

Introduction

- Important in today's political climate
 - Far-right groups are suspending people's rights as they gain power
- Laws should work for everyone, regardless of their background
- Law is dynamic, adapts, and evolves in response to paradigm shifts
- Regulate many aspects of our lives and are guided by the principles of reason and fairness
 - If the state charges you with a crime, the state should have to prove you guilty rather than you trying to prove your innocence
 - Maintaining an intelligent society in which everyone follows the law because they agree with it rather than being in fear of repercussions
 - Supposed to be fair, reason behind prescribed sentences
 - Assault is up to 3 years
 - Establishes a fair and standardized punishment for all of these kinds of offenders
- Provide order and stability for the creation of a safe society (predictability and structure)
 - Preventing people claiming ignorance of the law as an excuse for breaking a law from slipping through the cracks in the legal system

Beliefs and Values of Canadian Society

- Multiculturalism
- Democracy
- Fundamental Freedoms
- Equity
- Integrity
 - People deserve to feel and be safe in their person
 - Both are not mutually inclusive
- These beliefs and values are entrenched in the Charter

Current examples of changing Canadian Law

- Right to education
 - Up to the age of 16, you are legally required to get an education
 - Parents are legally required to educate you
- Changing the death penalty
- Consent to sexual activity
- Physician assisted suicide
 - Currently still a controversial issue
 - Over 18
 - Suffering from a terminal illness
 - Explicit consent
- Abortion Rights
- Same-sex marriage

- Legalization of marijuana

Challenges to Understanding the Law

- Justice is not synonymous to Law
- Misconception: law is meant to ensure justice for all
- Aggravating and Mitigating Circumstance
 - Aggravating: Worse for you
 - Mitigating: Better for you
 - Mitigating circumstance is that someone is younger than 18 years old
 - Youth Criminal Justice Act
 - Law is a lot more lenient for youth
- Moral boundaries shaped by background
- Dictionary definition: Just behaviour or treatment
 - Just: Quality of being and fair and reasonable
- Equity vs Equality
 - Affirmative Action Programs
 - Programs to ensure rights of all programs have equal opportunities in requirements, etc.
 - Helping people who have been historically underrepresented

Law and Morality

- Some laws serve a practical purpose, like the ones created for companies, banks, organizations, while others reflect the moral/ethical values of the majority of the population
- Morality is generally accepted as a basis for a law, moral issues can be extremely controversial in understanding, applying, and interpreting the law
 - People with different perspectives and backgrounds have personal beliefs against:
 - Euthanasia, suicide, abortion

Legal Duty vs. "Right thing to do"

- Law prevents criticism of the government and those who hear someone criticise the government they must report them. Parents criticise the government, what do you do?
 - Moral boundary against reporting parents
- Found \$50 beside ATM, do you keep or give the money back?
 - Moral boundary of whether you take the money or not
- Client instructs you to destroy evidence of a crime and after watching the tape, you discover that the evidence implicates your client + an accomplice who claimed she did not participate in the crime. Failure to provide the tapes may result in you being charged with obstruction of justice. But, turning over the tapes to the Crown may violate your client's rights to confidentiality between lawyer and client, and you may lose your license to practice law.

Day 2

Rule of Law

- Justness
 - Using laws for their intended purpose: to protect
 - (Challenge) Many people, even in democratic countries, aren't completely aware of the laws
- Work for your benefit
- Ensures accountability by applying to everyone equally
- Expressing power with the law to uphold the beliefs and values of that nation/ group
- Setting up standardized laws to benefit the citizens
- Transparency
 - You are aware of the law
 - Laws are available for you to use
- Consistency
- Accountability
- Principles of Fundamental Justice
 - Treat like cases alike and different cases differently - equity
 - Stare decisis and precedent
 - Treating similar cases similarly and using past case law in the current cases ensures fairness through precedent. The contents of the previous case applied to current ones is where this comes from.
- Providing everyone with a law
 - If the citizens don't agree with the law, the laws won't be followed (in a democracy)
- Usability
 - Being able to use the laws to your advantage
- Enforceability
 - Laws that are enforceable
 - If we don't believe in the ideals behind the law, we're less likely to use it
- Predictability
 - Well informed about the consequences
 - Hopefully the consequences act as a deterrent
 - Relates to consistency
 - Similar laws should apply to similar situations
- Overarching idea
 - People should be treated similarly in response to similar actions
 - Fairness, Consistency, Predictability

Day 3

Jurisprudence: The theory or philosophy of the law

Day 4

- Democracy used to be a negative term - democracy meant “rule of the mob” and had a negative connotation because oligarchs were worried of losing power to the mob
- Influence on Canadian Modern Law on worksheet

Day 5: Classification of Law

- Hierarchy of law
 - Constitutional Law
 - Statute Law (Using court decisions to codify law)
 - Common law (Court decisions)
- Entrenched within the constitutional law is the Charter, which has constitutional power
 - Supreme law of the land, except can be overridden in specific circumstances
 - outdated - doesn't reflect the b and v of the society, best interest of the general
- Statute Law may only override constitutional law if it is in the best interest of the general
- Ex.
 - Common law court decision on cyberbullying
 - Statute law turns common law into statute laws

Common Law

- Common law follow precedent - In case law, precedence established from English Common Law
- Stare decisis (to stand by decided matters)
- Rule of Precedent
 - Using past cases to determine ruling or using the decision of past cases as the basis for subsequent cases
 - Reinforces fairness, accountability, transparency, stare decisis

Limits to precedent

- There's more nuance to the case and the details of the previous case can't be applied here
- Precedent is outdated
 - Too old and doesn't apply to current values and beliefs
 - Factors back into how law is dynamic
 - Physician Assisted Suicide
 - This used to be banned, but as society's values change, factors like quality and quantity of life become more important
- Rulings on new elements of society
 - Usage of the internet (cyber bullying, illegally downloading, etc.), or patent laws re: human DNA often don't have a history of precedent

- Judge can disagree with past precedent and set new precedent (Distinguishing a case)
 - Must determine that the case is sufficiently diff. From the past case
 - Ties in with precedent being outdated - can distinguish this case by not allowing the past case because it is too old. The precedent was limited by its relevance to Canadian b and v
 - Establishing how this case is different and therefore sets a new precedent (Distinguishing a case)

Statute Law

- Laws created by elected governments in Canada
- Any law passed by the federal or provincial government, and has therefore been codified - written down
- Bodies of statute law:
 - Criminal Code of Canada, Environmental laws, narcotics and control laws, use + illegal use of drugs, youth justice system, highway traffic act
- Criminal Code of Canada
 - Criminal offences
 - For someone to be charged, their act has to have disrupted proper functioning of society
 - Fraud, narcotics use, identity theft
- Anything that can be ticketed is not criminally chargeable
- Anything you can be arrested for is criminal
- Many current laws have been Common Law turned into Statute law

Common vs. Statute Law

- Statute law has higher precedence over common law
- If a statute is insufficiently equipped to handle a case, the common law takes effect
- Municipal levels of government have the power to create or enact legislation, called by-laws
- Power is limited to the jurisdiction the level of government has
- Municipalities have power in common law, but not in statute law

Constitutional Law

- Supreme law of the land
- Constitutional law overrides every other law, except when the courts decide a law can be reasonably limited via s.1 of the Charter
- If a law is inconsistent with the Charter, it can be deemed unconstitutional
 - Various remedies to the law given to the courts
 - Remedy the law to make it fairer
- Amending a law
 - $\frac{2}{3}$ of the provinces must be in agreement, and the $\frac{2}{3}$ must be 70% of the population
 - Ontario, Quebec

- Notwithstanding Act
 - Gov't's way of overriding the Charter and other laws to do what they want
- War Measures Act turned into Emergency Measures Act
- Striking down
 - A law is declared invalid and therefore no longer applies
- Partial invalidity
 - Invalid parts of a law is taken out
- Reading down
 - Law is interpreted narrowly because it is too broad
 - Court interprets a law more narrowly
- Reading in
 - Law is too specific so words are read into it to make it more fair
 - Court interprets a law to be broader to make it more fair/consistent with the Constitution
- Temporary Suspension
 - Law still stands, but government will change the law given some time to deliberate over the decision

Purpose and significance of habeas corpus?

Habeas corpus establishes a freedom from imprisonment without proper reason. This ensures that those who are imprisoned are guilty, but more importantly that innocent people are not imprisoned. This idea of treating people as they deserve are the basis for Canadian Law.

Categories of Law

Rome Statute

- Body of laws that govern international law
- Every country has sovereignty over their own laws
- Any country that is a part of the UN agrees to follow the laws outlined by the Rome Statute
- Countries part of the UN decide to ban certain actions like crimes against humanity (genocide), ecocide, or destroying the culture of an area
- Geneva conventions
 - No attacking hospitals or civilians
 - Banning use of biological and chemical warfare
 - Testing nuclear weapons
 - Building new nuclear weapons
- International Criminal Court
 - Allowing an international court to try war criminals

International Law

- Laws governing relations between sovereign states
- Customary practice
 - A general custom that isn't written into law but is followed anyways

- There's no law that says the head of a political party becomes the prime minister
- Diplomatic Immunity
 - Diplomats can't be tried in the country apart from their home country in which they committed the crime
 - Russian diplomat hit a civilian, killing him
 - Russian diplomat would be sent back and tried in Russia, but basically not going to be tried at all, just leave
- Free Trade agreements
- Formal Treaties

Domestic Law

- Laws that govern the activities in the nation's border
- Statute and common law
- Can't feign ignorance to the law of that land, can't be subjected to the laws of the particular place
- Littering, chewing gum, smoking on the street is a criminal offence in Singapore
- If you do something illegal in Canada in a different country, you can't be tried in Canada.
 - If the country has extradition treaties with other countries, the country can request that you be tried in the original country
 - "Safe Havens" are Venezuela, Uruguay that don't have extradition laws

