



NO FORCED UNION MEMBERSHIP OR DUES FOR POLITICS:

IT'S A HUMAN RIGHT

THE EUROPEAN EXPERIENCE

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NOTE

This paper is a draft prepared in advance of a multi-province tour and meetings with Canadians to obtain a deeper understanding of the Canadian situation and how best explain the European and Canadian experience and current status. This paper will be updated after the tour. Further, English is not the first language of the author.



A. Introduction

It is not often that it is safe to say that the law in a certain area is settled. The main rule is: that there are exceptions to the main rule.

The purpose of this paper is to review two areas of labour law where it is safe to say that the legal position is crystal clear – at least in Europe that is.

The areas are forced membership and the use of union dues for political and other purposes not directly related to the workplace needs of employees covered by a collective agreement.

In the twenty-seven member countries of the European Union¹ and the forty-seven member countries of the larger Council of Europe² it is now an illegal violation of human rights for any statutory law or any collective agreement to require an employee to also become and remain a member in good standing of a union as a condition of employment. This was not always the case in a number of countries where closed shops were a fact in the world of labour relations.

Further, unions spending dues on political activities, social causes or other purposes unrelated to the administration of collective bargaining must only use monies obtained from the dues of voluntary union members. Dues imposed by collective agreement on non-members (as with Rand Formula workplaces in Canada) are very rare in Europe. There simply is no significant tradition of seeking collective agreement provisions requiring deduction of dues from non-members of a union. Use of the dues of non-members for political and other purposes is an illegal violation of human rights.

In these countries the traditional practice is that the members pay dues which can and are used for all purposes.

¹ See complete list as of September 1, 2007 in Appendix A.

² See complete list as of September 1, 2007 in Appendix B.



It was judgments delivered by the European Court of Human Rights, in 2006 and 2007 respectively, interpreting the European Convention on Human Rights³ that established there employee protections against union power. The history of key judgments stretches between 1981 and 2007.

As a result of 2006 European Court of Human Rights judgment in *Sørensen and Rasmussen v. Denmark*⁴, and related prior judgments, forced union membership, whether through post-entry⁵ as well as pre-entry closed shops⁶, is banned in all forty-seven countries comprising the members of the Council of Europe as of 2007.

All union dues, imposed on employees who are covered by a collective agreement but who are not also members of the union, may not be used for political and other purposes not directly related to collective bargaining. In fact, the mere suspicion of such dues going to political purposes was held to be a violation of human rights by the European Court of Human Rights in 2007 – *Evaldsson and Others v. Sweden*⁷.

If a union does not, or cannot transparently account to unionized non-members how their dues are used then the dues provision in their collective agreement would be struck down. Accounting which shows that union dues are levied for political and other purposes would prove to be a violation of the European Convention on Human Rights.

It is important to note here that there are not only important differences between the legal systems of Canada and the member nations of the Council of Europe, but there are important differences in terminology. As a result, statistics are not readily comparable. They are, to coin a phrase: apples and pears – or as Canadians might say – apples and oranges.

In Europe, the term unionized means members of the union. Thus, the term does not include employees covered by a collective agreement who have not also joined the union. In fact, the “not unionized” numbers in

³ See Appendix C.

⁴ *Sørensen and Rasmussen v. Denmark*, judgment on 11 January 2006, (Appl. Nos. 52562/99 and 52620/99)

⁵ Pre-entry closed-shops as defined by the European Court of Human Rights in *Sørensen and Rasmussen*, para. 34: a clause in a collective agreement creating an obligation on the employee to join a trade union at the time of being hired.

⁶ Post-entry closed shops as defined by the European Court of Human Rights in *Young*: a clause in a collective agreement creating an obligation on the employee to join a trade union after they have been hired but at the point in time the closed shop clause comes into effect.

⁷ *Evaldsson and Others v. Sweden* (Application no. 75252/01). Note, the applicant employees were represented by Percy Bratt and Jan Södergren – the latter being the author of this paper. The case was brought to the Swedish Labour Court by the head negotiator at the Swedish Construction Employers Association: Gustav Herrlin, whom also assisted before the European Court of Human Rights.



Europe, typically include employees covered by a collective agreement who have not joined (and rarely pay union dues) and those not covered by any collective agreement at their place of work. In Canada, unionized tends to refer to both union members and non-members – all employees covered by a specific collective agreement.

These new employee freedoms from union power were not the result of the political will in most member nations. Instead, judgments by two European bodies, namely the European Social Committee and the European Court of Human Rights – ruled against the political will in at least a few countries.

This paper will begin by looking in overview at the relevant European bodies; how they do, and do not, interact, and where relevant - look in part at how they were created and how they developed through to 2007. For outsiders it can be a daunting task and candidly, for many operating in Europe it remains somewhat confusing to try to sort out the different European bodies, how they operate and interface with one another.

Sweden, by no means, is the leading figure in these developments but it will serve as a useful example for this paper, in part because of the *Evaldsson*⁸ judgment.

The paper will also review key aspects of the law in Canada on these two topics, by attempting to look at the Canadian legal position in the European context.

B. The European Bodies

While speaking of Europe, people tend to think of the European Union (EU) and its 27 members. The “democratic” Europe however consists of 47 members. They are sovereign nations with their own legal systems. They are, however, also members of the so called Council of Europe (COE). They are all bound by the European Convention of Human Rights (the *Convention*), the European Social Charter (Social Charter) and other international treaties. The *Convention* is supervised by the European Court of Human Rights and the Social Charter by the European Social Committee. Furthermore, the 27 members of the EU are also governed by the legislation flowing from the institutions of the EU. There is a significant level of complexity, which is beyond the scope of this paper, in setting out the bodies and processes of the EU and COE with respect to their respective legislative processes. This paper will not cover this topic as it is not particularly relevant to the purpose of this paper.



What today is known as the EU was started by six countries in 1951 with the creation of the European Coal and Steel Community. Its essential purpose was the creation of a single market for coal and steel for the six member countries. It was created in the wake of WWII based on the presumption: If we trade coal and steel, we will not go to war against one another.

This was followed in 1957 by the creation of European Economic Community (EEC) through the famous Treaty of Rome. While still in force today, this Treaty has been altered several times. The purpose was to create a single common market in Europe, but the founders were also – as is held in the preamble – “determined to lay the foundation of an ever closer union among the peoples of Europe”.

EU has its own legislative bodies that have jurisdiction, albeit limited, to pass laws binding on all member countries. EU law takes supremacy over a member country’s statutory and even constitutional law. The EU also has its own court; the powerful European Court of Justice (ECJ), situated in Luxembourg. This court is often confused with the European Court of Human Rights, situated in Strasbourg, France with which this paper is primarily focused on.

The primary focus of EU law is ensuring trans-border matters of trade between member countries. This truth, however, comes with important qualifications. EU law deals with the freedom of movement for goods and services, persons (including workers) capital and the freedom of establishment⁹. The EU has no labour code. It has, however, passed some laws affecting the employment market, but they are not relevant to this paper.

The EU is not concerned with whether or not member states allow closed shops. But if such a system would be imposed only on foreign workers, it would constitute an obstacle to the free movement of workers which must be objectively justified or be removed. It would most certainly constitute a violation of the provisions dealing with the free movement of workers and the general prohibition of discrimination.

The EU is not primarily concerned with human rights. But within its limited jurisdiction, the European *Convention* on Human Rights is considered a general principle of law. Although the EU has its own legislative power including the ability to take measures which could violate human rights – the institutions of the EU may

⁸ op. cit.

⁹ That is the right to start and pursue business in another member country on the same terms as the companies situated in the host country.



not stand as a defending party before the European Court of Human Rights. Such issues could only be brought before its own court, the European Court of Justice, which might well look to precedents of the European Court of Human Rights in adjudicating an alleged human rights violation.

Suffice it to say that labour law is one sensitive area which has been left for the member states to decide, although there are exceptions.

One principle dispute within the EU today, which affects labour conditions, is the fear of older member nations regarding competition less expensive labour primarily from the newly democratized states of the former Eastern Bloc - the formerly communist countries that have become members of the EU. There is a fear of so called "social dumping". This paper will not explore this topic any further.

The Council of Europe, on the other hand, was created independently, at least formally, of the European Union, but approximately at the same time and in the same era.

The COE was formed in 1949, also in the wake of WWII. It was primarily concerned with the collective guarantee of human rights. The focus of the COE, which was not the initial primary focus of the EU, was human and social right rather than trade. After intense discussions and surveys, the COE adopted, in August 1950, a universal declaration of Human Rights and the establishment of a commission and a court to supervise the adherence. Twenty-two countries¹⁰ originally signed the Declaration in Rome on November 4, 1950. Today, forty-seven member countries have ratified this Declaration – the very successful European Convention on Human Rights and Fundamental Freedoms, which is its full name.

What was controversial at the time was that the system provided for individual complaints in addition to inter-country complaints. Many nations had a hard time picturing their own nationals suing sovereign nations before an international tribunal. The right of individual petitions became optional which enabled the *Convention* to be signed in Rome on November 4, 1950. It entered into force on September 3, 1953.

Today all the forty-seven members have accepted the individual petitions and those have taken over completely. States do not simply sue each other anymore in Europe.

¹⁰ Austria, Belgium, Cyprus, Denmark, the Federal Republic of Germany, France, Greece (in 1969 Greece resigned, but reentered in 1974), Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey and the United Kingdom. Finland has become a member of the Council of Europe on 5 May 1989.



Today, the former Commission, which was set up originally to conduct preliminary investigations and issue reports over alleged violations of the rights in the *Convention*, no longer exists. The cases are now decided by chambers within the European Court of Human Rights, with the possibility of having a “Grand Chamber” review or take over a case – if it is regarded as a very important case (for example *Sørensen*¹¹).

The Court decides whether the circumstances submitted by an applicant give rise to a violation of one or several rights in the *Convention*, for instance the right to freedom of assembly, association and to form a trade union in Article 11. The *Convention* rights also apply horizontally. The government of a country is under an obligation to protect individuals from having their rights violated by others including private individuals. The *Convention* thus does not only apply between the state or its organs and, the individual. This horizontal application flows from a doctrine of positive obligation. The member country may have an obligation to protect for example media from publishing so called paparazzi pictures, which the Court actually ruled in the famous case concerning Princess Caroline of Monaco¹². She had sought a prohibition of publication in German courts after years of pursuit by paparazzi and publications of her in every thinkable every day situations. The Court ruled that the German courts, in denying such prohibitions in certain situations, had failed in their positive obligation to protect the Princess’ right to private life or privacy¹³. Likewise, the states have the positive obligation to protect unions from violating non member’s negative right of association as in *Sørensen* and non-member’s right to peaceful enjoyment of possessions (property rights) as in *Evaldsson*. The protection may come from legislation or other measures or from national courts applying the *Convention* in the domestic system.

While the Canadian *Charter* does not formally apply horizontally, there is no question that *Charter* rulings trickle down through lower courts, arbitrators, legislators and the general perspective of citizens as to what they think their rights are and are not.

The European Court of Human Rights is now under the threat of collapsing under its own success. It has over one hundred thousand cases on its docket. And this work load is growing - exponentially.

¹¹ Ibid

¹² Von Hannover v. Germany, judgment on 24 June 2004, Appl. No. 59320/00.

¹³ Stipulated in Article 8 of the Convention.



The following may be said about the effects of a judgment of the Court. The immediate legal effect of the Court finding a violation does principally just affect the defending country. But of course a precedent is created. It is explicitly or implicitly held in national legal sources – incorporating the *Convention* - that the Court's rulings shall be followed¹⁴. The judgment is first declaratory, but damages may be imposed as well as legal costs awarded. This is often done.

A commission of experts is set out to supervise adherence to the judgment and to see that damages are paid, etc. The commission often recommends changes to be made to the defendant nation's laws, when appropriate. It was long thought that the Court had no jurisdiction to order a defending national government to change its laws, but after a resolution in 2004 by the Committee of Ministers that is possible today – but it is rare – at least so far.

There is another important body in the COE. That is the Social Committee set out to watch over the so called Social Charter¹⁵. This Charter contains a rule – Article 5 – which guarantees the right to organize employee organizations including unions. This was found quite early on in the history of the Committee, to include also the negative right of association – that is the right not to be forced to join.

The procedure before the Social Committee is two-fold. It consists of a regular reporting procedure. Each state comes before the Committee and they normally say that everything is in perfect order. But also a number of specified NGO's and organizations may attend the hearing, point out problems, etc.

Those organizations may also issue collective complaints. In short, the complaints may result in criticism from the Social Committee which in its turn may result in a resolution by the Committee of Ministers of the COE with recommendations to the country to alter the law or take appropriate measure in order to bring the domestic system in compliance with the Social Charter. Both sets of procedures are sort of *actio popularis*. No individual victims appear before this body.

These two bodies have played a tremendous role – as we will see later on – in limiting union coercive measures for the benefit of personal autonomy. Without them, closed shops and union dues from non-members for political purposes would still be allowed, at least in Scandinavia.

¹⁴ And it is of course also the intention of the Convention. Most countries have by now also incorporated the Convention into their legal systems, making it possible for individuals to invoke it before national courts.

