

# *Charter* Application

The *Charter* protects certain rights and freedoms. Before considering whether a *Charter* right or freedom has been violated, there is a threshold question that must be answered: does the *Charter* even apply? Section 32 of the *Charter* explains who the *Charter* applies to:

## 32. (1) This Charter applies

- a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
- b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.”[\[1\]](#)

This section limits the application of the *Charter* to the actions of the federal, provincial and municipal governments. The Supreme Court of Canada has stated that this section is a clear message that the *Charter* is “an instrument for checking the powers of government over the individual”.[\[2\]](#)

The *Charter* does not apply directly to private actors. This means that it does not apply to litigation between private parties, such as commercial or contractual disputes.

## **When does the Charter apply?**

There are two ways to determine whether the *Charter* applies to an entities’ activities:

1. Examining the nature of the *entity*;
2. Examining the nature of the entity’s [\[3\]](#)

### *Nature of the Entity*

If an entity is part of any level of government, the *Charter* will apply to all of its actions, including any laws it makes. However, there are also ways that an entity that is not technically government can be considered government such that the *Charter* applies:

1. The government exercises significant control over the entity;

This category does create some confusion surrounding *Charter* application. Public and quasi-public institutions such as universities and hospitals are the types of institutions that fit into this category for some roles they fill, but not others. The *Charter* will apply when the entities activities are subject to “routine or regular control by the government”.[\[4\]](#) Each situation must be examined to determine the level of governmental control.

2. The entity is “governmental in nature” meaning it exercises governmental functions.[\[5\]](#)

Under this category, the *Charter* will only apply to the activities performed by the entity that can be said to be governmental in nature. The clearest example of an entity that fits into this category are Municipalities. Municipal councils are democratically elected, possess taxing power, and are empowered to make and administer laws. Municipalities derive their existence and law-making authority from the provinces. As such, the *Charter* applies to their actions.<sup>[6]</sup>

### *Nature of the Activity*

When an entity itself is non-governmental, the *Charter* will not apply. However, if the entity partakes in governmental activities, the *Charter* will apply to those specific activities. This is to prevent the government from avoiding *Charter* application by granting powers to non-governmental entities to implement government actions.

<sup>[1]</sup> *Canadian Charter of Rights and Freedoms*, s 32, Part I of the *Constitution Act, 1982*, being schedule B to the *Canada Act 1982 (UK)*, 1982 c 11 .

<sup>[2]</sup> *McKinney v University of Guelph*, [1990] 3 SCR 229 at 261.

<sup>[3]</sup> *Greater Vancouver Transport Authority v Canadian Federation of Students - British Columbia Component*, 2009 SCC 31 at para 16.

<sup>[4]</sup> *Douglas/Kwantlen Faculty Assn v Douglas College*, [1990] 3 SCR 570

<sup>[5]</sup> Patrick Macklem & Carl Rogerson, *Canadian Constitutional Law*, 5th ed (Toronto: Edmond Montgomery Publications Limited, 2017) at 817.

<sup>[6]</sup> *Godbout v Longueuil (City)*, [1997] 3 SCR 844.