UNIT OVERVIEW

This unit examines the law as the source of rights and responsibilities. Starting with the overriding power of constitutional law, students will explore the rights that individuals in Canada have. Through case analysis, they will learn how the courts have interpreted conflicts between individual Charter rights and legislation. Students will discover the force of human rights legislation by investigating the grounds for human rights violations and the avenues available to resolve such violations. Through the activities in the student text and the extension activities in this resource, students will demonstrate their understanding of the purposes of specific Charter sections and human rights legislation and the impact they have on daily life.
Why is Canada considered one of the best countries in the world to live? One important reason is the high value its Constitution places on the rights and freedoms of the individual. This chapter focuses on the Canadian Charter of Rights and Freedoms and how the Charter is interpreted by the courts.

The chapter is divided into six sections. The first section provides a context for the Charter by focusing on key historical documents and by outlining the evolution of rights and freedoms in Canada. The second section examines the Charter’s area of authority, how the Charter is enforced, and the guarantees it affords Canadians. The fundamental freedoms and their limitations are discussed in the third section. The final three sections explain in some detail democratic, mobility, legal, equality, language, and general rights as defined in the Charter.

The Looking Back activities provided at the end of the chapter offer students opportunities to demonstrate and apply their understanding of key vocabulary and concepts related to the Canadian Charter of Rights and Freedoms.
### Planning Chart

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| **Topic:** Recognizing Rights and Freedoms | 1. Ask students the following questions and record their responses on the board. What is meant by the terms “rights” and “freedoms”? What are some examples of rights and freedoms?  
2. Explain the importance of entrenching the *Canadian Charter of Rights and Freedoms* in the Constitution. What is the significance of the notwithstanding clause?  
3. Discuss student responses to issues related to Alberta’s *Sexual Sterilization Act* discussed on page 82 of the text. Encourage debate on the question of victim compensation. Is there ever a time limit on justice? |
| **Key Vocabulary** |  |
| right |  |
| freedom |  |
| inalienable rights |  |
| franchise |  |
| entrench |  |
| override |  |
| invoke |  |
| notwithstanding clause |  |
| **Resources** | *Law In Action* pp. 77–83 |

| Topic: Jurisdiction, Enforcement, and Guarantee | 1. List the following terms on the board and have students research definitions for each: jurisdiction, enforcement, interveners, guarantee.  
2. Ask students to explain in their own words the meaning of the following sentence: Section 1 of the Charter guarantees our rights and freedoms while at the same time making it clear that these rights and freedoms are not absolute but are subject to “reasonable limits.” |
| **Key Vocabulary** | interveners |
| **Resources** | *Law in Action* pp. 83–86 |

| Topic: The Fundamental Freedoms | 1. Read s. 2 of the Charter (on page 519 of the text) with the class and ask students to explain the fundamental freedoms.  
2. Explain the necessity of placing limitations on fundamental freedoms.  
3. Discuss the article “Calgary teen to appeal transfusion ruling” on page 87 as an example of limiting a fundamental freedom. Ask students to supply written answers to the questions following the article. |
<p>| <strong>Key Vocabulary</strong> | dissemination |
| <strong>Resources</strong> | <em>Law in Action</em>, pp. 86–90, 519 |</p>
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| **Topic:** Democratic and Mobility Rights | 1. Explain how a statute differs from a right entrenched in the Constitution. Discuss how making democratic rights part of the Charter protects Canadians.  
2. Read and discuss ss. 3 to 6 of the Charter (on pages 519–520) with the class in order to clarify the language and concepts.  
3. Ask students to provide written answers to “Should Inmates Be Allowed to Vote?” on page 91.  
4. Explain how mobility rights are linked to extradition cases. |
| **Key Vocabulary** | extradition  
capital offence |
| **Resources** | *Law in Action*, pp. 90–93, 519–520 |
| **Topic:** Legal and Equality Rights | 1. Ask students to name their legal rights and record their responses on the board.  
2. Read ss. 7 to 14 of the Charter (on pages 520–521) with the class. Make appropriate additions or deletions to the list created in activity 1 above.  
3. Have students read *R. v. Parker* on page 95. Discuss student responses to the questions on the case.  
4. Explain the concept of affirmative action and how it applies to equality rights. |
| **Key Vocabulary** | ameliorate |
| **Resources** | *Law in Action*, pp. 93–100, 520–521 |
| **Topic:** Language and General Rights | 1. Discuss with students how the rights in this section reflect the diverse nature of Canadian society.  
2. Discuss “Charting the Record” on page 103 to reinforce student understanding of the controversies surrounding the Charter and legal decisions made as a consequence of its enactment. |
| **Key Vocabulary** | abrogate  
derogate |
<p>| <strong>Resources</strong> | <em>Law in Action</em>, pp. 100–103 |</p>
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Additional cases: Allan Singer Ltd. v. The Attorney General of Quebec; Irwin Toy Limited v. Quebec (Attorney General); Falkiner v. Director, Income Maintenance Branch; George Smitherman (guardian ad litem of Marc Hall) v. Michael Powers

*Law in Action Test Bank,* Chapter 4
Unscramble these four jumbled words, one letter to each square, to form four vocabulary words.

kioven
sgirth
dxetritiaon
dmofere

Now arrange the circled letters to form the answer to the question below:

What does constitutional law do in relation to statute law?

Answers: Jumbles—invoke, rights, extradition, freedom

What does constitutional law do in relation to statute law? overrides

This puzzle introduces students to symbolic logic. Give students the following information and example:

“p . q” means both p and q are true.

“If p . q ⊃ r” means that if p and q are true, then r is true.

Example:

Where

p = All single men are bachelors.
q = Ernie is a single man.

If p . q ⊃ r

Answer: r = Ernie is a bachelor.

For the following, write a statement for the unknown “r.”

Where

p = Sections 7 through 15 of the Charter apply to all individuals in Canada.
q = Mei Lin is visiting Vancouver from Hong Kong.

If p . q ⊃ r

Answer: r = Sections 7 through 15 apply to Mei Lin while she is in Canada.

Fill in the numbered clues of three shorter words to help find the longer word in this “Charter” puzzle (some letters may be used more than once).


2, 10, 1, 4 – breakfast, lunch, or dinner
7, 5, 6, 9 – violent public disturbance
9, 8, 4, 3 – gossip

Answer: meal/riot/tale/AMELIORATE

b) 1. ___ 2. ___ 3. ___ 4. ___ 5. ___ 6. ___ 7. ___ 8. ___ 9. ___

5, 6, 3, 7, 4 – bind or restrain
8, 3, 1, 9 – secure
2, 3, 7, 8, 9 – lift up

Answer: chain/safe/raise/FRANCHISE
Solutions to Questions and Cases

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What Do You Think?

- Have students work individually, in pairs, or in groups to list and prioritize five rights they consider essential for a citizen living in a democratic country. Invite students to share their lists and work together as a class to compile a list of the ten most important rights. Which of these rights do Canadians have?