¹⁵ See Appendix D



C. Sweden

Sweden, founded in 1523, is a small country of nine million people among the 800 hundred million in the forty-seven member countries of the Council of Europe. Certainly, Sweden has played a role in the area of forced membership and political use of the union dues of unionized employees who are not members of the union at their workplace.

Sweden, contrary to its general view of itself and its lofty world-wide reputation (at least amongst observers who subscribe to socialism as a good form of government), was in fact one of the “bad guys” of Europe with respect to the human rights of employees in their dealings with unions.

A brief overview of the Swedish legal framework and level of unionization is relevant to the *Evaldsson* case which now affects all forty-seven member countries.

1. “Rate of Unionization”

The rate of unionization has traditionally been very high in Sweden and Scandinavia. Europeans refer to “organization degree”; while Statistics Canada uses the term “coverage” and Americans often use “union density”.

Factors such as centralization, inter-sectoral and sectoral structures coupled with the “normative effect” (see normative effects section starting on page 11 for an explanation) in some member countries of the COE, mean that collective agreements can cover all employers in the sector or even a whole country, even where workers are not members of trade unions and employers are not members of employer organizations and not parties to a collective agreement.

Coverage in the COE ranges from 90 - 100% in Austria and Belgium, to 80-90% in the Nordic countries, 67% in Germany, to 36% in the UK.



Of the countries that recognize independent unions and free collective bargaining, Sweden, Finland and Denmark have some of the highest levels of union coverage or density degree in the world. In 2005, all three had a unionization rate in excess of 75 % with Sweden over 80%.

The worldwide range drops down quite drastically to France with less than 10% but expert observers say that in France, bargaining for that 10% impacts the terms and conditions of employment for 90% of France's workers.

There is however no doubt that the organization degree, in Scandinavia generally and in Sweden in particular, is exceptionally high. The fact is that historically, Swedish people simply join unions. There is a lawyer's union, there are white collar executives that are members of unions, let alone the traditional sectors that unions tend to focus on in most major industrialized nations.

Within Sweden, the organization degree for white collar workers has been steady for years at 78% with the blue collar rate even higher – over 80 %. The difference between the two is not significant.

A similar comparison between blue and white collar comparison in Canadian statistics was not readily available, but a significant difference is noted between the public versus private sector experience in Canada where the public sector has in excess of 70% and the private sector under 20% and falling. In the US the private sector in 2006 stood at 7.4%.

In 2000 accurate statistics in Sweden showed the following organization degrees:

Female blue collar workers	87.2%
Female white collar workers	83.5%
Male blue collar workers	82.6%
Male white collar workers	75.2%

2. Union Membership Declining

However, in Sweden, unions have lately had serious problems with younger workers. In 1994 unions represented 77% of workers under the age of 25. Today it is 52% and falling. The decrease is



explained by the types of jobs this age group tends to hold: temporary jobs and sectors such as IT with little or no tradition of unionization. This age group also sees unions as unfashionable.

Further, it appears things are starting to shift overall in Sweden. Recent reports indicate that the Swedish Trade Union Confederation, the head organization of unions organizing traditional workers, has lost 97,000 members. The Swedish Confederation of Professional Employees largely representing white collar workers has lost 40,000 members so far in 2007 alone.

The decrease is explained in part by certain measures taken by the new Conservative government, which came into office in September 2006. The unions administer the unemployment agencies, but it is not necessary to be a member of the union in order to have unemployment insurance. Higher unemployment insurance premiums paid by individual workers is likely leading some to reduce their costs of employment by resigning union membership.

There have also been significant declines in Denmark. In 2005, it was reported that the Danish Trade Union Confederation had lost 140,000 members during the prior ten years. With the *Sørensen* judgment ending the closed shop, it will be very interesting to see if Denmark twenty years from now has an experience even somewhat similar to the UK. It has been about twenty-five years since the first legislative action by Margret Thatcher and her Conservative government in 1981 to begin giving unions back to their members by starting to dismantle the coercive power of the closed shop. Subsequent legislative actions, the 1981 *Young*¹⁶ ruling of the European Court of Human Rights against post-entry closed shops in the UK have corresponded to a massive decline in the number of UK union members from 13,000,000 in 1979 to just over 6,000,000 in 2005. This is even more significant given the overall growth of the British workforce over the same period.

Despite these decreases, in Scandinavia, unions still have a very significant role in our cultures and a more positive image, than for example, unions have in Britain, United States and even Canada. This will likely mean a different experience with the end of the closed shop in Scandinavia in terms of the rate of decline.

It is my hypothesis that this strong position is the reason why unions in Sweden made limited attempts to seek closed shop collective agreements and impose union dues on non-members. They could live with “free-riding” that unions in the UK, for example, lament. What Swedish unions have done instead, is to force small and

¹⁶ *Young, James and Webster v. The United Kingdom* (Application no. 760/76; 7806/77)



medium sized companies to sign substitute collective agreements. Substitute agreements will be explained below. In short, it however means that a work site is bound to a local collective agreement similar to the relevant industry master collective agreement. However, neither the employees nor the employer need to be members of their respective organization for a substitute agreement to be in effect.

Swedish unions rarely sought closed shop agreements in master collective agreements. There were a few examples of closed shop clauses in master agreements up until the beginning of the 1990's. They did seek them in what we call substitute collective agreements.

In fact, it was mostly, but not only, within the construction sector that closed shop agreements were pursued in substitute agreements. As an aside, it is an interesting parallel that Canada's construction workers are at a greater disadvantage vis a vis union powers in jurisdictions such as Quebec, Nova Scotia and Ontario.

3. Sweden's Master and Substitute Collective Agreements System

Swedish employers and unions work with two types of collective agreements. Master or sectoral agreements and substitute agreements. Master agreements are typically between a group of employers joined together in an employer association and one or more unions. A substitute agreement is between a union and an individual employer. The employer entering into a substitute agreement does not belong to an employer association. Any employer who joins an employer association automatically has the master collective agreement applied to its employees and transitions away from any substitute agreement in force.

Substitute agreements often resemble the relevant master agreements but it is possible, to a certain extent to tailor them, often to the benefit to the union.

Under the master agreements of the construction sector, unionized employees (members of the union or not) had to pay what in Sweden we call monitoring fees themselves. Under substitute agreements, however, these fees were paid by the employer, without decreasing the pay of the employees.

The reasons for substitute agreements often being less favorable for employers is essentially because Swedish unions do not have as much trust in employers who operate outside of an employer association. They also see such employers as harder to control.



Substitute agreements are often obtained by a union as a result of threats of or actual industrial actions or conflict measures – such as boycotts. The union hunts down small businesses that do not have a collective agreement. This employer's garbage is not picked up, their phones are not repaired or installed, deliveries don't arrive, etc. At the end of the day they will end up signing a substitute agreement or joining an employer organization and taking on the relevant master agreement – or go bankrupt.

Just recently it was reported in a labour law periodical how union activists walked the streets of Gothenburg in order to hunt down small companies with even just one employee, in order to make them sign a collective or a substitute agreement, whether or not that single employee does or does not want to be covered by a collective agreement. "*Collective agreements are our business concept*", they stated.

4. The Swedish Legal Framework

In this chapter a few elements of the Swedish legal framework will be briefly reviewed.

The internal activity of non-profit organizations, such as unions, is not governed by statute law. It is unusual in Sweden to find that an entity affecting many people is not governed by law. Unions do not want to be governed by Sweden's laws. Instead they are governed by each union's constitution and bylaws.

The 1976 *Co-determination Act* regulates the following:

- Freedom of association – the right for employees and employers to organize.
- Right of negotiation – the right for unions and duty of employers to negotiate employment matters. The law even requires employers to negotiate regarding significant changes in the business.
- Right to information – the employer duty to inform the union about the business.
- Collective agreements – the law governs collective agreements and their legal consequences.
- "Co-determination through collective agreements". The law achieves regulation of work through the "normative effect" which also regulates the management of the employer and their activity. The employer however still manages the work.
- Peace duty – the law prohibits the parties to Swedish collective agreements to pursue industrial actions or conflict measures during the term of a collective agreement. However, this does not prevent



sympathy actions. Whether or not there is a peace duty when an employer – bound by a foreign collective agreement - is temporarily active in Sweden (Fredsplikt), might be decided soon by the European Court of Justice (the Court of the European Union). There is a Swedish law, explicitly making it legal to pursue industrial actions against a company bound by a foreign collective agreement (Lex Britannia).

- Mediation - the Swedish Mediation Institute is to actively work with the parties so that labour disputes may be solved without industrial action. It is mandatory to resort to the institute prior pursuing a conflict measure.
- Damages for breaches of collective agreements or the law.

Freedom of association is also stipulated in the *Swedish Bill of Rights* in the Instrument of Government. It is however not stipulated that there is a negative freedom of association. The Labour Court has held that there is no negative freedom in Sweden, apart from what is now evident through the interpretation and application of the *European Convention on Human Rights*.

Freedom of association is governed in Article 11 of the *European Convention*. The European Court of Human Rights has established a freedom from forced association through its judgments.

The *European Convention* was incorporated into the Swedish legal system in 1995, in connection with Sweden becoming a member of the European Union. That means that Swedish courts are obligated to apply the *Convention*. It was however merely incorporated through an ordinary law, not through a constitutional instrument.

Consequently the Swedish constitution takes supremacy over the *Convention*. As opposed to the situation in UK where the Blair-led Labour Party brought the *Convention* into the UK in a manner that will prevent future governments from reversing Thatcher's statutory method of ending the UK closed shops.

In Sweden in 1995, the left wing parties were skeptical about the impact of the *Convention*. In the UK the Conservatives were skeptical and did not bring the *Convention* into UK law at all.

Employment protection is regulated in the *Employment Protection Act* for privately employed workers and in the *Public Employment Act* concerning state employed workers. I am not going to deal with the differences



between private and public employment here. Both *Acts* apply whether or not the employees are members of a union or not.

The *Employment Protection Act* regulates, in short

- Different types of employment, full time, part time etc.
- Due causes for layoffs and dismissals.
- Order of priority for layoffs without cause (cut-backs) – the main principle being “last in first out”.
- Dismissal periods and pay during such periods.
- Union influence over lay-offs etc.
- Damages for unjust dismissals.

It is essential to point out that it is unlawful to dismiss an employee because they do not belong to a union.

That was held already in 1974 in the preparatory works¹⁷, when the *Employment Protection Act* was enacted.

But by that it could not also be said that post-entry closed shops were illegal, but they were fairly toothless.

There are no special regulations regarding the right for unions to impose union dues. As explained before, that is regulated by union constitutions and bylaws. Nor is there a law prohibiting the union from imposing dues on non-members.

Up to this year, when *Evaldsson* was decided, it was legal in Sweden to impose so called monitoring fees or salary inspection fees on non-members. The collective agreement at issue in *Evaldsson* contained an obligation upon the employer to deduct the fees from the salary of the employee and distribute the fees to the union along with certain information about work and pay.



As such, Swedish unions have a very strong position, which might explain why unions have not opted for closed shop provisions in master agreements. Perhaps that also explains why Swedish unions did not find the free riding phenomenon especially troublesome and that there were only limited efforts to impose union dues on non-members.

5. Concept of Normative Effect of Collective Agreements in Sweden

The normative effect in this context refers to the impact a collective agreement has directly or indirectly on the non-members of a union, whether or not they are covered by a collective agreement.

In several countries in the COE, collective agreements are given legal force for outsiders – non-members of a union, through statutes – a form of stipulation of minimum rights. In that sense the parties in the labour market, unions (employee organizations) and employer organizations, are given legislative-like powers instead of the elected legislative bodies.

That is the situation, for example, in Finland and France and it is the reason why only 10% of the French workers are members of unions – yet 90 % are affected by collective agreements. There also exists a form of “declaration of applicability” in some countries in the COE, which under certain circumstances are decided by authorities. After such declaration, the collective agreements receive general application within a certain line of business or in a district.

In Sweden, the applicability of collective agreements to non-members of a union is not stipulated by statute. The *Co-Determination Act* is actually built on the assumption that only the parties are bound by the agreement. But, this does not mean that Swedish collective agreements have no effect on non-members including employees not specifically covered by a collective agreement. On the contrary, in practice it is the norm rather than the exception. The collective agreement does not become directly applicable, but it does indirectly through customs. This too is complex area which this paper will discuss only briefly.

The main feature is that an employer, bound by a collective agreement is considered to have a contractual obligation, based on customs or even directly stipulated in the collective agreement, not to offer less favorable conditions to non-members who are directly covered by the collective agreement.

¹⁷ The preparatory works often containing the Governments reasons behind the act or statute plays an important role for the Swedish



Unions have been known to negotiate deals during layoffs where a lump sum of money is received from the employer and apportioned by the union such that members with fewer years of service get a larger severance than non-members. However, this occasional practice may not survive a future legal challenge.

If the employer offers less favorable conditions to non-members, he is in breach of contract and is facing damages towards the employee organization.

On the other hand, the non-member employee may not directly claim the applicability of the collective agreement in his or her relationship with the employer. However, if the employer generally applies the collective agreement, it may be considered a work site custom. The non-member employee may however not claim anything but the minimum conditions in the collective agreement.

