Charter of Rights and Freedoms

The '*Canadian Charter of Rights and Freedoms*' is Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.

Since at least the mid-1950s, many had advocated that Canada should adopt an entrenched charter of rights. Entrenchment means the inclusion, in this example, of a charter of rights as part of the constitution. The significance of entrenchment therefore is that the entrenched charter, as part of the constitution, can only be amended by formal constitutional amendment. The Canadian experience over the years was marked by the enactment of the *Canadian Bill of Rights* (S.C. 1960, c. 44, reprinted in R.S.C. 1985, App. III) in 1960 (applying only to federal law), the *Alberta Bill of Rights* (R.S.A. 2000, c. A-14) (applying only to provincial law) and a series of anti-discrimination statues, federally and provincially, starting with the *Saskatchewan Bill of Rights* (Repealed 1979, c. S-24.1, s. 51; now Part I of the *Saskatchewan Human Rights Code*, S.S. 1979, c. S-24.4) in 1953. Some of these statutes were regarded as quasi-constitutional in nature, suggesting that it would be politically inexpedient to repeal them. But they were not entrenched in the Constitution *per se*. The first major attempt to entrench a charter of rights was the Victoria formula of 1971 (see Victoria Charter) but it was not finally agreed upon. It was not until 1982 that Canada finally had a charter of rights as part of its Constitution.

The *Canadian Charter of Rights and Freedoms* is organized around the protection of certain categories of rights. These categories are the fundamental freedoms (traditionally freedom of speech, freedom of the press, freedom of religion and freedom of assembly and association), democratic rights, mobility rights, protections afforded those persons in contact with the criminal justice system, egalitarian or equality rights, linguistic rights, language of education rights, Aboriginal rights and multicultural rights.

Under section 32, the *Charter* is applicable only to the public sector: that is, statutes, regulations, policy, *etc.*at all levels of government, although there are cases dealing with the issue of what constitutes government.

An entrenched charter may be looked at in several ways. One view is that a charter of rights diminishes the power of our elected representatives in that all legislation enacted is subject to review by our courts to ensure charter compliance. In 1982, to ensure that the notion of parliamentary supremacy would not be endangered, the drafters of the *Charter* included two provisions to reinforce parliamentary sovereignty or parliamentary supremacy. One measure is section 33 of the *Charter*, which allows the Parliament of Canada and the legislatures of the provinces to opt out of certain sections as they apply to particular legislation. That is, Parliament or the legislatures may enact legislation that operates notwithstanding its conflict with sections 2 and 7-15 of the *Charter*. Secondly, section 1 provides that even if a law is in violation of the *Charter*, it may nonetheless be saved as a reasonable limit, demonstrably justified in a free and democratic society. A law will be found to be such a reasonable limit, generally, if it is a rational, non-disproportionate, minimally

intrusive means of achieving a pressing and substantial state objective (see balancing rights).

Entrenchment of a charter of rights not only diminishes the notion of parliamentary sovereignty (in the sense that legislative enactments are now subject to review by the courts to ensure compliance with the *Charter*), but it also, in effect, transfers authority from elected representatives to the judiciary. While this is not a new phenomenon in that judicial review has been an integral part of our judicial system since Confederation, it has attracted criticism largely because *Charter* cases often involve such controversial issues as abortion, pornography, hate propaganda, and other politically sensitive matters.