- Ask students to identify the criteria they used when ranking the rights on their class list. Have them consider which rights on the list they exercised during this process. What does their experience suggest about these rights?

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Law in the Extreme: Public Pressure Prevails

1. The provincial government proposed Bill 26, the Institutional Confinement and Sexual Sterilization Act, which would limit compensation to $150,000 per claim by someone sterilized under the Sexual Sterilization Act. In addition, the proposed legislation would invoke the notwithstanding clause to protect it from legal challenges under the Charter, which could potentially total hundreds of millions of dollars in damage awards to victims of institutional sterilization.

2. Answers will vary, but students should consider that grievous wrong was done to those sterilized at the hands of a provincial government. These victims are morally entitled to compensation from the institution that perpetrated the injustice. Since the only source of government funding is taxes paid by citizens, present-day taxpayers must indeed pay for the sins of the past. Other examples of the cost of justice reaching back over many decades are the prosecution of Nazi war criminals living in Canada and compensation paid out to Japanese Canadians sent to internment camps during World War II.

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Building Your Understanding

1. A freedom is the right to conduct one’s affairs without governmental interference. The fundamental freedoms that Canadians enjoy are identified in s. 2 of the Charter. A right is a legal, moral, or social entitlement that citizens can expect, mainly from their government. The remainder of the Charter lists and defines the rights of Canadians.

   The Universal Declaration of Human Rights is unique in that it was passed by the United Nations, which is an international body. Its sphere of influence was intended to cover the entire world rather than a single country (as was the case with the Magna Carta or the Declaration of Independence). It also protects a far greater range of human rights than previous rights documents. For example, it recognizes the equal and inalienable rights of all members of the human family; provides for fundamental freedoms of thought, opinion, expression, conscience, religion, peaceful assembly, and association; and acknowledges the equal rights of men and women.

   a) First Nations were forbidden to participate in cultural and religious ceremonies. A head tax discriminated against Chinese immigrants. The Dominion Elections Act excluded minorities from voting in federal elections. The “no stoppage” rule reduced the number of immigrants from India. The Supreme Court of Canada decided that the word person does not apply to women. The Alberta Sterilization Act ordered the sterilization of patients in psychiatric hospitals. The Indian Act prevented Aboriginal peoples from hiring lawyers to pursue land claims without the consent of the superintendent general of Indian affairs. The Quebec court upheld the right of a theatre owner to deny a black patron equal access. The federal government denied universal franchise to some minorities and Status Indians; later all races were given the federal franchise except Status Indians. The Communist Party was outlawed under the War Measures Act. Hutterites, Doukhobors, and enemy aliens were barred from buying land.
During World War II, Japanese Canadians were sent to detention camps.

b) Under the *British Emancipation Act* slavery was abolished. The federal government made the franchise universal, except for some minorities and Status Indians. Women were allowed to stand for Parliament. Women were granted the right to vote in federal elections. Manitoba granted women the right to vote in provincial elections. The "person decision" was successfully appealed, and women were officially recognized as "persons." Those libelled because of race or creed could get a court order to stop the libel. A covenant restraining the sale of land to Jews was struck down. In Saskatchewan the first Canadian human rights statute was passed. People of all races, and later Status Indians, were given the right to vote in federal elections. Jehovah’s Witnesses were allowed to distribute religious pamphlets. The *Fair Employment Practices Act* and *Female Employees Equal Pay Act* were passed. The *Canadian Bill of Rights* was enacted by Parliament.

3. The *Bill of Rights* is a statute and therefore, has the same status as any other statute. This means that another law can override it. As a statute, it can also be amended by a majority vote in the House of Commons. This is not the case with the *Canadian Charter of Rights and Freedoms*, which is entrenched as part of the Constitution. The terms of the Charter can, therefore, override all other laws, allowing for greater protection of citizens’ rights.

4. Section 33 grants the federal and provincial governments limited power to pass laws that are exempt from s. 2 and ss. 7 to 15 of the Charter. Without the inclusion of this condition, it is doubtful that the Charter would have been ratified by the provinces. Responses to the wisdom of including the notwithstanding clause will vary. Students should consider whether an “opting out” clause, even with time limitations, weakens the effectiveness of the Charter.

**Consider This**

The right of enjoyment of property and the right not to be deprived thereof except by due process of law is difficult to guarantee unconditionally. For example, sometimes the state needs to expropriate property to build a highway or an airport. Unconditional guarantees might also prevent the government from ever nationalizing a business or an industry.

**Consider This**

Interveners represent various social opinions. Their role is to present points of view that might not have been argued by the parties involved. In an important equality rights case, for example, defining a term like “equality” may be as significant as the decision the court makes. Interveners should be allowed to promote their views in Supreme Court cases because such cases have far-reaching implications and will be used as precedents for future cases.

**Case: R. v. Oakes**

1. “Reverse onus” means that the burden of proof is on the accused, who must disprove an essential element of an offence. In other words, the accused must prove that he or she did *not* commit the offence instead of the Crown needing to prove that the accused *did* commit the offence. Reverse onus breaks the rule of “innocent until proven guilty” contained in Charter s. 11(d), a concept fundamental to Canada’s legal system.

2. The court must decide whether a restriction is justified in a free and democratic society. For example, the Charter guarantees freedom of expression; however, hate literature causes such great harm that a limit on it may be regarded by society as an acceptable restriction.

3. In this case, where a guilty verdict could result in a jail sentence, the right to be presumed innocent cannot be partially limited. There are, however, cases where reverse onus has been upheld. For example, in *R. v. Keegstra*, [1990], the Supreme Court of Canada ruled that no person will be convicted of promoting hatred if that person can establish that the statements he or she is making are true. This decision places the burden of proof on
the accused, which the Supreme Court ruled as justifiable under s. 1 of the Charter.

**Building Your Understanding**

1. a) The three questions used to determine whether a Charter rights case can be heard before the Supreme Court of Canada:
   i. Was the right infringed or violated by government or its agencies?
   ii. Is the right in question covered under the Charter?
   iii. Is the violation or infringement within a reasonable limit?

b) Questions i and ii establish whether the court has the right to rule on the matter in question. The court has jurisdiction only when these questions are answered in the affirmative. The Charter covers cases that involve the government and its agencies and only those rights that are named within it.

2. The Supreme Court of Canada is responsible for determining whether a right or freedom has been infringed or violated. It may also strike down offending legislation or provide a certain length of time for the legislation to be amended to its satisfaction. In criminal cases, the Court may exclude certain kinds of evidence, order a new trial, or dismiss the case.

3. Without limitations, rights would be absolute. In order for society to function, the rights of one person must be balanced with the rights of another. On the most basic level, one person’s right to shout “Fire!” as a joke in a crowded theatre must be limited in the interests of public safety.

