# Mobility Rights

At their most basic, mobility rights allow individuals to move from place to place, largely free from government intervention. In a country as large and diverse as Canada, the ability to live and work in a location of your choosing, and enter and leave the country freely, are of great importance.

The significance of these rights is reflected in their inclusion as section 6 of the *Charter of Rights and Freedoms*.[1]

The Mobility Rights section of the *Charter* is subdivided into: (1) the mobility right of citizens and (2) the right to move and to gain a livelihood for citizens and permanent residents.

**(1) The mobility right**

This right allows all citizens of Canada to enter, remain in, and leave Canada as they please. To facilitate this right, the courts have decided that citizens also have a right to a government-issued passport.[2] The mobility right does not extend to permanent residents and those who are non-citizens.[3] Non-citizens can be refused entry into the country without the need for justification, and their admittance into Canada can be subject to strict conditions (e.g. visa conditions).[4] They also do not have a right to remain in the country once their pre-determined stay in the country has expired, unless they apply for an extension, or for permanent resident status.[5]

**(2) The rights to move and to gain a livelihood**

These rights allow Canadian citizens and permanent residents to move freely about and reside in, any province they choose. They also grant the right to earn a livelihood in any province. It should be noted that this however, does not create a constitutional right to work.[6] You can apply *for* a job in any province, regardless of which province you are coming from, but that does not give you a constitutional right *to* a job.[7]

**Section 6(2)'s Built-in Limitations**

The rights to move and to gain a livelihood are subject to specific limitations which are outlined within Section 6 of the *Charter.* The rights are subject to provincial laws that do not discriminate primarily on the basis of one's province of residence (either past or present), and are meant to apply generally to everyone in that province. This limit would save laws that require both in-province and out-of-province individuals to re-license or re-certify, in a regulated profession such as law or medicine, before being allowed to practice.[8] This is because these provincial licensing requirements apply to everyone equally. Similarly, requiring a person to obtain a new driver's license or health care insurance when s/he moves to a different province is considered justifiable.

In addition, both provincial and federal laws that are passed to ensure individuals qualify for

social services/assistance (based on reasonable residency periods) are allowed to limit this right.[9] For example, British Columbia revokes social assistance if the recipient is absent from the province for more than 30 consecutive days per year.[10]

Finally, certain laws, programs or activities are allowed to discriminate based on province of residence, so long as their objective is improving the conditions for socially or economically disadvantaged individuals.[11] In this way, an 'affirmative action' law or activity that ensures preferential hiring of certain individuals residing in a province could be constitutional, despite the fact that it, on its face, infringes on the mobility rights of others.[12]

**Justifiable Infringement of Section 6**

Mobility rights, like all other *Charter* rights, are subject to reasonable limits as prescribed by law. This means that the government may justify an infringement of section 6 rights. Say for example, that you were on Canada's equivalent of the no-fly list, the Passenger Protect Program.[13] If your inclusion on that list had a valuable or important purpose the Government would likely be able to argue that its infringement of your mobility right – to leave the country – was justified as a reasonable limit under section 1 of the *Charter*. In a case involving the denial of a passport to a Canadian citizen – and convicted terrorist – the Federal Court of Appeal held that the government's decision was justifiable, as the denial was a reasonable method of addressing national security concerns.[14]

**Not Withstanding**

Interestingly, mobility rights are not subject to the "notwithtanding" clause that allows Parliament or a provincial legislature to override certain *Charter* rights and freedoms.[15] As such, provinces can not 'opt out' and enact a law that allows for a specific limitation of mobility rights. So, while a province may wish to pass legislation protecting the livelihood of their own residents by restricting the ability of residents of other provinces to gain employment (for example), unless that legislation falls within the built-in limitations of Section 6, or is a justifiable infringement, it is unconstitutional for them to do so.

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[1] *Canadian Charter of Rights and Freedoms*,Part 1 of the *Constitution Act, 1982*, s 6, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 .

[2] *Kamel v Canada (Attorney General)*, 2008 FC 338, [2009] 1 FCR59, aff'd 2009 FCA 21, [2009]4FCR 449.

[3] Peter Hogg, *Constitutional Law of Canada,* 5th ed (Toronto: Carswell, 2007) (loose-leaf revision 1) vol 2 at 46-1 [Hogg]; see also Government of Canada, "New Immigrants – Life in Canada: Carrying identification and traveling outside of Canada" (13 November 2013), online: <http://www.cic.gc.ca/english/newcomers/after-life-id.asp>.

[4] Hogg, *supra* note 3 at 46-1, 46-2.

[5] Canada, "Extend your stay in Canada as a visitor" (24 June 2016), online: <http://www.cic.gc.ca/english/visit/extend-stay.asp>.

[6] Mollie Dunsmuir & Kristen Douglas, "Mobility Rights and the Charter of Rights and Freedoms" (19 August 1998), online: <http://publications.gc.ca/Collection-R/LoPBdP/CIR/904-e.htm#2.%20%20Selftxt>.

[7] See *Law Society of Upper Canada v Skapinke*,[1984] 1 SCR 357 at 382, DLR (4th) 161.

[8] Hogg, *supra* note 3 at 46-7. It should however be noted that virtually all provinces in Canada have acted to increase labour mobility: see *Agreement on Internal Trade* (entered into force 1 July 1995), online: <www.ait-aci.ca/>.

[9] *Charter*, *supra* note 1 at s 6(3)(b).

[10] British Columbia, "Residency in BC Eligibility" (20 May 2010), online: <www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/eligibility/residency>.

[11] *Ibid* at s 6(4). This discrimination is allowed to happen when the disadvantaged individuals reside in a province with an employment rate below the national average, see Hogg, *supra* note 3 at 46-8.

[12] Hogg, *supra* note 3 at 46-8.

[13] Public Safety Canada, "Recourse for Listed Persons" (20 June 2016), online: <http://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-trrrsm/pssngr-prtct/rcnsdrtn-eng.aspx>.

[14] *Kamel v Canada (Attorney General)*, [2009] 4 FCR 449, 2009 FCA 21 (CanLII).

[15] *Charter*, *supra* note 1 at s 33; Hogg, *supra* note 3 at 39-5, 46-2.