Chief Justice Brian Dickson's Influence in Interpreting the Charter

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Mount Royal University Land Acknowledgement

Mount Royal University is located in the traditional territories of the Niitsitapi (Blackfoot) and the people of the Treaty 7 region in southern Alberta, which includes the Siksika, the Piikani, the Kainai, the Tsuut'ina and the Iyarhe Nakoda. We are situated on land where the Bow River meets the Elbow River. The traditional Blackfoot name of this place is "Mohkinstsis," which we now call the city of Calgary. The city of Calgary is also home to the Métis Nation.

Abstract

Brian Dickson was the first chief justice during the enactment of *The Canadian Charter of Rights and Freedoms.* The Charter is enshrined in the Canadian constitution and became the supreme law of Canada when enacted with the purpose being to protect the rights and freedoms it established for Canadians. Dickson's exceptional impact on a variety of cases led him to being one of the most revered figures in Canadian legal history. His numerous landmark decisions are accentuated by his abounding number of Supreme Court decisions that have affirmed many aspects of the Charter. This thesis will attempt to highlight his many decisions and the sections of the Charter they recognized. This will be done by analyzing Dickson's reasoning through a qualitative study. A mixed method research design will be paired with a mixture of purposive and convenience sampling to acquire cases with the greatest thematic value. Then, a thematic analysis will be conducted to highlight Dickson's interpretation of the case and the language of the Charter. The five cases chosen for this thesis will be the s.8 case of *Hunter et.al v. Southam Inc.* (1984), a s.2 freedom of religion case in *R. v. Big M Drug Mart Ltd* (1985), a s.1 and s.11(d) case of *R. v. Oakes* (1986), a s.2(b) freedom of expression case in *Irwin Toy Ltd. v. Quebec (Attorney General)* (1989) and a s.15 case in *Andrews v. Law Society of British Columbia* (1989). The chosen cases are described as being the first major decisions for their respective Charter sections and will help illustrate the important effect Dickson had in setting up the *Canadian Charter of Rights and Freedoms* for its sustained and ever-lasting success.

Dedication and Acknowledgements

Firstly, I will thank my parents for the endless support they provide me. Emotionally or economically, they have always done the best possible job they could do to give me and my sister whatever we needed to be successful. I take great inspiration from their integrity and work ethic and appreciate the constant amount of comfort and unconditional love they show me. I am truly grateful for the family I am a part of. Thank you.

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Chief Justice Brian Dickson's Influence in Interpreting the Charter

Chief Justice Brian Dickson wrote many landmark Charter decisions in a wide variety of areas, such as Section 1, search and seizure and freedom of expression. Additionally, he had an extraordinary impact on individuals in non-Charter constitutional issues such as aboriginal rights, in Canada, as evident by *R. v. Sparrow (1990)*. It is meaningful to learn how the Charter's first chief justice translated and explained the Charter's language to help protect Canadians and set up future precedent through his decisions. Terms implemented by Dickson such as a "purposive analysis" and the "living tree doctrine" are still recognized and implemented in current times.

The *Canadian Charter of Rights and Freedoms* is one of the most influential and important additions to the Canadian legal system. It protects the basic human rights of Canadians and is critical in allowing Canada to be a free and democratic society. It also helps to ensure that anyone, including the government, does not unreasonably impede on these rights and freedoms. Enacted on April 17, 1982, it differed from common law and case law as it mainly protected legal rights of both criminal suspects and convicted individuals, various powers of the criminal justice system and the criminal procedure during a trial (Government of Canada, *Guide to the Canadian Charter,* 2022). This document has had a profound effect and impact on a varied number of criminal procedures in Canada with an emphasis on the rights of the accused and the powers of various criminal justice agencies (Goff, 2017). Chief Justice Brian Dickson had a thorough effect in deciphering the words of the Charter, and properly applying them to cases so that the legal system in our modern times had the blueprint on how to use it effectively and correctly.

Research Question

The research question will attempt to identify the influence Chief Justice Brian Dickson had on the Canadian Charter of Rights and Freedoms during its implementation in 1982. What influence did Dickson have in the many cases he was a part of? Did his wording and reasoning influence the decision direction? How has Dickson's initial interpretation of the Charter created everlasting precedents and concepts that are still relevant and in effect till this day.

In this paper, five cases will be discussed that were the first for their respective section in the Canadian Charter of Rights and Freedoms. *Hunter et.al v. Southam Inc.* (1984)*, R. v. Big M Drug Mart Ltd* (1985), *R. v. Oakes* (1986), *Irwin Toy Ltd. v. Quebec (Attorney General)* (1989) and *Andrews v. Law Society of British Columbia* (1989) were all monumental decisions that allowed the Charters language to advance. In these cases, Dickson's interpretation of the Charter will be examined to see how his principles and foundations are still used and in effect till this current day. It will be observed how Dickson worded his decisions and came to his conclusions in the cases discussed.

Methodology

The objective of this thesis is to analyze Dickson's wording and reasoning for his decisions. A qualitative study will be conducted to provide an in-depth understanding of the subject that will aid in providing a deep meaning to the Charter's language (Lanier & Briggs, 2019). This will be determined by how Dickson interpreted, evaluated, and resolved the Charter's language through secondary data collection of a few of the case studies Dickson wrote.

Research Design

The main research design for this study is a mixed method design. As stated by the University of Southern California (2021), a mixed method design collects points from various other research designs and bridges them together (para.15). As well, a historical research design will be used that collects and observes past case studies (University of Southern California, 2021, para.12). This data will then be examined to help answer the research question by observing the facts in the literature. Facets from a case study design will also be taken by narrowing down Dickson's many decisions and gaining an in-depth understanding of the research problem (University of Southern California, 2021, para.4). Finally, aspects from a descriptive design and explanatory design will be administered. As declared by Palys (1997), the objective of a descriptive research design is "to adequately describe some person, situation or group" (pg.86). Moreover, accuracy must be preeminent with a representative sample and the measures are both reliable and valid. In an explanatory design, the intention is to "derive casual insertions and allow causal inference" (pg.86). Again, the measures must be both reliable and valid and the research must be precise. Further, there is an emphasis on eliminating rival plausible explanations (Palys, 1997). These designs will aid in describing Dickson's various contributions to the Charter and by effectively explaining Dickson's interpretation through distinct themes.

