Exploring R. v. Oakes
Reasonable Limits with respect to the Charter of Rights and Freedoms

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Canadian Charter 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.

Section 1 therefore states that all rights and freedoms must exist within reasonable limits; individual interests must always be weighed against the interests of society.

Section 1 typically requires judges to use a “proportionality test” to weigh the value gained by limiting one’s rights against the value of protecting one’s rights in any given case.

R. v. Oakes [1986]

R. v. Oakes [1986] 1 S.C.R. 103, 1986 SCC 7 is a case decided by the Supreme Court of Canada which established the famous Oakes test, an analysis of the limitations clause (Section 1 of the Canadian Charter of Rights and Freedoms) that allows reasonable limitations on rights and freedoms through legislation if it can be demonstratedly justified in a free and democratic society.

Background:

An individual named David Edwin Oakes was caught with vials of hash oil as well as $619.45. Accordingly, he was charged with intended trafficking, under s.4(2) of the Narcotic Control Act (NCA), despite Oakes’ protests that the vials were not meant for trafficking and that the money he had was from a workers’ compensation cheque.

Section 8 of the Narcotic Control Act provided for a shift in onus onto the accused to prove that he was not in possession for the purpose of trafficking. Oakes made a constitutional challenge, claiming that the "reverse onus" created by the presumption of possession for purposes of trafficking violated the presumption of innocence guarantee under s. 11(d) of the Charter.

Issues:

Is s.8 of the NCA unconstitutional?

3. (1) Except as authorized by this Act or the regulations, no person shall have a narcotic in his possession.

(2) Every person who violates subsection (1) is guilty of an indictable offence and is liable to imprisonment for life.

(3) Every person who violates subsection (1) or (2) is guilty of a

Purpose of trafficking.

Punishment: (a) upon conviction on indictment, to imprisonment for one year or to both fine and imprisonment; or (b) upon conviction on summary conviction for a first offence, to a fine of two thousand dollars or to imprisonment for one year or to both fine and imprisonment; or (c) upon conviction on summary conviction for a subsequent offence, to a fine of two thousand dollars or to imprisonment for six months or to both fine and imprisonment.

4. (1) No person shall traffic in a narcotic or any substance represented or held out by him to be a narcotic.

(2) No person shall have in his possession a narcotic for the purpose of trafficking.

Every person who violates subsection (1) or (2) is guilty of an indictable offence and is liable to imprisonment for life.

Narcotic Control Act

First we try the accused for possession.

If the accused is found guilty of possession, then the onus shifts to the accused to prove that he was not in possession of the narcotic for the purpose of trafficking.

We all have a right to be presumed innocent until proven guilty.

Applicable Law: Canadian Charter of Rights and Freedoms, 1982

The Supreme Court of Canada presented a two-step test to justify a limitation:  

First, it must be an objective related to concerns which are pressing and substantial in a free and democratic society.  

Second, it must be shown "that the means chosen are reasonable and demonstrably justified."  

The key values of the Charter come from the phrase "free and democratic society" and should be used as the "ultimate standard" for interpretation of section 1.  

These include values such as:

- respect for the inherent dignity of the human person,
- commitment to social justice and equality,
- accommodation of a wide variety of beliefs,
- respect for cultural and group identity, and
- faith in social and political institutions which enhance the participation of individuals and groups in society.

In applying this test to the facts, the Court found that section 8 does not pass the rational connection test as the "possess [ion] of a small or negligible quantity of narcotics does not support the inference of trafficking... it would be irrational to infer that a person had an intent to traffic on the basis of his or her possession of a very small quantity of narcotics."  Therefore, section 8 of the Narcotics Control Act is in violation of the Charter and is of no force or effect.

Analyses:

This was the first case to consider the application of section 1 of the Charter.  It was therefore the test case to set the foundation for how the courts would analyze the Charter.

The test developed in this case has since gone through significant evolution due to subsequent case law, however, the test has remained fundamentally the same.

Charter rights are not absolute and it is sometimes necessary to limit them in order to achieve "collective goals of fundamental importance."

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The second part of the test, described as a "proportionality test," requires the invoking party to show:

i) the measures adopted must be carefully designed to achieve the objective in question. (They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective.)

ii) the means... should impair the right or freedom in question "as little as possible."

iii) there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance."