



# Justice Centre for Constitutional Freedoms

## **The Fundamental Importance of Freedoms under the *Charter***

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## Fundamental Freedoms First

We are all here to talk about weighty matters tonight. But before I get into a discussion of the challenges to Canada's constitutional freedoms, I must first say a word about our Constitution itself.

It is important to recognize that we are privileged to call this beloved land home, and it is equally important to recognize that Canada is what it is because of the foundational principles in its Constitution. The *Canadian Charter of Rights and Freedoms* recognizes and establishes certain freedoms as of **primary** importance directly below the recognition of divine supremacy. The freedoms of conscience, religion, thought, belief, **opinion, expression**, assembly and **association** are preeminent, and from their pre-eminence in our Constitution it is seen that the framers of the *Charter* envisioned a God who not only values freedom, but places **primary** importance on it.

The *Charter* not only speaks of these freedoms first in line for protection by the state, but also exclusively designates them as **fundamental**. The word "fundamental" means "a central or primary rule or principle on which something is based", and "forming a necessary base or core; of central importance". Just as the rights of conscience, religion, opinion, expression and assembly are "fundamental" to the citizen, so the state (comprised of our peers who are entrusted with the responsibility of leadership) is to regard its task to protect those freedoms as of "fundamental" importance.

It is freedom that makes Canada great. Freedom of conscience, religion, opinion, thought, expression, peaceful assembly and association are fundamental to Canada's liberal democracy, and foundational to the prosperity and peace we have historically enjoyed. They are the stated principles of national priority and importance. And they are the conditions of national success. Canada is great and will remain great insofar as it remembers these principles and strives to uphold them.

## Generational Question

But this is a generational question. Every generation must come to terms with these sacred and foundational principles, and determine whether they will stand to defend them, or whether the trusts of previous generations will be abandoned.

Every generation must face the test of whether or not fundamental freedoms of conscience and religion; thought and expression, assembly and association will be upheld.

Today we are in danger of failing this test like never before in the history of this country. There is a certain social amnesia which forgets the sombre persecutions of the past which led to the protection of human freedoms. It is far too easy to forget those who suffered for their thoughts and beliefs and associations in the past, who lost property, professions, and their lives. Dr. Robson mentioned the history of Magna Carta. I think of William Tyndale, who was strangled and burnt at the stake by Henry VIII simply for translating the Bible into English. Tyndale was executed for

nothing more than the propagation of ideas. How easily we forget the countless people like him who paved the way for the recognition of the rights we enjoy today.

History taught our founders to place primary importance on an individual's right to think, believe, express and associate, but sadly, our governments and even some courts are increasingly reluctant to do so. **They are reluctant to uphold the Constitution. Let me speak clearly – that is a betrayal of the national trust.** Citizens are not only supposed to be able to exercise these freedoms without suffering persecution, but to do so under government **protection**. The minimization **of foundational freedoms is resulting** in the destabilization of Canada's liberal democracy.

The Constitution exists to put a check on the arbitrary exercise of power. It is Canada's foundation. The disregard of the Constitution is altering the character of the nation built upon it.

## Two Great Threats

I've been asked to talk about current threats to our fundamental freedoms. There are two broad threats.

### 1. Intolerant Fundamentalist Secularism.

The first is this: an intolerant fundamentalist secularism has become akin to a state religion in Canada. And as with any state religion, those who disagree with it are finding themselves oppressed, harassed and punished.

The state's intolerant fundamentalist secularism is nothing less than a re-imagination of the *Charter* to elevate the state's concept of equality to "fundamental" status. Under the *Charter*, there is no fundamental right to be treated equally by your peers. There is no fundamental right to be respected by your fellow citizens. There is no right not to be offended.

Equality rights are not mentioned in the *Charter* until section 15. It is not listed as a "fundamental" right, and it has nothing to do with the way private citizens interact with other private citizens.

The principle of equality is important, but only if understood in context. Section 15 of the *Charter* codifies equality in the context only of a **government obligation** to recognize Canadians as equal before the law. The current attempts across this country to compel Canadians to treat each other equally in their private lives is unconstitutional. The *Charter* does not coerce and compel Canadians to treat each other equally. Or respectfully. Or inclusively. The state-coerced requirement that they do so is increasingly becoming an obligation for private citizens and private organizations to mouth acquiescence to state dogma, irrespective of their opinion, or their thought, or their belief. The improper imposition of government equality duties upon the citizen does not enhance liberty – it prevents it.

