

IN THE SUPREME COURT OF CANADA
ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

BIG M DRUG MART LTD.

Respondent

- and -

THE ATTORNEY GENERAL OF CANADA
THE SEVENTH DAY ADVENTIST CHURCH
IN CANADA AND LONDON DRUGS LTD.

Intervenors in the Court
of Appeal of Alberta

FACTUM OF THE ATTORNEY GENERAL OF CANADA
- INTERVENOR -

For the names and addresses of the
Solicitors for the parties and their
respective Ottawa Agents see inside
following title page.

Attorney General of Alberta
9833 - 109th Street
Edmonton, Alberta
(403) 427-8015

Solicitor for the Appellant

Gowling & Henderson
Barristers & Solicitors
160 Elgin Street
Ottawa, Ontario
(613) 232-1781

Ottawa Agent for the Appellant

Zenith, Klym, Hookenson & Boyle
Barristers & Solicitors
#311, 6707 Elbow Drive, S.W.
Calgary, Alberta
(403) 259-5041

Solicitor for the Respondent

Macera & Jarzyna
Barristers & Solicitors
350 Sparks Street, Suite 505
Ottawa, Ontario
(613) 238-8173

Ottawa Agents for the Respondent

Roger Tassé, Esq., Q.C.
Deputy Attorney General of
Canada
Department of Justice
Wellington & Kent Streets
Ottawa, Ontario
(613) 992-4621

Solicitor for the Attorney
General of Canada

I N D E X

	<u>Page</u>
PART I STATEMENT OF FACTS	1
PART II POINTS IN ISSUE	3
PART III ARGUMENT	5
<u>Does the Lord's Day Act, R.S.C. 1970 c.1-13 and especially section 4 thereof, infringe upon the freedom of conscience and religion guaranteed in section 2(a) of the Canadian Charter of Rights and Freedoms?</u>	
(A) Reasons of the Majority of the Court of Appeal of Alberta	5
(i) Conclusion on the Preliminary Point and Response Thereto	6
(ii) Main Conclusion and Response Thereto	9
(a) Constitutional Development of Freedom of Conscience and Religion	10
(b) Judicial Definition of Freedom of Religion and Conscience in Canada	11
(c) Legislative History of Sunday Observance Legislation	12
(d) Judicial Consideration of Sunday Observance Legislation and Religious Freedom before the Charter ..	21
(1) Canada	21
(2) United States of America	24
(e) Conclusion	26

Is the Lord's Day Act, R.S.C. 1970
c.l-13 and especially section 4
thereof, justified on the basis of
section 1 of the Canadian Charter
of Rights and Freedoms? 27

Is the Lord's Day Act, R.S.C.
1970, c.L-13 and especially
section 4 thereof enacted pursuant
to the Criminal Law power under
section 91(27) of the Constitu-
tion Act, 1867? 34

PART IV NATURE OF ORDER DESIRED 41

PART V LIST OF AUTHORITIES

TABLE OF STATUTES AND ARTICLES

APPEAL NO. 18125

IN THE SUPREME COURT OF CANADA
ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

BIG M DRUG MART LTD.

Respondent

- and -

THE ATTORNEY GENERAL OF CANADA
THE SEVENTH DAY ADVENTIST CHURCH
IN CANADA AND LONDON DRUGS LTD.

Intervenors in the Court
of Appeal of Alberta

FACTUM OF THE ATTORNEY GENERAL OF CANADA
- INTERVENOR -

PART I

STATEMENT OF FACTS

1. The Attorney General of Canada accepts as correct the facts recited in Part I of the Appellant's Factum and includes the following additional facts.
2. The Summary Conviction Court found that the prosecution had been commenced with the leave of the Attorney General of Alberta.

Case on Appeal, page 73, lines 6 to 8

3. His Honour also found that the business premises of the Respondent were open to the public on the date on which the offence is alleged to have been committed, that day being a Sunday.

Case on Appeal, page 66, lines 6 to 10
page 73, lines 9 to 13

4. The Respondent was a subsisting Alberta company in good standing on the date on which the offence is alleged to have been committed and was the legal entity in charge of the premises and business being conducted thereon.

Case on Appeal, page 66, lines 11 to 14
page 70, lines 23 and 24
page 73, lines 14 to 18

5. The Summary Conviction Court did not find that the freedom of conscience or religion of the Respondent or any other person had been infringed or denied by section 4 of the Lord's Day Act.

6. The Summary Conviction Court concluded that the appropriate remedies were "dismissal of charges against the [Respondent] under section 24(1) of the Charter and a declaration pursuant to section 52(1) of the Charter, that section 4 of the Lord's Day Act was of no force or effect, as being inconsistent (sic) with the Charter". [Emphasis added].

Case on Appeal, page 102, lines 13 to 18

PART II

POINTS IN ISSUE

10 7. Does the Lord's Day Act, R.S.C. 1970, c.L-13 and especially section 4 thereof, infringe upon the freedom of conscience and religion guaranteed in section 2(a) of the Canadian Charter of Rights and Freedoms?

It is the position of the Attorney General of Canada that the Lord's Day Act, and especially section 4 thereof, does not infringe upon the freedom of conscience and religion guaranteed in section 2(a) of the Charter.

20 8. Is the Lord's Day Act, R.S.C. 1970, c.L-13 and especially section 4 thereof, justified on the basis of section 1 of the Canadian Charter of Rights and Freedoms?

If the Lord's Day Act and especially s.4 thereof, does infringe upon section 2(a) of the Charter, then, it is the position of the Attorney General of Canada, that it is justified on the basis of section 1 of the Charter.

30 9. Is the Lord's Day Act, R.S.C. 1970, c.L-13 and especially section 4 thereof, enacted pursuant to the criminal law power under section 91(27) of the Constitution Act, 1867?

It is the position of the Attorney General of Canada that the Lord's Day

Act and especially section 4 thereof is enacted pursuant to the criminal law power under section 91(27) of the Constitution Act, 1867.

PART III

STATEMENT OF ARGUMENT

I. DOES THE LORD'S DAY ACT, R.S.C. 1970, c.L-13 AND ESPECIALLY SECTION 4 THEREOF, INFRINGE UPON THE FREEDOM OF CONSCIENCE AND RELIGION GUARANTEED IN SECTION 2(a) OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS?

(A) REASONS OF THE MAJORITY OF THE COURT OF APPEAL OF ALBERTA

10. The majority of the Court of Appeal dismissed the appeal by the Attorney General of Alberta, having concluded that the Lord's Day Act infringed upon the freedom of conscience and religion guaranteed by section 2(a) of the Charter and was of no force or effect.

