



# Chapter 4

## *Protecting Your Rights*

## Protecting Your Rights and Freedoms

***Canada protects its citizens' democratic freedoms and rights in our Constitution and our federal and provincial laws.***

As citizens, if we think our rights have been violated, we can seek a remedy. A remedy is a solution that corrects the violation. It can include:

- an apology
- changing an unfair law or policy
- financial compensation

Citizens can look for a remedy by complaining to various government agencies or by using our courts of law to enforce their rights.

The various protections for citizens' freedoms and rights are effective only if we take action when we believe our rights have been violated.

It is part of your democratic commitment as a citizen to stand up for your rights. By protecting your own rights, you will also help others who are harmed by unfair laws, government programs or policies.

# The Charter of Rights and Freedoms

In 1982, Canada's *Constitution* was changed to include the *Canadian Charter of Rights and Freedoms*—one of the most important events in Canada's recent political history.

The *Charter* identifies Canadians' *fundamental freedoms* and most important rights. It creates standards for how government agencies must treat us as citizens.



The *Charter* also creates limits on the power of government to interfere with citizens' most important rights and freedoms.

Some of the most important *Charter* freedoms and rights include:

## Fundamental Freedoms

- freedom of thought, belief, opinion and expression including freedom of the press
- freedom of conscience and religion
- freedom of association and peaceful assembly

## Democratic Rights

- the right to vote
- the right to hold office (become an elected representative)

## Mobility Rights

- the right to enter, leave, live and work in any part of Canada

## Legal Rights

- the right to life, liberty and security of the person
- the right to a fair trial
- the right to be free from unreasonable search and seizure
- the right not to be subject to cruel or unusual punishment
- the right to an interpreter in legal proceedings for people who do not understand the language

## Equality Rights

- the right to equal benefit and protection of the law without discrimination

## Limits on rights and freedoms

Although these rights and freedoms are very important, they are not *absolute*.

Government and the courts can place limits on these rights and freedoms, if they can show that these limits are justifiable in a “free and democratic society.”

## Hate speech laws

In efforts to fight racism, the federal government and most provincial governments have placed limits on freedom of speech by passing “hate speech” laws. These laws place limits on Canadians’ rights to say what they want.

**The Charter applies only to the laws, programs and actions of federal, provincial and local governments, and also to their agencies and employees.**

It does *not* apply to the actions or programs of non-government organizations, such as *private sector* employers who are not part of government. Many Canadians do not understand this important distinction.

**Drug testing** A private company might decide to test their employees for drug use. Those employees could not use the protections in the *Charter* for a remedy against their employer.

**Going to court** If citizens think that a law or government policy or program violates one of their freedoms or rights set out in the *Charter*, they can ask the courts to declare the law or policy *unconstitutional*. If the courts agree, they will declare that the law either no longer applies to citizens, or else change the law so that it does not violate the *Charter*.

In practice, however, going to court to enforce *Charter* freedoms or rights is a very expensive and time-consuming way to get a remedy.

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## The Criminal Code

The *Criminal Code* is the federal law which describes actions that are crimes in Canadian society. It describes the penalty for each crime and the court process for determining whether an accused person is guilty of the crime.

The *Code* protects all of society by giving citizens notice of what types of actions are crimes. It protects society from dangerous people who have committed a crime.

The *Code* also protects each of us as citizens by defining procedures so that we can defend ourselves if we are accused of a crime. This is known as *due process*.

The *Criminal Code* also protects citizens' rights and freedoms by **not** including all sorts of behaviour that many people believe to be wrong.

For example, most Canadians think it is very wrong to be extremely rude and insulting. But this behaviour is not a crime (except when it involves a threat to another person).

***In Canada, we try not to use the Criminal Code for all behaviour that may be morally wrong. Our restraint reflects our commitment to liberty and freedom.***

## Here is a short summary of specific ways the Criminal Code protects the rights and freedoms of citizens:

- ✓ Each crime is clearly defined so that citizens can know what type of actions are criminal actions.
- ✓ Government lawyers must prove beyond a reasonable doubt that the accused person committed the crime. This standard requires a lot of convincing evidence to prove that the person committed the crime. If the state can't provide this evidence, the accused is not guilty of the crime.
- ✓ The Code defines maximum and minimum penalties for most crimes. Courts may not give a penalty that is greater or less than the penalty stated in the Code. Accused persons have a right to make a full defence. This means that the accused person can make every argument possible to prove that he is not guilty of the crime.
- ✓ Accused persons have the right not to give evidence.
- ✓ Accused persons sometimes have the right to choose whether their trial will include a jury or just a judge. A jury is a group of other citizens who decide whether the accused is guilty.
- ✓ Accused persons have the right to be represented by a defence lawyer. An accused person who cannot afford to pay a lawyer may qualify for "Legal Aid". It is the responsibility of the defence lawyer and of the court to make sure that the accused person takes advantage of the protections of the Code.

