

COMPETING CONSTITUTIONAL RIGHTS: DEVELOPING THE CANADIAN APPROACH

Catherine Oatway

TOPIC AND IMPORTANCE

A core principle of the *Canadian Charter of Rights and Freedoms* (*Charter*), called the Equality Principle, is that none of the rights the *Charter* protects are more important than others. When a person's exercise of a protected right under the *Charter*—such as the right to religious expression or the right to freedom of expression—may be limited by the exercise of another person's rights, Canadian courts may be asked to reconcile the competing rights and determine an appropriate solution.

This article focuses on the analysis and principles used by courts to resolve cases where *Charter* rights have been in competition and what impact the improper application of these tests and principles could have. This is important because *Charter* rights are fundamental to the Canadian constitution, and the denial or limitation of rights could have meaningful impacts on how people interact and live their lives. While we generally enjoy the free exercise of our rights, it is inevitable that our exercise of rights will have to be limited to provide room for others to exercise their own rights, too.

MAIN ARGUMENTS

The task of courts when rights are in competition is to uphold the Equality Principle and determine how to give the fullest meaning possible to each *Charter* right involved—not to determine which of the rights is more deserving of protection. However, Canadian case law involving competing rights reveals that the concept of “reconciling” competing rights is not consistently applied. This inconsistency is representative of the ongoing debate amongst scholars about whether *Charter* rights have essential elements which must never be subject to limitation in case of a conflict with others' rights. This article primarily examines Supreme Court of Canada decisions leading to the 2012 case of *R v. NS*, arguing that the courts have developed an unclear analytical framework, guided by common principles (including the Equality Principle), which need to be refined to resolve ambiguities in this area of the law.

CONCLUSION AND ADDITIONAL CONSIDERATIONS

In a constitutional system which places its rights and freedoms on equal footing, the finding by our courts of an irreconcilable conflict between such rights is not acceptable. This article contends that, in order to uphold the Equality Principle, the Supreme Court should clarify how courts can ensure they are properly protecting *Charter* rights in cases where such rights appear to be in competition with each other.