

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)**

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA

Appellant

and

**HUTTERIAN BRETHREN OF WILSON COLONY and HUTTERIAN
BRETHREN CHURCH OF WILSON COLONY**

Respondents

and

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ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF
ONTARIO, THE EVANGELICAL FELLOWSHIP OF CANADA and
CHRISTIAN LEGAL FELLOWSHIP**

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PART I – STATEMENT OF FACTS

1. The Interveners, the Evangelical Fellowship of Canada¹ and the Christian Legal Fellowship² (jointly “These Interveners”), were granted leave to intervene in this appeal by the Order of the Honourable Mr. Justice Rothstein dated August 22, 2008, do not dispute the facts as set out in the facts of the Appellants and Respondents.
2. These Interveners, either on their own or in association with other groups, have been active in advocating their positions before this Court in a number of cases.
3. The Appellants have conceded, from the outset, that the introduction of the photo-license requirement violates the freedom of religion of the Respondents, however they submit that it can be saved through a s. 1 analysis. As such, These Interveners will focus on the s. 1 analysis required in a case where a *Charter* right has been violated.
4. These Interveners will make submissions on the following issues raised by this appeal:

PART II – ISSUES

- a. Must the nature and scope of the violated *Charter* right be defined and put into context before performing the *Oakes* test?
- b. What is the nature and scope of the violated rights and what is their context?

¹ The Evangelical Fellowship of Canada (“EFC”) is a national association of Protestant denominations, churches, church-related organizations and educational institutions. The EFC is interdenominational and represents a constituency of 41 denominations, approximately 125 other organizations and colleges and over 1,000 individual churches. It is estimated that there are approximately 3.3 million Protestant Evangelicals in Canada, representing approximately 10% of the Canadian population, of which approximately 1.5 million are members or adherents of EFC affiliated organizations.

² The Christian Legal Fellowship (“CLF”) is a national non-profit association of lawyers, law students, professors, friends and other legal professionals who support its work. Among other things, the CLF explores the complex interrelationships between the practice and theory of law and the Christian faith. While having no direct denominational affiliation, the CLF has over 500 active members from over 30 Christian denominations working in association.

- i. It is conceded by the Appellants that the individual s. 2a) *Charter* rights of the Wilson Members have been violated;
 - ii. The question remains whether the s. 2a) *Charter* rights of all Wilson Members, as a group, have been violated.
- c. Does the photo-license requirement minimally impair the Wilson Members' freedom of religion?

PART III – ARGUMENT

First Issue: Must the nature and scope of the violated *Charter* right be defined and put into context before performing the *Oakes* test?

5. The Appellant in this matter has conceded, from the outset, that the Wilson Members' s. 2a) *Charter* rights have been violated and as such, it becomes necessary to perform the *Oakes* test. To properly apply the *Oakes* test however, the Court must first establish the nature and scope of the rights that have been violated. Those rights must then be put into context to establish what consequences flow from the violation.
6. In *Multani v. Commission scolaire Marguerite-Bourgeoys*³, LeBel J. recognized the importance of first considering the violated right before applying the s. 1 analysis:

In such circumstances, it becomes very tempting to go directly to the stage of s. 1 justification, which provides courts, tribunals and litigants with the advantage of a familiar, well-established framework. However, in applying the *Canadian Charter*, not everything can be resolved under s. 1. To begin with, it is still necessary to analyse the right in issue, define its content and, where relevant, consider the scope of competing rights. The definition of the content of a right does not correspond systematically to a limit that must be justified by means of the approach developed in the cases on s. 1.

A question that arises in the initial stages of the review of an alleged violation of a constitutional right is that of the nature and scope of the right. What the right is must be determined, and its boundaries must be

³ *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256 [*Multani*], Book of Authorities of the Interveners, EFC & CLF, [EFC Authorities], Tab # 4.

established. Establishing these boundaries requires consideration of the guaranteed right's relationship with competing rights and sometimes leads to the necessary finding that rights come with corresponding obligations. We not only have rights, we also have obligations. How the *Canadian Charter* is applied, and the flexibility with which it is applied, are an acknowledgment of this reality. The application of the *Canadian Charter* does not always involve solely the relationship between the guaranteed rights of individuals and the government action limiting those rights. The relationship is often more complex, as it could have been in the instant case.⁴

