10

Protecting Human Rights

GUIDING QUESTIONS

Society & Identity
- How are minority rights protected in the Canadian Charter of Rights and Freedoms?
- How have affirmative action programs affected the workplace and why are they controversial?
- What human rights apply to children?

Politics & Government
- How does the Canadian Charter of Rights and Freedoms protect human rights in Canada?
- Are there any limits to our rights and freedoms?
- What is the significance of the notwithstanding clause?
- What are the fundamental rights and freedoms defined in the Charter?
- How are human rights protected in British Columbia?
- Why is the amending formula important?

Autonomy & World Presence
- What is the role of the United Nations in protecting human rights?
- How does Canada participate in human rights issues?

TIMELINE

1941
U.S. President Roosevelt calls for the right of peoples everywhere to four basic freedoms: freedom of speech and expression, freedom of religious worship, freedom from want, and freedom from fear

1945
The United Nations forms with Roosevelt's four basic freedoms as the basis of its charter

1948
The United Nations adopts the Universal Declaration of Human Rights
UN Convention on the Prevention and Punishment of the Crime of Genocide

1949
Four Geneva Conventions establish rules for the humane treatment of military personnel, prisoners of war, and civilians

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CHAPTER FOCUS QUESTION

What are human rights and how are they protected in Canada?

Living in Canada today, you enjoy the guarantee of rights and freedoms that are denied to people in many countries. It is hard to imagine that these rights and freedoms were not always a part of life in Canada. In previous chapters, you have read about how Aboriginal peoples, women, and minorities in Canada have struggled to achieve their political and civil rights. The ongoing struggle of Aboriginals for self-determination, the fight for women's suffrage, and the forced internment of Japanese Canadians during the Second World War are part of Canada’s human rights history.

Canada’s laws reflect our common values. As a society, we choose to have laws that protect children, workers on the job, the aged, and minorities. Our laws also recognize and protect basic rights and freedoms. Perhaps most important, we have the right to oppose laws that we feel are unjust and to work to change established laws by legal means.

In this chapter, you will explore human rights and how they are defined by the United Nations. You will learn about Canada's efforts to guarantee human rights for all its citizens, in particular Aboriginal peoples, women, children, and visible minorities.

Peace, in the sense of the absence of war, is of little value to someone who is dying of hunger or cold. It will not remove the pain of torture inflicted on a prisoner of conscience. It does not comfort those who have lost their loved ones in floods caused by senseless deforestation in a neighboring country. Peace can only last where human rights are respected, where the people are fed, and where individuals and nations are free.

–The Dalai Lama, 1989

KEY TERMS

Universal Declaration of Human Rights
Canadian Bill of Rights
Canadian Charter of Rights and Freedoms
notwithstanding clause
democratic rights
language rights
fundamental freedoms
mobility rights
equality rights
affirmative action
minority rights
legal rights
amending formula
employment equity
What Are Human Rights?

The term *human rights* is used so frequently, and in so many different situations, that a simple definition is hard to find. Many believe that human rights are rights that are considered basic to life in any human society. They include the rights to adequate food and shelter and protection from abuses such as torture. But we often use the term *human rights* to describe other rights—such as freedom of speech, thought, expression, and religion, or the political and legal protections outlined in Chapter 9. Other people would add to the list the rights to adequate health care, a basic education, and freedom from economic bondage.

The concept of human rights can vary from culture to culture. In some cultures, women must be completely covered in public and remain separated from men, except in the privacy of their home. Is this an infringement of their human rights? To some people, these cultural practices seem unfair; yet members of this culture would argue that North American society places too much emphasis on the individual and not enough on society as a whole.

Despite these different points of view, many people believe that some moral values are, or should be, universal. These are the foundation for human rights around the world.

The Global Movement for Human Rights

Concern for the protection of human rights became a global issue after the atrocities committed during the Second World War. The timeline below outlines some human rights abuses that have taken place in the last 100 years. These and other atrocities have strengthened the resolve of the United Nations and human rights organizations to protect the basic rights of all people, regardless of where they live. This global movement for human rights has become increasingly influential in bringing about change in some countries. For example, pressure from human rights organizations helped end the racist system of *apartheid* in South Africa.

Human rights organizations have also helped expose the issue of child labour in many countries. Even governments have started including human rights abuses as topics for discussion with other governments. Rights groups have pressured successive Canadian governments to link human rights with trade talks, hoping to persuade some of Canada’s trading partners to improve human rights in their countries.

<table>
<thead>
<tr>
<th>TIMELINE</th>
<th>Human Rights Abuses</th>
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<tbody>
<tr>
<td>Indian Act and residential schools, Canada</td>
<td>Australia’s “Stolen Generation”</td>
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</tbody>
</table>
The Universal Declaration of Human Rights

The Universal Declaration of Human Rights was proclaimed at the United Nations General Assembly in 1948. The Declaration is based on the belief that “all human beings are born free and equal in dignity and rights.” It condemns the “barbarous acts which have outraged the conscience of mankind,” a reference to the horrors of the Holocaust of the Second World War. This document is significant because it was the first international statement recognizing that all human beings have specific rights and freedoms.

The Declaration was adopted unanimously by UN member states. The Canadian federal and provincial governments have signed and ratified the Declaration, and it is now binding on Canada in international law. This means that individuals in Canada can complain to the UN’s Human Rights Committee if they believe the Canadian government is not meeting UN standards.

The United Nations has succeeded in getting most countries to agree with the general principles of the Universal Declaration of Human Rights. Non-governmental organizations (NGOs) have also played a role in promoting acceptance of the UN Declaration in developing countries. Yet, the only power the United Nations has to enforce the provisions of the Declaration is to draw world attention to abuses, putting pressure on offending countries. The Declaration is not part of binding international law. However, its acceptance by most countries around the world gives great moral weight to the fundamental principle that all human beings—rich and poor, strong and weak, male and female, of all races and religions—are to be treated equally and with respect for their natural worth as human beings.

WEB LINK
The full text of the Universal Declaration of Human Rights and more information on the human rights abuses in the timeline can be found on the Pearson Web site.
International Courts and Tribunals

Who makes sure that human rights are protected? In 1946, the United Nations established the International Court of Justice (ICJ) at The Hague, Netherlands, to settle disputes between countries based on international law. But this court becomes involved only if both sides agree to ask for its help. The UN also establishes temporary courts, or tribunals, to deal with specific events. Examples of tribunals include the Nuremberg and Tokyo trials, which dealt with atrocities committed during the Second World War in Europe and the Pacific.

During the Cold War, the protection of human rights was left to individual countries and violations often went unpunished. With the end of the Cold War came a renewed effort to bring those who are responsible for gross violations of human rights and humanitarian law to justice. In the 1990s, temporary tribunals were set up to investigate war crimes in Kosovo, part of the former Yugoslavia, and the genocide in Rwanda. International criminal tribunals have also been established to deal with human rights violations in Cambodia, Sierra Leone, Lebanon, and East Timor.

Many agencies, including Amnesty International, called for a permanent international court to deal with human rights abuses. By 2002, 60 countries established a permanent International Criminal Court (ICC) that would have the power to investigate and prosecute individuals, including political leaders, who commit war crimes, genocide, or crimes against humanity. Some countries, such as the United States and China, were against the creation of the ICC. Opponents say they are not willing to let an international body interfere in areas of law affecting their citizens.