Also in the situation where the employer is not formally bound by a collective agreement, customs within the line of business at issue or in the district may play an essential role for the “indirect” application of a collective agreement in Sweden and other countries in the COE.

Taking into account the high rate of unionization in Sweden the impact of collective agreements for the regulation of labour relations is very, very significant – especially in the blue collar workforce.

D. Comparative Canadian Legal Position

The right of association is stipulated in Article 2 of the *Canadian Charter of Rights and Freedoms*¹⁸. There is no explicit right to form unions or to collective bargaining. Nor is there an explicit right not to be forced to be a member of a union or other form of association.

The *Charter* does not bind individual or private entities. It has no direct horizontal effect so to speak. But it certainly comes into play with all federal and provincial legislation, all collective agreements that governments sign as employers and any area where the government significantly influences outcomes by some form of involvement.

courts' interpretation of the act.

¹⁸ See Appendix E.



At the same time the situation in Canada resembles the one in Europe in that Canada does not have one labour code applicable in the whole of Canada, but at least one for every province as well as one for federally regulated workplaces. While some Canadian jurisdictions largely have one labour code for both the public and private sector, others have multiple statutes because they break the public service into smaller groups with specific statutes. In the Council of Europe, there is at least one labour code in each of the forty-seven member states.

There is an important distinction between the two systems: The European *Convention* applies horizontally while the Canadian *Charter* does not. Essentially, this means that the Supreme Court of Canada does not have jurisdiction to rule over union practice – say in violation of the negative right of association – unless the union practice is derived directly from legislative provisions or a collective agreement where the government is the employer party, for example.

However, the rulings of the Supreme Court concerning the Charter may indirectly affect the interpretation of lower courts, labour boards and arbitrators over time as they handle cases between parties where the Charter does not directly apply.

Three key Canadian cases were reviewed for this paper: *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*¹⁹; *R. v. Advance Cutting and Coring Ltd.*²⁰ and *Lavigne v. Ontario Public Service Employees Union*²¹.

In *Health Services*, the Supreme Court rejected its previous jurisprudence and concluded that Section 2(d) of the *Charter* includes a procedural right to collective bargaining. It is significant that the Supreme Court relied on international instruments that Canada had committed to uphold in reaching that conclusion. It held that although it was a primary task of the federal government or the provincial legislatures to incorporate international agreements into domestic law, the international obligations could assist courts charged with interpreting the Charter's guarantees.

This is what, in Sweden, experts refer to as “treaty conforming interpretation”. It is an internationally accepted method of interpretation which is both reasonable and desirable.

¹⁹ 2007 SCC 27

²⁰ 2001 SCC 70



In *Lavigne* and *Advance*, a majority of the Supreme Court of Canada was prepared to accept that Section 2(d) includes a “negative” right of non-association – freedom from forced association. However, in both decisions, this was not ultimately sufficient for the Court to conclude that the freedom of either of the parties advancing the challenges had been abrogated, or that such abrogation was not justified pursuant to Section 1 of the *Charter*.

In *Lavigne*, union dues taken from a non-member pursuant to a mandatory “check-off” clause contained in the applicable collective agreement were the subject of *Charter* challenge, based on the fact that the dues were used, in part, to fund political and other causes that were unrelated to collective bargaining. The Court came down on both sides of the fence with respect to whether such a clause infringed on Section 2(d) of the *Charter*. Ultimately, a majority of the Court concluded that, even if there was a violation of Section 2(d), the provision was justified pursuant to Section 1 of the *Charter*.

In *Advance* a “closed shop system” legislated within the Quebec construction industry was the issue of the *Charter* challenge. In this case, notwithstanding that a majority of the Court concluded that the impugned legislation violated Section 2(d), it was upheld pursuant to Section 1 of the *Charter*. This decision stemmed largely from the turbulent and often violent history of the construction industry in Quebec.

As the Supreme Court of Canada has not yet concluded that either forced union membership or mandatory dues constitute a violation of Section 2(d) which cannot be justified under Section 1 of the *Charter*, Canada has many collective agreements compelling membership and virtually all compel dues which can and are used for political and other non-collective bargaining purposes.

Ending closed shops in Canada’s public sector may be as simple as bringing forward a different set of facts. *Advance* seems to suggest that absent facts such as the history of violence that existed in Quebec, any statute which requires forced membership as a condition of employment at the union’s request (such as Saskatchewan’s *Trade Union Act*) or requires such membership by virtue of the legislation itself (such as B.C.’s *Public Service Labour Relations Act* as it relates to employees hired post-certification) or the many collective agreements between provinces and unions (usually the respective “GEU” – government employees union) could be struck down unless the unions and Court could find another basis under Section 1 to exempt a

²¹ [1991] 2 S.C.R. 211



violation of the right of non-association. Arguably, the same result could occur with respect to forced membership clauses contained in collective agreements to which a provincial government is directly or indirectly (as in *Lavigne*) a party.

If such a case was successful, and the impugned legislation and/or collective agreements were struck down, what could happen across Canada as other governments were pressured to ensure compliance in their public sector?

If the entire Canadian public sector (and Saskatchewan's private sector as well) were rid of forced membership and conditional employment, what then could be done for the private sector employees who would continue to have their UN Article 20 (2) rights abrogated?

Could a provincial government ban private sector "closed shops" outright? *Health Services* at least indicates some caution in how the government that pursues such legislation engages unions in the legislative process.

The more contentious questions will likely surround the money- the dues. The issue of forced dues payments by non-members may ultimately prove to be much more challenging to address than the forced membership issue given the current precedents of Canada's highest court. However, given that the Court in *Health Services* was prepared to reverse itself because its prior rulings were found not to "withstand principled scrutiny", one might hope that change, even on this issue, is possible.

E. Early Developments Under the *European Human Rights Convention*

The freedom of association provision in the *European Human Rights Convention* is stipulated in Article 11. It provides for everyone's right to freedom of peaceful assembly and to freedom of association with others. As opposed to Article 2 d) in the Canadian Charter of Rights and Freedoms of 1982: "*Everyone has the following fundamental freedoms: freedom of association*", the *European Convention* explicitly provides for "*the right to form and to join trade unions for the protection of his interests.*"²².

²² "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."



As with all relative rights, the right of association might be infringed under certain conditions, which are stipulated in the second paragraph of Article 11 of the *Convention*. Principally, an infringement must be prescribed in sufficiently clear and foreseeable domestic law and there must be a legitimate aim. Those are exhaustively accounted for in the second paragraph, *inter alia* for the protection of the rights of others. Finally the measure or law restricting a particular right must be proportional to the legitimate aim pursued.

This is the *Convention's* approach for all rights that are possible to restrict. The right to life, the prohibition of torture, slavery and criminal rule of law are said to be absolute (although, in the end, this is not entirely true in practice in Europe).

What, however, is and was not explicitly expressed in the provision is the so called right of non-association or what some call the negative freedom of association, that is the right not to become a member of an association such as a union. According to preparatory works for the *Convention*, the "Founding Fathers" deliberately left out the negative right. The reason for that was "*the difficulties raised by the 'closed-shop system' in certain countries.*"²³

The first critical step towards a judicial ban on closed shops was in *Young*. This was quite a leap considering that the negative right was deliberately excluded from Article 11.

In short, the circumstances in *Young, James and Webster* were the following:

Mr. Young, Mr. James and Mr. Webster were employees of the British Railways Board ("British Rail"). British legislation was passed allowing closed shop collective agreements. Subsequently, in 1975, a "closed shop" agreement was concluded between British Rail and three trade unions, providing that thenceforth membership of one of those unions was a condition of employment. The applicants failed to satisfy this condition and were dismissed in 1976.

It was thus the question of a so called post entry closed shop agreement. The system with closed shop agreements had a long standing in Britain. The possibility to escape the obligation to join one out a few unions in *Young, James and Webster*, was out of manifest religious beliefs.

²³ Report dated the 19 June 1950.



It is also important for the understanding of the case that unions at issue that the intending members were required to sign an application form which embodied an undertaking to abide by the union rules and “loyally to promote” its objects.

The objects were, among other things, to employ a political fund and to work for the suppression of the capitalist system by a Socialistic order of society.

Mr. Young refused to be a member out of political – not religious – beliefs. Mr. James believed in the freedom of choice and hesitated. Subsequently he decided that the way unions work was unsatisfactory to him and he also refused to join. Mr. Webster too believed in the freedom of choice and had political objections. He sought an exemption on conscientious grounds – other than specifically religious grounds. His application for exemption was denied after a hearing and he was also dismissed.

A substantial portion of the pleadings before the Court were devoted to the question whether Article 11 guarantees not only freedom of association, including the right to form and to join unions, in the positive sense, but also, by implication, a "negative right" not to be compelled to join an association or a union.

The Court did not find it necessary to answer the question on that occasion. Whether or not the negative right was to be set at an equal footing with the positive right would not be answered by the Court until 2006 – in *Sørensen and Rasmussen v. Denmark*.

In *Young*, the Court held that it did:

“not follow that the negative aspect of a person’s freedom of association falls completely outside the ambit of Article 11 and that each and every compulsion to join a particular trade union is compatible with the intention of that provision. To construe Article 11 as permitting every kind of compulsion in the field of trade union membership would strike at the very substance of the freedom it is designed to guarantee.”

On the other hand, the Court found that:

”assuming that Article 11 does not guarantee the negative aspect of that freedom on the same footing as the positive aspect, compulsion to join a particular trade union may not always be contrary to the Convention.”



In essence, however, the Court found that the dilemma the applicants were facing – either to lose their livelihood or give in to a membership which they were opposed to whether due to political reasons or their objections to trade union policies, ran counter to the concept of freedom of association in its negative sense.

The Court also referred to the protection of personal opinion afforded by Articles 9 and 10 - freedom of thought, conscience and religion; freedom of expression is also one of the purposes of freedom of association as guaranteed by Article 11.

Accordingly, it strikes at the very substance of Article 11 to exert pressure, of the kind applied to the applicants, in order to compel someone to join an association contrary to his convictions or to lose his livelihood.

On those grounds the Court found Article 11 to be applicable to the case. It remained to decide whether the post entry closed shop clause was proportionate to the given aim. The Court concluded that the unions at issue would in no way have been prevented from striving for the protection of their members' interests through the operation of the agreement with British Rail even if the legislation in force had not made it permissible to compel non-union employees having objections like the applicants to join a specified union.

Having regard to all the circumstances of the case and the detriment suffered by Mr. Young, Mr. James and Mr. Webster the Court found that the result went further than was required to achieve a proper balance between the conflicting interests of those involved and could therefore not be regarded as proportionate to the aims being pursued.

The general conclusion to be made from *Young, James and Webster* is that the European Court in 1981 banned post-entry closed shop agreement, at least if non-performance of the obligation to join a union lead to dismissal.

From this case we could tell nothing of the Court's position on pre-entry clauses. We could not tell if they were allowed, nor the opposite. That is due to the casuistic approach by the Court. It limited it self to the narrowest grounds. And we do not know if post-entry clauses are merely banned only if they have the effect that the individual risks losing his or her job.



Two cases in 1993 made the legal position a bit clearer. It was on the one hand the Icelandic case of *Sigurjónsson v. Iceland* and another British case - *Sibson v. UK*.

In the Icelandic case it was the question of a compulsion to belong to a form of professional organisation in order to have and obtain a license to run a taxi business. Mr. Sigurjónsson became a member, after he was informed that such a membership was obligatory. Subsequently, however he refused to pay the membership dues and was expelled. As a result his license was revoked so he initiated domestic legal proceedings. The Supreme Court of Iceland finally found that the compulsion to belong to the organisation lacked statutory basis and annulled the revocation of his taxi license. Quickly however the Parliament enacted a law making membership obligatory. Mr. Sigurjónsson accepted membership, but pursued the matter to the European Court of Human Rights.

The Court noted that the applicant objected to being a member of the association partly because he disagreed with its policy in favour of limiting the number of taxicabs and he believed in extensive personal freedom as opposed to state regulation. Articles 9 and 10 concerning the protection of personal opinion also came into play. The pressure exerted on the applicant in order to compel him to remain a member of an organisation contrary to his wishes was a further aspect going to the very essence of Article 11. The Government's argument that the organisation was a non-political association was held, under those circumstances, to not be relevant.

As to the issue of proportionality, the Court found that there were other means to perform the functions of the association and that compulsory membership was not the only means to ensure that the licence-holder carried out certain duties and responsibilities. Lastly, it was not demonstrated that there did not exist other ways of protecting the members occupational interest in absence of compulsory membership.

As an aside, the Court did not rule on one point: his expulsion. This was because he had not brought his case to the Court in a timely manner (within six months). However the Court was able to rule on his case after he had rejoined and come forward. Whether the ruling was about a pre or post-entry circumstance is therefore not completely clear.

In the same year, 1993, the Sibson case was decided. In that case the Court did not find a violation of the negative right. The applicant did not oppose membership. His leaving one union and obtaining membership with another union was the result of a quarrel with other members. The other members voted for a closed shop



agreement and required either that Sibson re-join the union at issue or be dismissed. The employer tried to solve the problem by offering him a similar job at another job site not far from the one he was employed at. The applicant however refused and was ultimately dismissed.

The Court found that there was no violation. The applicant had not objected to the membership for fundamental reasons. As such, Articles 9 and 10 did not come into play. Further, he had been offered a reasonable option - the work at the other job site.

