Right to Life, Liberty and Security of the Person

This article was written by a law student for the general public.

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Section 7 of the *Canadian Charter of Rights and Freedoms* protects our right to "life, liberty, and security of the person." It guarantees our legal rights, which protect our personal autonomy and bodily integrity from laws or actions by the government that violate those rights. However, government action that harms these rights is not enough to violate the *Charter*. Section 7 is violated only when the government infringes these rights in a way that goes against the principles of fundamental justice.

Therefore, in determining whether there has been a section 7 violation, there are two components to consider:

1) whether government action infringes life, liberty or security of the person, and

2) whether this infringement goes against the principles of fundamental justice

Right to Life:

There is no concrete definition of the right to life.[1] This means the definition could expand when new issues emerge. Traditionally, state action that increases the risk of death involves the right to life.[2] This includes indirect action, such as barriers to health care for life-threatening conditions. [3]

Right to Liberty:

The Supreme Court is divided on what the right to liberty means, but identifies two components:

1) freedom from physical restraint, and

2) freedom to make fundamental personal choices. [4]

The first includes laws that involve possible imprisonment and physical actions that are forced by the state.[5] Two examples are mandatory fingerprinting laws and regulations that prohibit loitering.[6] The second protects the right to "enjoy individual dignity and independence."[7] This includes decisions about how a person wants to live his or her life, such as whether to marry or have children.[8]

Right to Security of the Person:

Security of the person "has a physical aspect and a psychological aspect."[9] The physical

aspect includes state action that prevents someone from making choices that affect his or her own body. It can also involve indirect state action, such as laws that cause a risk to health.[10] The psychological aspect is affected when a person experiences "serious state-imposed stress."[11] This occurs when the state causes stress that is beyond day-to-day stress, such as by threatening to remove children from their parents.[12]

Principles of Fundamental Justice:

If government action infringes life, liberty or security of the person, it must conform to the basic principles of fundamental justice to comply with the *Charter*.

Three guidelines define principles of fundamental justice:

1) the principle must be a legal principle

2) the public must generally consider this principle to be fundamental to a fair legal system

3) the principle must provide a manageable standard to measure section 7 violations[13]

These guidelines are quite broad. Therefore, courts use the specific concepts of arbitrariness, overbreadth, and gross disproportionality to determine whether an infringement is in line with the principles of fundamental justice. [14]

Arbitrariness:

The law on arbitrariness is "not entirely settled."[15] Traditionally, two steps determine if a law is arbitrary. First, the court must identify the law's objective. Second, the court must consider whether the law's effects meet this objective.[16] If the law leads to an effect that is not connected to its objective, it is considered arbitrary.[17] For example, in *R v Morgentaler,* the court considered laws that restricted abortions to those approved by an abortion committee. [18] The government argued the law's objective was to protect the fetus.[19] However, getting committee approval caused delays that were detrimental to women's health. Therefore, the law was arbitrary, because these delays were not connected to the objective of protecting the fetus.[20]

Overbreadth:

Overbreadth lets courts recognize that some laws "go beyond what is required to achieve its objective."[21] In *Bedford,* the court considered the law that prohibits living off profits made from prostitution. While the law means to protect sex workers from exploitation, it prevents them from hiring drivers, receptionists, and bodyguards.[22] This law is overbroad because it prohibits some relationships that are beneficial and not exploitative.[23]

Disproportionality:

Gross disproportionality describes state action that is too extreme to justify.[24] First, the

court must determine the objective of the law. Second, the court must consider whether the law's effect is too extreme as a response to that objective.[25] If the law's effects go beyond its objectives, it is considered disproportionate. For example, in *PHS Community Services Society,* the Supreme Court considered the constitutionality of refusing to allow a supervised safe injection site in Vancouver (Insite), which allowed people with addictions to use drugs without being prosecuted. Insite attempted to reduce needless deaths. The court decided that Insite caused no obvious negative impact on public health and safety.[26] Therefore, denying Insite's services was grossly disproportionate, because of the number of lives the program saves.[27]

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[1] Robert J. Sharpe & Kent Roach, *The Charter of Rights and Freedoms* (Toronto: Irwin Law, 2013) at 235 ; Guy Régimbald & Dwight Newman, *The Law of the Canadian Constitution* (Markham: LexisNexis, 2013) at 626 .

[2] Régimbald, *supra* note 1 at 626.

[3] *Ibid.*

[4] Sharpe, *supra* note 1 at 235; Peter Hogg, *Constitutional Law of Canada* (Toronto: Thomson Reuters, 2007) at 47-7 .

[5] Régimbald, *supra* note 1 at 627.

[6] *Ibid.*

[7] *Godbout v Longueuil (City),* [1997] 3 SCR 844 at para 66.

[8] Régimbald, *supra* note 1at 627-628.

[9] *Ibid* at 628.

[10] *Ibid.*

[11] *R v Morgentaler,* [1988] 1 SCR 30 at para 22.

[12] Régimbald, *supra* note 1at 629-630.

[13] *R v Malmo-Levine*, 2003 SCC 74 at para 113 .

[14] Peter W. Hogg, "The Brilliant Career of Section 7 of the Charter" (2012) 58 The Supreme Court Law Review 201 .

[15] *PHS Community Services Society v Canada (Attorney General)*, 2011 SCC 44 at para 132 .

[16] *Ibid* at paras 129-130.

[17] *Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 101 .

[18]*Morgentaler, supra* note 11 at para 39.

[19] *Ibid* at para 256.

[20] *Ibid* at para 153.

[21] *Bedford, supra* note 17at para 35.

[22] *Ibid* at para 64.

[23] *Ibid* at para 139.

[24] *Malmo-Levine, supra* note 13 at para 143.

[25] Hogg, *supra* note 4 at 205.

[26] *Insite, supra* note 15 at 133.

[27] *Ibid.*