Despite this opposition, convictions have occurred in various international tribunals established to deal with individual cases.

**KEY TERM**

cultural exceptionalism: the belief that human values vary by culture and that human rights should be interpreted according to ethnic, cultural, or religious traditions

**FIGURE 10–3** Louise Arbour is the Canadian judge who was appointed as the chief UN war crimes prosecutor at the ICJ and later as UN High Commissioner for Human Rights. Here she tours Bosnia as part of her investigation into war crimes in the former Yugoslavia.

Using Evidence How might visits to the sites of atrocities help judges decide cases involving genocide and war crimes?

**PRACTICE QUESTIONS**

1. In your own words, define the term human rights.

2. Look at the timeline on pages 324–325. How many of these human rights abuses have you heard about? Which did you find the most disturbing? Are you surprised by the number of incidents around the world? Why do you think that we hear more about some atrocities and not others?

3. What is the significance of the Universal Declaration of Human Rights? Why did the members of the United Nations feel it was necessary to prepare the Declaration?

4. What are the problems of enforcing the Declaration?

5. What is the purpose of the ICC? Name a case that has been heard by the court.
Are universal standards for human rights possible in a world of diverse cultural and religious beliefs?

As you read earlier, the UN adopted the Universal Declaration of Human Rights (UDHR) in 1948 in response to the atrocities of the Second World War. Since then, it has added conventions to deal with specific issues, such as economic or social rights, genocide, children, and women. Most countries in the UN have signed the UDHR, but not all of them follow its provisions.

UN Diversity

Since 1948, the world and the UN have changed. In 2010 the UN had 192 member states representing diverse cultures and ideas. This diversity has made agreement on human rights difficult, as some of the UDHR’s ideals do not fit with all cultural traditions.

People who object to a universal definition of human rights claim that: rights are specific to a culture; the community comes before individuals; and rights are a matter of national sovereignty. Some people believe that applying universal standards to developing countries hinders their development. They argue that human values vary by cultural perspectives and human rights should be interpreted according to ethnic, cultural, or religious traditions. According to this view, called cultural exceptionalism, human rights are cultural rather than universal. While the condemnation of wide-scale violence or genocide is generally approved, it is harder to deal with human rights violations that fall into the category of cultural practices, such as female genital mutilation (a traditional or religious practice in which the external female genitalia are partially or totally removed).

Tension in a Digital Age

The recent growth of the Internet, blogs, and social networking sites has made society increasingly global and multicultural. Some people embrace the digital revolution and global culture. Others resent its influence and see it as a means of promoting Western culture. For example, men and women can interact openly in Western societies, but this clashes with cultural and religious conventions in some Islamic states where the morality police can arrest a man and woman out in public if they cannot prove they are related.

The West is not immune to cultural exceptionalism. Canada, for example, sees the treatment of Aboriginal peoples as a domestic issue. In 1981, the UN Human Rights Committee found Canada in breach of the International Covenant on Civil and Political Rights over sexual discrimination in the Indian Act. More recently, Canada refused to sign the UN Declaration on the Rights of Indigenous Peoples. The United States also claims exemption from many international treaties in the interests of its national security and human rights covenants. For example, the U.S. and Somalia were the only two countries that did not sign the Convention on the Rights of the Child.

Analyzing the Issue

1. What are the principal problems in having all countries accept the UDHR?
2. To what extent do you think universal human rights can exist in a culturally diverse world?
3. To what degree do you think the communications revolution will help in the acceptance of universal standards for human rights?
Human Rights Legislation in Canada

In Canada, we are governed by a fixed set of laws that apply to all people equally, regardless of their position in society. This rule of law helps to protect our rights and prevent those in authority from abusing their power. It also means that police can only charge an individual for a specific offence, and then only by following proper legal procedures.

Before the Second World War, there were few laws to protect human rights apart from some individual property, criminal, and civil laws. Attitudes began to change after 1945, and the rights of minority groups in particular gradually improved. In 1947, Canadians of Chinese and East Indian descent won the right to vote, and Canadians of Japanese origin won this right in 1948. But it was 1960 before Aboriginal peoples on reserves could vote. Even after gaining the right to vote, many Canadians of non-European descent still faced racism and discrimination:

The postwar trend in Chinatown was for anyone who could afford better accommodation to move out. Like other Canadian families, Chinese families had aspirations to own their own homes. However, they did not necessarily have their choice of neighborhood. Mr. Gee had put down a deposit on a house in Kitsilano, a crowded middle-class neighborhood that rose up the slope from English Bay. When white neighbors got wind that a Chinese family wanted to move in, they amassed a petition against him. He walked away, losing his deposit.

—Denise Chong, The Concubine’s Children, 1994

The Canadian Bill of Rights

Since signing the Universal Declaration of Human Rights in 1948, the Canadian government has taken steps to protect human rights in Canada. When he became prime minister, John Diefenbaker made the passing of a bill of rights a priority. In 1960, Diefenbaker’s government passed the Canadian Bill of Rights. This bill formally outlined and recognized rights already held by Canadians under common law. However, as an act of Parliament, the Bill of Rights could be amended or changed like any other piece of legislation, and it did not override other federal or provincial laws. Human rights in Canada were not solidly entrenched in our legal system until 1982, when the Canadian Charter of Rights and Freedoms became part of the new Canadian Constitution.
### Timeline of Human Rights in Canada

