

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



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CANADIENNE DES
LIBERTES CIVILES

Learning Unit on Civil Liberties in pre-Charter

Canada: Prezi Guide

Introduction

The CCLA is a national, non-profit, non-governmental organization that works to protect and promote fundamental rights and freedoms through litigation, law reform, advocacy and public education.

Since 1964, the CCLA has been actively standing up to power by fighting against rights violations, abuse of police powers, inequality, and discrimination. We stand for freedom, equity, and a better future for all people in Canada. In the 1960's, CCLA quickly made a name for itself with its then-shocking exposure of racist landlords who were sending Black tenants to seek a new rental. More recently our work has included putting an end to the use of lengthy solitary confinement in Canadian prisons, and fighting a ban on public service workers in Quebec from wearing religious symbols such as crosses, hijabs, turbans and yarmulkes.

We've stood up for LGBTQ2S+ rights in the courts and published a resource to educate students and teachers about LGBTQ2S+ rights in schools.

Through challenging the law and educating youth on their rights, we are able to effect systemic change in our communities.

This Learning Unit provides a foundation for understanding the evolution of civil liberties in Canada before the existence of the Canadian Charter of Rights and Freedoms and highlights a number of historical events that shaped the landscape of rights in Canada between 1945 and

1982. The rights violations that took place during the Gouzenko Affair, the October Crisis and the Toronto bathhouse raids all illustrated the need for stronger rights protections in pre-Charter Canada and ultimately prompted important changes to the law.

In this timeline, we will also look at the 1960 Bill of Rights and the birth of the Canadian Civil Liberties Association (CCLA).

Civil liberties

Before the concept of human rights became more widespread in Canada in the 1970s, Canadians largely referred to their rights as civil liberties, which included:

- freedom of speech, association, assembly, religion, and the press; and
- the right to vote and due process (to be treated fairly under the law)¹

Civil liberties are meant to protect individuals from the government abusing its power in a democracy.

The Gouzenko Affair (1945)

As a British Colony, Canada's Constitution, written in 1867, closely mirrored that of the United Kingdom. As a result, Canada inherited the British Constitutional principle of Parliamentary supremacy, which gives the government complete control over creating, amending or abolishing laws. In a system of Parliamentary supremacy, the government could essentially create any law, even a repressive one, and there would be almost no legal means to challenge it.

The Gouzenko Affair was an important case in demonstrating the dangers of such a system. Mr. Gouzenko was a Soviet cipher clerk (someone who encrypts and decrypts coded messages) stationed at the Soviet Union's embassy in Ottawa during the Second World War. In 1945, just weeks after the end of the war, Mr. Gouzenko removed documents from the Soviet embassy that proved his country had been operating a spy ring in Canada. His intention was to offer this evidence in exchange for asylum for himself and his family in Canada. Gouzenko's defection, and the information he revealed, is credited by some as the spark that ignited the Cold War.

¹ Clement, Dominique, Will Silver, and Dan Trottier. "The Evolution of Human Rights in Canada." Ottawa: Canadian Human Rights Commission, 2012.

In response to this revelation, Prime Minister Mackenzie King, under the authority of the federal War Measures Act, formed a Royal Commission on Espionage with extraordinary powers to investigate the extent of the Soviet spy ring in Canada. The War Measures Act was a piece of legislation passed at the beginning of World War I that gave the government special powers during “war, invasion, and insurrection, real or apprehended.” Armed with these powers, the commission could essentially bypass the judicial system entirely. Suspected spies were arrested, detained and interrogated without charges for as long as the Minister of Justice desired, and witnesses were forced to testify and denied access to a lawyer.

The proceedings of the commission represent one of the most extensive abuses of civil liberties by a Canadian government in peacetime and played a key role in prompting the early civil liberties movement in post WWII Canada.²

The government’s mistreatment of Canadian citizens suspected of espionage united many to call for stronger protections in law for everyone. Several local civil liberties groups formed and arguments for constitutional protections for rights began to grow. With protections for individual rights embedded in the Constitution, Canada’s system of Parliamentary supremacy would shift to one of Constitutional supremacy. This meant that the government could no longer pass any laws it wished without restriction; if the government passed laws that violated the rights protected in the Constitution, those laws could be challenged and struck down by the courts. The Gouzenko Affair allowed civil libertarians to raise public awareness about the harms of unchecked Parliamentary power, and promoted the need for a legislative change.