Data Collection

The data will be collected through a mixture of purposive and convenience sampling techniques, that will be done by a selection of case studies and case law. Purposive sampling is a technique in which the researcher relies on their own personal judgement when choosing members of the population to sample. As described by Campbell et. al. (2020), purposive

sampling allows for “better matching of the sample to the aims and objective of the research” (pg.1). Convenience sampling is used when “samples possess characteristics that make them more accessible to the researcher” (Hann & Godley, 2016, pg. 76). In this thesis, the population will be the case studies that Dickson wrote or co-wrote. From this population, five cases were selected based on their thematic value, importance, and the content they possess. Therefore, thematic data analysis will be used to help discover any common subjects between the cases and Dickson’s interpretations. A thematic data analysis is a frequently used technique that leads in “identifying, analyzing and reporting patterns in the form of themes within text” (Snyder, 2019, pg.335). Also, it is capable of producing “trustworthy and insightful findings” and when used correctly can provide “a highly flexible approach that can be modified for the needs of many studies”. This guides the data analysis in arranging a rich, detailed, yet complex account of data (Nowell et. al., 2017, pg.2). Overall, the data analysis will focus on Dickson’s content and reasoning in his decisions, the terminology he uses and in his explanation of the law and the Charter.

Limitations

All research designs have their limitations, and the major limitation for this thesis is that it will only analyze Charter cases and decisions. Many of Dickson’s famous verdicts, such as *R. v. Sparrow* (1990) dealt with other issues and therefore did not apply to this thesis. Although Dickson made hundreds of decisions during his time as Chief Justice, this thesis is constrained by length and time limits to analyze all of his Charter related outcomes. Therefore, only five cases were purposively and conveniently selected that were deemed to be the most fit in answering the research question. Lastly, Dickson and many other Chief Justices that were influenced by him could not be interviewed or contacted due to further time restraints, economic

resources, and their passing. Since no interviews, surveys or interactions were made with any human subjects, ethics approval was not needed in this paper. Also, there is no funding for this thesis as it was written in part for the completion of the Bachelor of Arts: Criminal Justice (Honours) degree at Mount Royal University in Calgary, Alberta, Canada during the 2021-2022 academic school year.

Chief Justice Brian Dickson

Before the cases are discussed and analyzed, it is important to acknowledge Chief Justice Brian Dickson. He was one of the most influential figures in Canadian history and had an instrumental role in the original interpretation of the Canadian Charter of Rights and Freedoms as he wrote countless, influential decisions. Dickson displayed precision, clarity and simplicity in his decision making whilst also writing them in a reinvigorating fashion (Swinton, 2015). He extensively helped transform Canada's highest court by "adding substance" to it, which ushered in a new age in "Canadian jurisprudence" (Fulton, 1990, para.3). Overall, he showed a deep understanding of the Charter's language and helped develop powerful and enduring precedents in Canadian law. Dickson spent a large portion of his life (approximately 27 years) as a judge and was an imperative figure in revolutionizing the rule of law in Canadian history (Swinton, 2015).

Dickson was born in Yorkton, Saskatchewan on May 25, 1916, and attended the University of Manitoba after his family had moved to Winnipeg. He graduated from the University of Manitoba Law School in 1938 and was called to the bar in 1940. After not being able to find work as a lawyer, he enlisted in the armed forces during the Second World War and served in the Royal Canadian Artillery until he was severely wounded in the invasion of Normandy. Dickson returned in 1945 after serving for five years (Swinton, 2015). Upon his return he worked at Aikins MacAulay law firm until 1963 when he made an abrupt switch.

Dickson accepted an appointment to the Manitoba Court of Queen's Bench, and was then elevated to the Court of Appeal four years later (Sharpe & Roach, 2003). Finally, on March 26, 1973, Dickson was appointed to the Supreme Court of Canada by Prime Minister Pierre Trudeau, later becoming the chief justice on April 18, 1984. This is an important date as the Canadian Charter of Rights and Freedoms came into effect in 1982, but it took considerable time for the first cases to make their way to the Supreme Court. Dickson retired on June 30, 1990, after serving on the Supreme Court for over 17 years and passed away in 1998 at the age of 82 (Supreme Court of Canada, 2019).

When Dickson was appointed to the Supreme Court, judges often thought their job was based on applying precedents and left the issues of law reform and social justice to elected legislatures. Historical, social, and political context had relatively little scope in the broader context as judges feared to stray away from any traditional legal sources, writing judgements for strictly a legal audience. Nonetheless, by the time Dickson retired the Supreme Court had become a major national institution. Dickson "spearheaded" this transformation by molding the law so it fit a constantly changing society (Sharpe & Roach, 2003). Overall, he handed down numerous decisions and introduced a multitude of administrative reforms in his time as a judge. Still, his everlasting legacy is highlighted by his countless Supreme Court decisions that have laid down the groundwork for how the individual rights and freedoms of Canadians are interpreted. This paper will focus on just five of the many decisive decisions that Dickson orchestrated, with each of them having their own impact and importance in applying the Charter's language. They include the cases of *Southam* (1984), *Big M Drug Mart* (1985), *Oakes* (1986), *Irwin Toy* (1989) and *Andrews* (1989).

Hunter et. al. v. Southam Inc. **(1984)**

The Court's first major Charter decision was that of *Hunter v. Southam* (1984). Its main issue and question revolved around the constitutionality of a specific section in the Combines Investigation Act and involved s.8 of the Canadian Charter. The section in the Combines Investigation Act allowed the director of investigation and research to authorize access into any premise for the search and seizure of documents.

> "(1) Subject to subsection (3), in any inquiry under this Act the Director [of Investigation and Research of the Combines Investigation Branch] or any representative authorized by him may enter any premises on which the Director believes there may be evidence relevant to the matters being inquired into and may examine anything on the premises and may copy or take away for further examination or copying any book, paper, record of other document that in the opinion of the Director or his authorized representative, as the case may be, may afford such evidence" (*Hunter v. Southam,* 1984, pg.148).

> "(3) Before exercising the power conferred by subsection (1), the Director or his representative shall produce a certificate from a member of the [Restrictive Trade Practices] Commission, which may be granted on the *ex parte* application of the Director, authorizing the exercise of such power" (*Hunter v. Southam*, 1984, pg.148).

Whilst s.8 of the Charter protects people from unreasonable search and seizure, this is based on the reasonable expectation of privacy. Additionally, "privacy" itself is not mentioned in the Charter which meant the Court needed to properly balance and interpret this area of law (Colin, 2017). It was stated in an interview given by Dickson upon his retirement that the search

powers in this case could not "have been broader… it was a fishing license" (Sharpe & Roach, 2003, pg.313).

Facts

Southam Inc. in Edmonton, Alberta had its offices searched by the Federal Combines Investigation Branch, which operated under a warrant issued by the Director of Investigation and Research (Beaudoin, *Hunter v Southam,* 2015). The search was authorized on April 13, 1982, with the Charter being enacted days later on April 17. On April 19, officers presented their certified authorization to search the premises. The director had believed that Southam engaged in an anti-competitive activity, and consequently authorized the search of the "Edmonton Journal", one of Southam's many papers. Southam resisted this search and sued for an injunction (Sharpe & Roach, 2003). Before the search was conducted, the director needed to apply to a member of the Restrictive Trade Practices Commission (RTPC) for a certificate authorizing the search. The RTPC was an adjudicative and investigative body that had investigative powers to gather evidence, if the Director's investigation was not sufficient (Brockman, 2015). Southam Inc. stated that an open-ended search violated the s.8 guarantee in the Charter, which administers that

> "Everyone has the right to be secure against unreasonable search and seizure" (s.8).

