

Oakes Test and Proportionality Test: Balance between the Practical Costs of Limiting Rights and the Benefits Arising from the Law

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Abstract : The analysis of proportionality as a test is raised as a basic foundation for the achievement of Fundamental Rights. We used legal dogmatics and empirical analysis to seek the expected results, from the reading of the RV Oakes trial by the Supreme Court of Canada. In cases involving freedom of expression, two tests are used to resolve disputes. The first examines whether, in fact, the case can be characterized as a violation of freedom of expression; the second assesses whether this violation can be justified by the reasonable limit clause. This test was defined in the RV Oakes trial by the Supreme Court of Canada, concluding with the Oakes Test, used worldwide as a proportionality test. Resulting is a proportionality between the effects of the limiting measure and the objective - the more serious the harmful effects of a measure, the more important the objective must be.

Keywords : Oakes, proportionality, fundamental rights, Supreme Court of Canada

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