(i) Conclusion on the Preliminary Point and Response thereto

11. In the course of his reasons for the majority, Laycraft, J.A., rejected the preliminary point argued by counsel for the Attorney General of Canada that the Summary Conviction Court could not grant relief to the Respondent pursuant to section 24(1) of the Charter.

12. The argument was put on two bases. First, the Respondent being an artificial person, owing its creation and existence to legislative enactments, could not appreciate, exercise or enjoy the freedoms guaranteed in section 2(a) of the Charter. Secondly, there was no evidence before the Summary Conviction Court that a freedom guaranteed to the Respondent or any other person had been infringed or denied in fact. In rejecting the argument, the majority of the Court of Appeal for Alberta concluded that the word "everyone", where it appears in section 2(a) of the Charter, includes a body corporate and, further, that a corporation may have the good conscience and even the religion of its officers in the same way as it has been held to have the conscience of its officers.

Case on Appeal, page 152, lines 26 to 27

13. It is submitted that the majority of the Court of Appeal of Alberta erred in holding that the word "everyone" in section 2(a) of the Charter includes bodies corporate. Although the word "everyone" may, in certain circumstances, include bodies corporate, nevertheless, the context in which it appears may warrant a different construction. It is submitted that the context in which the word "everyone" appears in section 2(a) of the Charter, requires that it be

construed to refer to natural persons only, as it is only they who may appreciate, exercise or enjoy freedom of conscience and religion.

See: P.P.G. Industries Ltd. v. Attorney General of Canada, (1983), 3 C.C.C. (3d) 97 (B.C.C.A.) leave to appeal granted March 21, 1983

14. It is further submitted that the majority of the Court of Appeal of Alberta erred in extending the doctrine of "corporate mens rea" to embrace "corporate good conscience and religion", since the policy basis of corporate criminal responsibility is not applicable to any doctrine of corporate good conscience and religion.

See: Regina v. St. Lawrence Corp. Ltd. [1969] 2 O.R. 305 (C.A.) at 320; [1969] 3 C.C.C. 263 at 281 (C.A.)

Ewaschuk, "Corporate Criminal Liability and Related Matters" (1975) 29 C.R.N.S. 44 at 52-55

15. The majority dismissed the second basis on which the argument was put by concluding that it was irrelevant whether the Respondent's rights, guaranteed by the Charter, had been infringed or denied.

16. It is submitted that they also erred in reaching that conclusion since, as a matter of construction, proof, by an applicant for relief under section 24(1) of the Charter, of infringement or denial of a right guaranteed to such applicant by the Charter, is a condition precedent to obtaining relief under that subsection 24(1).

17. It is submitted further that they failed to distinguish between a declaration of inconsistency pursuant to section 52(1) of the Constitution Act, 1982 and a remedy under section 24(1) of the Charter. In this case, it was open to the Respondent to raise, by way of defence to the charge, any perceived inconsistency between section 4 of the Lord's Day Act and section 2(a) of the Charter. If successful, the remedy would have been a dismissal of the information pursuant to section 739 of the Criminal Code, on the ground that the Respondent had not committed an offence, the law which it was alleged to have violated having been declared to be of no force or effect. It is submitted that this result would not entitle the Respondent to a remedy under section 24(1) as the Summary Conviction Court and the majority of the Court of Appeal of Alberta have held.

(ii) Main Conclusion and Response Thereto

18. The majority rested their main conclusion that the Lord's Day Act infringes the freedom of conscience and religion guaranteed in section 2(a) of the Charter upon the following grounds:

- (i) The Lord's Day Act has a religious purpose, namely, to enforce the Sunday of the majority of the Christian religion.

Case on Appeal, page 158, lines 1 to 29

- (ii) The Lord's Day Act imposes a coercive burden on the free exercise of conscience and religion because it imposes an economic penalty on Canadians whose religions require them to observe another day of the week as a holy day or who, having no religious beliefs, object to the enforcement of a Christian day.

Case on Appeal, page 164, lines 31 to 49

- (iii) The Lord's Day Act imposes "the moral power of the state on one side of the dispute between its citizens in which the State must take no part".

Case on Appeal, page 165, lines 25 to 33

- (iv) The decision of this Court in Robertson and Rosetanni v. The Queen [1963] S.C.R. 651 was not binding because of "the enhanced status of the Charter as well as the different language in it" [in contrast to the language in the Canadian Bill of Rights]

Case on Appeal, page 169, lines 28 to 48

- (v) The Lord's Day Act is not justifiable under section 1 of the Charter.

Case on Appeal, page 170, line 1 to
page 173, line 9

18(a). It is submitted, for the reasons that follow that the majority of the Court of Appeal of Alberta erred in reaching their main conclusion.

18(b). The majority of the Court of Appeal did not attempt a general definition of the freedom of conscience and religion guaranteed in section 2(a) of the Charter; Laycraft, J.A. merely stated:

Whatever is comprehended by the terms, [freedom of conscience or religion] however, at the very least they mean that henceforth in Canada government shall not choose sides in sectarian controversy. [Emphasis added]

Case on Appeal, page 161, lines 1 to 23

19. It is submitted that Laycraft, J.A. erred in including an anti-establishment component in his definition of freedom of conscience and religion. His Lordship disregarded the constitutional history of freedom of religion in Canada, the consistent and unanimous judicial definition of that freedom, up to Walter v. Attorney General of Alberta, [1969] S.C.R. 383, and accepted uncritically, and was influenced by, principles developed by American courts in response to different constitutional imperatives.

20. It is submitted that the rights and freedoms entrenched in the Charter must be interpreted having regard to the laws in existence on the date of its coming into force and to the history of the development of such rights and freedoms.

See: Rauca v. The Queen et al (1983) 41 O.R. (2d) 225 (C.A.) aff'g. (1982) 38 O.R. (2d) 705

Minister of Home Affairs v. Fisher
[1980] A.C. 319 at p.329

(a) Constitutional Development of
Freedom of Conscience and Religion

21. The historical development of religious freedom in pre-Confederation Canada demonstrates an evolution from the establishment of the Roman Catholic Church with disabilities on Protestants in New France, to the establishment of the Church of England with disabilities on Roman Catholics and other religious minorities throughout English speaking Canada, and finally the gradual separation of Church and State with the amelioration of disabilities, pragmatically, on the British model.

See: Schmeiser, Civil Liberties in Canada
(Oxford University Press, 1964) at
pp. 60 to 70

22. A noteworthy feature of this evolution was the enactment by the legislature of the Province of Canada in 1852 of 14-15 Victoria c.175 (still in force in Quebec as section 1 of the Freedom of Worship Act, R.S.Q. 1977, c.L-2 and in Ontario as the Religious Freedom Act, R.S.O. 1980 c.447). It is submitted that the protections given by the statute of 1852, were "a fundamental principle of the constitution of the entire country".