Overall, the outcome concluded that the warrant obtention process violated the Charter, which resulted in the Court establishing a stricter set of procedural requirements (McCormick, 2015). The Supreme Court of Canada declared that this section is intended to prevent unreasonable searches and seizures before they occur (Barnhorst & Barnhorst, 2013). Therefore, they settled that the Combines legislation did indeed violate s.8 of the Charter and was

consequently of no force or effect. The legislation now has a section allowing the Director to apply for a search warrant from the Federal Court (Brockman, 2015).

Analysis

Although this case did not raise or highlight any social issues, it did display how Dickson interpreted a very vaguely worded Charter right. The overall consensus early on was that this search did indeed violate s.8 of the Charter. The Charter was deemed to be "vague and open" (*Hunter. v. Southam*, 1984, pg.154). It was framed with words that left the interpretation too broad, and the meaning could not be determined using a dictionary (Sharpe & Roach, 2017). Nonetheless, Dickson identified that an individual's right to privacy is the fundamental concern for s.8. This privacy interest needed to be balanced against the government's interest in law enforcement. Another issue was how Southam Inc was a corporation and not a singular individual. Dickson still believed they deserved the protection under s.8 even though criticism may follow in the protection of major organizations (Sharpe & Roach, 2003).

This statement made by Dickson emphasizes that his judgement was influential and displayed what would come from the Charter in the following years. It read:

> "The Constitution of Canada, which includes the *Canadian Charter of Rights and Freedoms,* is the supreme law of Canada. Any law inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect. Section 52(1) of the *Constitution Act, 1982* so mandates. The constitutional question posed in this appeal is whether s. 10(3), and by implication s. 10(1), of the *Combines Investigation Act,* R.S.C. 1970, c. C-23, (the "Act") are inconsistent with s. 8 of the *Charter* by reason of authorizing unreasonable searches and

> seizures and are therefore of no force and effect" (*Hunter v. Southam*, 1984, pg.148).

Additionally,

> "It is clear that the meaning of "unreasonable" cannot be determined by recourse to a dictionary, nor for that matter, by reference to the rules of statutory construction. The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a *Bill* or a *Charter of Rights,* the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political, and historical realities often unimagined by its framers. The judiciary is the guardian of the constitution and must, in interpreting its provisions, bear these considerations in mind. Professor Paul Freund expressed this idea aptly when he admonished the American courts "not to read the provisions of the Constitution like a last will and testament lest it become one" (*Hunter v. Southam*, 1984, pg.155).

An important excerpt from Dickson's opening judgement in this case referenced the famous "living tree" analogy that was in the 1930 *Person's Case* and its decision of the Privy Council (Sharpe & Roach, 2003). They emphasize that the Charter must be capable of molding over time to meet the needs of society as it advances itself. The excerpt read:

> "The British North America Act planted in Canada a living tree capable of growth and expansion within its natural limits. The object of the Act was to grant a Constitution to Canada… Their Lordships do not conceive it to be the duty of this Board—it is certainly not their desire—to cut down the provisions of the Act by a narrow and technical construction, but rather to give it a large and liberal interpretation" (*Hunter v. Southam*, 1984, pg.156).

Two key words in this case were "purpose" and "purposivism" and were the "central motif of the Dickson Court's subsequent Charter jurisprudence" (McCormick, 2015, pg.51). This purposive nature is a method of interpretation that allowed Dickson to inquire into the underlying elements for the reasons law and constitutions exist, which is critical when there is a lack of precision in the meaning and application of the words in the Charter. Dickson orchestrated this purposive method of interpreting by saying

> "I begin with the obvious. The *Canadian Charter of Rights and Freedoms* is a purposive document. Its purpose is to guarantee and to protect, within the limits of reason, the enjoyment of the rights and freedoms it enshrines. It is intended to constrain governmental action inconsistent with those rights and freedoms; it is not in itself an authorization for governmental action. In the present case this means, as Prowse J.A. pointed out, that in guaranteeing the right to be secure from unreasonable searches and seizures, s. 8 acts as a limitation on whatever powers of search and seizure the federal or provincial governments already and otherwise possess. It does not in itself confer any powers, even of "reasonable" search and seizure" (*Hunter v. Southam*, 1984, pg.156).

Dickson established that the protection of privacy would be the central goal in the Charter's guarantee of unreasonable search and seizure. However, this right is not absolute as individuals only have a "reasonable" expectation of privacy. This led to Dickson asking three different questions;

1. "When is the balance of interests assessed?"
2. "Who must grant the authorization?"
3. "On what basis must the balance of interests be assessed?" (Sharpe & Roach, 2003, pg.315-316).

To satisfy the first criteria, if it is feasible to obtain prior authorization, then this must be met through a search warrant. Otherwise, a search cannot be considered a reasonable intrusion into one's privacy. This is a critical step as obtaining a warrant allows for privacy to be assessed against the interest of the state. Despite this, a rebuttable presumption can be used, and the Crown can attempt to establish that a warrantless search was reasonable due to certain circumstances. The standards of prior judicial authorization and probable cause may be too exhausting in certain scenarios (*Hunter v. Southam*, 1984).

The second criterion is met by obtaining prior authorization from an individual who is capable of acting judicially. Although this is often a judge, it is not required to be. The individual must simply have the ability to operate in a neutral and impartial manner and must have the discretion to decide whether or not to issue a warrant. In this case of Southam, the Director and RTPC had significant investigative powers, and were therefore incapable of acting judicially (*Hunter v. Southam*, 1984).

The third criteria states that enough evidence must be available in order to make a judicial decision. A search cannot be conducted on the basis of suspicion. Instead, a credibility-

based probability such as “reasonable grounds to believe” is required. The Combines Investigations Act simply stated that an RTPC member may grant authorization, with very few specifics following it (Brockman, 2015). Using a purposive approach in this situation would allow for a persistent standard in revealing the point at which the interest of the state prevails over the interest of the individual (*Hunter v. Southam*, 1984).

