

Cases Where Individual Freedom or Rights Have Been Limited

Choose a Charter case below and identify if any freedoms or rights have been discriminated against. Your answer should be done using a proper paragraph.

Category	4	3	2	1
Quality of Information X2	Information clearly relates to the main topic. It includes several supporting details and/or examples.	Information clearly relates to the main topic. It provides 1-2 supporting details and/or examples.	Information clearly relates to the main topic. No details and/or examples are given.	Information has little or nothing to do with the main topic.
Organization	Information is very organized with well-constructed paragraphs and subheadings.	Information is organized with well-constructed paragraphs.	Information is organized, but paragraphs are not well-constructed.	The information appears to be disorganized.

Rights of Persons with Disabilities

Section 15 of the *Canadian Charter of Rights and Freedoms* states that all Canadians must be treated equally, without discrimination and regardless of things such as age, sex, or religion. Included in the list are mental or physical disabilities. However, before the *Charter* came into effect, people with mental or physical disabilities sometimes had certain rights violated because of their disabilities.

An example of this occurred in Alberta between 1928 and 1972: as part of a government eugenics program, almost 3000 people were sterilized. **Eugenics** means “well-born” in Greek and was an idea developed by Francis Galton (a cousin of Charles Darwin). It was a theory that advocated for the advancement of humanity by preventing certain people from reproducing. It was hoped that if people with the undesirable characteristics were unable to have children, these traits would eventually disappear from the human race. This idea was put into practice in many western nations, including Sweden, Germany, and the United States.

In Alberta, the eugenics program began in 1928. People appeared before a Eugenics Board that would then decide upon whether a person would be sterilized. People were sterilized if they were deemed insane or feeble-minded.

The eugenics law was repealed in 1972. In 1998, eugenics gained attention as Leilani Muir took the Alberta government to court over her forced sterilization in 1959. In 1955, Muir had been placed in the Michener Centre in Red Deer, Alberta's Provincial Training School for Mental Defectives. There she was given an IQ test and a short interview. Based on this information, the Eugenics Board declared her a "moron" and moved that she be sterilized. Muir won her case and a \$740,000 award. Her case opened the door for other sterilization victims to take the government to court.

What rights or freedoms are being violated/limited?

Results of challenge:

Children's Rights

Article 37 of the *Convention on the Rights of the Child*, ratified by Canada in 1991, states that countries "shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."

From 1867 to 1976, capital punishment was part of the Criminal Code of Canada. Between these years, 705 people were executed. They were punished for murder, treason, and rape. One of these 705 was Robert Henderson who was put to death on June 23, 1910 for the murder of Margaret McPherson. At the time of his death, Henderson was 17. Under current international law, this would be seen as an infringement on Henderson's rights due to the fact that he was not an adult at the time of his death. This is a right held specifically by children. By ratifying and becoming party to the principles outlined by the *Convention on the Rights of the Child*, it would now be illegal for Canada to reinstate the death penalty for persons under the age of 18.

What rights or freedoms are being violated/limited?

Results of challenge:

Workers' Rights

The principles established by the *Canadian Charter of Rights and Freedoms* are particularly important when applied to the workplace. These provisions ensure that people are treated equitably and fairly and are hired and promoted based on merit and not of race, religion, or any other superficial classification. If people are discriminated against on the basis of these criteria, they can lodge complaints with human rights commissions or try the case in court.

Workers' rights include freedom from discrimination based on sex. One example of this right's being violated in Canada occurred in 1982 when three Safeway employees, Susan Brooks, Patricia Allen, and Patricia Dixon, became pregnant. While Safeway's disability plan called for people to be given up to 26 weeks paid leave for health reasons, pregnancy was not considered a valid reason. The three women took Safeway to court over this omission. In 1989, the case made its way to the Supreme Court of Canada. The Supreme Court found in favour of the three employees. The court ruled that: "Pregnancy, while it is not properly characterized as a sickness or an accident, is a valid health-related reason, in our society, for absence from work and as such should not have been excluded from the respondent's (Safeway's) plan." The court also ruled that: "Discrimination on the basis of pregnancy is discrimination on the basis of sex," as women are the only sex which can become pregnant. As sex is one of the criteria stated in Article 15 of the *Canadian Charter of Rights and Freedoms*, Safeway's disability plan was in violation of the *Charter* and as such, women's work rights were being limited.