See: Schmeiser, Civil Liberties in Canada,
supra

Saumur v. The City of Quebec [1953] 2
S.C.R. 299, per Rand J. at 327, per
Kellock J. at 346

23. It is submitted that sections 93 and 146 of the British North America (now the Constitution) Act, 1867

indicate that at Confederation, our constitution did not embrace anti-establishmentarianism.

See: The Constitution Act, 1867, s.93

Manitoba Act, 1870, 33 Vict., c.3
(Canada), s.22, confirmed by the
Constitution Act, 1871

Alberta Act, 4-5 Edw.VII, c.3, s.17

Saskatchewan Act, 4-5 Edw. VII, c.42,
s.17

Term 17 of Terms of Union of Newfound-
land with Canada confirmed by British
North America Act, 1949, 12-13 Geo.VI,
c.22 (U.K.)

24. As evidenced by the United Nations Charter, the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, universal concern for the protection of human and political rights increased dramatically after the Second World War. Concern in Canada for the protection of civil liberties in a written document developed as part of that international movement. Starting with the Saskatchewan Bill of Rights in 1947, the Provinces responded by enacting legislation to protect civil and political rights, by prohibiting, inter alia, discrimination based on religion. In 1960 Parliament responded by enacting the Canadian Bill of Rights. Section 1(c) of the Canadian Bill of Rights protected "freedom of religion". But, that protection was

limited by the constitutional reach of Parliament's legislative jurisdiction.

See: Tarnopolsky, The Canadian Bill of Rights (2d) (McClelland and Stewart Ltd., Toronto, 1975), pp.1 to 23.

10

25. The Charter represents the most recent development in the evolution of the constitutional protection of freedom of conscience and religion. It is submitted that the entrenchment of the Charter was in part a consequence of further developments in the international movement, such as the International Covenant on Civil and Political Rights, to which Canada adhered in 1976. In section 2(a) of the Charter, freedom of conscience and religion is entrenched and guaranteed. In section 29, section 93 of the Constitution Act, 1867 is expressly preserved and entrenched.

26. In contrast to the Charter, the First Amendment to the Constitution of the United States of America and section 116 of the Australian Constitution not only guarantee the free exercise of religion but also expressly prohibit the making of any law for the establishment of religion.

27. As Belzil J.A. has observed in the minority reasons of the Court of Appeal of Alberta, the social and political problems which gave rise to the enactment of the anti-establishment provision in the First Amendment to the Constitution of the United States had been solved in Canada through evolution. There was, therefore, no need to make similar provision in the Charter or to interpret the Charter so as to embrace such a provision.

Case on Appeal, page 194, line 44 to
page 195, line 30

28. It is submitted, furthermore, that a construction of section 2(a) so as to include an anti-establishment component would contradict the express provisions of section 29 of the Charter, which recognizes state intervention in religious matters.

10

20

30

(b) Judicial Definition of Freedom of Religion and Conscience in Canada

29. Both before and after the enactment of the Canadian Bill of Rights, Canadian Courts have been unanimous in their definition of "freedom of religion", to include not only freedom of belief, freedom of thought, freedom of worship and freedom of expression, but also freedom of conscience.

See: Saumur v. City of Calgary, supra

Chaput v. Romain and Attorney General of Quebec [1955] S.C.R. 834, 840, 859, 864

Robertson and Rosetanni v. The Queen, supra

Walter et al v. Attorney General of Alberta et al, supra

30. Indeed, Cartwright, J. (as he then was) in his lone dissent in Robertson and Rosetanni, supra, expressly agreed with Ritchie, J. that a quotation from the dissenting judgment of Frankfurter, J. in Board of Education v. Barnette (1943) 319 U.S. 624 at 653, had appropriately described freedom of religion in the context of the Canadian Bill of Rights. His Lordship stated at page 660 [1963] S.C.R.:

I agree with my brother Ritchie that the following words which he quotes from the judgment of Frankfurter J. in Board of Education v. Barnette, supra, are appropriate to describe the freedom of religion referred to in the Canadian Bill of Rights:

Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma.

10 31. The definition of freedom of religion developed by Canadian Courts is not dissimilar to the meaning given to that phrase in the United States. D.A. Schmeiser, states that Stokes, in his work Church and State in the United States, was unable to find in American jurisprudence, a generally accepted definition of the phrase but eventually concluded that the phrase connoted the following seven freedoms:

1. Freedom of conscience;
2. Freedom of worship;
3. Freedom of association;
4. Freedom of propaganda;
5. Freedom of civil disability;
6. Freedom from discrimination against any or all religions by the State and the evidencing of impartial sympathy toward their work;
7. Freedom of the Church, or any part of it, from control due to any financial, political or other connection with the State.

20
30 Schmeiser also explains that any difference between the meanings developed in Canada and in the United States is attributable to the constitutional injunction in the United States, absent in Canada, against establishment of religion.

See: Schmeiser, Civil Liberties in Canada,
supra, pp. 54 to 59

40 32. Canadian jurisprudence is bereft of any notion that freedom of religion enjoined the state from choosing sides in "sectarian controversy" or from taking sides in "sectarian disputes". This is not surprising, in view of the provisions of sections 93 and 146 of the Constitution Act, 1867.

33. It is submitted that freedom of conscience and religion entrenched in section 2(a) of the Charter has the same meaning that it had in Canada before the Charter came into force. In this connection, the Attorney General of Canada respectfully adopts the minority reasons of Belzil, J.A. where he said:

The Charter does not purport to change the meaning of words and in particular the meaning of "freedom of conscience and religion" as traditionally and universally understood and earlier defined as the birthright of every human being. The "freedom of religion" declared and secured by the Canadian Bill of Rights in 1960 and considered by the Supreme Court of Canada in Robertson and Rosetanni has the same meaning as the "freedom of conscience and religion" guaranteed by the Charter of Rights in 1981.

Case on Appeal, p.189, lines 16-32

34. It is submitted, however, that in adopting these reasons it is not contended that the concept is immutable, since in its application to particular laws, Canadian Courts might well enlarge its meaning.

See: Regina v. Potma, (1983), 41 O.R. (2d) 43 (C.A.) at 52

35. If the majority of the Court of Appeal is correct in their conclusion as to the reach of section 2(a), then, it is submitted that provincial laws enacted for the

protection of education rights of religious minorities either are limits on the freedom or are inconsistent with it. For the same reasons, subsection (2) of section 110 and section 143 of the Income Tax Act, R.S.C. 1952, c.148, as amended, and section 172 of the Criminal Code, R.S.C. 1970, c.34, as amended, would also be inconsistent with that freedom. So also would be provincial laws such as the Religious Societies' Land Act, R.S.A. 1980, c.R-14, as amended.