7. In the instant case, the Wilson Members' freedom of religion is not competing with another *Charter* protected right and, therefore, no balancing of rights is required.
8. Without a proper appreciation of the nature and scope of the rights that have been violated and the consequences that flow from that violation, it is impossible to properly perform the *Oakes* analysis. Indeed, in *Canada (Human Rights Commission) v. Taylor*⁵, Dickson C.J. (as he then was) also recognized the importance of appreciating the violated right in each particular case:

What is of utmost importance is a recognition that s. 1 both guarantees and limits *Charter* rights and freedoms by reference to principles fundamental in a free and democratic society. This analysis requires an approach sensitive to the context of a given case, it being necessary to explore the nature and scope of constitutionally entrenched human rights in light of the facts at hand.⁶

9. In *R. v. Big M. Drug Mart Ltd.*⁷, Chief Justice Dickson stated:

In my view this analysis is to be undertaken, and the purpose of the right or freedom in question is to be sought, by reference to the character and the larger objects of the *Charter* itself, to the language chosen to articulate the specific right or freedom, to the historical origins of the concepts enshrined, and where applicable, to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the *Charter*. The interpretation should be, as the judgment in *Southam* emphasizes, a generous rather than a legalistic one, aimed at fulfilling the purpose of the guarantee

⁴ *Milani* at paras. 146 & 147, EFC Authorities, Tab # 4.

⁵ *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892 [*Taylor*], EFC Authorities, Tab # 1.

⁶ *Taylor* at 916, EFC Authorities, Tab # 1.

⁷ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 [*Big M*], EFC Authorities, Tab # 6.

and securing for individuals the full benefit of the *Charter*'s protection. At the same time it is important not to overshoot the actual purpose of the right or freedom in question, but to recall that the *Charter* was not enacted in a vacuum, and must therefore, as this court's decision in *L.S.U.C. v. Skapinker* illustrates, be placed in its proper linguistic, philosophic and historical contexts.⁵

10. Finally, Mr. Justice Lamer, concurring, confirmed in *B.(R.) v. Children's Aid Society of Metropolitan Toronto*⁹ [hereinafter *B.(R.)*] that in order to preserve the coherence of the entire constitutional text and to maintain the integrity of the intention of Parliament, the courts must consider specific factors in identifying the purpose of a protected right:

Thus, the wording of the provision, its structure, the context in which it is found, the relationship there may be between it and the other provisions, as well as the historical context in which the *Charter* was adopted, are all factors that must be taken into consideration in seeking to identify the purpose of a protected right or freedom, in order to preserve the coherence of the entire constitutional text and maintain the integrity of the intention of Parliament. A proper and prudent interpretation of the *Charter* is especially necessary because it is a constitutional document of great import that cannot be altered by a mere statutory amendment if this Court were to misunderstand or err as to the scope of the rights and freedoms to which exceptional protection is afforded.¹⁰

11. The notion of "freedom of religion" predates the *Charter*, receiving recognition in Canadian and international law¹¹. The underlying significance of religious belief, historically and philosophically, is evidenced in the preamble to the *Charter*¹², s. 2a) of the *Charter* and in all provincial human rights legislation.

12. It is crucial, therefore, that before embarking on a s. 1 analysis, the Court begins by

⁵ *Big M* at 344, EFC Authorities, Tab # 6.

⁹ *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 [*B.(R.)*], EFC Authorities, Tab # 2.

¹⁰ *B.(R.)* at para 17, EFC Authorities, Tab # 2.

¹¹ See *Husan and Chaush v. Bulgaria*, (2000), Eur. Ct. H.T. 2000-XI, 34 E.H.R.R. 554 at para. 62, EFC Authorities, Tab # 3; also see Article 9 of the European Commission of Human Rights *Convention for the Protection of Human Rights and Fundamental Freedoms* as amended by Protocol No. 11, Rome, 4.XI.1950, EFC Authorities, Tab # 14; also see Article 18 of the *United Nations International Covenant on Civil and Political Rights*, EFC Authorities, Tab # 15; and see *Big M*, EFC Authorities, Tab # 6.

¹² The preamble to the *Charter* reads: "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law", EFC Authorities, Tab # 13.

defining the nature and scope of the rights being violated, and subsequently puts those rights in context so that it may proceed with a proper application of the s. 1 analysis.

13. The above comments from *B.(R.)* also demonstrate that to properly define the nature and scope of the violated right, courts must take into consideration the relationship the right has with other provisions of the *Charter*. As such, it is necessary for this Honourable Court to consider those sections of the *Charter* that may assist it in its interpretation of s. 2a) such as s. 27,¹³ as well as those sections that confer rights which are integral to proper freedom of religion such as ss. 2b)¹⁴ and 2d)¹⁵.

