



# CANADIAN CHARTER OF RIGHTS AND FREEDOMS

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*The legal content of this presentation is accurate as of August 11, 2014*

# What is the Charter?

The Charter is a part of the Constitution Act of 1982 which together form the Canada Act. It had to be approved by Britain and Queen Elizabeth II signed the it on April 17, 1982.

Prime Minister Trudeau spearheaded the idea which was inspired by 3 pre-existing world documents.





1948 United Nations Universal  
declaration of Human Rights

1950 European Convention for the  
Protection of Human Rights and  
Fundamental Freedoms

1966 International Covenant on  
Civil and Political Rights



# 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

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

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

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. (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 at a general election of its members. (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. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

## Mobility Rights

4. (1) Every citizen of Canada has the right to enter, remain in and leave Canada. (2) Every citizen 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. (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. (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

5. 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. A. Everyone has the right to be secure against unreasonable search or seizure. 6. Everyone has the right not to be arbitrarily detained or imprisoned. 7. 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. 8. 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. 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment. 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. 14. A party to a 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

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. (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

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 governments of Canada. (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. (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. 17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament. (2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick. (3) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions shall be equally authoritative. (4) 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. 18. (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. (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. 19. (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 (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. (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. 20. 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. 21. 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

22. (1) Citizens of Canada (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. (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. (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 (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

23. (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. (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

24. 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 1, 1763; and (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired. 25. 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. 26. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. 27. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons. 28. 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 dissenting schools. 29. 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. 30. Nothing in this Charter extends the legislative power of any body or authority.

## Application of Charter

31. (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. (2) Notwithstanding subsection (1), section 35 shall not have effect until three years after this section comes into force. 32. (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 3 or sections 7 to 15 of this Charter. (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. (3) A declaration made under subsection (2) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration. (4) Parliament or a legislature of a province may re-enact a declaration made under subsection (2). (5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

## Citation

33. This Part may be cited as the Canadian Charter of Rights and Freedoms.

"We must now establish the basic principles, the basic values and beliefs which hold us together as Canadians and that beyond our regional loyalties there is a way of life and a spirit of values which make us proud of the country that has given us such freedom and such tremendous joy."

