

# Freedom of Peaceful Assembly

*This article was written by a law student for the general public.*

## **SECTION 2(C): FREEDOM OF PEACEFUL ASSEMBLY**

Section 2(c) of the *Charter of Rights and Freedoms* guarantees the freedom of “peaceful assembly.”<sup>[1]</sup> It is one of the fundamental freedoms protected in the *Charter*. The section protects a person’s right to gather with others and express ideas.<sup>[2]</sup> The wording of section 2(c) qualifies the freedom, guaranteeing only peaceful assembly. It indicates that breaches of the peace, such as riots, receive no protection.<sup>[3]</sup>

Although drafted as a separate right, Canadian courts have not focused much attention on section 2(c). Instead, courts treat it as an aspect of a person’s freedom of expression, which is protected under section 2(b). Since people often gather to express themselves, courts have viewed freedom of expression as the more applicable freedom.<sup>[4]</sup>

As with other *Charter* freedoms, peaceful assembly has its limits. The freedom is subject to the “[notwithstanding clause](#),” which is section 33 of the *Charter*.<sup>[5]</sup> The notwithstanding clause lets a government override a decision of a court that allows peaceful assembly.

For example, picture a group that peacefully assembled to protest student dress codes. Then imagine that the Government passed a law prohibiting protests at schools. As such, the assembly is broken up. The protesters go to court and argue that this anti-protest law goes against 2(c) and the freedom of peaceful assembly. The court agrees, and finds the law unconstitutional and of no force. However, because of section 33, even if the court states that the law violates section 2(c) and is unconstitutional, the Government can invoke the notwithstanding clause and have the law stand.

Finally, like other *Charter* freedoms, the freedom of peaceful assembly is subject to section 1.<sup>[6]</sup> That section allows a government to justify an action that infringes freedom of peaceful assembly if it passes the [Oakes test](#).

Let us return to our hypothetical dress code protesters at court. However, in this scenario, the court looks at the law and finds that while it violates section 2(c), it is justified under section 1. That is, the Government justifies its actions and the court states that the law passes the requirements in the *Oakes test*. Because the law passes the *Oakes test*, the court would decide that even though it violates the freedom of peaceful assembly, the violation is justified.

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<sup>[1]</sup>[Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11, s 2(c).

[2] Canadian Heritage, "[Section 2 - Fundamental Freedoms](#)" Government of Canada (13 March 2013).

[3] Peter W Hogg, *Constitutional Law of Canada*, 2012 student ed (Toronto: Carswell, 2012) at 44-2.

[4] CED (West 4th), vol 12, title 30 at § 513.

[5] *Supra* note 1 at s 33.

[6] *Ibid* at s 1.