

## Constitutional Law – Practice Question and Answer

**Session:** Charter

**Topic:** Override of Rights

**Recommended time:** 1 hour plus 15 minutes reading time

**Score:** 75 Marks

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### QUESTION

Last summer, the Prime Minister announced the appointment of Dominic Tunney as the next Governor General. This announcement generated immediate reactions from both loyalists and opposition party members for a variety of reasons:

- firstly, some criticised the appointment as totally without merit and merely intended to compensate Dominic Tunney who is a childhood friend of the Prime Minister and an ardent supporter.
- secondly, Mr. Dominic's name was not even on the list of shortlisted candidates submitted to the Prime Minister by the Advisory Committee, contrary to convention.
- thirdly, the three shortlisted candidates were French-speaking Canadians from Manitoba, and not a few people had hoped that the appointment of the next Governor General from this region would quieten the growing hostilities and disaffection among French-speaking Manitobans who consider themselves totally sidelined in the Dominion.

The office of the Prime Minister had generally responded to these criticisms on the ground that there is no legal duty on the Prime Minister to pick a candidate from the list submitted by the Advisory Committee, and the choice of the Governor General is entirely at his discretion, once discussed with the Queen.

Consequent upon this announcement, violent protests broke out in Winnipeg, accompanied by rioting, attacks on individuals, destruction of properties and disruption of businesses over a three-

day period, with constant threats to the lives of other residents. The leaders of these protests have threatened further violence, and have started moving from province to province urging other French-speaking communities in Alberta, Saskatchewan, British Columbia and Ontario to join in these protests. And everywhere they go, they speak openly and publicly in French at bus parks and even in public transit, appealing and often threatening other French speakers about the need to join them. While some arrests were made 8 days ago, the protesters have vowed not to be deterred but rather to escalate the protests.

To curb these disturbances, lawyers from the Justice Ministry had hurriedly prepared a bill which was presented in Parliament by the Minister of Justice and subsequently passed into law yesterday. The most relevant portions of this new law include the following:

3. From the commencement of this Act, it shall be unlawful for any person or group of persons:
  - a. to incite, encourage, entice, urge, threaten, or otherwise invite another person or group of persons to participate in any protest, demonstration, gathering, assembly or congregation.
  - b. to mobilize, speak to, campaign or canvass for the support of any other person or group of persons in the French language in any public or mass transportation system, including buses, trams, trains, boats or any other vehicle used in mass transit.
  - c. to support, align with, connect, link, confer, or become a member of any group of persons whose aim is to perpetrate any of the activities listed in subsections (a) and (b) above.
  - d. to move from one town, city or province to another with the intent to carry out any of the activities named in subsections (a), (b) and (c) above.
4. Any person found guilty under this law is liable to a fine not exceeding \$10,000.
5. This law shall operate notwithstanding the guarantees of rights and freedoms in the Canadian Charter of Rights and Freedoms and shall be in operation for five (5) years and three (3) months from the commencement date.
6. This law shall be deemed to operate notwithstanding any law that is in operation on the first day of the protests.

At a press conference after the law was passed, the Minister of Justice had explained that the new Act was inevitable in order to protect the lives and properties of innocent citizens and to safeguard

public buildings and infrastructure from wanton destruction. He noted further that the period of operation of this law was to ensure that the new Governor General serves out his time with the needed focus and peace of mind, while ensuring that all perpetrators of the violence are brought to book.

Anthony Dubois, a French-speaking Canadian from Broseau, Alberta, had approached you as a seasoned constitutional lawyer and voiced his concerns about this new law. He admitted participating in the protests but believes the new law abrogates his rights. He seeks your legal opinion on whether he stands a chance if he challenges the constitutionality of the law.

Prepare a draft of your legal opinion, including all relevant authorities in support. Your draft should address the following specific questions:

- (1) Did the new law infringe any of Dubois' rights or freedoms? If you answered yes, please identify the particular rights and freedoms with specific references to Charter provisions. (25 Marks)
- (2) Address the constitutionality of the new law. (Please confine yourself to the likely outcome of the Charter challenge. You do not need to consider if the law will be saved under s. 1) (50 Marks)

*Notes:*

- *Although this is a fact-based exam question, you may not need to employ the IRAC methodology in answering this type of question. This is because the question in itself is direct and clear as to what you are to address.*
- *So, to answer this type of question, marshal your points and address them directly.*
- *Please note that there could also be more than one point in these types of fact based questions so it's your responsibility to identify all necessary points.*
- *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 TO QUESTION (1):**

1. Yes. The law did infringe Dubois' rights and freedoms guaranteed under the Charter.
2. The rights infringed by the new law are as follows:
  - a. Freedom of expression as guaranteed by s. 2(b) of the Charter
  - b. Freedom of assembly as guaranteed by s. 2(c) of the Charter
  - c. Freedom of association as guaranteed by s. 2(d) of the Charter