*The Charter*: Responsibilities and Rights:

As Canadians, we all have certain responsibilities that we owe to society and government. We are required to obey the laws. We are expected to pay our taxes, to serve on juries if selected, and to vote in elections to choose our representatives in government.

There are times when obeying the law may seem to interfere with our freedoms. For instance, it could be argued that a municipal bylaw for a curfew on loud music after a certain hour might be a limit on an individual's freedom of expression. But that freedom could interfere with a neighbour's right to enjoy their property, so it's up to those making and enforcing the law to balance the rights of one person against those of another.

Fundamental Freedoms:

Section 2 of the *Charter* states:

“Everyone has the following fundamental freedoms:

1. freedom of conscience and religion;
2. freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
3. freedom of peaceful assembly; and
4. freedom of association.”

Freedom of Conscience and Religion

Freedom of conscience and religion means that everyone is free to worship in their own way. We cannot be punished for our religious beliefs, and we cannot be forced into actions that contravene our personal beliefs. In the past, this principle has meant that those who chose not to serve in the military because of their pacifist beliefs. People such as Quakers or Mennonites were exempted from active service. Since the *Charter*was enacted, this section has been used in some significant decisions. In 1985, in the case *R. v Big M Drug Mart Ltd*., the Supreme Court ruled that laws keeping stores closed on Sundays were unconstitutional, because those laws discriminated against people who did not observe Sunday as a day of rest, such as Jews or Muslims.

On the other hand, the courts have had to balance the religious belief of individuals against the rights of others. For instance, in the case of parents whose religious beliefs forbid the use of blood transfusions, the courts have ordered that their children be given transfusions in order to save a child's life, the argument being that the child's right to life is a more important principle in that circumstance.

##### Freedom of Thought and Expression

We are free to think what we want, and within reasonable limits we can express our thoughts in the form of writing, music, painting, photography or any form of art. This includes freedom of the press. Even if our thoughts, when expressed, are racist, inflammatory, or without basis in fact, we still have considerable freedom to express them. The case of R v. Zundel [1992] used the freedom of expression section to overturn the law forbidding the publication of false information. Ernst Zundel had been convicted of denying that the Nazis had killed six million Jews during the Holocaust, but that conviction was overturned on appeal to the Supreme Court of Canada.

##### Freedom of Peaceful Assembly and Association

As Canadians, we have the right to gather together peacefully. This includes political protests, marches, and rallies. It also includes the lawful actions of striking workers in picketing outside their place of employment. However, a gathering of 12 or more people, which disturbs the peace or causes fear in others, is classified as a riot, and authorities are justified in breaking it up.

Freedom of association is being able to join political parties, clubs, or teams. It also includes the right to join a union. There are reasonable limits placed on that freedom: if a youth, for instance, is on probation, he may be ordered to stay away from a certain group of friends who are considered to be a bad influence.

##### Democratic Rights

Although section 3 of the Charterreads “Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein”, there are limitations. Citizens under the age of 18 cannot vote, as it is believed that they have not yet achieved a level of maturity to fully understand political decisions. Neither can judges as they must maintain their impartiality.

Canadians are also guaranteed that elections must be held every five years at the most, unless in the event of a war or national emergency, to prevent any government from hanging onto power without the consent of the people.

##### Mobility Rights

Section 6 of *The Charter* states:

1. Every citizen of Canada has the right to enter, remain in and leave Canada.
2. Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right a) to move to and take up residence in any province; and b) to pursue the gaining of a livelihood in any province

##### However, provinces can restrict the availability of programs, such as education or employment opportunities, to permanent residents of that province. For instance, out-of-province students usually pay substantially higher tuition rates for university and college.

##### Life, Liberty, Security of the Person

The use of this section of the Charter has been controversial. Those opposing abortion argued that abortion interfered with the rights of the unborn child guaranteed within theCharter. But the Supreme Court ruled that a fetus was not a “person” in the eyes of the law, and therefore not entitled to the protection of Charter rights. In the case R v. Morgentaler[1988], the Supreme Court ruled that the laws limiting abortion violated a woman's security of person.