P. Trudeau 1981

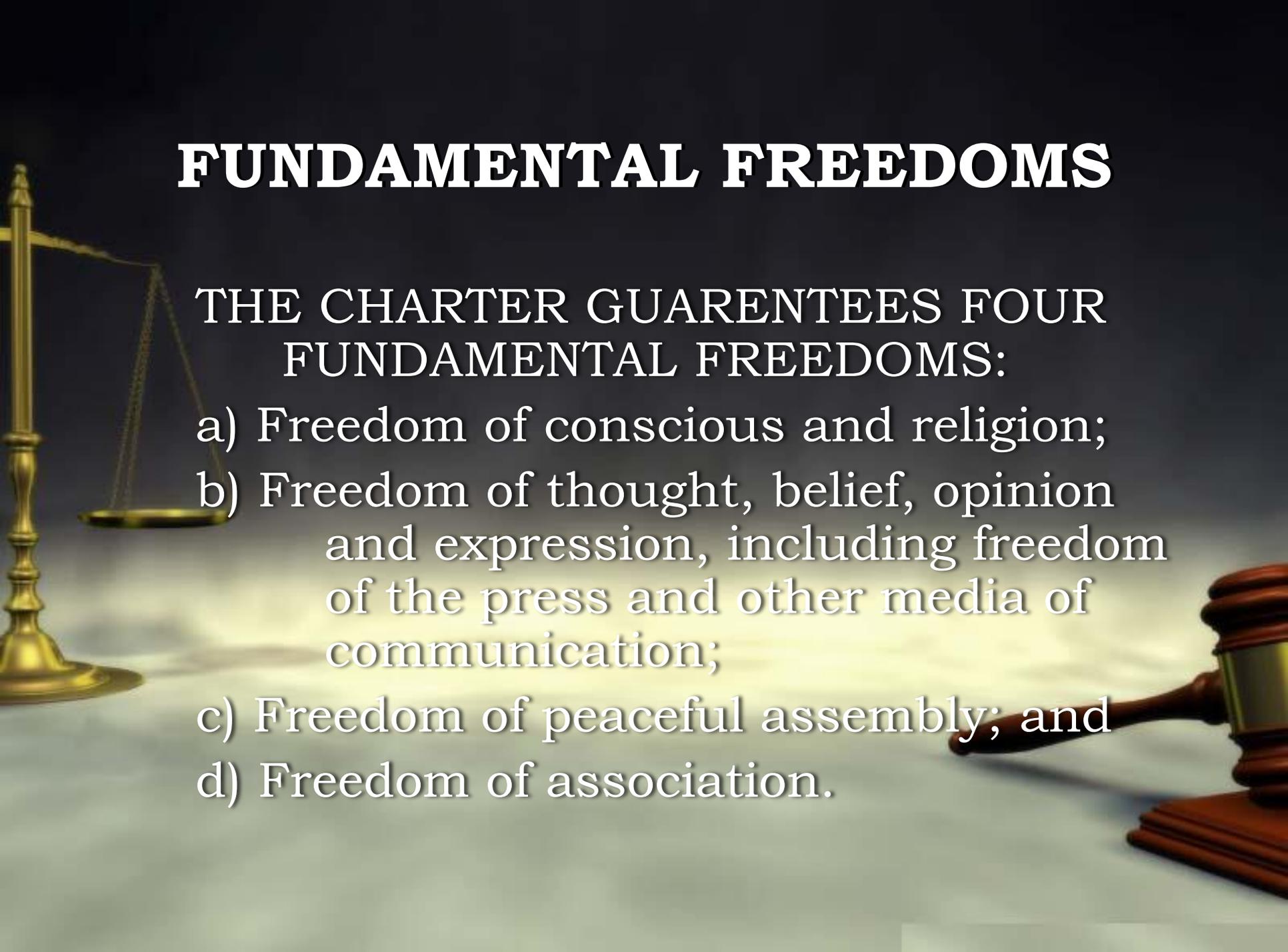


# FREEDOMS

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms of Canadians as can be justified in a free and democratic society.



# FUNDAMENTAL FREEDOMS



THE CHARTER GUARENTEES FOUR  
FUNDAMENTAL FREEDOMS:

- a) Freedom of conscious 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.

# RELIGION

What kinds of things do you think that the freedom of religion protects? Try to come up with some specific examples.



# RELIGION

- The Charter protects people from having to act against their religious beliefs.
- This can raise hard questions.
- Can courts order life-saving blood transfusions for children if it goes against the religious beliefs of their parents?



# ASSOCIATION

What kinds of things do you think that the freedom of association includes?