Alexis de Tocqueville, in his famed book *Democracy in America* written in the early 1800s counseled that freedoms fought for with blood and tears, resulting in a hard-won democratic

governance model, may disappear over time. He warned that citizens forget the hard-fought battle for freedom and indicates that:

*“there exists also in the human heart a **depraved taste for equality...** Not that those nations whose social condition is democratic naturally despise liberty; on the contrary, they have an instinctive love of it. But liberty is not the chief and constant object of their desires; **equality is their idol**: they make rapid and sudden efforts to obtain liberty, and if they miss their aim resign themselves to their disappointment; **but nothing can satisfy them except equality, and rather than lose it they resolve to perish.**”*

De Toqueville predicted the current state of affairs in Canada: the institution by the state of the equality idol, and its compulsory worship.

The impact of the outworking of these principles is seen in the following cases.

### **Derek and Francis Baars**

Derek and Francis Baars operated a foster home in Ontario. They had two young girls in their care, twin sisters. They cared for the girls as their own, and properly provided the necessities and comforts of life as good parents.

When confronted with the state’s fundamentalist secular doctrine that they *must* inform the girls that the Easter bunny is real, they refused. Derek and Frances told the state’s social worker that the Easter Bunny is not real, and that they were not willing to lie to the girls. They intended to hide chocolate eggs, yes. But inform the girls that a giant rabbit came into the house and hid them, no. The government agency warned them it would shut their foster home down if they did not confess the reality of the Easter Bunny. The government said the Baars were neglecting the girls’ cultural needs if they did not do so, as though every parent, be they atheist, Jew or Muslim, in Canada must foster a state-required belief in the Easter bunny. When they still refused, their foster home was shut down, and the girls were taken from them on less than 24 hours’ notice. They were devastated.

### **LSUC Inclusivity**

In Ontario, it is no longer sufficient to be: a competent lawyer, to be ethical, to know the law and abide by it. The Law Society has created new obligations for 2017, and emailed all Ontario lawyers of the “actions they need to take.” Lawyers must now sign a statement agreeing to personally promote the Law Society’s goals of diversity, inclusivity and equality. It is called a “Statement of Personal Principles” – but there is nothing “personal” about it. It is nothing but coerced speech, and lawyers across the province are refusing to sign it. Think of the irony. The Law Society is requiring lawyers to disavow their own constitutional rights. To speak words that are not their own. To violate their own personal concepts of right and wrong.

In the oft-quoted case of *R v. Big M Drug Mart*, the Supreme Court of Canada has stated that “freedom is the absence of coercion or restraint. If a person is compelled by the state or the will of

another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free.” Compelling lawyers in Ontario to say things they don’t mean is not freedom. It is ideological coercion.

### **Bill 89: Ontario**

Opens the door in this province to the removal of children from their biological parents on the basis of a child’s supposed gender identity and expression. Again, this stems from the state’s elevation of this particular ideology to “fundamental” status, without legal authority.

### **Upcoming cases**

Parents who were approved, and then refused the ability to adopt, not because they didn’t have a nice house, or weren’t loving people, or weren’t otherwise qualified, but because they did not agree with the state’s definition of marriage and sexuality. Tens of thousands of parents across Canada raise their children with diverse views on marriage and sexuality, but the state has refused the ability to adopt because of my clients’ identical views.

The refusal to allow parents with such beliefs is a disservice, not just to the parents, but also to the backlog of children in the system who are older, and who’s chances of adoption are dwindling. The state prevents their placement with a loving home for the sake of the propagation of the state’s ideologies.

### **Physician-assisted suicide, “Medical Assistance in Dying” or MAID**

The 2015 *Carter* case struck down criminal code prohibitions on euthanasia and assisted-suicide. The Supreme Court held that nothing compelled a doctor to participate in assisted suicide, and recognized that doctors have *Charter*-protected conscience rights. Despite this statement from the highest Canadian court, some of the provincial colleges of physicians and surgeons are intent on requiring doctor participation in the provision of MAID. Again, the state is requiring a citizen to disavow their conscience, again with the implied threat of professional sanction.

### **Prevention of freedom of conscience and religion in private schools**

Despite the findings of the Supreme Court of Canada in the *Loyola* case, there is increasing state intolerance to a religious school’s constitutional right to believe, associate and teach a common religious creed.

