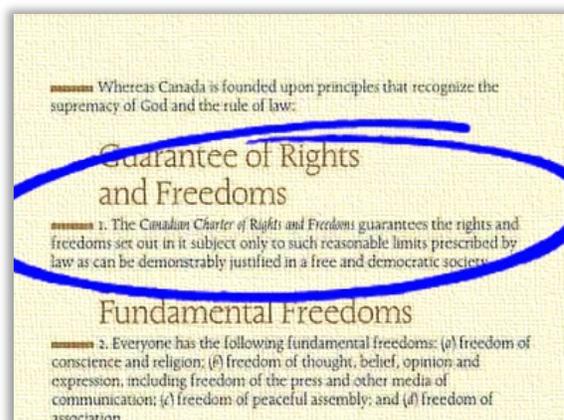
III. The Limits on Protected Rights (continued)

We have seen that the rights protected by the Charters are not absolute. Each right has a particular limit which limits its scope. It is sometimes the courts that determine this limit and at other times it is the very text of the Charters (internal limits).

There is a third "external" limit to fundamental rights: a **justified infringement**. This limit is important for the pleading exercise that you will complete. Let us take a closer look at it.

C) *THE JUSTIFIED INFRINGEMENT OF A RIGHT*

When the **state** infringes a fundamental right (by statute or by government action), the Canadian Charter provides an opportunity to **justify the infringement**. This is **section 1** of the Charter that allows the state to restrict fundamental rights, but only if it does so in a **reasonable and justified manner in a free and democratic society**.



The Supreme Court has developed a **4-part test** to determine if an infringement is justified under section 1. The Supreme Court applies this test as soon as it reaches the conclusion that a fundamental right has indeed been infringed.

The Supreme Court must decide in the state's favour if each step of the test is successfully passed: this means that the Charter has been respected.

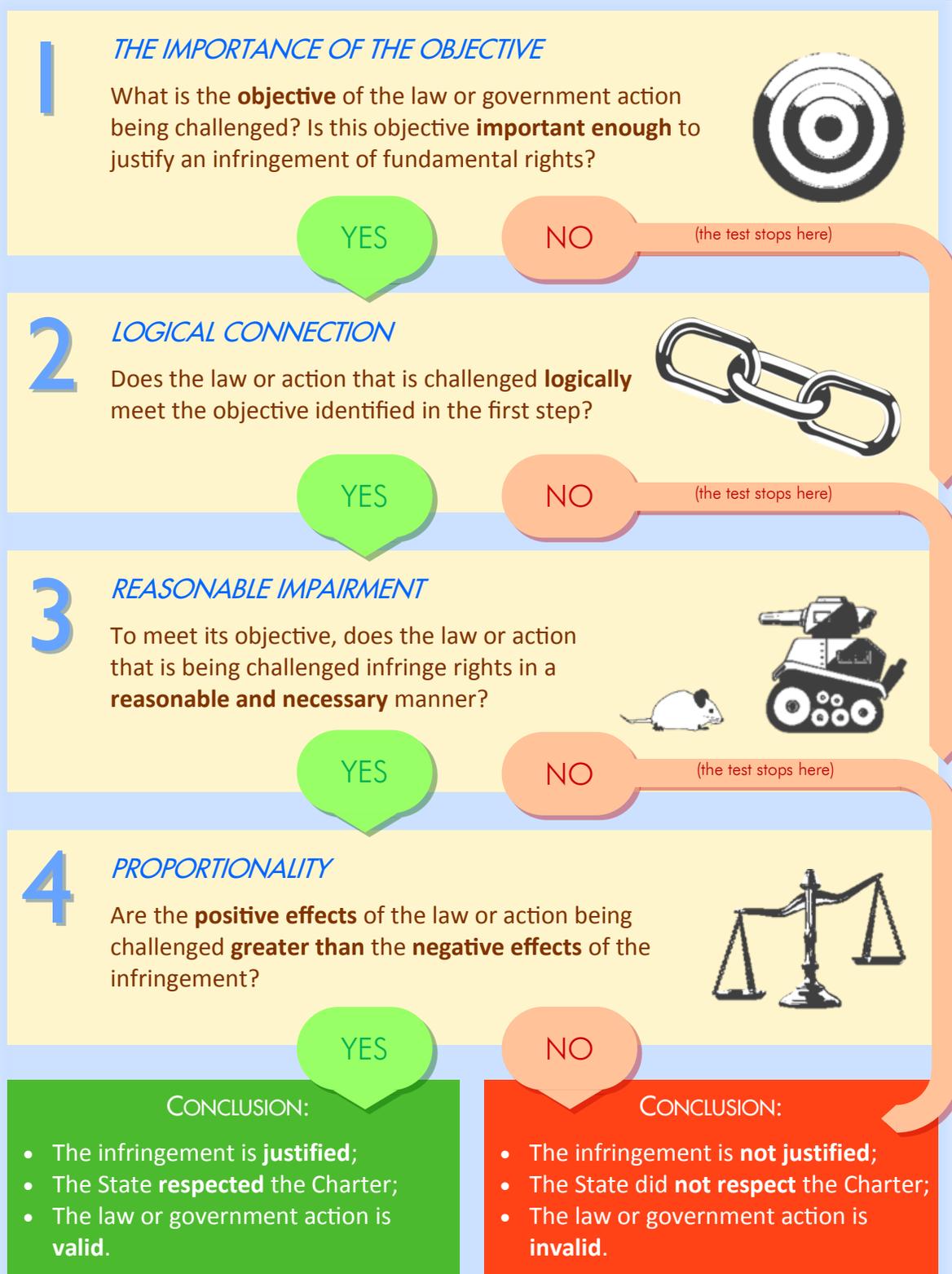
To note! The test can also be applied to the Quebec Charter via **article 9.1**.

This process is often referred to as the "**Oakes Test**", named after the first Supreme Court decision in which it was applied. This 1986 case concerned the right to the presumption of innocence. Since then, the test has been **widely used by Canadian courts** with respect to fundamental rights.

