

Four Step Charter Analysis

STEP 1 does the case involve government action or agent?

YES - a Charter challenge - move to step 2
NO - not a Charter issue

STEP 2 what section of the Charter is triggered?

who is the rightholder?

how has the section of the Charter been violated? or not.

YES - Charter right has been violated
NO - not a Charter issue

STEP 3 can the government justify the rights violation?

government must use the section 1 "reasonable limits" test
(called the "Oakes" test)

(a) does the government action have a VALID PURPOSE?

(b) is there a LOGICAL CONNECTION between the government action in question and achieving the VALID PURPOSE?

(c) does the government action take away from the Charter right as little as possible? MINIMAL IMPAIRMENT

(d) is there a PROPER BALANCE between the benefits of the government action and its damaging effects on the Charter right?

YES - the rights violation is justified in a free and democratic society thus the government action stands

NO - a step in the test is answered in the negative thus the government action is unjustified and the rightholder deserves a remedy

STEP 4 if an unjustified violation, what remedy does the rightholder deserve to stop the violation?

(a) strike down

(b) read down or read in (cut & paste)

(c) compensation

(d) declaration