This was the legal position in 1993 - pre-entry closed shop clauses were not yet at variance with the *Convention*, but we are closer than in 1981 (*Young et al*).

It is important to note the importance of some kind of personal and principled objection to membership at the same time that there is not necessarily an alternative employment option.

F. European Social Committee and the European Social Charter

In and around this time, the mid-1990s – the European Social Committee took notice of the issue of freedom from forced association. It was most certainly affected by the jurisprudence of the Court. The Committee is situated next door to the European Human Rights Court in Strasbourg, France. Both those entities are aware of their respective rulings; however they are not formally bound to each others activities.

The Social Committee is to watch over the *European Social Charter*. Article 5 in the *Charter* guarantees the freedom to form trade unions and employers' organizations to protect their economic and social interests.

The procedure before the Social Committee might best be described as a sort of “*actio popularis*”. The procedure is two fold – consisting of a reporting system and a complaint system. Even NGO's may submit complaints. The procedure results in resolution in the form of a recommendation by the Committee of Ministers including a statement as to whether or not there was a violation of the Charter and, if applicable, a recommendation requesting that the given country bring its national law and practice into conformity with the Charter.

This body also issues regular reports every other year focusing on possible problems with the Charter.



In its report over the reference period of 1988 – 1989, the Committee asked the Swedish Government to be informed “*about the existence in Sweden of closed shop clauses in the collective agreements and, in particular, whether unorganized workers in the private sector are protected against any pressure to join a trade union in order to obtain employment.*”

The Committee did not, at that point, or later on make any distinction what so ever between pre or post-entry clauses. In that sense the Committee was more progressive than the Human Rights Court.

The Committee had been critical in every report of the lack of protection from forced membership. In the report over the reference period 1990 - 1991, the Committee again criticized Sweden for the lack of protection, but welcomed the fact that the Swedish Government had appointed a national committee to file a report over the situation and suggest amendments in national law. That Committee was named the Labour Law Committee. It must be underlined though that Sweden at that time had a conservative government. By 1994, however, the Social Democrats were back in office when the report was due and, surprise, nothing came out about the work of the Labour Law Committee. The pro-union and union-funded Social Democrats said it was to be solved the normal Swedish way, by a dialogue between the labour parties. The Social Democrats were to remain in office for 12 years until 2006. This is important when seeking to understand the slow development of the freedom from forced association. The Social Democrats were certainly not reluctant to comply with international obligations, except when it came to this issue and how such change might impact their friends in the union movement.

In the Social Committee’s report for the reference period 1991 – 1993 four examples were noted for which closed shop provisions existed: for hotel and restaurant employee, construction workers, electricians and metal workers. The Social Committee concluded that the situation in Sweden in this area did not comply with the requirements of Article 5 of the Social Charter.

Again, for the reference period of 1994 - 1996 the Committee noted that no legislation concerning the freedom from forced association was planned by Sweden for the immediate future.

At this time, Sweden pointed out to the Social Committee that Sweden had incorporated the European *Convention* on Human Rights. The Committee however noted that the protection of the negative right according to the *Convention* was unclear. The Committee pointed out that the *Convention* and the *Charter*



were two different instruments and that “*Article 5 of the Charter there can be no sort of obligation to become or remain a member of a trade union.*”

The Committee noted that closed shop clauses no longer appeared in any master agreements but remained in substitute agreements. The Committee also noted that the clauses were framed differently.

Despite this, the Committee concluded for this period “*that the situation in the law and in practice in Sweden with respect to the negative right of association was not in conformity with Article 5 of the Charter.*”

For the period of 1997 – 1998, the Committee asked that closed shop clauses not be included in agreements signed from July 1, 1999 onwards and that one union had stated that the existing clauses should not be applied. It also noted that the Swedish Government sought to solve the problem through a dialogue between the employee- and employer organizations. Still the Committee found that “*the situation in law and in practice in Sweden was still not in conformity with Article 5 of the Charter.*”

To put it plainly: The Government simply did not care to act on the Committee’s findings and demands. It was not going to adopt a law explicitly protecting the negative right of association.

At this point the Confederation of Swedish Enterprises and the Construction employer’s organization - the Swedish Construction Industries were very concerned about the lack of protection for from forced association in Swedish law. They were irritated over the closed shop system as well as the monitoring fees imposed in the construction sector on non-members (referred to as unorganized employees – a term also applied to employees working in union-free jobs).

It was not possible to handle the issues through negotiations. The Construction Workers Association simply refused to discuss the issues and that union had a strike fund capable of funding a full scale strike for a year. That would have put the whole industry in peril.

The employers decided to opt for the legal route. In particular, one person at the Construction Industry’s organization Mr. Gustav Herrlin, their staff lawyer, started to dig in to the issues.

Negotiations were initiated concerning the monitoring fees in 1998. The negotiations did not lead anywhere. The issue ended up in the Swedish Labour Court in 2001. The Court found no violation of the *Convention* or



that the system was in conflict with any Swedish provisions. The case eventually ended up in the European Court of Human Rights, with *Evaldsson v. Sweden*.

While that case was pending before the European Court a complaint was filed on April 4, 2002 to the Social Committee in the name of the Confederation of Swedish Enterprises, The Confederation of Swedish Enterprises brought both the issue of the monitoring fees and the closed shop before the Social Committee. The issues were dealt with in the same complaint²⁴.

The issue of monitoring fees concerned the Construction workers' union right according to the master agreement to monitor time wages. That applied also to non-members, but not to those members of another competing union. The union charged 1.5 % of the salary of the employees. The employers were under the duty to deduct the fees from the employee's salary and deliver it to the union along with information about the salary and time put in etc. As will be explained further under the section concerning the Evaldsson case below it was suspected that the system of monitoring time wages generated a great surplus²⁵.

Regarding the closed shop issue it was estimated at this time that there was between 10,000 and 15,000 substitute agreements in force. (Closed shop clauses in master agreements had, since the mid-1990s, been taken out).

Example clauses:

- The employer is obligated to see to that presently employed workers and those that are employed in the future belongs to the organization concluding the [collective] agreement or will join the organization within 14 days.
- Members of the Construction Workers Association living within the municipality where the job site is situated, have priority for being employed.
- All work carried out in accordance to this agreement, shall be carried out by members of the Swedish Construction Workers Union.

²⁴ Complaint No. 12/2002.

²⁵ As opposed to the monitoring of piece work, which required actual activities and was time consuming.



Although it was and is not considered just cause to dismiss an employee for not belonging to the union, the employer faced damages for breach of contract if they hired or kept “unorganized workers” or non-members. One can only imagine what that did to an employer’s interest in hiring non-members. As an aside, there was case law from the Swedish Labour Court dating back to a 1977 case suggesting a union would be hard pressed to succeed with a claim for damages on that ground. This paper will not go into further detail regarding the case from 1977.

The reason why the Swedish closed shop issue was not brought before the European Court was that the issue had not been dealt with by the domestic courts while the issue of with monitoring fees – union dues for non-members was in progress. The procedure before the Human Rights Court can not be an *action popularis*. There must be an individual victim for the alleged violation of the *Convention* and that individual must have exhausted all effective domestic remedies.

The procedure before the Social Committee is much quicker than the one before the Human Rights Court.

The Social Committee issued another report to the Committee of Ministers on May 22, 2003. It did not exactly come as a surprise that the Committee found that the exercise of closed shop clauses violated Article 5 of the Charter. It held that the provision “*implies that the exercise of a worker’s right to join a trade union is the result of a choice and that consequently, it is not to be decided by the workers under the influence of constraints that rule out the exercise of this freedom.*”

The Social Committee held that the clauses at issue were “*clearly contrary to the freedom guaranteed by Article 5*”.

Concerning the wage monitoring fees the Committee found that the payment of a fee to the trade union for financing its activity of wage monitoring cannot be regarded in itself as unjustified.

The Committee went on: “*However, the Committee considers that doubts exist as to the real use of the fees and that, in the present case, if they were to finance activities other than wage monitoring, these fees, would, ...be deducted, at least for a part, in violation of Article 5.*”



The Committee was however not in the position to verify the use of the fees, whether they were used for political purposes and in particular to verify to what extent the fees were proportional to the cost of the services carried out and to the benefits wage monitoring confers on the workers.

The Committee reserved the right to supervise the situation in practice through the reporting procedure and/or the collective complaint procedure.

The Committee of Ministers issued its resolution on September 24, 2003. The Committee of Ministers having regard for the report of the Social Committee noted that Sweden undertook to bring the situation into conformity with the Charter. The Ministers looked “forward to Sweden reporting that the problems [were] solved at the time of the submission of the next report. . .”

In practice that meant that Sweden should report that the problem was solved at the latest by June 30, 2005, which they actually did. All pre and post-entry closed shop clauses were to be removed from all substitute agreements, by a declaration to the effect that those clauses were null and void.

But the road to get to this point was long and bumpy. The Social Committee having first noted the problems in its 1988-89 report and it took some seventeen years to get results.

The road from 2003 after the Committee of Ministers submitted its resolution was not straightforward. The Swedish government should not adopt legislation for the protection of the negative right of association. The left-wing Social Democrats again suggested more dialogue.

The Minister of Industry, Employment and Communications, Mr. *Hans Karlsson* – a former ombudsman in the Swedish Construction Workers Union, invited the parties through a letter on March 11, 2003. It was stated that “*the Government is of the opinion that the matter of closed shop clauses should be solved through talks.*” According to the representatives of the employers organizations that was actually all it was – talk.

The same Minister, again, invited the parties to a meeting a year later, on April 21, 2004. This time the representatives of the employers’ organization refused to participate. They did not think the “talks” worked. Nothing happened, they claimed in the media that if they participated it would legitimize the “talk model”. They expected legislation and so did the Strasbourg-based Social Committee of the COE.



What about the issue of wage monitoring fees then? Indeed the Social Committee was mindful regarding the fees. However, according to a newspaper article Minister Karlsson however regarded the issue of wage monitoring fees a “*non issue taking into account the announcement of the European Council!*” He did not acknowledge that the issue was pending before the European Court of Human Rights.

G. Most Recent Developments in the European Court of Human Rights

Denmark was having a similar experience with the Social Committee regarding its closed shop practices.

1. Sørensen and Rasmussen v. Denmark and Closed Shops

However, in Denmark the issue had been tried by the national courts ending with judgments in favour of the union in the Danish Supreme Court. And two cases were brought to the European Court of Human Rights – the *Sørensen* and *Rasmussen* cases. The cases were joined before the Court.

The first applicant – Mr. Sørensen – was 21 years old at the material time. He had just finished the military service. He was to commence university studies but a few months remained in between. He applied for a holiday relief job. In the pre-printed form he filled in there however was a closed shop clause, making it mandatory to be a member of one of the unions under the Danish Confederation of Trade Unions.

He got the job, which would last for about ten weeks. He did not apply for membership in the required union but joined another union, since he was opposed to the policy of the required union. He protested when he received his first demand to pay dues from the union. As a result of his refusal to pay, he was dismissed. He brought the dismissal to the Danish Courts and the case subsequently ended up in the Supreme Court. He however lost.

The second applicant was born 1959 and was a gardener by profession. He became a member of a union under the Confederation in the mid-1980s, but resigned his membership after a few years as he felt unable to support its political affiliations. Instead, he became a member of another union.



After having been unemployed for a while, he was offered a job on condition that he became a member of a union under the Confederation, as the employer had entered into a closed-shop agreement with that trade union. The applicant commenced the job and rejoined the “proper” union, although he still did not agree with its political views.

In the wake of the *Young, James and Webster* judgment, Denmark adopted a law that outlawed dismissals for not belonging to a certain union but only on a post-entry basis. However the law did not apply if the employee knew beforehand that a pre-entry closed shop clause existed (as well as some other exceptions).

It was also noted that the Denmark had made attempts to amend the law allowing closed shop terminations two times before, in 2003 and 2004. The attempts were in response to the Social Committee who of course found Danish employee rights to be at variance with Article 5 in the Social Charter. The attempts however failed, since the Government could not obtain the required majority in the Parliament to pass the law. Denmark was again criticized by the Social Committee. Also the Swedish issues before the Social Committee were noted in the judgment.

It was further noted that closed shop clauses were not practiced in master agreements in Denmark, but merely in what in Sweden are referred to as substitute agreements. Closed shops were illegal within the Danish public sector. It was estimated that 220,000 employees were affected by closed shop agreements – out of a work force of approximately 2.5 million.

The Human Rights Court had laid down the general principles concerning the negative aspect of the freedom of association. It added that the notion of personal autonomy is an important principle underlying the interpretation of the *Convention's* guarantees. It noted that the Court had not hitherto taken a definite stand on the point as to whether or not the negative aspect should be put on an equal footing with the positive right. The Court did not exclude that the negative right could be afforded the same level as the positive one, but noted that the matter can only be properly addressed in the circumstances of a given case.