These three questions effectively demolished the Combines Investigations Act, as it could not endure them. No impartial prior authorization was given by absolutely no objective standard. Government lawyers even urged Dickson and his fellow judges to “read in” necessary guarantees or to “read down” the Charter’s broad language. Notwithstanding, Dickson maintained his earlier view and refused this offer

> “While the courts are guardians of the Constitution and of individuals’ rights under it, it is the legislature’s responsibility to enact legislation that embodies appropriate safeguards to comply with the Constitution’s requirements. It should not fall to the courts to fill in the details that will render legislative lacunae constitutional. Without appropriate safeguards legislation authorizing search and seizure is inconsistent with s. 8 of the *Charter.* As I have said, any law inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect. I would hold subss. 10(1) and 10(3) of the *Combines Investigation Act* to be inconsistent with the *Charter* and of no force and effect, as much for their failure to specify an appropriate standard for the issuance of warrants as for their designation of an improper arbiter to issue them” (*Hunter. v. Southam*, 1984, pg.169).

Overall, this case was a decisive victory for the Court and the Charter. Dickson and his fellow judges made their motives clear and concise. Their collective voice confidently struck down the Combines Investigations Act and ensured the necessary respect for the rights presented by the Charter. The Supreme Court established that if a search and seizure violates an individual's rights, they can demonstrate that there was a reasonable expectation of privacy that needed to be respected, whether it was a place searched, item seized or even both. Furthermore, if this cannot be shown, then the state or any of its representatives could not have violated the s.8 rights of that individual (Goff, 2017). The phrase of "demonstrably justified" was of paramount importance as it put the onus onto the individuals who were attempting to limit a right or freedom. Led by Dickson's purposive interpretation method, he displayed how the Charter would be translated in a considerate manner to avoid any confusion and set a powerful precedent (*Hunter. v. Southam*, 1984).

R. v. Big M Drug Mart Ltd **(1985)**

Dickson's next considerable Charter case was *R. v. Big M Drug Mart Ltd* (1985). In the case of *Big M Drug Mart*, the central issue concerned the Lord's Day Act. This piece of federal legislation (initially passed in 1906) strictly limited what Canadians were able to do on Sunday's due to the Christian sabbath. In general, stores were not allowed to conduct business and sports games could not charge for admission, even though they were still allowed to be held (McCormick, 2015). The acknowledged purpose of the act was based around the compulsion of religious observance, which offends freedom of religion even if the initial premise was not meant to be offensive. The protection of minorities was something Dickson took very seriously, as this is an implicit principle of the Constitution. His stance on anti-discrimination legislation and a commitment to enhance minority rights was evident in this case (Sharpe, 2000).

Facts

On the Sunday of May 30, 1982, Big M Drug Mart opened their doors to conduct business in Calgary, AB (Grossell, 2014). This was a blatant violation of the Lord's Day Act, specifically section 4 which states that it is illegal to

> "…. sell or offer for sale or purchase any goods, chattels, or other personal property, or any real estate, or to carry on or transact any business of his ordinary calling, or in connection with such calling, or for gain to do, or employ any other person to do, on that day, any work, business, or labour."(*R. v. Big M Drug Mart Ltd.,* 1985, pg.301).

Police entered the store and observed individuals buying "groceries, plastic cups, and a bicycle lock". They laid charges which led to Big M raising a Charter defence in which it was argued that the "prohibition of Sunday shopping enforced a religious observance that was contrary to the Charter's guarantee of freedom of religion" (Sharpe & Roach, 2003, pg.320). Section 2 of the Charter guarantees

> "2. Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association" (s.2)

Analysis

The *Big M* case arguably entered a more controversial area when compared to the first case and its issue of unreasonable search and seizure. Lawyers for the government argued that a corporation could not demand religious freedom, but Dickson marked that the case was in the

Supreme Court due to a criminal offence. This meant that Big M was simply defending itself as they were engaged within the "rule of law" (Sharpe & Roach, 2003).

> "The supremacy of the Constitution declared in s. 52 dictates that no one can be convicted under an unconstitutional law. Any accused, whether corporate or individual, may defend a criminal charge by arguing the constitutional invalidity of the law under which the charge is brought" (*R. v. Big M Drug Mart Ltd*., 1985, pg.296).

Big M Drug Mart emphasizes the rule of law, and its prevalence over individual rights. In this case, the Crown argued that the accused could not invoke a claim based on freedom of religion since they were a corporation. Dickson held that the Court cannot convict under an unconstitutional statute. Since *Big M Drug Mart* was charged with an offence, this statute cannot convict them (Sharpe, 2000).

> "Any accused, whether corporate or individual, may defend a criminal charge by arguing the constitutional invalidity of the law under which the charge is brought… A law which itself infringes religious freedom is, by that reason alone, inconsistent with s. 2(*a*) of the *Charter* and it matters not whether the accused is a Christian, Jew, Muslim, Hindu, Buddhist, atheist, agnostic or whether an individual or a corporation. It is the nature of the law, not the status of the accused, that is in issue" (*R. v. Big M Drug Mart Ltd.,* 1985, pg.296).

Dickson did reject the notion that the "purpose of legislation may shift or be transformed over time by changing social conditions" and "no legislation would be safe from a revised judicial assessment of purpose" (McCormick, 2015, pg.58). Furthermore, Dickson sketched the basic framework for freedom of religion, which becomes violated if individuals have their

special day of worship coerced by the state. He identified that "The right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hinderance or reprisal, the right to manifest religious beliefs by worship and practice and the right to manifest religious belief by teaching and dissemination" (McCormick, 2015, pg.58).

Whilst it was argued that the purpose of the Lord's Day Act (to provide a common day of rest) may have been valid, the basis of its effect (unnecessarily impinging a fundamental freedom given by the Charter) was not duly. Due to this purpose vs. effect argument, the case transitioned as the purpose for the law was to allow for a common day of rest that would strengthen family relationships. However, this would put non-Christians at a disadvantage due to them potentially closing for any other day of the week in order to observe their own sabbath. This then conflicts with their own freedom of religion by putting them at an economic disadvantage as they would have to close their business twice a week (one for their own sabbath, and another on Sunday) (Sharpe & Roach, 2003). Nonetheless, due to Dickson's conciseness and simplicity, he felt that the law could not exist regardless of its effects and intentions.

> "While the effect of such legislation as the *Lord's Day Act* may be more secular today than it was in 1677 or in 1906, such a finding cannot justify a conclusion that its purpose has similarly changed. In result, therefore, the *Lord's Day Act* must be characterized as it has always been, a law the primary purpose of which is the compulsion of sabbatical observance" (*R. v. Big M Drug Mart Ltd.,* 1985, pg. 336).

The historical record of the Lord's Day Act was for a religious purpose, and this purpose "remains the best indication of what it is the legislation was intended to accomplish" (Sharpe &

Roach, 2003, pg.322). At the end of the day, if a legislation's initial purpose goes against the Charter, the effect does not need to be examined and it should be struck down.

Just like in the case of Southam, Dickson used a purposive analysis in interpreting this case.