Procedural Law

- Consists of rules that outline the steps involved in protecting our rights
- The way legal decisions are made
 - A charged person must be read their rights
 - Following rules of discovery
 - Habeas corpus
 - Ensuring that no one is held without a charge
 - Meant to protect an accused person's legal rights by ensuring that the same procedures are followed in every case
 - Helps victim
- Reinforces fairness, accountability
- Presenting evidence in a courtroom
 - Rules of discovery
- Obtaining an arrest warrant
- Appealing a court decision
 - Everyone in Canada has a right to appeal the court decision
 - However, everyone does not have the right to have that appeal heard
 - Higher court decides whether your appeal will be heard
 - Supreme Court hears about 80 appeals per year
 - Either national issue or one in which the law needs to be changed
 - Lower courts allow this case to move to the Supreme Court and signal that the law needs to be changed

Substantive Law

- What isn't Procedural Law
- Consists of rules that outline your rights and obligations in society
- Charter falls into substantive law
- Grounds upon which legal decisions are made
- Why and What of law
 - What defines a crime
- Can be further broken down into public and private law
- The specific criminal code section that says murder is illegal and punishable by law
- How degrees of murder are defined(1st, 2nd, manslaughter)
 - First is that the murder is planned and deliberate
 - Second is that the murder is deliberate but not planned
 - Manslaughter is that the murder is neither planned nor deliberate
 - Reckless behaviour that lead to murder may be considered as manslaughter
- Statute of limitations
 - The time limit for a case to be heard in - exists in US but not Canada
 - None in Canada for indictable (serious) offenses except for treason

Day 6: Substantive Law - Private Law (Tort)

- Case citation
 - Who brought the case to whom (Plaintiff)
 - Second person is defendant
- Stella Liebeck v McDonald's Restaurants, P.T.S, Inc. and McDonald's International, Inc
 - Stella Liebeck brought the case to McDonald's
- Product Liability
 - Being responsible for the damages a product causes
- Compensatory damages
 - Money paid as compensation for damages
- Punitive damages
 - Money paid to deter others and the defendant from doing this again
- In Liebeck v McDonald's, some 600,000 were for compensatory damages (medical bills, etc.) and the rest were punitive damages to ensure McDonald's changed how hot their coffee was and deter others
- Hung jury means that the jury couldn't make a unanimous decision
 - Causes a mistrial, and then a new jury w/ new jurors will be made
- Jury makes a decision (trier of facts)
 - Jurors can't be emotionally attached to case or plaintiff/defendant
- Judge decides the sentence (trier of law)

Day 7: Civil and Criminal Law

Civil Law

- Involve the government
- Parties are involved in a dispute and cannot come to an agreement
- Lawyer is paid no matter what and really don't want to go to court - they would much rather easily solve the case through discussion b/c going to court is expensive and takes a lot of time
- In *Liebeck v McDonald's* case, Stella and McDonald's couldn't come to an agreement
- Suing other party for repayment of debt, breach of a contract, damages incurred caused by non-performance or for personal injuries suffered
- *Plaintiff v Defendant*
- The case will go to court if they can't come to a resolution
- Balance of Probabilities
 - 51%
 - Just need to prove that it's likely you're telling the truth and that the other party is guilty
 - Threshold for a case to be heard and a person is telling the truth
- Can sue for damages
 - Emotional distress
 - Physical injury
- Any assault case can also be a civil case if the victim sues for damages

Proceedings

- Claimant/Plaintiff sues against a defendant is a lawsuit
- If proceedings are successful, judgement will be for the claimant
- Remedy could be a payment for damages, or an injunction
 - Ex. if someone is paying their child support, an injunction could be garnishing their wages for the child support
- Liable/not liable mean being legally responsible

Criminal Law

- Criminal offence
- One person is charged with an offence according to federal or provincial statute laws
- Most offences are in the Criminal Code of Canada. Other offences may be in pieces of federal or provincial legislation
- Concerned with wrongs taken against an individual but regarded as harmful to a society as a whole
 - Case about person A punching person B
 - Deter others, if your case succeeds ppl may use the case as precedent to punch other people, eventually leading to aspects of society to crumble
- Prosecutor (Crown/Rex/Regina) v. Defendant
 - Crown is a colloquialism

- Rex/Regina is latin for King/Queen respectively
- Beyond a reasonable doubt (99.9%) for the defendant to be found guilty
- Once the crown has decided to pursue criminal charges, the crown moves forward to prosecute someone
- Crown can look at a case and throw it out, or pursue charges
- Criminal charges: Vehicular assault, Dangerous Driving

Proceedings

- Prosecutor brings case against a defendant
- Case is decided by a verdict by either judge or judge + jury
 - If there is a jury, the Trier of facts says whether the defendant is guilty and the judge decides the sentence
 - Otherwise, the judge determines both sentence and guilty/ not guilty
- If a person may be sentenced to 5 or more years, they must have a jury
- Murder cases must have a jury
- Guilty and Not Guilty, criminally responsible

Sexual Assault case through:

Criminal Court

Pros

- Since it's a criminal case, the defendant may be charged with a criminal charge, resulting in possible jail time or a more serious punishment than in civil court. This is good because the defendant, if found guilty, should be punished for his/her actions

Cons

- Similarly to the sexual harassment case against Albert Schultz, victims of sexual harassment lose control over where the case goes and what it explores
 - The victims may have pressed charges, but they have little power over the verdict

Civil Court

Pros

- Similarly to the sexual harassment case against Albert Schultz, victims of sexual harassment have the power to control where the case goes and what it explores
- Easier for your case to be heard

Cons

- Punishment may not result in jail time and may instead be a monetary punishment that is of little consequence to someone with power and money
 - An issue in high-profile cases

Human Rights Tribunal

- Resolves discrimination or harassment cases brought under the Human Rights Code

Pros

- Expenses incurred for both parties can be lessened through mediation

Cons

- Vulnerable to the defendant strong-arming the plaintiff by placing the fee too high

Day 8: Case study analysis

- What constitutes dangerous driving

Day 9

- Subjective standard would be what an individual would do
- Can be argued that he picked up the water bottle to ensure that it wouldn't get lodged under the brake.
 - Could be further argued that he was being a prudent driver by picking up the water bottle
- Is the legal system too lenient on human error?
 - Message that if you mess up, sucks for you
- How do you hold people accountable for human error?
- Distracted driving can be defined as whenever someone takes their eyes off the road
- Read R v. Beatty and R v. Hundal

Day 10

- Judicial: To interpret the law
- Legislative: To make laws
- Executive: To execute the law

Judiciary Branch

- Act as an impartial third party in legal disputes
- To clarify and interpret the law
- Made up of justices who adjudicate disputes
- Responsible for deciding on the appropriate resolution, remedy, or punishment for each case

Section 11(h): Double Jeopardy

- Can't be tried again for the same case

If the law changes while your case is proceeding, you get the more lenient sentence if found guilty

- If evidence comes out that you committed a crime after the case was heard, you can't be tried for the exact same charge, but you could get tried on a similar charge, like 2nd degree murder instead of 1st degree murder

R v. Latimer

- If there is a mandatory minimum for a crime,

Those going to jail could ask for a reduced sentence, but it depends on the severity of your crime

Faint Hope Clause

- You have a chance to ask for parole but you're probably not going to get it

Bail

- If you break the provisions of your bail, you owe the government the bail
- Ex
 - If you don't show up to court, violate your curfew, violate a restraining order, or order to stay at least 100m away from a place

For any summary crime offence (less serious offence), you can apply for a criminal pardon, but the application's fees are immense

Judicial Independence

- Although judges are appointed by the executive branch, they are an independent branch of the government
 - Liberal and Conservative members cross lines and ask other party if everyone agrees with the judge they're bringing on
- Done so that there's no bias in favour of the person/branch that appointed you
- Gives them freedom to make independent decisions w/out having to worry about political pressure, intimidation, or potential repercussions
- Enables them to uphold the Constitution fairly, and hear cases free from bias and without external influence
- Judicial independence is one of the guiding principles of our constitution

Structure of Courts

- Based on British Model, but Quebec courts follow Napoleonic Model
- Follows a hierarchy from the lowest court to the Supreme Court
- Highest level before Supreme Court of court is Court of Appeal of Province
- Provincial court -> Court of Queen's Bench in Ontario -> Court of Appeal of Ontario -> Supreme Court of Canada
- Federal court -> federal court of appeal -> Supreme Court of Canada
- Odd number of judges to avoid a stalemate, when there are an equal number of yes' and no's, impasse
- Not all 9 justices sit on a court case, but typically are an odd number of justices
- Appeal
 - Move to a higher court
 - Everyone has the right to appeal their case, but not right to be heard
 - Done when fighting a case:
 - New evidence that would change the decisions
 - Arguing that the judge or jury erred in their decision

Small Claims Courts

- Judge Judy courts
- Small claims underneath \$25,000
- Relatively minor civil (private) disputes
- Damages to property
- Money owed
- Breach of contract
- Unpaid loans

Superior Court of Justice

- Federally appointed Judges
- Major criminal and civil matters
- Criminal Code of Canada
 - Assault, murder, criminal negligence

Courts of Appeal

Hears appeals from lower courts like the Small Claims Court and Superior Court of Justice

Supreme Court of Canada

- Guardians of our constitution
- Uphold the charter and hear appeal cases
 - Charter issues typically get pushed to Supreme Court
- 3 of the 9 justices must come from Quebec
- 3 from Ontario
- 2 from West
- 1 from East
- Current Suggestions
 - 1 justice should either be Indigenous or from the territories

Justices

- Superior Court judge for at least 10 years
- Have to retire at 75 years old
- The SCC makes a decision (Winter, Fall, and Spring [3 months per session]) and hears between 65 - 80 cases per year
- Cases can last from 1 hour to days
- Their decisions are final, and is binding on all lower courts
 - All lower courts have to sue that interpretation of the law
 - When it is overridden or otherwise made ineffective by an Act of Parliament or the Act of a provincial legislative assembly
- Majority decision rules - more than 50% decision becomes binding
- Minority decision is known as the dissenting decision
 - Dissenting is just disagreeing

Questions

Comment on the importance of access to justice and transparency in the court system.

