Freedom of Conscience

Freedom of conscience is one of the fundamental freedoms protected by section 2 of the *Canadian Charter of Rights and Freedoms*.[1]

What is the legal impact of this freedom?

Ultimately, the freedom of conscience constitutionally recognizes "the centrality of individual conscience and the inappropriateness of governmental intervention … to constrain its manifestation."[2] In fact, the Supreme Court has ruled that "an emphasis on individual conscience and individual judgment … lies at the heart of our democratic political tradition. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government."[3]

What is legally protected from government interference?

The only Supreme Court case considering the freedom of conscience directly is *R v Morgentaler*.[4] This 1988 case dealt with the constitutionality of abortion laws. Justice Wilson stated: "[t]he decision whether or not to terminate a pregnancy is essentially a moral decision and … the conscience of the individual must be paramount."[5] She also held that the freedoms guaranteed by section 2(a) "should be broadly construed to extend to conscientiously-held beliefs whether grounded in religion or in a secular morality."[6] However, since Justice Wilson opposed the majority decision of the Court, her judgment is not considered a settled statement of the law.

Without guidance from the Supreme Court, lower courts have had to figure out on their own what the freedom of conscience protects. From the limited jurisprudence that exists, we know "[t]he guarantee of freedom of conscience … is directed at an individual's overarching … normative value system."[7] If a person's actions are not motivated by a "comprehensive value system" (in a secular context), then they are not protected by section 2(a).[8] This can be quite limiting: when people have argued that their freedom of conscience was violated by mandatory seatbelt laws for example, their arguments failed because their objections were not supported by a comprehensive value system.

'Insubstantial' infringements upon a person's conscience are also outside of the scope of the guarantee.[9] This is a limitation that all the fundamental freedoms share: the freedom of religion for instance does not extend to protect against 'trivial' infringements upon a person's religious practice.[10]

One of the few lower court decisions solely considering the freedom of conscience, rather than conscience and religion together, was *Maurice v Canada (Attorney General)*.[11] Mr. Maurice wanted to receive vegetarian meals in prison. Originally, he was provided with these meals in recognition of his freedom of religion. However, when he renounced his religious beliefs, the prison stopped providing vegetarian meals. He successfully claimed

that, since he remained vegetarian for conscientious reasons, this was a violation of his freedom of conscience.[12] The Federal Court agreed, declaring that the "*Charter* … entitle[s] the Applicant to a vegetarian diet."[13]

The freedom of conscience garnered some attention in 2015 when the Supreme Court decided *Carter v Canada (Attorney General)*. In that case, a number of interveners claimed that providing access to physician-assisted dying would infringe the freedom of conscience of medical professionals.[14] This argument went beyond the scope of what needed to be decided in that case. However the Court noted that physician-assisted dying was indeed a "matter of conscience" and that at some point "the *Charter* rights of patients and physicians will need to be reconciled."[15]

What are the limitations on the freedom of conscience?

While the freedom of conscience is a fundamental freedom, it is not absolute. As with all other rights and freedoms in the *Charter*, if a breach of this freedom is found by a court, the government can argue that its laws are reasonable and justifiable under section 1 of the *Charter*.[16]

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[1] *Canadian Charter of Rights and Freedoms*, s 2, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 .

[2] *R v Big M Drug Mart*, [1985] 1 SCR 295 at 346, 18 DLR (4th) 321 .

[3] *Ibid*.

[4] *R v Morgentaler*, [1988] 1 SCR 30, 44 DLR (4th) 385.

[5] *Ibid* at 175–76.

[6] *Ibid* at 179.

[7] *R v Locke*, 2004 ABPC 152 at para 24.

[8] *Ibid* at para 25.

[9] *R v Warman*, 2001 BCSC 1771 (The *Warman* ruling considered section 7 of the *Charter of Rights and Freedoms.* However, the reasoning was adopted in the section 2 context by *R v Dubbin*, 2009 BCPC 164).

[10] Note that the freedom of expression has a similar threshold: for example, see *Police Services Union, Port Moody, District 43 v Port Moody Police Board*, (1991) 78 DLR (4th) 79 at 88–89 ; 54 BCLR (2d) 2 (BCCA): "These types of cases may be cases of expression but in my opinion they are not cases of constitutionally protected freedom of expression. They are too trivial."

[11] 210 DLR (4th) 186, 90 CRR (2d) 240.

[12] *Ibid* at para 15.

[13] *Ibid.*

[14] 2015 SCC 5 (Factum of the Interveners Catholic Civil Rights League, Faith and Freedom Alliance and Protection of Conscience Project at para 33); See also 2015 SCC 5 (Factum of the Intervener the Canadian Medical Association) (The Canadian Medical Association did not refer to section 2(a) of the *Charter of Rights and Freedoms,* but did state the importance of physicians being able to follow their conscience.

[15] *Ibid* at para 132.

[16] *Charter of Rights and Freedoms*, *supra* note 1, s 1.