(c) Legislative History of Sunday Observance Legislation

36. Sunday observance legislation has a long and well documented history in the Western world.

See: Holmestead: Sunday Law in Canada, pp.16 to 34

Report on Sunday Observance Legislation
Ontario Law Reform Commission, Appen-
dices I & II, pp. 383 to 404

37. Following the decisions of the Judicial Committee in Attorney General for Ontario v. Hamilton Street Railway Company [1903] A.C. 524, and of this Court in Re Legislation Respecting Abstention From Labour on Sunday [1905] S.C.R. 581, Parliament enacted An Act respecting the Lord's Day in 1906. In moving second reading, the Honourable Charles Fitzpatrick, who, on June 4 of that same year, was appointed Chief Justice of Canada, rejected the contention that the Lord's Day Act infringed upon religious freedom. He stated as follows:

The Bill is entitled "An Act respecting the Lord's Day". From this it must not be inferred that it is intended to regulate or in any way to affect the question of the religious observance of the Sabbath. Religious freedom, legal equality amongst all religious denominations is an admitted principle of legislation in all the colonies of Great Britain, and as consecrated by the terms of the Consolidated Statutes of Canada, 1859, Chapter 74 ...

The Honourable Minister continued and explained the purpose of the legislation:

This Bill is really intended to provide a day of rest for all, so that each man may be free to abstain from labour, and if he so desires, to give one day in the week to the service of his Creator. In my judgment it is always desirable to abstain from placing an individual in the position of being obliged to choose between his honest religious convictions and his personal gain. There are, of course, in this country great commercial interests which have to be considered, and we have also to bear in mind the needs of the great consuming class, and I feel that a careful examination of this Bill will show that they have not been overlooked; ...

Debates of the House of Commons, Second Session, Tenth Parliament, Vol.LXXVI, April 3, 1906, page 1010

38. This view of the purpose of the legislation was echoed by Kellock, J. in Henry Birks & Sons (Montreal) Ltd. et al v. City of Montreal et al [1955] S.C.R. 799 at 823, where he stated:

While Sunday is often and popularly referred to as the Sabbath, the original Sabbath was, of course, not that day at all. Blackstone long ago pointed out (vol.4, p.63) that Sunday became a special object of the attention of Parliament not only because of its significance in the Christian religion but because the keeping of one day in seven "as a time of relaxation and refreshment as well as for public worship, is of admirable service to a state, considered merely as a civil institution". No such twofold significance attaches to any of the six days mentioned in the present legislation.

39. The Lord's Day Act, as enacted, and in its present form, prohibits with certain exceptions, business and other specified activities on Sunday. In The Corporation of the City of Hamilton v. The Canadian Transportation Commission et al [1978] 1 S.C.R. 640, Martland, J. for a unanimous court, reviewed the provisions of the Act and concluded at p.644:

The Act does not purport to regulate the conduct of individuals so as to prevent their interfering with the sanctity of Sunday, or with Sunday observance by others. The provisions making it unlawful to provide or be present at public games or public performances on a Sunday apply only if the public game is for gain, prize or reward or a fee is charged for admission to the performance. Similarly with respect to Sunday excursions, it is only if they are operated for hire that they are forbidden. This emphasizes the fact that the purpose of the Act is not to protect Sunday observance from the conduct of others. The Act seeks to obtain Sunday observance by persons by prohibiting them from engaging in a gainful occupation or employment on that day.

40. On its face, section 4 prohibits specified secular activities only. It does not prevent anyone from giving expression to religious beliefs in any form. It does not coerce adherence to any religion or any religious practice. Provincial variation is permitted by the inclusion of the clause "except as provided in any Provincial Act or law now or hereafter in force". Pursuant to this clause, Provincial legislatures and the Territories enacted legislation such as was considered by the Judicial Committee in Lord's Day Alliance of Canada v. Attorney General for Manitoba [1925] A.C. 384 (P.C.) and by this Court in Lord's Day Alliance of Canada v. Attorney General of British Columbia [1959] S.C.R. 497.

(d) Judicial Consideration of Sunday
Observance Legislation and Reli-
gious Freedom before the Charter

(1) Canada

The Lord's Day Act and the
Canadian Bill of Rights

41. In Robertson and Rosetanni v. The Queen, supra, this Court considered the question as to whether section 4 of the Lord's Day Act infringed or abrogated the freedom of religion protected by the Canadian Bill of Rights. By a 4:1 majority the Court concluded that it did not. Ritchie, J., writing for the majority, based his conclusion on the definition of freedom of religion adumbrated in the earlier cases and the effect of the statute on the freedom as so defined.

See: Robertson and Rosetanni, supra, at 657,
658

42. In contrast, the dissent of Cartwright J. (as he then was) emphasized the purpose of the legislation. It is submitted that in looking to the effect of the statute as being decisive of the issue, Ritchie, J. used an approach similar to that of Warren, C.J. in Braunfeld v. Brown, 366 U.S. 579. Such an approach was used by this Court to determine the constitutional validity of legislation in:

Texada Mines Ltd. v. Attorney General of
British Columbia [1960] S.C.R. 713 at
718

Attorney General of Canada v. Reader's
Digest Association of Canada [1961]
S.C.R. 775 at 792

43. The decision in Robertson and Rosetanni, supra, was followed by the Appellate Division of the Alberta Supreme Court in Regina v. Boardwalk Merchandise Mart Ltd. et al (1972), 10 C.C.C. (2d) 50 (Alta.C.A.).

10

0

The Lord's Day Act and the
Charter of Rights and Freedoms

44. As mentioned earlier, section 2(a) of the Charter falls to be interpreted not only in light of the international developments respecting the protection of civil liberties which gave rise to its enactment, but also in light of judicial authority.

45. Accordingly, it is submitted that the conclusion of the majority of this Court in Robertson and Rosetanni v. The Queen, supra as to the effect of section 4 of the Lord's Day Act on the freedom protected by section 1(c) of the Canadian Bill of Rights applies with equal validity to its effect on section 2(a) of the Charter. The Attorney General of Canada, therefore, respectfully, adopts the following passage from the minority reasons of Belzil, J.A.:

The effect of the Lord's Day Act upon that same freedom of conscience and religion has been decided in Robertson and Rosetanni. While it may be technically true that this court is not bound in this case by Robertson and Rosetanni because the two cases deal with different documents, yet the interpretation by the Supreme Court of Canada of the same provision of the Lord's Day Act and the same fundamental right of freedom of conscience and religion is compelling.

Case on Appeal, page 189, lines 30 to 46

(2) United States of America

Sunday Observance Legislation
and the First Amendment

46. In the United States, despite the constitutional injunction in the First Amendment against establishment of religion the Supreme Court has consistently upheld Sunday observance legislation as being constitutionally valid.