- Courts are meant to serve the public
- Courts should be accessible to regular people to resolve their disputes
 - This is not possible with the number of cases each court deals with
 - Although this might be the goal, failing to do so creates an elitist justice system that doesn't fairly treat all Canadians
- If ordinary ppl can't access justice, it will change in a detrimental way
- Access to justice remains a problem
- Ppl don't have enough money for lawyers
- Bringing a case to court is hard
- Access to justice is integral to democracy
- Ppl need to believe that the justice system is good
- Open court room is fundamental principle of justice

Who are the current justices on the SCC?

- Rosalie Abella
- Michael Moldaver
- Andromache Karakatsanis
- Clément Gascon
- Suzanne Côté
- Russell Brown
- Malcolm Rowe
- Sheilah Martin
- Richard Wagner
 - Chief Justice
 - Represents the court system altogether
 - Very well respected
 - The person who is on the court for the longest typically becomes the next chief justice

The Supreme Court has the nickname 'Guardian of the Constitution.' Why?

- They interpolate and defend the Charter in their decisions
- Power to protect, safeguard, and uphold the Constitution in a manner that appeases the largest number of people while respecting everybody's Charter rights
 - Related to Judicial Independence in how

What does 'appeal as of right' and 'leave to appeal' mean?

- Appeal as a right
 - A guaranteed appeal, no need for leave to appeal
- Leave to appeal
 - Permission to appeal from court
 - Not "appeal as a right"
 - Appeal can continue
 - Permission for appeal to continue

- Person needs to apply for it

Why is judicial independence paramount in our democracy?

- Party in power doesn't affect the court decisions because that would violate one of the tenets of democracy
- Made to prevent a tyranny of the majority
 - The majority, which only needs to be above 50%, must be kept in check to prevent the majority from mistreating everyone else to ensure that everyone is treated fairly

Day 11

- Publication Ban
 - The appellant/person's name won't be published
 - Given if you or your family could be placed into danger
 - Almost all sexual harassment cases have a publication ban

Content Quiz

- Inculpatory: Incriminating evidence
- Exculpatory: Absolving evidence
- Balance of Probabilities
 - How sure does the court have to be to make a ruling
 - In civil cases, this is 51%
 - In criminal cases, it is 99.9% - you had better be sure without a doubt that this person did the offence

Day 11 - Charter

- Social change throughout the world
- Everyone on Canadian soil has the protection of the Charter
- Mobility and Language rights of Charter don't apply to non-Canadian citizens
 - Not allowed to move freely throughout Canada
 - non-Canadian citizens don't have the right to have an education in a language other than English or French
 - They do have the right to an interpreter (under s. 14)
 - Language rights are more specific to schooling, can't request that the government pay for your education in a different language
- Social Contract
 - An agreement between ppl and the gov't
- No grievance process to an unlawful law
- Bill of Rights is precursor to Canadian Charter
- Since ccrf is entrenched in the constitution, ccrf is then part of constitutional law
- Charter applies to all levels of government, anything that falls under govt authority abides by the charter
- Charter

- Restrict state power
- Protect rights and freedoms of people
- Rules and regulations
- Assess the constitutionality of laws
 - If govt produces a law but it challenges the charter, that is a charter challenge
 - Quebec's charter of values, prevented ppl from wearing something overtly religious when using government services. Challenged a lot by people saying that that law would violate freedom of religion

Notwithstanding clause

- Limit to 5 years
- Can't override sections 3 to 5

Right

- Simple legal, moral, or social entitlement given to all people because they are human beings
 - Right to life, liberty, and security of the person (s.7)

Freedom

- Power to act, think, or speak as one wants, without hindrance or restraint
 - Freedom of conscience and religion
 - Freedom of thought, belief, and expression including freedom of the press and other media of communication - including ability to criticize the government
 - Freedom of peaceful assembly
 - Labor unions

Reasonable limits

- You don't have unlimited power with the freedoms and rights

Section 1 of the Charter

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it

- Establishing what the Charter sets out (written rights and freedoms)
- The rights and freedoms set out in the Charter are guaranteed for everyone who is on Canadian soil
 - Except for Mobility and Language Rights, explained earlier in notes

subject only to such reasonable limits prescribed by law

- The rights and freedoms outlined in the Charter don't have unlimited power - they're limited by reasonable limits that are made through statute and constitutional law
- The reasonable limits written out in law

as can be demonstrably justified in a free and democratic society.

- The reasonable limits set out by the courts and cases must be consistent with the beliefs and values of a democratic society to limit rights and freedoms

Ex.

- Ppl can only drive when they're 16 and the rules around that
- Hate speech
- Voting age

- Smoking and drinking limits

Day 12 - Oakes Test

Is some law a reasonable limit on your Charter rights

- Prescribed by law
 - The limitation has to be in the level of law currently being judged or higher - the legislative branch typically has to write the limit into the law
 - The limit must already be known to the public to be used
 - Is there a statute law that is limiting your Charter or Constitutionally protected Rights?
 - Intra vires
 - In the jurisdiction
 - Ultra vires
 - Outside of the jurisdiction
 - For Oakes' case, section 8 of the Narcotic Control Act violated his section 11(d) rights
 - Pressing and Substantial
 - Is this a problem?
 - Does this impact society in a big way?
 - The purpose of the law has to be important and relevant to society
 - Proportionality
 - Rational Connection
 - Is the limit on the law connected and appropriate to the case?
 - Must be specific
 - If we put this law in place, will it achieve what it's hoping to achieve that's outlined in pressing and substantial
 - Minimal Impairment
 - The law has to impair the right as minimally as possible
 - Not an extreme punishment / extreme rationale
 - Proportionate Effect
 - Is this limit beneficial to society?
 - Do the positive effects of keeping the law outweigh the negatives of the infringement?
1. Section 1 guarantees our Charter rights through "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it". However, it also limits these rights in the following sentence, ensuring that the limits placed on people's rights are consistent with the values and beliefs of a democratic society and also help to maintain a harmonious society.
 2. The government has to *justify* limiting a person's rights to uphold the rule of law and also being transparent, but most importantly to provide context and justification that can and should be used in subsequent cases as precedent. Government can't just arbitrarily produce limitations on people's rights in order to establish consistency and rule of precedence, thereby helping to support fairness.
 3. The Oakes Test outlines how section 1 of the Charter should be applied to a case

- The limitation on someone's right must be in the law and within the jurisdiction of the level of government that passed it (intra vires)
- Limitation has to be clear to the public
- The limitation has to fix or be directed at a problem that is interrupting the regular flow of society
- The limitation has to be fair and reasonable
 - The limitation can't be arbitrarily made and has to be related to the objective of the limitation
 - The limitation must limit the least number of laws and to the lowest degree possible
 - The limitation has to be for the benefit of society

4

The R v. Oakes case led to the establishment of an objective test to interpret and apply section 1 of the Charter to future cases, which wasn't present during the R v. Oakes case. This objective test must also be used by all courts to determine whether a Charter infringement can be justified.

5.

If a Charter infringement cannot pass the Oakes Test, the courts will determine the law to be inconsistent with the Charter and will remedy the law (reading in/out, partial invalidity, striking down, etc.). The infringement is *not* justified and will bring in some of the remedies. Can also be referred to as a Charter

6.

The Oakes Test can be explored through Legal Perspective by looking at how the Oakes Test interacts with legal principles. The Oakes Test balances legal principles with the case through the questions it poses to justify limiting a Charter right. For example, for a law to pass the Oakes Test, it must not be arbitrarily made and has to be related to the objective of the law. This question ensures that a reasonable punishment is given, thereby ensuring fairness.

Continuity and Change: Something has been used since 1986, the courts haven't changed its use since

Ethical Dimensions: Would keeping a law be an ethical issue? The challenges of balancing people's rights

Day 13 - Oakes Test

Oakes Test Cont'd

- Is the infringement prescribed by law?
 - Is your violation of Charter rights prescribed by law
- Not deciding whether something infringes on your Charter rights, but to what extent and whether it
- The infringement can be justified in a free and democratic society?

Charter Sections

- In-loco parentis
 - Be in the place of parents when parents aren't available
 - Teachers are in-loco parentis when students are at school
 - This could be a problem since teachers are only allowed to exercise a reasonable degree of force

Hwk

Oakes Test on Garc Marneau Case: M v.

- Prescribed by Law
 - It's written in the Garc Marneau Constitution
- Pressing and Substantial
 - Mr. Sharp has seen some students get hospitalized after being intoxicated, which shows that this is a pressing and substantial problem
- Proportionality
 - Rational Connection
 - The law of forcing students to take a breathalyzer test is related to the objective of that law, which is to prevent students from being intoxicated
 - Minimal Impairment
 - To understand how this law would violate s.8, the test established in R v. Collins
 - Has there been a search or seizure?
 - Yes, since Mr. Sharp is conducting an inspection with the breathalyzer
 - Was the search reasonable?
 - Is it authorized by law?
 - Written into Garc Marneau Constitution s.27(3)
 - Is the law reasonable?
 - The pressing and substantial adverse consequences of the students being intoxicated would be solved through the enforcing of this law
 - Is the manner in which the search is conducted reasonable?
 - This is unclear - for students willing to undergo this search, the search would be reasonable; the student would breathe into the breathalyzer, and ideally enter the venue and have a fun night
 - For students unwilling to undergo this search, the reasonable manner of this search is dependent on Mr. Sharp's actions in response to students who don't wish to take the test but still wish to enter the venue

- Specific to this case, Mr. Sharp seems like a reasonable man and would not use force or inappropriate measures in response to unruly students, so the search is conducted reasonably
- Proportionate Effect
 - This law would be beneficial for society as it prevents students from entering prom intoxicated, potentially hurting others, which is a detriment to society.