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900</td>
<td>Dominion Elections Act makes the qualifications for voting in federal elections the same as for the provinces. In B.C., visible minorities, Aboriginals, and women are excluded from voting in federal elections.</td>
</tr>
<tr>
<td>1903</td>
<td>Chinese Immigration Act is amended, increasing head tax to $500.</td>
</tr>
<tr>
<td>1914</td>
<td>Continuous Passage Act and Komagata Maru incident</td>
</tr>
<tr>
<td>1917</td>
<td>B.C. follows Manitoba, Saskatchewan, and Alberta in granting most Caucasian women the right to vote in provincial elections.</td>
</tr>
<tr>
<td>1927</td>
<td>Indian Act makes it illegal for Aboriginal peoples to hire lawyers to pursue land claims without the permission of the Superintendent of Indian Affairs.</td>
</tr>
<tr>
<td>1928</td>
<td>Alberta passes Sexual Sterilization Act requiring patients in psychiatric wards to be sterilized.</td>
</tr>
<tr>
<td>1929</td>
<td>Women are ruled to be &quot;persons&quot; by the Privy Council in England.</td>
</tr>
<tr>
<td>1940</td>
<td>Government uses War Measures Act to ban a number of organizations, including the Communist Party and Jehovah's Witnesses.</td>
</tr>
<tr>
<td>1942</td>
<td>Canadians of Japanese origin are relocated and interned, and their property is confiscated. Doukhobors, Hutterites, and &quot;enemy aliens&quot; are barred from buying land in Alberta.</td>
</tr>
<tr>
<td>1948</td>
<td>Canadian Federal Elections Act is amended to ensure a person's race cannot be a reason to deny the vote in federal elections, excluding Status Indians.</td>
</tr>
<tr>
<td>1960</td>
<td>Status Indians are granted the right to vote in federal elections. Prime Minister Diefenbaker passes the Canadian Bill of Rights.</td>
</tr>
<tr>
<td>1969</td>
<td>Prime Minister Trudeau's Omnibus Bill decriminalizes homosexuality and makes it legal for women to have an abortion in certain situations.</td>
</tr>
<tr>
<td>1970</td>
<td>War Measures Act is invoked during the October Crisis (see Chapter 7). Canadian Criminal Code makes it a crime to advocate genocide or publicly incite hatred against people because of their colour, race, religion, or ethnic identity.</td>
</tr>
<tr>
<td>1973</td>
<td>Calder case is seen to be the basis for contemporary Aboriginal law in Canada.</td>
</tr>
<tr>
<td>1974</td>
<td>Thirty-two women are sworn in as the RCMP's first female recruits.</td>
</tr>
<tr>
<td>1976</td>
<td>Capital punishment is removed from the Criminal Code as a penalty for crime in Canada; it is still permitted in the military for treason until 1998.</td>
</tr>
<tr>
<td>1977</td>
<td>All restrictive regulations based on nationality, citizenship, ethnic group, occupation, class, or geographical area of origin are removed from the Canadian Immigration Act. Canadian Human Rights Act guarantees equal opportunity in areas affecting the federal government; it exempts all decisions and actions taken under the Indian Act.</td>
</tr>
<tr>
<td>1982</td>
<td>Canadian Charter of Rights and Freedoms sets out the basic rights to which all Canadians are entitled and is enshrined in the Constitution Act.</td>
</tr>
<tr>
<td>1985</td>
<td>Indian Act is amended to allow Aboriginal women who married non-Aboriginal men to reclaim their status.</td>
</tr>
<tr>
<td>1990</td>
<td>Federal government removes the ban preventing Sikhs in the RCMP from wearing turbans.</td>
</tr>
<tr>
<td>1995</td>
<td>The Supreme Court of Canada rules that sexual orientation is to be judged in the same way as other protected personal characteristics.</td>
</tr>
<tr>
<td>1996</td>
<td>B.C. Human Rights Code becomes law, protecting areas such as employment, housing, and services and facilities customarily available to the public.</td>
</tr>
<tr>
<td>1999</td>
<td>The Supreme Court recognizes same-sex relationships.</td>
</tr>
<tr>
<td>2003</td>
<td>British Columbia becomes the second province, after Ontario, to legalize same-sex marriages.</td>
</tr>
<tr>
<td>2006</td>
<td>Canadian government apologizes for Chinese Head Tax and Chinese immigration exclusions.</td>
</tr>
</tbody>
</table>
The Canadian Charter of Rights and Freedoms

Few laws have had as profound an effect on the life of Canadians as the Canadian Charter of Rights and Freedoms. As you read in Chapter 8, Prime Minister Pierre Trudeau spearheaded the campaign to amend the Canadian Constitution in 1982 to include the Charter. The Charter protects the fundamental freedoms of Canadians and guarantees their democratic, mobility, equality, legal, and language rights. The Charter gives Canadians the right to challenge in court any law they believe violates their Charter rights. The courts do not always agree with the challenges made, but Canadians generally believe that the Charter offers them a chance to stand up for their rights, even against powerful government interests.

Limiting the Charter

The Charter sets limits on some rights to make sure that one person’s rights do not take precedence over someone else’s. The Charter also allows the federal and provincial governments to have the final say in which laws are passed.

Reasonable Limits

Section 1 of the Charter contains this limiting clause: “the Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” This means that the government can limit a person’s rights or freedoms, but it must show that the limit is necessary. This clause was tested in 1990 when James Keegstra, an Alberta high-school teacher, was charged with promoting hatred by making anti-Semitic statements in his classes. Keegstra argued that the Charter protected his right to express his opinion, but the Supreme Court ruled that his teachings went beyond his right to freedom of expression and that it was reasonable to limit his right in this case.

The Notwithstanding Clause

As you learned in Chapter 8, the notwithstanding clause (section 33 of the Charter) allows the federal and provincial or territorial governments to pass a law even if it violates a specific freedom or right in the Charter (see Figure 10–7). This clause was a compromise. Some provincial politicians felt the Charter, which would be interpreted by justices, would weaken their power as elected lawmakers. The notwithstanding clause allowed legislatures to have the final say.

<table>
<thead>
<tr>
<th>Section 33 can be applied to</th>
<th>Section 33 cannot be applied to</th>
</tr>
</thead>
<tbody>
<tr>
<td>fundamental freedoms (section 2)</td>
<td>democratic rights (sections 3–5)</td>
</tr>
<tr>
<td>legal rights (sections 7–14)</td>
<td>mobility rights (section 6)</td>
</tr>
<tr>
<td>equality rights (section 15)</td>
<td>language rights (sections 16–23)</td>
</tr>
</tbody>
</table>

FIGURE 10–6 Application of the notwithstanding clause

Thinking Critically Which of the sections of the Charter would you move from one category to the other and why?
The federal government has never used the notwithstanding clause. Saskatchewan used it to protect a law that ordered striking workers back to work. Québec protested the patriation of the Constitution in 1982 by withdrawing all its laws and re-enacting them with the notwithstanding clause included. The same was done with all laws passed in the next three years. Since then, Québec governments have used the notwithstanding clause 15 times, dealing with issues such as the language on signage, pensions, and same-sex marriage.

<table>
<thead>
<tr>
<th>Section</th>
<th>Rights</th>
<th>What does this mean to me?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Guarantee of rights and freedoms</td>
<td>• I can live as a free citizen in a democratic nation, with certain legal limitations.</td>
</tr>
</tbody>
</table>
| 2       | Fundamental freedoms of conscience and religion; thought, belief, opinion, expression, and the press; peaceful assembly; association | • I can follow any religion I choose.  
• I can believe what I want.  
• I can express my opinions openly without fear.  
• I can associate with whomever I choose.  
• I can meet with others peacefully. |
| 3–5     | Democratic Rights                          | • Once I am 18, I can vote in elections at least once every five years.  
• Once I am 18, I can run as a candidate in elections. |
| 6       | Mobility Rights                            | • I can enter, remain in, or leave Canada.  
• I can live, work, or study wherever I wish in Canada. |
| 7–14    | Legal Rights                                | • I have a right to life, liberty, and security of person.  
• I have the right not to be arbitrarily arrested and detained.  
• I have the right to a fair trial if I am accused of a crime.  
• I have the right to humane treatment. |
| 15      | Equality Rights                            | • I can live, study, and work regardless of my race, religion, national or ethnic origin, colour, sex, age, and mental or physical ability.  
• I have the right to be treated as “equal before and under the law.” |
| 16–22   | Official Languages of Canada                | • I can communicate with and receive federal government services in English or French.  
• I can use French or English in any federal court. |
| 23      | Minority Language Educational Rights        | • I can have my children educated in either French or English where sufficient numbers of students exist. |
| 24      | Enforcement                                 | • I can take the matter to court should any of the above rights and freedoms be denied. |
| 25–31   | General                                     | • Aboriginal peoples of Canada retain any rights previously established.  
• Charter to be interpreted consistent with the preservation and enhancement of multiculturalism.  
• Rights under the Charter are guaranteed equally to both sexes. |

FIGURE 10–7 Some of the human rights protected by the Canadian Charter of Rights and Freedoms

PRACTICE QUESTIONS

1. What are the Canadian Bill of Rights and the Canadian Charter of Rights and Freedoms? How do they help protect the rights of all Canadians?

