

The Charter in the Classroom: Students, Teachers and Rights

Topic: *The Canadian Charter of Rights and Freedoms* Section 1: Limitations

Case: R v. Keegstra [1990]

In Case Study the cases involving Malcolm Ross and Paul Fromm are referenced. Summaries for these cases are found at the Resources tab.

Additional Cases, of possible interest to students, but not explored on The Charter in the Classroom: Students, Teachers and Rights, are listed in the Extension Option.

Instructional Expectations and Opportunities have been selected by province for secondary schools and may be found in **Resources** under **Curriculum Expectations**.

Environment

- Section 1 of *The Charter* visible to the class (after completion of anticipation guide)
- Classroom setting that supports group work

Required Resources

- Section 1: *The Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
- Dictionaries (if possible a law dictionary)
- Chart paper and markers, tape or magnets for posting completed chart pages
- “Anticipation Guide” worksheet found in Appendix A of this lesson plan
- Computer lab/laptop cart, with access to The Charter in the Classroom: Students, Teachers and Rights [CC:STAR] website <http://www.thecharterrules.ca>

Content and Suggested Strategies

Overview/Agenda/Review:

1. Introduction: Brainstorm meanings of key words found Section 1 of the Charter (Definitions are found in Appendix A)
2. Anticipation Guide: Reasonable Limitations (Appendix B)
3. Introduce Section 1 of the Charter
4. Explore the CC:STAR website Concept 2
5. Discussion Questions
6. Consolidation: Anticipation Guide: “After Exploring Concept 2” & Think-Pair-Share
7. Extension Option: Review other Charter cases dealing with reasonable limits

Introduction:

- **Brainstorm** (Approximate time: 15 minutes): Brainstorm meanings of key words found in Section 1 of the Charter:
 - limitations
 - demonstrably/demonstrate
 - reasonably/reasonable
 - justified
 - free and democratic society.

Print each of the five words/terms words on a separate piece of chart paper. Divide the class into six groups and provide one colour of marker to each group. One group will

research actual definitions of the terms from the class dictionary. Each of the remaining five groups will receive a piece of chart paper and markers. Each group will have 1-2 minutes to brainstorm all of their ideas and connections about that particular term. The teacher will then tell students to rotate the papers and begin with the next term. Students need to review the contributions of the previous group before adding new ideas to the page. When all groups have contributed to each definition, post the charts and highlight common themes and/or differences. Compare student ideas with actual definitions from your research group.

Content and Teaching Strategies/Activities:

- **Anticipation Guide** (Found in Appendix B) Now that students have an idea of the key terms in Section 1 of the Charter, ask them to complete the first column of the Anticipation Guide.
- Introduce Section 1 of the Charter: *The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*
- Using their computers, ask students to explore Concept 2 of the CC:STAR website.
- At the Interpretation tab, Danielle McLaughlin (Education Director of the Canadian Civil Liberties Education Trust (CCLET)) explains the limitations of the Charter through the “Acorn Test”, a simplified version of the Oakes test. The simplified version asks three questions regarding a limitation to one’s freedoms: What does is the limitation and why is it necessary? Will it work? What else does it do? (The full Oakes case may be found at the Resources tab.) CCLET has developed a prezzi that outlines the Acorn Test in more detail. See <http://prezi.com/6qe-52nj1cre/cclet-presents-the-acorn-test/>

Discussion Questions:

- Teachers may wish to refer back to the four corners activity in Concept One. Why might we compare the Charter to a passport or curfew? The goal is for students to understand that the Charter begins by guaranteeing rights and freedoms, but also allows for those very same freedoms to have limitations.
- Why does it seem reasonable to limit the guarantee of certain rights and freedoms?
- Do students feel that the Charter goes far enough in protecting their rights and freedoms?
- Do students feel that the Charter adequately balances individual rights with the demands of the common good and rights of Canadian society?

Consolidation:

- **Think-Pair-Share Activity** After students have explored the website, ask them to independently complete the final column (after reading) in their Anticipation Guides. Allow students to share with a partner. Do they still agree with their opinions on reasonable limits of guaranteed freedoms?

Explore Option (found at Explore tab):

Have students, working individually or in small groups, research *Fitzgerald v. Alberta*. What did the Supreme Court of Canada say about reasonable limitations in these cases?