Day 14 - The dissenting opinion and R v. Keegstra

Ratio decidendi - rationale behind the decision

Why the dissenting opinion is important

- Transparency in the law
 - If only the majority opinion is heard, the discussion behind how the decision was made isn't heard
 - Hearing a different opinion on the case enables you to understand the competing arguments to the decision
- Dissenting opinion could apply in a different case
 - In R v. Keegstra, the dissenting opinion, which explored the limits and guidelines around freedom of speech wouldn't directly apply to many of the stakeholders in the issue (teenagers), but would more appropriately apply to other stakeholders in other cases
 - Also shows the flaws within laws
 - Dangers of the chilling effect - Limiting people's freedom of speech to a degree in which it intimidates them into not speaking about what may actually be legal
 - As law constantly evolves, the dissenting opinion could serve as the basis for a future majority opinion
 - Dissenting opinion may better reflect the changing attitudes in the future, forming the basis behind the future argument
- Judicial Independence
 - Without a dissenting opinion, you may need to compromise between the majority and dissenting opinion to have one opinion
 - Avoiding the tyranny of the majority
 - Those who agree with the dissenting opinion can now do so without being affected by the majority decision
- Shows rigorous examination of the law

Definition of Freedom of Expression

R v. Keegstra

Day 15 and 16

Identify the sub-legal issues in the case

- What is the definition of hatred?
 - Causing emotional and/or physical pain with the intent to harm
 - What is the definition of hate speech?
- How much of an individual's s. 1 and 2 rights can be limited?
- Should the courts acknowledge impacts only when there is proof of harm?
- Does religious affiliation justify discriminatory actions?
- How do we balance competing rights?
 - Equality rights vs. freedom of speech and religion
- How can the magnitude of the hate be measured?
 - Should people be punished more severely for spreading hatred to more people (such as on social media platforms like Freedoms)?

A) What is the purpose of a human rights commission?

- Promote, protect, and advance human rights through research, education, targeted legal action and policy development
- One of the organizations behind Ontario's human rights system, with Human Rights Tribunal of Ontario, and the Human Rights Legal Support Centre

B) Why did this case go to the human rights tribunal first, and not immediately to a court?

- Since this case is a civil case, the plaintiff and defendant can meet before going to court to deliberate over a settlement
- There wasn't a charge from the government, which means the case becomes a civil case. Since it was a civil case and about a human rights issue, it went to a human rights tribunal rather than a court.

Why isn't this case called R v. Whatcott?

- There wasn't a charge against Whatcott, so he can't be charged by the state, making it a civil case. However, since it took place in human rights tribunal, it was called SHRC v. Whatcott
- The issue was also made known because people complained to the SHRC rather than an individual bringing a charge to Whatcott (as what would happen in tort law)

Conduct an Oakes Test

- Prescribed by Law
 - Yes, the infringement is from s. 14(1) of the Saskatchewan Human Rights Code. s. 14(1) explicitly states that you cannot publish or display discriminatory material
- Pressing and Substantial
 - S. 14(1) is hoping to prevent any person or class of persons to be exposed to hatred, ridicule, belittlement, etc. on the basis of a prohibited ground
 - This law reflects the s.15 of the Charter in how it works to maintain a free society in which people aren't discriminated against on the basis of a prohibited ground, supporting their equality. This law is pressing and substantial for similar reasons as to why s.15 is important to the proper functioning of a democracy: it ensures that people are treated fairly,
- Proportionality

- Rational Connection
 - In SHRC v Whatcott, Whatcott distributed flyers in Regina and Saskatchewan with blatantly homophobic material that belittled people who identify as gay or lesbian, which is exactly what s.14(1) aims to prevent.
- Minimal Impairment
 - S. 14 (1) does not prohibit people from having homophobic or discriminatory views or beliefs (in fact, this is protected under s. 2(b)) or even sharing these views in private conversation. Rather, it only prevents individuals from publishing or displaying this kind of hate speech. In R v. Keegstra, the benefits of keeping hate speech outside of the common vocabulary are explored by showing that the violation wasn't as severe as the content of the hateful speech. Similarly, s.14 (1) shares a similar rationale - the consequences of prohibiting people from publishing or displaying blatantly discriminatory material are minimal when compared to the consequences of allowing hate speech to spread.
- Proportionate Effect
 - This law works to prevent the publishing or displaying of hate speech. If this law didn't exist, there would be nothing barring people from abusing their s. 2(b) rights, at the expense of those around them.
 - Those who quickly glance at this case will take away the impression that our beliefs and views as a society have evolved - we have collectively at least begun to accept homosexuality as the sexual orientation others have. More importantly, they would take away the impression that hate speech should not be published or displayed, which is the appropriate message that should be sent.

Define hate speech

- Must be the most severe of the genre and could objectively cause hateful actions
 - The hate speech must be the most severe insults out of all the insults brought against the identifiable group
 - Use of derogatory words
- Must be targeted to an identifiable group; must be used to vilify or dehumanize a group or person
- Must be public
- Must be deliberate; not careless
- Excluded are: good faith interpretations of religious doctrine, discussion of issues of public interest, and literary devices like sarcasm and irony
- The statements must be hateful when considered in their social and historical context

Comment on the article

- Writer seems very aware of his audience
 - It's not so much that it's a war against Christianity so much as it is the largest group voicing concerns are Christian, most likely because, historically, they have been the predominant group voicing these kinds of concerns
- Explores how the limits on free speech
- While Levant has an argument that s.14(1) is too broad, his suggestion

- Can't use religion to defend hate speech
 - Hate for same-sex couples in religious people has the same degree as non-religious people who hate same-sex couples.

A) Examine hate speech def in s. 14

- Although the definition is comprehensive in what it restricts - the publish/displaying in virtually any medium or form, it is vague on the exact definition of what being exposed to hatred, etc. means. It is made clear that a person should not experience hatred being exposed to them on the basis of a prohibited ground, but the exact definition of hatred, ridicule, belittlement, or other affronts on someone's dignity are not included in s. 14(1).

B) Dangers of an overbroad definition

- A chilling effect may occur if law-abiding citizens self-censor and avoid sharing lawful opinions because the law does not clearly specify what defines hatred, ridicule, or belittlement, or other affronts on dignity.
- An overbroad definition prevents the law from being executed effectively because the law is vague
 - Dangerous individuals will exploit this overbroad definition to hide behind s. 2 (a) and (b) while furthering their political agenda

Day 17

- Courts have not yet defined
- Was what Whatcott was doing a good faith interpretation of his religion?

Yes:

-

No:

- Trying to enforce his beliefs on other people in a society in which people don't have his beliefs
- His referring to people as less than human (dirty, filthy) is problematic
- His intent is malicious

Challenges

- Where do we draw the line between harmful speech and hate speech?
 - Definition of hate speech given by SCC
- How do we balance competing rights?
 - Individuals' equality rights + life, liberty, and freedom of the person v. another's freedom of expression and religion

Define bias in the law

- Bias in the law is when legal decisions are made in favour of a particular group, often motivated by prejudice against marginalized groups
- Prejudice against marginalized groups during legal situations, which can lead to discrimination
- Intentional or unintentional advantages groups are given in the context of the law
 - Unintentional advantages are an example of implicit bias

Most problematic form of bias

- The most problematic form of bias is bias in law enforcement since it has prevented systemic issues to receive the police attention and resources that they deserve. Police are meant to serve and protect, but prejudice within law enforcement shows fundamental flaws in the police system. Preventing serious cases like rape from receiving the police attention they need allows this hideous crime to continue taking place, which threatens the safety of the people in the society.
- Although individually, each of the biases in the judicial system and law enforcement are problematic, all 4 forms of bias work in tandem and are equally problematic and responsible for systemic issues.
- Bias in law
 - Bias in the laws that are made influence how the law is executed outside
 - If the law is fundamentally flawed, the system collapses
 - Recognizing that minorities have a voice in the justice system

What does access to justice mean?

- Access to justice is a fundamental tenet of the justice system - regular people should be able to use the courts to resolve their issues. When people do not have unfettered access to justice, an elitist justice system is made that only fairly treats the wealthy or those with influence, while all other members of the society cannot resolve their disputes in a fair and just manner.
- Check Day 19 - Access to Justice

Day 18 - Bias

- Belief that some ideas, people, etc. are better than others, which results in believing that some are inferior
- If bias' goal is to rectify past discrimination, it is justified

Explicit Bias

- Attitudes and beliefs - positive, which are preferences, or negative, which are prejudices - that we consciously hold and express about a person or group
- Examples of prejudice:
 - Fewer black people in Parliament
 - Asians can't drive

Implicit Bias

- Attitudes or beliefs about other ppl, ideas, issues, or institutions that occur outside of our conscious awareness, and control, which affect our opinions and behaviour
 - The actions with or biases that you might have about certain people of specific groups become problematic when you attempt to reflect that on the entire group. This disproportionately affects marginalized groups.
- Everyone has implicit bias, and explicit and implicit biases can sometimes contradict each other
- Pervasive - results in an "us vs. them" mentality that makes people think others are less than themselves. Deeply problematic in the legal system since the people

making laws have slight biases that adds up. They affect judgement, perception, association of other people

- Everyone possesses them, even people with commitments to impartiality, such as the judiciary
- Don't necessarily align with our declared beliefs or even reflect stances we would explicitly endorse
- Confirmation bias: trying to confirm your bias rather than changing your way of thinking
 - If one person who happens to be part of a marginalized group and commits a crime, someone thinking that those actions reflect the mentality and using that to confirm their pre-existing biases

How do implicit biases impact:

Our sense of justice and the law

- For many members of specific communities, they have less aggravating reactions towards overly lenient sentences given in rape cases. This was demonstrated in many of the rape cases
- However, members of other communities see these sentences as overly lenient and are ready to point as such, while losing confidence in the legal system to fairly convict those who commit heinous crimes irrespective of their or their victim's wealth, race, and/or socioeconomic status.

Our perceptions of crime (the 'type' of person who commits a crime)

- There are stereotypes of the people who commit crimes based on their colour
 - Black people are more likely to be robbers and gang members

Convictions and sentences/sentencing (how people are found guilty and their sentencing for a crime).

