



The Charter Project

1. Lesson Plan Information

Course: Any social science course (History, Politics, etc)

Grade Level: 8-10

Topic: Freedom of Expression in the School Context

Time/Length of Period: 45 minutes

2. Expectation(s) and Learning Skills

The students will:

- Learn about the Canadian Charter
- Learn about the Freedom of Expression, its application and scope
- Think critically about the values that underlie Freedom of Expressions
- Weigh competing values and make judgement decisions about them

3. Pre-assessment

A. (i) Students

Background Information (To be used as needed):

The Canadian Charter

- The *Canadian Charter of Rights and Freedoms* is a bill of rights entrenched in the Constitution of Canada, forming the first part of the Constitution Act, 1982.
- The *Charter* guarantees certain political rights to Canadian citizens and civil rights of everyone in Canada from the policies and actions of all levels of government.
- The *Charter* only applies to government laws and actions (including the laws and actions of federal, provincial, and municipal governments and public school boards), and sometimes to the common law, not to private activity.
- The *Charter* was preceded by the *Canadian Bill of Rights*, which was enacted in 1960; however, it was limited in scope, was easily amendable by Parliament, and it had no application to provincial laws.
- The relative ineffectiveness of the *Canadian Bill of Rights* motivated many to improve rights protections in Canada.
- One of the most notable effects of the adoption of the *Charter* was to greatly expand the scope of judicial review, because the *Charter* is more explicit with respect to the guarantee of rights and the role of judges in enforcing them than was the *Bill of Rights*. The courts, when confronted with violations of *Charter* rights, have struck down unconstitutional federal and provincial statutes and regulations or parts of statutes and regulations, as they did when Canadian case law was primarily

concerned with resolving issues of federalism. However, the *Charter* granted new powers to the courts to enforce remedies that are more creative and to exclude more evidence in trials.

Freedom of Expression

2. Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

- The Freedom of Expression is broadly defined as any "activity that conveys, or attempts to convey, meaning" (with the exception of violent acts, or threats of violent behaviour).
- Many regard it as the most significant of all the rights in the entire *Charter*. In a 1989 Supreme Court of Canada case dealing with an Edmonton Newspaper's publication rights, Justice Peter Cory said of the Freedom of Expression, that it would be "difficult to imagine a guaranteed right more important to a democratic society".
- People need to be able to "express", communicate, act, write and share whatever/whenever they want. The premise for this argument is that society will be better served by the public exchange of ideas, whether expressions agree or disagree with the majority.
- ALL the Rights and Freedoms in the *Charter* are subject to certain limits. The Courts have a specific model they use to determine whether or not limiting one's rights will protect or hurt society (Oakes), but suffice it to say, sometimes situations arise where complete carte blanche for expressing oneself will do more harm than good, and cannot be permitted.
- Section 2(b) of the *Charter* states that "Everyone has the following fundamental freedoms: ... freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." The section potentially could cover a wide range of action, from commercial expression to political expression; from journalistic privilege to hate speech to pornography.
- The jurisprudence of the Supreme Court has largely been an attempt to carve out:
 - first, the purpose of s. 2(b) (what values does it seek to protect, who should be entitled to its protection); and
 - second, the scope of s. 2(b) (what is 'expression?').
- Freedom of expression is a cornerstone of a functioning democracy. Freedom of expression promotes certain societal values, as noted by Professor Emerson in 1963: "Maintenance of a system of free expression is necessary
 1. as assuring individual self-fulfillment,
 2. as a means of attaining the truth,
 3. as a method of securing participation by the members of the society in social, including political, decision-making, and
 4. as maintaining the balance between stability and change in society."
- Our constitutional commitment to free speech is predicated on the belief that a free society cannot function with coercive legal censorship in the hands of persons supporting one ideology who are motivated to use the power of the censor to suppress opposing viewpoints.
- The Canadian approach to freedom of expression allows for a wide conception of

"expression" within s. 2(b). The Supreme Court of Canada has stated that a wide and inclusionary approach to the interpretation of the Charter's free expression guarantee is to be preferred (see *Ford v. Quebec*, and *Irwin Toy*). Thus, in *Irwin Toy*, Chief Justice Dickson explained that "'expression' has both a content and a form, and the two can be inextricably connected. Activity is expressive if it attempts to convey meaning. That meaning is its content." Not only is there a freedom of expression, there is also a freedom to not express. As Justice Beetz said in *National Bank of Canada v. R.C.U.* [p. 377 text], "all freedoms guaranteed by s. 2 of the Charter necessarily imply reciprocal rights: ... freedom of expression includes the right to not express."

(ii) Differentiation of content, process, and/or product (may be accommodations and/or modifications).

B. Learning Environment

- Any classroom environment

C. Resources/Materials (see Appendix)

- A case hypothetical (will involve a short, simple, practical, and understandable issue that involves a "law/rule" that violates freedom of expression)
- A handout with quotes/case ratio choices relating to fr. of ex. for each team
- Overhead Projector/Computer to show powerpoint slides with quotes/case ratios on them (See attached for powerpoint)

4. Content (The What)

(i) Warm Up Activity

Discussion (or, alternatively, multiple choice questions about the following questions):

- Who knows what the Charter of Rights and Freedoms is?
- Do all countries have laws like the Charter of Rights and Freedoms?
- What purpose does it serve for Canadians?
- Who knows what Freedom of Expression is?
- Is all expression protected? If not, what kind of expression is not protected and why, in your opinion

5. Teaching/Learning Strategies (The How)

Introduction (to be conducted by teacher) :

1. Give a brief summary of the *Charter*, freedom of expression, and the section 1 limit on freedom of expression. This may begin with simply asking the class what they already know on the subject.
2. Introduce the activity and informally divide the class in two teams (a “defend” side of the room and a “defeat” side of the room).
3. Read the case hypothetical to the class and pass handouts to each team with freedom of expression quotes and case ratios on them, each of which are numbered and each which have a different number of points (depending on their complexity).
4. Lead a discussion based on the following questions:

Conflict #1

1. Should Mr. Keegstra be able to restrict any campaign issues from being discussed? Why or why not?
2. Would it be more or less ok for Mr. Keegstra not to allow the discussion of weekly assemblies if there were some reason for it other than he doesn't like to “hear students complain”? In other words, is the restriction on issues ok or not ok depending on the REASON behind the restriction?
3. Can you give an example of a law that the Canadian government has enacted that limits freedom of expression? Why is that law justified?