The *Oakes* test is almost always applied when a statute is involved. On the other hand, it is not applied as systematically when government action is involved (see page 31 of this Guide).

To simplify the activity, we will apply the test to certain cases even if the courts have not done so in practice.

Here is a **simplified version of the test**, to be done once the infringement has been demonstrated:



Example: Tobacco and Freedom of Expression

To better understand the test in section 1, let us see how the judges of the Supreme Court of Canada **applied** it in *RJR-MacDonald v Canada* (1995).

FACTS:

The Parliament of Canada passed legislation **prohibiting all forms of cigarette advertising.**

Tobacco manufacturers are challenging the law in the courts: they say it is not respecting their **freedom of expression.**

For the State, this legislation is important because it is designed to protect the health of Canadians and discourage young people from smoking.



QUESTIONS:

1. *Does the law infringe the freedom of expression of tobacco manufacturers?*

Yes. Commercial advertising is a form of expression **protected by section 2(b) of the Canadian Charter.** Prohibiting tobacco manufacturers from advertising therefore infringes on their freedom of expression.

2. *Is the infringement justified in a free and democratic society?*

Having answered « yes » to the previous question, the Court **must now apply the test** to determine if the law is saved by section 1 of the Charter. Let's examine the Court's answer, step-by-step.

1 THE IMPORTANCE OF THE OBJECTIVE

What is the objective of the law or government action being challenged? Is this objective important enough to justify an infringement of fundamental rights?

YES. The objective of the legislation is to prevent Canadians (especially young people) from being persuaded to smoke. This objective is sufficient, given the health hazard of tobacco.

2 LOGICAL CONNECTION

Does the ban on cigarette advertising logically prevent Canadians from being persuaded to smoke?

YES. It is reasonable to believe that certain types of advertising cause people to smoke. There is therefore a logical connection between the law and the objective sought.

3 REASONABLE IMPAIRMENT

Does the prohibition of any advertising of cigarettes infringe rights in a manner that is reasonable and necessary to meet its objective?

NO. The total ban is too harsh and unnecessary. The State could have simply prohibited certain types of advertising (for example, advertising that influences young people).

4 PROPORTIONALITY

Are the positive effects of the law on society greater than the negative effects on the rights of tobacco manufacturers?

The Court does not have to address this issue (the State has already failed in the previous step).



CONCLUSION:

- The infringement on freedom of expression is **not justified**.
- The State did **not respect** the Charter.
- The tobacco manufacturers are **successful**.
- The law is **invalidated**.

The Supreme Court was **very divided** in *RJR-MacDonald v Canada*: four out of nine judges who heard the appeal (see page 19 of this guide) would have concluded that the law was justified under section 1. However, it was the opinion of the majority that prevailed.

Following this ruling, the Parliament of Canada passed a **new act** on tobacco advertising . The Act provides for **less extensive and more targeted prohibitions**. The Supreme Court confirmed in 2007 that this law respects the Canadian Charter.

The **provinces** have also adopted their own laws, for example to limit the public display of cigarettes in shops. This explains why cigarettes are now hidden behind a sign in convenience stores in Quebec.

IV. How do you remedy the infringement of a right?

At the end of the test, a court can conclude that the Charter was not respected. But **practically speaking**, what does this mean for the person who suffered the infringement?

This means that the victim is entitled to a “**remedy**”. It is the Court that orders the remedy in the conclusions of the judgment. The appropriate remedy may vary depending on the **context** of the case.

In the case of an action or decision that affects only one individual, it is often sufficient to annul it. If the harm is already done, it is also possible that the victim is compensated by a sum of money or in some other way.

In the context of a **criminal trial**, the appropriate remedy is often the **exclusion of evidence** that the State has obtained in a manner contrary to the Charter. This rule is in section 24(2) of the Canadian Charter.

For example, the judge may disregard drugs found through an abusive search or confessions taken from the accused in violation of his or her right to remain silent. The exclusion of evidence does not mean that the person will necessarily be cleared.

Sometimes, the infringement can only be remedied by the complete end of the prosecution against the accused (for example, where there are excessive delays and contrary to section 11(b) of the Charter).

The Court can go so far as to declare a law "unconstitutional" if it does not respect the Charter. The law therefore **no longer has any effect on anyone**. Judges must, however, consider the possible impact of such an invalidity on the public. More often than not, it will be preferable to invalidate only part of the law or to give the State time to modify it.



Supreme Court of Canada Collection

The Court generally prefers to give the State time to amend the law rather than create a **legislative void** that is harmful to the public by invalidating the legislation as a whole or in part. That is why the Supreme Court in the recent *Carter* (included in this activity) and *Bedford* (on prostitution) cases left the Canadian Parliament with 12 months to amend sections of the Criminal Code.

THE QUEBEC CHARTER

Where an infringement is committed by a **private person** (see pages 31 and 32 of this Guide), **section 49** of the Quebec Charter provides for possible remedies. Among other things, the courts may impose **exemplary or punitive damages**. They are said to be "exemplary" or "punitive" because it is not only a matter of compensating the victim for what he or she has suffered, but also of dissuading people from acting in breach of the Charter.

The Quebec Charter also allows a person who claims to be a victim to **file a complaint** with the **Commission des droits de la personne et des droits de la jeunesse**. The Commission then investigates and may attempt to negotiate an agreement between the parties. A complaint is only possible in cases of **discrimination** (section 10) or the **exploitation of elderly or disabled persons** (section 48).

If no agreement is reached, the Commission may, on behalf of the complainant, bring the case before an expert tribunal: the *Human Rights Tribunal* (see the diagram on page 17 of this Guide). It is then the Commission, not the complainant, who pays the legal fees.

PREPARING FOR PLEADINGS

Developing Legal Arguments on Appeal



Supreme Court of Canada Collection

In the Supreme Court, lawyers try to convince judges that **the position of their party is correct** (appellant or respondent). To convince judges, lawyers put forward **legal arguments**. They must then apply the relevant legal concepts to the facts of the case by being **creative**. The Court renders its judgment after analyzing all the arguments of the two parties.

