

Section 1 and the Acorn (Oakes) Test

s.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.

What does it mean?

Rights and freedoms are enshrined in the *Charter* because they are essential to living in a free and democratic society. While Section 1 of the *Charter* provides a guarantee of rights and freedoms to everyone on Canadian soil (not just citizens!)¹, it also says they are not absolute: meaning, that it could be REASONABLE to limit those rights and freedoms if:

- a) The limit is prescribed by law: this means that the limit is based in a law, statute or regulation that was passed by the government; and
- b) the limit is “demonstrably justified in a free and democratic society”.

How do you know if a limit is “reasonable” and “demonstrably justified in a free and democratic society”?

If the government passes a law or takes action that violates rights and freedoms, those laws/actions can be challenged in court to determine if the violation is **reasonable and justified**. If the violation is not considered reasonable, the court can decide on the appropriate remedy to address the violation, including declaring the law invalid.

The onus (responsibility) of proving that a limit is justified is on the party who wants the limit to be enforced.

The Oakes Test

Determining what is “reasonable” and “justified” can be a challenging task. What is reasonable to me, might be very unreasonable to you. The courts have established a test called the *Oakes Test* to help them with this task of determining if a limit to a *Charter* right or freedom is reasonable and justified within the meaning of s.1 of the *Charter*.

¹ There are a few exceptions to the rule that *Charter* rights are for anyone in Canada. Voting rights (section 3) require Canadian citizenship, and Mobility Rights (section 6) require either citizenship or permanent resident status.

The name of the test comes from the Supreme Court of Canada case in which it was first formulated, *R v Oakes*, [1986] 1 SCR 103.

An Oakes Test Analysis consists of the following parts, all of which must be satisfied in order to determine if a limit to the *Charter* is reasonable and justified under s.1:

- 1) **Objective:** limiting the *Charter* protected right or freedom serves a pressing and substantial objective that aligns with the values of a free and democratic society;
- 2) **Rational Connection:** the law or action that limits a *Charter* right or freedom is carefully designed to meet its objective. A law or action that does not effectively achieve the desired objective is not rationally connected to its purpose;
- 3) **Minimal Impairment:** The law or government action should achieve its objective while impairing rights or freedoms as little as possible. If there is an alternative method of achieving the objective that causes less harm to rights or freedoms, that alternative may be a better option;
- 4) **Proportionality:** the benefits gained by meeting the objective should outweigh the harms caused by limiting the right or freedom. The more serious the infringement on rights and freedoms, the more we should expect that a real, pressing, and substantial benefit to society is to be gained.

CCLET's Acorn Test

The Canadian Civil Liberties Education Trust (CCLET) has come up with its own mini-version of the Oakes test, called the Acorn Test.² The Acorn Test is comprised of three questions that are a bit easier to remember, but require similar considerations when trying to determine if a limit to a *Charter* right or freedom could be reasonable and justified under s. 1.

- 1) **What is the purpose or objective of the limit?** Is that an important objective in a free and democratic society?
- 2) **Does it work?** Does the law or action achieve its intended objective?
- 3) **What else does the limit do?** This question combines the Minimal Impairment and Proportionality steps from the Oakes test into one by asking you to consider what other outcomes, side-effects, or consequences may result from the law or action.



Much like medication – which can provide health benefits but also cause serious side-effects – we must consider if the possible benefits of limiting a *Charter* right or freedom outweighs all the possible harms. Also, like medicine, there are often different medical options to treat the same health issue, each with different side-effects and levels of effectiveness.

Consider if there are other reasonable alternatives to the limit being imposed that achieve the same objectives but cause fewer harms or unwanted side-effects.

² CCLET came up with the name from the idea that an acorn is a miniature oak tree; so naturally, the Acorn Test is a miniature Oakes Test!



HOW DO YOU DECIDE IF A LIMIT TO YOUR CHARTER RIGHTS OR FREEDOMS IS REASONABLE AND JUSTIFIED?

ASK AND ANSWER THE CCLET'S ACORN TEST QUESTIONS AND DECIDE FOR YOURSELF!

START

WHAT IS THE PURPOSE OF THE LIMIT? IS THAT AN IMPORTANT OBJECTIVE? WHAT DOES THE GOVERNMENT HOPE TO ACCOMPLISH BY LIMITING A CHARTER RIGHT OR FREEDOM WITH A PARTICULAR LAW OR ACTION?

YES

NO

DOES IT WORK? DOES THE LAW OR ACTION ACHIEVE ITS INTENDED OBJECTIVE? IS THE LAW OR ACTION RATIONALLY CONNECTED TO ITS PURPOSE?

X CHARTER RIGHTS AND FREEDOMS ARE VERY IMPORTANT. IF WE MUST PLACE LIMITS ON THEM, WE SHOULD BE DOING SO ONLY TO ACHIEVE OBJECTIVES THAT ARE IMPORTANT TO SOCIETY. A LAW OR ACTION THAT LIMITS RIGHTS AND FREEDOMS WITHOUT AN IMPORTANT PURPOSE IS ARBITRARY AND UNREASONABLE.

YES

NO

X IF THE LAW OR ACTION DOES NOT HAVE ANY CONNECTION TO ITS PURPOSE AND IS NOT AT ALL EFFECTIVE IN ACHIEVING ITS GOAL, ITS NOT REASONABLE. CONSIDER AN ALTERNATIVE LAW THAT COULD BE MORE EFFECTIVE AND PERFORM THE ACORN TEST AGAIN!

WHAT ELSE DOES THE LIMIT DO? BESIDES ACHIEVING ITS INTENDED PURPOSE, WHAT OTHER OUTCOMES, SIDE-EFFECTS, OR CONSEQUENCES MAY RESULT FROM THE LAW OR ACTION?

LAWS AND GOVERNMENT ACTION CAN HAVE DIFFERENT EFFECTS ON DIFFERENT PEOPLE/ GROUPS/STAKEHOLDERS. A LAW THAT BENEFITS ONE GROUP MAY DO SO AT THE EXPENSE OF ANOTHER. CONSIDER HOW THE LAW OR ACTION AFFECTS DIFFERENT STAKEHOLDERS, AND THINK ABOUT WHAT IS THE BEST WAY TO BALANCE ALL COMPETING INTERESTS.

DOES THE LAW OR GOVERNMENT ACTION ACHIEVE ITS OBJECTIVE WHILE IMPAIRING RIGHTS OR FREEDOMS AS LITTLE AS POSSIBLE?

YES

DOES THE LAW OR GOVERNMENT ACTION DO MORE GOOD THAN HARM? DO THE BENEFITS OF THE LAW OR GOVERNMENT ACTION OUTWEIGH THE HARMS CAUSED BY LIMITING THE RIGHT OR FREEDOM?

NO

NO

YES

X IF THE SAME OBJECTIVE CAN BE ACHIEVED WITH AN ALTERNATIVE LAW OR GOVERNMENT ACTION THAT CAUSES LESS HARM TO THE RIGHT OR FREEDOM, THEN THE LAW OR ACTION BEING CONSIDERED MAY NOT BE REASONABLE. CONSIDER A LESS HARMFUL ALTERNATIVE AND PERFORM THE ACORN TEST AGAIN!

X A LAW OR ACTION THAT VIOLATES RIGHTS AND FREEDOMS SIGNIFICANTLY WHILE PROVIDING RELATIVELY LITTLE BENEFIT IS NOT REASONABLE.

✓ THE LIMIT ON THE CHARTER RIGHT OR FREEDOM IS REASONABLE AND JUSTIFIED.