**Rights & Freedoms in Canada**

Our constitution was written in 1867. At that time, the main focus of the constitution was to set up rules determining the roles and responsibilities of the new Canadian government. As time went by, Canadian citizens and the government realized there was something lacking in our Constitution. From 1867 until 1982, there were no formal laws that protected citizens against discrimination and violations of rights that are now accepted by society as a whole. Important laws had to be created to protect our freedom and rights. Laws were created in the Canadian Charter of Rights and Freedoms to protect all Canadians from various abuses.

"You have the right to remain silent." "…If you cannot afford a lawyer one will be appointed for you. Anything you say can be used in evidence against you." These are familiar phrases detailing your rights on arrest. Or are they? Do you know for sure?

The phrases above are the kind we have all picked up from American television. We all know the accused has to be Mirandized when arrested, or do we? The Miranda statute is an American law, and the phrases mentioned at the outset are part of a caution that you will never hear in Canada if you are unlucky enough to be arrested.

This does not mean that Canadians do not have rights when arrested. You will be read your rights upon arrest. The **caution** you are about to read will, however, be somewhat different from the one you usually hear in the American media. It will sound, in part, something like this.

**Caution**

You need not say anything. You have nothing to hope from any promise or favour and nothing to fear from any threat whether or not you say anything. Anything you do or say may be used as evidence. Do you understand?

The following is a caution that must be read to inform a person accused of a crime that they have a right to have a lawyer present:

**Right To Counsel**

Before you say anything, it is my duty to inform you that you have the right to retain and instruct counsel without delay.

Do you understand?

You have the right to free and immediate legal advice from Legal Aid counsel who is a lawyer and available on a 24-hour basis or you may telephone the lawyer of your own choice. You have the right to speak to the lawyer in private.

If you are later charged with an offence you may then apply to Legal Aid for assistance by speaking to duty counsel or by contacting the local Legal Aid office. If you wish to speak to counsel now, I will provide you with a list of local lawyers and out-of-area lawyers who you can telephone toll-free for free legal advice right now.

Do you understand? What do you want to do about your right to a lawyer?

# The Canadian Charter of Rights and Freedoms



The Canadian Charter of Rights and Freedoms is much broader than the cautions you have just read. It covers many aspects of human rights including Canadians' right to freedom of religion and freedom of expression, and New Brunswickers' right to receive government services in both official languages.

The Charter is a far-reaching document contained in the Constitution Act, 1982. It is the supreme law of the land. This means that it normally takes precedence over any federal or provincial law. That is, if any legislation, either provincial or federal, conflicts with the rights guaranteed in the Charter, it must be amended appropriately or it is likely to be struck down by the courts.

To gain a better understanding of the rights and freedoms guaranteed by the Charter, explore the following readings, and make notes on what you find. These resources will help prepare you for an upcoming assignment.

**The Canadian Charter of Rights and Freedoms (**this is the entire document for reference; no need to read it in its entirety**)-** <https://laws-lois.justice.gc.ca/eng/Const/page-15.html>

**Introduction to the Charter. Focus on Sections 4 and 5 (**note: ONLY sections 4 & 5…so pp.5-11**) -** <https://nbvhs-nbed.brightspace.com/content/SocialStudies/LAW_120/Law120_PL_2019-20_S2/documents/M01_TryJudging_Resource.pdf?_&d2lSessionVal=3JEy4Z8zMG9FAomnyI3mK5eFt&ou=56047>

**Guide to the Charter. Focus on Part 1 – An Overview. (**again, no need to read this in its entirety, it is here as a clause by clause explanation of the Charter**) -** <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html#section4>

**The Creation of the Charter. Focus on section "The Canadian Charter of Rights and Freedoms" (**just the section on the Charter**) -** [http://web.archive.org/web/20100821012534/http://www.mta.ca/faculty/arts/canadian\_studies/english/about/law/index.htm#charter](http://web.archive.org/web/20100821012534/http%3A/www.mta.ca/faculty/arts/canadian_studies/english/about/law/index.htm#charter)

**What Does the Charter Mean to You? (Video: 2 minutes) -** <https://www.youtube.com/watch?v=YAIM1qzO9_w&feature=emb_logo>

# Check Your Understanding: Rights and Freedoms

You've had the opportunity to examine the Canadian Charter of Rights and Freedoms on the preceding screen. You will now be presented with six hypothetical scenarios where an individual's rights may have been violated, and you have to identify the "right" in question.

Read each scenario and select the right that may have been violated from the following and place the number on the blank. Copy and paste and return this in an email to me. Best to do this before moving onto assignment.

1. Fundamental Freedoms,

2. Mobility Rights,

3. Legal Rights,

4. Democratic Rights,

5. Equality Rights,

 6. Minority Language Education Rights

**\_\_\_\_\_A.** A New Brunswick parent wants her child to learn French. However, they live in an Anglophone community where very few parents are requesting that their children be educated in French. She claims that her child has the right to be educated in either French or English

\_\_\_\_\_B. A woman was summoned to testify in court to state what she had seen during a theft. She is now worried, since in her testimony , she revealed that her reason to be there was to steal some goods from the same store.

\_\_\_\_\_C. A group of people want to gather and discuss their views on the controversial issue of abortion. Following this meeting, they plan to gather in their community for a rally to protest government policies on abortion.

\_\_\_\_\_D. Because many residents from Saskatchewan fear people from other provinces will take away their jobs, their provincial government decides to prevent outsiders from moving to their province through various means.

\_\_\_\_\_E. A woman claims she is denied employment with the government because she is a member of a minority religion.

\_\_\_\_\_F. A prisoner is requesting the right to vote.

# Assignment: The Charter and Me

Law 120 – Assignment

In this assignment, you'll examine the Canadian Charter of Rights and Freedoms more closely. Yes, it’s wordy. But, believe it or not, this document is one of the most important safeguards in your life. Refer to the rights and freedoms contained in the Charter as you answer the following questions.

1. You’re driving on the highway somewhere in New Brunswick. You come up to a police checkpoint on the road. Once you get to the checkpoint, a police officer takes a look at your car’s license plate to see that your registration is up-to-date. The officer checks on your car’s inspection sticker to see that it is current. The tint on your windows is within provincial guidelines. The officer doesn’t suspect that you’re driving under the influence of alcohol or cannabis. She takes a quick look at your backseat and doesn’t see anything out of the ordinary. You are told that you may proceed with your trip. Why did the officer not decide that, since you are a suspicious-looking young person, she will detain you to check your smartphone for incriminating evidence, and search your trunk for illegal substances? Provide details from the Charter to support your answer. (3 points)
2. In your own words, explain the meaning of each of the following Charter rights (6 points).

o (11b) [The right] to be tried within a reasonable time. \*Generally, what is a reasonable time, as accepted by the judicial system? Your answer should reflect a reasonable time for provincial court trials, superior court trials, and for youth criminal trials. This webpage may be helpful <http://royallaw.ca/2016/08/11b-right-tried-reasonable-time/>.

o (11d) [The right] to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

o (11e) [The right] not to be denied reasonable bail without just cause. \*What would constitute "just cause" for denying an accused bail?

o (11h) If finally acquitted of the offence, [the right] 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.

o (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.

1. If any of the rights listed above are violated, what can happen to the evidence obtained when it comes to trial? (1 point)
2. Review the rights and freedoms guaranteed in the Charter and select the five (5) you feel are most important to you at your stage of life. Briefly explain how each right protects you and is important to your life as a young person in Canada. (5 points)