But how do you build convincing legal arguments? You do so in **four steps**:

1. Know your case:

- Begin by reading the **facts of your case**.
- Pay attention to the **questions asked**: these are the questions you must answer with your legal arguments.
- For **each** of the questions asked, go through steps 2 to 4 below.

2. Identify the relevant legal rule(s):

- Review the **Charter** texts and identify the item(s) that are most **relevant** to the question asked.
- **Determine the scope** of each section, i.e. how it protects the fundamental right concerned. To do so, refer to the information in this **guide** and to the **additional concepts** provided with your case.

3. Apply the law(s) to the facts:

- You must **explain** how the rule (s) you have identified apply **to the facts of your case**.
- Highlight the **facts that benefit your party** and explain why these facts are relevant to the question asked.
- If some facts disadvantage you, you can explain why they are **not relevant**.
- Also try to **anticipate and disprove the arguments of the other party**.

Be careful: **stick to the facts** that have been given to you. Do not invent facts to benefit you. Also avoid mixing legal rules with your personal opinions!

4. Concluding remarks:

- In light of your explanations, give a **clear** answer to the question. Be convincing!

Examples of Legal Arguments

Let us start with facts inspired by a true judgment, the *Hendricks* case (2002), to develop a legal argument using the above method. Note that the facts have been simplified and that the arguments presented are not those that were actually pleaded.

And rest assured! This example refers to legal concepts that you have not learned. Pay particular attention to how the legal rules have been explained (step 2) and applied to the facts (step 3).

FACTS:

Gilles and Stephen are a couple and have lived together for 30 years. They bought everything they own together and are financially dependent on each other. However, they cannot marry: a federal law dictates that marriage is reserved for a man and a woman.

Gilles and Stephen (the "plaintiffs") therefore decided to challenge the law in the courts. They assert that it infringes their right to equality and non-discrimination.

QUESTION:

Does the law affect the plaintiffs' right to equality and non-discrimination?

Return to the four steps we have seen before, putting ourselves in the shoes of Gilles' and Stephen's lawyers.



1. Know your case:

(This is done.)



2. Identify the relevant legal rule:

The right to equality and non-discrimination is protected by section 15(1) of the Canadian Charter. This Charter applies to federal and provincial legislation.

Section 15(1) prohibits laws from treating a person differently, in a manner that disadvantages him or her and for a prohibited reason. This prohibition extends to the grounds that are set out in the section, but also to other grounds that are comparable.

3. Apply the rule to the facts:

- The law treats plaintiffs differently because it prevents some couples from marrying but allows others to do so.
- Yet, plaintiffs love each other and have lived together for a long time. Moreover, they own everything together and are financially dependent upon each other. They could improve their situation by getting married, but the law prevents them from doing so. Therefore, the law treats the plaintiffs in a manner that disadvantages them.
- Finally, the plaintiffs are treated in this way because they are homosexual. This reason is prohibited because it is comparable to those listed in section 15(1). Indeed, homosexuals are often victims of prejudice.

4. Concluding remarks:

It is therefore clear that the law infringes the plaintiffs' rights to equality and non-discrimination.

On the basis of the same facts and the same legal rule, lawyers for the opposing party (the State) could develop a **contrary argument**:

3. Apply the rule to the facts:

- It is true that the law treats couples like the plaintiffs differently.
- However, plaintiffs are not disadvantaged. People who are couples can very well live happily without getting married. This is the case for the plaintiffs who have lived together for 30 years. The fact that they are financially dependent on one another is irrelevant because it was their choice to purchase everything together.
- Sexual orientation is not a prohibited ground of discrimination. This ground is not listed in section 15(1) and is hardly comparable to those that are listed.

4. Closing remarks:

Accordingly, the law does not infringe the plaintiffs' right to equality and non-discrimination.

In this example, the scope of the right to equality and non-discrimination (step 2) was first summarized in a few words. Then, **for each element** of this legal rule, the facts relevant and favourable to the asserted position (step 3) were highlighted.

Now, it is your turn to play! Before you begin to develop your own legal arguments, read the clarifications provided for your case. Good luck!

USEFUL LINKS

Limits on Protected Rights

- [RJR-Macdonald Inc v Canada \(AG\)](#) (full text of the judgment)
- [Hendricks v Québec \(AG\)](#) (full text of the judgment only available in French)
- Click on Justice: [Canadian Charter of Rights and Freedoms -- Section 1 \(video\)](#) (only available in French)

How do you remedy the infringement of a right?

- Éducaloi: [Reasonable Accommodation \(teacher's tool\)](#) (only available in French)
- Éducaloi: [Recourses against Discrimination](#)
- Éducaloi: [The Human Rights Tribunal](#)
- CDPDJ: [Complaints Process](#)

The Charters

COURSE

4



PLEADING EXERCISE

60 TO 75 MINUTES (1 PERIOD)

Learning Objectives

- Meet with a **judge** in person.
- Simulate an appeal before the Supreme Court in class.
- Practice your **oral argumentation**, and, more particularly, the **art of pleading** in law (for the student lawyers).
- Work on **listening** and **rendering a decision** based on the arguments heard (for the student judges).
- Reflect on a **social issue** from a **legal angle**.

Teacher Preparation

- Review the **summary of the actual decision** rendered by the Supreme Court for the selected case.
- Arrange your classroom to reproduce a **courtroom** setting based on the plan on page 56 of this guide.
- Welcome the guest judge and explain the **time that the students have spent** on developing their legal arguments.

Student Preparation

- Ask students to re-read the **case**, the **fact sheet for their role**, and the **rules of decorum** found on page 27 of their guide (page 55 of the Teacher's Guide).
- The student lawyers must also have their **arguments ready** when they arrive (at the same level as expected).