47. In McGowan v. Maryland, 366 U.S. 420 and Two Guys from Harrison-Allentown Inc. v. McGinley, 366 U.S. 582 the appellants based their arguments on economic injury inflicted by the operation of the legislation. The majority of the Court ruled in both cases, that because no evidence of religious denomination had been introduced, the appellants lacked standing to mount their argument on the "free exercise" clause. The appellants were thereby forced to rely on the "establishment clause". The majority of the court concluded that Sunday closing laws had been divorced from the original religious purpose and that the present purpose was to provide a day of rest for all citizens. Since the primary purpose of the legislation was not to aid, or prefer one religion over another, it did not violate the establishment clause.

48. In Braunfeld et al v. Brown, supra and Gallagher v. Crown Kasher Super Market of Massachusetts Inc. et al 366 U.S. 617, certain members of the Orthodox Jewish faith, had standing to argue that Sunday closing laws prevented the free exercise of their religion. They argued that if required by law to abstain from business on Sunday, then they suffered an extreme economic disadvantage, because their religion required them to close from sundown Friday to

to sundown Saturday. In Braunfeld, supra, Warren C.J. speaking for a majority of the court rejected the argument for reasons similar to those given by Ritchie J. in Robertson and Rosetanni in validating section 4 of the Lord's Day Act.

See: Braunfeld v. Brown, supra, at 605, 606

49. The authority of Braunfeld, supra, was confirmed by the majority of the United States Supreme Court in Sherbert v. Verner, 374 U.S. 398, (relied on by the majority of the Court of Appeal of Alberta for support in striking down section 4 of the Lord's Day Act) where that Court concluded that state legislation could not be applied so as to deny unemployment compensation benefits to a member of the Jehovah's Witness sect by reason only of her refusal to work on Saturdays.

(e) CONCLUSION

50. The Attorney General of Canada, therefore, submits that the Lord's Day Act, R.S.C. 1970, c.L-13 and especially section 4 thereof does not infringe upon the freedom of conscience and religion guaranteed in section 2(a) of the Canadian Charter of Rights and Freedoms.

II. IS THE LORD'S DAY ACT, R.S.C. 1970, c.L-13 AND ESPECIALLY SECTION 4 THEREOF, JUSTIFIED ON THE BASIS OF SECTION 1 OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS?

51. The majority of the Court of Appeal of Alberta concluded that the Lord's Day Act was not justifiable under section 1 of the Charter.

52. They rested their conclusion on this issue on two grounds:

- (a) the purpose and effect of the Lord's Day Act is religious and not merely to enforce a day of rest;
- (b) the Lord's Day Act contains few exemptions from its prohibitions.

Case on Appeal, page 170, line 1 to
page 173, line 9

53. It is submitted that they erred in reaching that conclusion.

54. It is submitted that the question of justification under section 1 of the Charter should be considered only if the Respondent discharges the onus of proving that the freedom of conscience and religion guaranteed to it in section 2(a) of the Charter has been infringed or denied. As already mentioned there was no evidence of such infringement or denial before the Summary Conviction Court, and none was tendered before the Court of Appeal of Alberta.

55. It is submitted further that in examining the Lord's Day Act to determine whether it is justifiable under section 1 of the Charter, regard must be had to its history and purpose.

56. As mentioned earlier, after the Judicial Committee had invalidated Ontario Sunday observance legislation in Hamilton Street Railway, supra, and this Court had made it plain in In re Jurisdiction of a Province to Legislate Respecting Abstention from Labour on Sunday (1905) 35 S.C.R. 581 at 592:

"...that legislation having for its object the compulsory observance of such day [Sunday] or the fixing of rules of conduct (with the usual sanctions) to be followed on that day is legislation properly falling ... within the jurisdiction of the Dominion Parliament",

there arose throughout Canada a great demand for Federal Sunday observance legislation. Parliament responded to this demand by enacting the Lord's Day Act, in which it sought to reconcile competing religious, economic and regional interests.

See: Debates of the House of Commons, supra, page 5625

57. In Committee, Sir Wilfred Laurier stated the two objectives of the Bill. He said that the first objective was "to give sanction to the divine precept that Sunday shall be made a day of rest and that there shall be no work

on that day". He articulated the second objective as follows:

Now, the secondary principle of this Bill, in my estimation, is perhaps as important as any other part of it, and it is this, to provide that every labouring man shall have a day of rest. This is the corollary to the first principle of the Bill, and that is the reason why, we have introduced this legislation.

Debates of the House of Commons, supra,
pp. 5638 and 5642

58. As mentioned earlier (paragraph 38) Kellock J. had explained in Henry Birks & Sons (Montreal) Ltd. et al v. City of Montreal et al, supra, that since Blackstone's time the English Parliament had recognized a valid state interest in Sunday observance legislation having these two objectives.

59. The legislation in its present form has achieved these objectives by:

- (a) Prohibiting certain secular activities on the Lord's Day as defined (ss.4, 5, 6, 7, 8, 9 and 10);
- (b) Exempting other activities from such prohibition (ss.3 and 11);

- (c) Requiring employers to provide an alternative day of rest for employees required to work on the Lord's Day (s.5);
- (d) Providing for local option in accordance with Provincial laws (ss.4, 6, 7 and 15);
- (e) Requiring the consent of the Provincial Attorneys General as a condition precedent to the institution of prosecutions for violations of its prohibitions (s.16).

60. It is submitted that in designing this legislative scheme, Parliament has employed means proportionate to the objectives envisaged by the Act. The Act secures the sanctity of the Lord's Day, provides for a day of rest without regard to religious faith or preference, and provides for local options to meet the demands of an evolving pluralist society. In other words, by its terms, the Act represents a balancing of competing social interests.

61. It is submitted further that in enacting the Lord's Day Act Parliament was mindful not to encroach upon freedom of religion as it was then understood. This is evident from the Debates and in particular from the following passage in which Sir Wilfrid Laurier responded to a member's claim that the Bill was depriving Roman Catholics of liberty of conscience:

The law does not provide that a man on Sunday shall be obliged to go to church, shall be obliged to wear certain garments, to do certain things upon this line and that; the liberty of the subject is not interfered with in this respect, and a man can do on the Sabbath whatever he pleases to do. There is no exception to his liberty except this, that he is not allowed to work.

Debates of the House of Commons, supra,
page 5639

62. It is submitted, therefore, that the Lord's Day Act satisfies the test of reasonableness articulated and applied by Evans C.J.H.C. in Federal Republic of Germany v. Rauca (1983) 38 O.R. (2d) 705 (H.C.J.) aff'd. sub nom. Rauca v. The Queen (1983) 41 O.R. (2d) 225 (C.A.) where he said at 715:

The phrase "reasonable limits" in section 1 imports an objective test of validity. It is the judge who must determine whether a "limit" as found in legislation is reasonable or unreasonable. The question is not whether the judge agrees with the limitation but whether he considers that there is a rational basis for it - a basis that would be regarded as being within the bounds of reason by fair-minded people accustomed to the norms of a free and democratic society. That is the crucible in which the concept of reasonableness must be tested.