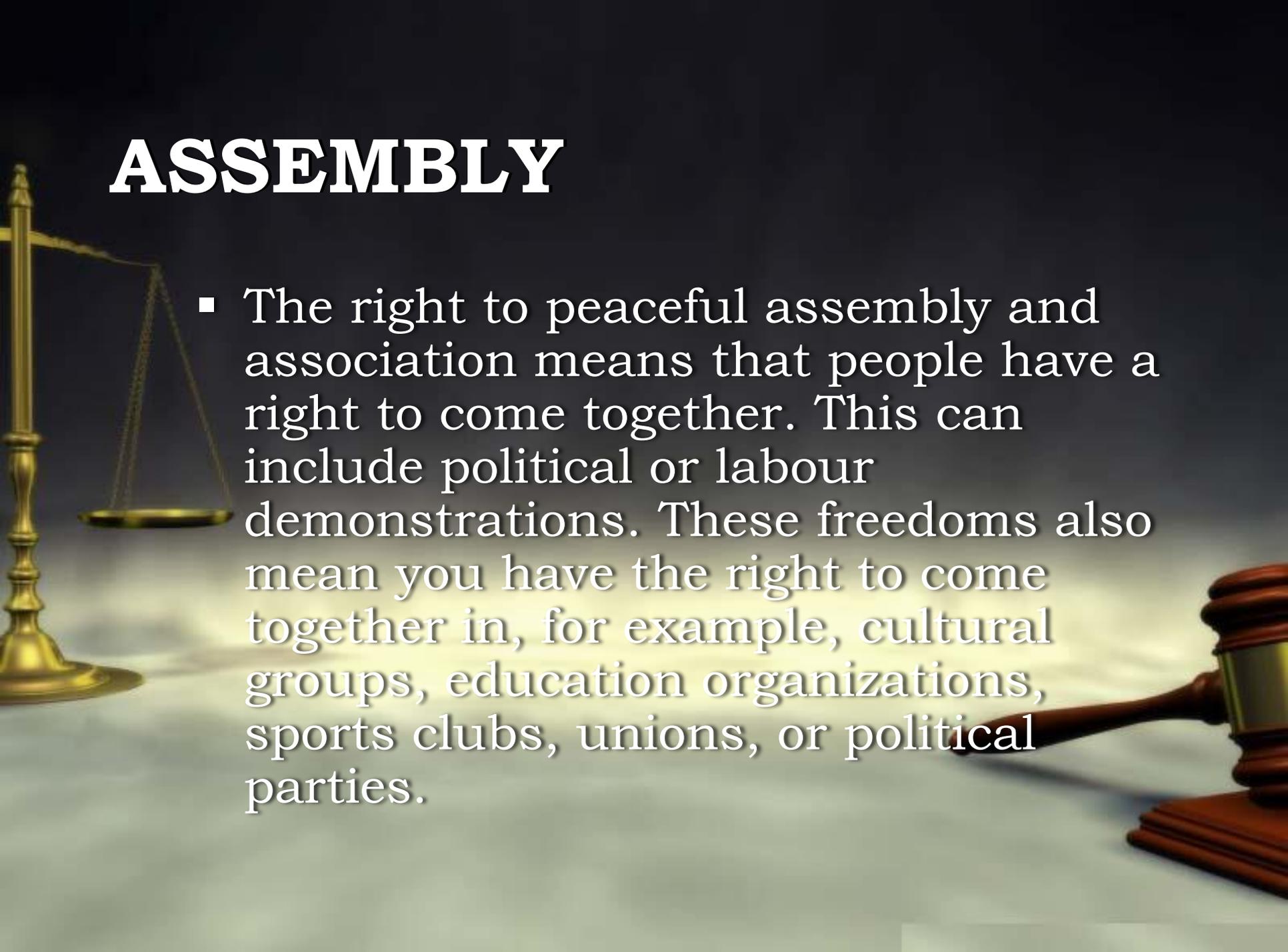


# ASSOCIATION

- You have the right to assert your rights, pursue your interests, express your views, hear the ideas of others, or otherwise participate in a democratic society, it can be important to join with other people.



# ASSEMBLY



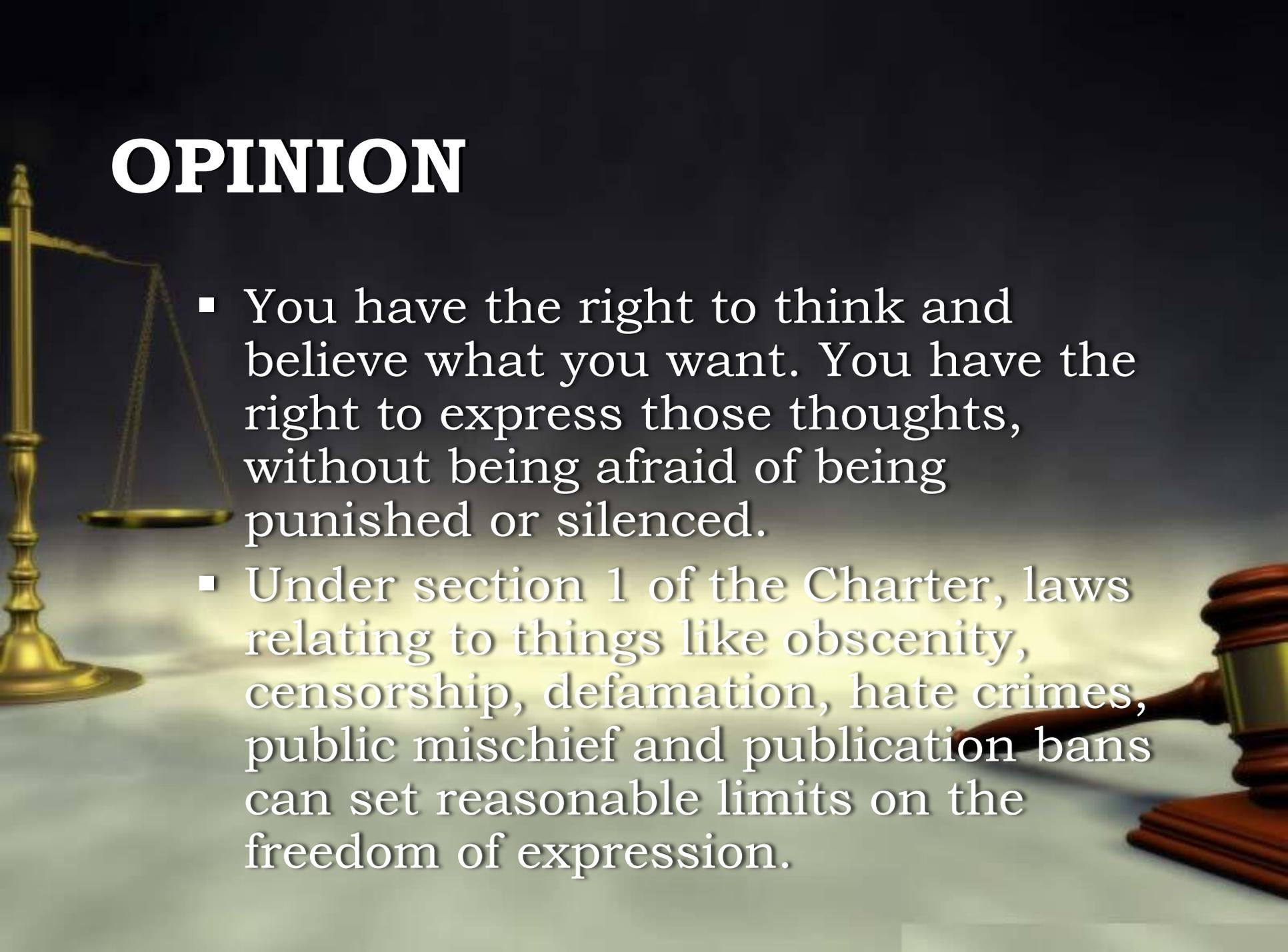
- The right to peaceful assembly and association means that people have a right to come together. This can include political or labour demonstrations. These freedoms also mean you have the right to come together in, for example, cultural groups, education organizations, sports clubs, unions, or political parties.