Conflict #2

1. Is Eric allowed to express his opinion no matter what?
 - a. If not, what kind of restrictions should apply to his comments?
2. Why do you think that the school administration made rule #10, that the rules only apply within the school?

Do you think that this is the best approach to ensuring that rules, like rule #8 are followed?

Playing time

5. Students on each team will try and win the greatest number of points by raising

their hands and giving a reason why they think the “law/rule” should “stand” or be “struck down” (depending on what their team is striving for), using as support at least one quote/case ratio on their handout. Before making their “argument”, they will say which numbered quote/ratio they are using. Each quote / principle may be used more than once.

- Mediate the discussion, note down team points on the board, and highlight the quote/case ratio being used on an overhead transparency or a powerpoint so that everyone in the classroom can see and understand it.

(ii) Lesson Conclusion

1. Do a wrap-up of the case (state what happened and why, if it is a real case) and congratulate the students on an activity well-done.
2. Post-diagnostic assessment (see section 6) may be administered to encourage reflection.

6. Assessment / Evaluation

Ask students to write a reflection writing piece on the following question:
Do you think Freedom of Expression protects everything that it should? If not, should it protect less or more?

In devising your answer, consider the following thoughts:

- Freedom of expression does not protect many slanderous statements (statements made that may tarnish someone’s reputation unjustly)
- Freedom of expression does not protect hate speech (expression that is discriminatory, for example)

7. Teacher's Reflections on the Lesson

A. (i) Evidence of Student Learning Related to the Lesson Expectation(s)

(ii) Next Steps for Student Learning Related to Lesson Expectation(s)

B. (i) Evidence of the Effectiveness of the Teacher

(ii) Next Steps Related to the Effectiveness of the Teacher

APPENDIX
CASE HYPOTHETICAL

Near the end of the school year, student council elections are being held at Pierre Trudeau Secondary School (PTSS). Two candidates in grade 11 are running for president: Angelina and Eric. In an attempt to make sure campaigns are conducted fairly, PTSS' administration has outlined and distributed a set of rules for candidates to follow.

PTSS' RULES FOR CAMPAIGN

The following rules apply to our hypothetical:

5. Candidates may raise any school-related issues in their campaign material as long as they are not prohibited by the principal, Mr. Keegstra.
8. Candidates may not make comments in their campaign material that are insulting or malicious to other candidates.
10. All of the rules outlined above are applicable only to campaign materials posted or distributed in PTSS.

CAMPAIGN ISSUES

In preparation for her campaign, Angelina asked her friends what the biggest concern that they had about their school was. They told her that it was the removal of their weekly assembly. When Angelina and her friends were in grade 9, the principal of PTSS was Mr. Irwin. Mr. Irwin required that every Friday morning, teachers cancel their classes and bring their students to the auditorium to voice and discuss any problems that were part of their school experience. When Angelina was in grade 10, Mr. Irwin left PTSS and Mr. Keegstra replaced him. Mr. Keegstra refused to continue these weekly assemblies, saying he "hated hearing students complain".

Dispute #1

Angelina made campaign posters that said: *"Vote Angelina! If elected, I will reinstate the weekly assembly!"*

When Mr. Keegstra saw these posters, he told Angelina to immediately take them down, since he prohibited the discussion of weekly assemblies as an issue according to rule 5.

Dispute #2

Eric knew that the best way to reach his fellow students and encourage them to vote for him was to create a Facebook group for himself. In the description of his group, he wrote:

"Our student council has never had a female president and there's a good reason for that- girls don't know how to lead councils! Don't trust Angelina- make the right choice and vote for me!"

When Angelina saw this posting, she complained to Mr. Keegstra that it was against rule 8 but he replied that since the comment was on Facebook and not in the school, rule 10 applied and so Eric was doing nothing wrong.

QUOTES & CASE LAW PRINCIPLES

1. Expression encompasses all activities that convey or attempt to convey meaning.
2. An exception to freedom of expression has been suggested where the repulsion of the content of the expression (such as hate propaganda) has been recognized.
3. The Charter protects the right to receive expressive material as much as it does the right to create it.
4. It is universally recognized that the reputation of a person is and always has been an important value which the law must protect. Canadian judges have weighed more heavily the value of personal reputation over those of free speech and free press.
5. The guarantee of freedom of expression serves to protect the right of the minority to express its view, however unpopular it may be; adapted to this context, it serves to preclude the majority's perception of "truth" or "public interest" from smothering the minority's perception.
6. The fact is that censorship always defeats its own purpose, for it creates, in the end, the kind of society that is incapable of exercising real discretion.
7. I disapprove of what you say, but I will defend to the death your right to say it.
8. If we don't believe in freedom of expression for people we despise, we don't believe in it at all.
9. Young players need freedom of expression to develop as creative players... they should be encouraged to try skills without fear of failure.