- For white males suspected of rape like in the Coat Hanger Rape case, the law is overly lenient and sometimes even blind to the motivations of these white men, who are often racially motivated. Some judges in these cases give punishments to the accused that aren't representative of the pain and damage they've caused someone else.

Day 19 - Access to Justice

- Being fairly represented in legal proceedings
 - Advocacy for those who are marginalized
 - Ensure that people who are marginalized are represented fairly in the legal system
- Perception and the reality that the courts are legitimate and are not swayed by external influences - Judicial independence
- Legal Capability
 - Knowledge of your rights and responsibilities, and to be able to confidently and competently make their way through the legal system
- Being able to seek short-term (access to lawyers, legal aid) and long-term (knowledge about the justice system) legal help
- Ensure that your collective voice is heard

- Without the collective voice of the people as input, laws and decisions that reflect the voices of the people can't be made - if you don't say anything, nothing will happen
- Legal capability ensures access to justice
 - Knowledge about the system and where to go to ask for help
 - Skills for communicating their experience and preparing for legal processes
 - Confidence in both themselves and the justice system
- Prosecutors, judges, juries cannot be related to the defendant, and a family member can represent you, but it is ill-advised
- A licensed lawyer must represent you if someone else is going to represent you
 - Someone can self-represent temporarily and does not permanently give up their right to be represented by a lawyer
 - If this person self-represents for a trial but then wants a licensed lawyer to represent them, that is fine

Barriers

- Adding to the issue of getting a lawyer being out of most people's means, you must make an annual income of less than \$14,000 to qualify, while there are increasingly more people who make more than \$14,000 but struggle to pay lawyers at rates of \$300 or higher
- Communication issues, including where language spoken, read, and understood by an individual with legal issues isn't language in which information or services are made available
 - As Canada espouses the values of multiculturalism, there is a considerable number of people who immigrate to Canada and aren't very fluent in English in their first few years in the country and may not be after more time. These people are most vulnerable to misunderstanding the legal options available to them if they are involved in a legal issue.
- Geographical limitations
 - There are too few lawyers in remote or rural communities, preventing the law from being executed quickly because there are too many cases for these few lawyers.
 - Being unable to reach legal services - rural and Indigenous communities suffer from this problem the most as law firms, courts, government buildings aren't readily available to them
- Being a minority or part of a marginalized group
 - Afraid to use the law, even while trying to protect themselves
- Feeling overwhelmed
 - Not knowing where to start or what to do
- Legalese - legal vocabulary that's too difficult for laypeople to understand
- Fear of retribution
 - Fear of what people will say about you and your case
- Differences in power and wealth
 - It's \$631 to apply for a criminal pardon, which typically applies to people who commit petty crimes, who also don't have an extra \$631 to throw around

- Self-representation
 - People can't afford a lawyer, they are representing themselves in the courts
- Plea bargaining
 - Pleading a case down and then saying guilty to a lower charge
 - Used as a tool to push people through the courts quickly
 - About 87 - 93% of all cases in Ontario (Almost every case!)
- Legal Aid
 - Almost nobody qualifies for legal aid

Challenges in criminal pardon fee regarding access to justice

- Criminal offenders, regardless of whether they committed a summary offence, are saddled with a criminal record, that prevents them from easily getting a job, travel, and generally contribute to society. Although a suspension doesn't erase the record, it makes contributing to society and maintaining a livelihood significantly easier.
- The challenge to getting a suspension. The application fee of getting a pardon is expensive for those on limited income, many of whom may be on disability, or part of marginalized groups like Indigenous peoples.
- Waiting period means that people must wait five years for summary offences or ten years for indictable offences. People aren't able to get their life back on track for an extended period of time.
- Pardons are inherently related to justice - after someone is rehabilitated, they shouldn't have to carry the weight of the crime they attended when they were someone different
 - Barriers to getting a pardon prevent these people from living a fair life because of something they did in the past, and access to justice
-

Court Challenges Program

- Wants to provide individuals and groups with financial support to access the courts for the litigation of test cases of national significance
- People who've had their Charter rights infringed don't always have the financial means to bring their case to court, and the CCP enables these individuals or groups to bring these cases to court, clarifying and strengthening the language and human rights in Canada
- Helps to bring about court reform, by enabling marginalized groups to advocate for the issues they face and enact change in the legal system
- Develops the legal capability of the citizens who have their Charter rights infringed
- Removes the financial barrier to access to justice, and removing the financial barrier increases a person's access to justice, regardless of their financial situation

Salomon v. Matte-Thompson and Access to Justice

- People who don't have the legal background or professional training to be well-versed with legal material, legalese, etc. rely on their lawyers to be the voice of authority when it comes to legal decisions. Salomon didn't appropriately follow his professional and ethical duties as a lawyer, which undermines access to justice.
- Cases in brief increases the legal capability of Canadian citizens. The cases that go to SCC are of national importance, and part of the rationale behind "Cases in Brief" is that the decisions made in these cases affect the entire Canadian population, so they should be made aware of these decisions.

Day 20 - Challenges facing Indigenous Communities

- Access to Justice in remote Northern communities
 - Very, very few courthouses in Northern communities, which means that the courthouses are backlogged
 - Ad-hoc courthouses are made to deal with cases. Some are made on top of schools or near convenience stores
- Lack of financial means
 - Many Indigenous communities don't have the financial resources to learn about the law and their Charter rights, which prevents them from addressing legal issues that affect them that
- Prejudice with non-Indigenous judges
 - Many non-Indigenous judges are heavily biased against Indigenous people
 - If an Indigenous person and a non-Indigenous person are in a legal issue, there is bias against the Indigenous person
- Missing voices
 - Not enough representation in the judiciary
 - 11 judges identify as Indigenous out of 380 in Ontario
 - There have been cases with Indigenous people in which there have been no Indigenous jury members

Day 21 - Indigenous Perspectives and Approaches to Legal Issues: Rethinking Rehabilitation

- Overrepresentation in the legal system
 - Indigenous people are overrepresented in Canada's Criminal Justice System, both as victims and offenders
 - Indigenous adults represent 4.1% of the total Canadian adult population, but 26% of adults in federal custody
 - Overrepresentation as people in jail

How can we transform Canada's criminal justice system to better address Indigenous overrepresentation?

- Challenges
 - In R v. Gladue,
- Considering rehabilitation in the sentence
 - s.718.2(e) of the criminal code has created an analysis to consider when sentencing Indigenous individuals, and should be given more credence

Day 22 - Section 7

- Life
 - Right to determine life and death for yourself
 - Decide whether or not you want to live

- No criminal provision against you committing suicide, but there are criminal provisions against people helping you
- Should there be restrictions against euthanasia?
- Age and intoxication as a factor to whether you want to die
- Have to be 18 or older, must be competent
- Quality vs. Quantity of Life
 - Are we looking at how long you live (in years)?
 - Or how well you live?
- Right to do what you want to do as well as the belief that you can do what you would like to do
 - Doing what you will doesn't necessitate that you can believe to do what you want to do
- Actor/Agent of change in the freedom of your life
- Allowing people to kill themselves as a response to "My life isn't worth living" spreads the message that suicide is an acceptable option to a series of unfortunate events
- Courts don't allow physician-assisted suicide from mental health issues
- Liberty
 - Physical Liberty
 - Free will as long as your actions are legal
 - Mental Liberty
 - Free will to think how you want to
- Security of the Person
 - Privacy of the body and health
 - Psychological Integrity
 - Feeling and being safe
 - Protected by and from the government
 - Protected from undue physical and psychological harm from the government
- Quebec's new bill 21, which includes a clause similar to the notwithstanding act, signifies their intent to use the notwithstanding act if it goes to court
- Right not to be deprived thereof except in accordance with the principles of fundamental justice
 - Defining the principles of fundamental justice is a matter of ethics, so you can be denied your s.7 rights if it is ethically good

Homework

What are sub-legal issues presented in this case?

- What defines the right to life?
- Do you have the right to choose when you die?
- How do you determine whether someone is competent enough to choose to die?

What is the slippery slope argument as presented in this case?

- Writing an exception to euthanasia that allows assisted suicide for certain groups of people creates an inequality and would lend support to the notion of full recognition of euthanasia

Majority or dissenting?

- Majority
 - Permitting someone to assist Rodriguez in committing suicide creates an inequality in who is granted the privilege of physician-assisted suicide, which can only be resolved by granting everyone the privilege of physician-assisted suicide
 - Problematic, since vulnerable people in moments of weakness might be pushed to commit suicide simply because they are in an altered mental state and cannot evaluate all their options properly.

Should Right to life, liberty, and security of the person differentiate between quantity and quality of life?