The Charters

COURSE

4



In the Classroom

Overview of the Period (60 minutes)

5	4.1. Welcome and introduction of guest lawyer	Lecture	Large group	5-10 min.
10	4.2. Exchanges between the students and the guests	Discussion	Sub-groups	5-10 min.
15	4.3. Start of simulated hearing	Simulation	Large group	5 min.
20	4.4. Pleading of the lawyers for the appellant	Simulation	Large group	10 min.
25				
30	4.5. Pleading of the lawyers for the respondent	Simulation	Large group	10 min.
35				
40	4.6. Appellant and respondent replies (optional)	Simulation	Large group	5-10 min.
45	4.7. Deliberation of the judges and overview of the lawyers' performances	Discussion	Sub-groups	5-10 min.
50	4.8. Announcement of the judges' decision	Simulation	Large group	5 min.
55	4.9. Review of the decision and conclusions	Lecture	Large group	5-15 min.
60				

4.1. Let the guest judge introduce himself or herself to your students, then explain briefly how the period will work (5 to 10 minutes) .

4.2. Divide your class into **two sub-groups**:

- ◆ In caucus, the guest judge discusses with the **student lawyers** their role during the hearing. He or she can give them some **advice** if he or she wishes.
- ◆ The guest judge also does the same with the **student judges**.

Take advantage of this moment to ensure that the **usher** and **clerk** are aware of what they have to say and do during the hearing (5 to 10 minutes) .

The Charters

COURSE

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- 4.3. The **simulated hearing can begin**. Ask the student judges and the guest judge to leave the classroom while others are in the right place. From now on, students must follow the **decorum rules** and can refer to their **instruction sheets** to guide themselves.

The usher announces the entry of the judges. All must stand up until the judges are seated. From then on, you can **let the guest judge direct the simulation** (*at most 5 minutes*).

- 4.4. The **lawyers for the appellant** presented **all of their arguments**. Each student turns to the judges in turn, in the order chosen by the team (see lawyers' fact sheets). Judges may ask **relevant questions** at the end, under the direction of the guest judge (*10 minutes*).

- 4.5. **Lawyers for the respondent** put forward **all their arguments** in the same manner (*10 minutes*).

- 4.6. If the appellant's lawyers wish, they can **reply** to the arguments put forward by their opponents, without bringing new points.

Lawyers for the respondent may then do the same. This step is **optional** (*5 to 10 minutes*).

- 4.7. Once the pleadings are completed, the **student judges** and the guest judge leave the room to **deliberate**. Again, the other students get up at the same time as the judges and sit down when they are out.

As a group, during the deliberations, the guest lawyer can comment on the **performance of the lawyers** (their strengths and weaknesses, etc.). He or she can also answer **students' questions** (*5 to 10 minutes*).

- 4.8. The judges re-enter the room (following the rules of decorum) and **announce their final decision** (*no more than 5 minutes*).

- 4.9. Use the remaining time to **conclude the activity**:

- ◆ The guest judge can make some comments on the decision that has been made and **answer the students' questions**.

- ◆ You can also ask students (especially the public) to **react to the decision**.
- ◆ Finally, let the judge **disclose the actual decision** of the Supreme Court. If there is enough time, someone can explain the differences between your students' arguments and those that have really been pleaded at Court (*5 to 15 minutes*).

Continuation of the Program and Complementary Activities

- It would probably be worth taking a few minutes in the next period to **take stock of the activity** with your students.
 - ◆ For example, ask them to give their impression on the activity, or share some new reflections.
 - ◆ You could also explain the important details of the actual decision, so that your students have the right ideas regarding the current state of the law.

Suggestions for Complementary Activities

- Ask students to write a short text on their role, which could cover the following topics:
 - ◆ Had they already made conclusions on the case before hearing the pleadings? Did they change their mind after hearing the pleadings ?
 - ◆ Did the lawyers forget to raise important arguments?
 - ◆ How did their own beliefs or personal opinions affect their decision?
 - ◆ How did this experience influence their vision of the justice system?
- Designate students as "journalists" to write an article about the hearing. Journalists can address the questions on the information sheet on page X of this guide. They can interview lawyers, judges, etc. to gather their comments and write a text on the issue.

Alternative

You may decide to do the pleading without a guest judge. Then, ask the guest lawyer to play the role of the judge during the period. In turn, take over from the lawyer when necessary (steps 4.2 and 4.7) ... or decide with him or her on a way of doing this that would be more suitable!

PREPARING FOR PLEADINGS (CONTINUED)