2. Do you think section 1 of the Charter is necessary? Why or why not?

3. Why was the notwithstanding clause included in the Charter? To which section of the Charter can it be applied? Why do you think the notwithstanding clause has not been used more often?
The Charter in Action

As you have read, the Canadian Charter of Rights and Freedoms defines the basic rights and freedoms that individuals and groups are entitled to in Canada. We will now explore these rights and freedoms in more detail and see how the Charter helps to protect them.

Fundamental Freedoms

Section 2 of the Charter protects the fundamental freedoms of conscience, religion, thought, belief, opinion, expression, peaceful assembly, and association. These are the political civil liberties at the core of Canada's democratic society ensuring individual Canadians freedom from fear and persecution. They are at the heart of what it means to be a citizen of Canada. These freedoms are, however, subject to reasonable limits (see Case Study: Human Rights and Freedom of Expression on page 338).

In the past, the federal government has restricted or denied these freedoms. For example, in 1907 it passed the Lord's Day Act, which restricted activities such as shopping on Sundays. This Act was overturned in 1985 as contrary to freedom of religion. In 1970, during the October Crisis, the government invoked the War Measures Act, the first time it was applied in peacetime, restricting people's freedom of assembly, association, and expression.

Religious Freedom in a Multicultural Society

In 2001, when he was 12, Gurbaj Singh Multani’s ceremonial dagger, his kirpan, fell out of its cloth holder in the schoolyard. The school board in Montréal banned Gurbaj from bringing his kirpan to school because it was considered a weapon. Gurbaj argued that it was not a weapon but a religious symbol, which he as an orthodox Sikh was required to wear at all times. After numerous court cases, the Supreme Court of Canada ruled unanimously that the ban on kirpans was a violation of Gurbaj’s religious freedom as guaranteed by the Canadian Charter of Rights and Freedoms. “Religious tolerance is a very important value of Canadian society,” wrote Justice Louise Charron. The decision, however, does allow school boards to impose restrictions on how kirpans can be worn to protect the safety of students.
Mobility Rights

Section 6 of the Charter gives citizens the right to remain in and leave Canada, and to move and live within the country. Mobility rights have been brought to the public’s attention since the 9/11 attacks in 2001 because heightened security has led to a number of cases in which Canadians were refused admission to Canada. Most mobility cases are concerned with extradition of Canadians accused of a crime by another country. The Supreme Court has ruled that people may not be extradited for crimes that might result in the death penalty. Subjecting a Canadian citizen to a possible death penalty in another country would contradict section 7 of the Charter, which entitles each Canadian the right to life, liberty, and security.

Equality Rights

Section 15 of the Charter guarantees equality “before and under the law.” “Before the law” means everyone must have access to the courts, which is why we have legal aid programs to make sure that those who cannot afford a lawyer are represented fairly. “Under the law” means that laws passed by the government must treat everyone equally. The courts cannot favour the rights of one group over another. Section 15 prohibits anyone, including the justice system or any other branch of government, from discriminating against individuals based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. Some exceptions are allowed if they aim to improve the conditions of “disadvantaged individuals or groups.” Similarly, affirmative action programs are recognized under subsection 15(2) of the Charter to ensure minority rights for disadvantaged individuals and groups.

One of the most significant cases decided by the Supreme Court confirmed the equality rights of gays and lesbians. In 1991, Delwin Vriend, an instructor at a private religious college in Alberta, was fired because the school discovered he was gay. The Alberta Human Rights Act did not cover discrimination based on sexual orientation, so the Alberta Human Rights Commission would not hear Vriend’s case. When the matter reached the Supreme Court, it ruled that exclusion on the basis of sexual orientation violated section 15 of the Charter.

You will read more about three different types of equality rights—Aboriginal, gender, and child—later in this chapter.
Legal Rights

Canadians have their legal rights guaranteed by sections 7 to 14 of the Charter. These rights cannot be taken away without proper legal process. Many of the Charter cases before the courts are attempts to settle situations in which the Criminal Code conflicts with individual rights and freedoms.

The powers of police to arrest and question suspects, seize evidence, and conduct searches have been steadily reduced since the introduction of the Charter in 1982. Some people argue that this is necessary to protect the rights of citizens. Others maintain that it severely restricts the ability of the police to carry out their duties. The courts have also strongly upheld the rights of those held or arrested by the police. Prisoners have the right to know the reason for their arrest and to have a judge decide whether they are being held legally. They also have the right to contact a lawyer, and the right to a speedy trial.

FAST FORWARD

An Illegal Search

In 2002, at St. Patrick’s High School in Sarnia, Ontario, police used a sniffer dog to search backpacks while the students were kept in their classrooms. During the search, the dog reacted to one of the backpacks. Without getting a warrant, the police opened the backpack, found illicit drugs, and charged the student. At both the trial and appeal, judges dismissed the charges, finding both the search with the sniffer dog and the search of the backpack unreasonable under section 8 of the Charter. When the case reached the Supreme Court, six of the nine judges supported these findings, noting that students can “...expect the contents of their backpacks not to be open to the random and speculative scrutiny of the police.” The other three judges disagreed, saying that students were warned before and at the time about the zero-tolerance policy of drugs in the school.

WEB LINK

You can read the transcript of this and a similar case decided at the same time on the Pearson Web site.

PRACTICE QUESTIONS

1. Create a three-column chart with the following headings: Right or Freedom; Explanation; Examples. In your own words, give a brief explanation of the rights and freedoms on pages 332–334 and give specific examples from the textbook.

2. What is the purpose of affirmative action programs? Why are these programs “technically” against the Charter of Rights and Freedoms?

3. Would you agree with the majority or minority view of the Supreme Court for the search described in the above Fast Forward? Explain.

4. Where would you draw the line between personal privacy and public safety? Explain.
Advocating for Your Rights

Imagine you are 19 years old and looking to rent an apartment with two friends. Your mother was shown a suitable apartment, but when you call to set up an appointment to view the rental unit with your friends the landlord coldly tells you the unit is taken. Is this age discrimination, you wonder. Human rights abuses such as this take place across the country. Fortunately, we can seek help from the legal system to resolve these types of issues.

Federal and Provincial Human Rights Legislation

The federal and provincial governments have passed specific laws to deal with particular cases of discrimination. These laws are administered by human rights commissions that investigate complaints and attempt to find solutions. The Canadian Human Rights Act covers all federally regulated businesses and agencies including banks, the major airlines, Canada Post, and the national media. The Canadian Human Rights Commission administers this Act. Provincial human rights codes clarify people’s rights in areas such as employment, tenancy, and institutions, and are interpreted by provincial bodies.

The British Columbia Human Rights Code

Most human rights complaints in British Columbia fall under the British Columbia Human Rights Code. The Code protects citizens against discrimination on the grounds of age (19 to 65), ancestry, colour, family or marital status, physical or mental disability, place of origin, political belief, race, religion, sex, or sexual orientation. It covers employment, tenancy and property purchases, accommodation, services, facilities usually available to the public, and hate propaganda. The British Columbia Human Rights Tribunal deals with complaints and hearings.

In 2009, over 1100 complaints were filed with the British Columbia Human Rights Tribunal. The majority of the complaints dealt with employment, followed by services and tenancy. Of the cases that appeared before the Tribunal, 607 were settled, withdrawn, or abandoned.

FIGURE 10–11 Complaint process at the B.C. Human Rights Tribunal

Thinking Critically Describe a change you would make to improve the complaint process.
Employment
• You cannot be refused work or a promotion because of your age, or any of the other grounds listed in the Code.
• Employers cannot refuse to hire an applicant because of a criminal record if the crime is unrelated to the job.
• Job ads cannot exclude any category of persons except on the basis of occupational requirements.