4. The four criteria established in the *R. v. Oakes* case to judge whether limitations on a Charter right can be justified are i) the reason for limiting the Charter right must be shown to be important enough to justify overriding a constitutionally protected right; ii) the measure carried out to limit the right must be reasonable and logically connected to the objective for which it was enacted; iii) the right must be limited as little as possible; and iv) the more severe the rights limitation, the more important the objective must be.

5. An intervener identified in *R. v. Mills* that would be most interested in presenting its ideas in the *R. v. Oakes* case is the Canadian Civil Liberties Association because it focuses on civil rights cases. The right to be presumed innocent is a fundamental civil right.

**Calgary teen to appeal transfusion ruling**

**UPDATE:** On April 26, 2002, the Alberta Court of Appeal upheld the Alberta Court of Queen's Bench ruling, stating that the 16-year-old girl is not mature enough to make a decision that is crucial to her treatment. The Calgary teen appealed the decision to the Supreme Court of Canada, but on July 11, 2002, the Court declined to hear the case.

1. The Alberta Court of Queen's Bench allowed doctors to proceed with the transfusions because it felt that the 16-year-old Jehovah’s Witness was not mature enough to understand information relating to her treatment and the consequences of refusing the treatment.

2. Answers will vary, but students may wish to consider the legal age restrictions for activities such as driving, smoking, drinking, and voting. Ask students to compare these activities to the type of decision the teen in the news article wished to make.

3. Answers will vary. Encourage students to discuss this issue in terms of the three questions the Supreme Court of Canada considers when deciding whether to hear a case (page 84). Since legislation (in Ontario) and case-by-case decisions (in Alberta) already acknowledge that it is possible for 16-year-olds to make this decision, it could be argued that the case has merit and falls squarely under the freedom of belief or conscience.
Law in Your Life
Since schools fall under government jurisdiction, the Charter of Rights and Freedoms governs their activities. Consequently, if one of these texts were removed today, Alice Munro or the estate of Margaret Laurence could challenge the removal of the text in the courts based on s. 2(b) of the Charter.

Figure 4.6
Some students might argue that limiting the possession of child pornography is a reasonable restriction on freedom of expression because it exploits children sexually. Others might argue that s. 163.1(4) of the Criminal Code does violate section 2(b) of the Charter and that since the Criminal Code is statute law and the Charter is constitutional law, s. 163.1(4) should be struck down and Sharpe should be acquitted. Refer students to page 106 of the student text to read about the case.

Case: Lavigne v. Ontario Public Services Employees Union
1. Lavigne took the union to court because he felt that the dues deducted from his paycheque violated his freedom of expression and association. The union used part of his dues to support causes that Lavigne did not endorse.

2. The trial judge ruled that Lavigne's freedom of association was infringed because he was forced to contribute to organizations he disagreed with simply by working for an institution where all teachers were represented by a particular union. His freedom of expression was not infringed because he was free to speak and lobby against how the union was spending his dues.

3. The Court of Appeal found that the use of the dues by the union was a private activity by a private organization and, therefore, beyond the reach of the Charter. The Charter only has jurisdiction over the activities of the government and its agencies. It also stated that there had been no infringement of Lavigne's freedom of association because he remained free to associate with others and to oppose the union.

4. Some students may agree that according to the facts of the case, the courts made a reasonable decision. However, others may argue that Lavigne should not be forced to pay dues to a union to which he does not wish to belong. Explain that under labour legislation, it is mandatory that every employee pay dues to the union in the workplace. Point out to students that Lavigne is reaping the benefits of the collective agreement negotiated by the union (pay, benefits, etc.) on the behalf of all employees.

Building Your Understanding
1. A person’s right to freedom of religion is limited by the rights and freedoms of others. For example, if a couple's religion opposes blood transfusions, the court may order that their child be given a transfusion if his or her life is in danger. In this case, the child's right to life takes precedent over the parents’ freedom of religion.

2. Laws against promoting hatred toward an identifiable group or possessing and distributing obscene materials are examples of limits placed on freedom of expression.

3. a) Freedom of peaceful assembly allows persons to gather for peaceful purposes such as demonstrating against a government action or marching in support of a cause. Freedom of association allows people to join groups of their choice such as unions, political parties, cultural groups, educational organizations, or sporting clubs.

b) An assembly must be orderly and non-violent and can be dispersed if it disturbs the peace “tumultuously” or causes fear in persons nearby. Freedom of association is restricted in situations that would undermine discipline and security.

4. Young offenders are prohibited from associating with friends who might influence them to get into further trouble. In a prison community, freedom of association and assembly would undermine discipline and security. RCMP officers and federal
lawyers are not allowed to form or join unions. As agents of the Crown, they owe their allegiance to the Crown and cannot form certain associations that could jeopardize their positions.

Law in Action: Should Inmates Be Allowed to Vote?

1. Students may argue that inmates naturally forfeit some of their rights and freedoms (such as mobility rights) because they have committed crimes. However, others might argue that allowing criminals to vote provides them with incentive to stay informed of current events and keeps them connected to society. These factors would facilitate their eventual reintegration into the world.

2. Losing the right to vote is one of the many consequences of committing a crime. The four criteria of “reasonable limits” established in *R. v. Oakes* might be applied as follows:
   - The reason for limiting this Charter right is that it is important as a necessary consequence of anti-social or violent behaviour that threatens public safety.
   - The two-year cut-off reflects the fact that serious crimes usually warrant a sentence of more than two years. Granting voting rights only to prisoners incarcerated on lesser charges may be appropriate.
   - Because the prison population prevented from voting will be reduced by the proposed change, the right will be limited as little as possible.
   - It could be argued that the seriousness of limiting the right to vote is balanced by the seriousness of someone committing a grave crime.

Figure 4.9

Higher fees might prevent students from attending universities in other provinces if these fees are higher than what students can afford to pay. Inability to pay may result in restricting movement from one province to another.

Building Your Understanding

1. a) The restrictions on the right to vote are age, mental capacity, residence, and registration.
   b) Members of the judiciary are not allowed to vote, presumably to ensure their independence from the government.

2. a) The Supreme Court of Canada has ruled that accused persons can be sent to other countries to face trial. However, if persons are accused of a capital offence, they will not be sent to a country where the death penalty is legal.
   b) The Supreme Court of Canada has ruled that it is a reasonable limit on mobility rights to send an accused person to other countries to face trial. Suppressing crime is considered to be of sufficient importance to warrant this measure. However, it is the Court’s view that sending a suspect to face the possibility of a death penalty would violate that person’s right to life.

3. The governments of wealthier provinces are concerned about being flooded by unemployed residents from other provinces seeking work and using social services paid for by permanent residents. The governments of poorer provinces may wish to limit access to programs created to improve opportunities for its own permanent residents.