**Dealing with crime** If you think that someone has committed a crime against you, you can make a complaint to the police. When the police receive a complaint from a citizen or if they have some other reason to suspect someone has committed a crime, they will investigate.

If the police discover enough evidence to lay a charge against someone for committing a crime, the police then work with Crown Counsel.

Crown Counsel are government lawyers who argue in court that a person is guilty of a crime.

Before going to court, Crown Counsel must decide that there is adequate evidence to prove the crime and that it is in the public interest to charge a person with a crime. If so, the police will lay a charge against the person, arrest the person and take him or her to court. If it can be shown beyond a reasonable doubt that the accused committed the crime, he or she will be punished by the court.

In some provinces, the police make the decision whether or not to charge someone for a crime rather than Crown Counsel. It is better for Crown Counsel to make this decision because they are experienced lawyers. Also, police may feel more public pressure to “solve” a crime by charging someone.

## Human Rights Laws

***Equality is a fundamental right and value in Canadian democracy.***

Equality means that each citizen's needs and hopes are equally important. Citizens have a fundamental right to be treated with equal dignity and respect by government and other citizens.

***The value of equality helps us to fulfill our personal potential in our lives and encourages us to become full participants in democratic life.***

In addition to the equality guarantees in the *Charter*, Canada's federal and provincial human rights laws prohibit discrimination against a person based on:

- race
- colour
- national or ethnic origin
- age
- religion
- family or marital status
- physical or mental disability
- gender
- sexual orientation

Human rights laws differ from the *Charter*. These laws apply both to government agencies and to the private sector (employers, landlords, organizations and individuals who are not part of government).

These laws are there to protect you against unfair discrimination when you look for a job or housing, or when you use public services such as eating at a restaurant.

**Making a complaint** If you think you have been the victim of discrimination, you can complain to the Canadian Human Rights Commission Tribunal or to the various provincial human rights agencies such as the B.C. Human Rights Tribunal. These agencies have the power to investigate your complaint and take action to remedy the discrimination.

Remedies for unfair discrimination include:

- an order to stop the discrimination
- an order that you be offered the opportunity that was denied to you (for example, a job)
- an order that you be compensated for any expenses caused by the discrimination
- an order that you be given payment for your pain and suffering, including injury to your dignity, caused by the discrimination

In some cases, an employer may be ordered to create an *employee equity program*. This requires an employer to take steps to make sure that other people don't suffer discrimination in the workplace.

# Access to Information and Privacy Laws

Citizens need access to information that is controlled by government for two reasons:

- ✓ to make informed, democratic choices
- ✓ to make our elected representatives accountable to us

Governments possess a huge amount of information about each citizen that is very private and sensitive. This

***For democracy to be successful, citizens must have both an effective right of access to information and a right to privacy.***

information must be protected. Canada has both federal and provincial access-to-information and privacy laws.

Federally, the *Access to Information Act* provides citizens with a basic right of access to general information controlled by the federal government. This Act also creates a comprehensive system for citizens to request access to this information.

Most provinces also have access to information laws. For example, in British Columbia, the *Freedom of Information and Protection of Privacy Act* gives everyone the right to request and receive government-controlled information.

**Access to information rights are not absolute.** There are various exceptions if the government has a legitimate reason for not releasing the information.

For example, the federal and provincial laws include an exception for information provided to government in confidence (for the government's use only).

Other exceptions to the right of access include:

- information regarding national security
- information relating to law enforcement or investigation
- personal information about other people

**Privacy rights** Privacy is another fundamental right of citizens in a democracy. Though we must be able to get access to information regarding the government's activities, government must **not** be able to gather private information about us or monitor our personal activities without a very legitimate reason.

**Equally important, governments must not release our personal information to other citizens or organizations.**

The federal law that protects our personal information possessed by the federal government is known as the *Privacy Act*. Many other provinces have similar laws. British Columbia's *Freedom of Information and Protection of Privacy Act* also protects citizens' privacy.

In addition, there are privacy laws that create rules about how organizations in the private sector can collect, use and disclose personal information. In B.C., this law is called the *Personal Information Protection Act*.

**Exceptions** There are several exceptions to these principles in various laws. For example, police can collect information about citizens without their knowledge if police are conducting a legitimate criminal investigation. Police can also refuse citizens access to their own personal information if releasing this information might interfere with law enforcement or a police investigation.

