

# CHARTER OF RIGHTS AND FREEDOMS

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## INTRODUCTION

The [Canadian Charter of Rights and Freedoms](#) influences the administration of labour relations by defining individual and group rights and obligations. The Charter is a constitutional document that places limits on legislative, executive and judicial authority to affect certain listed individual and collective rights. It can be used to attack direct action by government entities like boards, departments, or the police. It can be used to attack legislation legitimizing private action that might otherwise be unlawful, or to attack legislation prohibiting otherwise lawful conduct. Its equality rights provisions are used to redress unequal application of the laws. The Charter does **not**, however, apply to purely private matters: if neither a government entity nor legislation is involved in a problem, the Charter cannot be invoked.

The most important elements of the Charter include:

- the recognition of the “fundamental freedoms” of conscience and religion, opinion and expression, assembly and association;
- a list of legal rights governing search and seizure, arrest, criminal procedure, detention and punishment;
- the right to equal protection and benefit of the law among individuals;
- the important collective rights of minority language education and denominational schools; and
- a general subjection of Charter rights to limitations that are “demonstrably justifiable in a free and democratic society.”

Courts of competent jurisdiction are given power to fashion remedies for violations of Charter rights, while legislation contrary to the Charter is deemed inoperative to the extent of the conflict.

In an officer’s investigation in which a Charter issue is raised, it should be discussed with the Director of Settlement and the Chair or Solicitor.

Section 25 of the [Judicature Act](#) entitles the Attorneys General for Alberta and Canada 14 days notice of hearing on issues involving the Charter of Rights and Freedoms. The Board expects the party raising the Charter question to immediately serve notice of the constitutional question to the Attorneys General. The Board’s procedure is to adjourn or schedule the matter to allow sufficient time for this notice so they can attend and make representations. If a Charter issue arises in the context of an urgent matter, the Board may wish to make an interim order pending notice to the Attorneys General.

The Supreme Court has held that labour relations boards have jurisdiction to apply the Charter. The Board does not have the authority to strike down laws but it may choose not to apply Legislation it finds violates the Charter. After the Board schedules a case involving the Charter, the presiding Chair or Vice-Chair decides the timing and manner of hearing the Charter issue itself.

The text of the Charter is printed as an appendix to recent texts on constitutional law and in the CCH *Canadian Labour Law Reporter*, vol. 1, para. 5001 or online at <http://laws.justice.gc.ca/en/charter/>. The leading cases to date on the interpretation of the Charter in the context of labour relations law include:

- *RDSWU Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.* [2002] SCJ No. 7. (secondary picketing).
- *Brewer's Distributors Ltd. et al.* [2000] Alta.L.R.B.R. 266 and 444, affd [2001] Alta.L.R.B.R. 31 (Q.B.). (prohibition on picketing of allied employer).
- *Lavigne v. OPSEU* (1991) 91 C.L.L.C. 14,029 (S.C.C.) (use of union dues for non-collective bargaining purposes)
- *Reference re Public Service Employee Relations Act, etc.* (1987) 38 D.L.R. (4th) 161, (S.C.C.) (validity of strike prohibitions in "essential services")
- *RWDSU, Local 580 v. Dolphin Delivery Ltd.* (1986) 33 D.L.R. (4th) 174 (S.C.C.) (validity of prohibitions on secondary picketing)
- *PSAC v. The Queen* (1987) 38 D.L.R. (4th) 249 (S.C.C.) (legislation imposing compulsory extension of collective agreement)
- *Gov't of Saskatchewan v. RWDSU Local 544 et al.* (1987) 38 D.L.R. (4th) 277 (S.C.C.) (temporary strike prohibition)
- *Re Service Employees Int'l Union v. Broadway Manor Nursing Home* (1983) 44 O.R. (2d) 392, 4 D.L.R. (4th) 321 (Ont. Div. Ct.) ("wage-freeze" legislation)
- *Cuddy Chicks Ltd. v. Ontario Labour Relations Board et al.* (1989) 62 D.L.R. (4th) 125 (Ont. C.A.) (competence of labour relations board to determine constitutional validity of provisions of its own statute)
- *UFCW 1518 v. KMart Canada Ltd.* [1999] 2 SCR 1083 (leafleting)
- *Dunmore v. Ontario (Attorney General)* [2002] C.C.S. No. 1985 (exclusion of agricultural workers)