14. It is These Interveners' position that when defined and put into context, s. 2a) of the *Charter* protects group rights, as well as individual rights, and as such, the s. 1 analysis must be performed with consideration of the effects the photo-license requirement will have on all Wilson Members' freedom of religion collectively as a colony.

Second Issue: What is the nature and scope of the violated rights and what is their context?

15. Section 27 of the *Charter* requires that the *Charter* be interpreted in a manner that preserves the multicultural heritage of Canada. The term "multiculturalism" has been defined as "various ways of life [...] rooted in the authentic life of a people seen as a community bound together by pervasive traditions and moral ties"¹⁶. As such, the *Charter* must be interpreted to protect the rights of groups as well as individuals.

16. Religion is by definition, and in practice a personal commitment manifest in and

¹³ Section 27 of the *Charter* reads: "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.", EFC Authorities, Tab # 13.

¹⁴ Section 2b) of the *Charter* reads: "Everyone has the following fundamental freedoms: [...] freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;", EFC Authorities, Tab # 13.

¹⁵ Section 2d) of the *Charter* reads: "Everyone has the following fundamental freedoms: [...] freedom of association", EFC Authorities, Tab # 13.

¹⁶ Howard Brotz, 'Multiculturalism in Canada: A Muddle' (1980) 6 Can. Pub. Pol. 41 at 41-42, EFC Authorities, Tab # 10.

through community. In the Christian tradition, for example, this communal dimension of belief is manifest in the very concepts of being members of the body of Christ, being brothers and sisters, one with another, and the concept of church. Other world religions also manifest their beliefs in and through communal ways of life.

The history of civilization shows how men and women who want to commit themselves to a religious, cultural or social ideal bond together to live out that vision, to find the structures that are necessary for what they want to do, and to give mutual support and care for each other. Such small groups have generally occurred within the world's great religions, where people come together with a common purpose.¹⁷

17. The communal dimension of religion is manifest in religious communities, organizations, and orders. These communal expressions and structures are necessary and integral to religion. Religious communities, groups and organizations have long been recognized in Canadian and international law.¹⁸
18. Religious beliefs form an integral part of many cultures and are often the glue that holds cultures or cultural communities together. Indeed, the Hutterian culture and way of life are rooted in biblical principles¹⁹. If the courts are to interpret the *Charter* in a manner that preserves and enhances the multicultural heritage of Canada, they must extend fundamental freedoms like that of freedom of religion to cultural, ethnic and religious groups or communities, especially where the religious beliefs are central to the group's cultural being.
19. Indeed, when writing for the majority in *R. v. Edwards Books and Art Limited*²⁰, Dickson C.J. (as he then was), stated:

In this context, I note that freedom of religion, perhaps unlike freedom of conscience, has both individual and collective aspects. Legislatures are

¹⁷ Jean Vanier, *Becoming Human* (Toronto: House of Anansi Press Limited, 1998) at 53, EFC Authorities, Tab # 12.

¹⁸ *Supra* note 11.

¹⁹ Acts 4:32 of the Bible reads: "All the believers were one in heart and mind. No one claimed that any of his possessions was his own, but they shared everything they had." (NIV), EFC Authorities, Tab # 9.

²⁰ *R. v. Edwards Books and Art Limited*, [1986] 2 S.C.R. 713 [*Edwards Books*], EFC Authorities, Tab # 7.

justified in being conscious of the effects of legislation on religious groups as a whole, as well as on individuals.²¹

20. In *Edwards Books*, Wilson J. argued that an interpretation of s. 2a) that protects the religious freedoms of individuals but not the groups they belong to is precluded by s. 27:

Yet it seems to me that when the *Charter* protects group rights such as freedom of religion, it protects the rights of all members of the group. It does not make fish of some and fowl of the others. For, quite apart from considerations of equality, to do so is to introduce an invidious distinction into the group and sever the religious and cultural tie that binds them together. It is, in my opinion, an interpretation of the *Charter* expressly precluded by s. 27 which requires the *Charter* to be interpreted "in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians"²².