> "In my view this analysis is to be undertaken, and the purpose of the right or freedom in question is to be sought by reference to the character and the larger objects of the *Charter* itself, to the language chosen to articulate the specific right or freedom, to the historical origins of the concepts enshrined, and where applicable, to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the *Charter*. The interpretation should be, as the judgment in *Southam* emphasizes, a generous rather than a legalistic one, aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the *Charter*'s protection" (*R. v. Big M Drug Mart Ltd.,* 1985, pg.344).

Furthermore, Dickson viewed freedom as

> "Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience (*R. v. Big M Drug Mart Ltd*., 1985, pg.95). If I am a Jew or a Sabbatarian or a Muslim, the practice of my religion at least implies my right to work on a Sunday if I wish. It seems to me that any law

> purely religious in purpose, which denies me that right, must surely infringe my religious freedom" (*R. v. Big M Drug Mart Ltd.,* 1985, pg.337).

This was a critical statement by Dickson, as he decided to put himself within the "shoes" of a minority individual. It sent a powerful message to other legal figures that they must envision themselves in a minority persons situation who was attempting to claim the Charter's protection. Furthermore, Dickson himself was a Christian who was held in high regard in the Anglican Church yet took a chance in standing up for minority rights that went against his own religious beliefs.

This case displayed Dickson's view of the power that the court had as he struck down the Lord's Day Act which had prevented Alberta stores from opening up. His reasoning was simple; the statute was poorly written and wrongly centered around religious beliefs (Fulton, 1990).

R. v. Oakes **(1986)**

The *Oakes* case is one of the most cited and famous cases in Canadian history. In this case, a major issue was based on the presumption of innocence. The burden of proof is typically on the prosecutor, but some Criminal Code offences contain a reverse onus clause, which shifts the burden of proof to the accused (Barnhorst & Barnhorst, 2013). In the *Oakes* case, the Supreme Court struck down a section in the Narcotics Control Act that presumes individuals to be guilty (now known as the "Controlled Drugs and Substances Act"). It forced the onus of proof onto the individuals, and demanded they prove to the Court that any narcotics found in their possession were not for the intent of trafficking (Goff, 2017). This case established that an

1. individual must be proven guilty beyond a reasonable doubt,
2. The state must bear the burden of proof, and

3. Criminal prosecutions must be carried out in accordance with lawful procedures and fairness (Goff, 2017, pg.60).

Therefore, individual(s) are innocent until proven guilty, and there must be an independent and impartial tribunal in a fair and public hearing (Goff, 2017).

R. v. Oakes (1985) also established s.1 of the Charter, which states that

> "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." (s.1)

Facts

David Edwin Oakes was picked up by the police in London, Ontario. At the time Oakes was picked up, he had eight grams of hashish oil along with over $600 in cash. Oakes explained that the oil was bought to help with a back injury, and that the cash was received from a worker's compensation cheque. The police did not believe this story and charged him with the possession of narcotics. Under the Narcotics Control Act, this meant that individuals charged with simple possession would actually be charged with possession for the purpose of trafficking, which carries a maximum penalty of life imprisonment. Additionally, this possession charge had a "reverse onus" component to it, meaning the burden of proof was on Oakes to display that he did not have the hashish oil for the purposes of trafficking (Beaudoin, *R v Oakes,* 2015). His lawyer believed this to be a violation of his section 11(d) Charter rights, which states that

> "(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;" (s.11)

The government believed that the Narcotics Control Act was prescribed by law and justified in a free and democratic society due to the spread of illegal drugs posing a substantial danger to other Canadians and the rule of law.

Analysis

Dickson identified that the reverse onus premise did infringe on the presumption of innocence which was guaranteed by section 11(d) of the Charter.

> "The presumption of innocence protects the fundamental liberty and human dignity of any and every person accused by the State of criminal conduct. An individual charged with a criminal offence faces grave social and personal consequences, including potential loss of physical liberty, subjection to social stigma and ostracism from the community, as well as other social, psychological, and economic harms. In light of the gravity of these consequences, the presumption of innocence is crucial. It ensures that until the State proves an accused's guilt beyond all reasonable doubt, he or she is innocent. This is essential in a society committed to fairness and social justice. The presumption of innocence confirms our faith in humankind; it reflects our belief that individuals are decent and law-abiding members of the community until proven otherwise" (*R. v. Oakes*, 1986, pg.119-120).

Nonetheless, in the final analysis, the reverse-onus clause needed to be determined under section 1 of the Charter. Although the initial burden in proving a violation rests with the individual claiming it, if a *prima facie* violation is proved, this burden shifts. The Court must consider if a right or freedom should be limited, and weigh any collective interests (Sharpe, 2003).

Dickson resolved that the words "free and democratic society" were of utmost importance, as that is the initial reason the Charter was originally entrenched (Sharpe & Roach, 2003).

> "The Court must be guided by the values and principles essential to a free and democratic society which I believe embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society. The underlying values and principles of a free and democratic society are the genesis of the rights and freedoms guaranteed by the *Charter* and the ultimate standard against which a limit on a right or freedom must be shown, despite its effect, to be reasonable and demonstrably justified" (*R. v. Oakes*, 1986, pg.136).

Dickson defined the "stringent standard of justification" that must be met. Even though the party challenging any law must show initial onus of a breach of rights, once this violation is established the onus then shifts to the state as they must justify the limiting right. This begins with the state showing a pressing and substantial need for the infringement in a free and democratic society, followed by a three-step test. Even though this law was pressing and substantial to protect individuals from drug trafficking, there was no rational connection as the law determined individuals had drugs for the purpose of trafficking (Sharpe & Roach, 2003).

Dickson used this case to clearly establish the application of s.1 of the Charter and helped in creating clear and logical steps that Courts could use to decide if s.1 saves a violation of rights along with the standards that must be met (McCormick, 2015). Currently s.1 only becomes

engaged once a finding has been discovered in which any right or freedom is limited. The onus of proof falls onto the individual who is looking to justify the limit (in most cases, this is often the government) (Government of Canada, *Section 1,* 2021).

Moreover, for the law to be capable of justification under section 1, the limit on the freedom must be "prescribed by law".

a) The limit must be expressed or implied in a statute or regulation or,

b) In the government policy, in which

- 1.) the government entity was authorized to enact the policy,
- 2.) the policy sets out binding rules of general application,
- 3.) the policy is sufficiently precise so as to enable people to regulate their conduct by it, and so as to provide guidance to those who apply the law, and
- 4.) the policy is sufficiently accessible to give notice to the public of the rules to which they are subject

c) A common law limit, assuming there is sufficient government action for the Charter to apply (Government of Canada, *Section 1,* 2021).

In the *Oakes* test, a limit on a Charter right must be "reasonable" and "demonstrably justified".

1.) "Is the legislative goal pressing and substantial? i.e., is the objective sufficiently important to justify limiting a Charter right?

2.) "Is there proportionality between the objective and the means used to achieve it? (Government of Canada, *Section 1,* 2021).

