

The Charter in the Classroom: Students, Teachers and Rights

Topic: *The Canadian Charter of Rights and Freedoms* Section 2(b): Freedom of Conscience and Religion

Case: Multani v. Commission scolaire Marguerite-Bourgeoys

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

Environment

- Section 1 and Section 2(a) of *The Charter* visible to the class

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
- Section 2 (a): Everyone has the following fundamental freedoms: freedom of conscience and religion
- “Anticipation Guide” worksheet found in Appendix A of this lesson plan
- “Understanding the Oakes Test” worksheet found in Appendix B of this lesson plan
- Computer lab/laptop cart with access to the Charter in the Classroom, CC: STAR website <http://www.thecharterrules.ca>

Content and Suggested Strategies

Overview/Agenda/Review:

1. Introduction: Section 2 (a) Freedom of Conscience and Religion
2. Anticipation Guide: “Before Reading”
3. Case Review: Multani v. Commission scolaire Marguerite-Bourgeoys
4. Discussion Questions
5. *The Charter* Section 1 and Understanding the Oakes Test
6. Oakes Test Exercise
7. Consolidation: Anticipation Guide: “After Reading”
8. Extension Option: Writing Exercise

Introduction:

- Introduce students to section 2 (a) of *The Canadian Charter of Rights and Freedoms*: *Everyone has the following fundamental freedoms: freedom of conscience and religion*;
- Ask students what they think is the purpose of s. 2(a) of the charter.
- **Anticipation Guide – Before Reading:** Prior to reading/discussing the details of the Multani v. Commission scolaire Marguerite-Bourgeoys case, students will complete the “**Before Reading**” portion of the Anticipation Guide found in Appendix A of this lesson plan.
- If time/resources permit, allow students to explore the “Introduction” and “Interpretation” sections of the Freedom of Religion Concept 3 of the CC: STAR website <http://www.thecharterrules.ca>.

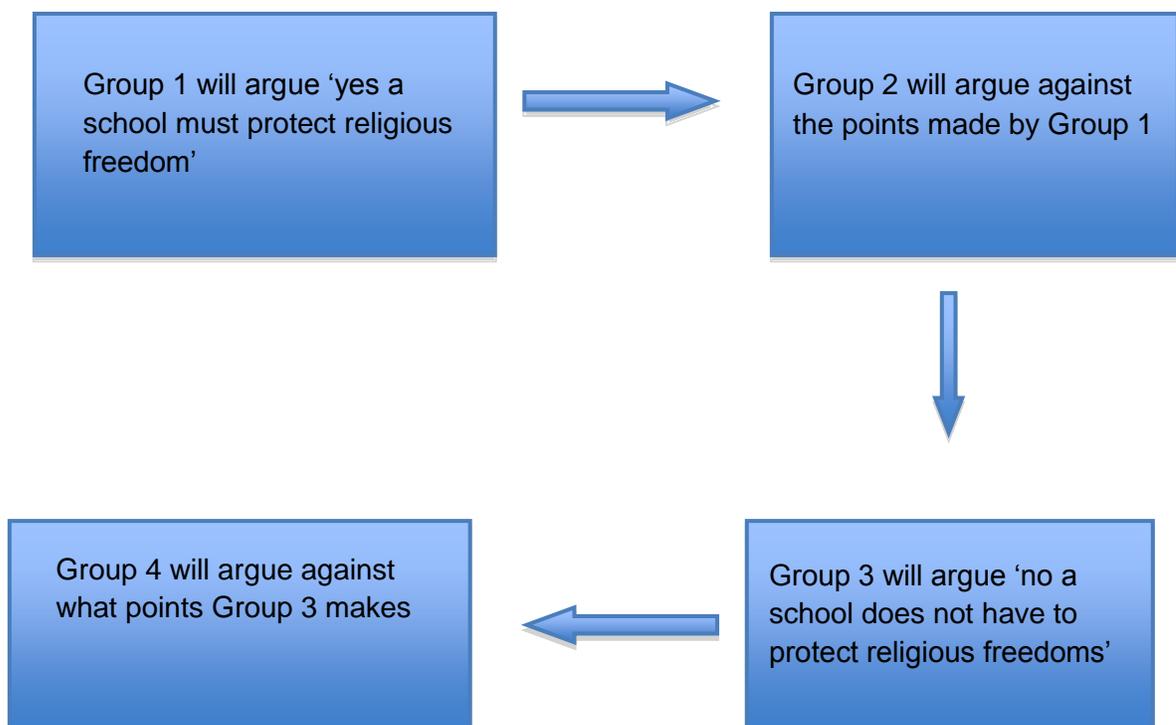
Content and Teaching Strategies/Activities:

- **Case Review:** Introduce the facts behind the case of Multani v. Commission scolaire

Marguerite-Bourgeois by providing students with the case summary found under the “Resources” section of the CC: STAR website <http://www.thecharterrules.ca>. Students should also watch the video found in the Concept 3 “Multani Case Study Scenario” section of CC: STAR website [<http://www.thecharterrules.ca>]. **NOTE:** Do not reveal the results of the case at this point because the students will be required to arrive at their own conclusions in the “Understanding the Oakes Test” exercise found in Appendix B below.