4. Answers may vary. Students wanting to remove subsections 3 and 4 of the Mobility Rights section may disagree with any limitations to mobility in Canada, maintaining that these sections discriminate against newcomers to the province and favour residents who have lived in the province for a certain period. Those who prefer to retain subsections 3 and 4 may believe that such restrictions are necessary to protect permanent residents.

Consider This

The subject of the “personhood” of a fetus will likely spark lively discussion and debate in the classroom. Some students will have strong opinions about when life begins and the rights of the fetus. Others will have
just as strongly held views about a woman’s right to make decisions about her body. The subject of abortion will likely come up. Students should be urged to listen respectfully to each other’s opinions and recognize that such a complex issue will not be resolved in the classroom.

At one end of the spectrum of views regarding the status of the fetus is the belief that from conception the embryo is fully a person with all the rights any person has—notably the right to life. On the other end of the spectrum is the position that the early embryo is nothing more than cellular material that demands little, if any, moral consideration.

The following questions could be included in the discussion:

- Should a person who harms a pregnant woman and causes the death of her fetus be charged with homicide?
- Should a mother be forcibly restrained from using alcohol, cigarettes, or harmful drugs in the interest of her fetus’s health?
- If a fetus is a person, should abortion be considered murder?
- If multiple conceptions occur as the result of reproductive technology, is it right to eliminate some of the embryos to save the others?

Advocates for voluntary euthanasia believe that for a person to be considered a candidate, he or she must be suffering from a terminal illness; be unlikely to benefit from the discovery of a cure during his or her life expectancy; be suffering intolerable pain; have an enduring and competent wish to die; and be unable, without assistance, to commit suicide.

Students might consider some of the following points in their discussion:

- Technological advances in modern medicine have extended the dying phase of some terminal illnesses.
- Should individuals be able to decide for themselves whether their own lives retain sufficient quality and dignity?
- Palliative care in hospices is available only to a small proportion of those who are terminally ill.
- Are standard “do not resuscitate” orders in hospitals different from active euthanasia? If so, how?
- Will allowing voluntary euthanasia lead to non-voluntary euthanasia of those who are severely disabled?
- Is voluntary euthanasia compatible with a doctor’s commitment to saving life?

Figure 4.10

Answers will vary. You may wish to provide the students with some historical background on the issue of physician-assisted euthanasia. The ancient Greeks and Romans were tolerant of suicide where no relief could be offered to the dying. In the 16th century, Thomas More’s Utopia advocated facilitating death for those suffering “torturing and lingering pain.” More recently, in the 1990s, the parliament of Australia’s Northern Territory approved voluntary euthanasia; however, the legislation was later overturned by the National Parliament. In 1997, physician-assisted suicide was legalized by the state legislature of Oregon. In 2001, the Netherlands became the first country in the world to legalize euthanasia and physician-assisted suicide; persons as young as 16 years old may request euthanasia without parental consent. In 2002, legislation allowing physician-assisted euthanasia was passed by the Belgium parliament.

Case: R. v. Parker

1. Parker argued that he was facing imprisonment for trying to preserve his health. He held that the statute making the cultivation of marijuana illegal was inconsistent with the principle of fundamental justice as stated in s. 7 of the Charter.

2. The Court of Appeal suspended its declaration against the marijuana law for one year to give Parliament the chance to amend the law to bring it into agreement with s. 7 of the Charter.

3. Answers will vary, but it is reasonable to assume that the law to legalize doctor-prescribed marijuana may make attitudes more lenient toward this drug, particularly since its therapeutic value has been generally recognized.
Case: R. v. Askov

1. It is important that a trial be held within a reasonable period in order to assure fundamental justice for the accused. If too much time passes, a fair trial becomes more difficult because witnesses' memories of the events may fade, or witnesses may move, become ill, or die. From society's point of view, bringing lawbreakers to trial within a reasonable period will assure the public that for its protection, criminals will be placed in custody or punished in other ways.

2. Answers will vary, but students may argue that the Askov decision has had a positive outcome for society by emphasizing the fact that an accused person has the right to a speedy trial. Prolonging an unresolved case, particularly if the accused is innocent, is cruel and unjustifiable. Citizens want justice to be served but not at the expense of violating anyone's rights. The Canadian legal system should ensure that enough resources are in place so that fair trials can occur within a reasonable time frame.

On the other hand, a negative outcome of the Askov decision is the practice of releasing persons who may be guilty simply because their cases have not yet come up for trial.

Figure 4.11

In order for justice to be served, it is essential that the facts of the case be established in court; only then can a fair verdict be determined. A witness holding back the truth in order to cover up an unrelated illegal act does not serve the interests of the case at hand. The law, therefore, protects witnesses from prosecution if their testimony reveals participation in an illegal act. However, telling a lie while giving evidence on the witness stand in order to protect oneself from prosecution is contrary to establishing the facts of a case and is, therefore, punishable.

Consider This

One example might be allowing a disabled person to use a voice-activated computer during a test while other students are denied the use of computers. Some might say that equality means treating everyone exactly the same; however, the disabled person needs the computer just to be on a level playing field with the other students. The interests of justice are served by ensuring equal opportunity for all students.

Building Your Understanding

1. The right to life, liberty, and security of the person means that an individual has the right to live his or her life, to be free from imprisonment except in accordance with the principles of fundamental justice, and to be protected from certain forms of corporal punishment and physical suffering.

2. A controversial aspect of s. 7 of the Charter is the right to life, which has been applied in situations related to abortion and physician-assisted suicide. These cases have provoked discussion of difficult questions, e.g., Is a fetus a person? Does a person have the right to ask someone else to help end his or her life?

3. The courts must weight the rights of the individual against the principles of fundamental justice to ensure there is a “fair balance.”

4. The provisions in the Criminal Code that related to abortion subjected some women to physical suffering, i.e., women whose lives were in jeopardy if they carried a fetus to full term. When the Supreme Court of Canada ruled that the fetus is not a person, the Court considered the rights of the individual as more important than that of the fetus and ruled that those provisions in the Code related to abortion violated a woman’s right to security of the person.

5. Random spot checks by the police to determine whether motorists have been drinking are legal because they can be justified under s. 1 of the Charter. Section 1 allows for “reasonable limits prescribed by law” regarding the rights guaranteed in other sections. The courts have ruled that the objective of spot checks, i.e., to detect impaired drivers to save lives, is a reasonable limit.

6. This evidence cannot be used against Katrina in court because on arrest the police did not inform her of all her legal rights. The police should have
told Katrina that if she could not afford a lawyer, legal counsel was available at no charge. A lawyer would have advised Katrina about answering questions asked by the police.

7. Double jeopardy means bringing someone to trial twice for the same offence. Double jeopardy is not allowed under Canada’s legal system.

8. Students might argue that discrimination based on age can be justly applied to restrict those under 18 from voting because all citizens under the age of 18 are restricted. This may be considered a reasonable limit on voting rights because someone younger might not have the maturity, knowledge, or experience to seriously weigh the issues and select the candidates.

