Section 52(1) of the Constitution Act, 1982 states that any law that is inconsistent with the provisions of the Constitution is of no force or effect. Statutes which conflict with the Constitution are invalid in the most radical sense; they do not become law. In Strayer, The Canadian Constitution and the Courts (3d ed., 1988) the author states at p. 32: Now we need look no further than s. 52 of the Constitution Act, 1982 for the principle of supremacy of the Constitution [...] and for the intended consequence of supremacy; that is, the invalidity of inconsistent laws.

In R. v. Therens, [1985] 1 S.C.R. 613 at 638, the Supreme Court of Canada, speaking through Le Dain J. stated:

[...] the Charter must be regarded, because of its constitutional character, as a new affirmation of rights and freedoms and of judicial power and responsibility in relation to their protection. This results from s. 52 of the Constitution Act, 1982, which removes any possible doubt or uncertainty as to the general effect which the Charter is to have by providing that it is part of the supreme law of Canada and that any law that is inconsistent with its provisions is to the extent of such inconsistency of no force and effect.

In Hunter v. Southam Inc., [1984] 2 S.C.R. 145 at 148, Dickson J. emphasized the importance of s. 52(1):

[...] The Constitution of Canada, which includes the Canadian Charter of Rights and Freedoms, is the supreme law of Canada. Any law inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect. Section 52(1) of the Constitution Act, 1982 so mandates.

Again in R. v. Big M Drug Mart, [1985] 1 S.C.R. 295 at 312, Dickson C.J.C. said:

Section 24(1) sets out a remedy for individuals (whether real persons or artificial ones such as corporations) whose rights under the Charter have been infringed. It is not, however, the only recourse in the face of unconstitutional legislation. Where, as here, the challenge is based on the unconstitutionality of the legislation, recourse to s. 24 is unnecessary and the particular effect on the challenging party is irrelevant.

Section 52 sets out the fundamental principle of constitutional law that the Constitution is supreme. The undoubted corollary to be drawn from this principle is that no one can be convicted of an offence under an unconstitutional law.

These cases seem to indicate that section 52 operates in two ways. First, s. 52 states that the constitutional law is supreme when legislation comes into conflict with the constitution, there are certain effects. These effects are the second branch of section 52: constitutional remedies. When legislation comes into conflict with the constitution, what should the petitioner receive? The second part of section 52 is dealt with in the Constitutional Remedies section at Part V of this volume.

The first arm of section 52 - constitutional supremacy - is not a phenomenon unique to Canada. In the United States, Chief Justice Marshall stated this principle in Marbury v. Madison (1803), 5 U.S. (1 Cranch 137):

[T]he people have an original right to establish, for their future government, such principles, as, in their opinion, shall most conduce to their own happiness [and this] is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent. [...]

The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently, the theory of every such government must be that an act of the legislature, repugnant to the constitution, is void.