- Section 7 should differentiate between quantity and quality of life because of the fundamental differences between both principles that are involved with Sue Rodriguez and other people like her. Although she had some amount of life left, 1 to 13 months, her ALS continuously degraded her mental capacity and made her unable to enjoy her life

Test for quantity vs. quality

- Must be approved by 2 or more doctors, more doctors inversely proportional to severity of disease, but not less than 2
- Over 18 and mentally competent - if they can repeat that they want to be assisted in suicide and understand it
- Terminal illness - Person will die eventually and cause immense pain

Video Issues

- Against Assisted Suicide
 - Many patients envision a painful life filled with horror in the future, but their life at its end is not painful given the proper treatment
 - Many people who are part of organizations like Right to Die are motivated by a poor end of life care given to a family member or friend
- For Assisted Suicide
 - A peaceful exit that allows for someone to die and live with dignity
 - Some feel as if death in such a painful way that debilitates them negates their life rather than honouring it
- Why was the case brought back?
 - Societal views change - the autonomy of an individual is respected more with the sanctity of life, giving the individual more choice with their body
 - Social awareness that exists now that didn't exist during R v. Rodriguez
 - New attention brought to people taking matters into their own hands - Taylor downing drugs with whiskey to kill herself, and the lady debilitating herself in trying to kill herself
-

Day 23 - Carter v Canada

Central Legal Issue

- Balancing sanctity of life and protecting the vulnerable against the autonomy and dignity of a competent adult who seeks death as a response to a grievous and irremediable medical condition

Class-action Lawsuit: Bunch of people raising a case against a company or organization
Arguments

- Laws were unconstitutional under s.7 and s.15
- Laws restrict the liberty of physicians to deliver compassionate end of life care to incurable ill patients
- Laws deny equality to physically disabled by criminalizing a choice that is available to the able-bodied

Day 24 - Vriend v. Alberta, s. 15

Equal Before (Judicial)

- Impartiality
 - Judges and the jury look at you regardless of race, gender, sex
- Before law enforcement
 - Legislation that protects you within a province
 - Courts take too long and cost too much money to sue quickly
- Legal egalitarianism
 - Distributing power to marginalized groups to balance the power of those who have more and less power

Equal Under (Legislation)

- Equal under the codified law in the Canada
-

Equal Benefits

- Benefits of the law regardless of race, gender, sex, ...
 - Government programs
- Consistency in monetary amounts given in restitution
- Government programs apply to anyone regardless of race, gender, sex, ...
 - Welfare or legal aid doesn't discriminate against race, gender, sex, ...
- Equity to give everyone what they need to be equal (equity v. equality)
- Certain programs for specific groups should give equal rights to the people within the group

Equal Protection

- Protection with Charter rights
 - Using the courts, and the Charter to protect people

S.15 states that you are granted equality, from any point of access to the law

Affirmative Action Programs

- These are discriminatory practices, but are used to reverse historic discrimination against race, gender, or sex
- Increase access to education and employment

Enumerated grounds

- Grounds written explicitly in s. 15

Analogous Ground

- Equality on the basis of other characteristics that are not specifically set out in s. 15
- Been held to prohibit discrimination on the basis of things you can't control, like sexual orientation, gender, etc.

Vriend v. Alberta

Substantive Equality

- Looking at the spirit of the law to ensure equality

Formal Equality

- Looking at the letter of law to ensure equality

Brandeis Brief

- You can't just look at the letter of the law, have to look at its effects
- Even if a law is not meant to be discriminatory, its effects should be considered closely

Central Legal Issue:

- Is discriminating against someone based on sexual orientation justified?
- Does s.7(1) of the IRPA violate s.15 of the Charter

Sub legal Issues:

- How should the substantive equality of discrimination cases be considered when coming to a decision?
- How can future grounds be anticipated for when creating laws to prevent discrimination within s. 7(1) of the IRPA?
 - Why isn't there an analogous grounds clause in s. 7 of the IRPA?
 - After the case, Alberta modelled its laws after the Charter
- How do we balance freedom of religion and equality rights?
- How do we determine the true reason behind being fired for work?
- How can the courts ensure that employees don't continue to discriminate against homosexual employees indirectly (e.g. hostile workplace, etc.) to the point where the employees feel like they have to quit anyway?
 - Severance package of buyout agreement
 - Company says that employee won't be a good fit for us and we're not a good fit for a company, so let's come to an agreement

- Would it be problematic for Alberta to invoke s. 33 to continue to exclude sexual orientation from the IRPA?
 - Quebec's bill 21 signals that they intend to use the notwithstanding clause to ensure that their laws are passed
- Does s. 7(1) of the IRPA infringe on s. 7 of the Charter?
 - Violating liberty and security of the person
 - Protecting psychological integrity for the person to feel safe being a homosexual
- Should organizations be punished for not enforcing religious beliefs, even if they are discriminatory?
 - Should you be expected to completely follow the religious doctrine or should you be able to balance the law and religion

How do we foster an inclusive space specifically pertaining to marginalized groups and individuals?

- The buyout or severance package is one that quickly ends issues between the employee and employer and ensures that the discrimination stops, but it is a reactionary solution to a problem that requires a proactive solution.
- Ensuring that other employees don't express discriminatory views or use those to motivate them to seclude marginalized individuals from equal treatment
 - Screening during the application process for jobs to ensure that the applicant doesn't hold any overtly discriminatory views

What are the challenges to fostering an inclusive space?

- Balancing competing rights, two particularly problematic rights are the freedom of religion and equality rights, as some religions violate equality rights, but practicing that religion must be permitted to uphold freedom of religion

Day 25 - Human Rights Commission

What is the Ontario Human Rights Commission? Mission + Objective

- Agency of government to prevent discrimination and to promote and advance human rights in Ontario
 - Deals with systemic elements of human rights, develops policies, public education, monitoring,
 - Support all Ontarians, understand human rights in the Code, and provide interpretations as to how these cases should be conducted
- Mission is to promote and enforce human rights, engage in dignified and respectful relationships, and create a culture of human compliance and accountability
- Vision is an inclusive society in which everyone takes responsibility in promoting and protecting human rights

What are the protected/code grounds and protected social areas?

- Protected grounds are grounds upon which someone cannot be discriminated against in protected social areas
- These grounds are:
 - Age, Ancestry, Creed, Race, Colour, Citizenship, Disability, Family Status, Sex, sexual orientation, etc.
- The protected social areas are:

- Accommodation(housing), contracts, employment, goods, services, and facilities, and membership in unions, trade or professional associations

Direct, Constructive, and Systemic discrimination

- Direct discrimination is when you're discriminated against purely based on who you are, such as when an employer does not promote an employee because of his race
- Constructive discrimination is when discrimination is an adverse effect of some rule, such as a job requiring men to be clean-shaven. This rule is not meant to be discriminatory against Sikh men, but it has this effect
- Systemic discrimination is the patterns of behaviour, policies, or practices that are part of the structures of an organization, and which create or perpetrate disadvantages for people based on protected grounds
 - Women being paid less than men

Duty to accommodate

- An obligation to adjust rules, policies, or practices to prevent or reduce discrimination. This enables people to participate fully in activities, regardless of their disabilities
 - An employer has the duty to accommodate visually impaired applicants with a screen/special software in order to write a written test

As an employer do I have to give people time off for religious leave and do I also have to pay them?

- Employers have a duty to accommodate an employee's creed or religion up to the point of undue hardship, including time off for religious holidays

Fire a pregnant woman because her pregnancy is preventing her from performing her tasks

- Firing a pregnant woman because her pregnancy is preventing her from performing the job she was hired to do is discriminatory - employers have a duty to accommodate a pregnant woman unless it would cause undue hardship

Undue Hardship

- Undue hardship is the metric used to define a disproportionate amount of hardship endured to accommodate someone
- Cost, Outside sources of funding, Health and safety requirements

How does undue hardship affect an employer's duty to accommodate?

- The employer has the onus of proof to claim the undue hardship defence against accommodation
- Evidence used to demonstrate undue hardship must be objective, real, and quantifiable for cost

If you feel as though you have been discriminated against, what steps can you take to have your case heard by the OHRT

- Before you file an application to have your case heard
 - Consider whether your claim falls within the scope of the Ontario Human Rights Code and whether the OHRT has the legal authority to deal with it
 - File your claim within one year of when the alleged discrimination occurred
 - Late claims may only be permitted if the delay was in good faith and will not cause substantial harm to other parties
 - Get free legal advice from HRLSC or other legal clinics, private lawyers, etc
- File an application to get your case heard

- You can file a claim directly through the OHRT's website

e-Learning

- The “Not In My Backyard” mentality within ordinary citizens that masks itself as supporting anti-discriminatory policies when the citizens really feel otherwise is one of the most problematic challenges to fostering an inclusive environment in which citizens work to produce that environment.

Day 26 - Garrie v. Janus Joan Inc

Which section of OHRC does this case apply?

- Freedom from discrimination in employment as part of s.5(1)
- “Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability”

Balance of probabilities

- The applicant has the onus of proving that they were discriminated against, but they only need to prove on a balance of probabilities, specifically, they only need to prove with a 51% certainty that they were discriminated against
- If a balance of probabilities in favour of the applicant is reached, then the verdict supports the applicant and vice versa

Prima facie

- The first impression which is accepted as correct until proven otherwise. The defendant now must disprove the applicant's claims as the prima facie is of the applicant's story
- Prima facie is used when there is substantial evidence before the case to reach an indictment, unless there is other evidence to contradict the existing evidence
- Civil courts and human rights cases

To establish a prima facie case:

(1) She had, or was perceived to have, a disability

- Terri-Lynn Garrie identifies as a person with a developmental disability, and receives ODSP payments from the provincial government
- She was paid less than other workers who didn't have developmental disabilities

(2) She received adverse treatment

- She, and other workers with developmental disabilities, received significantly less pay for the same job others without developmental disabilities were performing
 - Not being paid overtime
 - Not being given an electronic passcard
- She and other workers with developmental disabilities were the only ones fired while workers without developmental disabilities continued to perform the same jobs Garrie had been doing

(3) Her disability was a factor in the adverse treatment

- Only the disabled workers were fired
- She meets the requirements

Remedial powers available to the tribunal

- The OHRT may order:
 - Janus Joan Inc to pay monetary compensation to Garrie, including compensations for injury to dignity, feelings and self-respect, which may play as a role as Garrie became reclusive after she was fired from her job
 - Janus Joan Inc to make restitution in a form other than monetary compensation for the losses Garrie incurred as a result of the discrimination she faced
 - Janus Joan to do something that would promote compliance with the Ontario Human Rights Code

End result of this case

- Janus Joan was ordered to pay over \$186,000 to Garrie
 - 142,214 in back-pay for lost income
 - 19,613 for lost income post-termination
 - 25,000 as general damages
- Investigate how pervasive this is in Ontario

Tahmourpour v. RCMP

- Ali Tahmourpour, a Canadian citizen of Iranian origin and of Muslim faith, was dismissed from the RCMP's cadet training program after being subjected to racial jokes and verbal abuse
- He complained to the Saskatchewan Human Rights Tribunal, but his claim had been originally dismissed in 1999. Upon review in 2005, the Tribunal found that Mr. Tahmourpour had been terminated for discriminatory reasons and made several remedial orders requiring monetary compensation.
- This case highlights the challenges to fostering an inclusive environment within all settings of society, even in national icons that represent deep-seated Canadian beliefs and values
- More importantly, it highlights systemic issues within the human rights tribunals and approach to handling human rights cases within Canada
 - Due process within the law dragging cases out to last over a decade doesn't help anyone involved, while the costs of litigation continue to increase with time