21. Indeed, Professor W.S. Tarnopolsky (as he then was) has opined and agreed with Wilson J.'s argument in stating that the *Charter* protects group rights:

There are at least two fundamental distinctions which must be emphasized for the sake of clarity. The first is that an assertion of an individual right emphasizes the proposition that everyone is to be treated the same regardless of his or her membership in a particular identifiable group. The assertion of group rights, on the other hand, bases itself upon a claim of an individual or a group of individuals because of membership in an identifiable group [...] [t]his leads to the second distinction [...] [t]he guarantee of an individual right like free expression essentially requires the non-interference of the state.²³

22. The Wilson Members sincerely believe that the Bible requires them to live on rural colonies as a community, therefore they cannot exercise their religion individually; it must be exercised as a group²⁴.

²¹ *Edwards Books* at 781, EFC Authorities, Tab # 7.

²² *Edwards Books* at 808 & 809, EFC Authorities, Tab # 7.

²³ W.S. Tarnopolsky, 'The Equality Rights in the Canadian Charter of Rights and Freedoms' (1983) Can. Bar Rev. 242 at 259 & 260, EFC Authorities, Tab # 11.

²⁴ Acts 2:44, 46-47 of the Bible reads: "All the believers were together and had everything in common. [...] Every day they continued to meet together in the temple courts. They broke bread in their homes and ate together with glad and sincere hearts, praising God and enjoying the favor of all the people. And the Lord added to their number daily those who were being saved." (NIV), EFC Authorities, Tab # 9.

23. Indeed, Bastarache J. has noted, in *R. v. Beaulac*²⁵, that certain individual rights are justified by the existence of a community composed of similar individuals:

"In interpreting *Charter* provisions, this Court has firmly endorsed a purposive approach." [...] These pronouncements are a reflection of the fact that there is no contradiction between protecting individual liberty and personal dignity and the wider objective of recognizing the rights of official language communities. The objective of protecting official language minorities, as set out in s. 2 of the *Official Languages Act*, is realized by the possibility for all members of the minority to exercise independent, individual rights which are justified by the existence of the community. Language rights are not negative rights, or passive rights; they can only be enjoyed if the means are provided. This is consistent with the notion favoured in the area of international law that the freedom to choose is meaningless in the absence of a duty of the State to take positive steps to implement language guarantees;²⁶

24. When applying the reasoning in *Beaulac* to the instant case, it is apparent that the Wilson Members each individually have the right to freedom of religion due principally to the very existence of the Hutterian Brethren of Wilson Colony as a group. If there is no Wilson Colony, then there can be no Wilson Member. Therefore, in order for the Wilson Members to exercise their freedom of religion, they must do it in community because the community is the means by which they can exercise their s. 2a) rights.
25. As such, the court must appreciate that the photo-license requirement violates the Wilson Members' s. 2a) rights in that it requires them to be photographed, which they sincerely believe to be a sin or, in the alternative, to forgo their option to obtain a driver's license, which would inevitably result in the community and all its individuals not having the means to freely exercise freedom of religion.
26. These Interveners submit that Bastarache J.'s reasoning in *Beaulac* may therefore be applied to the instant case by replacing references to language rights with references to freedom of religion, as demonstrated below:

²⁵ *R. v. Beaulac*, [1999] 1 S.C.R. 768 [*Beaulac*], EFC Authorities, Tab # 5.

²⁶ *Beaulac* at paras. 16 and 20, EFC Authorities, Tab # 5.

[...] there is no contradiction between protecting individual liberty and personal dignity and the wider objective of recognizing the rights of religious communities. The objective of protecting freedom of religion of groups is realized by the possibility for all members of the group to exercise independent, individual rights which are justified by the existence of the community. (underlining demonstrates our revisions).

Third Issue: Does the photo-license requirement minimally impair the Wilson Members' freedom of religion?

27. As discussed, before embarking on a s. 1 analysis, the Court must first define the nature and scope of the violated right and put that right into context. Having ascertained that the Wilson Members' s. 2a) rights must include the right to freedom of religion of the entire group, because the group itself is the means by which the individual Wilson Members can exercise their s. 2a) *Charter* rights, we can proceed to the s. 1 analysis.
28. The *Oakes* test, developed by this Court in *R. v. Oakes*²⁷ sets out a two-part test by which the courts can determine if the infringement of a *Charter* right can be saved by s. 1 of the *Charter*²⁸.
29. Although it is These Interveners' position that the Appellants have not established any of the components set out in the *Oakes* test, These Interveners submit that the photo-license requirement cannot, in law, meet the second and third components of the proportionality test.
30. Before arriving at the minimal impairment stage of the s. 1 analysis, the Court must appreciate the impairment caused by the violation. The effect of photo-licence requirement goes beyond forcing those Wilson Members seeking a driver's license to commit a sin. It also consequently infringes upon the s. 2a) *Charter* rights of all

²⁷ *R. v. Oakes*, [1986] 1 S.C.R. 103, [*Oakes*], EFC Authorities, Tab # 3.