Bill of Rights (1960)

Unfortunately, the Royal Commission on Espionage that was born out of the Gouzenko Affair was one of many examples of the government’s disregard for the rights and freedoms of certain groups in Canada after WWII. [The internment of Japanese Canadians](#), the mistreatment of religious minorities in Quebec, censorship during the war, widespread racial and sex discrimination, and the [Padlock law](#) in Quebec all fueled debate among civil libertarians and law

² Clément, Dominique. (2000). Spies, Lies, and a Commission: A Case Study in the Mobilization of the Canadian Civil Liberties Movement. *Left History: An Interdisciplinary Journal of Historical Inquiry and Debate*. 7.

makers about the need for greater rights protections and the role of Canada's courts to limit the powers of Parliament. The Canadian Bill of Rights (1960), the first federal law to clearly protect human rights and fundamental freedoms, was formed out of these discussions. Since lawmakers were hesitant to change the system of parliamentary supremacy, the Bill of Rights was passed as a federal statute, instead of a constitutionally protected bill of rights. As a federal statute, the Bill of Rights was much less powerful as a legal tool to provide protection of individual rights against government powers. After the passing of the Bill of Rights in 1960, civil libertarians continued to vocalize dissatisfaction with its limits in terms of not being part of the Canadian Constitution.

Birth of the CCLA (1964)

In 1964, the Ontario government proposed Bill 99, which proposed to give the police special authority to detain and investigate suspects of organized crime. These special powers would enable the police to detain suspects without being charged, without notifying their next of kin, and without allowing them to talk to a lawyer. The police would even be allowed to jail suspects for up to eight days, and if they did not cooperate with the investigation, police could renew the 8 day detention for up to a year. This Bill inspired lawyer Irving Himel and six other Toronto activists to come together and create the Canadian Civil Liberties Association. Thankfully, Bill 99 was not passed and the CCLA remained organized to continue to speak out against threats to democratic rights in Canada.

The October Crisis (1970)

Among the CCLA's most impactful campaigns was against the government's use of the War Measures Act in response to the October Crisis of 1970.

The Front de libération du Québec (FLQ) was a group of Quebec nationalists who advocated for an independent Quebec by any means necessary, including violence. After nearly a decade of perpetrating acts of vandalism, armed robberies, and bombings, the FLQ kidnapped James Cross, the British Trade Commissioner on October 5, 1970. Five days later on October 10, the FLQ kidnapped Pierre Laporte, Canada's Minister of Immigration and Labour. These two kidnappings made the October Crisis the most serious terrorist action ever on Canadian soil. In

response to the crisis, Prime Minister Pierre Trudeau used the War Measures Act to arrest and detain suspected FLQ terrorists and their supporters. Shortly after, Pierre Laporte was found dead in the trunk of a car.

Activating the War Measures Act resulted in the suspension of basic civil rights of many Canadians. Police conducted thousands of searches and detained nearly 500 people who were denied access to a lawyer and the right to have a court determine the legality of their detention (Habeas Corpus). Freedom of expression and the press were also severely limited. Teachers, student newspapers, and mainstream media were intimidated and cautioned against expressing sympathy with the FLQ or simply reporting on the crisis, resulting in some teachers and journalists losing their jobs, and others arrested and interrogated.

Despite the severity of these rights violations, most of English Canada saw the use of the War Measures Act as a necessary response to the crisis. Going against popular opinion, the Canadian Civil Liberties Association was among a relatively small chorus of vocal critics outside of Quebec, and was quick to call on the government to revoke the War Measures Act on the basis that it was overkill. They argued that emergency war time powers were not necessary when there were already laws in place to deal with kidnappings. New human rights and civil liberties organizations formed and coordinated efforts across the country calling for an end to the use of emergency powers.

