

## Four-Step Guide: How to Analyze a Charter Case



4. If not, is there a remedy provided under the Charter?

3. Does the reasonable limits clause justify the infringement?

2. Has a Charter right or freedom been infringed?

1. Does the Charter apply?

When considering a legal case that involves the *Charter of Rights and Freedoms*, ask these four questions in sequence.

✓ **1. Does the Charter Apply?** The Charter covers only matters involving the government. For example, a Charter case may challenge a law passed by the government. It may question a government action, such as the way police officers made a search or seizure. If the matter concerns only private individuals with no aspect of the government involved, the Charter does not apply. The question may have to be settled through other means. For example, if a dispute involved a landlord refusing to rent an apartment to a tenant because of his or her race, the dispute would have to be settled under the human rights legislation of the province or territory on the grounds of racial discrimination.

✓ **2. Has a Charter Right or Freedom Been Infringed?** In each Charter case, the court must examine the facts. A government action or law can be challenged in court. Does it violate a particular right or freedom guaranteed under the Charter? In this chapter, you will examine your fundamental freedoms, democratic rights, mobility rights, legal rights, equality rights, language rights, Aboriginal rights, and multicultural rights. You will also discover how the courts have interpreted the meaning of these rights in cases brought before them.

✓ **3. Does the Reasonable Limits Clause Justify the Infringement?** Your Charter rights are not absolute; they can be limited if it can be justified in our free and democratic society. Section 1 of the Charter is a critical section because it provides the authority for the government to limit your Charter rights and freedoms.

✓ **4. If Not, Is There a Remedy under the Charter?** What happens if your rights have been infringed, and the courts will not allow section 1 of the Charter to be used to limit your rights? You may be able to apply to the court for a remedy, such as having the evidence excluded under section 24(2) of the Charter (see page 26). The court may even declare a law unconstitutional and strike it down.





## Case

### R. v. Oakes, 1986 CanLII 46 (S.C.C.)

For more information, [Go to Nelson Social Studies](#)

In 1982, David Oakes was charged with unlawful possession of a narcotic for the purpose of trafficking under section 8 of the *Narcotic Control Act* (now referred to as the *Controlled Drugs and Substances Act*.) It was the job of the Crown attorney to prove that Mr. Oakes had the drugs in his possession. Once that was done, it was up to Mr. Oakes to prove that he did not have them for the purpose of trafficking. Mr. Oakes argued that it should not be his responsibility to prove himself innocent of trafficking. In legal tradition, the accused is presumed innocent until proven guilty. The Crown attorney generally has the responsibility of proving the case against the accused. This is known as the burden of proof. Oakes argued that when the burden of proof switched to him, his legal right under section 11(d) of the Charter, the right to be presumed innocent until proven guilty, was violated. At trial and later at appeal, the courts accepted Mr. Oakes's argument that "reverse burden of proof" was unconstitutional. The Crown appealed to the Supreme Court of Canada.

In 1986, the Supreme Court of Canada accepted the argument that Mr. Oakes's legal right to be presumed innocent until proven guilty was violated. In its reasoning, the Supreme Court set out a test to determine how section 1 of the Charter, the reasonable limits clause, should be interpreted. First, the court asked whether the law enforced an important government objective. Society is concerned about drug trafficking, so the federal government has enacted laws against it. The court must then perform a balancing test. In this proportionality test, the courts must balance individual rights against the rights of society. The proportionality test consists of three questions:

1. Is there a rational connection between limiting an individual's rights and the objective of the law in question? (The objective of the law is to reduce drug trafficking.)
2. Does the law or government action interfere with rights and freedoms as little as possible?

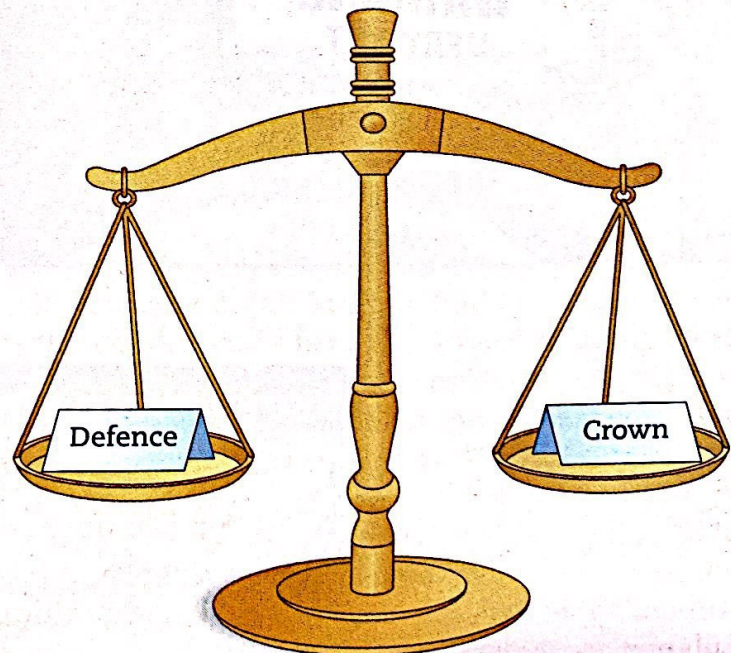
3. Are the effects of the limitation proportional to the objective? (Is there a balance between meeting the objective of the law and limiting individual rights?)

The court ruled that just because the accused had a small quantity of narcotics, that was no reason to assume that he intended to traffic it. The appeal was dismissed, and section 8 of the *Narcotic Control Act* was declared unconstitutional.

### For Discussion

1. What was the charge against David Oakes?
2. Why did he argue that his Charter rights were violated?
3. Explain the four parts used in the Oakes test to limit Charter rights.
4. Why do you think the presumption of innocence is so highly valued in Canadian society?

### Burden of Proof



In a criminal trial, the Crown must prove the case against the accused.