The Decorum

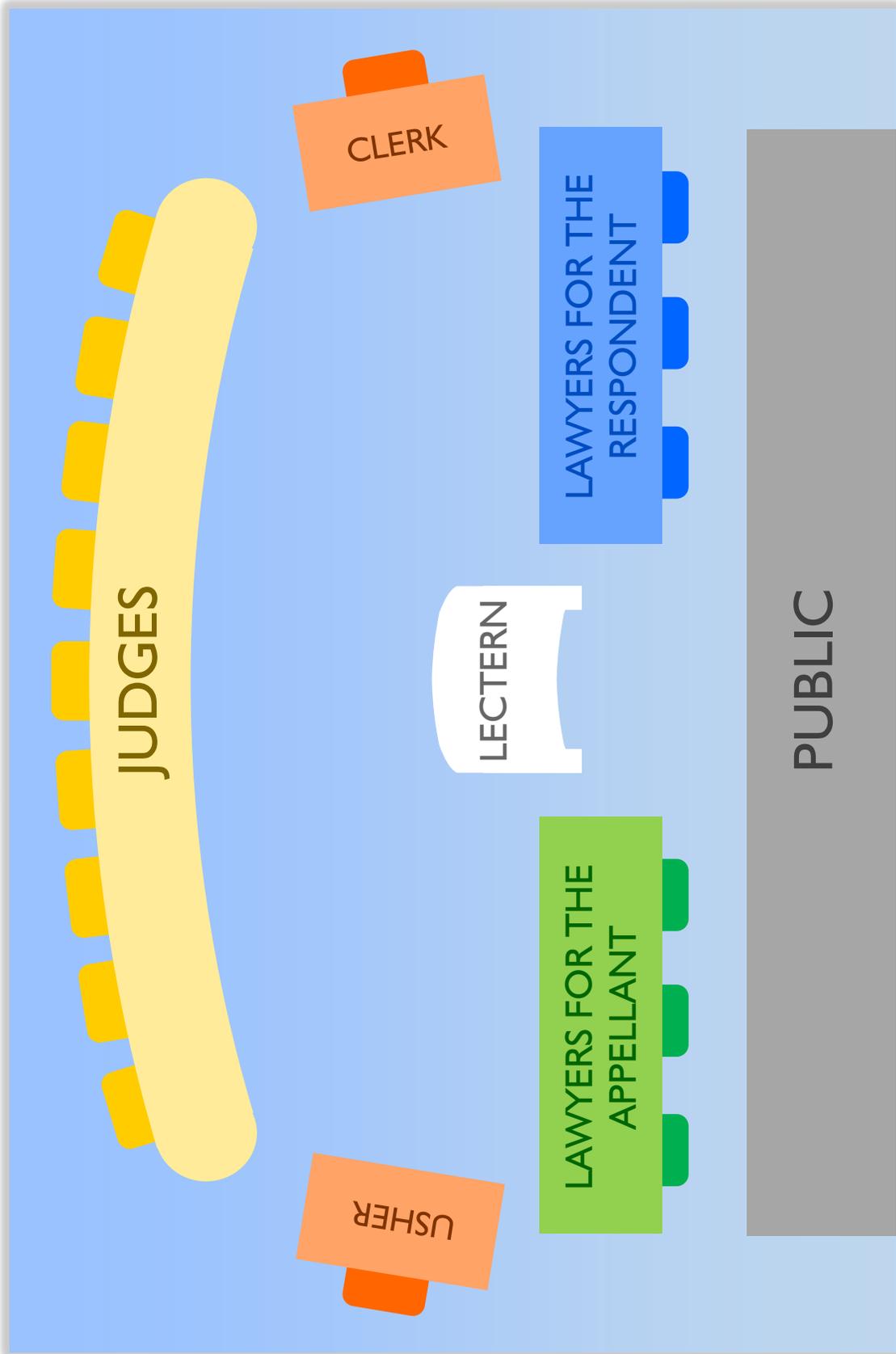
There are several **rules of conduct** to follow in the courtroom. This is called "**decorum**", which you must respect during the exercise:

- When the **judges enter the room**, the usher asks all persons present to stand. Once the judge is seated, they can sit down.
- Whenever a lawyer speaks to a judge, **he or she must stand up** and address the judge using the title "**Mister Justice**" or "**Madam Justice**".
- During the pleadings, the lawyer **always speaks to the judges**. He or she must not address the lawyers of the opposing party directly.
- Amongst themselves, lawyers are called "colleague" or "friend" ("confrère" or "consoeur"). One can also say "**Maître**", followed by the surname (this is the title given to lawyers in Québec).
- Lawyers must be **respectful** at all times. They must never interrupt the judges or lawyers of the opposing party. They must wait for the permission of a judge to answer a question or to speak .



Supreme Court of Canada Collection

Floorplan of a Courtroom



APPELLANT'S LAWYERS

INFORMATION SHEET

Use this form to guide you before and during the simulated hearing.

What you need to do:

Before the Hearing

Prepare your **legal arguments** carefully as a team. Also review **pages 9 to 12** of your guide.

Determine who among you will present each of the arguments before the Court. Two lawyers can share one argument.

During the Hearing

Follow the **decorum** rules described on page 55 of your guide. At the beginning of the hearing, remain silent and stand up when asked.

The order of pleadings is on page 10 of your guide. **You start!** Some clarifications:

1

The first lawyer who addresses the judges must summarize the **facts** of the case. Once done, present **all** your arguments in turn .

2

It is then the respondent's lawyers' turn to speak. Listen carefully and take notes .

3

You then have the right to **respond** to the pleadings of your opponents. Warning: you can only react to the arguments they have invoked. It is no longer time to invent new arguments!

4

In turn, lawyers have the right to reply (if a judge allows). The pleadings end here.

When the pleadings are over, the judges withdraw to **deliberate**. You will know their final decision before the end of the period .

A few tips:

- Remember that a legal argument is **based on facts and legal rules**. It is of no use to give your personal opinions during your pleadings .
- In order for the judges' decision to be in your favour, it is sufficient that the majority of the judges are just a little bit more convinced by your arguments than by those of your opponents (50% +1) .
- To be convincing, speak **slowly** and look at the judges. Present your ideas **clearly** and **in a logical order**.
- It is normal for you to be nervous ... even the best lawyers are! Trust yourself!

RESPONDENT'S LAWYERS

INFORMATION SHEET

Use this form to guide you before and during the simulated hearing.

What you need to do:

Before the Hearing

Prepare your **legal arguments** carefully as a team. Also review **pages 9 to 12** of your guide.

Determine who among you will present each of the arguments before the Court. Two lawyers can share one argument.

During the Hearing

Follow the **decorum** rules described on page 27 of your guide. At the beginning of the hearing, remain silent and stand up when asked.

The order of pleadings is on page 20 of your guide. It is the appellant's lawyers who start. Some clarifications:

1

During the pleading of your opponents, listen carefully and take notes. Wait until they have completed all of their arguments .

2

Wait for the judges to give you **permission** to make your pleadings. First, if you did not like the way your opponents described the **facts**, you can present your version. Then, present all your arguments in turn. Take advantage of this to respond to what lawyers for the appellant pleaded .

3

Lawyers for the appellant then has the **right of reply**. When they are finished, you can ask the judges for permission to respond to what they have said. This is not always necessary.

When the pleadings are over, the judges withdraw to **deliberate**. You will know their final decision before the end of the period.

A few tips:

- Remember that a legal argument is based on **facts and legal rules**. It is of no use to give your personal opinions during your pleadings.
- In order for the judges' decision to be in your favour it is enough that the **majority** of the judges are just a little bit more convinced by your arguments than by those of your opponents (50% +1).
- To be convincing, speak **slowly** and look at the judges. Present your ideas **clearly** and **in a logical order**.
- It is normal for you to be nervous ... even the best lawyers are! Trust yourself!

