Charter: A Course

A podcast about Canadian Constitutional Law & Litigation

Season 2, Episode 4: Freedom of Expression and Association

About the Series

Charter: A Course is a podcast created by the David Asper Centre for Constitutional Rights (the Asper Centre) and hosted by the Asper Centre's Executive Director Cheryl Milne.

Charter: A Course focuses on Canadian constitutional law and litigation. In each episode, we highlight the accomplishments of U of T Law's faculty and alumni involved in leading constitutional cases and issues. Each episode also includes a "Practice Corner", where we talk about the ins and outs of what it means to be a constitutional litigator.

Whether you are a law student, a lawyer, or just an interested person, we hope that you learn about an aspect of constitutional law and litigation that interests you in our podcast.

Show Notes

With the help of our distinguished guests, Professor David Schneiderman and Professor Ashwini Vasanthakumar, we discuss how our section 2 freedoms – the freedom of expression, the freedom of association, and the freedom of assembly – protect our right to protest. Tracing the history of the right to protest up until some of the more recent instances of protests in this country, our guests share insights about the many moral and political purposes of this right in Canada.

In the Practice Corner, Steven Barrett, Managing Partner of Goldblatt Partners LLP, discusses the freedoms of expression, association, and assembly in the labour law context. We hear about the jurisprudence leading up to the Supreme Court's recognition of a constitutional right to strike and discuss how the Charter is litigated in employment and labour disputes. We also hear more about Bill 28 and the provincial government's use of the notwithstanding clause to limit the right to strike.

Find a FULL TRANSCRIPT of this episode HERE.

Case Links

In this episode, the following were discussed:

Cases:

Irwin Toy Ltd v Quebec (Attorney General), [1989] 1 SCR 927

Reference Re Public Service Employee Relations Act (Alta), [1987] 1 SCR 313

British Columbia Teachers' Federation v British Columbia, 2016 SCC 49

Dunmore v Ontario (Attorney General), 2001 SCC 94

Health Services and Support - Facilities Subsector Bargaining Assn v British Columbia, 2007 SCC 27

Mounted Police Association of Ontario v Canada (Attorney General), 2015 SCC 1

Ontario (Health) v Association of Ontario Midwives, 2022 ONCA 458

Saskatchewan Federation of Labour v Saskatchewan, 2015 SCC 4

OPSEU et al v Ontario, 2016 ONSC 2197

Bills:
Bill 28, Keeping Students in Class Act, 2022
Bill 115, Putting Students First Act
Bill 124, Protecting a Sustainable Public Sector for Future Generations Act, 2019

Statutes:
International Labour Organization conventions and recommendations
Labour Relations Act, 1995, S.O. 1995, c. 1
Wagner Act, United States [1935]
The Declaration of the Rights of Man and of the Citizen, 1789

Protests:
G 20 Protests
Black Lives Matter protest in the pride parade in Toronto
Freedom convoys in 2022
Protests at Fairy Creek
Wet'suwet'en protests
APEC protests at UBC

Additional Resources:
"Investment Law's Alibis: Colonialism, Imperialism, Debt and Development" by David Schneiderman
"Freedom of Expression in Canada" by Kent Roach and David Schneiderman
"Red, White, and Kind of Blue?: The Conservatives and the Americanization of Canadian Constitutional Culture" by David Schneiderman
Sara Slinn, Associate Professor at Osgoode
Previous episode with Professor Lorraine Weinrib: "Section 33 of the Charter: The Notwithstanding Clause"

About the Asper Centre

The Asper Centre, a part of the University of Toronto's Faculty of Law since 2008, is devoted to realizing constitutional rights through advocacy, research and education. The Centre aims to play a vital role in articulating Canada's constitutional vision to the broader world. The cornerstone of the Centre is a legal clinic that brings together students, faculty, and members of the bar to work on significant constitutional cases and advocacy initiatives. The Centre was established through a generous gift from U of T law alumnus David Asper (LLM '07).

Thank You's

Charter: A Course is proudly sponsored by the University of Toronto's affinity partner **TD Insurance**. We would like to thank our sponsor, and you can discover the benefits of affinity products here.

We would like to thank the creators of our theme music for Charter: A Course. Constitutional law professor Howie Kislowicz and law professor Rob Currie gave us the licence to use their constitutional law shanty in exchange for a donation to the Calgary Food Bank. The song's performers are: Vanessa

Carroll, Rob Currie, Howie Kislowicz, Avinash Kowshik, Anna Lund, Patricia Paradis, Elin Sigurdson, Lyle Skinner, and Dave Wright. You can listen to the entire shanty here: Charter a Course. Please consider contributing to your local food bank!

Thank you to Marisa Benjamin and to David McQuillan, JD students at the University of Toronto Faculty of Law and Asper Centre Research Assistants, for their contributions to the production of this episode.

Thank you to our wonderful guests on this episode: Martha Jackman, Bruce Porter, and Steven Barrett! Thank you to our audio editor Liam Morrison of Bell Room Media Solutions.