# OPINION

What things do you think  
are included under the  
“freedom of opinion”  
protection?



# OPINION

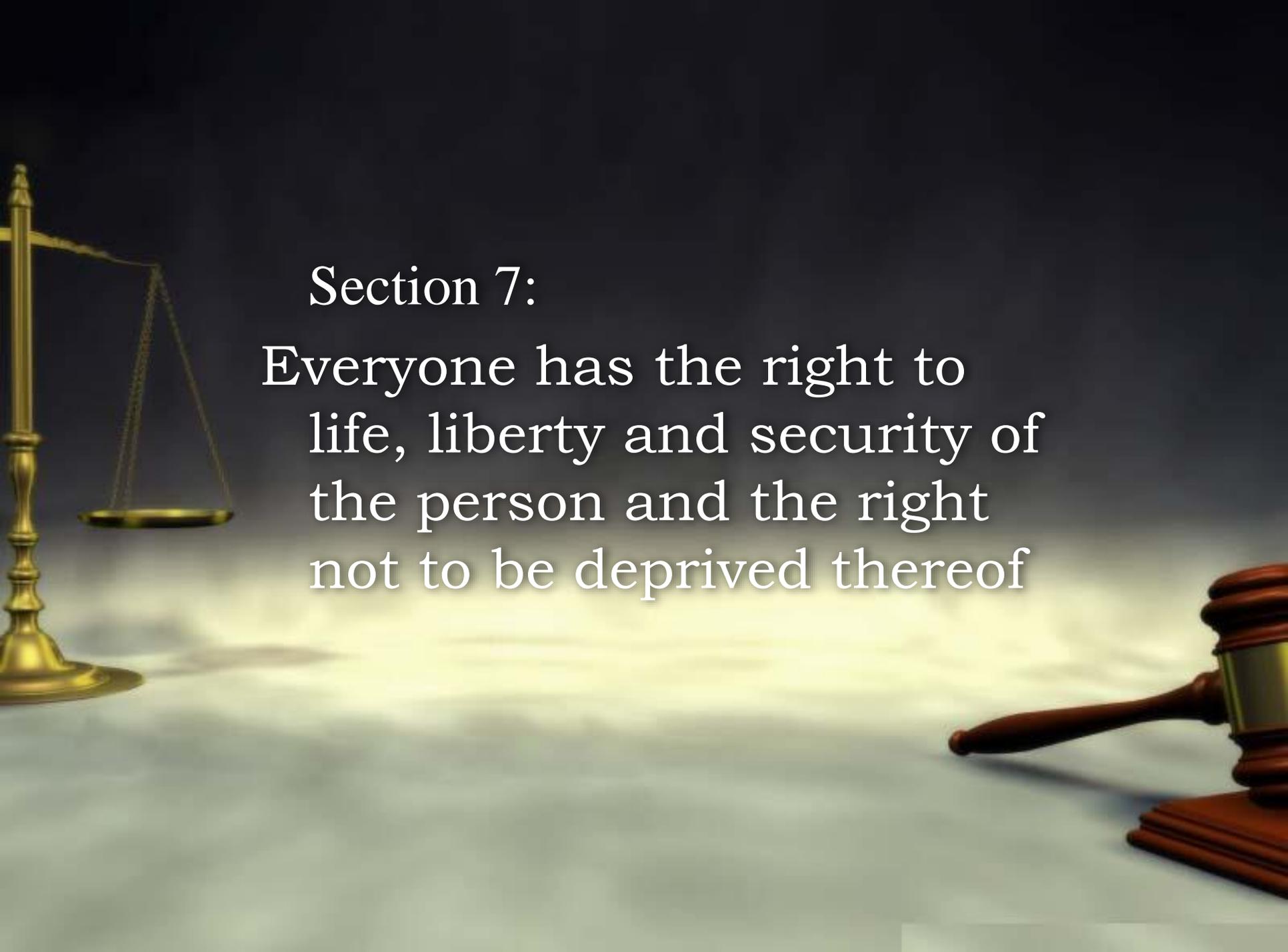


- You have the right to think and believe what you want. You have the right to express those thoughts, without being afraid of being punished or silenced.
- Under section 1 of the Charter, laws relating to things like obscenity, censorship, defamation, hate crimes, public mischief and publication bans can set reasonable limits on the freedom of expression.

# What are your Rights?

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms of Canadians as can be justified in a free and democratic society.

*Divide into groups of 4 or 5 to spend a few minutes generating a list of rights that you consider to be essential to your life.*



Section 7:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof



# LIFE

*Which rights from your list  
could fall within this  
guarantee?*



# LIBERTY

*Which rights from your list  
could fall within this  
guarantee?*



# SECURITY

*Which rights from your list  
could fall within this  
guarantee?*



Section 15:

To the equal protection and  
equal benefit of the law  
without discrimination

*Which rights from your list  
could fall within this  
guarantee?*





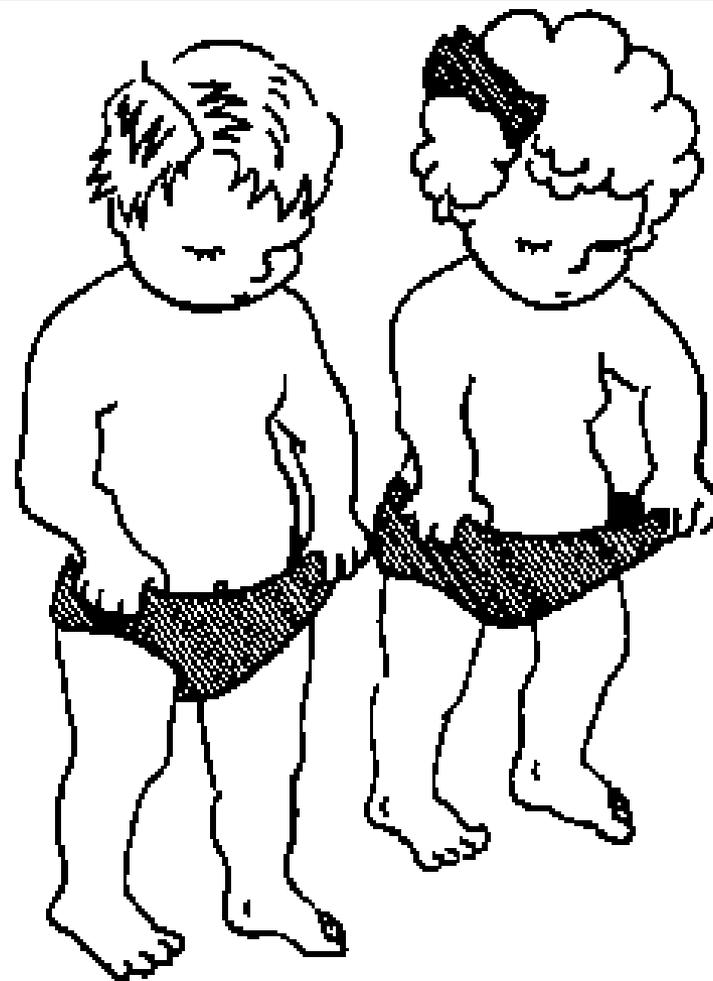
# **DISCRIMINATION!**

*Try to identify the basis of discrimination in the following slides (eg. gender)*