Minimum Wage

- This statement explores how the intrinsic worthiness working, self-respecting humans have are warrant enough to make a minimum amount of money to ensure that they can support themselves
- For many jobs seen to be lower on the social ranking, the minimum wage workers receive sometimes does not reflect the effort those workers put into their jobs to retain them
- Many marginalized groups are pushed to perform minimum wage jobs, and they require a specific pay level to support a basic life

Day 27 - Intro to Criminal Law

Definition

Crime: any act or omission of an act that is prohibited and punishable by law

- Act is considered wrong by society
 - Very vague, but exists so that people can look at the law and say oh yeah that's right by society
- Act causes harm to society in general, or to those, such as minors and the elderly, who need protection
 - Written explicitly to try to be stricter on people who commit crimes against vulnerable people
- The harm from the act must be serious
- The remedy must be handled by the criminal justice system (sentencing, jail time, community service, etc.)
 - Made in response to vigilante justice

Elements of a Crime

- To convict a person of a crime, the Crown/prosecuting attorney) must usually prove that two elements existed at the time the offence was committed
 - actus reus: The actual act
 - mens rea: Intention to commit the act
- The Crown has the "burden of proof" (aka onus) of proving the accused's guilt , and thus must prove actus reus and mens rea
 - Burden of proof in a criminal case is 99.99% - basically just much beyond a reasonable doubt
- Must need actus reus and mens rea except in strict liability cases

Actus reus

- Translates from Latin to "the guilty act"

Voluntary/Volition

- Product of a conscious act and/or will
- Automatism as a defence to say basically going on autopilot
 - Physically assaulting someone, varying degrees of assault, degrees of murder

Omission

- Failing to act can be considered a crime (not doing something that you are legally required to do)
 - Failure to provide the necessities of life, failure to remain at the scene of an accident, failure to stop at a stop sign, failure to provide medical treatment - specific to parents and guardians
 - Have to prove that a parent is providing education

State of being

- Illegal state of “being” instead of doing
- Being in possession of stolen goods, being in possession of illegal narcotics, being found intoxicated in the driver’s seat of a car

Mens rea

- Translates from Latin to “the guilty mind”
- Deliberate intention to commit a wrongful act (moral guilt) with reckless disregard for the consequences - not caring about the consequences
- In most cases, mens rea must be present with actus reus for a criminal offence to be committed
- Crown must prove the existence of mens rea by showing that the accused had the intent to commit an offence or knowledge that the act was against the law
 - Ignorance of the law is not a legitimate defense

Intent/Motive

- Intent refers to the reckless disregard regarding the consequences of one’s actions (a person should know or have foreseen the consequences of their wrongful act). There are two kinds of intent: general and specific
- General intent: Committing a crime for no reason
 - Beat someone up simply to hurt them, not for any other reason
- Specific intent: Committing a crime in order to accomplish something else
 - Wilfully beat someone up to steal their cell phone
 - Harsher punishment, but harder to argue than general intent

Knowledge

- Establish mens rea by showing that the accused had knowledge of certain facts resulting in criminal behaviour
- Ex
 - Every one, who, knowing that a document is forged, uses, deals, or acts upon it is guilty of an offense

Criminal Negligence

- Reckless (careless) disregard for the lives and safety of others, sometimes causing serious injury or death (negligent behaviour)
- Extend to a person failing to take precautions to avoid harm that “any reasonable person would take”
 - Person should have known better
- Who: a) in doing anything or b) in omitting to do anything that it is his duty to do ...shows wanton or reckless disregard for the lives or safety of other persons
- Risk you take is not likely to cause injury, but in hindsight, you should have known better
- Not shovelling your driveway, and somebody slips on it
- Caretaker messing up giving medication to older person

- Leaving an underage child at home or in a car, failure to provide the necessities of life, doctor's giving a deadly dose of medication, etc.

Recklessness

- Involves knowingly taking an unjustifiable risk that a reasonable person wouldn't take
- Often involves a person making a decision that would endanger themselves or others
- Drag racing, drinking and driving, carrying a concealed weapon

Wilful blindness

- Involves deliberately closing your mind to the possible consequences of your actions (avoid knowing the truth that your actions might be criminal)
- Wilfully blind if you avoid asking questions about a certain situation before making a decision that could possibly constitute criminal behaviour
 - Ex buying a brand new iPhone 10x for \$300
 - This is grossly below the market value for the phone, probably stolen or acquired through other means

Criminal Law Terms

Indictable offence

- More serious than summary conviction offences
- No time limit to when charges can be laid, such that an accused can be charged at any time after an act has occurred
 - Treason can only be charged between 3 years of when the offence was committed
- Police do not require a warrant to arrest under an indictable
- Accused has to submit fingerprints when required to appear to answer to an indictable offence
- Accused convicted under an indictable offence can apply for a pardon after 10 years

Summary Offence

- Accused must be charged with a summary conviction within 6 months after the act happened
- Police can arrest under summary conviction without an arrest warrant if found committing a summary offence
- Accused doesn't have to submit fingerprints when charged
- Appeals have to go to the highest trial court within the jurisdiction

Years served

- The maximum time penalty in jail for a summary offence is 6 months, and may also include a \$5000 fine
- Summary offence offenders may apply for a pardon after 5 years
- The maximum jail sentence that an indictable offence may receive is dependent on the exact offence committed
 - Impaired driving, on its own, has a maximum penalty time of 10 years
 - However, impaired driving causing bodily harm has a maximum penalty time of 14 years
- Indictable offence offenders may apply for a pardon after 10 years

Scenarios

Intent/Motive

- Ms. Yolodew decided that she didn't like one of her colleagues, Ms. Bobobsama, and so planned her murder. She deliberately poisoned an apple she gave her. Once the deceased ate the apple and fell fatally ill, she threw her body into the dumpster after wiping the scene of the crime to hide the evidence.

Knowledge

- Ms. Yolodew's friend, Ms. Dolores, noticed Ms. Yolodew's strong interest in Ms. Bobobsama's life, and so gives Ms. Yolodew forged documents that show that Ms. Yolodew also goes by the name of Ms. Bobobsama and that all of Ms. Bobobsama's possessions are Ms. Yolodew's. Ms. Yolodew takes these documents and, knowing that they have been forged, uses them to gain all of Ms. Bobobsama's possessions.

Criminal Negligence

- Ms. Yolodew, after living in Ms. Bobobsama's home for awhile, doesn't enjoy the responsibilities of upkeep of Ms. Bobobsama's home, specifically shovelling her driveway of the harsh Canadian winter. Her carelessness results in the ice building up to be so thick that it is unreasonably difficult to walk across her section of sidewalk. An elderly woman is walking along the sidewalk to go home when she steps on Ms. Yolodew's sidewalk and falls, resulting in significant injury.

Recklessness

- Realizing that her life has begun to fall into a downward spiral, Ms. Yolodew decides to have some fun one night and go drag racing. Drag racing has become a big issue in the city, and the police decide to stop it through any means necessary. The police find Ms. Yolodew after the race, as well as her destroyed car and city property.

Wilful Blindness

- Ms. Yolodew is desperate to get her life in order, but needs a new laptop because her current one has begun to die sporadically. Ms. Yolodew browses Kijiji for an affordable laptop and comes across a seller who is selling a Dell Inspiron 15 7000 Gaming for \$360, 40% of the market price. The seller has a single, grainy picture of the laptop and offers no other details of the laptop, except for a link to see the laptop's features. Ms. Yolodew suspects that the laptop may have been acquired illegally, but decides that she needs the laptop anyway and buys it.

Day 28 - Search and Seizure

What is the major legal issue of this case?

- Does the manner in which the search was conducted infringe upon the s.8 rights of the student?

Sub legal issues

- Is a civilian in authority, with the support of the police an agent of the police?
- What is the extent of the reasonable expectation of privacy for students in a school?

Powers of s.24(2)

- S. 24(1) says that anyone whose Charter rights have been denied or infringed can go to the courts and ask for a remedy
- s.24(2) says that if evidence for a case was acquired through means that infringe on other Charter sections, the evidence must be thrown out if including it would defeat the integrity and consistency of the justice system

Case at all court levels

- Was there a search by the *police*? ← This question is about whether or not Cadue was an agent of the state
 - The RCMP constable did not search the accused, but the answer to this question lies in whether the vice-principal was an agent of the police.
 - Clear that the vice-principal, Mr. Cadue, was in cooperation with the police, pursuant to their school's code
 - Would the exchange happen identically if the police were not involved?
 - Yes, Mr. Cadue's main motivation was to uphold school integrity and the incident jeopardized the physical and psychological integrity of other students. His search of the accused and his locker would have occurred similarly what he would have done if the RCMP constable
 - Although Mr. Cadue was in cooperation with the RCMP constable, they did not agree upon a plan to use to arrest the student (no "agreed strategy") and Mr. Cadue's searches would have occurred almost exactly to how they would have been carried out had the police not been there. Therefore, Mr. Cadue was not acting as an agent of the police
- Type of search
 - Warrantless, since there was no order from the courts to search the boy - Mr. Cadue searched him because of suspicion of possessing and dealing drugs
- Reasonable search?
 - The modified standard for reasonable searches:
 - Is the search in this location appropriate?
 - It can be inferred from the relevant Education Act that teachers and principals are authorized to conduct searches on their students
 - Has the search been carried out in a reasonable manner?
 - The search was carried out in a sensitive and reasonable manner as it was not very intrusive
 - Surrounding Circumstances
 - Both Mr. Cadue and the accused are male
- Was there a violation of s.8
 - No, for the reasons outlined in why the search was reasonable, Mr. Cadue's search of the accused was reasonable and not a violation of s. 8
- Lower standard for reasonable expectation of privacy within a school with reference to searching the students
 - Search had to be justified at inception

- Search has to be reasonable

When can a police officer search someone without a warrant?