Consider This
Some students might argue that minority language education rights should not be extended to people who speak languages other than French or English because French and English are Canada’s two official languages. These rights were entrenched in the Charter based on Canada’s two major European founding cultures. Others might argue that if large numbers of people speak another language in a particular community, it is discriminatory not to allow them to be educated in that language.

Consider This
Justice Bertha Wilson meant that it is difficult to apply Charter rights the same way in every case. For example, in the Rodriguez case, the court ruled that the state had the right to limit Sue Rodriguez’s control over her own life. But in the Morgentaler case, the court gave women sovereignty over their own bodies. Although both of these cases relate to s. 7 of the Charter, they had very different outcomes.

Building Your Understanding
1. The public can obtain services in both French and English in any head office of an institution of the Parliament or Government of Canada. Services in both languages must also be available in any other federal office where there is significant demand or where, due to the nature of the office, such services are required.

2. In the provinces and territories where most people speak English, citizens have the right to have all their children educated in French if their first language is French, if they received their own primary education in Canada in French, or if they have a child who is receiving or did receive education in French. In Quebec, citizens have the right to have their children educated in English if they received their own primary instruction in Canada in English, or if they have a child who is receiving or did receive their education in English.

3. Section 25 states that the Charter cannot take away any rights or freedoms pertaining to Aboriginal peoples. This section is consistent with a just, free, and democratic society in which rights and freedoms are guaranteed (s. 1). It is also consistent with the principles established in s. 15(2), which states that laws can be made to benefit a disadvantaged group; historically, Aboriginal peoples in Canada have been disadvantaged.

4. a) Some critics argue that the Charter has made the Supreme Court of Canada more powerful than governments duly elected by the people because laws can be struck down by Charter challenges. Special interest groups are also seen as having gained too much influence. Others argue that the Charter is not strong enough because the notwithstanding clause allows governments to enact laws contrary to its terms.

b) Answers will vary. Students may discuss the validity of viewing the Supreme Court of Canada as an impartial body that protects the rights of Canadians regardless of the government in power. Defending the rights of special interest groups whose concerns have often been ignored could be seen as a positive and necessary role for the Charter. Although it does weaken the Charter, the notwithstanding clause allows for the occasional expression of special provincial needs, which, in a country as large and diverse as Canada, may be necessary. The fact that there is a five-year limit on such legislation is in the public’s best interest.
Quick Quiz

1. a) freedom; b) derogate; c) notwithstanding clause; override; d) ameliorate; e) entrenched; f) interveners; g) franchise; h) inalienable rights

Checking Your Knowledge

2. a) False. The Charter gives freedom of religion to everyone within reasonable limits. Polygamy is a violation of the Criminal Code and is, therefore, a reasonable limit.

b) False. Freedom of the press has limits. For example, newspapers cannot promote hatred against an identifiable group.

c) True.

d) False. The notwithstanding clause cannot be invoked for legal rights issues.

e) False. Requiring applicants to be 18 years of age when applying to the police force is a reasonable limitation.

3. a) This search would only be allowed if customs had reasonable grounds to believe that the individual was trying to smuggle an illegal substance into the country. Also, the person would need to be searched by someone of the same gender.

b) This practice is reasonable because the staff must ensure that the penitentiary is safe and secure.

c) In what sense are the passengers behaving strangely? If their speech is slurred, if they act aggressively or irrationally, or if they smell of alcohol, then the police would have a good reason to search the car for illicit goods. There must be concrete grounds for the police to act. They are not allowed to go on “fishing expeditions” based on the passengers’ physical characteristics such as race or clothing.

Developing Your Thinking and Inquiry Skills

4. a) Section 2(a), freedom of conscience and religion: These defendants would likely be unsuccessful in their challenge because smoking marijuana, public nudity, and cruelty to animals fall under the Criminal Code.

b) Section 2(c), freedom of peaceful assembly: What is a reasonable limit on this right? Holding protest signs along the route would be considered reasonable, but lying down to block the vehicle might be considered unreasonable. Blocking the car might also be regarded as a security risk to the passengers. The fact that no one was injured would be held in their favour, but the court might rule against them.

c) Section 2(b), freedom of the press: The prime minister is a well-known political figure, so the press would have more leeway in satirizing him than they would in satirizing a private citizen. Because the newspaper was publishing a political cartoon, the prime minister would probably not be successful in his challenge; after all, cartoons occur regularly and should be expected in political life. The prime minister may have more success launching a civil suit claiming that he has been libelled.

Communicating Your Ideas

5. Direct students to s. 11 on page 520 of the text. Student work can be evaluated using Generic Assessment Master G-14: Checklist: Creating a Brochure.

6. Provide students with BLM 4-1: Analyzing a Case to record their responses. Evaluate their presentations using Generic Assessment Master G-3: Rubric: Case Analysis and Generic Assessment Master G-10: Rubric: Case Presentation.

7. Questions students might included in their polls:
   - How many Supreme Court judges are there?
   - How are they selected?
• Who is responsible for this selection?
• What are the criteria for the selection of Supreme Court justices?
• How is each province/territory in Canada ensured equal representation on the Supreme Court?

Putting It All Together

8. This question requires students to take a particular point of view. Those agreeing with the quote might note how the various groups discussed throughout the chapter have benefited from the Charter. In addition, students would have to show that persons who are not members of the groups identified in this question have not benefited.

Those disagreeing with the quote would argue that the Charter protects the rights and freedoms of all Canadians, no matter who the individual is. They could also cite the RJR-MacDonald Inc. case on page 107 to provide an example of a corporation that has not benefited from the charter.


Case: R. v. Sharpe

1. Section 163.1(4) of the Criminal Code makes possession of child pornography a crime. Charter section s. 2(b) grants freedom of expression. The conflict arises between those who believe that making possession a crime is a “reasonable limit” intended to protect children and those who maintain that such a law is a violation of their freedom of expression.

2. The Criminal Code defines child pornography as follows:

   (a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,
      (i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or
      (ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years; or

   (b) any written material or visual representation that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act.

Baby pictures of naked children taken by parents do not generally fit this definition. If parents did take pictures of this nature, they should be liable for prosecution under the Criminal Code.

3. Answers may vary. Some students might argue in support of the government invoking the notwithstanding clause because child pornography and those who possess and traffic in it are repugnant to society as a whole. Many believe that the right to possess child pornography goes beyond the “reasonable limit” in s. 1 of the Charter. Others might argue that invoking the notwithstanding clause weakens the Charter and should not be used to limit freedom of expression.

Case: Arsenault-Cameron v. Prince Edward Island

1. The ministry might have argued that s. 23 does not specify how close the French school needs to
be to the students’ homes. Since facilities were available at the French language school in Abram’s Village, students should be bused there. After all, it would not be economically feasible to build an additional French school in Summerside. Finally, the ministry might argue that if a school were to be built in Summerside, given the small school population, it would be difficult to meet all the children’s pedagogical needs, such as music classes, physical education, and library resources.