JUDGES

INFORMATION SHEET

Use this form to guide you before and during the simulated hearing.

What you need to do:

Before the Hearing

Carefully read the **facts** of the case that you will hear, as well as **pages 9 to 12** of your guide. Consider the arguments that could be made by both parties. However, you must keep an **open mind**: lawyers must be able to convince you with their pleadings!

When asked, leave the room for the start of the hearing.

During the Hearing

Stay focused and follow the **decorum** rules outlined on page 27 of your guide. As judges, you are "masters" of the hearing. Some clarifications:

1

Wait for the usher to announce for you to **enter the room**. Walk in line and sit in your designated places.

- 2 During the pleadings of both parties, **listen carefully to the arguments** of the lawyers and take notes if necessary .
You have the right to ask questions to the lawyers. Write them down and wait for all the arguments to be made. Limit yourself to the questions **necessary** to clarify a specific point. You can point out to a lawyer that he or she has invented facts or that he or she has moved away from the law to give his or her personal opinion. At all times, be **respectful!**
- 3 When the **appellant's** lawyers have completed all their arguments, tell the **respondent's** lawyers that they can start their own arguments. Then give both parties permission to **reply** (unless instructed otherwise by an adult).
- 4 Once the **pleadings** are over, it is time to leave the room to deliberate (see below). Designate a spokesperson who will announce your **final decision** once you are back in the room.

Deliberations :

You will have a few minutes to discuss between you and the guest judge the decisions you will make. You must make a **choice between the positions** of the appellant and the respondent.

- Your decision must be based solely on the facts and legal arguments presented to you. Use your notes and those taken by the clerk.
- You do not have to agree on all the points of either of the parties. As soon as one party convinces you a little bit more than the other (**50% +1**), you must decide in his or her favor.
- There is also no need for unanimity between the judges: the **majority** prevails.

USHER

INFORMATION SHEET

Use this form to guide you before and during the simulated hearing.

What you must do:

Before the Hearing

If your teacher asks you, come to class a little earlier to help him or her **place the courtroom**. Inspire yourself from the plan on **page 28** of your guide. You should also **know the name of the guest judge**.

When it is time to start the hearing, **help the other students** find their respective places. The judges must leave the room.

During the Hearing

It is you who opens and closes the hearing and enforces the **rules of decorum** (which you can read on **page 27** of your guide). Some clarifications:

1

When all are seated in the right place, announce the entrance of the judges by declaring this to the room:

« Silence. Please stand! »

Once the judges are at their seats, say:

2

« The Supreme Court of Canada, presided over by the Honorable [name of guest judge] is in session. Please sit down. »

3

During the **pleadings**, make sure that members of the public are **silent** and that lawyers follow the rules of decorum.

4

When the pleadings are over, announce to the room that the judges will go out to **deliberate**. Repeat:

« Silence. Please stand! »

Then, once all judges have exited:

« Please sit down. »

5

Repeat the **same two sentences** when the judges return to announce their decision .

CLERK INFORMATION SHEET

Use this form to guide you before and during the simulated hearing.

What you should do:

Before the Hearing

If your teacher asks you, come to class a little earlier to help her or him **prepare the courtroom**. Inspire yourself from the plan on page 28 of your guide.

When it's time to start the hearing, **help the other students** find their respective places. The judges must leave the room.

During the Hearing

Take note of everything you can on a piece of paper:

- ◆ The order of pleadings (who took the floor and when?);
- ◆ The main points of the arguments put forward by the lawyers of the two parties;
- ◆ The questions asked by the judges and the answers given.

At the end of the pleadings, give your sheet to the judges: they will be able to use it during their deliberations.

JOURNALIST INFORMATION SHEET

To write a good **article**, read the facts and listen carefully during the hearing. Ask yourself the following questions:

- What are the main facts?
- What were the main arguments of the lawyers?
- What were the main questions asked by judges to lawyers?
- Should some legal rules be explained to the readers?
- What was the court's decision?

You can also ask these questions to your colleagues who are judges and lawyers.

ILLUSTRATOR INFORMATION SHEET

Why do we use an illustrator rather than a cameraman or a photographer?

Because many Canadian courts prohibit video cameras in courtrooms and all Canadian courts prohibit taking photographs. On the other hand, most hearings before the Supreme Court are webcast and televised.

The role of the illustrator is therefore to draw what is going on in the courtroom. His or her drawings can be used in newspapers or on television. Draw the lawyers and judges in action.



APPENDIX 1 CANADIAN CHARTER OF RIGHTS AND FREEDOM

PART I OF THE 1982 CONSTITUTION ACT

Assented to on March 29, 1982

Whereas Canada is founded upon principles that recognize the supremacy of God and the rules of law:

Guarantee of Rights and Freedoms

Rights and Freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:
- freedom of conscience and religion;
 - freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 - freedom of peaceful assembly; and
 - freedom of association.

Democratic Rights

Democratic Rights of Citizens

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be

qualified for membership therein.

Maximum Duration of Legislative Bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs of a general election of its members.

Continuation in special circumstances

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual Sitting of Legislative Bodies

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

Mobility Rights

Mobility of Citizens

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

- to move to and take up residence in any province; and
- to pursue the gaining of a livelihood in any province.



Limitation

- (3) The rights specified in subsection (2) are subject to
- a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
 - b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative Action Programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Legal Rights

Life, Liberty and Security of Person

7. Everyone 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.

Search or Seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or Imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention

10. Everyone has the right on arrest or detention:

- a) to be informed promptly of the reasons therefor;
- b) to retain and instruct counsel without delay and to be informed of that right; and
- c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Proceedings in Criminal and Penal Matters

11. Any person charged with an offence has the right:

- a) to be informed without unreasonable delay of the specific offence;
- b) to be tried within a reasonable time;
- c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- e) not to be denied reasonable bail without just cause;
- f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- i) if found guilty of the offence and if the punishment for the offence has been varied

between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Treatment of Punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-Crimination

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Interpreter

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Equality Rights

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative Action Programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Official Languages in Canada

Official Languages in Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

Official languages of New Brunswick

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

Advancement of status and use

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

English and French linguistic communities in New Brunswick

16.1 (1) The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

Role of the legislature and government of New Brunswick

(2) The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.

