

Values of the Justice System



Section 1

Canadian Rights and Responsibilities

Section 1 – Canadian Rights and Responsibilities

Time: 300 minutes

Description:

This section examines the legal rights and responsibilities of Canadian citizens and how those rights have evolved over the years. It will focus on the *Charter of Rights and Freedoms*, as well as the fundamental beliefs and values that are associated with democratic citizenship, such as the rule of law and freedom of expression. This activity ideally culminates with a trip to the courts, or a guest speaker in the classroom.

Overall expectations:

- ICV.02 - explain the legal rights and responsibilities associated with Canadian citizenship.
- PCV.01 - demonstrate an understanding of the beliefs and values underlying democratic citizenship and explain how they guide citizens' actions.

Specific expectations:

- IC1.02 - compare the benefits and drawbacks of democratic and authoritarian forms of decision-making, drawing on examples from everyday contexts (e.g. with respect to the rights and responsibilities of citizens, the rule of law, the common good, the parliamentary system, majority rule and the rights of minorities, including Aboriginal peoples).
- IC2.01 - identify the rights and responsibilities of Canadian citizenship, based on the Canadian Charter of Rights and Freedoms, and describe how these rights and responsibilities are exercised in schools, communities, and the nation.
- IC2.04 - analyse cases that have upheld or restricted a citizen's rights and responsibilities, outlining the concerns and actions of involved citizens and the reasons for the eventual outcome.
- PC1.01 - describe fundamental beliefs and values associated with democratic citizenship (e.g. rule of law, human dignity, freedom of expression, freedom of religion, work for the common good, respect for the rights of others, sense of responsibility for others).

Planning Notes:

- Obtain copies of the *Charter of Rights and Freedoms*, either individual copies for the students, or a classroom copy.
- Create an overhead using Appendix 1.1.
- Reproduce copies of Appendices 1.2, 1.3, 1.4, 1.5 and 1.6.
- Arrange for computer lab time for the assignments that are a part of Appendices 1.3 and 1.6.
- Arrange for tv/dvd booking for work associated with Appendix 1.9.
- Obtain articles from newspapers or magazines that focus on legal issues such as sexual orientation and hate crimes.
- If anticipating the use of a guest speaker, make necessary arrangements in this regard.

Prior Knowledge Required:

Students should be familiar with their rights and responsibilities, as well as the *Charter of Rights and Freedoms*, as it is introduced in the Grade 5 *Aspects of Government in Canada* strand.

Teaching/Learning Strategies:

1. Introduce the concept of rights and responsibilities by using a brainstorming approach. Then, using the overhead found in Appendix 1.1- *The Charter of Rights and Freedoms*, introduce each of the legal rights and explain them using examples.
2. Explain to the students that, while they are able to enjoy a number of rights, they also have some responsibilities as citizens. Teachers may wish to introduce this concept by discussing students' rights and responsibilities at home, at school, and in their daily lives.
3. Divide the class into groups of 5-6 and ask students to brainstorm ideas regarding the responsibilities of a Canadian citizen. Ask students to record their group answers on the top part of Appendix 1.2 - Responsibilities of a Canadian

- citizen. (The second page of this appendix includes a list with some possible answers. This is meant for teacher use only.)
4. Bring the class back together and share all the group answers. After some discussion, ask the class to identify the five responsibilities that they feel are the most important and to record their answers on the bottom part of the handout.
 5. Briefly outline for the students the concept of equality rights and how this has changed over the years to reflect the morals of an ever-changing society. Provide students with a copy of Appendix 1.3 - The Evolution of Equality Rights. Students are to read it and answer the questions provided. Ask the class to consider how and why moral codes are changing by making reference to current examples from the media.
 6. Introduce the issue of sexual orientation and the law. Discuss the implications of homosexual marriage, survivor benefits for pension plans, immigration, child support and custody, and job discrimination. Provide students with a copy of Appendix 1.4 - Equality rights under the *Charter*, which examines the issue of sexual orientation in Canada, and have them research the required information using the internet, newspapers or any available resources. This could be introduced during class time and completed as homework. (In light of Catholic values, teachers in Catholic schools should exercise their professional judgment with regard to using this exercise.)
 7. This assignment should be reviewed with the class in order to discuss the issues that may arise from it.
 8. Introduce the students to the Magna Carta and the concept of the rule of law, either through a teacher-directed lesson or by reading the appropriate section in a text. Provide the students with copies of Appendix 1.5 -What is the Rule of Law? and have them work independently on the answers. Correct the assignment in class.
 9. Discuss with the students the concept of freedom of expression and its significance in a democratic society. Provide students with a copy of Appendix 1.6 - Freedom of Expression and the *Charter*: The issue of Hate Crimes in Canada, and have them work in pairs to research and complete this assignment.
 10. This activity could culminate with a visit by a judge, a prosecutor, or defence counsel. Students should prepare questions about some of the issues previously discussed in this unit. The teacher should also make the speaker

