**Charter of Rights and Freedoms Review**

Examine the following situations, which are based on actual cases. In each situation, the defendants argue that one of their fundamental freedoms as defined in the *Canadian Charter of Rights and Freedoms* has been denied. Explain which *Charter* right has been violated.

Using your knowledge of the Charter, write an opinion with reasons on whether you believe these defendants would be successful in their challenge, and be sure to cite which Charter right has been violated.

**Case I**

Emily belongs to a religious group called the Utopians. Some of their religious ceremonies include dancing naked in the woods at midnight, sacrificing animals (such as cats and lapdogs), and smoking marijuana. Police have charged Emily and her fellow Utopians with indecent exposure, cruelty to animals, and possession of marijuana. Emily claims that her rights under the *Charter* have been violated.

**Case II**

Martin is a member of an organization opposed to the government of China. When the Chinese prime minister came to Canada as the guest of the Canadian government, Martin organized a protest. Martin and 20 of his supporters chained themselves to the gates of the Chinese Embassy, blocking the car that was driving the prime minister to Parliament. No one was injured, but Martin and his followers were arrested for causing a disturbance. Martin says his rights under the *Charter* have been violated.

**Case III**

The *British Columbia Herald* published a cartoon of the prime minister, depicting him as a spider plucking off the heads of members of the public. The cartoon implied that the prime minister had lured British Columbians into his web and was now taking all their money for one of his own enterprises. The prime minister sued. The newspaper is arguing a *Charter* right.

**THE *CHARTER* SINCE 1982**

Since 1982, the Supreme Court of Canada has issued many landmark decisions based on the Charter. Some rulings have been controversial. This is particularly true in cases where rulings changed existing laws. Several cases that have changed the legal landscape in Canada are summarized below.

***R. v. Oakes*, 1986:** David Oakes was charged with possession of a narcotic for the purpose of trafficking. He challenged a law requiring him to prove he was not trafficking drugs. He argued that this reverse burden of proof, requiring him to prove himself innocent of trafficking, violated his right under the Charter to be presumed innocent until proven guilty. The court agreed and declared the law to be unconstitutional. The Oakes case is regularly used in courts as a precedent because it sets out the test – often referred to as the ‘Oakes test’- in deciding when your rights and freedoms can be limited under the Charter.

***R. v. Morgentaler*, 1988:** The Supreme Court entered a legal, moral and ethical debate when Dr. Henry Morgentaler challenged Canada’s abortion law. The court struck down Canada’s abortion law because it violated section 7 of the Charter. That section confirms everyone’s right to life, liberty and security of the person. Since the abortion law restricted a woman’s ability and right to obtain an abortion legally, it was struck down. The case created controversy. People debated whether the Supreme Court had too much power in interpreting laws.

***R. v. Collins*, 1987:** Undercover police officers used a choke hold to search Ruby Collins for drugs. It turned out that she did not have any drugs in her mouth, although she did have some in her hand. Collins argued that the search and seizure violated section 8 of the Charter. The Supreme Court ruling established a test for a reasonable search. The police must have reasonable grounds for carrying out a search and must act fairly while conducting it. The court also declared that evidence obtained in an unreasonable manner cannot be used in court if it would interfere with the fairness of the trial.

***Irwin Toy Ltd. V. Quebec (Attorney General)*, 1989:** Irwin Toy challenged a Quebec law that banned television advertising to children under the age of 13. The court ruled that the law protected children from manipulation by advertising. As such, it was a reasonable limit on freedom of expression. Freedom of expression was recognized as a guaranteed right. Still, it was subject to reasonable limits under section 1 of the Charter.

***R. v. Keegstra*, 1990:**  James Keegstra was an Alberta high school teacher. He was charged with promoting hatred toward an identifiable group – in this case, Jewish people. He argued that this freedom of expression was violated. However, the court allowed section 1 of the Charter t limit freedom of expression. Canada’s hate-crime laws are a reasonable limit to our freedom of expression. The protect groups from hate speech.

***Vriend v. Alberta*, 1998:** Delwin Vriend was an Alberta Christian college teacher. He was fired because he was gay. Vriend wanted to challenge his dismissal as discrimination under provincial human rights legislation. However, Alberta’s *Human Rights, Citizenship, and Multiculturalism Act* only recognized discrimination on the basis of sex, not sexual orientation. Vriend argued at the Supreme Court that the act violated his equality rights. It did not protect him from discrimination on the basis of his sexual orientation. The court agreed. However, it did not rule that he human rights law was unconstitutional. Instead, the court ordered the Alberta government to include sexual orientation as a prohibited ground of discrimination under the law. The Alberta government complied.

For Review

1. In which of the cases were fundamental freedoms denied?

2. In which of the cases was the law held to be a reasonable limit on individual rights?

3. What is the test for a reasonable search under the *R. v. Collins* case?

4. What step did the court take in the *Vriend v. Alberta* case to uphold the human rights law?