- **Debate:** (can be tied in with the Discussion Questions) ‘Using the discussion questions below as topics or some that you come up with as a class, prepare students for a small debate. Divide students into 4 groups (pro-argument, argue against what pro comment group says, con-argument and argue against what con-argument group says). Allow groups 5 minutes to come up with list of possible comments and arguments. First group will have 2 minutes to express points for their side, next group will have 2 minutes to argue what they said and so on. Because the time spent on each debate is small, a number of topics can be discussed. To keep things fair and balanced reorder groups so they are placed on different sides of the debate.’

Example: Does a school’s obligation to protect the religious freedom of a few students outweigh their obligations to maintain a safe environment foal I students and staff?



Discussion Questions:

1. What are the two main rights or concerns that are in conflict in this case? (Answer: maintaining school safety and protecting freedom of religion)
2. Are the school’s concerns about the Kirpan being used as a weapon or symbol of violence warranted? Why or why not?
3. Does a school’s Charter obligation to protect the religious freedoms of a few students

- outweigh their obligations to maintain a safe environment for all students and staff?
4. How do you balance the protection of religious freedoms against school safety?
 5. What is a fair limit on one's freedom of religion?
 6. How might your decision compare with a ban of Kirpans on planes or in a courtroom?

Understanding the Oakes Test:

- Using the Oakes test, students will determine if a school ban on Kirpans is a reasonable and demonstrably justified limit of religious freedoms under s. 1 of the Charter.
- Provide students with the “Understanding the Oakes Test” worksheet found in Appendix B below.

Consolidation:

Anticipation Guide – After Reading: Once students have learned about the details of the case and completed their own Oakes test analysis, students will complete the “**After Reading**” portion of the Anticipation Guide found in Appendix A of this lesson plan.

Extension Option:

Writing Exercise: Ask students to consider their response to question 7 of the Anticipation Guide. What has been their own personal experience regarding protecting and valuing religious freedoms? Ask students to prepare a brief written response, using knowledge of the Oakes Test, to explain whether they agree with the statement in question 7 of the Anticipation Guide.

Argument Counter Argument Activity provided at the Explore tab in Concept 3.

Appendix A: Anticipation Guide

Before Reading	Statements	After Reading
Agree Disagree	1. Freedom of religion is an absolute right that should never be subject to limits.	Agree Disagree
Agree Disagree	2. Limiting religious freedoms may be reasonable depending on the context in which the right was infringed.	Agree Disagree
Agree Disagree	3. Principals and teachers should aim to achieve an absolute level of school safety.	Agree Disagree
Agree Disagree	4. Banning religious symbols that could potentially be used as weapons, such as a Kirpan, is a reasonable means of maintaining school safety.	Agree Disagree
Agree Disagree	5. The safety of the majority is always more important than protecting the religious freedoms of the minority.	Agree Disagree
Agree Disagree	6. Since some Sikhs are willing to wear wooden replicas of their Kirpans, all Sikhs should be able to accept this as a reasonable compromise of their religious freedom in order to maintain school safety.	Agree Disagree
Agree Disagree	7. Protecting and valuing the religious freedoms of students promotes values such as multiculturalism, diversity, and the development of an educational culture respectful of the rights of others. ¹	Agree Disagree

¹ *Multani v. Commission scolaire Marguerite-Bourgeois*, [2006] 1 S.C.R. 256, 2006 SCC 6. at 78.

Appendix B: Understanding the Oakes Test²

In *Multani v. Commission scolaire Marguerite-Bourgeoys*, the Supreme Court of Canada had to determine if a school ban on Kirpans was a reasonable and justifiable limit on Gurbaj Singh's religious freedoms. To determine if such a limit could be justified, the Court used the Oakes test as a guideline by which to assess the limit and its intended objectives and effects on society.

Your Turn: Using the parts of the Oakes test listed below, act as a Supreme Court Justice and apply your knowledge of the *Multani* case to decide whether or not a complete ban on Kirpans in school is a reasonable and justifiable limit under s. 1 of *The Charter*. Write your analysis of each of part of the Oakes test as well as your final decision on a separate piece of paper.

Part 1: Importance of the Objective

It must be demonstrated that the limit is motivated by a pressing and substantial objective, an objective that society deems to be significantly important.

Questions to Consider:

- What is the underlying objective of the limit?
- Is that objective so pressing and substantial that it could warrant limiting a Charter right or freedom?

Part 2: Proportionality

Rational Connection:

It must be demonstrated that the limit imposed is not arbitrary, but rather rationally connected to the objective of the limit.

Questions to Consider:

- Is there a rational connection between the rule and its intended objective?

Minimal Impairment:

In order for a limit on a protected right or freedom to be justified, the limit must minimally impair that right or freedom. If another less intrusive alternative is available, the limit may not be justified.

Questions to Consider:

- Is the limit absolutely necessary to meet its objectives?
- Are there other reasonable alternatives that impair the protected right or freedom to a lesser extent?

Proportionate Effect:

The benefits of imposing the limit must be weighed against any negative consequences to determine if there is proportionality between the limit and the importance of its objective.

Questions to Consider:

- What are the salutary effects (benefits) of the limit?
- What are the deleterious effects (disadvantages) of the limit?
- Do the salutary effects of the limit outweigh the deleterious effects?
- Are there other reasonable alternatives that are more proportionately advantageous?

² Based on Ontario Justice Education Network. Section 1 of the Charter & the Oakes Test. www.ojen.ca