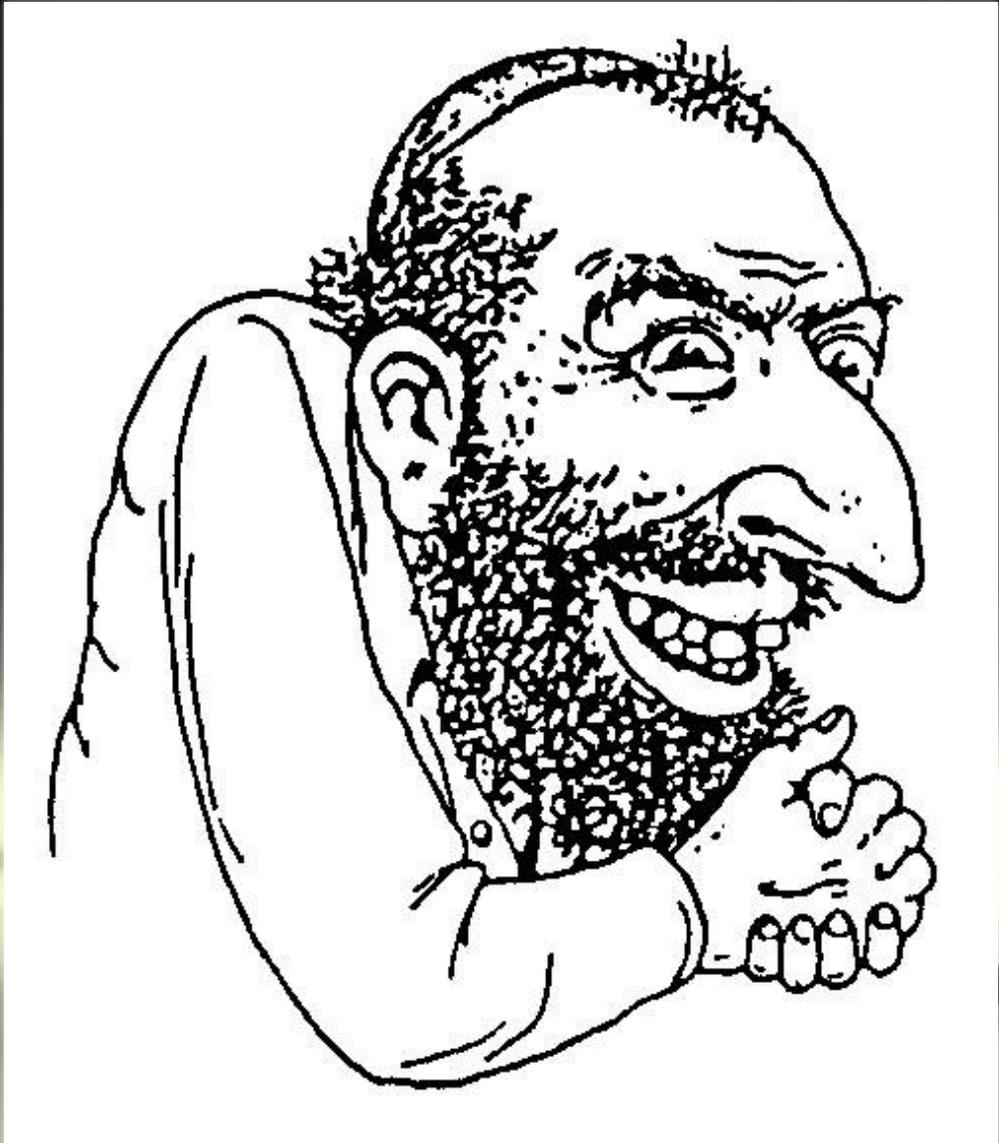
How come she  
got promoted after  
a **week**, when I've  
been here a **year**?





**"OH! THAT EXPLAINS THE  
DIFFERENCE IN OUR PAY"**







'This brain surgeon we had to employ under the age discrimination rules says he can't concentrate without his iPod.'



I SUPPOSE  
MORALLY —  
I SHOULD RENT  
YOU THE FLAT!