2. The Supreme Court of Canada ruled that under s. 23 of the Charter, a French school should be built in Summerside if the number of students is sufficient to warrant it. Providing a French school in the Summerside community would encourage French-speaking children to attend; a long bus ride to a school in another community would discourage students from receiving an education in the language of their choice. Also, attendance at an English school might result in assimilating French students rather than encouraging them to maintain their unique culture.

3. The purpose of s. 23 of the Charter was to encourage the flourishing and preservation of the French language in parts of the country where French speakers are in the minority. Its intent was to make high-quality education as accessible as possible to French students. The broad and liberal interpretation of this right is appropriate as a remedy for past situations where French students were denied education in their own language. In addition, a school might become an important focal point for French families living in a community.

Page 107

Guided Case: RJR-MacDonald Inc. v. Canada

1. The Quebec Superior Court ruled that the regulations forced on tobacco companies by the Tobacco Products Control Act violated s. 2(b) of the Charter. The Court of Appeal, on the other hand, ruled that the legislation was valid and was enacted for the “peace, order, and good government” of Canada. The Supreme Court of Canada also ruled that Parliament was allowed to enact the Tobacco Act; however, it came down against the constitutionality of the warning label provisions, stating that these provision were inconsistent with s. 2(b) and did not constitute a reasonable limit under s. 1 of the Charter.

2. If the warning had been identified as coming from the government, or if the manufacturer could have added its own information, the Supreme Court of Canada would have likely found the law acceptable because the provisions would not have violated s. 2(b) of the Charter.

3. The government considered the legislation a vital response to a national public health problem of substantial and pressing concern. However, the tobacco company felt that this interference had gone beyond the powers granted to the government by the Constitution.

Solutions to Additional Cases

Pages 115–117 of this teacher resource

Additional Case: Allan Singer Ltd. v. The Attorney General of Quebec

1. Allan Singer Ltd. believed that the Quebec Charter of the French Language violated freedom of expression guaranteed by s. 2(b) of the Charter by not allowing the company to post signs in the language of its choice.

2. By invoking the notwithstanding clause, the Quebec government could enforce French-only signs, regardless of the Supreme Court ruling that the Charter was being violated.

3. The Quebec government felt this action was necessary to preserve and protect Quebec’s French heritage and culture.
Additional Case: Irwin Toy Limited v. Quebec (Attorney General)

1. Yes, advertising is a form of expression protected by the Charter because it is a means of communicating information to the public. The Supreme Court of Canada ruled that “all activities conveying or attempting to convey meaning are expression for the purposes of s. 2(b) and, as such, are protected by the Charter.”

2. The Consumer Protection Act does limit that right and does violate the Charter. Since the purpose of the Act was to restrict freedom of expression, it violates s. 2(b) of the Charter.

3. Section 1 contains a reasonable limits provision, which applies to all rights and freedoms. This means that a law must have an objective important enough to justify limiting a Charter right. The Supreme Court of Canada deemed that the objective of the provisions in the Consumer Protection Act, i.e., limiting advertising to protect children under 13, was important enough to limit—as little as possible—Irwin Toy’s freedom of expression.

Additional Case: Falkiner v. Director, Income Maintenance Branch

1. This law violates s. 15 of the Charter, which states that the Charter does not preclude any law, program, or activity that has as its objective the amelioration of conditions of disadvantaged individuals. Giving welfare to single mothers with children is a measure designed to ameliorate their position. Taking their welfare payments away would be against the spirit of s. 15 because it might lead to economic hardship. The legislation should have remained consistent with the three years it takes for spouses to obtain common-law status.

2. The Ontario government could rewrite the legislation to indicate that even under the new definition of “spouse,” family benefits would not be taken away from single parents on welfare. Welfare recipients would be able to keep their benefits until they reached the three-year limit of cohabitation. However, since the “spouse in the house” change to the legislation was intended to remove these single parents from social assistance, it would be difficult to change the legislation and still achieve the objective without violating s. 15.

Additional Guided Case: George Smitherman (guardian ad litem of Marc Hall) v. Michael Powers

1. Justice MacKinnon ruled that the Board’s claim of jurisdictional power under s. 93(1) was unconstitutional because it violates s. 15 of the Charter.

2. Some students will agree that Marc Hall has the right to attend the school prom just like any other student at his high school. Section 15 of the Charter ensures that he is treated equally without discrimination. Others might argue that while the Charter names discrimination based on “sex,” it does not mention sexual orientation. These terms are not synonymous.

Extension Activities

Activity 1

Ranking Human Rights

Purpose
To allow students to increase their awareness of the various human rights issues in society by ranking these issues according to seriousness, by forming a rationale for their opinions, and by communicating their opinions effectively to others.

Resources

- BLM 4-2: Ranking Human Rights
- Legal Inquiry

Teaching Strategies

a) Hand out copies of BLM 4-2: Ranking Human Rights and explain to the students that they will read various scenarios related to rights and free-
domains. Once they have read the list, they will rank the scenarios from most objectionable (1) to least objectionable (10).

b) After the students have ranked the scenarios individually, they should form small groups to share and discuss their rankings. Ask students to come up with a group consensus on how to rank the scenarios.

c) Each group should then post their results on the board in chart form.

d) Finally, hold a discussion to arrive at a class consensus. Encourage students to discuss their ideas in the context of the Charter of Rights and Freedoms.

Activity 3
Charter Issue

Purpose
To encourage students to think critically and apply the Charter to a controversial issue in society.

Resources
• BLM 4-4: Freedom of Expression Activity

Teaching Strategies:

a) Ask students to read the scenario in BLM 4-4: Freedom of Expression Activity and answer the accompanying questions.

b) Give students a chance to share and discuss their responses.

Activity 4
Rewording the Charter

Purpose
To familiarize students with the contents of the Charter and allow them to express its terms in their own words.

Resources
• Canadian Charter of Rights and Freedoms, Law in Action, pp. 519–523

Teaching Strategies

a) Explain to students that the wording of the Charter is often difficult to understand and interpret.

b) The students’ task is to pick five sections of the Charter and reword them so that they are clearer and easier to understand. (Alternatively, assign various sections of the Charter to individual students or small groups and create a new classroom version of the Charter.)

c) Ask students to display and discuss their revised sections of the Charter.
Additional Resources

Books
A collection of articles by 10 authors from all parts of Canada on the Charter of Rights and Freedoms. Includes a chapter that compares the Charter with the Canadian Bill of Rights.

A brief, detailed, historical chronology of political events in Canada. A great reference book and a must for all teachers.

Provides historical background and analyses of Constitutional issues. Also presents current arguments for constitutional change.