aware of the topics covered so they can prepare for the visit. [Appendix 1.7](#) is the teacher request form that can be used to arrange this visit.

11. Extension Activity – Have students view the DVD version of the Great Debate, as described in [Appendix 1.9](#). Teachers can obtain the discs free of charge from OJEN – info@ojen.ca. Either in groups or individually, have students identify main arguments made by the debaters and give a brief explanation of why they think a particular argument is a good one.

Teachers may want to personally attend the Great Debate (held annually in April, in Toronto at Osgoode Hall) and use their experience at the event to inform the classroom activity.

12. Extension Activity – Using [Appendix 1.10](#), select a *Landmark Case* related to the Charter and have students prepare and perform in role and act out part of the trial.
13. Extension Activity – Copy and distribute to students the “Spanking Case” summary, questions and timeline found in [Appendix 1.10](#). Have students work individually or in small groups to answer the questions.

Assessment/Evaluation Techniques:

(Please note that in this and all subsequent activities, the numbers listed below correspond to the numbers in the Teaching/Learning Strategies section above.)

3. Roving conference while students are working in their groups.
5. Summative evaluation of written responses to [Appendix 1.3](#).
7. Formative assessment of verbal and written responses to [Appendix 1.4](#).
8. Formative assessment of verbal and written responses to [Appendix 1.5](#).
9. Summative evaluation of written responses to [Appendix 1.6](#).

Resources:

Print:

Classroom Civics or Law textbooks
Newspapers and news magazines
The Canadian Charter of Rights and Freedoms

Non-Print:

<http://www.ojen.ca>

(Key resource for teachers: OJEN resources have been designed for teachers teaching law and for judges, lawyers, and other justice sector volunteers when speaking with students. To obtain a disc of The Great Debate, contact OJEN.)

<http://laws.justice.gc.ca/en/charter/>

(This site has a complete copy of the *Charter of Rights and Freedoms*.)

<http://www.samesexmarriage.ca/equality/incanada.html>

(This site has a great deal of information on the legal issues surrounding same sex marriages and links to a number of similar sites. It offers information on court cases and a timeline of legal marriages in Canada.)

<http://www.efc.ca/pages/chronicle/censor.html>

(This site has links to a number of sites related to the issue of freedom of expression.)

<http://www.uottawa.ca/hrrec/lawroom/freespch.html>

(This site is called the Law Room on Canada's SchoolNet and deals with Free Speech and Hate Crime.)

www.ojen.ca

(Teachers can access the request form for a courtroom visit or a guest speaker at this site. It also has a listing of the courthouses and their addresses and fax numbers. Teachers can access this information through the Courtrooms & Classrooms link.)

Television:

News in Review – C.B.C.

Studio Two – TV Ontario

Diplomatic Immunity – TV Ontario

Appendix 1.1

THE CHARTER OF RIGHTS AND FREEDOMS

The *Charter of Rights and Freedoms* was created in 1982 in order to entrench the fundamental rights and freedoms of Canadians into the existing Constitution. Below you will find the legal rights afforded to all Canadian citizens as they are listed in selected sections of the *Charter*.

GUARANTEE OF RIGHTS AND FREEDOMS

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.

