

McGill Law Journal accessible summary:

# **A missing framework for the role of international human rights law in Charter interpretation**

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## **Topic and importance**

Canadian courts frequently consider international human rights law in Charter cases without a consistent interpretive methodology. Although Canada has ratified numerous human rights treaties, these treaties are often not expressly incorporated into domestic law, leaving their relevance to Charter interpretation unclear. This uncertainty risks weakening the rule of law and has tangible consequences for Charter rights related to life, health, dignity, and equality, particularly as courts outside of Canada increasingly treat international human rights obligations as enforceable standards.

## **Main arguments**

Canadian law distinguishes between customary international law, which applies automatically unless displaced by legislation, and treaties, which generally require legislative implementation. Yet, despite the Supreme Court of Canada's recent efforts to address the matter, there is no clear

framework governing the use of international human rights law in Charter cases. This uncertainty was reinforced outside of the Charter context by decisions such as *Baker v. Canada*, which referred to international human rights “values” drawn from treaties that have not been legislatively implemented without explaining their content or how they should guide judicial interpretation. Courts have relied on international human rights law as a baseline for interpreting Charter rights but have also referenced it without clarifying its significance. This article urges the Supreme Court to explicitly endorse the “Dickson Doctrine,” which holds that binding international human rights obligations set a minimum standard for corresponding Charter rights, while non-binding obligations may inform interpretation when they are relevant to the matter before the court. It also argues that courts must apply international law’s interpretive methods when interpreting international human rights obligations and explain the weight they give to international materials, rather than treating them as interchangeable or optional.

## **Conclusion and additional considerations**

Canadian courts rely on international human rights law in Charter cases without a clear method, sometimes allowing binding international obligations to be treated as optional and weakening the rule of law because the lack of a clear method makes it uncertain how international human rights law will be treated by Canadian courts. Explicitly endorsing the Dickson Doctrine through a Charter-specific framework that treats binding international obligations as a minimum standard and applies international interpretive methods would bring coherence to Charter interpretation and better align domestic Charter rights with Canada’s international commitments.