



# THE CHARTER OF RIGHTS AND FREEDOMS

UNIT 1: FOUNDATIONS OF LAW



# INTRODUCTION

- Civil rights and freedoms limit the power that a government has over its citizens
- Human rights protect people from being unfairly discriminated against by other individuals
- Canadians are free because laws are passed to protect their rights and freedoms, and are not to be judged based on race, sex, age, beliefs. Everyone is treated equally in the eyes of the law.
- Equality in the eyes of the law is a recent concept in the eyes of the law. Throughout history many different groups had different rights than others. Ex: Ancient Babylonian slaves, and 16<sup>th</sup> century French peasants.



# THE DEVELOPMENT OF HUMAN RIGHTS AND FREEDOMS

- Events in history showed that beliefs about rights could lead to changes in the way people were governed.
  - King John signing the Magna Carta in 1215 C.E.
  - Queen Mary II signing the English Bill of Rights in 1689
  - The Thirteen Colonies fighting for their colonial independence from Great Britain, until their signing of the Declaration of Independence in 1776, which eventually became law in 1788.
    - In 1791, 10 amendments (changes) were made to the Constitution. These became known as the U.S. Bill of Rights, and are still the basis of freedom and civil rights for Americans.
  - The creation of the National Assembly in France, and the passing of the Declaration of the Rights of Man and of the Citizens, on August 26, 1789.
  - The American Civil War (1861-1865) and the eventual abolishment of slavery and the addition of the 13<sup>th</sup> amendment.
  - The creation of the United Nations in 1945, and the adoption of the Universal Declaration of Human Rights on December 10, 1948, following WWII and the Hitler regime.

## HUMAN RIGHTS IN CANADA AFTER WORLD WAR II

- After rights abuse during WWII any Canadians believed legal rights had to be written down, apposed to common law.
- In 1945, John Diefenbaker led a movement to have these rights made into law, but was defeated by MPs who thought common law was good enough.
- Diefenbaker later became the leader of the Progressive Party, and promised a bill of rights during his federal campaigns in 1957 and 1958.
- As prime minister, Parliament passed the Canadian Bill of Rights on August 10, 1960.

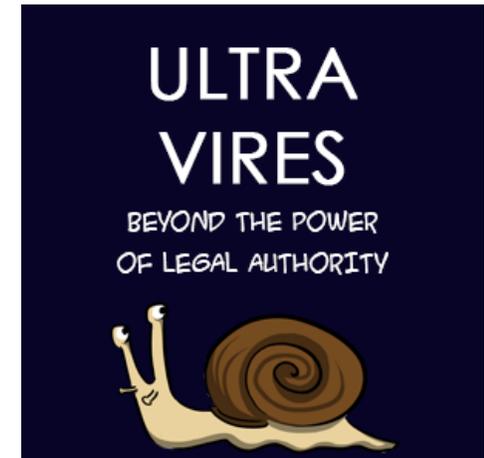


# CONSTITUTIONAL PROTECTION OF CIVIL RIGHTS

- In the mid 1960's a politician by the name of Pierre Trudeau spoke of a “just society”, striving for greater social justice and stronger guarantees of individual rights.
- The addition of the Charter of Rights and Freedoms to the Constitution Act, 1982, listed:
  - Civil Rights and freedoms of all Canadians
  - Guarantees them at all levels of government (federal, provincial, territorial, and municipal)
- The purpose of the Charter is to limit the power of the government.

# MATTERS GOVERNED BY THE CHARTER

- When a case concerning a section of the Charter comes to courts, the first thing they is whether to hear the case. Section 32 to makes it clear what the Charter does and doesn't cover.
- As a result of legal considerations, Charter cases often determine what matters are:
  - Ultra vires: outside the authority of the government to legislate
  - Intra vires: within the authority of the government to legislate
- The Charter does not cover private legal matters.



# NOT WITHSTANDING CLAUSE

- Lets provincial and territorial governments enact legislation in spite of the fact, or “notwithstanding” that it may violate the Charter. (applies to section 2 and 7-15)
- Any legislation that is passed using the notwithstanding clause can stay in effect for five years at most, but then reenacted.
- Certain rights cannot be overruled using the clause, these include:
  - Right to vote
  - Minority language education rights
  - Mobility rights



# BREAKDOWN OF THE CHARTER OF RIGHTS AND FREEDOMS

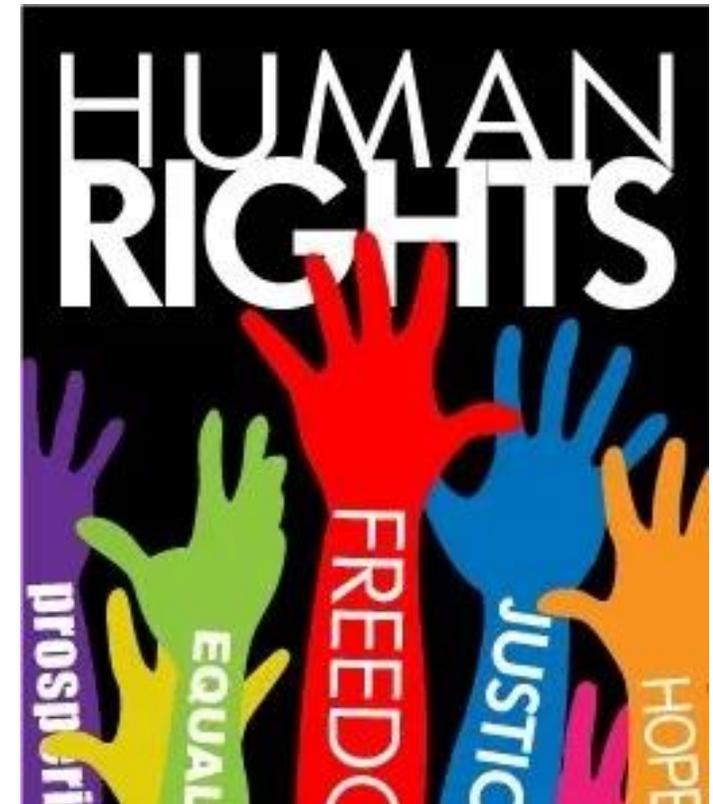
- Section 2: Fundamental Freedoms- Broken into 4 sections:
  - Freedom of Conscience and Religion
  - Freedom of Thought, Belief, Opinion, and Expression
  - Freedom of Peaceful Assembly
  - Freedom of Association



- Sections 3, 4, and 5: Democratic Rights- The right to vote.
- Section 6: Mobility Rights- Move freely through Canada
- Sections 7-14: Legal Rights- Covered under the Criminal Code:
  - Life, Liberty, and Security of Person
  - Search and Seizure
  - Detention or Imprisonment
  - Arrest or Detention
  - Proceedings in Criminal and Penal Matters
  - Treatment or Punishment
  - Self-Crimination
  - Interpreter



- Section 15 and 28: Equality Rights
- Section 16-22: Official Languages of Canada
- Section 23: Minority Language Education Rights
- Section 25: Aboriginal Rights and Freedoms
- Section 27: Multicultural and Heritage Rights



# HUMAN RIGHTS

- Human rights differ from Charter of Rights and Freedom and are taken care of by the Canadian Human Rights Act
- Major focal points consist of:
  - Prejudice
  - Stereotyping
  - Discrimination