This was an important step forward in favor of personal autonomy – at the expense of collective rights. The Court went on:

At the same time, an individual cannot be considered to have renounced his negative right to freedom of association in situations where, in the knowledge that trade-union membership is a pre-condition of securing a job, he accepts an offer of employment notwithstanding his opposition to the condition



imposed. Accordingly, the distinction made between pre-entry closed-shop agreements and post-entry closed-shop agreements in terms of the scope of the protection guaranteed by Article 11 is not tenable. At most this distinction is to be seen as a consideration which will form part of the Court's assessment of the surrounding circumstances and the issue of their Convention-compatibility.

The Court uses a concept called “margin of appreciation”. The states in the EU are given a certain amount of room for self determination, which varies for a variety of reasons. This margin of appreciation however goes – as the Court often expresses it – “hand in hand with the supervision of the Court”.

The states are normally afforded a wide margin of appreciation when it comes to deciding sensitive social and political issues. In such cases the Court finds that the domestic system, whether the legislators or the domestic courts, better equipped than an international judge to decide the matter. Matters concerning the regulation of the labour market are normally considered such a delicate situation.

In the present case the Court however held:

However, where the domestic law of a Contracting State permits the conclusion of closed-shop agreements between unions and employers which run counter to the freedom of choice of the individual inherent in Article 11, the margin of appreciation must be considered reduced.

The Court also took notice of changing perceptions of the relevance of closed-shop agreements for securing the effective enjoyment of trade-union freedom. The Court had noted such changes of perception through, for instance in the Social Committee and also in the Danish parliamentary debates trying to amend the Danish law.

The Court defined the clauses in the case as pre-entry closed shop agreements since both applicants were aware of the obligation before taking up their jobs. The Court did not find the fact that the applicants accepted membership as one of the terms of employment significantly altered the element of compulsion inherent in having to join a trade union against their will. Had they refused they would not have been recruited. In this connection the Court accepted that individuals applying for employment often find themselves in a vulnerable situation and are only too eager to comply with the terms of employment offered.

Not even the fact that Mr. Sørensen's job would merely last for ten weeks altered the Court's serious view that his dismissal struck at the very substance of the freedom of choice inherent in the freedom from forced association.



The Court also noted that the applicants' personal views and opinions were compromised since they both objected to a membership because they could not subscribe to the political views of the trade union at issue.

The Government however argued that the applicants had the possibility of subscribing to a form of “non-political membership”. In this instance the Court held – and this is important and was also invoked in the *Evaldsson* case concerning the monitoring fees:

However, it is to be observed that such “non-political membership” does not entail any reduction in the payment of the membership fee to the specific trade union. In any event, there is no guarantee that “non-political membership” will not give rise to some form of indirect support for the political parties to which the specific trade union contributes financially.

In sum the Court found that the compulsion struck at the very substance of the freedom of association. That meant that Article 11 was applicable.

It remained to be decided whether the interference was justified under the second paragraph of Article 11, an examination that seems to resemble the examination the Canadian Supreme Court makes under Article 1 of your *Charter* – a proportionality test.

Due to what the Court had stated this far in the case; it did not seem hard for the Court to find a violation.

In short it noted the change of perception regarding the limited need for closed shops in modern society, since strong and representative trade unions and organisations had now been established in the labour market. It noted other international instruments also protecting the negative right and observed the legislative attempts to eliminate entirely the use of closed shops. It noted that only 220,000 employees were affected by them.

The Court also addressed the argument by the Confederation to the alleged effect that it would become difficult or impossible to enforce collective agreements *vis-à-vis* small non-affiliated employers.

The Court held that the annulment of a closed shop provision in a collective bargaining agreement with an employer, who was not in an employers association for bargaining purposes, would not change the fact that the collective agreement was still valid and must be complied with. The Court also noted that the concern expressed by the Confederation had not occurred in any of the Contracting Parties (member countries) that had abolished closed-shop agreements entirely.



With reference to other European instruments and the procedures before the Social Committee etc, the Court concluded that

“...there is little support in the Contracting States for the maintenance of closed shop agreements...and that their use in the labour market is not an indispensable tool for the effective enjoyment of trade-union freedoms.”

This appears to be the death stroke for the use of closed-shop clauses in Europe Union and Council of Europe countries.

2. Ewaldsson and Others v. Sweden and Union Dues

Eight unionized employees in the construction company LK Mässinteriör AB carried out work covered by a master collective agreement (collective agreement for a group of employers) signed by the union and the Swedish Construction Industries (*Sveriges Byggindustrier*) – an employer association. Three of them were also members of the Swedish Building Workers' Union (*Svenska Byggnadsarbetareförbundet*) while the five unionized applicants were not members of this or any other union. They were employed from March 3 to July 30, 1999.

Under the collective agreement, the local union had the right to monitor employee pay (“salary inspection”) and to be reimbursed for the costs involved on the basis of a fee - 1.5 per cent of the worker's pay. The employer was obliged to deduct that amount from the worker's pay and provide the local of the union with the information it needed for this monitoring work. Only unionized employees who were members of another union were exempt from these deductions by this union.

The applicants asked to be exempt from the deductions. The employer complied and stopped paying the fees to the union and stopped providing the agreed information concerning the applicants. The union insisted on payment and initiated formal local negotiations, no solution was reached.

The employer association brought the case before the Labour Court (*Arbetsdomstolen*) seeking a declaratory judgment that the employer was not required to levy the fees in question. On March 7, 2001, the Labour Court rejected the Industries claims.



One seriously contested issue was whether the system generated a surplus. The Construction Industries claimed that the system generated a huge surplus, which was also apparent from the annual reports of one of the divisions of the Building Workers Union – which was invoked before the Labour Court. If the system generated a profit that would have meant that in one way or other the surplus was used for general union purposes. The Union vigorously denied a surplus existed, without however submitting any evidence that would verify that the system yielded break-even or a deficit result each year.

The Labour Court managed to avoid the issue of whether or not the union made a profit and held that the applicants never were under pressure or forced to join the Union. Hence there was no violation of their freedom from forced association. Referring to the European Court's case law, the Labour Court considered that only the core of this freedom was protected under Article 11, meaning that a person must have been subjected to a certain measure of force or at least strong pressure to join an organization in order to give rise to a violation of that Article.

Before the Court the applicants invoked the negative aspect of the freedom of association in combination with Articles 9 and 10, thus the freedom of opinion and conscience. They also invoked the right of possession in Article 1 of Protocol 1 (property rights). Further they argued that they were discriminated against in violation of Article 14, since members of other unions escaped the fee, while the non-members did not.

The applicants argued that, because the amount of the fees “greatly” exceeded the cost of the monitoring pay, the balance was going into general union funds and was being used for purposes that the applicant employees did not support, which amounted to forced union membership so breaching their human rights. The applicants asserted that most of the funds were used to support the pension plan of the union, “union agitation” and political work.

The union claimed that the monitoring fees were not membership fees (which were charged separately to the actual members) so did not amount to forced union membership. Also, the union claimed that the employer erred in its analysis of the funds and stated that the monitoring fees operated at a loss, not a profit. They argued that the positive right to associate outweighed the negative right to not associate and that banning monitoring fees would induce members to leave the union because non-members would pay no monitoring fee and did not pay membership fees.



The union made considerable submissions regarding where these funds were allocated within the union's structure, however the union only produced written statements by union officials and home-made spread sheets without the underlying documents. That led to the Government Agent explicitly stating that the Government was not in a position to verify the correctness of the statements by the Union.

The government of Sweden, as defendant, argued that the costs of monitoring served not only the legitimate aim of protecting the rights and freedoms of others, but also pursued the general interest of the community, namely to uphold the legitimacy of the Swedish approach in the area of industrial relations. They claimed that the interference of the Protocol 1, Article 1 right was proportional to the aim of the Swedish system of collective bargaining.

Since the issue of a possible surplus was so elegantly avoided by the Labour Court this issue of examining facts became a crucial issue in the Court. The Court normally holds that it is primarily for the domestic court to examine facts, since those courts are in a better position to do that – as compared to the international judge. As a result, Evaldsson had to go through accounting materials and union budgets in order to make his case.

The Court also pointed at certain facts in its operative reasons that – appear to lead to the conclusion that the system generated a huge surplus. This paper will not go into such details, but it is important to emphasize one passage, related to the applicants' submission that the fees were tantamount to a membership fee. The chairman of the Building Workers Union talked about the fees in a Union periodical just a few weeks before the oral hearing in Strasbourg. This was invoked by the applicants and noted by the Court:

It notes, however, the statement made by the Union president, Mr Tilly, that the monitoring and measuring fees carry the costs of the negotiation organization.”

That is to say that the monitoring system, partly financed by non-members, sponsored the membership fees. In fact the Court came as close as possible to say that the system generated a surplus used for general union activities, including political agitation, without actually saying it.

It is also adequate to recall what the Court held in *Sørensen* –that there must be guarantees that the fees will not give rise to some form of indirect support for the political parties to which the specific trade union contributes financially.

The Court did avoid this severely contested issue by holding that that the applicants had not been given sufficient information for them to verify how the fees they paid were actually used, information to which they



were all the more entitled given that those fees were paid against their will and to an organization with a political agenda they did not support.

In conclusion, the Court considers that the Union's wage monitoring activities, as applied in the present case in the context of the Swedish system of collective bargaining, lacked the necessary transparency.

The Court found a violation of the right of possession and did not find it necessary to rule on the other Articles of the *Convention* invoked by the applicants.

The combined conclusion that must be drawn from *Sørensen* and *Evaldsson* is that union dues may not be imposed on non-members unless there are verifiable guarantees that the fees are not used for general union purposes and certainly not for political purposes. Such dues, if used for political and other purposes bring the freedom from forced association right that has been read into Article 11. Such a circumstance would also bring the freedoms of conscience and opinion into play (Articles 9 and 10 of the *Convention*).

Evaldsson should have been decided under Article 11, and not only under the possessions protection. This is what the Swedish judge stated in her concurring opinion. But then the Court would have to address the sensitive surplus issue. In any event, the conclusion must be the one I just mentioned.

Such union dues are now unlawful in Europe.

H. Preliminary Conclusions

Of course, Canada is not bound by European jurisprudence. European jurisprudence has, however, relied on international instruments that Canada is also committed to, most particularly Article 20 of the *Universal Declaration of Human Rights*, which reads:

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

The fact that the Supreme Court of Canada has already read-in the freedom of non-association is a significant step. Further, that the Canadian Supreme Court has looked to Canada's signature on international instruments



such as the UN Declaration of Human Rights and certain ILO instruments may enable actions against any government legislation or actions that compel membership, especially as a condition of employment.

The *Charter* does not directly apply in the sphere of individuals and private parties such as unions and employers in the private sector (it does not formally apply horizontally). But there is no question that *Charter* rulings trickle down through lower courts, arbitrators, legislators and the general perspective of citizens as to what they think their rights are and are not.

No provincial or federal human rights codes, at this time, protect against union status discrimination as a basis for future actions. Most labour codes in Canada have language stating that employees have a choice to join a union or not but the author has not examined if anyone has yet litigated the idea that forced membership, *prima facie*, does not constitute freely joining a union and thereby results in a violation of such Canadian labour code provisions.

There is the option of legislative action, if possible, to ban forced membership security clauses. It would likely need to be accompanied by purpose language that invokes the UN Declaration's Article 20 (2). The author is not in a position to completely analyze the Canadian situation. It should, however, be noted that the Canadian Supreme Court held in the 2007 *Health Services* case from 2007, that courts should take due account of Canada's international obligations. This is consistent with how the freedom from forced association was read into the Canadian Charter by the Supreme Court with its *Advance Cutting and Coring* ruling in 2001. While one judge held that situation in Europe could not be translated into a Canadian context because the European labour market was so different from the Canadian that does not appear to be the overall trend in how the Court is conducting itself.

Given the incredible diversity between the labour markets within Europe that may be a position that one day may "no longer withstands principled scrutiny" – a new basis your Court appears to have developed in *Health Services* for overturning itself. There is perhaps a greater difference between the Italian labour market and the Scandinavian – than there is between the Scandinavian and the Canadian.

In the case concerning union dues, it is admittedly a complication that the European Court decided *Evaldsson* on the right of possessions, as Canada has no property rights - yet. But following from *Sorenson*, the Court made it clear that if the dues of non-members were in fact going to political and other purposes then that would violate Article 11 plus 9 and 10 (association plus conscience and opinion).



Unless Canada's top Court chooses to read it in as it done a number of times. This happened in Europe where like Canada the debate between strict constructionists and judicial activists is much less vigorous. Who knows what the future holds as long as such Courts make law rather than strictly interpret it.

But Canada may still have that European Court's statement in *Sørensen* to ponder. One of the ratios in that case thus was that there must be a guarantee that a compulsory contribution will not give rise to some form of indirect support for a political party to which the specific trade union contributes financially.

The world-wide trend in 2007 is clearly against Canadian practices in these two key areas of employee choice and freedom. It goes against the very core of a democracy to be forced to support a certain political view.

But the struggle was not an easy one in Europe and certainly not in Sweden and Denmark. The development clearly went against the political will. And it is certain that the law today would have turned out very differently if the issues had only been decided by domestic courts in Denmark and Sweden. Domestic judges are normally more sensitive to the local political will than international judges.

For example, what if the *Advance* case had not involved Quebec legislation and a number of Quebec judges – was this simply too hot a political issue leading up to 2001 to have the highest court strike down Quebec legislation? What if the legislation was in Nova Scotia or Alberta?