Proceedings of parliament

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

Proceedings of New Brunswick legislature

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

Parliamentary statutes and records

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

New Brunswick statutes and records

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

Proceedings in courts established by Parliament

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

Proceedings in New Brunswick courts

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

Communications by public with federal institutions

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

- a) there is a significant demand for communications with and services from that office in such language; or
- b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both

English and French.

Communications by public with New Brunswick institutions

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

Continuation of existing constitutional provisions

21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

Rights and privileges preserved

22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

Minority Language Educational Rights

Language of instruction

23. (1) Citizens of Canada:

- a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
- b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary

and secondary school instruction in that language in that province.

Continuity of language instruction

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

Application where numbers warrant

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

- a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
- b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Enforcement

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or

freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

Aboriginal rights and freedoms not affected by Charter

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

- a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

Other rights and freedoms not affected by Charter

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

Multicultural heritage

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

Rights guaranteed equally to both sexes

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Rights respecting certain schools preserved

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of

Canada in respect of denominational, separate or dissentient schools.

Application to territories and territorial authorities

30. A reference in this Charter to a Province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

Legislative powers not extended

31. Nothing in this Charter extends the legislative powers of any body or authority.

Application of Charter

Application of Charter

32. (1) This Charter applies:

- a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
- b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Exception

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

Exception where express declaration

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

Operation of exception

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

Five year limitation

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

Re-enactment

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

Five year limitation

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

Citation

Citation

34. This Part may be cited as the Canadian Charter of Rights and Freedoms.



APPENDIX 2

CHARTER OF HUMAN RIGHTS AND FREEDOMS

Preamble

WHEREAS every human being possesses intrinsic rights and freedoms designed to ensure his protection and development;

Whereas all human beings are equal in worth and dignity, and are entitled to equal protection of the law;

Whereas respect for the dignity of human beings, equality of women and men, and recognition of their rights and freedoms constitute the foundation of justice, liberty and peace;

Whereas the rights and freedoms of the human person are inseparable from the rights and freedoms of others and from the common well-being;

Whereas it is expedient to solemnly declare the fundamental human rights and freedoms in a Charter, so that they may be guaranteed by the collective will and better protected against any violation;

Therefore, Her Majesty, with the advice and consent of the National Assembly of Québec, enacts as follows:

PART 1: HUMAN RIGHTS AND FREEDOMS

Chapter 1 : Fundamental Freedoms and Rights

1. Every human being has a right to life, and to personal security, inviolability and freedom.

He also possesses juridical personality.

2. Every human being whose life is in peril has a right to assistance.

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Every person must come to the aid of anyone whose life is in peril, either personally or calling for aid, by giving him the necessary and immediate physical assistance, unless it involves danger to himself or a third person, or he has another valid reason.

3. Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association.

4. Every person has a right to the safeguard of his dignity, honour and reputation.

5. Every person has a right to respect for his private life.

6. Every person has a right to the peaceful enjoyment and free disposition of his property, except to the extent provided by law.

7. A person's home is inviolable.

8. No one may enter upon the property of another or take anything therefrom without his express or implied consent.

9. Every person has a right to non-disclosure of confidential information.

No person bound to professional secrecy by law and no priest or other minister of religion may, even in judicial proceedings, disclose confidential information revealed to him by reason of his position or profession, unless he is authorized to do so by the person who confided such information to him or by an express provision of law.



The tribunal must, ex officio, ensure that professional secrecy is respected.

9.1. In exercising his fundamental freedoms and rights, a person shall maintain a proper regard for democratic values, public order and the general well-being of the citizens of Québec.

In this respect, the scope of the freedoms and rights, and limits to their exercise, may be fixed by law.

Chapter 1.1: Right To Equal Recognition and Exercise of Rights and Freedoms

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

10.1. No one may harass a person on the basis of any ground mentioned in section 10.

11. No one may distribute, publish or publicly exhibit a notice, symbol or sign involving discrimination, or authorize anyone to do so.

12. No one may, through discrimination, refuse to make a juridical act concerning goods or services ordinarily offered to the public.

13. No one may in a juridical act stipulate a clause involving discrimination.

Such a clause is without effect.

14. The prohibitions contemplated in sections 12 and 13 do not apply to the person who leases a room situated in a dwelling if the lessor or his family resides in such dwelling, leases only one room and does not advertise the room for lease by a notice or any other public means of solicitation.

15. No one may, through discrimination, inhibit the access of another to public transportation or a public place, such as a commercial establishment, hotel, restaurant, theatre, cinema, park, camping ground or trailer park, or his obtaining the goods and services available there.

16. No one may practise discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.

17. No one may practise discrimination in respect of the admission, enjoyment of benefits, suspension or expulsion of a person to, of or from an association of employers or employees or any professional order or association of persons carrying on the same occupation.

18. No employment bureau may practise discrimination in respect of the reception, classification or processing of a job application or in any document intended for submitting an application to a prospective employer.

18.1. No one may, in an employment application form or employment interview, require a person to give information regarding any ground mentioned in section 10 unless the information is useful for the application of section 20 or the implementation of an affirmative action program in existence at the time of the application.

18.2. No one may dismiss, refuse to hire or otherwise penalize a person in his employment owing to the mere fact that he was convicted of a penal or criminal offence, if the offence was in no way connected with the employment or if the person has obtained a pardon for the offence.

19. Every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place.

A difference in salary or wages based on experience, seniority, years of service, merit, productivity or overtime is not considered discriminatory if such criteria are common to all members of the personnel.

Adjustments in compensation and a pay equity plan are deemed not to discriminate on the basis of gender if they are established in accordance with the Pay Equity Act (chapter E-12.001).

