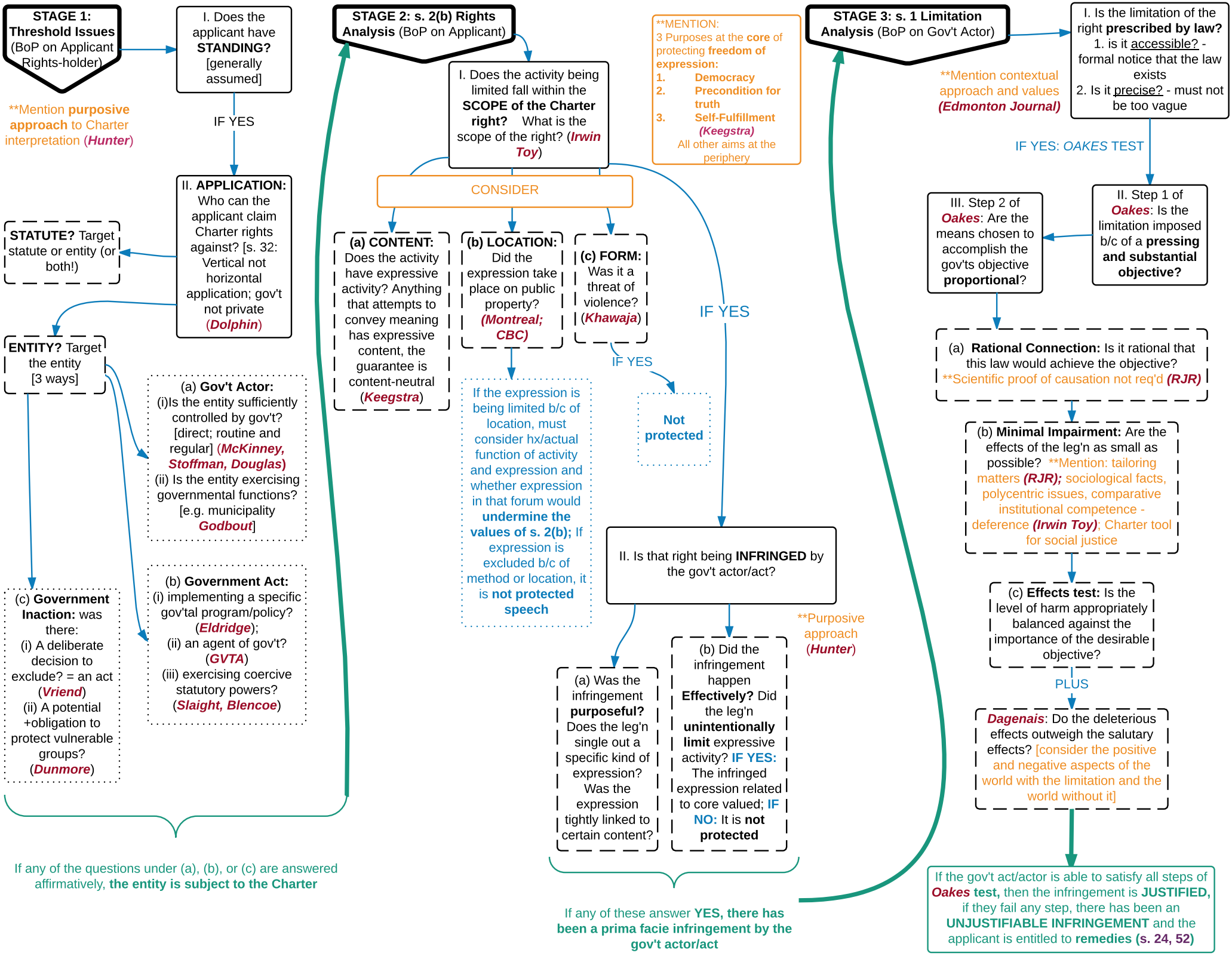
STAGE 1: Threshold Issues (BoP on Applicant Rights-holder)
I. Does the applicant have STANDING? [generally assumed]
IF YES
**Mention purposive approach to Charter interpretation (Hunter)
II. APPLICATION: Who can the applicant claim Charter rights against? [s. 32: Vertical not horizontal application; gov't not private (Dolphin)
STATUTE? Target statute or entity (or both!)
ENTITY? Target the entity [3 ways]
(a) Gov't Actor: (i)Is the entity sufficiently controlled by gov't? [direct; routine and regular] (McKinney, Stoffman, Douglas) (ii) Is the entity exercising governmental functions? [e.g. municipality Godbout]
(b) Government Act: (i) implementing a specific gov'tal program/policy? (Eldridge); (ii) an agent of gov't? (GVTA) (iii) exercising coercive statutory powers? (Slaight, Blencoe)
(c) Government Inaction: was there: (i) A deliberate decision to exclude? = an act (Vriend) (ii) A potential +obligation to protect vulnerable groups? (Dunmore)
If any of the questions under (a), (b), or (c) are answered affirmatively, the entity is subject to the Charter
STAGE 2: s. 2(b) Rights Analysis (BoP on Applicant)
I. Does the activity being limited fall within the SCOPE of the Charter right? What is the scope of the right? (Irwin Toy)
**MENTION: 3 Purposes at the core of protecting freedom of expression: 1. Democracy 2. Precondition for truth 3. Self-Fulfillment (Keegstra) All other aims at the periphery
CONSIDER
(a) CONTENT: Does the activity have expressive activity? Anything that attempts to convey meaning has expressive content, the guarantee is content-neutral (Keegstra)
(b) LOCATION: Did the expression take place on public property? (Montreal; CBC)
(c) FORM: Was it a threat of violence? (Khawaja)
IF YES
If the expression is being limited b/c of location, must consider hx/actual function of activity and expression and whether expression in that forum would undermine the values of s. 2(b); If expression is excluded b/c of method or location, it is not protected speech
Not protected
IF YES
II. Is that right being INFRINGED by the gov't actor/act?
**Purposive approach (Hunter)
(a) Was the infringement purposeful? Does the leg'n single out a specific kind of expression? Was the expression tightly linked to certain content?
(b) Did the infringement happen Effectively? Did the leg'n unintentionally limit expressive activity? IF YES: The infringed expression related to core valued; IF NO: It is not protected
If any of these answer YES, there has been a prima facie infringement by the gov't actor/act
STAGE 3: s. 1 Limitation Analysis (BoP on Gov't Actor)
**Mention contextual approach and values (Edmonton Journal)
I. Is the limitation of the right prescribed by law? 1. is it accessible? - formal notice that the law exists 2. Is it precise? - must not be too vague
IF YES: OAKES TEST
II. Step 1 of Oakes: Is the limitation imposed b/c of a pressing and substantial objective?
III. Step 2 of Oakes: Are the means chosen to accomplish the gov'ts objective proportional?
(a) Rational Connection: Is it rational that this law would achieve the objective? **Scientific proof of causation not req'd (RJR)
(b) Minimal Impairment: Are the effects of the leg'n as small as possible? **Mention: tailoring matters (RJR); sociological facts, polycentric issues, comparative institutional competence - deference (Irwin Toy); Charter tool for social justice
(c) Effects test: Is the level of harm appropriately balanced against the importance of the desirable objective?
PLUS
Dagenais: Do the deleterious effects outweigh the salutary effects? [consider the positive and negative aspects of the world with the limitation and the world without it]
If the gov't act/actor is able to satisfy all steps of Oakes test, then the infringement is JUSTIFIED, if they fail any step, there has been an UNJUSTIFIABLE INFRINGEMENT and the applicant is entitled to remedies (s. 24, 52)