Tenancy
• Offer tenants same protection as employees.
• Landlord cannot refuse to rent to you based on your source of income.
• Landlord can determine whether you can afford to pay the rent, except in the case of older people and those with disabilities.

Accommodation, service, or use of facilities
You cannot be unfairly denied accommodation, service, or use of a public facility, with two exceptions:
• In matters of public decency (public washrooms and change rooms), discrimination on the basis of sex is allowed.
• Insurance companies are allowed to take sex and physical and mental health into account when calculating insurance costs.

Hate propaganda
A person cannot publish or display any notice, sign, symbol, or emblem that is likely to expose a person or class of persons to hatred or contempt.

FIGURE 10–12 Some of the protections provided by the B.C. Human Rights Code

FIGURE 10–13 Areas of discrimination cited in complaints to the British Columbia Human Rights Tribunal, 2009

Why is the amending formula important?

KEY TERMS
precedent a legal decision that serves as a rule for future cases
amending formula a rule established in 1982 that states Canada’s Constitution cannot be changed unless at least seven Canadian provinces, representing at least 50 percent of the population of Canada, approve

The Supreme Court and the Charter
The Supreme Court of Canada has been the highest court for all legal issues in Canada since 1949. It decides on constitutional issues and acts as the final court of appeal for some criminal cases. The Governor General, on the advice of the prime minister, appoints the nine members of the Supreme Court. Three of these justices must be from Québec. Traditionally, three others come from Ontario, one from the Maritimes, and the remaining two from the Western provinces.

The importance of the Supreme Court in the everyday lives of Canadians has grown since the introduction of the Canadian Charter of Rights and Freedoms. The Court’s decisions set precedents that define our rights and, in some cases, change our legal system. No one can alter the decisions of the Supreme Court, unless Parliament passes a constitutional amendment. The amending formula established in 1982 specifies that at least seven provinces, totalling at least 50 percent of the population of all provinces, must approve such an amendment.
Chapter 10  ■  Protecting Human Rights

1. Both the Canadian Charter of Rights and Freedoms and the B.C. Human Rights Code restrict age discrimination to those between 19 and 65. What problems might occur if this age restriction were removed?

2. Which of the following situations violate human rights, and under which category might they fall in the B.C. Human Rights Code?
   a) A person in a wheelchair is denied access to a sporting event because the wheelchair cannot fit in the space designated for wheelchairs.
   b) An advertisement for a house rental says that only non-smoking women need apply.
   c) A woman is refused an interview for a job as a security guard in a mall because the company says it finds men are more effective at controlling groups of young people.
   d) A group puts up posters for a dance that include some racist lyrics from the songs that will be played.

3. How does the Supreme Court decide whether it will hear a Charter challenge? How has the Charter changed the role of the Supreme Court in the lives of Canadians? What problems are associated with this new role?

4. Perspectives  How might the WCC’s decisions differ from the Supreme Court’s on major issues? Explain.

**FASTFORWARD**

**Rewriting History**

In 2008, several female lawyers and scholars established the Women’s Court of Canada (WCC). Their goal is to challenge conventional thinking and highlight what they see as problems with Supreme Court equality decisions under section 15 of the Charter. The WCC see themselves as part of the long tradition of Canadian women, such as those in the Persons Case (see Chapter 3), refusing to accept decisions of the Supreme Court as the last word. Adopting the declaration of the writer Oscar Wilde that “the only duty we owe to history is to rewrite it,” the WCC set itself the task of rewriting a number of Supreme Court cases to reflect equity as they see it.

**WEB LINK**  Read about the WCC on the Pearson Web site.
Human Rights and Freedom of Expression

Canada guarantees its people equality and inclusion in society. Federal and provincial human rights laws protect our right to equality as well as our right to be different. The Criminal Code of Canada protects minority groups from those who would incite hatred toward them. In short, Canadian legislation promotes tolerance and open-mindedness, which characterizes our multicultural society.

Yet there are times when multiculturalism is at odds with another Canadian value: free speech. The Charter protects “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.” Reconciling the ideals of multiculturalism and free speech has become an important public issue in Canada.

Free Speech at All Costs?

This question was at the centre of three cases launched by the Canadian Islamic Congress before the Canadian Human Rights Commission and the human rights commissions in B.C. and Ontario. Dr. Mohamed Elmasry lodged complaints against Maclean’s magazine after it published an excerpt from Mark Steyn’s book America Alone in an article entitled “Why the Future Belongs to Islam.” The article asserts that Muslims will soon dominate world culture because they have “youth, numbers, and global ambition,” while Western culture is in decline because it “is growing old and enfeebled, and lacks the will to rebuff those who would supplant it.”

According to section 13(1) of the Canadian Human Rights Act and section 7 of the B.C. Human Rights Code, it is discriminatory to say anything that is likely to expose a person or persons to hatred or contempt. Dr. Elmasry claimed the article was “flagrantly Islamophobic,” demonized Islam, and contributed to discrimination. The Canadian Human Rights Commission dismissed his claim without a hearing. At the B.C. hearing, Dr. Faiza Hirji, a university journalism instructor, testified that the article had examples of common stereotypes of Muslims being associated with violence and terrorism. The lawyers for Maclean’s argued that the hearings “constitute an unjustifiable infringement of freedom of the press.” The tribunal ruled that the article did not violate anti-hate laws and was a legitimate subject for public discussion.

Restricting Free Speech

After the judgement, Dr. Elmasry commented that “the state should act to empower those who are disadvantaged by hate speech, and that may mean lowering the voices of some in order that others may be heard.” This was echoed by the Ontario Human Rights Commission, which said that the media should try harder to not promote stereotypes.

Many people in the media defended the right to disagree and to offend as part of the price of free speech. They also argued that free speech is the best protection for minorities. The writers’ group PEN Canada claimed this case raised “disturbing questions about the degree to which human rights commissions have taken it upon themselves to become [the judges] of what constitutes free speech.”

Looking Further

1. How would you have decided Dr. Elmasry’s complaint? Explain.
2. Would you support removing section 13(1) of the Canadian Human Rights Act? Why or why not?
Aboriginal Rights

Rights taken for granted by most Canadians were sometimes denied or only slowly granted to Aboriginal groups. The issue of residential schools is an extreme example of the Canadian government imposing its will on Aboriginal peoples to try to assimilate them into mainstream culture. Even though residential schools and most of the legal restrictions that had been placed on First Nations peoples are now gone, Aboriginal groups still suffer from serious problems, including poverty, poor health, and inadequate housing and education.

The Bill of Rights did not advance Aboriginal rights in Canada, but the Canadian Charter of Rights and Freedoms has helped to eliminate some of the injustices that existed in law before 1982. In July 2000, Aboriginal leaders presented their case at the UN Working Group on Indigenous Populations, claiming Canada had violated their human rights. Despite these efforts, Canada was one of only four countries (Australia, New Zealand, and the United States were the other three) that refused to sign the UN Declaration on the Rights of Indigenous Peoples. Australia endorsed the Declaration in 2009.

