**CASE STUDY REVIEW**

* ***R. v. Sharpe***

Legislation:

Section 2(b) of the Charter was used

* 2(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

Section 163.1 of the Criminal Code was used

* 163.1 …
* (4) Every person who possesses any child pornography is guilty of
* (a) an indictable offence and liable to imprisonment for a term not exceeding five years; or
* (b) an offence punishable on summary conviction

The definition of “child pornography”:

* Any photographic, film, video or other visual representation that shows a person who is or is depicted as being under the age of 18 years engaged in explicit sexual activity
* Any written or visual representation that advocates or counsels sexual activity with a person under the age of 18 that would be an offence under this Act

Summation of the case:

* Sharpe possessed some diskettes, books, manuscripts and stories that were considered as child pornography
* Charged with four counts under the criminal code – possession of child pornography and possession for the purpose of distribution or sale
* Sharpe claimed that the law against possession material such as this violated his freedom of expression under Section 2(b) of the Charter – saying that this material was art
* The trial judge and the majority in the British Columbia Court of Appeal rule that this section was unconstitutional, and the Crown appealed to the Supreme Court of Canada

Discussion Questions:

* Did the charges violate his freedom expression? If so, why?
* Should the reasonable limits clause be enacted in this case? If so, why and how?
* Why do you think the case was so close? (4-3)
* Do you think that Sharpe’s freedom of expression is more important than the security of the person for the children during the making of these films?

The outcome:

* Violated freedom of expression but was not justified under section 1 as the government objective of protecting children from exploitation is more important
* The Supreme Court ruled 4-3
* However, the law captures the possession of two categories of material that one would not normally think of as a “child pornography” and that raise little or no risk of harm to children:
* (1) written materials or visual representations created and held by the accused alone, exclusively personal use;
* (2) visual recordings created by or depicting the accused that do not depict unlawful sexual activity and are held by the accused exclusively for private use
* The bulk of the material falling within these two classes engages important values underlying section 2 (b) guarantee while posting no reasoned risk of harm to children
* ***R. v. Latimer***

Legislation:

Section 12 of the *Charter* was used in defence of Latimer

* 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Section 7 of the *Charter* was used in defence of the victim, Tracy

* 7. Everyone has the right to life, liberty and security of the person and the right nt to be deprived thereof except in accordance with the principles of fundamental justice.

Section 15 of the *Charter* was used in defence of Tracy

* 15. Everyone is equal under the law and has the right to equal protection and equal benefit of the law without discrimination (including those who are at disadvantage because of race, national/ethnic origin, colour, religion, sex, age, mental or physical disability).

Section 235 of the *Criminal Code* was used against Latimer

* 235…
* (1) Everyone who commits first degree murder or second degree murder is guilty of an indictable offence and shall be sentenced to imprisonment for life

Section 745 of the *Criminal Code* was used against Latimer

* 745. The sentence to be pronounced against a person who is to be sentenced to imprisonment for life shall be
* (c) in respect of a person who has been convicted of second degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until person has served at least ten years of the sentence or such greater number of years, not being more than twenty-five years…

Latimer also used “defence of necessity”

🡪 Three requirements need to be satisfied for this to be successfully used

* Imminent peril or danger
* Must have had no reasonable legal alternative to the course of action undertook
* Must be proportionality between the harm inflicted and the harm avoided

Summation of the case:

* Latimer decided to put his quadriplegic daughter – suffering from a severe form of cerebral palsy – into his truck filled with carbon monoxide using a hose inserted from the truck’s exhaust to the pipe into the cab.
* Latimer first lied that Tracy simply passed away in her sleep. He later confessed to having taken her life
* Her condition was permanent, caused by neurological damage at the time of birth
* She had the mental capacity of a fourth-month-old baby and she could only communicate by facial expressions, laughter and crying
* She was completely dependent on others for her care
* She experienced 5-6 seizures daily
* Her pain could not be reduced by her medication
* She was not terminally ill but her doctors anticipated that she would have to undergo repeated surgeries, her breathing difficulties had increased, but her life was not in its final stages

Discussion Questions:

* Why was the defence of necessity not applicable to this situation?
* The accused pleaded that his life sentence was a circumstance of cruel and unusual punishment. Why would he say this when he was convicted of second degree murder of his 12 year old daughter?
* Considering the sympathy Latimer got for ending his daughter’s life, how do you think people would react if we made it okay to end the lives for all people with a severe case of cerebral palsy?

