

Handout #8c: Worker's Human Rights Laws

The Canadian Charter of Rights and Freedoms

The Charter is entrenched in the constitution of Canada. That is, it is the supreme law of the land. Even the government cannot act in violation of the Charter.

The Charter only applies to actions of government. If government or its agencies enacts a policy, law, or other 'act' that contravenes the Charter, the Supreme Court of Canada can order a remedy (fix) to the violation.

The Charter does not apply to individuals or groups not attached to government. For example, if your landlord, a store owner, your boss, your coach violates human rights, it is not a Charter matter. A different area of law applies and a Human Rights Tribunal can order a remedy. But if the government of BC or the police, or in some cases a school violates your human rights, the Charter applies and the Supreme Court can order a remedy.

Remedies available for Charter violations include: **read down** (remove part of the law that violates rights but keep the rest of it), **read in** (add a word or phrase to clarify the law that violates rights so that it no longer violates rights), **or strike down** (make void the law that violates rights).

Even if a law violates rights, there are a few 'escape clauses' that still allow the government to violate rights if it really wants to.

First, **Section 1 (Reasonable Limits clause)** allows the government to keep a law that violates rights if it is 'reasonable in a free and democratic society'. The Supreme Court of Canada decides what is reasonable. Basically, there are some limits on rights and freedoms. For example, the Charter says every citizen has the right to vote. But we have several elections laws that restrict the right to vote based on age. This is a violation of both voting and age discrimination sections. However, it is generally considered reasonable in a democracy to have an age limit for voting. Babies should probably not be allowed to vote. Students may wish to discuss whether 18 is the best age...

Second, **Section 33 (Notwithstanding clause)** allows governments to pass laws that violate rights as long as it is only fundamental freedoms (S2), legal rights (S7-14), and equality rights (S15). This was really the result of a federal/provincial compromise when the Charter was created. Provinces were worried the courts would have too much power over their ability to pass laws. Any law enacted under S33 expires after 5 years.

Human Rights Codes

Generally, provinces have their own human rights law statutes that govern rights and freedoms in private relationships like the workplace, tenancy, businesses, etc. Their provisions are quite similar to the Charter in the sense of outlawing discrimination based on certain factors such as age, race, sex, etc.

Remedies are different in these cases, focusing on individual compensation and dispute resolution. For example, a person fired because of discrimination might be ordered compensation, or a landlord might be forced to rent to someone they had refused.

Individuals can take their complaint to a Human Rights Tribunal, which will hear the case and order a remedy.

Resources:

Canadian Charter of Rights and Freedoms at <http://laws.justice.gc.ca/eng/Charter/>

BC Human Rights Code “Protection from Discrimination” Information sheet. At <http://www.ag.gov.bc.ca/human-rights-protection/>

Handout #8c Continued: Workers Human Rights Law-- International Treaties**The United Nations Declaration of Human Rights (UNDHR) 1948**

The UNDHR is the primary source for most human rights law in the world. Canada had a pivotal role in its creation and has signed and ratified that treaty. It is binding law on the Canadian government. And in regards to workers collective rights, the UNDHR states:

Article 23.

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

International Labour Organization

In addition, the International Labour Organization passed a Convention in 1948 that established the right of all workers to form and join unions to engage in free collective bargaining. This convention was ratified by the federal and provincial governments of Canada in 1972 and it is even referred to in the opening of the Canada Labour Code.

This convention was reaffirmed in the ILO Declaration on Fundamental Principles and Rights at work, to promote the rights of workers to freedom of association and the right to collective bargaining.