Under the Indian Act, if an Aboriginal woman married a non-Aboriginal, she was no longer considered a status Indian. This meant that she could not live on the reserve, nor receive any of the treaty benefits of her band or nation. She could not participate in band councils. As a final indignity, she could no longer be buried with her ancestors. None of these rules applied to Aboriginal men who married non-Aboriginal women. In those cases, the non-Aboriginal wives gained Indian status for themselves and the children born to the marriage.

In 1970, Jeannette Corbière, a member of the Anishnawbe nation in Ontario, lost her Indian status when she married a non-Aboriginal, David Lavell. She decided to challenge the law. Her case was the first that claimed discrimination on the basis of gender under the 1960 Canadian Bill of Rights. Lavell lost her case in County Court but the Federal Court of Appeal ruled in her favour. The Crown, however, chose to appeal the decision.

In 1973 the Supreme Court ruled against Lavell. The Court found that, as Lavell was being treated the same as other Aboriginal women who had married non-Aboriginals, she had not been discriminated against. It dismissed the argument that treating Aboriginal women differently from Aboriginal men was discriminatory.

However, Lavell did eventually triumph. When the Canadian Charter of Rights and Freedoms was passed, it expanded the equality provisions in the Bill of Rights. The Charter also contained a provision that Aboriginal and treaty rights must be applied equally to men and women. These changes meant that the regulations in the Indian Act were now unconstitutional. In 1985, this part of the Act was changed so Aboriginal women keep their status when they marry non-Aboriginal men.

Our experience with Canada is an ongoing violation of our people’s fundamental human rights.... Our people are still confined to tiny portions of Canada’s land mass, with few or no resources.... Our peoples still mostly live in desolate communities with unsafe drinking water and inadequate sanitation. Our people are still crowded into unsafe and unhealthy dwellings or live homeless on the streets of the big cities.

–Ashley Iserhoff, a James Bay Cree, to the UN Working Group on Indigenous Populations
The Impact of the Charter and the Constitution

Section 25 of the Charter protects the practices and customs of Aboriginal peoples and those outlined in section 35 of the Constitution Act of 1982. The Constitution recognized “the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada.” These rights have been in place since the arrival of Europeans and predate the Constitution.

The Supreme Court’s recent decisions regarding Aboriginal rights have been among its most controversial. In its decisions, the Court has also considered the historical mistreatment of Aboriginal groups and their existing social and cultural needs. Recent court decisions have defined the nature of Aboriginal and treaty rights and clarified the legal relationship between the governments of Canada and Aboriginal peoples. These decisions are important in British Columbia because of the lack of treaties covering most of the land in the province.

<table>
<thead>
<tr>
<th>Case</th>
<th>Issue</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calder vs. B.C.</td>
<td>Aboriginal title to traditional lands</td>
<td>The Nisga’a went to court to establish title to their traditional lands. In 1973, the Supreme Court of Canada (SCC) ruled that the Nisga’a did hold title to their traditional lands before British Columbia was created. Because Native title to land is proclaimed to exist under English law, predating colonization, the decision forms the basis for contemporary Aboriginal law in Canada.</td>
</tr>
<tr>
<td>R. vs. Sparrow</td>
<td>Inherent Aboriginal rights</td>
<td>The Supreme Court decision that Aboriginal rights that were in existence in 1982, such as fishing, are protected under the Constitution of Canada and cannot be infringed upon.</td>
</tr>
<tr>
<td>Delgamuukw vs.</td>
<td>Aboriginal title to land</td>
<td>The Supreme Court’s landmark decision that Aboriginal title is an ancestral right protected by the Constitution Act. It ruled that Aboriginal title is a right to exclusive use and occupation of land. To claim Aboriginal title, the people must be able to prove that they occupied the land before sovereignty. The Court made another important decision by allowing oral tradition to be used as evidence to prove a claim to Aboriginal title.</td>
</tr>
<tr>
<td>R. vs. Kapp</td>
<td>Aboriginal fisheries</td>
<td>A federal government initiative, the Aboriginal Fisheries Strategy, allowed only Aboriginal fishers to catch and sell salmon in a closed fishery on the Fraser River. Non-Aboriginal fishers were excluded and claimed their equality rights under section 15(1) of the Charter were being violated. The Court ruled that the exclusion of non-Aboriginal fishers falls under section 15(2) of the Charter that enables governments to develop programs to help disadvantaged groups improve their situation.</td>
</tr>
</tbody>
</table>

**PRACTICE QUESTIONS**

1. Why do you think the government appealed the Lavell case to the Supreme Court? What was at stake for the government? For Aboriginal women?
2. In your own words, explain the difference between Lavell’s view of what constituted discrimination and the Supreme Court’s view.
3. Give examples of how the Charter has helped gain human rights recognition for Aboriginals.
4. Why has B.C. been the focus of so many Charter challenges that have appeared before the Supreme Court of Canada? How might these challenges impact future relations between the government and Aboriginal peoples?
Gender Equity

In 2009, the United Nations ranked Canada fourth on the Human Development Index (HDI), down from first place in the 1990s. Less impressive are Canada’s efforts to deal with gender equality. The gender-related development index (GDI) measures the same achievements as the HDI but includes data on inequalities between men and women. The gender empowerment measure (GEM) reveals whether women take an active part in the economy and politics of a nation. In 2009, Canada was ranked twelfth out of 109 countries in the GEM. These findings encouraged efforts to enforce the gender equity provisions of the Charter.

The Charter and Gender Equity

Though the Charter provides guarantees against gender discrimination, this does not mean that attitudes change quickly. While most Canadians believe in the idea of equality and fairness, opinions differ as to how these goals are realized in the workplace. Women continue to be underrepresented in many traditionally male disciplines, and they are often paid less than men when they perform the same type or an equal amount of work.

As Figure 10–18 shows, the average earnings of women have been rising, perhaps partly because the number of women in the labour force has increased. However, in 2006, about 26 percent of the 2 million employed women in Canada were working part-time (less than 30 hours per week). Part-time work generally provides fewer benefits, such as pensions, health coverage, and life insurance.

The Charter allows for special initiatives, such as affirmative action programs, that would improve the situation of those people who have been discriminated against because of “race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.” Just how far should this principle be extended? Two practices designed to improve employment equity still cause debate: the principle of equal pay for work of equal value, and the use of preferential hiring practices.
Equal Pay for Work of Equal Value

Women in the workplace face the challenge of breaking out of traditional “job ghettos,” occupations that usually pay poorly and are dominated by female workers. For example, secretarial and nursing positions were once overwhelmingly held by female workers, and as a result the average wages were lower than for equivalent positions held by males.

Studies have shown that the values attached to various types of work often reflect attitudes based on stereotypes of who does what kind of work and a frequent assumption that the work performed mainly by men is more valuable than work performed mainly by women.

To avoid this form of discrimination, the Canadian Human Rights Act, 1986, states the following:

1. It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment performing work of equal value.

2. In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.

Most people agree that female teachers, police officers, and postal workers should be paid at the same rate as their male colleagues (equal pay for equal work). However, some critics claim that it is impossible to compare the value of jobs, especially when those jobs are as different as clerk and plumber, for example.

Preferential Hiring Policies

“Universities hiring, but white males need not apply.” So read the headline in a Vancouver newspaper in the summer of 1999. The employment advertisements for a number of Canadian universities clearly expressed a preference for equity groups—candidates who were female, from a minority, or had disabilities. The universities claimed they wanted to hire instructors who would more accurately reflect the mix of students in university. To receive federal government funding, universities had to set equity hiring targets.