FUNDAMENTAL FREEDOMS

2. 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
 - freedom of peaceful assembly, and
 - freedom of association

LEGAL RIGHTS

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention

10. Everyone has the right on arrest or detention:
- a) to be informed promptly of the reasons therefor;
 - b) to retain and instruct counsel without delay and to be informed of that right; and
 - c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right:
- a) to be informed without unreasonable delay of the specific offence;
 - b) to be tried within a reasonable time;
 - c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
 - d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
 - e) not to be denied reasonable bail without just cause;
 - f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
 - g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
 - h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
 - i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Treatment or punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-crimination

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence, so given, used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Interpreter

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

EQUALITY RIGHTS

15. Every individual is equal before and under the law and has the right to equal protection and equal benefit of law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Appendix 1.2

RESPONSIBILITIES OF A CANADIAN CITIZEN/RESIDENT

In your group, discuss the responsibilities that you feel are associated with being a Canadian citizen. Come up with at least five responsibilities and list them below. Be prepared to justify your responses.

1.

2.

3.

4.

5.

List the five responsibilities that the class has determined are the most significant.

As a Canadian citizen/resident, I have a responsibility to...

1. _____

2. _____

3. _____

4. _____

5. _____

(Appendix 1.2 continued....Teacher's Copy)

Responsibilities of a Canadian Citizen/Resident

(The responsibilities of a Canadian citizen may include, but are not limited to, the following:)

As a Canadian citizen, I have a responsibility to...

- “faithfully observe the laws of Canada” (as stated in the oath of citizenship)
- vote in elections
- promote and preserve Canada’s diverse and multicultural heritage
- defend Canada
- pay taxes that help to fund public services such as health care and education
- serve on a jury
- respect all Canadians
- allow all Canadians to enjoy their rights and freedoms without discrimination
- be an active participant in my community
- work towards the common good of the country
- be open to educating myself on my country’s history, geography, laws, heritage etc.
- appear as a witness
- tell the truth in giving statements and describing events observed

Appendix 1.3

THE EVOLUTION OF EQUALITY RIGHTS

What is Equality?

Equality is a difficult idea to understand. In fact, there are different definitions of equality, and even these have changed over time. Providing people with equal protection and equal benefit of the law does not mean treating people exactly the same. Rather, in our quest for equality, it is often necessary to treat people differently, as long as we are treating them fairly, so that they do not suffer from discrimination.

Discrimination occurs when someone acts on a stereotype or prejudice that leads to the unfair treatment of a person, or group of persons. Discrimination imposes a penalty upon people for invalid reasons and prevents them from having an equal opportunity to be a part of society. Making our society equally accessible to all people is not easy. More often than not, our society is based upon the interests of the majority while the varying needs of minority groups are not taken into account. These actions may not be intentional, but they continue to occur.

Let us look at the case of Michael Huck. Mr. Huck relies on a motorized wheelchair for mobility. On May 16, 1980, he went to the Coronet Theatre in Regina to view a movie. Theatre personnel advised Mr. Huck that he could either transfer to a theatre seat or view the movie from his wheelchair in an area in front of the first row of seats. Mr. Huck was unable to transfer to a theatre seat because of the nature of his disability, and even if he could, his safety would be in danger if there should be a fire. The second option was also useless because there was very little space in the front of the theatre and it would have been difficult for him to view the movie.

Michael Huck claimed that he did not, as compared to the non-disabled public, have an equal opportunity to view a movie in a theatre and that this clearly constituted discrimination against him because of his physical disability. After a five-year court battle, Mr. Huck was successful in convincing the Court of Appeal that the theatre should provide places among the regular seats for wheelchairs to be parked. More than two decades later, handicapped parking spots and access for the disabled are accepted as a normal part of everyday life as they provide equal opportunities to an important segment of our society.

The Bill of Rights

Passed in 1960, *The Bill of Rights* was an early attempt by the federal government to introduce equality protection in Canada. Unfortunately, because of inconsistent interpretation by the courts, and because it was not part of the Constitution (it was simply a federal statute), it failed to provide the protection that many Canadians had hoped for.