Whatever, *Advance* still suggests Canadian workers who are clearly covered by Charter rights and freedoms because they work under a collective agreement with a provincial government as the employer, for example, might only need to resign, be removed from membership, fired and contest. This is easy to say – it is another thing to be that employee. Maybe a government can do a reference case as has happened in Canada.

In closing, the author looks forward to learning more and returning to this conclusions section in the future.

**COUNTRIES OF
THE EUROPEAN UNION**

THE EUROPEAN UNION

The European Union (EU) is a union of twenty-seven independent states based on the European Communities and founded to enhance political, economic and social co-operation. Formerly known as European Community (EC) or European Economic Community (EEC).

Date of foundation: 1st November, 1993.

Member states (EUR: Euro currency):

- Austria (*since 1995-01-01*) (EUR)
- Belgium (EUR)
- Bulgaria (*since 2007-01-01*)
- Cyprus (Greek part) (*since 2004-05-01*) (EUR: 2008-01-01)
- Czech Republic (*since 2004-05-01*)
- Denmark
- Estonia (*since 2004-05-01*)
- Finland (*since 1995-01-01*) (EUR)
- France (EUR)
- Germany (EUR)
- Greece (EUR)
- Hungary (*since 2004-05-01*)
- Ireland (EUR)
- Italy (EUR)
- Latvia (*since 2004-05-01*)
- Lithuania (*since 2004-05-01*)
- Luxembourg (EUR)
- Malta (*since 2004-05-01*) (EUR: 2008-01-01)
- Netherlands (EUR)
- Poland (*since 2004-05-01*)
- Portugal (EUR)
- Romania (*since 2007-01-01*)
- Slovakia (*since 2004-05-01*)
- Slovenia (*since 2004-05-01*) (EUR)
- Spain (EUR)
- Sweden (*since 1995-01-01*)
- United Kingdom of Great Britain and Northern Ireland

APPENDIX B

COUNCIL OF EUROPE

COUNCIL OF EUROPE

Founded in 1949, the Council of Europe seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals.

Member States

The Council of Europe has a genuine pan-European dimension:

- 47 member countries
- 1 applicant country: Belarus; Belarus ' special guest status has been suspended due to its lack of respect for human rights and democratic principles.

Observers

5 observer countries: the Holy See, the United States, Canada, Japan, Mexico.

Aims

- to protect human rights, pluralist democracy and the rule of law;
- to promote awareness and encourage the development of Europe's cultural identity and diversity
- to find common solutions to the challenges facing European society: such as discrimination against minorities, xenophobia, intolerance, bioethics and cloning, terrorism, trafficking in human beings, organised crime and corruption, cybercrime, violence against children;
- to consolidate democratic stability in Europe by backing political, legislative and constitutional reform.

Member States:	
Albania (13.07.1995)	Luxembourg (05.05.1949)
Andorra (10.11.1994)	Malta (29.04.1965)
Armenia (25.01.2001)	Moldova (13.07.1995)
Austria (16.04.1956)	Monaco (05.10.2004)
Azerbaijan (25.01.2001)	Montenegro (11.05.2007)
Belgium (05.05.1949)	Netherlands (05.05.1949)
Bosnia and Herzegovina (24.04.2002)	Norway (05.05.1949)
Bulgaria (07.05.1992)	Poland (26.11.1991)
Croatia (06.11.1996)	Portugal (22.09.1976)
Cyprus (24.05.1961)	Romania (07.10.1993)
Czech Republic (30.06.1993)	Russian Federation (28.02.1996)
Denmark (05.05.1949)	San Marino (16.11.1988)
Estonia (14.05.1993)	Serbia [*] (03.04.2003)
Finland (05.05.1989)	Slovakia (30.06.1993)
France (05.05.1949)	Slovenia (14.05.1993)
Georgia (27.04.1999)	Spain (24.11.1977)
Germany (13.07.1950)	Sweden (05.05.1949)
Greece (09.08.1949)	Switzerland (06.05.1963)
Hungary (06.11.1990)	"The former Yugoslav Republic of Macedonia" (09.11.1995)
Iceland (07.03.1950)	Turkey (09.08.1949)
Ireland (05.05.1949)	Ukraine (09.11.1995)
Italy (05.05.1949)	United Kingdom (05.05.1949)
Latvia (10.02.1995)	
Liechtenstein (23.11.1978)	
Lithuania (14.05.1993)	

[*] "With effect from 3 June 2006, the Republic of Serbia is continuing the membership of the Council of Europe previously exercised by the Union of states of Serbia and Montenegro (CM Decision of 14 June 2006)"

**EUROPEAN CONVENTION ON
HUMAN RIGHTS**

EUROPEAN CONVENTION ON HUMAN RIGHTS

COUNCIL OF EUROPE

The European Convention on Human Rights

ROME 4 November 1950

and its Five Protocols

PARIS 20 March 1952

STRASBOURG 6 May 1963

STRASBOURG 6 May 1963

STRASBOURG 16 September 1963

STRASBOURG 20 January 1966

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THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND ITS FIVE PROTOCOLS

The European Convention on Human Rights

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 10 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 the aim is to be pursued is the maintenance and further realization 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

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

SECTION I

ARTICLE 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - o (a) in defence of any person from unlawful violence;
 - o (b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;
 - o (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term 'forced or compulsory labour' shall not include:
 - o (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - o (b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;
 - o (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - o (d) any work or service which forms part of normal civic obligations.

ARTICLE 5

1. Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.
 3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to 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

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. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest 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 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 the 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

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 recognized by civilized nations.

ARTICLE 8

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

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 the protection of the rights and freedoms of others.

ARTICLE 10

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 the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

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

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

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

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

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.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 16

Nothing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction on any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 18

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II

ARTICLE 19

To ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention, there shall be set up:

1. A European Commission of Human Rights hereinafter referred to as 'the Commission';
2. A European Court of Human Rights, hereinafter referred to as 'the Court'.

SECTION III

ARTICLE 20

The Commission shall consist of a number of members equal to that of the High Contracting Parties. No two members of the Commission may be nationals of the same state.

ARTICLE 21

1. The members of the Commission shall be elected by the Committee of Ministers by an absolute majority of votes, from a list of names drawn up by the Bureau of the Consultative Assembly; each group of the Representatives of the High Contracting Parties in the Consultative Assembly shall put forward three candidates, of whom two at least shall be its nationals.
2. As far as applicable, the same procedure shall be followed to complete the Commission in the event of other States subsequently becoming Parties to this Convention, and in filling casual vacancies.

ARTICLE 22

1. The members of the Commission shall be elected for a period of six years. They may be re-elected. However, of the members elected at the first election, the terms of seven members shall expire at the end of three years.
2. The members whose terms are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary-General of the Council of Europe immediately after the first election has been completed.
3. A member of the Commission elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.
4. The members of the Commission shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

ARTICLE 23

The members of the Commission shall sit on the Commission in their individual capacity.

ARTICLE 24

Any High Contracting Party may refer to the Commission, through the Secretary-General of the Council of Europe, any alleged breach of the provisions of the Convention by another High Contracting Party.

ARTICLE 25

1. The Commission may receive petitions addressed to the Secretary-General of the Council of Europe from any person, non- governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.
2. Such declarations may be made for a specific period.
3. The declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties and publish them.
4. The Commission shall only exercise the powers provided for in this article when at least six High Contracting Parties are bound by declarations made in accordance with the preceding paragraphs.

ARTICLE 26

The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken.

ARTICLE 27

1. the Commission shall not deal with any petition submitted under Article 25 which
 - o (a) is anonymous, or
 - o (b) is substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure or international investigation or settlement and if it contains no relevant new information.
2. The Commission shall consider inadmissible any petition submitted under Article 25 which it considers incompatible with the provisions of the present Convention, manifestly ill-founded, or an abuse of the right of petition.
3. The Commission shall reject any petition referred to it which it considers inadmissible under Article 26.

ARTICLE 28

In the event of the Commission accepting a petition referred to it:

- (a) it shall, with a view to ascertaining the facts undertake together with the representatives of the parties and examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;
- (b) it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention.

ARTICLE 29

1. The Commission shall perform the functions set out in Article 28 by means of a Sub-Commission consisting of seven members of the Commission.
2. Each of the parties concerned may appoint as members of this Sub-Commission a person of its choice.
3. The remaining members shall be chosen by lot in accordance with arrangements prescribed in the Rules of Procedure of the Commission.

ARTICLE 30

1. If the Sub-Commission succeeds in effecting a friendly settlement in accordance with Article 28, it shall draw up a Report which shall be sent to the States concerned, to the Committee of Ministers and to the Secretary-General of the Council of Europe for publication. This Report shall be confined to a brief statement of the facts and of the solution reached.

ARTICLE 31

1. If a solution is not reached, the Commission shall draw up a Report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention. The opinions of all the members of the Commission on this point may be stated in the Report.
2. The Report shall be transmitted to the Committee of Ministers. It shall also be transmitted to the States concerned, who shall not be at liberty to publish it.

3. In transmitting the Report to the Committee of Ministers the Commission may make such proposals as it thinks fit.

ARTICLE 32

1. If the question is not referred to the Court in accordance with Article 48 of this Convention within a period of three months from the date of the transmission of the Report to the Committee of Ministers, the Committee of Ministers shall decide by a majority of two-thirds of the members entitled to sit on the Committee whether there has been a violation of the Convention.
2. In the affirmative case the Committee of Ministers shall prescribe a period during which the Contracting Party concerned must take the measures required by the decision of the Committee of Ministers.
3. If the High Contracting Party concerned has not taken satisfactory measures within the prescribed period, the Committee of Ministers shall decide by the majority provided for in paragraph 1 above what effect shall be given to its original decision and shall publish the Report.
4. The High Contracting Parties undertake to regard as binding on them any decision which the Committee of Ministers may take in application of the preceding paragraphs.

ARTICLE 33

The Commission shall meet 'in camera'.

ARTICLE 34

The Commission shall take its decision by a majority of the Members present and voting; the Sub-Commission shall take its decisions by a majority of its members.

ARTICLE 35

The Commission shall meet as the circumstances require. The meetings shall be convened by the Secretary-General of the Council of Europe.

ARTICLE 36

The Commission shall draw up its own rules of procedure.

ARTICLE 37

The secretariat of The Commission shall be provided by the Secretary-General of the Council of Europe.

SECTION IV

ARTICLE 38

The European Court of Human Rights shall consist of a number of judges equal to that of the Members of the Council of Europe. No two judges may be nationals of the State.

ARTICLE 39

1. The members of the Court shall be elected by the Consultative Assembly by a majority of the votes cast from a list of persons nominated by Members of the Council of Europe; each Member shall nominate three candidates, of whom two at least shall be its nationals.
2. As far as applicable, the same procedure shall be followed to complete the Court in the event of the admission of new members of the Council of Europe, and in filling casual vacancies.
3. The candidates shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence.

ARTICLE 40

1. The members of the Court shall be elected for a period of nine years. They may be re-elected. However, of the members elected at the first election the terms of four members shall expire at the end of three years, and the terms of four more members shall expire at the end of six years.
2. The members whose terms are to expire at the end of the initial periods of three and six years shall be chosen by lot by the Secretary-General immediately after the first election has been completed.

3. A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.
4. The members of the Court shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

ARTICLE 41

The Court shall elect the President and Vice-President for a period of three years. They may be re-elected.

ARTICLE 42

The members of the Court shall receive for each day of duty a compensation to be determined by the Committee of Ministers.

ARTICLE 43

For the consideration of each case brought before it the Court shall consist of a Chamber composed of seven judges. There shall sit as an 'ex officio' member of the Chamber the judge who is a national of any State party concerned, or, if there is none, a person of its choice who shall sit in the capacity of judge; the names of the other judges shall be chosen by lot by the President before the opening of the case.

ARTICLE 44

Only the High Contracting Parties and the Commission shall have the right to bring a case before the Court.

ARTICLE 45

The jurisdiction of the Court shall extend to all cases concerning the interpretation and application of the present Convention which the High Contracting Parties or the Commission shall refer to it in accordance with Article 48.

ARTICLE 46

1. Any of the High Contracting Parties may at any time declare that it recognizes as compulsory 'ipso facto' and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention.
2. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties or for a specified period.
3. These declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties.

ARTICLE 47

The Court may only deal with a case after the Commission has acknowledged the failure of efforts for a friendly settlement and within the period of three months provided for in Article 32.

ARTICLE 48

The following may bring a case before the Court, provided that the High Contracting Party concerned, if there is only one, or the High Contracting Parties concerned, if there is more than one, are subject to the compulsory jurisdiction of the Court, or failing that, with the consent of the High Contracting Party concerned, if there is only one, or of the High Contracting Parties concerned if there is more than one:

- (a) the Commission;
- (b) a High Contracting Party whose national is alleged to be a victim;
- (c) a High Contracting Party which referred the case to the Commission;
- (d) a High Contracting Party against which the complaint has been lodged.

ARTICLE 49

In the event of dispute as to whether the Court has the jurisdiction, the matter shall be settled by the decision of the Court.

