Fundamental Freedoms

Fundamental Freedoms are basic political liberties required in a democracy. In general, they guarantee that an individual can act, think, be, or do without government interference unless a law says otherwise.[1]

Fundamental Freedoms are found in section 2 of the *Canadian Charter of Rights and Freedoms*. This section guarantees the following freedoms to everyone in Canada:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including

(c) freedom of peaceful assembly; and

(d) freedom of association

The Supreme Court of Canada (SCC) interprets these freedoms in a broad way. For example, in the *R v Big M Drug Mart Ltd*. decision, the SCC specified that section 2 "embraces both the absence of coercion and constraint, and the right to manifest such beliefs and practices."[2] In that case, the Court found the ban on Sunday shopping violated freedom of religion since the law's purpose was to force the Christian religious observance on all Canadians.[3]

Fundamental freedoms became increasingly important to the international community and to Canadians after the horrors of the Second World War. The United Nations adopted a set of fundamental freedoms in the *Universal Declaration of Human Rights* in 1948.[4] Parliament first recognized similar freedoms in 1960 through the *Canadian Bill of Rights*. But as an ordinary federal statute, and not part of the Constitution, the protections given in the *Bill of Rights* had no more force than any other law. They also did not protect Canadians against provincial laws. In the late 1960s, P.E. Trudeau championed a bill of rights to be inserted into the constitution to "guarantee the fundamental freedoms of the individual from interference, whether federal or provincial."[5] This guarantee was realized through patriation in 1982 and the *Charter of Rights and Freedoms*.

While "fundamental," these freedoms are not absolute. Legislatures can override them by using the notwithstanding clause. However, the notwithstanding clause has never been used to override fundamental freedoms. Additionally, section 1 of the *Charter* establishes that the rights guaranteed within it are subject to "reasonable limits" that are "justified in a free and democratic society."[6]

For example, in *R v Keegstra* the SCC ruled that the law against the willful promotion of hatred violated Keegstra's freedom of expression, but that the law was justified under section 1. Keegstra's anti-Semitic speech went against the very principles of democracy that the freedom of expression was supposed to protect. Hateful expression harms democracy when its targets face such scorn and disrespect that they no longer participate in the

process. [7] Therefore, the law in this case was found to be a reasonable limit on freedom of expression.

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[1] Walter S. Tarnopolsky, *The Canadian Bill of Rights*, 2d ed (Toronto: McClelland and Stewart, 1975) at 2.

[2] *R v Big M Drug Mart Ltd*., 1985 CanLII 69 at para 95 (SCC).

[3] *Ibid* at para 97.

[4] *Universal Declaration of Human Rights*, GA Res 217 (III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948) 71, ss 18-20

[5] The Honourable Pierre Elliot Trudeau, Minister of Justice, *A Canadian Charter of Human Rights*, January 1968 in Anne Bayefsky, *Canada's Constitution Act 1982 and Amendments: A Documentary History* (Toronto: McGraw-Hill Ryerson, 1989), at 51-53.

[6] *Canadian Charter of Rights and Freedoms*. Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (UK), 1982, c 11, s 33.

[7] *R v Keegstra*, 1990 CanLII 24 (SCC).