## Four basic principles of privacy



- ✓ Personal information about citizens may be collected by government or organizations only for a legitimate purpose. For example, provincial governments must have private information such as personal health information for medical insurance.
- ✓ Citizens must consent before the government can collect their personal information; government should notify citizens of the reason for the collection.
- ✓ Personal information may be used only for the purpose for which it was collected, unless the citizen consents to a different use.
- ✓ Citizens should have a right of access to their personal information, including the right to correct inaccurate personal information.

**Government agencies are responsible for enforcing access-to-information and privacy laws.** Federally, you can contact the Information Commissioner (to get access to information) or the Privacy Commissioner about federal government agencies. In B.C., one agency does both jobs. The Office of the Information and Privacy Commissioner can assist you with your concerns.

These agencies have the power to investigate the actions of government and organizations. Unfortunately, the recommendations of both the federal Information Commissioner and the federal Privacy Commissioner are not binding on the federal government. In contrast, the B.C. government must obey orders of the Information and Privacy Commissioner.



## Other Federal and Provincial Laws

Many other federal and provincial laws and local government by-laws protect our democratic rights and freedoms less directly. Here are some examples:

**Some laws give government agencies power to monitor citizens' activities.**

**However, these same laws allow citizens to question the activities and behaviour of government employees.**

**The Police** The *Police Act* in British Columbia, and the federal *RCMP Act*, give police the right to enforce the law. These same laws also give citizens the right to complain about the conduct of the police, and to expect an adequate and timely response to complaints. (See chapter 5 for more information on police complaints.)

Certain laws create *watchdog* agencies. These agencies monitor the actions of government, and in some cases, make public reports about government behaviour.

**The Ombudsman** The Office of the Ombudsman in B.C. and Ontario accept complaints from citizens who feel they have been treated unfairly by provincial government agencies. The Ombudsman can make recommendations to the government and issue public reports. (See Chapter 6 for more information about the Ombudsman.)

**Auditors General** The federal government, and many provinces, have an *Auditor General* who monitors the way government manages public finances.

**The Private Sector** Some laws cover the behaviour of companies in the private sector (employers and organizations other than government). The federal *Bank Act* protects the interests of citizens who deal with banks. Most provinces have laws that protect the interests of consumers when they deal with sales people. Similarly, *credit bureaus* and *credit agencies* (organizations that provide information about a person's record of paying debts) are often regulated by provincial laws, which make sure the credit agency treats the citizen fairly.

**Judicial Review** Other laws give citizens the right to ask a court to review a decision by a government agency that affects them. This is known as *judicial review*.

**Local Laws** Some laws also limit our freedom in order to promote the common goals of society. For example, zoning by-laws limit the type of buildings we may construct on private property.

**Respect** Government agencies and their staff are required by law or policy to treat citizens with respect. *Respect* means more than just acting politely. It means government agencies must respond quickly to a complaint from a citizen, answer questions, explain decisions that affect the citizen and explain government policies and procedures in language a citizen can understand.

This chapter has described only a few of the laws protecting the rights of citizens. For more information, contact your local courthouse library, legal aid office, lawyer referral service or an advocacy organization.

## Going to Court

As well as specific laws that protect our rights and freedoms as citizens, Canada has a very well-developed justice system. This system allows everyone to go to court to enforce his or her rights.

**Common law** Over time our legal system has developed various rules which allow Canadians to go to court to protect their rights and interests. Known as the *common law*, these rules control relationships between citizens rather than between government and citizens.

For example, the common law can protect a citizen's financial interests, their reputations or their property.

**Legal aid** It is very expensive to go to court. Some people criticize our justice system for being too costly for the majority of citizens to use.

Governments have created *legal aid* to make our justice system more accessible to the public. Legal aid is a system that provides legal services for people who can't afford to pay a lawyer. Unfortunately, legal aid is only available for certain types of legal issues such as criminal and family law.



## Small Claims Court

British Columbia has a *Small Claims Court* to make it easier and less expensive for citizens to go to court to enforce their rights. Small claims court is designed to be used by citizens to settle disputes without a lawyer. In British Columbia you can use Small Claims Court only if the remedy you want is \$25,000 or less.

Throughout Canada, there are agencies that provide free legal services to people who cannot afford to pay for a lawyer. Contact your local law society for more information. For services in British Columbia, turn to page 120.

You can also contact law students for legal advice at the University of British Columbia and the University of Victoria.

Other agencies, like the **People's Law School** provide free public education about the law and your rights in the legal system.

## Your Role in Protecting Our Rights

Laws that protect citizens' rights are valuable only if citizens take them seriously and use them when necessary.

*It is an important part of your democratic commitment to stand up for your rights and to seek assistance when you believe that the government or other individuals are treating you or others unfairly.*

the  
people's  
law  
school



**i** The People's Law School website: [www.publiclegaled.bc.ca](http://www.publiclegaled.bc.ca)