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Grade 12

Word Count: 1079

An Analysis on the Rule of Law and Freedom of Expression

The rule of law protects freedom of expression. It provides a safe zone for people to criticize their governments without the fear of having their rights taken away and being penalized. The rule of law is an unwritten part of the constitution created by judges through common-law. The rule states that the government must enact law in an open and transparent manner, apply it equally to all, and apply the law without political or outside influence (Provincial Courts of BC). The court has a responsibility to protect our freedoms while also having a commitment to the values inherent to our democracy.

Your fundamental freedoms come at a cost, nothing in our constitution is without limitation as referenced by Section 1 of the Canadian Charter. The court has a responsibility to balance our fundamental freedoms and the foundational values that uphold our democracy. The Supreme Court definition of freedom of expression is broad: "if the activity conveys or attempts to convey a meaning, it has expressive content" (Toronto (City) v. Ontario (Attorney General)). Freedom of expression can present in many different forms, but limitations always exist. Perjury, counselling suicide, and creating child pornography are all forms of expression, however, because of their inclusion in the Criminal Code of Canada as prohibited or illegal activities, the limits imposed on "expression" through these means are justified. These limitations are there to protect vulnerable members of society. Without reasonable limits our constitutional rights have the potential to be abused and the ability to harm the people in our communities.

Freedom of expression and rule of law are essential components in a democratic society. The ability for constituents to openly criticize their governments, perhaps most valuable when the cause is unpopular, is a fundamental principle of democracy. When the trucker convoy arrived in Ottawa it started off as just a protest, private citizens demonstrating their dismay in the mandates the government of Canada was imposing. It quickly turned into something much less civil and even threatening, resulting in Prime Minister Justin Trudeau invoking the *Emergencies Act*, essentially taking away, or usurping, the rule of law in order to limit people's freedoms. While Canadians have the right to express themselves in a broad way, this right is not absolute. "Protests that shade into unilateral demands backed by even implicit threats of violence stop being

democratic debate” (Metcalf). The rule of law protects the people involved in protests and the people affected by them. Just because you are fed up with the government does not mean your constitutional rights are being violated. The convoy protests were disruptive to trade routes, belligerent in city streets and at times contained hate speech. Without the reasonable limits outlined in section 1 of the Charter the innocent people affected by these protests would be forced to change their daily practices, and it would greatly and negatively affect their businesses and personal lives. The government was justified because the convoy violated the inherent values our democracy is based on.

Courts have the ability to limit demonstrations when it is demonstrably justified by the values that guide the court. Supreme Court of Canada Chief Justice Brian Dickson addressed these as the values that are foundational to our courts; “respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation for a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions to enhance participation in society” (R v. Oakes). When political activism and protests impede these values, the courts have an obligation to step in. Despite the limitations, protests and demonstrations are understood to be a cornerstone of democracy. “A noisy public “marketplace of ideas” that allows individuals to “search for truth” through open debate is an *ideal* of Canada’s constitutional democracy.” (Metcalf). The courts walk a fine line, upholding the values of democracy while protecting the people they govern.

The rule of law and freedom of expression are so intertwined that one without the other creates a system where governments can abuse their power and citizens have no power or voice. Without the rule of law, all branches of the government -- legislative, executive, and judicial -- could arbitrarily take away individual rights or unreasonably detain people. This would give the government excessive power and discretion and would inevitably steer our society away from one of democratic values towards a dictatorship. Without freedom of expression for citizens much of the same would happen, as an essential component of democracy is the criticism the government receives from the public. Russia is a current prime example of a place where both of these are abused. The fundamental freedoms of the people of Russia are so restricted, if you oppose the government, you may go to jail, or face execution. Without the rule of law,

freedom of expression cannot be upheld, and both are absolute staples in democratic society.

Beyond the values of society, the courts must also balance the rights of the individual versus that of society. This is a common debate during the pandemic: when does the health and safety of society as whole trump individual choice? This is where the rule of law is essential. The courts must govern without undue influence and without favouritism. While it is the general consensus of Canadians to get the vaccine, there is a vocal and not insignificant minority, but the court of public opinion cannot come into play. Their disregard for the health and safety of their neighbour is difficult to understand, and one could argue it is behaviour that is not protected by the constitution, “The constitution is not a suicide pact guaranteeing the right to harm others” (Hamilton and Offit). By the same token, the unpopularity of the anti-vaccine movement does not mean that the courts can limit their right to protest and their freedom of expression. Protests where individuals convey discontent and even express unscientific content can be seen as a “good” of Canadian democracy (Metcalf).

Our world is ever-changing but our ability to criticize government and make demands for our elected officials needs to remain. The ability to come together and express our views -- no matter how popular -- is critical in our free and democratic society. Our constitution is designed to reasonably limit our rights to protect the people around us and provide the courts with guidance, and they are there to balance our rights and the greater commitment to the values that uphold our society.

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