

HANDOUT:

Freedom and Law

When people live together, everyone needs to meet certain expectations. Some expectations are informal, such as the unwritten rules that govern a family. Some expectations are formal, such as the written laws that govern a community.

Laws and expectations can be seen as restricting the freedom of individuals to do as they want. However, they can also help provide freedom to all individuals.

Consider this extreme example that illustrates the complex relationship between rules and freedom. If every person was free to kill others as they so pleased, then nobody would be free to enjoy their life and security. Reasons such as these have led society to generally accept that the most freedom that an individual can enjoy is the freedom to do what they wish, so long as their actions do not impose upon the freedom of another individual. This is a basic tenet of liberalism.

The interplay between the restriction and promotion of freedom can be seen in many less extreme examples of the laws that govern us. As another example, think about the laws and regulations that govern public sanitation. Organized garbage collection and bans on littering dictate acceptable methods for waste disposal. Therefore, these laws restrict the freedom of citizens to do whatever they please with their garbage.

However, a universal framework to minimize pollution also helps free citizens from the burden of many pollution-borne diseases. As well, it increased citizens' freedom to use and enjoy clean public spaces. Further, a public system of garbage disposal gives citizens the freedom to spend their time and energy pursuing life choices, rather than each individual spending their time seeking out ways to dispose of their garbage. When seen this way, public sanitation laws can also be thought of as contributing to freedom.



Who Determines Reasonable Limits to Freedom?

In Canada, the *Charter of Rights and Freedoms* enshrines many civil and political rights and freedoms. However, these rights and freedoms are not absolute. Rights and freedoms set out in the Charter are subject to “reasonable limits as can be demonstrably justified in a free and democratic society.” In other words, the government may pass a law that limits rights and freedoms, so long as they can prove that they acted in a reasonable and justified way.

When questions arise as to whether or not the government is acting in a reasonable and justified manner in limiting rights and freedoms, it is up to the courts to decide.

Take, for example, the rights of public-sector workers to strike. In 2008, the Government of Saskatchewan passed a law restricting the freedom of public sector workers. The law took away the right to strike for workers in

positions deemed as “essential services.” The Saskatchewan Federation of Labour challenged the constitutionality of the law. They pointed out that the law allowed the government to declare that almost every public servant was performing an “essential service,” including such things as university workers and park employees. The Supreme Court found that the law unreasonably interfered with the freedom and ability of public sector workers to meaningfully negotiate labour contracts with the government. The Government of Saskatchewan was forced to change parts of the law that were deemed unconstitutional.

Rulings such as the one above illustrate why it is important that courts and judges operate independently of government. Independence means that judges are not subject to the whim of the government, or to popular trends of the day. By being independent, courts and judges can protect the rule of law and guarantee the government does not trample on rights such as freedom of speech, worship, press, and association.

THINK

1. How do reasonable limits on freedoms promote peace, order, and good government?
2. How does the court’s ability to strike down oppressive laws promote peace, order, and good government?