The second part of the *Oakes* test has three distinct elements that must be fulfilled.

a.) “Rational Connection”: the limit must be rationally connected to the objective. There must be a causal link between the impugned measure and the pressing and substantial objective,

b.) “Minimal Impairment”: the limit must impair the right or freedom no more that is reasonably necessary to accomplish the objective. The government will be required to show that there are no less rights-impairing means of achieving the objective “in a real and substantial manner”, and

c.) “Final Balancing”: there must be a proportionality between the deleterious and salutary effects of the law (Government of Canada, *Section 1,* 2021).

The concern the government had towards drug trafficking was substantial and pressing, as they intended to protect society from the consequences associated with it. However, there was no rational connection between the possession of drugs and the presumed fact that an individual is trafficking drugs that are in their possession. In this case, the individual was only in possession of a small quantity of narcotics, which would not support the intent needed to traffic them. Since there was no rational connection, the minimal impairment and final balancing elements did not need to be assessed (*R. v. Oakes*, 1986).

Irwin Toy Ltd v. Quebec (Attorney General) **(1989)**

The case of *Irwin Toy* was the Charter’s first major decision regarding freedom of expression. A main issue the Court needed to resolve was Quebec’s consumer protection law that forbade any direct advertising to younger children, and its violation of s.2(b) of the Charter’s freedom of expression (Sharpe & Roach, 2017). Section 2(b) of the Charter states that

> "2. Everyone has the following fundamental freedoms: (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;" (s.2)

This case also examined if the Quebec legislation violated s.7 of the Charter. Section 7 of the Charter states that

> "7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." (s.7)

Nonetheless, it was determined that s.7 cannot be claimed by a business or corporation and only applies to the people of Canada, including its non-citizens (Sharpe & Roach, 2017).

Facts

In the case of *Irwin Toy* (1989), a toy manufacturer broadcasted advertisements that violated the Consumer Protection Act's ban on children's advertising. This government legislation in Quebec barred any targeted product advertisement or endorsements to children under the age of 13 for commercial purposes. Irwin Toy disputed this Quebec legislation as an unreasonable infringement of their s.2(b) freedom of expression. The Attorney General of Quebec argued that there is a substantive and pressing need for this legislation as young children, deemed to be a vulnerable group, have an excessive vulnerability to the effects of advertising and therefore require legal protection from the government. Moreover, the government regarded this ban as having a minimal impairment towards an individual's freedom of expression and stated that this ban created no deleterious effects (Columbia University, n.d.).

Analysis

Dickson used this case to deal with a broader definition of "expression" in order to help interpret the Charter (McCormick, 2015).

> "Activity is expressive if it attempts to convey meaning…That meaning is its content (*Irwin Toy Ltd v. Quebec (Attorney General),* 1989, pg.968)"

This wording establishes that theoretically, the conveying of any meaning is protected under the Charter. This led to a three-stage process in resolving a s.2(b) case.

The first stage is definitional. It is intended to determine if any activity is indeed an actual form of expression. Any activity that conveys or attempts to convey any explanation is deemed to be an expression. The use of the word "activity" is important, as actions without words can still mean something and have expressive content (Sharpe & Roach, 2017). The Supreme Court used the example of parking a car, as normally this act has minimal meaning. However, under certain circumstances even this simple act becomes expressive in nature.

> "For example, an unmarried person might, as part of a public protest, park in a zone reserved for spouses of government employees in order to express dissatisfaction or outrage at the chosen method of allocating a limited resource. If that person could demonstrate that his activity did in fact have expressive content, he would, at this stage, be within the protected sphere and the s. 2(*b*) challenge would proceed" (*Irwin Toy Ltd v. Quebec (Attorney General),* 1989, pg.969)

However, if the expression is an act of violence, then section 2(b) cannot be used. As stated by McCormick, "violence as a form of expression receives no such protection" (2015, pg.72). Theoretically speaking, punching, or kicking someone does show much expression and meaning, but cannot claim Charter protection. Additionally, violence is often used by terrorists to

aid them in conveying a certain message, but laws against terrorism due not infringe one's freedom of expression. Another aspect to the definitional stage is if the expression has privacy associated with it. Some situations such as a cabinet meeting or a sitting in Parliament require decorum and order to be conducted. They would become incompatible if anyone could intrude and express their views openly. If privacy is indeed associated with the expression, then there are no limitations by a public law (Sharpe & Roach, 2017).

The second stage is based on the nature of the violation, as there are two categories that can violate this section of the Charter. The first is if the action is purposely restricting any content or expression. These are quite familiar, and include the "law of defamation, the prohibition of pornography, and restrictions on advertising" (Sharpe & Roach, 2017, pg.170). The second is specific to the actual effect of a restriction that merely has the effect of limiting expression. A common example used in this situation is the prohibition against littering. If someone is handing out pamphlets that have a harmful form of expression, then the effects-based restraint has done its job. However, if someone carelessly discards a candy wrapper then the effect does not apply. The Supreme Court has stated that this only applies to activities that infringe political debate, autonomy/self-fulfillment, and the marketplace of ideas and require the party claiming Charter protection to demonstrate this (Sharpe & Roach, 2017).

The last stage assesses if the violation is justifiable in a free and democratic society based on s.1 of the Charter using an *Oakes* test. The state must justify any limit it is imposing as being reasonable in a free and democratic society (Sharpe & Roach, 2017).

Finally, the Supreme Court also declared the reference to "everyone" in s.7 did not include corporations, as they do not enjoy life, liberty, and security in the same sense as a natural person (Sharpe & Roach, 2017).

> “This is not to declare, however, that no right with an economic component can fall within "security of the person". Lower courts have found that the rubric of "economic rights" embraces a broad spectrum of interests, ranging from such rights, included in various international covenants, as rights to social security, equal pay for equal work, adequate food, clothing and shelter, to traditional property -- contract rights. To exclude all of these at this early moment in the history of *Charter* interpretation seems to us to be precipitous. We do not, at this moment, choose to pronounce upon whether those economic rights fundamental to human life or survival are to be treated as though they are of the same ilk as corporate-commercial economic rights” (*Irwin Toy Ltd v. Quebec (Attorney General),* 1989, pg.1003).

Likewise, they ruled that life, liberty and security of a person are both distinct and separate grounds. Thus, the appellant must only show an infraction on either one, and not necessarily all. If this is successfully done, that individual can claim s.7 protection. Moreover, it is important to note that s.7 is a qualified right, and any deprivation associated with it must violate a principle of fundamental justice (McCormick, 2015).

