

## Exploring R. v. Oakes

Reasonable Limits with respect to the Charter of Rights and Freedoms

## About Limitations

Although the Charter grants Canadians a variety of rights and freedoms, it also outlines many possible exceptions to these rights and freedoms.

### 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 *demonstrably 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?

**Applicable Law:** *Narcotic Control Act*, R.S.C. 1970, c. N-1., and the Charter of Rights and Freedoms

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:

(a) upon summary conviction for a first offence, to a fine of one thousand dollars or to imprisonment for six months or to both fine and imprisonment and for a subsequent offence, to a fine of two thousand dollars or to imprisonment for one year or to both fine and imprisonment; or

(b) upon conviction on indictment, to imprisonment for seven years.

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.

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

**Section 3(1)**  
It is illegal to possess narcotics.

**Section 3(2)**  
Punishment:  
Hybrid;  
sum.: \$1,000.00.  
/ 6 mo.  
ind.: 7 yrs.

**Section 4**  
It is illegal to traffic narcotics.  
Punishment:  
Life!!!

8. In any prosecution for a violation of subsection 4(2), if the accused does not plead guilty, the trial shall proceed as if it were a prosecution for an offence under section 3, and after the close of the case for the prosecution and after the accused has had an opportunity to make full answer and defence, the court shall make a finding as to whether or not the accused was in possession of the narcotic contrary to section 3; if the court finds that the accused was not in possession of the narcotic contrary to section 3, he shall be acquitted but if the court finds that the accused was in possession of the narcotic contrary to section 3, he shall be given an opportunity of establishing that he was not in possession of the narcotic for the purpose of trafficking, and thereafter the prosecutor shall be given an opportunity of adducing evidence to establish that the accused was in possession of the narcotic for the purpose of trafficking; if the accused establishes that he was not in possession of the narcotic for the purpose of trafficking, he shall be acquitted of the offence as charged but he shall be convicted of an offence under section 3 and sentenced accordingly; and if the accused fails to establish that he was not in possession of the narcotic for the purpose of trafficking, he shall be convicted of the offence as charged and sentenced accordingly.

11. Any person charged with an offence has the right:  
d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

**NCA, Sec. 8**  
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 for the purpose of trafficking.

**Charter, Sec. 11**  
We all have a right to be presumed innocent until proven guilty.

**Ratio Decidendi:**

The Court was unanimous in holding that the shift in onus violated both Oakes's section 11(d) rights and indirectly his section 7 rights. Moreover, there was no rational connection between basic possession and the presumption of trafficking, and therefore the shift in onus could not be justified in a free and democratic society.

The Court described the exceptional criteria under which rights could be justifiably limited under section 1. The Court identified two main functions of section 1.

- First, "it guarantees the rights which follow it", and
- Secondly, it "states the criteria against which justifications for limitations on those rights must be measured".

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."*

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

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

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 "as little as possible" the right or freedom in question.**

**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".**

In applying this test to the facts, the Court found that **section 8 does not pass the rational connection test** as the "...possession 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.