

Reasonable limits on Charter rights



Background Briefs

Historic injustices and redress in Canada

Section 1 of the *Charter of Rights and Freedoms* specifies that governments may be justified in placing limits on the rights protected by the *Charter* as long as certain conditions are met:

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.

This means that *Charter* rights are not absolute. Even when a right has been infringed upon by a governmental authority, it may still not violate the *Charter* if there are good reasons for limiting the right. The task of applying these reasonable limits is a difficult one. The Supreme Court of Canada has interpreted “reasonable limits” and “demonstrably justified in a free and democratic society” to mean that limits on rights and freedoms may be permitted if three conditions are met:

Prescribed by law: To be *prescribed by law* a limit must be embodied in an existing law or authorized by a properly delegated official or agency. For example, a police officer cannot arbitrarily or inconsistently decide to infringe a *Charter* right without a valid law or authorized superior directing the officer to act in this way.

Clearly justified objective: The government’s objective or goal in wanting to limit the right must be reasonable and clearly justified. The limitation must have sufficient merit or

importance in order to justify overriding a constitutionally protected right. For example, the courts may decide that limiting a person’s freedom of assembly is justified in order to safeguard public safety and protect life, but it may decide that limiting a person’s freedom of assembly is not justified merely to avoid minor traffic delays.

Clearly justified means: The way or method used by the government to limit individual rights must also be justified. The Supreme Court has suggested three factors to consider in relation to the means:

- whether the means is carefully designed to achieve the objective;
- whether it interferes as little as possible with the right in question;
- whether it causes less harm than it avoids.

For example, police officers may be justified in encouraging a groups of people who are demonstrating to disperse for reasons of safety; but arresting the entire group for their safety may not be a justified means, since there may be less drastic ways to protect their safety.

The courts must first decide whether or not a right or freedom specified in the *Charter* has been infringed, and then consider all three conditions in deciding whether or not the infringement was a reasonable limitation of that right.