It is also submitted that the Act satisfies the test of reasonableness articulated and applied in Deschênes C.J. in Québec Association of Protestant School Boards et al v. A.G. Québec et al (1982) 140 D.L.R. 33 (Que.S.C.) (appeal dismissed, Que. C.A., June 9, 1983, leave to appeal granted, S.C.C., September 20, 1983), where he stated at p.77:

- (i) a limit is reasonable if it is a proportionate means for achieving the objective envisaged by the statute;
- (ii) proof of the contrary implies proof not only of an error, but of an error that offends common sense;
- (iii) the Court must not give in lightly to the temptation to substitute their opinion for that of the legislature.

63. It is submitted that the Act is a limit prescribed by law, since, as will be demonstrated later, it was duly enacted by a Parliament competent to do so.

64. It is submitted that such a limit is demonstrably justified in a free and democratic society. Laws of similar import exist in democratic countries such as the United States, Australia, New Zealand and the United Kingdom where constitutional protection of freedom of conscience and religion is no less secure than it is in Canada.

See: Shop Trading Hours Act 1977, R.S.N.Z., Vol.7

Factories, Shops and Industries Act, 1962, No. 43 (N.S.W., Australia)

Labour and Industry (Amendment) Act, 1981 (Victoria, Australia)

Labour and Industry (Shop Trading Hours) Act, 1971 (Victoria, Australia)

Labour and Industry (Shop Closing) Act, 1970 (Victoria, Australia)

Labour and Industry (Shop Trading Hours) Act, 1968 (Victoria, Australia)

Shops Act, 1950 (c.28), Part IV (U.K.)

Sunday Observance Act, 1833 (c.31)(U.K.)

Sunday Theatre Act, 1972 (c.26)(U.K.)

Sunday Cinema Act, 1972 (c.19)(U.K.)

Sunday Entertainments Act, 1932 (22 and 23, Geo. 5, c.31)(U.K.)

Sunday Observance Act, 1780 (21 Geo.3, c.49)(U.K.)

65. In addition to these submissions, the Attorney General of Canada adopts paragraphs 33 to 35 inclusive of the Factum of the Attorney General of Alberta.

66. If, therefore, this Court should conclude that the Lord's Day Act, and especially section 4 thereof infringes upon the freedom of religion in section 2(a) of the Charter, then, the Attorney General of Canada submits that the Act is justified on the basis of section 1 of the Charter.

III. IS THE LORD'S DAY ACT, R.S.C. 1970, c.L-13 AND ESPECIALLY SECTION 4 THEREOF ENACTED PURSUANT TO THE CRIMINAL LAW POWER UNDER SECTION 91(27) OF THE CONSTITUTION ACT, 1867?

67. The Court of Appeal of Alberta was unanimous that the Lord's Day Act was enacted pursuant to the Criminal Law power assigned to Parliament by section 91(27) of the Constitution Act, 1867.

Case on Appeal, page 142, line 1 to
page 148, line 8

page 175, line 1 to
page 176, line 30

68. It is submitted that they were correct in their conclusion.

69. In 1903 the Judicial Committee in Attorney General for Ontario v. Hamilton Street Railway Company, supra, declared the Ontario Sunday observance statute entitled an Act to Prevent the Profanation of the Lord's Day ultra vires the legislature of that Province, as being legislation in relation to criminal law.

70. In 1905 the Governor General in Council referred to this Court for hearing and consideration, the question as to whether the legislature of a province had authority to enact a statute in terms of a draft Bill respecting abstention from labour on Sunday. The Bill provided for a weekly day of rest on Sunday and prohibited certain conduct on that day, violations of which were punishable by fines. A majority of the Court followed the decision of the

Judicial Committee in Attorney General for Ontario v. Hamilton Street Railway Company, supra and concluded that the Bill as a whole was ultra vires of a Provincial legislature.

See: In re Legislation Respecting Abstention From Labour on Sunday, supra

71. Following this decision, and in response to widespread demands for Sunday observance legislation, Parliament enacted the Lord's Day Act in 1906. The essential terms of that statute are identical to those of the present statute.

72. In Quimet v. Bazin [1912] 46 S.C.R. 502, this Court, by a majority, invalidated a Quebec statute entitled An Act respecting the Observance of Sunday on the ground that it was legislation in relation to criminal law. Fitzpatrick C.J., for the majority, stated at p.505, that the legislation was designed to promote public order, safety and morals. Duff J., as he then was, in a separate concurring opinion said at p.525:

.The enactment appears to me, in effect, to treat the acts prohibited as constituting a profanation of the Christian institution of the Lord's Day and to declare them punishable as such. Such an enactment we are, in my opinion, bound to hold, on the authority of The Attorney General v. Hamilton Street Railway Co.(1), to be an enactment dealing with the subject of the criminal law.

73. Parliament's jurisdiction in relation to prohibitory Sunday observance legislation is exclusive.

See: La Corporation de la Paroisse de St. Prosper v. Rodrigue [1917] 56 S.C.R. 157 at 162

74. The Lord's Day Act reached the Judicial Committee in Lord's Day Alliance of Canada v. Attorney General of Manitoba [1925] A.C. 384. There the Court was required to determine the validity of a Manitoba statute permitting Sunday excursions. In delivering the judgment of the Court, Lord Blanesburgh reviewed the history of Sunday observance legislation in Canada and confirmed the authority of Attorney General for Ontario v. Hamilton Street Railway Company, supra, that prohibitory legislation with reference to Sunday observance was within the exclusive legislative authority of Parliament under section 91(27) of the Constitution Act, 1867.

75. In Henry Birks & Sons (Montreal) Ltd. v. The City of Montreal, supra, this Court again confirmed that prohibitory Sunday observance legislation such as the Lord's Day Act was part of the criminal law and as such within the legislative authority of Parliament.

76 Although the constitutional validity of the Lord's Day Act was not in issue in Robertson and Rosetanni v. The Queen, supra, Ritchie J. in his majority reasons did observe at page 656 to 657 [1963] S.C.R. that:

... since the decision in Attorney General for Ontario vs. Hamilton Street Railway, it has been accepted that such legislation and the penalties imposed for its breach, constitutes a part of the criminal law in its widest sense and is thus reserved to the Parliament of Canada by s.91(27) of the British North America Act.

77. In Regina v. Boardwalk Merchandise Mart Ltd.,
supra, the Court of Appeal of Alberta considered the
question settled by authority.