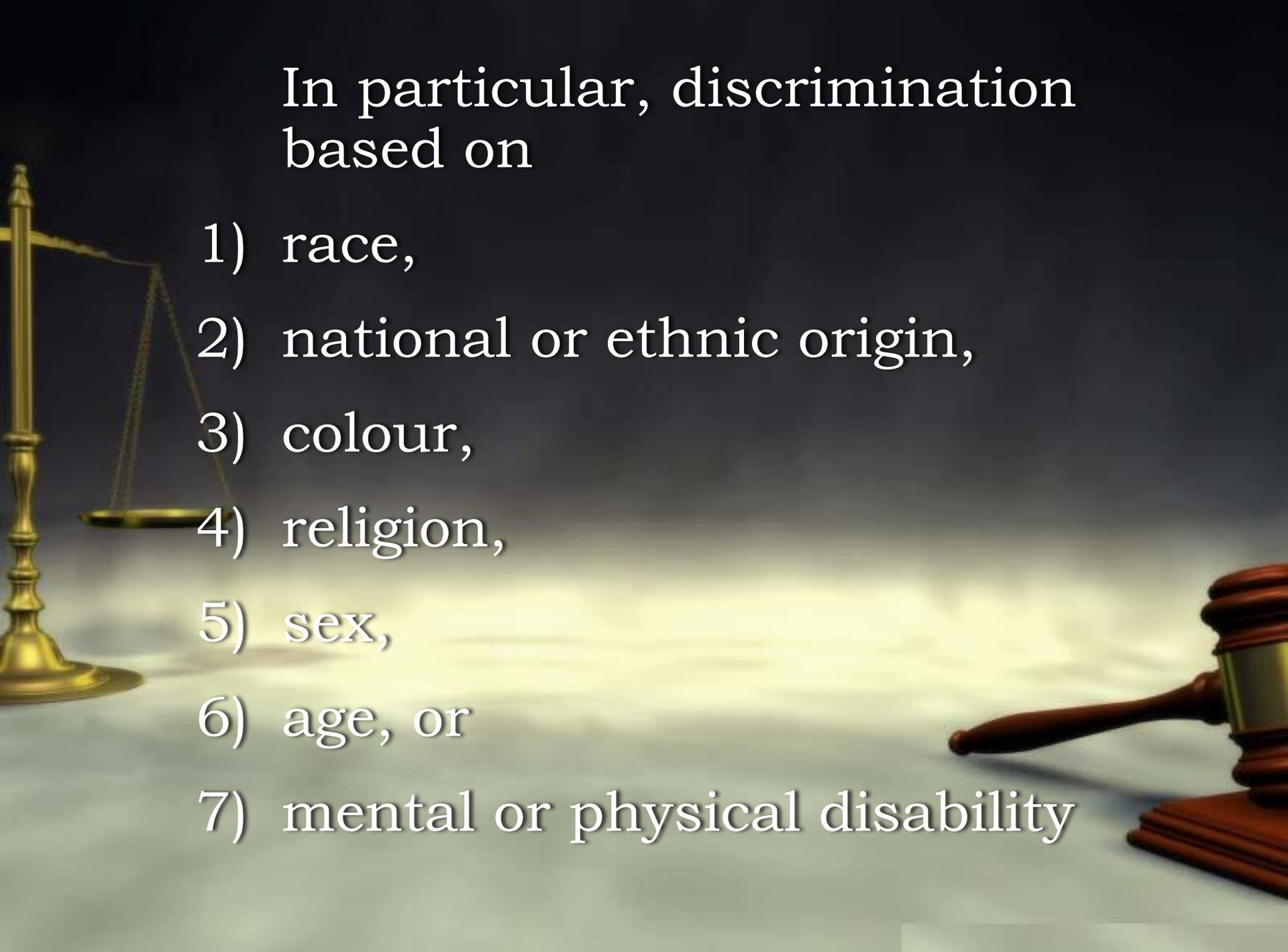


I SUPPOSE  
LEGALLY —  
YOU'D BE UNWISE  
NOT TO !!



Just let me know how his gayness is affecting office productivity.