²⁸ *Oakes* at 128 & 139, EFC Authorities, Tab # 3.

Wilson Members since it would deprive them of the ability to live on rural Hutterian colonies as they sincerely believe is required by the Holy Scriptures.

31. As already established, the Wilson Members' communal way of life is the means by which they can freely exercise their s. 2a) *Charter* rights. As such, the impairment caused by the violation is not minimal in that it takes away the means by which the Wilson Members, and the colony itself, can exercise their right to freedom of religion and therefore violates their s. 2a) *Charter* right to freedom of religion.

32. These Interveners ask that they be permitted to make a joint oral argument of 15 minutes at the hearing of this appeal.

PART IV – COSTS

33. These Interveners do not seek costs and ask that no costs be ordered against them.

PART V – ORDER SOUGHT

34. These Interveners respectfully submit that when the nature and scope of the Wilson Members' 2a) rights are defined and put into context, that the photo license requirement cannot be saved under s. 1 of the *Charter* and as such, that this appeal be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22nd day of September 2008.



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ALBERTOS POLIZOGOPOULOS

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CONSTITUTION ACT, 1982¹⁰⁶

SCHEDULE B

CONSTITUTION ACT, 1982

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Rights and
freedoms in
Canada

1. 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.

Fundamental Freedoms

Fundamental
freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

¹⁰⁶ Enacted as Schedule B to the *Canada Act 1982*, (U.K.) 1982, c. 11, which came into force on April 17, 1982. The *Canada Act 1982*, other than Schedules A and B thereto, reads as follows:

An Act to give effect to a request by the Senate and House of Commons of Canada

Whereas Canada has requested and consented to the enactment of an Act of the Parliament of the United Kingdom to give effect to the provisions hereinafter set forth and the Senate and the House of Commons of Canada in Parliament assembled have submitted an address to Her Majesty requesting that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The *Constitution Act, 1982* set out in Schedule B to this Act is hereby enacted for and shall have the force of law in Canada and shall come into force as provided in that Act.

2. No Act of the Parliament of the United Kingdom passed after the *Constitution Act, 1982* comes into force shall extend to Canada as part of its law.

3. So far as it is not contained in Schedule B, the French version of this Act is set out in Schedule A to this Act and has the same authority in Canada as the English version thereof.

4. This Act may be cited as the *Canada Act 1982*.

Continuity of language instruction	(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.
Application where numbers warrant	<p>(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province</p> <p>(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and</p> <p>(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.</p>

Enforcement

Enforcement of guaranteed rights and freedoms	24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
Exclusion of evidence bringing administration of justice into disrepute	(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

Aboriginal rights and freedoms not affected by Charter	<p>25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including</p> <p>(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and</p> <p>(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.²⁴</p>
Other rights and freedoms not affected by Charter	26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.
Multicultural heritage	27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

⁽²⁴⁾ Paragraph 25(b) was repealed and re-enacted by the *Constitution Amendment Proclamation, 1983*. See SI/84-102.

Paragraph 25(b) as originally enacted read as follows:

"(b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement."

ANNEXE B
LOI CONSTITUTIONNELLE DE 1982

PARTIE I
CHARTRE CANADIENNE DES DROITS ET LIBERTÉS

Attendu que le Canada est fondé sur des principes qui reconnaissent la suprématie de Dieu et la primauté du droit :

Garantie des droits et libertés

1. La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

Droits et libertés
au Canada

Libertés fondamentales

2. Chacun a les libertés fondamentales suivantes :

Libertés
fondamentales

- a) liberté de conscience et de religion;
- b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
- c) liberté de réunion pacifique;
- d) liberté d'association.

Droits démocratiques

3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales.

Droits
démocratiques
des citoyens

4. (1) Le mandat maximal de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date fixée pour le retour des brefs relatifs aux élections générales correspondantes.⁹⁰

Mandat maximal
des assemblées

(2) Le mandat de la Chambre des communes ou celui d'une assemblée législative peut être prolongé respectivement par le Parlement ou par la législature en question au-delà de cinq ans en cas de guerre, d'invasion ou d'insurrection, réelles ou appréhendées, pourvu que cette prolongation ne fasse pas l'objet d'une opposition exprimée par les voix de plus du tiers des députés de la Chambre des communes ou de l'assemblée législative.⁹¹

Prolongations
spéciales

5. Le Parlement et les législatures tiennent une séance au moins une fois tous les douze mois.⁹²

Séance annuelle

⁹⁰ Voir l'article 50 de la *Loi constitutionnelle de 1867* et les notes relatives aux articles 85 et 88 de cette loi.