## **TWU**

In no case is this more apparent than that of Trinity Western University. In a pluralistic, multicultural society where freedom reigns, disagreement on issues of philosophy, morality, spirituality, are not punished by a neutral state. In ages past, and in other countries today, an oppressive state may take away the property and even the right to earn a living, of individuals who reject State-enforced ideas. Today in Canada, people are free to associate around creeds, and not associate with those who do not share them. In a free society, to quote the preamble to the federal Civil Marriage Act, it is not against the public interest to hold and express diverse views on marriage, which includes personal convictions on sexuality. TWU is a private university operated by the Evangelical Church in Canada. It receives no government funding.

If anyone ought to know the law in this regard it is the law societies. And they do. They knew that in 2001 TWU made its way to the Supreme Court of Canada over the BC College of Teachers' refusal to accredit their education program. In that case, the Supreme Court found that Trinity is not for everyone, and that it was able to associate around its religious creed, and exclude those who did not respect the conduct required by TWU of its students.

The record in this latest version of TWU's struggle to have its constitutional rights respected shows that the Law Society of BC was aware of the law, considered it, initially made a just judgment as to TWU's right to have a law school, and ultimately approved it.

But, then came social pressure. The Law Society reversed itself because of public pressure from its own lawyers. Because they feared public backlash more than they respected the Constitution. Like Pilate of old, it washed its hands of the law because of the public, no matter what justice or the law required.

And that highlights the second great threat to constitutional freedoms in Canada today:

### **Authorities which love immediate popularity more than the rule of law**

TWU showcases the other great threat to Canada's fundamental freedoms: authorities that love popularity more than the constitution, and more than the rule of law. Present in each of the cases I highlighted to a certain degree.

This demonstrates a need, now more than ever, for Canadian constitutionalism. Democracy is wonderful, to a point. But without respect for the Constitution and the rule of law, democracy is nothing but mob rule. Our Constitution is a wonderful document. But we need our elected officials and appointed judges to uphold it, instead of bowing to popular pressure and infringing the freedoms of Canadians in a free and democratic society.

## **Conclusion**

Government is just a fancy word for our peers, in positions of trust and authority, through election. Social compact theory posits that independent, free thinking beings trade certain rights to those in

authority (called government) in exchange for certain benefits. Some examples would be motor vehicle laws, and the institution and enforcement of speed limits. Society surrenders the ability to drive however they want in exchange for regulations which should make the road more safe. Another example is the exercise of the Criminal law power. We trade our inclination to right wrongs against us through vigilante justice in exchange for protection by a police force. We collectively trade a certain degree of civil freedom in exchange for state protection.

But certain fundamental freedoms may not be traded with the state because the state can offer nothing in return. This is particularly true in regard to religious and conscience rights, beliefs and opinions, which deal with personal conceptions of morality, spirituality, the meaning of life, and eternal destinies. The government cannot trade with us in regard to such things because the government has no authority in regard to objective truth, the hereafter, eternal life, etc.

It is not the state's job to make people good. Government's job is found in the Constitution. Fundamental freedoms are of conscience, religion, speech and association. That means that a government's fundamental obligation is to ensure the exercise of these rights. But increasingly, governments across this country are overstepping the lawful exercise of state power in favour of an ideological state idol.

Milton Friedman once said, "A society that puts equality before freedom will get neither. A society that puts freedom before equality will get a high degree of both."

We are watching the truth of that statement play out before us.

### **About the Justice Centre**

Founded in 2010 as a voice for freedom in Canada's courtrooms, the Justice Centre for Constitutional Freedoms defends the constitutional freedoms of Canadians through litigation and education.

### **About the Author**

Jay Cameron is the litigation manager at the Justice Centre for Constitutional Freedoms, a non-profit law firm dedicated to the education and defence of Canadians constitutional rights, particularly freedom of religion and conscience, freedom of speech and freedom of association. Jay graduated from law school in New Brunswick in 2007 and articulated at a national law firm in Calgary, Alberta. After being called to the bar in 2008, Jay worked in British Columbia as a Crown prosecutor, where he ran trials and bail hearings in Prince George and Williams Lake. In 2012 he returned to Alberta and civil litigation and has since appeared at every level of court in Alberta, British Columbia, Nova Scotia, Manitoba, and at the Court of Appeal in Ontario. He has testified as a witness on constitutional issues at standing committees of both the House of Commons and the Senate, and will represent the Justice Centre at the Supreme Court of Canada in November 2017 on a landmark freedom of association case. He is married, loves the outdoors,

and believes that everyone is created equal by God and endowed by their Creator with certain inalienable rights.