This resource provides an easy-to-read perspective on human rights history in Canada. Also includes a copy of the Universal Declaration of Human Rights and The Convention on the Rights of the Child.

The following books are available from Spetz Publishing Ltd., 630 Graceland Avenue, Kingston ON K7M 7P7, Tel: (613) 389-7176 or e-mail sgspetz@kos.net

Judicis
A series of eight case problems representing a cross section of topics in law courses across Canada. Each case study is a stand-alone unit that includes all the background information students need. Reproduction rights are granted to the purchasing school.

The Law Enrichment Program
A series of Modules designed to enhance legal literacy. Each module has a question section and a comprehensive marking guide. Reproduction rights are granted to the purchasing school.

The Law Student’s Workbench
Contains 104 pages of questions, including true-false, multiple choice, short answer, and case questions. Reproduction rights are granted to the purchasing school.

Magazines
Just In Time, I.P.I. Publishing Limited.
An easy-to-read journal that discusses current issues in Canadian law and provides a clear understanding of some of the major developments.

Other Resources
- CBC News in Review, CBC Educational Sales
  Relevant, investigative reports of Canadian affairs, accompanied by a teacher’s guide with activities. Previous segments have included Canadian landmark cases such as James Keegstra, Sue Rodriguez, and David Milgaard.
- Newspapers are an excellent resource for Charter cases. Check frequently for current cases.
- Inviting a lawyer, a Crown attorney, or a judge to speak about the Charter of Rights and Freedoms is always a great activity.
Allan Singer Ltd. v. The Attorney General of Quebec (1988), S.C.C.

The Quebec Charter of the French Language required that public signs, posters, and commercial advertising had to be in French only. Allan Singer Ltd. complained to the courts that this statute violated section 2(b) of the Charter, which guarantees freedom of expression. The Supreme Court of Canada agreed with this complaint and struck down the sections of the Quebec statute that violated the Charter. Using the notwithstanding clause, the Quebec government re-enacted the legislation requiring the use of French only on signs outside a business.

1. Explain why Allan Singer Ltd. believed that the Quebec Charter of the French Language violated section 2(b) of the Charter.

2. Why did the Quebec government use the notwithstanding clause in this case?

3. Why did the Quebec government feel it was important to uphold the legislation requiring public signs to be in French only?

Irwin Toy Ltd. v. Quebec (Attorney General), [1989] 1 S.C.R. 997

In 1980, the Quebec government enacted new consumer protection legislation called the Consumer Protection Act, directed at protecting youths under the age of 13. The provisions of the Act prohibited all forms of commercial advertising—newspapers, magazines, radio, and television—directed at children. The Quebec government warned Irwin Toy Ltd. that its television advertising violated the provisions of this legislation. In response, Irwin Toy began an action against the province, claiming that the Act violated its right to freedom of expression guaranteed under s. 2(b) of the Canadian Charter of Rights and Freedoms. The questions to be considered in this case were as follows:

1. Is advertising a form of expression that is protected by the Charter?

2. Does the Consumer Protection Act limit that right and violate the Charter?

3. If the Act does violate that right, is it a reasonable limit under s. 1 of the Charter?

It took nine years of litigation before the Supreme Court of Canada answered these questions. How would you answer them?
**Falkiner v. Director, Income Maintenance Branch (2002), Ont. C.A.**

In May 2002, Justice John Laskin of the Ontario Court of Appeal ruled that the government’s “spouse in the house” definition instituted in 1995 was unconstitutional. Previously, according to the *Family Benefits Act* and *Family Law Act*, persons were deemed to be spouses if they had lived together continuously for at least three years. Under the 1995 amendment, a spouse was defined to include persons of the opposite sex living in the same place who had “a mutual agreement or arrangement regarding their financial affairs” and a relationship that amounted to “cohabitation.” Under this amended definition, once persons of the opposite sex began living together, they were presumed to be spouses unless they provided evidence to the contrary.

At the trial, Sandra Falkiner and three other women argued that the amended definition of “spouse” violated their rights under s. 15 of the Charter. Each of the respondents was an unmarried woman, had a dependent child or children, and was in a “try-on” relationship with a man with whom she had lived for less than a year. When the 1995 definition came into effect, each woman lost her eligibility to receive family benefits as a “sole support parent.” “Forcing them [mothers on welfare] to become financially dependent on men with whom they have at best try-on relationships strikes at the core of their dignity,” said Laskin in his decision.

1. How does the “spouse in the house” rule violate s. 15 of the Charter?

2. How could the Ontario government rewrite the law to avoid violating s. 15?

BACKGROUND Before his high-school graduation prom, 17-year-old Marc Hall requested permission to bring Mr. Drumond, who had been his boyfriend for about a year, as his date. On February 25, 2002, the principal, Michael Powers, denied Hall permission to attend the prom with Drumond. The rationale behind his decision was that interaction at a prom is a romantic form of sexual activity, and granting permission to bring a partner of the same sex would be the same as endorsing and condoning conduct that is contrary to Catholic Church teachings. Hall then took his request to the Durham District Catholic School Board. On April 8, 2002, the Board refused to reverse the principal’s decision. Hall sought an interlocutory (temporary) injunction (a court order) to restrain the Board from preventing Hall and his boyfriend from attending the high-school prom on May 20, 2002, and from cancelling the prom altogether.

In defending its decision, the Board claimed jurisdictional powers under s. 93(1) of the Constitution Act, 1867, which states

In and for each Province the Legislature may exclusively make Laws in relation to education, subject and according to the following Provisions:

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union.

LEGAL QUESTION Does the Board’s decision violate individual human rights protected under the Canadian Charter of Rights and Freedoms, or does it fall within the Board’s power to make decisions with respect to denominational matters and is, therefore, protected under s. 93(1) of the Constitution Act, 1867?

DECISION In his ruling, Justice R. MacKinnon described school as a fundamental institution that provides a social context for students’ lives both in and outside of school hours. In this sense, excluding a student from a significant occasion like the school prom constitutes a restriction in access to a fundamental social institution. Moreover, a publicly funded school board that establishes and implements policies of general application is subject to the Charter. In this situation, the decision to enforce Roman Catholic teachings establishes policy of general application to any student making the same request as Mr. Hall’s. This engages s. 15 of the Charter, which provides that

Every individual is equal before the law and has the right to equal protection and equal benefits of the law without discrimination and, in particular, without discrimination based on … religion, sex, or age …

According to Justice MacKinnon, the purpose of s. 15 is to value human dignity in a free society where difference is respected and equality is valued. Section 15 is intended to prevent discrimination and promote a society in which all are secure in the knowledge that they are recognized as human beings equally deserving of concern, respect, and consideration. By denying Hall the opportunity to bring the date of his choice to the prom, Michael Powers unjustly discriminated against Hall in violation of his s. 15 Charter rights.