- SITA, Search Incident to Arrest
- Exigent circumstances
 - Not enough time to obtain a warrant

Day 29: Mock Trial

OHRC prep

- Protected Code Grounds
 - Age, Ancestry, Colour, Race, Creed
- Protected Social Areas
 - Accommodation
 - Housing
- Purpose
 - Agency of government to prevent discrimination and to promote and advance human rights in Ontario
- Purpose of the Tribunal
 - Similar to the courts as it resolves claims of discrimination and harassment brought under the HRC
- Undue Hardship
 - Metric used to define a disproportionate amount of hardship endured to accommodate someone
 - It costs over 500 Million dollars to install some or reduce discrimination. This enables people to participate fully in activities, regardless of their disabilities
 - An employer has the duty to accommodate visually impaired applicants with a screen/special software in order to write a written test

Discrimination

- HRTIO is there to punish the people who discriminated against you by rewarding you with money
- Reconsideration is the appeal process
 - Asking the HRTIO to reconsider the case and give the case to a new person
- Garrie vs. Janus Joan
 - Statute of limitations of 1 year didn't apply because each paycheck was a separate act of discrimination so that she was very well in the time limits
- Is this discrimination?
 - Older man goes into a clothing store, this store is directed towards young females
 - He's looking for work, and is fully qualified for it, but the store doesn't hire him because of his age and sex
 - The store is allowed to do it because they want their customer service reps to relate to their customers, and the older man wouldn't be able to do that

Duty to Accommodate

- Communication with the employee
 - Making it clear that you need accommodation
- Not have to accommodate when others will be put at risk
 - Bona fide

Harassment

- Unwanted and inappropriate behaviour
 - Ex: flirting within the workplace
 - Considered harassment once the person ought to have known that it is not welcome or if it is known that it is not welcome
- Poisoned work environment
 - Uncomfortable work environment
 - Ex - Woman who identifies as Caribbean in a hospital, overhears racist remarks, not directed to her or about her, but it made her feel uncomfortable

Day 30: s. 9 - Arbitrary detention + imprisonment

- Gives everyone the right not to be arbitrarily detained or imprisoned
- Government officials can't take individuals into custody or hold them there w/out a good reason
- Police officer must have reasonable suspicion for detaining an individual and reasonable /probable grounds for arresting a person

Reasonable suspicion vs. Probable Cause

- Reasonable Suspicion
 - Based on objectively reasonable circumstances, based on reasonable person
 - Suspicion that the detained individual was involved in, or was about to be involved in a crime
 - Suspect matching a description
 - Ex. People at MGCI can't be arrested for suspicion that they were involved in a fight in Etobicoke
- Reasonable/Probable Grounds
 - Based on the detainment
 - Totality of circumstances - Everything is starting to add up either for or against the detainee

Day 31: s.10 - Rights when Arrested

- S. 10 covers your rights once you've been arrested or detained
- S.10 ensures that ppl under arrest have a chance to challenge the lawfulness of their arrest
 - You challenging the state if they don't follow proper procedures for arrest

-
- Given the following rights:
 - 10(a): To be promptly informed of the reason for your arrest (10(a) caution)
 - They only accept an “affirmative” to whether you understand the rights as they’ve been read to you, only “yes”
 - 10(b): To be informed of your right to legal counsel (right to talk to a lawyer and to know what legal aid services are available to you)
 - 10(c): Habeas corpus - Everyone has the right on arrest or detention to have the validity of the detention determined by way of habeas corpus and to be released if the detention isn’t lawful
 - Habeas corpus states that someone under arrest has to be brought to the court to secure their rights unless it can be legally proven that they should go to jail

Day 31(2): S.11 - Rights when charged

- 11(a): Right to informed without unreasonable delay of the specific offence
- 11(b): You have the right to a trial within a reasonable amount of time from the date of your arrest
- 11(c): You cannot be forced to testify at your own trial, you can’t be compelled to be a witness in proceedings against you
- 11(d): You are presumed innocent until proven guilty
- 11(e): You can’t be denied bail without just cause - reverse onus principle
 - The more heinous a crime you commit, the less likely you will receive bail
- 11(h): You can’t be retried for an offence if acquitted - double jeopardy
 - Can’t keep trying someone until they’re proven guilty
- 11(i): If you commit a crime and the law changes before you are convicted, you must be sentenced under whichever law is more lenient
 - Must be before you’ve been convicted (found guilty)

Day 32

- Superior Court hears cases in which crimes are more heinous and serious
- Defence Lawyer for queen

Day 33: More notes about trials

- Direct examination
 - also known as examination in chief, is like a coffee and blanket conversation, your side asks your witness about questions
 - Have them rattle off their tale
 - Want to establish a sequence of events that speak to your side of the case
- Cross examination
 - Can only refer to the other side’s direct
 - Write down the important parts of the direct so that you can take them
 - One question at a time

- Make sure that you only ask one question at a time
- Redirect
 - 2 questions for this trial
 - Ask for clarification, no new information
- Objection
 - Relevance is when a counsel's questions aren't relevant to
 - Which question is my client supposed to answer? (If the opposing counsel asks multiple questions in multiple)

Day 34: s.24(2)

- Primary challenge regarding rules of criminal procedure is balancing the efficient enforcement of the law with the protection of individual rights as outlined by the Charter
 - Balancing the power those who are responsible for executing the law and not infringing upon Charter rights
 - Courts have the power to enforce compliance with Charter rights, as outlined under s.24(1)
 - s.24(2) states that courts have the discretion to exclude evidence from the trial of an accused person
 - Illegally or unconstitutionally obtained evidence is not excluded automatically. Court has to determine whether the evidence should be excluded or not

s.24(2)

- Where, in proceedings under subsection 1,
 - s.24(2) applies to anything to which s.24(1) applies
- a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter,
 - s.24(2) doesn't tackle whether or not the evidence was obtained illegally - that happens with s. 8 and s.9. Rather, s.24(2) focuses on whether that evidence, which was collected illegally, should be included in the trial or not
- the evidence shall be excluded if it is established that, having regard to all the circumstances,
 - Evidence not included considering all the facts of the cases
- the admission of it in the proceedings would bring the administration of justice into disrepute.
 - This is determined through balancing public outcry versus the longevity of the Charter
 - If keeping this evidence will make the court look bad in public opinion, the evidence should not be included (Grant test)

Grant test

- Revised from the Collins Test in the 1800s
- Determines how to apply s.24(2) b/c s.24(2) is vague and needs to be specific

- Seriousness of the Charter-infringing state conduct (conduct of government agency, like the police)
 - How serious was that Charter breach of the state?
 - Was the breach deliberate?
 - Were the officers acting in good faith?
 - What does it mean to act in good faith?
 - The more severe and deliberate the breach is, the more likely the evidence will be excluded
- Impact of the breach on the Charter-protected interests of the accused?
 - Focuses on how accused was affected by the state conduct
 - How intrusive was the breach into the person's privacy? (Explored through reasonable expectation of privacy)
 - Was the individual forced to self-incriminate?
 - To what degree did the breach affect the person's human dignity and their reasonable expectation of privacy?
 - The more serious the breach is, the more likely the evidence will be excluded
- Society's interest in the adjudication of the case on its merits
 - Focuses on how reliable the evidence is in light of the Charter breach
 - How important is this evidence to the Crown's case?
 - How serious is the offence?
 - How will society feel about the inclusion/exclusion of the evidence

What does it mean to "bring the administration of justice into disrepute"? Discuss how both the admission and exclusion of the gun could bring the administration of justice into disrepute?

This phrase is mainly directed towards anticipating public opinion towards the decisions of a case. This language in s. 24(2) is present to ensure that the public reaction to cases is considered within the courts, ensuring that the public have confidence in the courts to judge similarly to their views while also delivering a just verdict. In *R v. Grant*, the concern with the administration of justice is regarding the firearm Grant was carrying when he was arrested.

Admission

- Positive Effect
- Exchange b/w the police officers and Grant only lasted for a few minutes
- The police officers were motivated to protect the safety in the school zone, especially in an area more prone to dangerous activity
- Without the gun, the Crown loses a large, and only piece of evidence against Grant as the precedent instead if they won would become not being able to act "suspiciously" around a school zone

Exclusion

- Negative Effect
- Gun would be excluded based on his statement as being self-incriminatory
- How serious the police conduct was

Step 2 of the Grant Test, the Charter breach is valid, but not as serious as can be.

- S.8
 - Police searched him unreasonably, he was acting suspiciously, but would a reasonable person see acting suspiciously as grounds for being searched?

- Grant volunteered over self-incriminating testimony about him carrying marijuana and a firearm
- S.9
 - The two police officers cornering Grant would constitute as psychological detainment, and the physical detainment that followed after was arbitrary before Grant made self-incriminating statements
 - Police were polite during their exchange
 - They were in a dangerous school zone
- The breaches to s.9 and s.13, although relevant to the case, are not ultimately significant to the case concerning Grant's possession of a firearm in a dangerous school zone. The firearm found from Grant's incriminatory statements, although technically a Charter breach, must be admitted for the reasons explored in 1)

Significance of this case

- R v. Grant improved on the Collins test, creating an objective test for applying the vague language within s.24(2). The new test applies directly to the individual statements within s.24(2), ensuring that s.24(2)'s focus on the societal impact and reaction to the Court's decisions are respected and considered when the Court makes a decision.

Another s.24(2) case

R v. Hebert

- Hebert was arrested for a charge of robbery and informed of his right to counsel. A police officer dressed up as a suspect and extracted incriminating information from the suspect. The concern with s.24(2) is regarding whether the statements should be admitted under s.24(2).
- The police's violation of basic Charter-protected rights under s.7 of the right to remain silent (outside of being arrested) effectively disqualifies the evidence under s.24(2). Moreover, the precedent that would have been set had this evidence been admitted would be dangerous, promoting the police to routinely extract incriminatory information from suspects through unfair tricks.