In general, the legislation showed a pressing and substantial need to protect children up to the age of 13 due to this age group being easily manipulated. Not only was the option chosen by the government proportional to its objective, but it was also rationally connected. Although the government did not choose the least intrusive means in impairing s.2(b) rights, the evidence established the necessity of a ban to meet its objectives. Finally, the effects of the ban did not outweigh the government's objective since advertisers can direct their products towards adults and develop other marketing strategies (*Irwin Toy Ltd v. Quebec (Attorney General),* 1989).

Andrews v. Law Society of British Columbia (1989)

Although the Charter was enacted in 1982, the "equality rights" section did not come into effect for another three years, as Parliament desired to do a review of this critical section. This refinement process meant that *Andrews* was the Supreme Court's first major case on equality rights (McCormick, 2015). The Andrew's case was the first major Charter case to deal with s.15 of the Charter. Section 15 states that

> "15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability" (s.15)

"Equality is universally recognized as a fundamental human right and essential democratic value" (Sharpe & Roach, 2003, pg.397). Equality is also a comparative concept that grounds a s.15 analysis. Nonetheless, equality is an ever-changing right that has evolved over time, especially in the Canadian context. The Court's initial interpretation of the equality guarantee emphasized the "focus for equality review must be upon historic patterns of discrimination and disadvantage" (Sharpe & Roach, 2017, pg. 37).

Facts

At the time of this case, in order to practice law in Canada, an individual must have belonged to a provincially legislated law society. Mark Andrews attended a law school in British Columbia and met all but one requirement in being admitted into the profession of law. The Law Society of British Columbia required their members to be Canadian citizens so that they had an increased understanding of Canadian customs. Additionally, The Law Society of British Columbia stated that citizenship was not an enumerated ground in the Charter. Andrews was not a Canadian citizen, as he was born in the United Kingdom and claimed this to be an infringement upon his s.15(1) rights (*Andrews v. Law Society of British Columbia,* 1989).

The Supreme Court agreed with the lower Courts that Andrews' s.15 rights were infringed and agreed with their rationale. This was mainly based upon the idea that s.15(1) was not limited to its listed grounds and can go beyond them. The Supreme Court used the term of "analogous grounds" to help broaden the list of listen grounds in s.15. The lower Courts also believed that discrimination must be invidious or pejorative in nature, and that differential treatment on s.15(1) grounds is not always discriminatory (LEAF, 2020).

Analysis

The list of personal characteristics is not a closed list of characteristics that is used on the claim for discrimination. The Courts have dispersed this list to include analogous grounds, such as factors like sexual orientation (Seaman, 2006). Still, s.15 can only be invoked in an attempt to "challenge legislative distinctions based on enumerated or analogous grounds that have an impact on individuals stereotypically or that reinforce existing prejudice and disadvantage" (Sharpe & Roach, 2017, pg.359).

Furthermore, it was argued that s.15 must be learned by egalitarian principles; “the necessity of protecting the rights of historically disadvantaged persons; and the recognition of the place of equality values and human rights legislation in the Canadian legal system” (LEAF, 2020, para.5-6). In order to ensure substantive equality, a purposive approach must be adopted. This purposive approach would recognize that s.15 is designed to aid individuals/groups who historically had unequal access to various resources. In some situations, treating people the same might actually allow inequality to continue (LEAF, 2020).

A significant aspect of this case was the Supreme Court's conceptualization of s.15. They rejected exclusive reliance on formal equality and the similarly situated test. Additionally, they emphasized that the purpose behind s.15 was “to protect vulnerable groups from discrimination”, which meant that s.15 could not be used to “challenge every differential treatment created by a law” (Sharpe & Roach, 2017, pg.361)

The Supreme Court passionately disagreed with the equality test used in the rationale of the Andrew case in the lower Court. The equality test and its associated “similarly situated test” was seriously deficient in that it excludes any consideration of the nature of law (Sharpe & Roach, 2017). The “similarly situated test” has roots stemming from the teachings of Aristotle, and states that “things that are alike should be treated alike”.

> “The "similarly situated should be similarly treated" approach will not necessarily result in equality nor will every distinction or differentiation in treatment necessarily result in inequality. The words "without discrimination" in s. 15 are crucial.” (*Andrews v. Law Society of British Columbia,* 1989, pg.144).

A problem with this type of thinking is that an individual might have a certain disadvantage, such as being blind, and may not be able to write a written test in the same capacity as someone

who can see. As well, the Court believed that "If it were to be applied literally, it could be used to justify the Nuremberg laws of Adolf Hitler. Similar treatment was contemplated for all Jews". Instead, the Supreme Court believed that the purpose and effect of a law must meet the standards set by s.15, which can also be known as substantive justice (Sharpe & Roach, 2017, pg.359).

The Supreme Court did not believe the party claiming an infringement must prove the discriminatory act to be invidious and pejorative. Discrimination, regardless of it being intentional or unintentional, is a distinction that is founded on personal traits. These include the imposed disadvantages on an individual group that were not imposed on other groups or the limited access to advantages which were available to other groups (LEAF, 2020).

> "Discrimination is a distinction which, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, has an effect which imposes disadvantages not imposed upon others or which withholds or limits access to advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed" (*Andrews v. Law Society of British Columbia,* 1989, pg.144).

Instead, they created the *Andrews* Test to resolve if differential treatment is deemed to be discriminatory.

> 1.) Is the law making a distinction based on the individual's personal attributes, on either an enumerated or an analogous ground?
>
> 2.) Does this distinction, whether intentional or not, have the effect of "imposing burdens, obligations, or disadvantages on such individuals or groups not imposed

> upon others, or withholds or limits access to opportunities, benefits, and advantages available to other members of society?" (*Andrews v. Law Society of British Columbia,* 1989, pg.174)

Both questions must be answered with a "yes" for the Court to believe that an infringement of s.15(1) has happened. However, a s.1 *Oakes* test can still save this infringement (Sharpe & Roach, 2017).

The *Andrews* case affirmed the need for a purposive and contextual approach to equality rights. Likewise, there must be proof on both differential treatment and substantive discrimination on enumerated or analogous grounds. In this case, the act of discrimination was put onto *Andrews* the moment he needed to obtain Canadian citizenship in order to practice law in British Columbia. The Court held that there were plenty of other ways for the Law Society of British Columbia to address any justifiable concerns they presented for an individual to have Canadian citizenship. For example, if they believed that an individual will not be familiar with Canadian laws, a justifiable alternative would be to test his knowledge or require a Canadian law degree as opposed to gaining Canadian citizenship (*Andrews v. Law Society of British Columbia,* 1989).