Employment equity or affirmative action policies have become quite controversial. Some critics argue that they amount to reverse discrimination and are unfair to qualified applicants who cannot be considered for some positions. Critics feel these hiring policies are unnecessary because existing inequities will correct themselves in time.
In 1994, Tawney Meiorin lost her job as a forest firefighter because she took too long to finish a 2.5-kilometre run. She had been doing the job for three years before she failed the new test, which was based on the aerobic capacity of several dozen elite male firefighters. Meiorin’s union brought the case to the courts after a B.C. labour arbitrator’s decision was overturned by the B.C. Court of Appeal. At issue was whether the running test was a reasonable occupational requirement.

In a unanimous decision, the Supreme Court ruled that although the province apparently developed its aerobics test in good faith, it failed to take into account the physical differences of males and females. Madame Justice Beverley McLachlin wrote: “If men and women do not have equal ability to meet the excessive standard, the effect may be to exclude qualified female candidates from employment for no reason but their gender.”

The Court said that employers can discriminate in hiring standards only if not doing so would impose “undue hardship” on the employer and if the standards reflect a legitimate occupational requirement. It ordered the province of British Columbia to compensate Tawney Meiorin for lost wages and benefits.

Some people saw this ruling as a major step in eliminating discrimination that had stopped women from being hired for jobs traditionally dominated by men. They said that relaxing such restrictions would give them access to a larger pool of applicants who better reflect the diversity of Canadians. Critics of the judgement claimed that it would compromise safety standards in the name of political correctness. One editorial claimed that “more people will die in burning buildings in order to ensure that more women can become firefighters.”

1. In your own words, explain the following terms: preferential hiring policy, equity group, and reverse discrimination. Provide specific examples of efforts to minimize these issues.

2. Explain why preferential hiring programs are controversial.

3. a) In what areas of Canadian society could the laws still be changed to improve equality in the workplace?

   b) What methods, other than using decisions from the human rights commissions, could be used to promote equality in the workplace?

4. How were Tawney Meiorin’s rights under the Charter violated when she was dismissed? Do you agree with the Supreme Court’s decision? Why or why not?

5. What occupations do you think would be justified in imposing discriminatory hiring standards, based on the Supreme Court’s requirement of “undue hardship” on the employer? What would the standards be?

6. Evidence What does the term glass ceiling refer to? Which social values and forces do you think created glass ceilings?
How many times have you heard someone say, “Just give me the facts!” It is important to distinguish what is factual from what is simply someone’s opinion. When an opinion is passed from person to person, details can often get exaggerated. Even if there is a factual basis to the opinion, the central point is often overlooked and can lead to stereotyping.

In today’s world of constant and instant communications, people are bombarded with information from print and electronic sources, including commercial advertising, public service announcements, and social networking sites. It is important to remember that media sources contain both fact and opinion, along with statements that are often controversial.

It is important for courts and tribunals to deal only with statements that can be backed by evidence. Facts contain truths that can be verified by research, while opinions are biased statements based on a person’s beliefs and values (see Building Your Skills in Chapter 1). This means that facts are objective (not influenced by personal beliefs) and are as close to the truth as you can get.

Opinions are personal and subjective because they are the result of one’s beliefs and perspective on the world. Ideally, your opinion should be supported by facts and not based on only one point of view. This is referred to as an informed opinion. Even if your opinion is informed, it is likely to be influenced by your life experiences and by those around you. You may think your opinion is the right one, but others will likely have contrary opinions that they consider equally valid.

### Applying the Skill

The following examples will help you to distinguish between fact and opinion.

1. Read the following paragraph. Indicate and explain which of the sentences are fact, opinion, and informed opinion.

   (a) Since it was enacted in 1982, the Charter of Rights and Freedoms has led to an expansion of the basic rights to which all Canadians are entitled and has had a profound effect on Canadian society. (b) Advocates for human rights groups conclude that the expansion of human rights has been a benefit to Canadians and should be expanded further. (c) As the examples in this chapter illustrate, the Charter has been instrumental in defining the rights of Canadians in relation to the police and the courts. (d) On the other hand, representatives of law enforcement agencies conclude that the expansion of rights in some areas has been misdirected, allowing criminals to escape punishment. (e) The powers of the police to question, arrest, and conduct searches have been reduced. (f) Section 8 of the Charter guarantees everyone “the right to be secure against unreasonable search and seizure.” (g) It severely restricts the ability of the police to carry out their duties. (h) Police point to cases of drug dealers having charges dismissed on technicalities as a result of the way the police carried out the arrest. (i) However, it is necessary to protect the rights of citizens.
2. In 2002, the Supreme Court overturned the restriction in the Canada Elections Act prohibiting prisoners from voting in federal and provincial elections as denying a fundamental democratic right guaranteed by the Charter. Use the cartoon on page 344 to answer the following questions.

a) Analyze the cartoon. Select and explain details in the illustration that are based on fact or on opinion.

b) Would you consider the cartoon to be subjective or objective? Why?

3. Read the following excerpt from an article and answer the questions that follow.

**Fewer Young Criminals May Face Life-Without-Parole Sentences**

Texas joined six other states this year in banning life sentences without the possibility of parole for young offenders.

The legislation reverses a 2005 law that allowed life sentences without parole, under which four juveniles were incarcerated, according to Human Rights Watch. The new law will not retroactively affect those already incarcerated, although... a measure (may be introduced) next year to change existing sentences.

Critics of lifetime incarceration for juveniles have long called for banning the practice because minors often act on impulse, without the same level of emotional control of which adults are capable.

A person’s brain is not fully developed until he or she is an adult, said Debra Kowalski, M.D., chair of the Children and Adolescents Committee of the Texas Society of Psychiatric Physicians, in an interview with Psychiatric News.

A growing body of research on adolescent brain development has found that teens do not have the abilities of adults to make sound decisions, control their impulses, resist group pressures, or weigh the long-term consequences of their actions.

The new law “gives [offenders] an opportunity to make these changes and develop a better life,” Kowalski said.

Human Rights Watch has found that the numbers of youths receiving such sentences was small until 1982, when the number began to rise until it peaked at 152 in 1996. Although the number of new sentences has declined since 1996, at least 2574 people are serving such sentences for crimes committed before they were 18 years old.

That research has led Congress to consider action on the issue. The Juvenile Justice Accountability and Improvement Act of 2009 (HR 2289) would require states and the federal government to offer youth offenders meaningful opportunities for parole after serving 15 years of a life sentence.

–Rich Daly, Psychiatric News, 2009

a) What is the writer’s opinion? Is it an informed or an uninformed opinion?

b) What facts are used to back up the opinion?

c) Opinions are biased in nature. List examples of bias in the article. Do they detract from the opinion offered?

d) Can you find words associated with persuasion and argument?

e) What points would someone who held the opposite opinion to the author make?

f) Indicate whether you agree or disagree with the article and why.
Children’s Rights

Children are entitled to all the rights guaranteed by the Universal Declaration of Human Rights and the various treaties that have developed from it. Children are also guaranteed additional rights because they need special protection and care. Children must be able to depend on the adult world to look after them, to defend their rights, and to help them develop and realize their potential.

*A century that began with children having virtually no rights is ending with children having the most powerful legal instrument that not only recognizes but protects their human rights.*

--Carol Bellamy, UNICEF executive director

The UN Convention on the Rights of the Child—the most widely ratified human rights treaty—outlines children’s unique rights (see Figure 10–23). This Convention is the first legally binding international agreement to include children’s civil and political rights. It also outlines their economic, social, and cultural rights, giving all rights equal emphasis. Work on drafting the Convention began in 1979, the International Year of the Child.