In 2005, two Edmonton women, Erin Fitzgerald and Christine Jairamsingh, appealed to have the age restriction moved from the right to vote in Alberta. The Supreme Court of Canada would not hear the case.

Another case to examine:

In 1998, the Canadian Foundation for Children, Youth and Law applied to a court to have Section 43 of the Criminal Code of Canada declared unconstitutional. Read "The Spanking Case: Testing the Validity of Section 43," prepared for OJEN by Counsel for the Department of Justice Canada, available at

<http://www.ojen.ca/sites/ojen.ca/files/sites/default/files/resources/S43%20English.pdf>

Appendix A: Definitions

Sources:

Dukelow, D.A., & Nuse, B., (Eds.). (1995). *The dictionary of Canadian law*. Toronto, ON: Carswell Thomson (Dukelow & Nuse)

Garner, B.A., (Ed.). (1999). *Black's law dictionary*. St. Paul, MN: West Group. (Garner)

Online Oxford dictionary (<http://www.askoxford.com/?view=uk>) (Oxford)

Limitations: a restriction; a defect or failing. (Oxford); the act of limiting; the state of being limited; a restriction; a statutory period after which a lawsuit or prosecution cannot be brought to court. (Garner)

Demonstrate: clearly show that (something) exists or is true; give a practical exhibition and explanation of; express or reveal (a feeling or quality) by one's actions; take part in a public demonstration. (Oxford)

Demonstrably: clearly apparent or capable of being logically proved (adjective) demonstrably (adverb) (Oxford)

Reasonable: fair and sensible. **2** as much as is appropriate or fair; moderate. **3** fairly good; average. (Oxford)

Justified: prove to be right or reasonable; be a good reason for (Oxford)

Reasonable and demonstrably justified: "to establish to that a limit is reasonable and demonstrably justified in a free and democratic society [within s. 1 of the Charter], two central criteria must be satisfied. First, the objective, which the measures responsible for a limit on a Charter right are designed to serve must be of 'sufficient importance to warrant overriding a constitutionally protected right or freedom' ... Secondly, once a sufficiently significant objective is recognized, then the party invoking s. 1 must show that the means chosen are reasonable and demonstrably justified. This involves 'a form of proportionality test' ... There are ... three important components to the proportionality test. First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations ... they must be rationally connected to the objective. Secondly, the means, even if rationally connected to the objective in this first sense, should impair 'as little as possible' the right or freedom in question ... thirdly, there must be a proportionality between the effects of the measure which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of significant importance' ..." *R. v. Oakes* (1986), 25 D.L.R. (4th) 200 at 227, [1986] 1 S.C.R. 103, 50 C.R. (3d) 1, 14 O.A.C. 335, 19 C.R.R. 308, 24 C.C.C. (3d) 321, 65 N.R. 87, Dickson C.J.C..

Free and democratic society: "the values and principles essential to a free and democratic society ... embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society ..." *R. v. Oakes* (1986), 19 C.R.R. 308 at 334, [1986] 1 S.C.R. 103, 50 C.R. (3d) 1, 14 O.A.C. 335, 24 C.C.C. (3d) 321, 26 D.L.R. (4th) 200, 65 N.R. 98, Dickson C.J.C. (Chouinard, Lamer, Wilson and Le Dain JJ concurring) (Dukelow & Nuse)

Appendix B: Anticipation Guide – Reasonable Limitations

Before Exploring Concept 2	Statements	After Exploring Concept 2
Agree Disagree	1. It is fair and reasonable to limit voting age to persons 18 years of age and older.	Agree Disagree
Agree Disagree	2. Teachers may impart their personal views to their students, even if those views contradict historical fact or may be considered to promote hatred against a particular group of persons.	Agree Disagree
Agree Disagree	3. It is fair and reasonable for police to be required to have a warrant before searching your home.	Agree Disagree
Agree Disagree	4. It is fair and reasonable for a school administrator to search a student backpack or locker without student permission.	Agree Disagree
Agree Disagree	5. It is fair and reasonable to require passengers boarding airplanes to undergo a full body scan or search.	Agree Disagree
Agree Disagree	6. It is fair and reasonable that police do not have the right to search people at random as they walk down the street.	Agree Disagree
Agree Disagree	7. It is fair and reasonable to limit driving age to persons 16 years of age and older.	Agree Disagree
Agree Disagree	8. It is fair and reasonable to require persons age 18 and under to attend school.	Agree Disagree