⁹¹ Remplace en partie la catégorie I de l'article 91 de la *Loi constitutionnelle de 1867*, qui a été abrogée comme l'indique le paragraphe 1(3) de l'annexe de la présente loi.

⁹² Voir les notes relatives aux articles 20, 86 et 88 de la *Loi constitutionnelle de 1867*.

b) comprend, lorsque le nombre de ces enfants le justifie, le droit de les faire instruire dans des établissements d'enseignement de la minorité linguistique financés sur les fonds publics.

Recours

24. (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste en égard aux circonstances.

Recours en cas d'atteinte aux droits et libertés

(2) Lorsque, dans une instance visée au paragraphe (1), le tribunal a conclu que des éléments de preuve ont été obtenus dans des conditions qui portent atteinte aux droits ou libertés garantis par la présente charte, ces éléments de preuve sont écartés s'il est établi, en égard aux circonstances, que leur utilisation est susceptible de déconsidérer l'administration de la justice.

Inaccessibilité d'éléments de preuve qui risquent de déconsidérer l'administration de la justice

Dispositions générales

25. Le fait que la présente charte garantit certains droits et libertés ne porte pas atteinte aux droits ou libertés — ancestraux, issus de traités ou autres — des peuples autochtones du Canada, notamment :

Maintien des droits et libertés des autochtones

a) aux droits ou libertés reconnus par la proclamation royale du 7 octobre 1763;

b) aux droits ou libertés existants issus d'accords sur des revendications territoriales ou ceux susceptibles d'être ainsi acquis.⁸⁴

26. Le fait que la présente charte garantit certains droits et libertés ne constitue pas une négation des autres droits ou libertés qui existent au Canada.

Maintien des autres droits et libertés

27. Toute interprétation de la présente charte doit concorder avec l'objectif de promouvoir le maintien et la valorisation du patrimoine multiculturel des Canadiens.

Maintien du patrimoine culturel

28. Indépendamment des autres dispositions de la présente charte, les droits et libertés qui y sont mentionnés sont garantis également aux personnes des deux sexes.

Égalité de genre et des droits pour les deux sexes

29. Les dispositions de la présente charte ne portent pas atteinte aux droits ou privilèges garantis en vertu de la Constitution du Canada concernant les écoles séparées et autres écoles confessionnelles.⁸⁵

Maintien des droits relatifs à certaines écoles

30. Dans la présente charte, les dispositions qui visent les provinces, leur législature ou leur assemblée législative visent également le territoire du Yukon, les territoires du Nord-Ouest ou leurs autorités législatives compétentes.

Application aux territoires

31. La présente charte n'élargit pas les compétences législatives de quelque organisme ou autorité que ce soit.

Non-dépassement des compétences législatives

⁸⁴ L'alinéa 25b) a été abrogé et remplacé aux termes de la *Proclamation de 1983 modifiant la Constitution* (TR/84-102). Texte original de l'alinéa 25b) :

b) aux droits ou libertés acquis par règlement de revendications territoriales.

⁸⁵ Voir l'article 93 de la *Loi constitutionnelle de 1867* et la note relative à cet article.

Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11

Rome, 4.XI.1950

The text of the Convention had been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, is repealed and Protocol No. 10 (ETS No. 146) has lost its purpose.

Chart of Declarations under former Articles 25 and 46 of the ECHR

Protocol
No. 4 | No. 6 | No. 7
No. 12 | No. 13 | No. 14
France

Non-official translations are available here :
European Court of Human Rights - Basic Texts

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

Article 1 - Obligation to respect human rights¹

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6 – Right to a fair trial¹

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - b. to have adequate time and facilities for the preparation of his defence;
 - c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 – No punishment without law¹

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8 – Right to respect for private and family life¹

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9 – Freedom of thought, conscience and religion¹

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in

community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 – Freedom of expression¹

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 – Freedom of assembly and association¹

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12 – Right to marry¹

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13 – Right to an effective remedy¹

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 – Prohibition of discrimination¹

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15 – Derogation in time of emergency¹

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.



The United Nations INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed, if, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such