Bill of Rights

What is the *Canadian Bill of Rights*?

The *Bill of Rights* became law in 1960 to protect the fundamental rights and freedoms of individuals against federal laws and government actions authorized by those laws.[1]

At the time of the *Bill*'s creation, people in Canada and around the world were concerned about the protection of their individual rights and freedoms.[2] Shortly after World War II, the United Nations adopted a *Universal Declaration of Human Rights* which encouraged many countries, including Canada, to introduce protections for the rights and freedoms of their own citizens.[3]

The *Bill of Rights* continues to survive as law today, even after the inclusion of the *Charter of Rights and Freedoms* in Canada's Constitution in 1982.[4]

What does the *Bill of Rights* protect?

The *Bill of Rights* guarantees several rights and freedoms, including freedom of religion, freedom of speech, freedom of the press, and the right to equality, to legal counsel, and the presumption of innocence.[5] Unlike the *Charter*, the *Bill* also protects the enjoyment of property and the right to a fair hearing when an individual's rights and obligations are to be determined.[6]

Where a federal law conflicts with the rights and freedoms protected in the *Bill,* the courts will refuse to apply that law. [7] In this context, a law that a court refuses to apply because it violates the *Bill* is called "inoperative."[8]

Unsuccessful attempts at using the *Bill of Rights*

Individuals in Canada have rarely been successful in relying on the *Bill* to protect their rights and freedoms.[9]

In *Bliss v Canada (AG)*, a pregnant woman claimed that a law that denied her unemployment benefits violated her equality guarantee in the *Bill of Rights*.[10] The unemployment benefits were available to men and non-pregnant women.[11] Despite the differential standard, the Supreme Court of Canada found no violation of the *Bill*'s equality guarantee because the law had a non-discriminatory purpose (it set out the requirements for different groups to receive unemployment benefits) and it treated all pregnant women the same way.[12]

Similarly, a majority of the Supreme Court decided in *Canada (AG) v Lavell* that a section of the *Indian Act* that denied Indian band status to Aboriginal women, but not Aboriginal men, who married non-Aboriginals did not offend the *Bill*'s equality guarantee.[13] The Court said that the law did not violate equality rights because it had a valid objective (controlling the use and benefit of Indian reserves).[14]

Successful examples of the *Bill of Rights*

Although the *Bill of Rights* is rarely used, a few court decisions have shown that the *Bill* can indeed protect rights and freedoms of Canadians.[15]

One success was in *The Queen v Drybones*, where the Supreme Court said that a section of the *Indian Act* that made it an offence for "an Indian" to be intoxicated off of a reserve affected Mr. Drybones' right to equality before the law.[16] Members of other racial groups did not face punishment for the same conduct on account of their race.[17]

Another successful outcome was in the 1985 Federal Court of Appeal case of *MacBain v Lederman*, where the Court considered whether parts of the federal *Human Rights Act* violated the right to a fair hearing.[18] In that case, Mr. MacBain faced a discrimination complaint brought against him by one of his employees.[19] However, the procedures outlined in the *Act* allowed the same people who prosecuted the complaint against Mr. MacBain to select the decision makers in the hearing process.[20] The Court found that those sections of the *Act* that defined how decision makers were appointed were inoperative because they violated Mr. MacBain's right to a fair hearing in section 2(e) of the *Bill of Rights*.[21]

More recently, the Federal Court in *Hassouna v Minister of Citizenship and Immigration Canada* found that parts of the *Citizenship Act* were inconsistent with the right to a fair hearing, and declared those sections inoperative.[22] The Court said that allowing a federal minister to revoke citizenship without giving individuals the opportunity for a hearing was contrary to the protections in the *Bill of Rights*.[23]

Interestingly, in *Hassouna,* the arguments made to the Court relied on both the *Charter* (section 7 right to liberty and security of the person) and the *Bill of Rights*.[24] The Court's decision focused on the violation of the right to a fair hearing – a right that is explicitly listed in the *Bill of Rights*, but not in the *Charter*.[25]

This keyword was written by Coleman Brinker.

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[1] *Canadian Bill of Rights*, SC 1960, c 44, s 5(2) ; Peter W Hogg, *Constitutional Law of Canada*, vol 2, 5th ed (Toronto: Thomson Reuters, 2007) at 35.1-35.2.

[2] Walter Surman Tarnopolsky, *The Canadian Bill of Rights*, 2nd ed (Toronto: McClelland and Stewart, 1975) at 3-6.

[3]*Ibid; Universal Declaration of Human Rights,* GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.

[4] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ; *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177 at 224, Beetz J .

[5] *Bill of Rights*, *supra* note 1, ss 1(b)-(e), 2(c),(f).

[6] *Ibid*, ss 1(a), 2(e); *Authorson v Canada (Attorney General)*, 2003 SCC 39 at para 34 .

[7] *The Queen v Drybones*, [1970] SCR 282 at 293-295 Ritchie J ; *Authorson*, *ibid* at paras 10, 32.

[8] *Drybones, ibid; Authorson, ibid*.

[9] Hogg, *supra* note 1 at 35.5, 36.1; Robert J Sharpe & Kent Roach, *The Charter of Rights and Freedoms*, 5th ed (Toronto: Irwin Law, 2013) at 332-334.

[10] [1979] 1 SCR 183.

[11] *Ibid*.

[12] *Ibid* at at 186, 192-194. See also *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 at 167-168.

[13] [1974] SCR 1349.

[14] *Ibid* at 1359-1360, 1372-1373.

[15] See e.g. *Drybones, supra* note 7; *Singh, supra* note 4; *MacBain v Lederman*, [1985] 1 FCR 856 (CA) ; *Hassouna v Minister of Citizenship and Immigration Canada*, 2017 FC 473 .

[16] *Drybones, ibid* at 297.

[17] *Ibid*.

[18] *MacBain, supra* note 15; *Bill of Rights*, *supra* note 1, s 2(e).

[19] *MacBain, ibid* at 121.

[20] *Ibid* at 122-125, 126.

[21] *Ibid* at 140-141.

[22] *Hassouna, supra* note 15.

[23]*Ibid* at paras 2, 17-18, 68-70, 125-126.

[24] *Ibid* at para 127.

[25] *Ibid* at paras 66, 154-157, 161; *supra* note 1, s 2(e).