The Outcome:

* Latimer was initially charged with first degree murder, then convicted by a jury of second degree murder
* The Court of Appeal for Saskatchewan upheld his conviction and life sentence with no eligibility for parole for 10 years but this Court ordered a new trial
* During the second trial defence counsel asked the trial judge for a ruling on whether the jury could consider the defence of necessity. The judge then ruled that the defence was not available due to the fact that Latimer’s actions did not meet the three requirements.
* The jury of this Court recommended one year before parole eligibility and the trial judge then granted a constitutional exemption from the mandatory minimum sentence, sentencing the accused to one year of imprisonment and one year on probation.
* The Court of Appeal affirmed the conviction but reversed the sentence, imposing the mandatory minimum sentence of life imprisonment without parole eligibility for 10 years.
* ***R. v. Parker***

Legislation:

Section 7 of the *Charter* in defence of Parker

* 7. Everyone has the rights to life, liberty and security f the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice

Acts:

*Narcotic Control Act* was used against Parker

* Someone is authorized to have a narcotic in his or her possession where the person has to have either a license (pharmaceutical) or a prescription (a card that is a license allowing you to prow and possess).

*Section 4* of the *Controlled Drugs and Substances Act* was used against Parker

* 4.
* (1) Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II, or III.
* (2) No person shall seek or obtain
* (3) Every person who contravenes subsection (1)…

1. is guilty of an indictable offence and liable to imprisonment for a term not exceeding seven years; or
2. is guilty of an offence punishable on summary conviction and liable
3. for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both, and
4. for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Stated in the Controlled Drugs and Substances Act, if you have a

* “category 2 symptom” – which means a debilitation symptom that is associated with a medical condition or with the medical treatment of that condition – you have (with approval and prescription) the “authorization to possess.”

Section 2 of the *Controlled Drugs and Substances Act* in relation to medicinal drugs

* 2. The holder of an authorization to possess is authorized to possess dried marijuana, in accordance with the authorization, for the medical purpose of the holder

Section 25 of the *Controlled Drugs and Substances Act* in relation to medicinal drugs

* 25. A person is eligible to be issued a personal-use production license only if the person is an individual who ordinarily resides in Canada and who has reached 18 years of age

Summation of the case:

* Terrance Parker has sever epileptic seizures and uses marijuana to help ease the amount of seizures
* Charged with growing and trafficking marijuana
* The Narcotic Control Act and the Controlled Drugs and Substances Act were used against him
* He felt that he was denied of his safety by using Section 7 of the Charter as a defence
* “Personal medically approved use”

Discussion Questions:

* Should medicinal marijuana be distributed in pharmacies or should people be allowed – with proper licenses – to grow it at home?
* Should the police enforce the law more with possession of marijuana?

The Outcome:

* Crown does not believe that he needs to smoke marijuana but that he may use other drugs for his seizures
* The Court comes to the decision that Parker needs marijuana to help his seizures. Judge read into the legislation for an exemption for persons possessing or cultivating marijuana for their “personal medically approved use”
* Crown appeals and states that he does not need marijuana and if he does he can get it by prescription
* The legislation is not unconstitutional simply because no drug company has attempted to have marijuana or CBD licensed for sale through prescription. It also argues that Parker could have applied for a special exemption from the Minister of Health under s. 56 of the Controlled Drugs and Substances Act.
* Epilepsy association of Toronto intervened in the appeal
* The trial judge was right in finding that Parker needs marijuana to control symptoms of his epilepsy of his epilepsy. The prohibition on the cultivation and possession of marijuana is unconstitutional
* Forcing Parker to choose between his health and imprisonment violates his right to liberty and security of the person
* THC in marijuana is scientific evidence that has anti-seizure properties
* CBD can shrink tumours and stimulate the growth of new brain cells in adult mammals. Scientific and clinical investigations underscore CBD’s potential as a treatment for a wide range of conditions, including: chronic pain, schizophrenia, PTSD, diabetes and MS.
* ***Hall v. Power***

Legislation:

Section 15 (1) of the *Charter* was used against Power

* 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability

Section 93 of the *Constitution* was used against Power

* 93. Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union

Section 29 of the *Charter* was used against Power

* Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools

Legal Terms:

Interlocutory injunction

* A pre-trial court order requiring a party to perform a specified act or restrain from performing a specified act