What rights or freedoms are being violated/limited?

Results of challenge:

Aboriginal Peoples' Rights

One of the basic rights established by both the *Universal Declaration of Human Rights* and the *Canadian Charter of Rights and Freedoms* is the right to vote (also called **suffrage**). Voting is one of the basic rights and responsibilities of all Canadian citizens. However, in Canada, this was not always the case. Canada has slowly allowed more and more people to vote. In 1916, women were awarded suffrage and in 1948, Asians were granted the right to vote. Aboriginals are the last group to be given suffrage; some were unable to vote until 1960. Prior to 1960, only those Aboriginals who became **enfranchised** (the act of stripping First Nations of their identity and status) were allowed the right to vote in Canadian General Elections. After this date, however, First Nations people gained the right to vote in Canadian General Elections without giving up their status. Aboriginals were bound by the rules established by a government they were not permitted to help choose. The inability to choose the government meant that Aboriginals were not permitted to participate actively in Canadian society. Thus, not being able to vote was a serious limitation on the rights of Aboriginal people.

What rights or freedoms are being violated/limited?

Results of challenge:

Language Rights

When Alberta became a province in 1905, English was the only official language. Franco-Albertans have had to work hard to maintain their language, even after French became one of Canada's two official languages.

In 1969, the *Official Languages Act* was passed by the federal government. It stated that French and English were the two Canadian official languages. This gave a sense of hope to Francophone communities living in Anglophone milieus. However, things in Alberta did not change drastically. As of 1968, only 50 percent of the curriculum in Alberta schools could be taught in French. In 1976, this number increased to 80 percent; however, schooling conducted completely in French was not permitted. In 1982, the Canadian Constitution was repatriated and every child in Canada was granted the right to education in either French or English. In 1983, three Francophone parents took advantage of the law to create their own school, l'école Georges-et-Julia Bugnet. The school was forced to close down within nine months because of lack of funds. Jean-Claude Mahé, Angeline Martel, and Paul Dubé took their case to the Supreme Court of Canada. The verdict was that Franco-Albertans should be granted the right to have their own school councils as well as equal representation on schools boards. In 1990, the Alberta government finally recognized and decided to support exclusive French education. By 1999, five regions in Alberta had their own Francophone school boards.

Franco-Albertans have also had to fight to ensure that minority language rights are guaranteed in the Alberta Legislature. The Piquette Affair occurred in 1987 when Leo Piquette, a New Democrat MLA from Lac La Biche, began speaking in French in the Alberta Legislative Assembly. The Speaker told him not to speak in French, and Piquette responded by saying that he could conduct his business in either official language. After investigating the affair, the Speaker of the House of Commons said that using French was out of order and that Piquette should apologize. Piquette eventually said that he did not mean to be disrespectful. On November 27, 1987, the committee investigating the affair gave their recommendations: any language could be used in the Alberta Legislative Assembly as long as an English translation was provided, and, in the case of another language's being used during Oral Question Period, two hours' notice

What rights or freedoms are being violated/limited?

Results of challenge:

Gender Rights

Women have not always enjoyed the equality they have today. Only male nouns and pronouns were used throughout the 1867 *British North America Act*. In 1916, Manitoba was the first province in Canada to give women the right to vote. Later that year, the *Alberta Equal Suffrage Act* was passed. Women in Alberta were granted “absolute equality” with men in provincial, municipal, and school affairs. The *Canada Elections Act* of 1918 granted women in Canada the right to vote.

Despite this, however, women were still not considered to be “persons” and were therefore not afforded all the rights men received under the *British North America Act*. Because of their status as “non-persons”, women could not become Canadian senators. A group of five Albertan women, known as the Famous 5, appealed to the Supreme Court of Canada to clarify the definition of “persons” under the *British North America Act*. The Supreme Court of Canada unanimously decided, in 1928, that women were not “persons” and therefore could not become Canadian senators. The Famous 5 did not give up easily, and, with the support of Prime Minister Mackenzie King, they took their case to the Judicial Committee of the British Privy Council. On October 18, 1929, the Privy Council officially declared women to be persons and, therefore, eligible for Senate appointments.

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