A. CHARTER RIGHTS, CONSCIENCE AND EXPRESSION

The Constitution Act of 1982, the Canadian Charter of Rights and Freedoms, sets out “Fundamental Freedoms”.

Section 2 of the Act says:

*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;*

B. THE OAKES TEST MUST BE MET IF

THE CHARTER RIGHTS OF THE INDIVIDUAL

ARE TO BE EXTINGUISHED

It is established through common law that the Government has to meet the criteria of the "Oakes Test" in order to override a Charter Right.

Section 1 of the Charter can be used to override charter rights, if the good of the larger society is more important than the individual right and freedom. BUT there are tests that must be passed, in order to allow an override.

**THE OAKES TEST**

Is there a “pressing and substantial” concern such that I must give up my Charter Right to the fundamental freedoms of conscience and expression?

Is there “proportionality”? - The Statistics Act allows the Government to put me in jail for 3 months and fine me $500 if I do not comply with the census. Is there “proportionality” between the sanction and the offence? (elaboration below).

<http://en.wikipedia.org/wiki/R._v._Oakes>

*The Court presents a two step test to justify a limitation (of an individual’s Charter Rights and Freedoms) …*

*•First, it must be “an objective related to concerns which are pressing and substantial in a free and democratic society“, and*

*•second it must be shown “that the means chosen (3 months in jail and a fine of $500) are reasonable and demonstrably justified“.*

*The second part is described as a “proportionality test” which requires the invoking party to show:*

*• First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective.*

*• Second, the means, even if rationally connected to the objective in this first sense, should impair “as little as possible” the right or freedom in question.*

*• Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of “sufficient importance”.*