

## Real Estate Agent Obligations ~ Charter of Rights



**By Brian Madigan LL.B.**

There are basic duties and obligations that are owed to the public. They may be found in both the common law, and laws of general application. Particularly, there are some basic rules set out in the *Charter of Rights and Freedoms*. These laws supersede other laws and in the event of conflict, then the Charter of Rights will prevail.

So, what does the Charter say? Here are some of the provisions that may have application in the case of a real estate transaction. I have omitted those provisions that do not have any application to real estate whatsoever.

### **“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.**

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.

**MOBILITY RIGHTS OF CITIZENS / Right to move and gain livelihood / Limitation / Affirmative action programs.**

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

(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.

(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 were socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

**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.

### **SELF-INCRIMINATION.**

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.

### **EQUALITY BEFORE AND UNDER LAW AND EQUAL PROTECTION AND BENEFIT OF LAW / Affirmative action programs.**

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.

### **ENFORCEMENT OF GUARANTEED RIGHTS AND FREEDOMS / Exclusion of evidence bringing administration of justice into disrepute.**

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.

(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.

**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.

**RIGHTS GUARANTEED EQUALLY TO SEXES.**

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

That was the Charter. The Courts will routinely strike down any legislation which is not in accordance with the Charter. The basic human rights are set out and they cannot be abridged. It is also noteworthy that under section 26, all common law rights are preserved.

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