Case Name	Section(s) on which Challenge is Based	Existence of Infringement	Whether Infringement Saved by s. 1 or Remedy Granted under s. 24	Object of Challenge
Miron v. *Trudel*	15(1)	Yes	Not saved	Legislation (P)
R. v. *Canadian Pacific Ltd.*	The issue was whether the Ontario *Environmental Protection Act* governed a federal undertaking	*intra vires*	—	Legislation (P)
Husky Oil Operations Ltd. v. *Minister of Natural Resources*	91(21)	*ultra vires*	S. 133 of the provincial *Workers Compensation Act* was found to be inapplicable (as the operational conflict was in an area of exclusive federal jurisdiction)	Legislation (P)
MacMillan Bloedel Ltd. v. *Simpson*	96	*ultra vires*	Legislation was found to be inoperative and was read down accordingly	Legislation (F)

[1] The issue in *Bernshaw* was the existence of "reasonable and probable grounds" which is required by statute, yet reference is made that such grounds are also a constitutional requirement under s. 8 as a precondition to a lawful search and seizure.

[2] In *Egan*, the finding that there was no infringement was made by a plurality (4) within the majority group, while Sopinka, the fifth judge in the majority, did find an infringement but believed it to be saved under s. 1, allowing the legislation to be found constitutional.

[3] While s. 24(1) was not invoked to grant a remedy at the time of the trial in *Khela*, the issue was left open in the event that the Crown failed to meet the terms of the judgment of the Court of Appeal. In the alternative, to avoid a stay under s. 24(1), the Crown could attempt to vary the terms of the Appeal Court judgement based on information which had come into its possession since that judgement was made.

1994 CASES INVOLVING CONSTITUTIONAL CHALLENGES

Case Name	Section(s) on which Challenge is Based	Existence of Infringement	Whether Infringement Saved by s. 1 or Remedy Granted under s. 24	Object of Challenge
R. v. *Colarusso*	8	Yes	Not excluded under 24(2)	Action
International Longshoreman's Union v. *Canada*	2(d)	No	—	Legislation (F)
	7	No		
Quebec v. *Canada (N.E.B.)*	35(1)	No decision	—	Action
R. v. *Durette*	7	Yes	Not saved	Action
	11(d)	Yes		
R. v. *Finta*	7	No	—	Legislation (F)
	11(a)	No	—	
	11(b)	No	—	
	11(d)	No	—	
	11(g)	No	—	
	12	No	—	
	15	No	—	
	7	No	—	Action
	11(b)	No	—	
	11(d)	No	—	

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Case Name	Section(s) on which Challenge is Based	Existence of Infringement	Whether Infringement Saved by s. 1 or Remedy Granted under s. 24	Object of Challenge
Telephone Guevremont Inc. v. *Quebec*	92(10)(a) 91(29)	Read down; provincial legislation inapplicable to interprovincial work and undertaking	—	Legislation (P)
B.C. v. *Canada; Re Vancouver Island Railway*	The issue was whether Canada has a constitutional obligation under term 11 to operate a Victoria-Nanaimo RR	*intra vires*	No obligation was found to exist as treaty only provided for construction and not operation	Legislation (F)
R. v. *Jones*	7 10(b)	No No	— —	Action
R. v. *Howard*	35(1)	No. The treaty in question had extinguished the fishing rights of the area in which the offence occurred	—	Action
143471 Canada Inc. v. *Quebec*[1]	7 8	The Court provided interlocutory relief until final determination of the constitutionality of the legislation	In deciding to provide this relief, consideration was given to the failure of the legislation to protect the privacy interests which s. 8 is aimed at protecting	Legislation (P)-oriented, yet the legislation itself was not challenged here
Comite Paritaire v. *Potash*	8	No	—	Legislation (P)
R. v. *McIntyre*	7	No	—	Action
R. v. *Boersma*	8	No	—	Action
Re Quebec Sales Tax	92(2)	*intra vires* the province	—	Legislation (P)
R. v. *Whittle*	10(b) 7	No No	— —	Action
R. v. *Tran*	14	Yes	Conviction quashed and new trial ordered under 24(1)	Action
R. v. *Daviault*	7 11(d)	Yes Yes	Not saved Saved	Common Law Rule
R. v. *Borden*	8 10(a) 10(b)	Yes Yes Yes	Excluded under 24(2)	Action
R. v. *Bartle*	10(b)	Yes	Excluded under 24(2)	Action
R. v. *Prosper*	10(b)	Yes	Excluded under 24(2)	Action
R. v. *Pozniak*	10(b)	Yes	Excluded under 24(2)	Action
R. v. *Matheson*	10(b)	No	—	Action
R. v. *Harper*	10(b)	Yes	Not excluded under 24(2)	Action
R. v. *Cobham*	10(b)	Yes	Excluded under 24(2)	Action
Native Women's Assn. of Canada v. *Canada*	2(b) 28 35(1) 35(4)	No No No No	— — — —	Action
R. v. *Brown*	12	No	—	Legislation (F)
Transgas Ltd. v. *Mid-Plains Contractors*	92(13)	*intra vires* the Parliament of Canada	—	Legislation (F)