#### Case History: Sue Rodriguez

In 1991, Sue Rodriguez was diagnosed with ALS, or Lou Gehrig's disease, which caused irreversible and fatal degeneration of the nervous system without affecting the brain. Rodriguez knew that there was no hope for an eventual recovery and that in the end, she would be unable to move or even breathe on her own, while at the same time being fully conscious of her condition. She made the decision that rather than wait for that, she wanted to end her life, and since she would no longer able to do so on her own, needed to be assisted in committing suicide.

Under the Criminal Code,it was an offence for anyone to do so, and she brought suit against the province of British Columbia, arguing that this restriction interfered with her Charter right to security of person. The case went to the Supreme Court, which ruled against her, by a vote of 5 to 4. A few months later, she died, assisted by an unknown doctor.

##### Unreasonable Search and Seizure

Police cannot search a person, their home, or belongings, without showing just cause first. In the case of R v. Janvier[2007], the Saskatchewan Court of Appeal ruled that even the strong smell of burning marijuana, without any other evidence of the presence of the substance, was not sufficient grounds for the police officer to arrest Archibald Janvier and then search his car, after he was pulled over with a broken headlight. Even though the officer did find eight ounces of marijuana in Janvier's possession, both the lower court and the Court of Appeal threw out the charges because his rights to protection from unreasonable search and seizure had been violated.

##### Arbitrary Detention or Imprisonment and Rights of Arrested People

People in Canada cannot be detained or imprisoned without reason. This is the basic principle of habeas corpus (recall from Magna Carta). Thus, an arrested person must be promptly told why s/he has been arrested, even before s/he is taken to the police station. The arrested person must also be given the opportunity to contact a lawyer. Legal counsel must be offered to those who cannot afford a lawyer. The accused must be allowed to speak with the lawyer before being questioned, and the police cannot listen in on the accused's conversation with the lawyer.

##### Rights of Those Who Have Been Charged

##### Once a person has been charged with a crime, s/he is presumed innocent until proven guilty in a court of law. In court, s/he cannot be forced to testify at the trial. The accused has the right to choose trial by jury for a serious offence. Once a person has been found not guilty of a crime, s/he cannot be tried for that same offence again.

##### Cruel and Unusual Punishment or Treatment

The principle is that the punishment should fit the crime, that is, a punishment should not be disproportionate to the offence committed. For instance, in the case of R v. Smith[987], the Supreme Court ruled that the seven year minimum sentence for importation of narcotics constituted “cruel and unusual punishment”, since that would apply even to someone caught with one ounce of marijuana.

##### Rights of Witnesses in Court

If a person, while under oath in court as a witness, says something that is incriminating to her/him, that information cannot be used as evidence against that person in another case.

##### Equality Rights

Section 15 of the Charter says that all individuals have a right to equal treatment under the law. It outlaws discrimination on the basis of “race, national or ethnic origin, colour, religion, sex, age or mental or physical disability”. It doesn't specifically mention but does NOT exclude marital status or sexual orientation from protection against discrimination.

##### Language Rights

The Charter affirms the status of French and English as the two official languages of Canada. All Canadians, no matter where they are in the country, have a right to communicate with the federal government in the official language of their choice, although not all services may be available everywhere, based on demand.

##### Language Education Rights

In all provinces outside Quebec, students can be educated in French if they speak French as their first language, if their primary education was in French, or if their children had previously received their education in French, and if there are a sufficient number of students to make it practicable. In Quebec, the same applies to English-speaking families.

##### Aboriginal Rights

Aboriginal Canadians have a right to the continuation of the agreements made in the Royal Proclamation of 1763 and later treaties and land claims settlements.

##### Multicultural Rights

The rights of people of different cultural backgrounds are recognized in Section 27.

Group Analysis:

1. Following your examination of this reading, as well as the actual *Charter*, write a paragraph that determines the most significant freedom protected by the Charter. Support your decision in the form of a paragraph with three pieces of supporting evidence.