SOCIAL SIGNIFICANCE Both positions are valid. They are also indicative of Canada’s strength as a nation that values tolerance and respect for others. Mr. Hall has a duty to respect the religious values and beliefs of those who do not share his orientation. The principal and the Board have a duty to give Mr. Hall the respect he is due as a student attending the prom with his date.

ANALYSIS

1. Why did Justice MacKinnon rule that the Board’s claim of jurisdictional power under s. 93(1) was unconstitutional?

2. Do you agree with the judgment of Justice R. MacKinnon? Why or why not?
ANALYZING A CASE

Name: ____________________________ Date: ____________________________

1. Briefly describe the facts of the case by explaining the issues and who was involved. Identify the Charter right or freedom argued in the case.

________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________

2. Frame the legal question that is the focus of the case.

________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________

3. Explain the ruling of the court. Summarize the reasons given for the decision.

________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________

4. Identify the Charter application or precedent for this case.

________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________
**RANKING HUMAN RIGHTS**

Name: ___________________________  Date: ___________________________

Read the following scenarios. Under the first column, “Individual Ranking,” rank the scenarios in order from 1 to 10, with 1 being the most objectionable scenario and 10 the least objectionable scenario.

<table>
<thead>
<tr>
<th>Scenarios</th>
<th>Individual Ranking</th>
<th>Group Ranking</th>
<th>Class Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Canadian Sikh war veteran is denied entry into the Canadian Legion Hall because he refuses to remove his ceremonial headgear.</td>
<td></td>
<td></td>
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<tr>
<td>A woman is refused service in a five-star restaurant because she is accompanied by her seeing-eye-dog.</td>
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<td></td>
<td></td>
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<tr>
<td>A young person is refused entry into an adult-only video store.</td>
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<tr>
<td>A woman is refused entry into a private men’s club.</td>
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<tr>
<td>A gay Catholic teen is not allowed to attend his school’s senior prom if he brings his boyfriend as his date.</td>
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<tr>
<td>A senior citizen is forced to retake his driver’s test on his 65th birthday.</td>
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<tr>
<td>An employee is fired because she cannot work on Wednesday afternoons due to religious observances.</td>
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<tr>
<td>A qualified woman is not hired because the employer can see that she is pregnant.</td>
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<tr>
<td>A disabled person is denied entry to a film festival because the theatre is not wheelchair accessible.</td>
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<tr>
<td>A homeless person is denied government social assistance because he has no fixed address.</td>
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</tr>
</tbody>
</table>
Although the *Canadian Charter of Rights and Freedoms* was entrenched in the Constitution in 1982, it can still be changed or improved. Your task is to create a poster that heightens public awareness of an addition to the Charter that you believe is necessary.

Addition to the Charter: ________________________________________________________________

__________________________________________________________

__________________________________________________________

Why this addition is necessary: __________________________________________________________

__________________________________________________________

__________________________________________________________
Scenario:
The owner of a private art gallery was arrested after displaying child pornography at a recent show. Many of the paintings depicted young children in sexually explicit poses. The artist, himself a victim of sexual abuse as a youngster, was attempting to make society aware of this hidden problem. He was also using his art as a personal healing process by depicting images of what had occurred in his own life.

At the show, the artist performed a poetry reading from his personal journal, describing the sexual abuse he had suffered. The poem was distributed to patrons of the gallery, and the paintings were displayed for sale.

The owner of the gallery and the artist were both charged and convicted under s. 163.1(2) of the *Criminal Code* for possessing child pornography with the purpose of distribution or sale. The case eventually found its way to the Supreme Court of Canada where the accused claimed that the judgment violated the Charter’s freedom of expression guarantee.

During the trial, a number of abuse counsellors testified that visual expressions of this nature help abuse victims come to terms with their past. Many patrons of the art show were themselves victims of abuse and testified that the show provided valid recognition of what they had suffered.

1. Should an artist be allowed to create works of art that depict children in sexually explicit poses and then write about the abuse that he or she suffered? Why or why not?

2. Should the government have the right to prevent an art gallery from displaying this kind of material and distributing or selling it to the public? Explain.

3. Discuss whether advance warnings about the controversial content of the art show would have made the event more acceptable.
Support Information

The report issued in April 2002 was prepared by Guy Richard, a former judge, and Roger Augustine, former chief of the Eel Ground First Nation in Maramichi. In addition to the fisheries issue, the report addressed the social and economic difficulties of the Aboriginal communities, specifically the poverty and despair on the Burnt Church reserve. The federal government was advised to forgive the over 100 charges that resulted from the confrontations, most of them against Aboriginal fishers. To proceed with the prosecutions would be costly and would breed more ill will.

Page 109 Looking at the Issue

1. The 2002 report recommended that Ottawa
   - drop all charges arising from the confrontations
   - compensate fishers who lost traps and boats
   - allow Aboriginal fishers to fish for lobster during the spring season only, giving both Aboriginal and non-Aboriginal fishers the same season
   - have Aboriginal fishers operate under a federal licensing system distributed by the band
   - provide education in the Mi’kmaq language
   - establish quality health, social, and family support systems for Aboriginal communities

2. Government regulation:
   - Regulations such as moratoriums on endangered species might infringe on Aboriginal hunting and fishing rights if the species were considered essential to the Aboriginal community’s livelihood. Justification for the moratoriums would be the issue of conservation for future generations. Arguments against such a moratorium would be that treaty rights entitle Aboriginal communities to benefit economically without restriction.
   - The government might also regulate certain hunting methods if they were found to be inhumane. Justification for these regulations would be based on arguments that more humane methods would be just as effective. Arguments against such regulations might be that alternative methods are less efficient or that they damage the pelts.
   - The government might prohibit fishing in a particular area if the fish were found to have a high level of mercury contamination. Such a regulation would be justified on the basis of protecting the lives of consumers. Arguments against such a prohibition would be the loss of livelihood for fishing guides.

3. Possible confrontations: Oka, Camp Ipperwash, Gustafsen Lake, and Kirkland Lake. Students should present arguments for both sides of the issue and attempt to provide solutions that are fair to all parties.

4. Groups possessing recognized rights:
   - English and French Canadians have language rights in situations regarding the Government of Canada, in federal courts, and in Quebec, New Brunswick, and Manitoba: Charter ss. 16–20; Constitution s. 133; Manitoba Act.
   - Catholics have rights to separate schools, and Protestants have rights to public schools: Constitution Act, 1867, s. 93.
   - French Canadians have rights to schooling in French outside Quebec: Charter s. 23. Note that s. 23(1)(a) does not apply to Quebec, and the right to English education in Quebec must be argued under other s. 23 provisions.
   - Linguistic minorities and the hearing impaired have the right to an interpreter: Charter s. 14. These rights are entrenched in the Constitution (constitutional law), so a government regulation (statute law) that infringed on any of these rights could be challenged in the courts as a violation and might be struck down.

Additional Resources