ARTICLE 50

If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party, is completely or partially in conflict with the obligations arising from the present convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

ARTICLE 51

1. Reasons shall be given for the judgement of the Court.
2. If the judgement does not represent in whole or in part the unanimous opinion of the judges, any judges shall be entitled to deliver a separate opinion.

ARTICLE 52

The judgement of the Court shall be final.

ARTICLE 53

The High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties.

ARTICLE 54

The judgement of the Court shall be transmitted to the Committee of Ministers which shall supervise its execution.

ARTICLE 55

The Court shall draw up its own rules and shall determine its own procedure.

ARTICLE 56

1. The first election of the members of the Court shall take place after the declarations by the High Contracting Parties mentioned in Article 46 have reached a total of eight.
2. No case can be brought before the Court before this election.

SECTION V

ARTICLE 57

On receipt of a request from the Secretary-General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of this Convention.

ARTICLE 58

The expenses of the Commission and the Court shall be borne by the Council of Europe.

ARTICLE 59

The members of the Commission and of the Court shall be entitled, during the discharge of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

ARTICLE 60

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

ARTICLE 61

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

ARTICLE 62

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

ARTICLE 63

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary-General of the Council of Europe that the present Convention shall extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary-General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4. Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Commission to receive petitions from individuals, non-governmental organizations or groups of individuals in accordance with Article 25 of the present Convention.

ARTICLE 64

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
2. Any reservation made under this article shall contain a brief statement of the law concerned.

ARTICLE 65

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date of which it became a Party to it and after six months' notice contained in a notification addressed to the Secretary-General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a Member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms Article 63.

ARTICLE 66

1. This Convention shall be open to the signature of the Members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary-General of the Council of Europe.
2. The present Convention shall come into force after the deposit of ten instruments of ratification.
3. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
4. The Secretary-General of the Council of Europe shall notify all the Members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November, 1950, in English and French, both text being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatories.

Protocols

1. Enforcement of certain Rights and Freedoms not included in Section I of the Convention

The Governments signatory hereto, being Members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November, 1950 (hereinafter referred to as 'the Convention'),

Have agreed as follows:

ARTICLE 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

ARTICLE 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.

ARTICLE 3

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

ARTICLE 4

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary-General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 63 of the Convention.

ARTICLE 5

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional articles to the convention and all the provisions of the Convention shall apply accordingly.

ARTICLE 6

This Protocol shall be open for signature by the Members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary-General of the Council of Europe, who will notify all the Members of the names of those who have ratified.

Done at Paris on the 20th day of March 1952, In English and French, both text being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatory Governments

2. Conferring upon the European Court of Human Rights Competence to give Advisory Opinions

The Member States of the Council of Europe signatory hereto:

Having regard to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as 'the Convention'), and in particular Article 19 instituting, among other bodies, a European Court of Human Rights (hereinafter referred to as 'the Court');

Considering that it is expedient to confer upon the Court competence to give advisory opinions subject to certain conditions;

Have agreed as follows:

ARTICLE 1

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.
2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the convention and in the Protocols thereto, or with any other question which the Commission, the Court, or the committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a two-thirds majority vote of the representatives entitled to sit on the Committee.

ARTICLE 2

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its consultative competence as defined in Article 1 of this Protocol.

ARTICLE 3

1. For the consideration of requests for an advisory opinion, the Court shall sit in plenary session.
2. Reasons shall be given for advisory opinions of the Court.
3. If the advisory opinion does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
4. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

ARTICLE 4

The powers of the Court under Article 55 of the Convention shall extend to the drawing up of such rules and the determination of such procedure as the Court may think necessary for the purposes of this Protocol.

ARTICLE 5

1. This Protocol shall be open to signature by member States of the Council of Europe, signatories to the Convention, who may become Parties to it by:
 - o (a) signature without reservation in respect of ratification or acceptance;
 - o (b) signature with reservation in respect of ratification or acceptance, followed by ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.
2. This Protocol shall enter into force as soon as all the States Parties to the Convention shall have become Parties to the Protocol in accordance with the Provisions of paragraph 1 of this article.
3. From the date of the entry into force of this Protocol, Articles 1 to 4 shall be considered an integral part of the Convention.
4. The Secretary-General of the Council of Europe shall notify the Member States of the Council of:
 - o (a) any signature without reservation in respect of ratification or acceptance;
 - o (b) any signature with reservation in respect of ratification or acceptance;
 - o (c) the deposit of any instrument of ratification or acceptance;
 - o (d) the date of entry into force of this Protocol in accordance with paragraph 2 of this article.

In witness whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Strasbourg, this 6th day of May 1963, in English and French, both text being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatory States.

3. Amending Articles 29, 30, and 94 of the Convention

The member States of the Council, signatories to this Protocol,

Considering that it is advisable to amend certain provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as 'the Convention') concerning the procedure of the European Commission of Human Rights,

Have agreed as follows:

ARTICLE 1

1. Article 29 of the Convention is deleted.
2. The following provision shall be inserted in the Convention:

"ARTICLE 29

After it has accepted a petition submitted under Article 25, the Commission may nevertheless decide unanimously to reject the petition if, in the course of its examination, it finds that the existence of one of the grounds for non-acceptance provided for in Article 27 has been established.

In such a case, the decision shall be communicated to the parties."

ARTICLE 2

1. At the beginning of Article 34 of the Convention, the following shall be inserted: "Subject to the provisions of Article 29..."
2. At the end of the same article, the sentence "the Sub- commission shall take its decisions by a majority of its members" shall be deleted.

ARTICLE 4

1. The Protocol shall be open to signature by the member States of the Council of Europe, who may become Parties to it either by:
 - o (a) signature without reservation in respect of ratification or acceptance, or
 - o (b) signature with reservation in respect of ratification or acceptance, followed by ratification or acceptance. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.
2. This Protocol shall enter force as soon as all States Parties to the Convention shall have become Parties to the Protocol, in accordance with paragraph 1 of this article.
3. The Secretary-General of the Council of Europe shall notify the Member States of the Council of:
 - o (a) any signature without reservation in respect of ratification or acceptance;
 - o (b) any signature with reservation in respect of ratification or acceptance;
 - o (c) the deposit of any instrument of ratification or acceptance;
 - o (d) the date of entry into force of this Protocol in accordance with paragraph 2 of this article.

In witness whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Strasbourg, this 6th day of May 1963, in English and French, both text being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatory States

4. Protecting certain Additional Rights

The Governments signatory hereto, being Members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as 'the Convention') and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20 March 1952,

Have agreed as follows:

ARTICLE 1

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

ARTICLE 2

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety for the maintenance of 'ordre public', for the prevention of crime, for the protection of rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

ARTICLE 3

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

ARTICLE 4

Collective expulsion of aliens is prohibited.

ARTICLE 5

1. Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary-General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.
2. Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of territory.
3. A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 63 of the Convention.
4. The territory of any State to which this Protocol applies by virtue of the ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

ARTICLE 6

1. As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the convention, and all the provisions of the Convention shall apply accordingly.
2. Nevertheless, the right of individual recourse recognized by a declaration made under Article 25 of the convention, or the acceptance of the compulsory jurisdiction of the court by a declaration made under Article 46 of the convention, shall not be effective in relation to this Protocol unless the High Contracting Party concerned has made a statement recognizing such a right, or accepting such jurisdiction, in respect of all or any of Articles 1 to 4 of the Protocol.

ARTICLE 7

1. This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary-General of the Council of Europe, who will notify all members of the names of those who have ratified.

In witness thereof, the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Strasbourg, this 16th day of September 1963, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatory States.

5. Amending Articles 22 and 40 of the Convention

The Governments signatory hereto, being Members of the Council of Europe,

Considering that certain inconveniences have arisen in the application of the provisions of Articles 22 and 40 of the Convention for the Protection of Human Rights and fundamental Freedoms signed at Rome of 4th November 1950 (hereinafter referred to as 'the Convention') relating to the length of the terms of office of the members of the European Commission of Human Rights (hereinafter referred to as 'the Commission') and of the European Court of Human Rights (hereinafter referred to as 'the Court');

Considering that it is desirable to ensure as far as possible an election every three years of one half of the members of the Commission and of one third of the members of the Court;

Considering therefore that it is desirable to amend certain provisions of the Convention,

Have agreed as follows:

ARTICLE 1

In Article 22 of the Convention, the following two paragraphs shall be inserted after paragraph (2):

"(3) In order to ensure that, as far as possible, one half of the membership of the Commission shall be renewed every three years, the Committee of Ministers may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than six years but not more than nine and not less than three years.

(4) In cases where more than one term of office is involved and the Committee of Ministers applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary-General, immediately after the election."

ARTICLE 2

In Article 22 of the Convention, the former paragraphs (3) and (4) shall become respectively paragraphs (5) and (6).

ARTICLE 3

In Article 40 of the Convention, the following two paragraphs shall be inserted after paragraph (2):

"(3) In order to ensure that, as far as possible, one half of the membership of the Court shall be renewed every three years, the Consultative Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than nine years but not more than twelve and not less than six years.

(4) In cases where more than one term of office is involved and the Consultative Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary-General, immediately after the election."

ARTICLE 4

In Article 40 of the Convention, the former paragraphs (3) and (4) shall become respectively paragraphs (5) and (6).

ARTICLE 5

1. This Protocol shall be open to signature by Members of the Council of Europe, signatories to the Convention, who may become Parties to it by:
 - (a) signature without reservation in respect of ratification or acceptance;
 - (b) signature with reservation in respect of ratification or acceptance, followed by ratification or acceptance.

Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.

2. This Protocol shall enter into force as soon as all Contracting Parties to the Convention shall have become Parties to the Protocol, in accordance with the provisions of paragraph 1 of this article.
3. The Secretary-General of the Council of Europe shall notify the Members of the Council of:
 - (a) any signature without reservation in respect of ratification or acceptance;
 - (b) any signature with reservation in respect of ratification or acceptance;
 - (c) the deposit of any instrument of ratification or acceptance;
 - (d) the date of entry into force of this Protocol in accordance with paragraph 2 of this article.

In witness whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Strasbourg, this 20th day of January 1966, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatory Governments

EUROPEAN SOCIAL CHARTER

European Social Charter

Turin, 18.X.1961

Preamble

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

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950, and the Protocol thereto signed at Paris on 20th March 1952, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;

Being resolved to make every effort in common to improve the standard of living and to promote the social well-being of both their urban and rural populations by means of appropriate institutions and action,

Have agreed as follows:

Part I

The Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
6. All workers and employers have the right to bargain collectively.
7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
8. Employed women, in case of maternity, and other employed women as appropriate, have the right to a special protection in their work.
9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
10. Everyone has the right to appropriate facilities for vocational training.
11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
12. All workers and their dependents have the right to social security.
13. Anyone without adequate resources has the right to social and medical assistance.
14. Everyone has the right to benefit from social welfare services.

15. Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability.
16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
17. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.
18. The nationals of any one of the Contracting Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
19. Migrant workers who are nationals of a Contracting Party and their families have the right to protection and assistance in the territory of any other Contracting Party.

Part II

The Contracting Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs.

Article 1 – The right to work

With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.

Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. to provide for public holidays with pay;
3. to provide for a minimum of two weeks annual holiday with pay;
4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest.

Article 3 – The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

1. to issue safety and health regulations;
2. to provide for the enforcement of such regulations by measures of supervision;
3. to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards. The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:
4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 16 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;

7. to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

Article 8 – The right of employed women to protection

With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before and after childbirth up to a total of at least 12 weeks;
2. to consider it as unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence;
3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4.
 - a. to regulate the employment of women workers on night work in industrial employment;
 - b. to prohibit the employment of women workers in underground mining, and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature.

Article 9 – The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Contracting Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including school children, and to adults.

Article 10 – The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Contracting Parties undertake:

1. to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;
2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;
3. to provide or promote, as necessary:
 - a. adequate and readily available training facilities for adult workers;
 - b. special facilities for the re-training of adult workers needed as a result of technological development or new trends in employment;
4. to encourage the full utilisation of the facilities provided by appropriate measures such as:
 - a. reducing or abolishing any fees or charges;
 - b. granting financial assistance in appropriate cases;
 - c. including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
 - d. ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training

arrangements for young workers, and the adequate protection of young workers generally.

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia*:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases.

Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102 Concerning Minimum Standards of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements, or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
 - a. equal treatment with their own nationals of the nationals of other Contracting Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Contracting Parties;
 - b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Contracting Parties.

Article 13 – The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Contracting Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11th December 1953.

Article 14 – The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Contracting Parties undertake:

1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

Article 15 – The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement

With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the Contracting Parties undertake:

1. to take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private;
2. to take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment.

Article 16 – The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.

Article 17 – The right of mothers and children to social and economic protection

With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.

Article 18 – The right to engage in a gainful occupation in the territory of other Contracting Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Contracting Party, the Contracting Parties undertake:

1. to apply existing regulations in a spirit of liberality;
2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
3. to liberalise, individually or collectively, regulations governing the employment of foreign workers; and recognise:
4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Contracting Parties.

Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
 - a. remuneration and other employment and working conditions;
 - b. membership of trade unions and enjoyment of the benefits of collective bargaining;
 - c. accommodation;
5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply.