Irreparable harm

* Harm that cannot be properly compensated in damages (monetary compensation)

Balance of convenience

* Balance of risk of harm to the defendant against the risk of significant impairment to the plaintiff’s rights

Summation of the case:

* Marc Hall, an openly gay senior student attending a Catholic high school in Ontario, requested to bring his same-sex boyfriend to prom as his date.
* The principal of Marc’s Catholic high school, Michael Powers, was required to approve all prom requests for the purpose of obtaining contact information and excluding potential troublemakers.
* On February 25 2002, Powers denied Hall’s request, claiming that allowing Hall to bring his same-sex date to prom would mean condoning homosexual acts, contrary to Catholic beliefs.
* After the Catholic school board upheld Powers’ decision, Hall initiated legal proceedings against Powers and the school board, claiming discrimination on the basis of his sexual orientation.
* As the trial would not take place until after the date of Hall’s prom, he applied for an interlocutory injunction, restraining the school from preventing the attendance of Hall and his same-sex date at prom on May 10 2002.

Three Stage Injunctive Test:

* + Is there a serious issue to be tried? The court must be satisfied that the applicant has demonstrated there is a serious issue to be tried in the sense of a case with enough legal merit to justify the extraordinary intervention of the court in making the order sought prior to trial.
* B. Will the applicant suffer irreparable harm if the interlocutory injunction is not granted?
* C. Does the balance of convenience favour granting the relief? This can also be stated as follows - which party will suffer greater harm from the court granting or refusing to grant the interlocutory remedy pending a trial decision on the merits?

Hall’s Arguments

* The purpose of Section 15 is to value human dignity in a free society where difference is respected and equality is valued. Section 15 of the Charter is prevents discrimination and promotes a society in which all are secure in the knowledge that they are recognized as human beings equally deserving of concern, respect and consideration.
* The Church's Catechism first declares that homosexuality is contrary to natural law and can under no circumstances be approved, but goes on to direct both that homosexuals should be accepted with respect, compassion, and sensitivity and also that every sign of unjust discrimination should be avoided. There is a substantial diversity of opinion within the Catholic community regarding the appropriate pastoral care and the practical application of Church's teachings on homosexuality.
* “Dating” is an accepted aspect of social interaction whether it be for fun, for romance, for personal growth, for interaction skills, or for seeing oneself as an individual accepted in the social milieu of other persons. Mr. Hall is clear that he and Mr. Dumond are partners in a relationship of some duration, just as some of the others at the dance will be there with their partners in a relationship of some duration.

Powers’ Arugments:

* Catholic schools are not the same as non-denominational public schools. The education that takes place there is one of the central means by which the Roman Catholic Church accomplishes it's mission - the nurturing and development of young persons in a Christian community so that Catholic values, Catholic life and Catholic faith become integrated in their students' lives.
* A Principal's duties under the Education Act including the duty to maintain discipline are carried out with a Catholic orientation.
* The School Board claims an implicit or inherent right to regulate those who can attend school dances based on denominational concerns under the generic umbrella of school management. “Management" in its ordinary sense is broad enough to encompass absolutely anything and everything that happens in a school system.

Discussion Questions:

* If you were the judge, would you have granted the interlocutory injunction to Marc Hall?
* Do you believe that the three factors necessary to grant an interlocutory injunction were applicable? (serious issue, irreparable harm, balance of convenience)
* In your opinion, does allowing homosexual students (attending Catholic secondary schools) to bring their same-sex dates to prom infringe on the rights guaranteed to denominational schools under Section 93 of the Constitution Act?

The Outcome and Explanation of the Judge’s Ruling:

* *RULING***:** “An interlocutory injunction will issue restraining the defendants and their agents and all persons having knowledge of this order from preventing or impeding Mark Hall from attending his high school prom with his boyfriend on May 10, 2002.”
* A) “I am satisfied that the applicant has demonstrated that there is a serious issue to be tried - in the sense of a case with sufficient legal merit to justify the extraordinary intervention of this court in making the order sought before trial.”
* B) “The cultural and social significance of a high school prom is well-established. Being excluded from it constitutes a serious and irreparable injury to Mr. Hall as well as a serious affront to his dignity.”
* C) “It seems to me that the effect of an injunction on the defendants and on other members of the Catholic faith community will be far less severe than the effect on Mr. Hall and on lesbian and gay students generally if an injunction is not granted.”