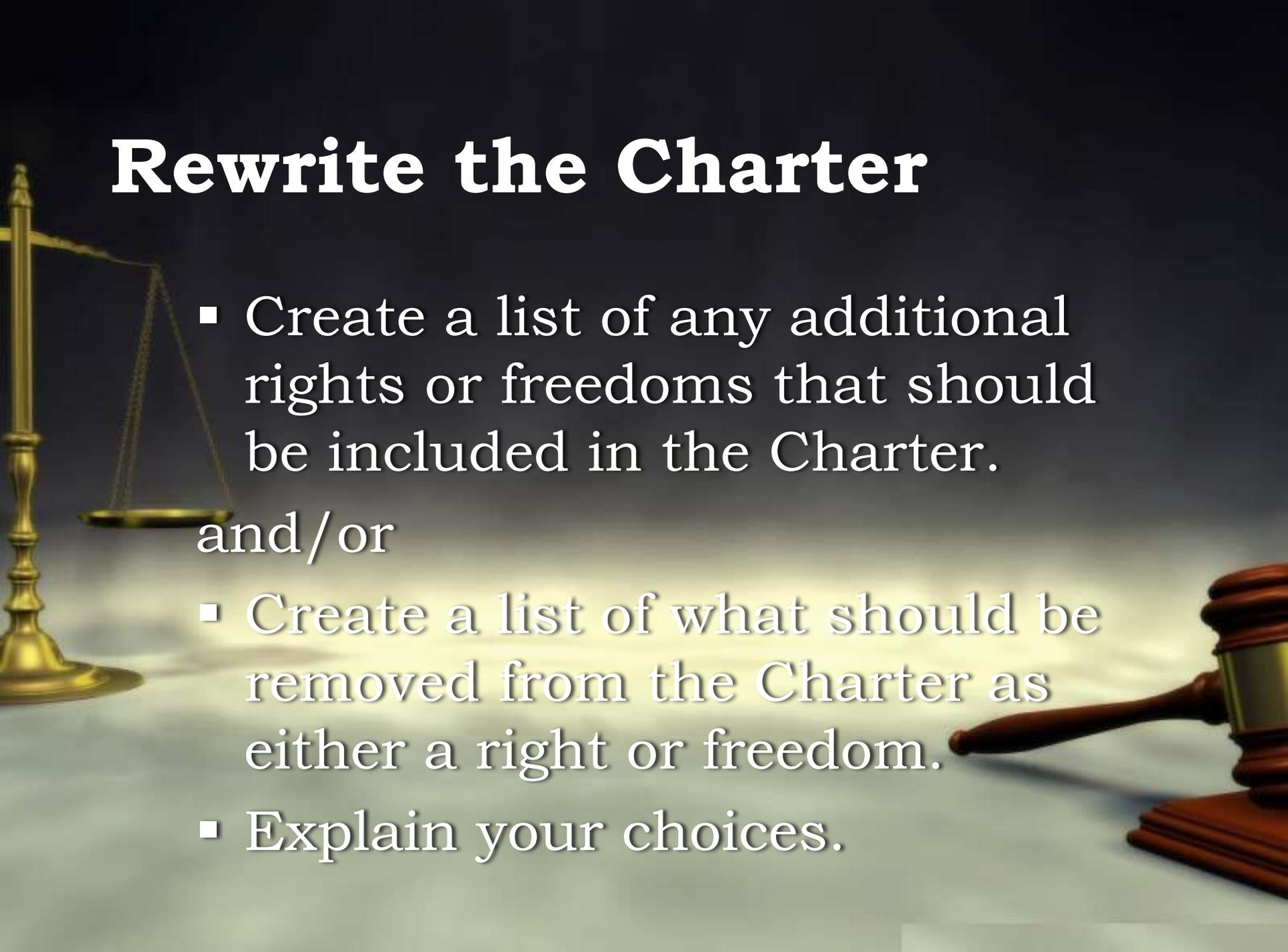




In particular, discrimination based on

- 1) race,
- 2) national or ethnic origin,
- 3) colour,
- 4) religion,
- 5) sex,
- 6) age, or
- 7) mental or physical disability

# Rewrite the Charter



- Create a list of any additional rights or freedoms that should be included in the Charter.

and/or

- Create a list of what should be removed from the Charter as either a right or freedom.
- Explain your choices.

# Application of Charter

While the Charter protects the rights and freedoms of Canadians, section 32 indicates that it only applies to the government of Canada and the individual provincial legislatures. This means that it applies to all government laws and actions. All laws in Canada must respect the rights and freedoms that people have under the Charter.



# Application of Charter

For example, Human rights commissions and labour relations boards are bound by the *Charter* because their authority stems from government laws.

The delivery of health care services by a public hospital because the health services are regulated under government laws, and therefore the *Charter* applies to them as well. However, although Universities are partially owned by the government, they are *not* bound by the Charter.

The Charter is not used in disputes between private businesses or individuals. So if you're looking to get a raise at your job in the mall, the Charter will not help you.

THANK YOU