> "The objective of the legislation was not sufficiently pressing and substantial to warrant overcoming the rights protected by s. 15. Given that s. 15 is designed to protect those groups who suffer social, political, and legal disadvantage in our society, the burden resting on government to justify the type of discrimination against such groups is appropriately an onerous one. The proportionality test was not met. The requirement of citizenship is not carefully tailored to achieve the objective that lawyers be familiar with Canadian institutions and customs and

> may not even be rationally connected to it. Most citizens, natural-born or otherwise, are committed to Canadian society but that commitment is not ensured by citizenship. Conversely, non-citizens may be deeply committed to our country. Even if lawyers do perform a governmental function, citizenship does not guarantee that they will honourably and conscientiously carry out their public duties: that is a function of their being good lawyers, not of citizenship" (*Andrews v. Law Society of British Columbia,* 1989, pg.146-147).

This case helped affirm the bona fide occupational standard, as Andrews lack of a Canadian citizenship did not matter in the grand scheme of his ability to practice law. It is critical the organization/person who imposes this standard demonstrates why it is genuine that any requirement is necessary for that line of work and that any bona fide occupational standard would produce undue hardship on the individual applying for work (*Andrews v. Law Society of British Columbia,* 1989).

Overall, the *Andrews* case helped construct a framework with which the Courts can use to understand the scope of s.15(1), and if something does in fact constitute as discrimination. As well, it helped determine that the "meaning of equality in section 15(1) did not require that all must be treated in the same way and that equality sometimes requires different treatment for different individuals and groups" (Sharpe & Roach, 2017, pg.61). Nonetheless, every inequality in the Charter is not a violation of one's equality rights. There are many contextual factors that play an important role in this interpretation.

Discussion

When the Charter was enacted, it became the supreme law of Canada. All public laws needed to be assessed and modified, if necessary, to be consistent with the Charter. In *Hunter v.*

Southam, the Combines Investigations Act was of no force or effect as it did not align with the Charter and its s.8 right to be free from unreasonable search and seizure. Currently, the legislation has a section which allows the Director to apply for a search warrant rather than him/her being able to authorize it. This change in legislation puts itself in position to align with the standards of an unreasonable search and seizure. In *Oakes*, the Narcotics Control Act had its subsequent section altered so that the onus of proof for the presumption of trafficking did not fall on the charged individual. This affirmed s.11(d) of the Charter in presuming an individual is innocent until proven guilty. Moreover, the Lord's Day Act of 1906 in *R. v. Big M Drug Mart Ltd* was completely struck down as it did not align with the freedom of religion that the Charter protects. The Charter is the most important law in Canada as it is entrenched in the constitution. Therefore, any other law must abide by it, unless the limitations can be justified to protect other, more important values.

The Charter must remain a living document and our understanding of rights and freedoms must evolve to meet the evolving nature of Canadian society. It must be interpreted in a manner that allows for growth over the coming years. If this is allowed, the Charter can remain relevant and accommodate itself towards the needs of a rapidly evolving society. The individuals who created the Charter may have taken a vague approach when creating it due to the many different intentions they may have had. Since the Charter is a living document, nothing should stunt its growth as it continues to grow, expand, and change over time within its natural limits. This leaves the door open for certain sections to possibly evolve and adapt to the current situation. If there is no growth or development, the Charter is essentially frozen into the time period it was created.

Charter rights and freedoms must be interpreted liberally in favour of the rights holder - not in favour of the government or its agents. An important purpose of the Charter is for it to constrain the government and their infringement of the rights and freedoms of individuals. As demonstrated in *Hunter v. Southam* (1984), the government does not have the guaranteed right to a reasonable search and seizure. The police or any other justice agency's authority is not a right, but rather an authority that is granted by a statute and case law. Charter rights and freedoms are not absolute. It rests with a court to find a balance between the rights/freedoms of individuals and the legitimate interests of society. Although the Charter guarantees and protects individuals under its protection, the rights and freedoms presented by it can be limited in a way that is justifiable in a free and democratic society. Nonetheless, they must be justified in a way only an ordinary, cautious, and prudent person would find acceptable, which is often left to the judge or any other trier of fact.

It is the responsibility of the courts to ultimately determine the meaning, application and limitations of Charter rights and freedoms - not governments. It is integral for the courts to conduct a purposive analysis by conducting a balance of interests. Protecting an individual's rights within a free and democratic society is weighed against legitimate needs by the government (and their agents) to limit an individual’s Charter rights/freedoms. The judge must echo on what the true purpose and rationale is for the Charter - to protect the rights and freedoms it enshrines of the individuals it protects. The Charter wasn't seen by Dickson and the Court as an extension of pre-Charter interpretations of rights and freedoms. The Charter was a vehicle to reinterpret and expand these rights and freedoms - thereby moving Canada into a new, more progressive, era.

Conclusion

In general, Dickson was an open-minded leader of the court who displayed leadership along with a willingness to listen to everyone's views (Anderson, 2004). He presided over hundreds of appeals that involved the Charter and was also a perfectionist who often made as many as nine drafts for his decisions. The results of endless "reading and thinking and thinking and reading" drove his success and set up the foundation for the Canadian Charter of Rights and Freedoms to succeed even after he stepped down ("Brian Dickson", 1991). This is evident in the case of *R. v. Big M Drug Mart Ltd* (1985), as Dickson spent countless hours examining the roots of obligatory observance of the sabbath and took great fulfillment in tracking legal doctrines to their beginnings. He even asked the Supreme Court Library to arrange a bibliography for the freedom of religion (Sharpe & Roach, 2003). Furthermore, in the case of *Andrews v. Law Society of British Columbia* (1989) Dickson was especially fascinated by the concept of equality. Since his time at the University of Manitoba, he believed the same standards must be applied to all citizens, and this was further heightened by his traumatic war injury as he truly felt for those who had limitations or disabilities (Sharpe & Roach, 2003).

Each of the five cases discussed in this project highlight important issues and were the first major case for their respective section of the Charter. Dickson aided in unraveling the meaning of an unreasonable search and seizure in *Hunter v. Southam* (1984) and emphasized that a purposive analysis must be used to interpret the Charter. In *R. v. Big M Drug Mart Ltd* (1985), he interpreted the Charter's guarantee to freedom of religion and highlighted the rule of law. The case of *R. v Oakes* (1986) was a landmark case in which Dickson accentuated the principle of being "innocent until proven guilty" and set up the s.1 *Oakes* test. In *Irwin Toy Ltd v. Quebec (Attorney General)* (1989) Dickson aided in defining the broad term of expression whilst

establishing a three-stage process that would resolve future s.2(b) cases. Finally, in *Andrews v. Law Society of British Columbia* (1989), Dickson underlined the scope of s.15 by defining what constitutes as discrimination and helped determine the meaning of equality.

Under Dickson's leadership, the Charter was breathed with life. It gave Canadians a real sense for the protection of their rights and a necessary direction on how to proceed with future cases (Sharpe & Roach, 2003). Minister of Justice Kim Campbell described Dickson as "the father of Charter interpretation" (Sharpe & Roach, 2003, pg. 467). His collective work, highlighted by the discussed cases, amplifies the fundamental constitutional values entrenched in the Charter.

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