Balancing Rights (section 1)

Section 1 of the *Canadian Charter of Rights and Freedoms* reflects the basic principle that individual rights and freedoms cannot be absolute and that, in some circumstances, they must be limited by the state in order to protect competing rights or the interests of the community as a whole. Section 1 provides that *Charter* rights are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." In its 1986 decision in *R.* v. *Oakes* ([1986] 1 S.C.R. 103), the Supreme Court of Canada set out a general framework for deciding whether a law or other form of government action found to violate a *Charter* right can nevertheless be justified under section 1.

This balancing rights test became known as the *Oakes* Test. First, the government entity responsible for the individual rights violation must show that its objectives are "of sufficient importance to warrant overriding a constitutionally protected right." Next, the government must demonstrate that the means it has adopted to achieve those objectives are rational; that they impair the right in question as little as possible; and that the benefits achieved outweigh the harm which results from the rights violation. Limits upheld by the court under section 1 include restrictions on freedom of expression under the pornography and the hate propaganda (see *R.* v. *Butler*, [1992] 1 S.C.R. 452 and *R.* v. *Keegstra*, [1990] 3 S.C.R. 697, respectively) and provisions of the *Criminal Code* (R.S.C. 1985, c. C-46). Examples of rights violations that have failed section 1 scrutiny include restrictions on freedom of expression under provincial sign language laws (see *Ford* v. *Quebec(A.G.)*, [1988] 2 S.C.R. 712) and under federal tobacco control legislation (see *RJR-MacDonald Inc.* v.*Canada (A.G.)*, [1995] 3 S.C.R. 199).

Sources:

- R.J. Sharpe & K.E. Swinton, "Limitation of *Charter* Rights" in R.J. Sharpe & K.E. Swinton, *The Charter of Rights and Freedoms* (Toronto: Irwin Law, 1998) 42.