20. A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory.

20.1. In an insurance or pension contract, a social benefits plan, a retirement, pension or insurance plan, or a public pension or public insurance plan, a distinction, exclusion or preference based on age, sex or civil status is deemed non-discriminatory where the use thereof is warranted and the basis therefor is a risk determination factor based on actuarial data.

In such contracts or plans, the use of health as a risk determination factor does not constitute discrimination within the meaning of section 10.

Chapter II : Political Rights

21. Every person has a right of petition to the National Assembly for the redress of grievances.

22. Every person legally capable and qualified has the right to be a candidate and to vote at an election.

Chapter III : Judicial Rights

23. Every person has a right to a full and equal, public and fair hearing by an independent and impartial tribunal, for the determination of his rights and obligations or of the merits of any charge brought against him.

The tribunal may decide to sit *in camera*, however, in the interests of morality or public order.

24. No one may be deprived of his liberty or of his rights except on grounds provided by law and in accordance with prescribed procedure.

24.1. No one may be subjected to unreasonable search or seizure.

25. Every person arrested or detained must be treated with humanity and with the respect due to the human person.

26. Every person confined to a correctional facility has the right to separate treatment appropriate to his sex, his age and his physical or mental condition.

27. Every person confined to a correctional facility while awaiting the outcome of his trial has the right to be kept apart, until final judgment, from prisoners serving sentence.

28. Every person arrested or detained has a right to be promptly informed, in a language he understands, of the grounds of his arrest or detention.

28.1. Every accused person has a right to be promptly informed of the specific offence with which he is charged.

29. Every person arrested or detained has a right to immediately advise his next of kin thereof and to have recourse to the assistance of an advocate. He has a right to be informed promptly of those rights.

30. Every person arrested or detained must be brought promptly before the competent tribunal or released.

31. No person arrested or detained may be deprived without just cause of the right to be released on undertaking, with or without deposit or surety, to appear before the tribunal at the appointed time.

32. Every person deprived of his liberty has a right of recourse to *habeas corpus*.

32.1. Every accused person has a right to be tried within a reasonable time.

33. Every accused person is presumed innocent until proven guilty according to law.

33.1. No accused person may be compelled to testify against himself at his trial.

34. Every person has a right to be represented by an advocate or to be assisted by one before any tribunal.

35. Every accused person has a right to a full and complete defense and has the right to examine and cross-examine witnesses.

36. Every accused person has a right to be assisted free of charge by an interpreter if he does not understand the language used at the hearing or if he is deaf.

37. No accused person may be held guilty on account of any act or omission which, at the time when it was committed, did not constitute a violation of the law.

37.1. No person may be tried again for an offence of which he has been acquitted or of which he has been found guilty by a judgment that has acquired status as *res judicata*.

37.2. Where the punishment for an offence has been varied between the time of commission and the time of sentencing, the accused person has a right to the lesser punishment.

38. No testimony before a tribunal may be used to incriminate the person who gives it, except in a prosecution for perjury or for the giving of contradictory evidence.

Chapter IV : Economic and Social Rights

39. Every child has a right to the protection, security and attention that his parents or the persons acting in their stead are capable of providing.

40. Every person has a right, to the extent and according to the standards provided for by law, to free public education.

41. Parents or the persons acting in their stead have a right to give their children a religious and moral education in keeping with their convictions and with proper regard for their children's rights and interests.

42. Parents or the persons acting in their stead have a right to choose private educational establishments for their children, provided such establishments comply with the standards prescribed or approved by virtue of the law.

43. Persons belonging to ethnic minorities have a right to maintain and develop their own cultural interests with the other members of their group.

44. Every person has a right to information to the extent provided by law.

45. Every person in need has a right, for himself and his family, to measures of financial assistance and to social measures provided for by law, susceptible of ensuring such person an acceptable standard of living.

46. Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment which have proper regard for his health, safety and physical well-being.

46.1. Every person has a right to live in a healthful environment in which biodiversity is preserved, to the extent and according to the standards provided by law.

47. Married or civil union spouses have, in the marriage or civil union, the same rights, obligations and responsibilities.

Together they provide the moral guidance and material support of the family and the education of their common offspring.

48. Every aged person and every handicapped person has a right to protection against any form of exploitation.

Such a person also has a right to the protection and security that must be provided to him by his family or the persons acting in their stead.

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Chapter V: Special and Interpretative Provisions

49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

49.1. Any complaint, dispute or remedy the subject-matter of which is covered by the Pay Equity Act (chapter E-12.001) shall be dealt with exclusively in accordance with the provisions of that Act.

Moreover, any question concerning pay equity between a predominantly female job class and a predominantly male job class in an enterprise employing fewer than 10 employees shall be settled by the Commission des normes, de l'équité, de la santé et de la sécurité du travail in accordance with section 19 of this Charter.

50. The Charter shall not be so interpreted as to suppress or limit the enjoyment or exercise of any human right or freedom not enumerated herein.

50.1. The rights and freedoms set forth in this Charter are guaranteed equally to women and men.

51. The Charter shall not be so interpreted as to extend, limit or amend the scope of a provision of law except to the extent provided in section 52.

52. No provision of any Act, even subsequent to the Charter, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the Charter.



53. If any doubt arises in the interpretation of a provision of the Act, it shall be resolved in keeping with the intent of the Charter.

54. The Charter binds the State.

55. The Charter affects those matters that come under the legislative authority of Québec.

56. 1° In sections 9, 23, 30, 31, 34 and 38, in Chapter III of Part II and in Part IV, the word “tribunal” includes a coroner, a fire investigation commissioner, an inquiry commission, and any person or agency exercising quasi judicial functions.

2° In section 19, the words “salary” and “wages” include the compensations or benefits of pecuniary value connected with the employment.

3° In the Charter, the word “law” or “Act” includes a regulation, a decree, an ordinance or an order in council made under the authority of any Act.

[Parts II to VII of the Quebec Charter are not reproduced]

