

The Charter in the Classroom: Students, Teachers and Rights

Topic: The Canadian Charter of Rights and Freedoms – Sections 1, 2(a), 2(b), and 15(1).

Case: Ross v. New Brunswick School District No. 15, [1996] 1 S.C.R. 825

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

Environment

- Sections 1, 2(a), 2(b) and 15 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 such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
- Section 2(a) and 2 (b): Everyone has the following fundamental freedoms:
 - freedom of conscience and religion;
 - freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- Section 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- “Competing Rights Activity” found in Appendix A of this Lesson plan.

Content and Suggested Strategies

Overview/Agenda/Review:

1. Introduction – Discussion on off-duty conduct
2. Review of Ross v. New Brunswick School District No. 15
3. Discussion Questions
4. Competing Rights Activity: Freedoms of Expression and Religion vs. Freedom from Discrimination

Introduction:

- Search Activity Cards: (each activity to be printed on a separate piece of paper/card stock) One set is required to conduct the game as a teacher-led activity. Multiple sets would be required to conduct the game in small groups. Ask students how they might react if they learned their family doctor engaged in any one of the following activities:
 - Skydiving
 - Being an alcoholic
 - Going to a night club
 - Driving drunk
 - Doing drugs
 - Riding a motorcycle
 - Having a criminal record
 - Having friends who have criminal records
 - Belonging to a whites-only golf club

Have students place cards on scale of acceptable to not acceptable.

- Is simply participating in any of the above activities sufficient grounds to revoke your family doctor's license to practice medicine?
- Why do you feel some of these activities are inappropriate conduct for a doctor? How do you draw the line between which activities are appropriate and which are not (i.e. illegal versus illegal activity? "Moral" versus "immoral" activity)?
- Would your opinions change if the person in question was the receptionist at the doctor's office? What if this person was a family member? What if the person was your teacher?
- Would your opinions change if you could be certain that these activities were completely separate from your doctor's/teacher's professional life, and they did not affect your doctor's/teacher's job performance?
- Should schools and school boards have a say in what a teacher does in their spare time, or with whom they associate? Should teachers and other professionals be expected to disclose all their personal associations and off-duty activities to their employers?

Content and Teaching Strategies/Activities:

- Introduce students to section 15 of the Canadian Charter of Rights and Freedoms:
Section 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- Introduce students to section 2(a) and 2(b) of the Canadian Charter of Rights and Freedoms:
Section 2(a) and 2 (b): Everyone has the following fundamental freedoms:
 - *freedom of conscience and religion;*
 - *freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;*
- Recall the hypothetical scenario in which a doctor or teacher frequented a whites-only golf club on their off duty time. What is the overall purpose of sections 15, 2(a) and 2(b) of the Charter? How do these sections apply to that hypothetical scenario?
- Introduce the facts behind the case of Ross v. New Brunswick School District No. 15, by providing students with case summaries found under the "Teacher Resource" section of the CC: STAR website <http://www.thecharterrules.ca>.
- If class time/resources permit, allow students to learn about the facts of the case by exploring Concept 9 "Case Study" section of CC: STAR website <http://www.thecharterrules.ca>.

Discussion Questions:

1. Do you agree or disagree that Ross' discriminatory remarks created a poisoned school environment? In other words, did Ross' remarks violate students' rights to an equal education without discrimination under section 15 of the Charter? Explain.
2. The Board of Inquiry found there was no evidence of any direct discriminatory activity by Ross inside the classroom or school. Does knowing that Ross' discriminatory remarks occurred only on his off-duty time change your answer to question 1 above? Explain.
3. By its failure to respond appropriately to Ross' out of school conduct, was the School Board endorsing Ross' conduct and therefore contributing to the "poisoned school environment?" Explain.
4. Are Ross' writings worthy of protection under the Charter's guarantee to freedom of expression and freedom of religion? Explain.

Competing Rights Activity Appendix A:

- In groups of 3 – 4, have students review the restrictions the board put on Ross in his private life.
- The groups will put themselves in the role of the Supreme Court of Justice and use the Oakes test to determine if the limitations were reasonable under the Charter.
- Have groups record their analysis and final decision on separate paper and present to the class.
- Discuss differences of opinions between groups/students

Additional Resource:

Hurley, M. (2007). Charter equality rights: Interpretation of section 15 of Supreme Court of Canada Decisions. Ottawa, ON: Library of Canada. Available from <http://www2.parl.gc.ca/content/lop/researchpublications/bp402-e.pdf>

Appendix A

Competing Rights: Freedoms of Expression and Religion vs. Freedom from Discrimination

In an effort to remedy the poisoned school environment created by Ross' discriminatory conduct, The Human Rights Board of Inquiry made an order requiring the School Board to take the following action (among others):

(2) That the School Board:

- d) terminate Malcolm Ross' employment with the School Board immediately if, at any time during the eighteen month leave of absence or if at any time during his employment in a non-teaching position, he:
 - o publishes or writes for the purpose of publication, anything that mentions a Jewish or Zionist conspiracy, or attacks followers of the Jewish religion, or
 - o publishes, sells or distributes any of the following publications, directly or indirectly:
 - Web of Deceit
 - The Real Holocaust (The Attack on Unborn Children and Life Itself)
 - Spectre of Power
 - Christianity vs. Judeo-Christianity (The Battle for Truth)

This action was the main subject of the appeal set forth at the Supreme Court of Canada.

Your Turn: Using the parts of the Oakes test listed below, you will act as a Supreme Court Justice and apply your knowledge of the Ross case to decide whether or not the above limit on Ross' Freedom of Religion and Freedom of Speech is reasonable and justifiable limit under s. 1 of the Canadian Charter of Rights and Freedoms. 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. In other words, an objective that society deems to be significantly important.¹

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.ⁱⁱ

- 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?

ⁱ Ontario Justice Education Network. Section 1 of the Charter & the Oakes Test. p 2.

ⁱⁱ Ontario Justice Education Network. Section 1 of the Charter & the Oakes Test. p 4.