

1 what is this book, and who is it for?

This guide outlines some basic ideas and concepts concerning civil liberties for students. **But**, it can be used by anyone who is interested in civil liberties, including parents, guardians, teachers and school staff. Knowledge *is* power: if you know what rights are and how they work, you can better understand and protect your rights, and protect and respect the rights of others.

2 so, what are civil liberties?

Civil liberties are a set of values concerning individual freedom and the limits of government intervention in our lives. They define the importance of liberty. In a broader sense, you could also think of them as saying something about how we should treat each other (with respect and dignity).

Some people think of civil liberties and rights as the same thing. For the most part, this is not a problem; however, there is one small difference. Civil liberties are rights that apply to individuals. For example, I have the right to a lawyer upon arrest; or, I have the right to protest my beliefs. Rights can, however, also apply to groups. Group rights grant individuals within a group special protection under the law.

For example, in Canada, society protects minority language rights, such as the right of French children to receive an education in French.

There are many examples of civil liberties in Canada. Some might apply only to citizens of Canada, such as voting rights, while others apply to everyone regardless of citizenship. Key civil liberties include:

- privacy (the right not to be snooped on by the government)
- access to information (the right to know what information government possesses)
- freedom of speech (the right to express yourself)
- freedom of association (the right to hang out with others)
- legal rights (rights upon arrest, during a trial and if convicted)
- political rights (the right to vote and to hold free elections).

3 where do rights come from?

Civil rights in Canada come from three sources:

1. Canada's constitution: the *Charter of Rights and Freedoms*, and the *British North America Act of 1867* (which brought over all British laws, including all of the rights that British citizens enjoyed at that time, and sets out the division of powers between the federal and provincial governments). The constitution gives people rights that can change governments' laws and policy.

2. Federal and provincial legislation that sets out special equality protections, such as provincial human rights codes, the *Canadian Human Rights Act*, and various international rights agreements that Canada has enacted into law.

For example, the B.C. *Human Rights Code* protects individuals in B.C. against discrimination in areas such housing, employment and services that are customarily available to the public (libraries, public facilities, etc.).*

3. The common law, which is a body of legal decisions that, over time, has come to help us define and to understand what our rights are.

While all of these sources are extremely important, we will be working mainly with the *Charter of Rights and Freedoms*. We have provided you with an Internet address in the resource section of this guide where you can locate an on-line version of the *Charter* (most libraries also have copies of the *Charter*). We suggest that before you read further, you get a copy of the *Charter* to help you with the case studies.

* **NOTE** The *Human Rights Code* has something built into it called “enumerated grounds”. These are groups that are specifically protected against certain forms of discrimination listed in the Code. Some examples of enumerated grounds include: race/ethnicity, gender, physical or mental disability, marital status and sexual orientation. To make a complaint of discrimination against someone under the Code, the discrimination has to have occurred because you belong to one of the groups listed.

Of all the sources of rights in Canada, perhaps the most well-known and widely used is the *Charter*. It is hard to believe, but it hasn't been around very long (only since 1982). The *Charter* contains various groups of rights and freedoms*. These include:

- fundamental freedoms (section 2)
- voting and election rights (sections 3 to 5)
- mobility rights, the right to move around (section 6)
- legal rights (sections 7-14)
- equality rights (sections 15 and 28)
- language rights (sections 16 to 22)
- minority language educational rights (section 23).

We will look at some of these groups of rights in the following sections.

Does the *Charter* apply to students attending schools? If you have your *Charter* handy, look up section 32 (or just keep reading):

Section 32 states that the *Charter* applies to dealings between an individual or group and the federal, provincial and municipal government and their designated agencies or agents. So, you can invoke your *Charter* rights when you deal with the police, but you can't use a *Charter* argument against your mother (well, you can try, but you won't win in court).

* **NOTE** While the rights in the *Charter* are guaranteed, section 1 of the *Charter* allows governments to limit these rights if they do so in a way that can be reasonably justified.

* case study

bad bob's locker

facts: Bob is a troublemaker. He is always being rude to teachers and acting tough around school. Many of the students and teachers think he might be a drug dealer, although no one is sure. Every other week Vice-Principal Koffi checks Bob's locker and goes through his lunch bag. She never finds any drugs, but she keeps checking.

1. Would the *Charter* apply in this case? Why or why not?
2. Are civil liberties issues involved here?
3. If Bob ended up going to court over the continued searches and argued that his *Charter* rights were being violated, what might the judge say?

Usually with case studies we will give you some ideas in the back of this book. In this case, we'll spare you the agony of waiting and give you the answer to the first question: Yes, the *Charter* does apply because, in a case called *R. v. M. (M.R.)* the Supreme Court of Canada decided that, for the purpose of applying the *Charter*, "schools constitute a part of government". For more info on this case, you can look it up on the Supreme Court web site listed in the back of this booklet.

In British Columbia, the *School Act* is a provincial law that sets out the legal powers and responsibilities of teachers, school administrators and school boards. For example, this law deals with student discipline. In terms of understanding how this Act works, you need to be familiar with a little Latin—*in loco parentis*. This phrase roughly means that during school hours the school acts as your parents or guardians. Therefore, school officials have the right, within reason and within the guidelines of the Act, to discipline you if you are not behaving appropriately in class, or to demand that you hand in your homework (this may seem unfair, but think of it as practise for your first job).

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FOIPPA)

This provincial Act protects both your right to access provincial government information and your privacy. For example, if you think your privacy has been violated by a government agency, you can file a complaint to the Information and Privacy Commissioner's office. There are also federal laws called the *Access to Information Act* and the *Privacy Act*. In addition, there are both federal and provincial laws to protect the privacy of your personal information in the private sector.

OMBUDS ACT

If you have been treated unfairly by a state agency, including a school board, you can file a complaint with the provincial Ombuds office.

THE YOUTH CRIMINAL JUSTICE ACT

This Act contains everything you ever wanted to know about how young people are to be treated if they break the law. One thing that the act does is to provide some extra protections for young offenders, aside from the legal rights found in the *Charter*. However, if you're thinking about embarking on a teen-hood of crime, you may want to think again. As you will discover throughout this guide, in many ways youth have fewer rights than adults (for example, see the section on search and seizure in schools). That's another reason why it's important to know your rights and to protect them when challenged!