Part III

Article 20 – Undertakings

1. Each of the Contracting Parties undertakes:
 - a. to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;
 - b. to consider itself bound by at least five of the following articles of Part II of this Charter: Articles 1, 5, 6, 12, 13, 16 and 19;
 - c. in addition to the articles selected by it in accordance with the preceding sub-paragraph, to consider itself bound by such a number of articles or numbered paragraphs of Part II of the Charter as it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than 10 articles or 45 numbered paragraphs.
2. The articles or paragraphs selected in accordance with sub-paragraphs b and c of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification or approval of the Contracting Party concerned is deposited.
3. Any Contracting Party may, at a later date, declare by notification to the Secretary General that it considers itself bound by any articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification or approval, and shall have the same effect as from the thirtieth day after the date of the notification.
4. The Secretary General shall communicate to all the signatory governments and to the Director General of the International Labour Office any notification which he shall have received pursuant to this part of the Charter.
5. Each Contracting Party shall maintain a system of labour inspection appropriate to national conditions.

Part IV

Article 21 – Reports concerning accepted provisions

The Contracting Parties shall send to the Secretary General of the Council of Europe a report at two-yearly intervals, in a form to be determined by the Committee of Ministers, concerning the application of such provisions of Part II of the Charter as they have accepted.

Article 22 – Reports concerning provisions which are not accepted

The Contracting Parties shall send to the Secretary General, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of Part II of the Charter which they did not accept at the time of their ratification or approval or in a subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided.

Article 23 – Communication of copies

1. Each Contracting Party shall communicate copies of its reports referred to in Articles 21 and 22 to such of its national organisations as are members of the international organisations of employers and trade unions to be invited under Article 27, paragraph 2, to be represented at meetings of the Sub-committee of the Governmental Social Committee.
2. The Contracting Parties shall forward to the Secretary General any comments on the said reports received from these national organisations, if so requested by them.

Article 24 – Examination of the reports

The reports sent to the Secretary General in accordance with Articles 21 and 22 shall be examined by a Committee of Experts, who shall have also before them any comments forwarded to the Secretary General in accordance with paragraph 2 of Article 23.

Article 25 – Committee of Experts

1. The Committee of Experts shall consist of not more than seven members appointed by the Committee of Ministers from a list of independent experts of the highest integrity and of recognised competence in international social questions, nominated by the Contracting Parties.
2. The members of the committee shall be appointed for a period of six years. They may be reappointed. However, of the members first appointed, the terms of office of two members shall expire at the end of four years.
3. The members whose terms of office are to expire at the end of the initial period of four years shall be chosen by lot by the Committee of Ministers immediately after the first appointment has been made.
4. A member of the Committee of Experts appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 26 – Participation of the International Labour Organisation

The International Labour Organisation shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the Committee of Experts.

Article 27 – Sub-committee of the Governmental Social Committee

1. The reports of the Contracting Parties and the conclusions of the Committee of Experts shall be submitted for examination to a sub-committee of the Governmental Social Committee of the Council of Europe.
2. The sub-committee shall be composed of one representative of each of the Contracting Parties. It shall invite no more than two international organisations of employers and

no more than two international trade union organisations as it may designate to be represented as observers in a consultative capacity at its meetings. Moreover, it may consult no more than two representatives of international non-governmental organisations having consultative status with the Council of Europe, in respect of questions with which the organisations are particularly qualified to deal, such as social welfare, and the economic and social protection of the family.

3. The sub-committee shall present to the Committee of Ministers a report containing its conclusions and append the report of the Committee of Experts.

Article 28 – Consultative Assembly

The Secretary General of the Council of Europe shall transmit to the Consultative Assembly the conclusions of the Committee of Experts. The Consultative Assembly shall communicate its views on these conclusions to the Committee of Ministers.

Article 29 – Committee of Ministers

By a majority of two-thirds of the members entitled to sit on the Committee, the Committee of Ministers may, on the basis of the report of the sub-committee, and after consultation with the Consultative Assembly, make to each Contracting Party any necessary recommendations.

Part V

Article 30 – Derogations in time of war or public emergency

1. In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter 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.
2. Any Contracting Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.
3. The Secretary General shall in turn inform other Contracting Parties and the Director General of the International Labour Office of all communications received in accordance with paragraph 2 of this article.

Article 31 – Restrictions

1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.
2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article 32 – Relations between the Charter and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

Article 33 – Implementation by collective agreements

1. In member States where the provisions of paragraphs 1, 2, 3, 4 and 5 of Article 2, paragraphs 4, 6 and 7 of Article 7 and paragraphs 1, 2, 3 and 4 of Article 10 of Part II of this Charter are matters normally left to agreements between employers or employers' organisations and workers' organisations, or are normally carried out otherwise than by law, the undertakings of those paragraphs may be given and compliance with them shall be treated as effective if their provisions are applied through such agreements or other means to the great majority of the workers concerned.
2. In member States where these provisions are normally the subject of legislation, the undertakings concerned may likewise be given, and compliance with them shall be regarded as effective if the provisions are applied by law to the great majority of the workers concerned.

Article 34 – Territorial application

1. This Charter shall apply to the metropolitan territory of each Contracting Party. Each signatory government may, at the time of signature or of the deposit of its instrument of ratification or approval, specify, by declaration addressed to the Secretary General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.
2. Any Contracting Party may, at the time of ratification or approval of this Charter or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible or for which it assumes international responsibility. It shall specify in the declaration the articles or paragraphs of Part II of the Charter which it accepts as binding in respect of the territories named in the declaration.
3. The Charter shall extend to the territory or territories named in the aforesaid declaration as from the thirtieth day after the date on which the Secretary General shall have received notification of such declaration.
4. Any Contracting Party may declare at a later date, by notification addressed to the Secretary General of the Council of Europe, that, in respect of one or more of the territories to which the Charter has been extended in accordance with paragraph 2 of this article, it accepts as binding any articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the thirtieth day after the date of the notification.
5. The Secretary General shall communicate to the other signatory governments and to the Director General of the International Labour Office any notification transmitted to him in accordance with this article.

Article 35 – Signature, ratification and entry into force

1. This Charter shall be open for signature by the members of the Council of Europe. It shall be ratified or approved. Instruments of ratification or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall come into force as from the thirtieth day after the date of deposit of the fifth instrument of ratification or approval.
3. In respect of any signatory government ratifying subsequently, the Charter shall come into force as from the thirtieth day after the date of deposit of its instrument of ratification or approval.
4. The Secretary General shall notify all the members of the Council of Europe and the Director General of the International Labour Office of the entry into force of the Charter, the names of the Contracting Parties which have ratified or approved it and the subsequent deposit of any instruments of ratification or approval.

Article 36 – Amendments

Any member of the Council of Europe may propose amendments to this Charter in a communication addressed to the Secretary General of the Council of Europe. The Secretary General shall transmit to the other members of the Council of Europe any amendments so proposed, which shall then be considered by the Committee of Ministers and submitted to the Consultative Assembly for opinion. Any amendments approved by the Committee of Ministers shall enter into force as from the thirtieth day after all the Contracting Parties have informed the Secretary General of their acceptance. The Secretary General shall notify all the members of the Council of Europe and the Director General of the International Labour Office of the entry into force of such amendments.

Article 37 – Denunciation

1. Any Contracting Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force for it, or at the end of any successive period of two years, and, in each case, after giving six months notice to the Secretary General of the Council of Europe who shall inform the other Parties and the Director General of the International Labour Office accordingly. Such denunciation shall not affect the validity of the Charter in respect of the other Contracting Parties provided that at all times there are not less than five such Contracting Parties.
2. Any Contracting Party may, in accordance with the provisions set out in the preceding paragraph, denounce any article or paragraph of Part II of the Charter accepted by it provided that the number of articles or paragraphs by which this Contracting Party is bound shall never be less than 10 in the former case and 45 in the latter and that this number of articles or paragraphs shall continue to include the articles selected by the Contracting Party among those to which special reference is made in Article 20, paragraph 1, sub-paragraph b.
3. Any Contracting Party may denounce the present Charter or any of the articles or paragraphs of Part II of the Charter, under the conditions specified in paragraph 1 of this article in respect of any territory to which the said Charter is applicable by virtue of a declaration made in accordance with paragraph 2 of Article 34.

Article 38 – Appendix

The appendix to this Charter shall form an integral part of it.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Charter.

Done at Turin, this 18th day of October 1961, in English and French, both texts being equally authoritative, in a single copy which shall be deposited within the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the Signatories.

Appendix to the Social Charter

Scope of the Social Charter in terms of persons protected

1. Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 include foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19. This interpretation would not prejudice the extension of similar facilities to other persons by any of the Contracting Parties.
2. Each Contracting Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed at Geneva on 28th July 1951, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Contracting Party under the said Convention and under any other existing international instruments applicable to those refugees.

Part I, paragraph 18, and Part II, Article 18, paragraph 1

It is understood that these provisions are not concerned with the question of entry into the territories of the Contracting Parties and do not prejudice the provisions of the European Convention on Establishment, signed at Paris on 13th December 1955.

Part II

Article 1, paragraph 2

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.

Article 4, paragraph 4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Article 4, paragraph 5

It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.

Article 6, paragraph 4

It is understood that each Contracting Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article 31.

Article 7, paragraph 8

It is understood that a Contracting Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under 18 years of age shall not be employed in night work.

Article 12, paragraph 4

The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply *inter alia* that with regard to benefits which are available independently of any insurance contribution a Contracting Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Contracting Parties.

Article 13, paragraph 4

Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Social Charter in respect of this paragraph provided that they grant to nationals of other Contracting Parties a treatment which is in conformity with the provisions of the said Convention.

Article 19, paragraph 6

For the purpose of this provision, the term "family of a foreign worker" is understood to mean at least his wife and dependent children under the age of 21 years.

Part III

It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof.

Article 20, paragraph 1

It is understood that the "numbered paragraphs" may include articles consisting of only one paragraph.

Part V

Article 30

The term "in time of war or other public emergency" shall be so understood as to cover also the threat of war.

CANADIAN CHARTER OF RIGHTS AND FREEDOMS



Canadian Charter of Rights and Freedoms



Department of Justice Ministère de la Justice
Canada Canada

Français

Guarantee of Rights and Freedoms
Fundamental Freedoms
Democratic Rights
Mobility Rights
Legal Rights
Equality Rights
Official Languages of Canada
Minority Language Educational Rights
Enforcement
General
Application of Charter
Citation

Schedule B Constitution Act, 1982

Enacted as Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11, which came into force on April 17, 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.

Democratic Rights

Democratic rights of citizens

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Maximum duration of legislative bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs of a general election of its members.

Continuation in special circumstances (2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual sitting of legislative bodies 5. There shall be a sitting of Parliament and of each legislature at least once every twelve months

Mobility Rights

Mobility of citizens 6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
a) to move to and take up residence in any province; and
b) to pursue the gaining of a livelihood in any province.

Limitation (3) The rights specified in subsection (2) are subject to
a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Legal Rights

Life, liberty and security of person 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure 8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment 9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention 10. Everyone has the right on arrest or detention
a) to be informed promptly of the reasons therefor;
b) to retain and instruct counsel without delay and to be informed of that right; and
c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Proceedings in criminal and penal matters 11. Any person charged with an offence has the right
a) to be informed without unreasonable delay of the specific offence;
b) to be tried within a reasonable time;
c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
e) not to be denied reasonable bail without just cause;
f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or

international law or was criminal according to the general principles of law recognized by the community of nations;
h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Treatment or punishment **12.** Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-crimination **13.** A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Interpreter **14.** A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Equality Rights

Equality before and under law and equal protection and benefit of law **15.** (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Official Languages of Canada

Official languages of Canada **16.** (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

Official languages of New Brunswick (2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

Advancement of status and use (3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

English and French linguistic communities in New Brunswick **16.1.** (1) The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

Role of the legislature and government of New Brunswick (2) The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.

Proceedings of Parliament **17.** (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

Proceedings of New Brunswick legislature (2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

Parliamentary statutes and records	18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.
New Brunswick statutes and records	(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.
Proceedings in courts established by Parliament	19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.
Proceedings in New Brunswick courts	(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.
Communications by public with federal institutions	20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where <ul style="list-style-type: none"> a) there is a significant demand for communications with and services from that office in such language; or b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.
Communications by public with New Brunswick institutions	(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.
Continuation of existing constitutional provisions	21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.
Rights and privileges preserved	22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

Minority Language Educational Rights

Language of instruction	23. (1) Citizens of Canada <ul style="list-style-type: none"> a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.
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	(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 <ul style="list-style-type: none"> 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

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.

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

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

- a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

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.

Rights guaranteed equally to both sexes

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Rights respecting certain schools preserved

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.(93)

Application to territories and territorial authorities

30. A reference in this Charter to a Province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

Legislative powers not extended

31. Nothing in this Charter extends the legislative powers of any body or authority.

Application of Charter

Application of Charter

32. (1) This Charter applies

- a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
- b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Exception
APPENDIX E

(2) Notwithstanding subsection (1), section 15 shall not have effect until three

years after this section comes into force.

Exception where express declaration **33.** (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

Operation of exception (2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

Five year limitation (3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

Re-enactment (4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

Five year limitation (5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

Citation

Citation **34.** This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

