

## Balancing Rights

### Section 1: *The Reasonable Limits Clause*

Occasionally our individual rights may oppose the rights of society or the community. How do we resolve such conflicts? We try to balance opposing rights. Section 1 is the way the balance is struck

Your rights and freedoms are protected under the Charter. However, as outlined in s. 1, a limit may be placed on a right if it happens to conflict with important societal needs. For example, public safety can be seen as an important enough reason to curtail an individual right. Thus Parliament may pass a law that restricts expression if it feels public safety is a risk. Such a law may be challenged in the courts. Although the law might be deemed to violate a Charter right, it is not automatically “struck down” by the courts. Rather the courts decide if the said law can be saved under the s.1 provision. That is, they determine if the limit placed on a right is reasonable or not. If it is reasonable, the law may stand.

How does the court determine if a limit is reasonable? It applies the **Proportionality Test** (sometimes called the “Oakes Test”).

To pass the test, a law has to:

1. Have an objective important enough to justify overriding a constitutionally protected right or freedom.

*i.e. If you are going to infringe the Charter, it better be for a darn good reason.*

2. Use means that are proportional to the ends it is trying to achieve. That means a law has to:

- i. Have a rational connection to the objective.

*i.e. The requirements in the law must actually be connected to the law's stated goal.*

- ii. The limitation of individual rights or freedoms is minimal

*i.e. The law can't be excessive in the way it limits a right.*

- iii. Should not have harmful effects that outweigh the benefits.

*i.e. A law that does more harm than good will not survive the test*