78. Finally, in The Corporation of the City of
Hamilton v. The Canadian Transportation Commission [1978] 1
S.C.R. 640, this Court (at 642 - 643) reaffirmed the
constitutional validity of the statute as being legislation
in relation to criminal law.

79. The rationale for deciding and maintaining for the
better part of a century that the Lord's Day Act is legisla-
tion in relation to Criminal law was stated by the Chief
Justice of this Court in delivering the majority judgment in
Quimet v. Bazin, supra, when he said, at p.507, [in relation
to Quebec legislation having the same purport];

...the evident object [is] to conserve
public morality and to provide for the
peace and order of the public on the
Lord's Day.

80. That the maintenance of public morality, public
peace and order is the proper subject of the criminal law
power has been confirmed by numerous authorities.

See: Proprietary Articles Trade Association
v. Attorney General of Canada [1931]
A.C. 310 at 323 to 324

Reference re Section 5(a) of the Dairy
Industry Act [1949] S.C.R. 1 at 49 to 51

Johnson v. The Attorney General of
Canada [1954] S.C.R. 127 at 150

Labatt Breweries of Canada Limited v.
The Attorney General of Canada [1980]
1 S.C.R. 914 at 932 to 933

81. Since the constitutional validity of the Lord's Day Act as legislation in relation to criminal law has subsisted for almost a century, it is submitted that this Court would be warranted in assigning it a different constitutional characterization only if it is shown that:

...New appreciations thrown up by new social conditions, or re-assessments of old appreciations which new or altered social conditions induce make it appropriate...

See: The Queen v. Zelensky [1978] 2 S.C.R. 940 at 950 to 951

82. It is submitted that these prerequisites cannot be shown in this appeal. As Laycraft, J.A. has observed in his majority reasons:

Even assuming for the purpose of argument that changing public perceptions or attitudes could render ultra vires, a statute found repeatedly by the Courts over three-quarters of a century to be within federal powers, nothing demonstrates the profound change in public attitudes in the last six years which would be required to warrant the conclusion reached [by the Summary Conviction Court].

Case on Appeal, pages 147 to 148

83. It is submitted finally that in deciding whether the Lord's Day Act should now receive a different constitutional characterization, this Court should consider the

following statement of Viscount Simon in Attorney General for Ontario v. Canada Temperance Federation [1946] A.C. 193, in which the Judicial Committee was urged to overrule its previous decision in Russell v. The Queen (1882) 7 App. Cas. 829. His Lordship stated at p.206:

The appellants' first contention is that Russell's case ... was wrongly decided and ought to be overruled. Their Lordships do not doubt that in tendering humble advice to His Majesty they are not absolutely bound by previous decisions of the Board, as is the House of Lords by its own judgments. ... But on constitutional questions it must be seldom indeed that the Board would depart from a previous decision which it may be assumed will have been acted on both by government and subjects. In the present case the decision now sought to be overruled has stood for over sixty years; the Act has been put into operation for varying periods in many places in the Dominion; under its provisions businesses must have been closed, fines and imprisonments for breaches of the Act have been imposed and suffered. Time and again the occasion has arisen when the Board could have overruled the decision had it thought it wrong. Accordingly, in the opinion of their Lordships, the decision must be regarded as firmly embedded in the constitutional law of Canada, and it is impossible now to depart from it.

See also: Re Agricultural Products Marketing Act [1978] 2 S.C.R. 1198 at 1257

Sellars v. Her Majesty the Queen [1980] 1 S.C.R. 527

Constitution Act, 1982, s.31

84. It is submitted, therefore, that the Lord's Day Act and especially section 4 thereof is enacted pursuant to the criminal law power under section 91(27) of the Constitution Act, 1867.

PART IV

NATURE OF ORDER DESIRED

85. The Attorney General of Canada submits that the Constitutional questions posed in the order made by the Chief Justice of this Court should be answered as follows:

1. That the Lord's Day Act, and especially section 4 thereof, does not infringe upon the freedom of conscience and religion guaranteed in section 2(a) of the Canadian Charter of Rights and Freedoms.
2. That if the Lord's Day Act, and especially section 4 thereof, does infringe upon the freedom of conscience and religion guaranteed in section 2(a) of the Canadian Charter of Rights and Freedoms, then, it is justified on the basis of section 1 of the Canadian Charter of Rights and Freedoms.
3. That the Lord's Day Act and especially section 4 thereof is enacted pursuant to the criminal law power under section 91(27) of the Constitution Act, 1867.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,



Julius A. Isaac



Virginia L. Davies

of Counsel for the Attorney
General of Canada

LIST OF AUTHORITIES

	<u>Tab</u>
<u>Attorney-General for Ontario et. al.</u> <u>v. Canada Temperance Federation et. al.,</u> [1946] A.C. 193 (P.C.)	1
<u>Attorney-General for Ontario</u> <u>v. The Hamilton Street Railway Company et. al.,</u> [1903] A.C. 524 (P.C.)	2
<u>The Attorney General of Canada</u> <u>v. The Reader's Digest Association (Canada) Ltd.</u> [1961] S.C.R. 775	3
<u>Braunfeld v. Brown,</u> 366 U.S. 599	4
<u>West Virginia State Board of Education et al</u> <u>v. Barnette et. al.,</u> 319 U.S. 624	5
<u>Chaput v. Romain et. al.,</u> [1955] S.C.R. 834	6
<u>The Corporation of the City of Hamilton</u> <u>v. The Canadian Transport Commission et. al.,</u> [1978] 1 S.C.R. 640
<u>Gallagher v. Crown Kasher Market,</u> 366 U.S. 617	8
<u>Henry Birks & Sons (Montreal) Limited et. al.</u> <u>v. The City of Montreal,</u> [1955] S.C.R. 799	9
<u>In the Matter of the Jurisdiction of a Province to</u> <u>Legislate Respecting Abstention from Labour on Sunday,</u> (1905), 35 S.C.R. 640	10
<u>Johnson v. The Attorney General of Alberta,</u> [1954] S.C.R. 127	11