In December, the government successfully negotiated the release of James Cross, the kidnappers were sent to Cuba and Laporte's killers were arrested. CCLA met with the Minister of Justice and played a key role in convincing the government to abandon a push for permanent emergency powers in Canada.

On the long-term implications of the Crisis, Professor Dominique Clément writes:

[The October Crisis] strengthened the human rights movement in Canada with the creation of new advocacy groups; but in many other respects the aftermath of the crisis produced disturbing precedents for restricting human rights.³

³ Clément, Dominique. (2008). The October Crisis of 1970: Human Rights Abuses Under the War Measures Act. *Journal of Canadian Studies/Revue d'études canadiennes*. 42. 160-186.

Toronto Bathhouse Raids (1981)

The third and final case study involves a police operation targeting homosexual men in Toronto. In the largest police operation since the October Crisis, 200 city police officers stormed a series of gay bathhouses in downtown Toronto on February 5, 1981, arresting 306 men in total. In the process of making the arrests, police also destroyed \$50,000 worth of property, made homophobic remarks and collected vast amounts of private information from those caught up in the raids. Aside from the criminal charges, there were many other consequences faced by those who suffered the humiliation of the raids: some lost their jobs and others were rejected by family and friends as a result of being outed in the process.

Prominent members of the community spoke to the Chief of Police expressing their concern over targeting a minority group through an undercover police operation. CCLA and many others outside of the community were appalled by the excessive resources devoted to a months long investigation of a relatively minor crime.

An article from the Globe and Mail on February 9 aptly demonstrated that the raid was clearly a targeted attack on the homosexual community:

“There have been no such raids on other private clubs in Metro Toronto. There have been no such raids on heterosexual bawdy houses in Metro Toronto. Even in the days when there were raids on heterosexual bawdy houses, few charges were laid against found-ins. The impression upon the public cannot fail to be that the police are discriminating against homosexuals, knowing that the relatively minor charges which have been laid against so many people may give them major problems in their private lives — hurting them in their jobs and families, exposing them to the abuse of those who would deny homosexuals any rights.”

Fueled by their anger, the gay community organized a midnight march to protest police brutality and discrimination. 3000 voices from within the LGBTQ+ community and their allies came together to denounce homophobia in policing and in general society.

The raids are credited as a critical moment in the gay rights movement in Canada. Society in general saw the raids as an overreaction on the part of police and many argued that they were an intrusion into people's private life and called for more protections on the right to privacy.

The next year the Charter of Rights and Freedoms was signed into the Constitution of Canada. It excluded sexual orientation as a protected ground of discrimination. It was not until 13 years later, in the landmark Supreme Court of Canada case [Egan v. Canada](#), that sexual orientation was established as a prohibited ground of discrimination under section 15 of the Charter. In 2016, Toronto's Chief of Police issued an apology for the 1981 raids.

Conclusion

These cases demonstrate how severely civil liberties were dismissed in pre-Charter Canada in response to real threats to public safety and national security, and also as a result of biases and bigotry. Although no such constitutional protections for rights and freedoms existed at the time, the collective voices of the public, civil liberties and human rights organizations held the government accountable for its actions and gradually pushed for greater rights protections in Canada. Over time, more voices, representing increasingly diverse rights claims, would join the call to action, shifting public attitudes towards a greater respect for rights in the process. By the time the Charter of Rights and Freedoms was being envisioned by Prime Minister Pierre Trudeau, the general public and lawmakers were ready to move away from the tradition of Parliamentary Supremacy, and finally adopt a bill of rights that would be enshrined in the Constitution. When the Canadian Charter of Rights and Freedoms became part of the Constitution in 1982, Canada's system of Parliamentary Supremacy finally gave way to one of Constitutional Supremacy, requiring the government to align laws with the Charter to prevent rights violations and give recourse to people and groups whose rights have been denied. While the Charter is an important step forward in the evolution of rights in Canada, even Charter rights and freedoms are not absolute. Each of our rights and freedoms can be limited when the government thinks it is reasonable and justified to do so. Thankfully, like those before us who challenged the government to respect our civil liberties, we too can take a stand against unreasonable limits to our Charter rights and freedoms and continue to advocate for an increasingly inclusive realization of rights in Canada.