

Constitutional Law – Practice Question and Answer

Session: Charter

Topic: Limitation of Rights

Recommended time: 2 hours

Score: 100 Marks

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Question

You are an articling student at the Ministry of the Environment, Conservation and Parks, Ontario. At work this morning, your supervisor dropped by your office and left a document on your table. He informed you that the document contained the draft of a proposed legislation that was sent to him by the Head of Legal Department for his inputs.

The proposed legislation seeks to prohibit distribution of religious materials at public parks. According to your supervisor, the Minister commissioned a panel of inquiry which investigated and reported that there is proliferation of many religious groups and organizations that lurk in parks within the province for the main purpose of distributing their materials. Aside the fact that such materials litter the parks and increase the cost of keeping them clean, the panel concluded that such activities may soon lead to chaos or violence if left unchecked. References were made to two incidents that occurred at a park in Hamilton some weeks ago where two religious groups engaged themselves in violent confrontations, attacking each another for the right to share religious materials to a group of people. The situations would have degenerated if not for the quick intervention of the police. In spite of this, many innocent visitors to the parks sustained grievous injuries from the attackers or in the course of fleeing the scenes. It is therefore the Minister's belief that this prohibition was necessary to prevent a breakdown of law and order which may put lives and properties in the province at serious risks.

However, your supervisor has intimated you of his concerns that the proposed legislation may not survive a Charter challenge. He is concerned that the proposed legislation would breach rights and

freedoms guaranteed by the Charter and he does not see how the legislation can be saved by s. 1. He intends to present this argument to the Head of Legal Department but requests you to read through the proposed legislation and proffer an opinion. His last words were: “Please ignore the religious effects of the proposed legislation and focus attention on the application of s. 1 to the limitation of any other Charter rights involved, especially the rule in *R. v. Oakes*. I will take up the other argument with the HoD from there.”

The draft of the proposed legislation reads as follows:

1. This Act shall be known as An Act to Prohibit the Distribution of Religious Materials at the Public Parks of Ontario.
2. From the commencement of this Act, it shall be unlawful for any person or group of persons to share, distribute, disseminate, circulate, dispense, propagate, communicate or pass on any religious material at any park funded and maintained by the Ministry of the Environment, Conservation and Parks, Ontario (The Ministry).
3. The religious materials referred to in s. 2 above shall include but not limited to tracts, handbills, posters, notices, flyers, leaflets, circulars, handouts, pamphlets or any written advertisement that conveys religious messages of any sort.
4. Anyone found guilty of an offence under this law shall be liable to a fine of Five Thousand Dollars or sentenced to a term of imprisonment not exceeding six (6) months.

Prepare a draft of your legal opinion.

Notes:

- *This is a fact-based question. To answer this type of question, you should employ the IRAC methodology. You must be able to distil the issue(s), identify which rule or law applies, apply the rule or law and then reach a conclusion.*
- *Please note that there could be more than one issue in a fact based question so it's your responsibility to identify all necessary issues.*

- *Finally, your answer must be based on currently applicable laws. Don't espouse your own opinion or that of a dissent judgement unless absolutely required or requested by the examiner or needed only for reference purposes. If you do so for reference purposes, remember to indicate clearly that this is a dissent judgement or your own opinion.*

HIGHLIGHTS OF ANSWER

I have read through the draft of the proposed legislation and I am of the opinion that two issues arise for determination, viz:

1. Did the proposed legislation violate or limit any of the rights guaranteed by the Charter?
2. If the proposed legislation did violate or limit a Charter right, can the violation or limitation be reasonably justified in a free and democratic society?