	<u>Tab</u>
<u>Labatt Breweries of Canada Limited</u> <u>v. The Attorney General of Canada,</u> [1980] 1 S.C.R. 914	12
<u>Lord's Day Alliance of Canada</u> <u>v. Attorney-General for Manitoba,</u> [1925] A.C. 384	13
<u>The Lord's Day Alliance of Canada on its own</u> <u>Behalf and in its Representative Capacity</u> <u>v. The Attorney General of British Columbia,</u> <u>City of Vancouver et. al.</u> [1959] S.C.R. 497	14
<u>McGowan et al v. Maryland,</u> 366 U.S. 420	15
<u>Minister of Home Affairs and Another</u> <u>v. Collins MacDonald Fisher and Another</u> [1980] A.C. 319	16
<u>Ouimet v. Bazin, Husmer Lanctot and S.P. Leet</u> (1912) 45 S.C.R. 502	17
<u>P.P.G. Industries Ltd.</u> <u>v. Attorney General of Canada</u> (1983) 3 C.C.C. (3d) 97 (B.C.C.A.) leave to appeal granted March 21, 1983	18
<u>Proprietary Articles Trade Association et. al.</u> <u>v. Attorney-General for Canada et. al.,</u> [1931] A.C. 310	19
<u>Quebec Association of Protestant School Boards et. al.</u> <u>v. Attorney-General of Quebec et. al. (No. 2),</u> (1982), 140 D.L.R. (3d) 33 (Quebec Superior Court)	20
<u>Her Majesty the Queen v. Zelensky,</u> [1978] 2 S.C.R. 940	21

<u>Federal Republic of Germany v. Rauca</u> (1982), 38 O.R. (2d) 705 (H.C.J.) aff'd. 41 O.R. (2d) 225 (Ont.C.A.)	22
<u>In the Matter of a Reference Respecting the Agricultural Products Marketing Act, R.S.C. 1970,</u> [1978] 2 S.C.R. 1198	23
<u>In the Matter of a Reference as to the Validity of Section 5(a) of the Dairy Industry Act,</u> R.S.C. 1927, c. 45, [1949] S.C.R. 1	24
<u>Regina v. Boardwalk Merchandise Mart Ltd. et. al.,</u> (1972) 10 C.C.C. (2d) 50	25
<u>Re Potma and The Queen,</u> (1983) 41 O.R. (2d) 43 (Ont.C.A.)	26
<u>Regina v. St. Lawrence Corp. Ltd. et. al.,</u> (1969) 3 C.C.C. 263 (Ont.C.A.)	27
<u>Robertson and Rosetanni</u> <u>v. Her Majesty the Queen,</u> [1963] S.C.C. 651	28
<u>Russell v. The Queen,</u> (1982) 7 App.Cas. 829	29
<u>La Corporation de la Paroisse de</u> <u>St. Prosper v. Rodrigue,</u> [1917] Vol. LVI S.C.C. 157	30
<u>Saumur v. The City of Quebec,</u>	31
<u>Sellars v Her Majesty the Queen,</u> [1980] 1 S.C.R. 527	32

Tab

Sherbert v. Verner et. al., Members of South
Carolina Employment Security Commission et. al.,
374 U.S. 398 33

Texada Mines Limited v.
The Attorney General of British Columbia
[1960] S.C.R. 713 34

Two Guys from Harrison-Allentown Inc.
v. McGinley, District Attorney, Lehigh
County, Pennsylvania et. al.,
366 U.S. 582 35

Walter et. al. v. The Attorney
General of the Province of Alberta,
[1969] S.C.R. 83 36

TABLE of STATUTES and ARTICLES

Tab

<u>Alberta Act</u> , 4-5 Edw. VII, c.3, s.17	A
Term 17 of <u>Terms of Union of Newfoundland</u> with Canada confirmed by <u>British North</u> <u>America Act</u> , 1949, 12-13 Geo.VI, c.22 (U.K.)	
<u>Manitoba Act</u> , 1970, 33 Vict., c.3 (Canada), s.22, confirmed by the <u>Constitution Act</u> , 1971	
<u>Saskatchewan Act</u> , 4-5 Edw. VII, c.42, s.17	
<u>American Convention for Human Rights</u> , Article 12	B
<u>The New Cambridge Modern History</u> , (The Syndic's of the Cambridge University Press)	C
Vol.II <u>The Reformation</u> , 1958, c.VII, pages 226-280	
Vol.IX <u>War & Peace in an Age of Upheaval</u> , 1965, c.VI, pages 146 to 148	
Vol.X <u>The Zenith of European Power</u> , 1960, c.IV, pages 76 to 103	
<u>The Canadian Bill of Rights</u>	D
<u>The Constitution Act</u> , 1867, 30 & 31 Vict. c.3	E
<u>The Constitution Act</u> , 1982, Part I, <u>Canadian</u> <u>Charter of Rights and Freedoms</u>	F
<u>Criminal Code</u> , R.S.C. 1970, c.C-34 ss.172 and 739	G
<u>The European Convention for the Protection</u> <u>of Human Rights and Fundamental Freedoms</u>	H
Ewaschuk, <u>Corporate Criminal Liability</u> , (1975) 29 C.R.N.S. 44 at 52 to 55	I

	<u>Tab</u>
<u>Freedom of Worship Act, R.S.O. 1977, c.L-2</u>	J
<u>Holmestead, Sunday Law in Canada,</u> pages 16 to 34	K
<u>Debates of the House of Commons,</u> <u>Second Session, Tenth Parliament,</u> <u>Vol.LXXVI, April 3, 1906,</u>	L
page 1010	
page 5625	
pages 5637 to 5642	
<u>Income Tax Act,</u> <u>R.S.C. 1952, c.148, ss.110(2) and 143</u>	M
<u>Internation Covenant on Civil and</u> <u>Political Rights, Article 18</u>	N
<u>La Nauze, The Making of the Australian</u> <u>Constitution (Melbourne University</u> <u>Press, 1972), at pages 227 to 229</u>	O
<u>Lord's Day Act, R.S.C. 1970, c.L-13</u>	P
<u>Report on Sunday Observation Legislation,</u> <u>Ontario Law Reform Commission,</u> <u>Appendices I & II, pages 383 to 404</u>	Q
<u>Religious Freedom Act, R.S.O. 1980, c.447</u>	R
<u>Religious Societies' Land Act, R.S.A. 1980</u> <u>c.R-14, as amended</u>	S
<u>Saskatchewan Bill of Rights Act, 1947,</u> <u>S.S. 1947, c.35</u>	T

Tab

<u>Schmeiser, Civil Liberties in Canada</u> (Oxford University Press, 1964), at pages 54 to 90	U
<u>Shops Act, 1950</u> (c.28), Part IV (U.K.)	V
<u>Sunday Observance Act, 1833</u> (c.31)(U.K.)	
<u>Sunday Theatre Act, 1972</u> (c.26)(U.K.)	
<u>Sunday Cinema Act, 1972</u> (c.19)(U.K.)	
<u>Sunday Entertainments Act, 1932</u> (22 and 23, Geo. 5, c.31)(U.K.)	
<u>Sunday Observance Act, 1780</u> (21 Geo.3, c.49)(U.K.)	
<u>Tarnopolsky, The Canadian Bill of Rights</u> (2d) (McClelland and Stewart Ltd., Toronto, 1975), pp.1-23	X
<u>United Nations Covenant on Civil and Political Rights</u>	X
<u>Universal Declaration of Human Rights</u>	Y