Countries that ratify the Convention have a legal and moral obligation to advance the cause of children’s rights through administrative, legislative, judicial, and other measures.

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**FIGURE 10–23** Some of the substantive provisions of the UN Convention on the Rights of the Child

**Thinking Critically** Why do you think the UN chose these rights as important for children? Why do you think they included rules on how countries should ensure these rights are protected?

---

**Children’s Rights in Canada**

Canada has taken a number of steps to protect the rights of children. The British Columbia government established the Ministry of Children and Family Development to help communities and families “care for and protect vulnerable children and youth,” as well as “support healthy child and family development to maximize the potential of every child in B.C.” Children’s rights are considered paramount and social workers have the power—and the obligation—to remove children from unsafe environments. In 2006, Mary Ellen Turpel-Lafond became the first Representative for Children and Youth, a new position created in the B.C. legislature. The representative’s role is to act as an advocate for children and youth, protecting their rights and ensuring access to support for those who are vulnerable.
Canadian Coalition for the Rights of Children

Shortly after Canada adopted the Convention on the Rights of the Child in 1989, several organizations decided to form the Canadian Coalition for the Rights of Children (CCRC). The CCRC is a network of Canadian organizations and individuals that monitor how well Canada fulfills its obligation to the UN Convention on the Rights of the Child. The coalition has looked into child abuse and neglect, refugee children, education, health care, and other basic rights and freedoms of Canadian children.

Child Poverty

Child poverty is perhaps the single biggest children’s rights issue in Canada. In 1989, the House of Commons passed a resolution “to achieve the goal of eliminating poverty among Canadian children by the year 2000.” Almost 20 years later, the number of children in Canada living below Statistics Canada’s low income cut-off (LICO)—meaning the family spent more than 70 percent of its income on food, clothing, and shelter—had only decreased to 9.5 percent (637 000 children) in 2007 from 11.9 percent (792 000 children) in 1989. This means that about 1 in 10 children in Canada were living in poverty in 2007. In First Nations communities, 1 in 4 children were living in poverty.

There is significant disagreement about how to eliminate child poverty in Canada. Some activists feel that parents with low income should pay lower taxes. This would give them more income and allow them and their families a better standard of living. Others emphasize the need for governments to invest in programs and services for poor children and their families, such as good-quality and affordable child care, housing supplements, and allowances (such as the Child Tax Benefit Program) paid directly to low- and middle-income families.

As you have read in this chapter, the Canadian Charter of Rights and Freedoms defines what rights Canadians are entitled to, which also helps define living standards. You will learn more about living standards in Canada in Chapter 12.

What If…

MP Marc Garneau tabled a private member’s bill (see Chapter 9) in 2009 to establish a Children’s Commissioner for Canada. The commissioner would promote and monitor implementation of the Convention on the Rights of the Child in Canada. What if this private member’s bill passed? How might it improve the rights of children in Canada?

1. Do you think the UN Convention on the Rights of the Child has made a difference in the lives of children in Canada and other countries? Explain.
2. How are children protected in Canada and B.C.?
4. Why do you think Canada has made so little progress since 1989 in ending child poverty?
5. Do you agree with the definition of poverty used by Statistics Canada in the LICO? In a two-column organizer, list the benefits and drawbacks of using such a definition as a way of helping children living in poverty in Canada.

Practice Questions

FIGURE 10-24 Access to shelter is a fundamental human right, yet homelessness is on the rise in Canada today. Young people under the age of 18 make up the fastest growing segment of homeless people. Developing an Understanding What are some of the factors that might account for the numbers of young people living on the streets in Canadian cities?
CHAPTER REVIEW

CHAPTER FOCUS QUESTION What are human rights and how are they protected in Canada?

We live in what could be called the age of human rights. As Canadians, our rights are protected by international, national, and provincial documents.

1. Define human rights in your own words.

2. Create an organizer for human rights issues in each of the following categories: International, Canada, British Columbia. Each organizer will have three columns (see sample below).

   a) In the first column, record at least three documents that protect human rights for that category.
   b) In the second column, use an “E” to indicate if the protections in the document can be enforced. Use an “N” if the protections are not enforceable.
   c) In the third column, describe one or more situations that would be regarded as a violation of human rights related to the document.

<table>
<thead>
<tr>
<th>Documents</th>
<th>E / N</th>
<th>Examples of violations related to the documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
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<tr>
<td>2.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
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</tbody>
</table>

Vocabulary Focus

3. Review the Key Terms on page 323. Then visit the Pearson Web site to complete a matching activity.

Knowledge and Understanding

4. Explain, using examples from this text or other examples that you are familiar with, how the Canadian Charter of Rights and Freedoms protects the human rights of each of the following: women, Aboriginals, gays and lesbians, Sikhs, persons arrested by the police, persons travelling outside Canada, voters, media sources, and Francophones.

5. Since its introduction, the Canadian Charter of Rights and Freedoms has changed the way Canadians think about their rights. Should its protections be extended to the way parents govern their children at home? Should Charter rights apply to limitations placed on students in the school system?

6. Make a list of exceptions to the equality rights in section 15 of the Canadian Charter of Rights and Freedoms that you would consider reasonable under the age category. Compare your list with others, and discuss areas of disagreement.

7. What is the importance of each of the following cases in expanding the Charter rights of Canadians?
   a) Calder vs. B.C.
   b) R. vs. Sparrow
   c) Delgamuukw vs. B.C.

Critical Thinking

8. Consider the following situations. Explain why each would or would not be considered a violation of human rights.
   a) In an Islamic country, a woman is stoned after being accused of having an affair.
   b) A woman of a visible minority is refused a university teaching post on the grounds that her qualifications are not sufficient for the job.
c) A Canadian citizen is refused entry to Canada after visiting Africa because he or she is considered a security threat.

d) A Sikh employee is refused permission to wear a turban at work.

e) A gay man is called names as he walks down a Vancouver street.

f) A young man is refused the right to vote because he is 16 and not a Canadian citizen.

g) A protest at a trade conference is broken up by the police using tear gas.

h) A prominent Canadian makes derogatory remarks about Aboriginal people.

i) A qualified man is refused a job because the company says it must give the position to a qualified woman.

9. Summarize the achievements of someone who actively supported human rights. You could choose from these examples: Rosemary Brown or John Diefenbaker in Canada, Rosa Parks or Eleanor Roosevelt in the United States, Mohandas Gandhi in India, Aung San Suu Kyi in Myanmar, Nelson Mandela in South Africa, or Andrei Sakharov in Russia. Organize a classroom bulletin board to display the results of the research. The B.C. Human Rights Tribunal’s Web site is a good place to start (visit Pearson’s Web site).

Document Analysis

10. View Figure 10–25 and answer the following questions:

a) Describe how Neda is portrayed in the poster.

b) What message is being sent by this portrayal?

c) Is there evidence of bias in this photo of Iranian protestors? Provide examples.

d) What freedoms under the Canadian Charter of Rights and Freedoms allow for this type of demonstration?

**FIGURE 10–25** Neda, a young girl allegedly killed by the police during the election protests in Iran, became a symbol for rebellion. Her death was filmed by bystanders and broadcast all over the world.