R. v. *Heywood*	7 11(d)* 12* 9* 11(h)*	Yes No* No* No* No*	Not saved * These sections were only dealt with by minority as the first determination made the others unnecessary	Legislation (F)
Dagenais v. *C.B.C.*	2(b) 11(d)	Yes Yes	Not saved Not saved	Common Law Rule
R. v. *Laba*	11(d)	Yes	Not saved	Legislation (F)
R. v. *Pizzardi;* *R.* v. *Lewis*	7	No	—	Action
Tolofson v. *Jenson*[2]	92(13)	*intra vires* the province's competence to have provisions of a provincial act apply to all who have car accidents in Quebec	—	Legislation (P)

[1] The *143471 Canada Inc.* case was not a constitutional challenge *per se*, but a motion for interlocutory relief based on a likely infringement of two sections of the *Charter*.

[2] The inclusion of the *Tolofson* case was marginal: while it made a pronouncement on the jurisdiction of the province to make the law in question, the focus of the decision was that of a conflict of laws rather than any constitutional challenge on federalism grounds.

LAMENT FOR A CHARTER

BY DAVID BEATTY

April 17 is something of a landmark in Canadian political history. It was exactly 15 years ago that we added a Charter of Rights and Freedoms to our constitution.

Signing on to a written bill of rights radically changed the way we Canadians govern ourselves. We moved from a system in which Parliament was sovereign and could do no wrong, to a model in which some very real restrictions were put on what governments could and could not do.

Adopting a written bill of rights meant that Canada joined an elite group of nations in which the rule of law replaced majority rule as the supreme value in the political life of the country. In theory, from that day on, Canadians (like Americans, Germans, Italians, Indians, Japanese, and others before us) had a legal guarantee that our fundamental freedoms (of religion, expression, association, etc.) and our basic human rights (to equality, life, liberty and security of person, etc.) would not be violated by our governments unless it was practically impossible to avoid.

To be sure, anniversaries, like birthdays, are quite artificial benchmarks, but they are useful occasions for reflection nonetheless. Moreover, in law, as in life, certain periods—like adolescence—have more meaning than others and warrant special attention.

The story of the *Charter*'s infancy and adolescence is easy to tell. In the beginning, its development looked very promising. In the first few years following its entrenchment, the Supreme Court of Canada was very insistent that politicians and public servants respect the new rights and freedoms that the *Charter* guaranteed.

Using the *Charter*, the Court struck down a variety of laws, including: (1) parts of Quebec's language code that restricted the education rights of its English-speaking minority; (2) a section in B.C.'s motor vehicle law that threatened people who drove without a valid license with a week in jail even if they did so inadvertently; and (3) various provisions in the federal government's immigration rules that had the effect of denying some people who wanted to make a refugee claim the right to a public hearing of their case.

Led by Bertha Wilson and Brian Dickson, the Supreme Court established two basic tests or principles of constitutional validity in these early cases. In order to justify rules and regulations that interfered with people's constitutional rights, governments had to meet both.

The first is a test of avoidability. It requires governments to prove that no other policy was available that would have interfered with the people's rights to a lesser extent. In striking down the offending provisions of the B.C. *Motor Vehicle Act*, for example, the Court ruled that imprisonment was much more punitive than was necessary, given the seriousness of the "crime."

The second test is one of consistency. It insists that if a government cannot avoid restricting people's rights, it should only do so in ways that are broadly consistent with the way the rights of others have been treated elsewhere and in the past. For example, the Supreme Court said Canada's refugee determination law could not pass this test because other free and democratic societies were able to provide hearings for all refugee claimants, and because even in Canada people who receive parking tickets are entitled to a hearing to settle the merits of their case.

Notwithstanding this very auspicious beginning, the Court soon began to restrict and relax the use of these standards. Increasingly, it released the politicians and government officials from their constitutional duties to craft their laws as carefully and sensitively as they can.

Especially over the last decade, as more and more of