

Declarations

A declaration is a statement made by a court clarifying the law, or the rights and obligations of one party to another. When a court makes a declaration, it simply 'declares' what the law is. It does not direct a party to take any particular action.

When people feel that a government action or a law has denied them their rights, or that a law contradicts a section of the Constitution, they may seek a declaration from the courts deciding the issue.

Constitutional Sources

The courts hold a traditional power to make declarations on any subject. In constitutional law, the courts use declarations as remedies against unconstitutional government action, or to clarify the meaning of the Constitution or a constitutional provision.

Two sections of the Constitution reinforce the courts' ability to use declarations to protect the Constitution: sections 24(1)[\[1\]](#) and 52. Section 24(1) protects the courts' ability to declare that the government has breached the *Charter* rights of an individual. Section 52 confirms that "The Constitution of Canada is the supreme law of Canada," and any law inconsistent with its provisions is "of no force or effect."[\[2\]](#) This confirms the courts' ability to render a law invalid by declaring it unconstitutional.

Historical Significance

Declarations are important in non-constitutional law both historically and today. In the past, the law forbade people from suing the government for money.[\[3\]](#) This has since changed at both a provincial[\[4\]](#) and federal level.[\[5\]](#)

However, Canadians are still not able force the government to take specific actions through a lawsuit.[\[6\]](#) Instead, courts are to declare whether or not the government has acted legally.[\[7\]](#) If it has acted illegally, the government is expected to take steps to fix any problems it has caused, but the court does not instruct it on how to do so. Thus, unelected judges do not order an elected government to do anything, while the legally correct outcome still, eventually, follows.

Constitutional Application

Courts have stronger powers to compel the government to take specific actions to follow the *Constitution*. However, courts still generally prefer to rely on declarations. This is largely because governments must consider the will of the electorate when creating laws, and must balance many competing interests.[\[8\]](#) Courts thus prefer to declare a law or course of action to be unconstitutional, and allow the government and voters to decide on the best way to fix it.

If declaring a law to be unconstitutional would cause a breakdown in law and order, courts

will sometimes [suspend a declaration](#) to give the government time to craft a new one.

[1] *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5, s. 24(1).

[2] *Ibid*, s. 52(1).

[3] William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1765) at Book 3 Chapter 17, available online: <http://avalon.law.yale.edu/18th_century/blackstone_bk3ch17.asp>.

[4] *Proceedings Against the Crown Act*, RSA 2000, c P-25.

[5] *Crown Liability and Proceedings Act*, RSC 1985, c C-50 s 3.

[6] *Ibid*, s 22(1); *Proceedings Against the Crown Act*, *supra* note 3, s 17(1)(2).

[7] *Ibid*.

[8] *Newfoundland (Treasury Board) v NAPE*, 2004 SCC 66 at para 114, 3 SCR 381.