In the case of *Rv. Drybones* (1970), Joseph Drybones, a status Indian, had too much alcohol to drink and became intoxicated. He was picked up by the local police and charged. According to section 94(a) of *The Indian Act*, it was illegal for an Indian to be drunk while not on a reserve. Yet, it was not illegal for non-aboriginal Canadians to be drunk. The Supreme Court ruled that Mr. Drybones was denied equality under this law because it made it an offence for an Aboriginal to do something that other Canadians were legally free to do. That is unequal treatment. As a result, the Supreme Court declared section 94(a) of *The Indian Act* to be invalid because it discriminated against Native Canadians.

However, in another case involving *The Indian Act*, the Supreme Court adopted a narrower view of *The Bill of Rights*. In this case, *the Attorney General of Canada v. Lavelle* (1978), an Indian woman married a non-Indian man and lost her status as an Indian. Yet under the law, an Indian man who married a non-Indian woman would not only keep his status, but his wife would also gain status. ("Status" allows a person to enjoy the rights that native people are entitled to under a number of treaties.) Lavelle argued that by not allowing native women to keep their status, the Act discriminated against women. In this case, the Supreme Court ruled that this was not contrary to *The Bill of Rights*.

These cases are clear examples of the contradictory interpretations adopted by the courts that eventually weakened the authority of *The Bill of Rights*. In some instances, the Supreme Court would strike down a section of a law because it was considered discriminatory, while in other cases it allowed inequalities in the law to remain.

The Charter of Rights and Freedoms

These experiences with *The Bill of Rights* influenced the development of the *Charter of Rights and Freedoms*. The *Charter* was entrenched in the Constitution to ensure that the rights and freedoms contained in it would be recognized by the courts as basic principles that could not be violated by other pieces of legislation.

Section 15, the equality section of the *Charter*, states that:

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.

This section of the *Charter* is considered by many to be the most important. It establishes basic principles of equality and anti-discrimination. Because its potential impact was so great, section 15 did not come into effect with the rest of the *Charter* on April 17, 1982. Instead, the government delayed its enactment for three years to review existing laws and bring them into line with section 15.

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THE EVOLUTION OF EQUALITY RIGHTS - QUESTIONS

1. By using examples, outline your definition of discrimination and identify different kinds of discrimination.

2. Examine the Huck case and decision. Describe another situation where identical treatment would not provide equal benefit of the law.

3. What was the major problem with *The Bill of Rights*?

4. Do you agree with the decisions in the *Lavelle* and *Drybones* cases? Explain.

5. Which section of the Charter guarantees equality? _____

6. Which groups are specifically mentioned in this section?

7. Can you think of a group, other than those named in section 15, which should also be protected? Why?

8. When did section 15 come into effect and why?

In light of Catholic values, teachers in Catholic schools should exercise their professional judgment with regard to using Appendix 1.4.

Appendix 1.4

EQUALITY RIGHTS UNDER THE CHARTER: THE ISSUE OF SEXUAL ORIENTATION IN CANADA

Canadian courts have held that section 15 protects equality based on those specific characteristics set out in the *Charter* as well as those that are not specifically mentioned, such as sexual orientation. This is an issue that has been prevalent in the courts and in the media in recent years. Your assignment is to investigate this issue using newspapers, magazines, your textbook and the internet to examine the issues and the approach of the courts.

A few major cases may be found in OJEN's *Landmark Case* series at www.ojen.ca.

Describe three issues of discrimination based on sexual orientation that have been, or are being, challenged in the courts.

i) _____

ii) _____

iii) _____

Describe a case of discrimination based on sexual orientation that has been challenged in Canadian courts using section 15 of the *Charter*. Briefly state the facts of the case and outline the court's final decision.

Appendix 1.5

WHAT IS THE RULE OF LAW?

In 1215, a document was signed in England that would be crucial in the development of democracy. This document is known as the Magna Carta, or “Great Charter”. It is also the first document to introduce the principle of the rule of law, a concept that is fundamental to our system of justice.

Using your textbook and other resources, describe the events that led to the need for the Magna Carta.

In your own words, explain the meaning of the following excerpts that have been taken from the Magna Carta.

38. No bailiff for the future shall, upon his own unsupported complaint, put anyone to his "law", without credible witnesses brought for this purpose.

39. No freemen shall be taken or imprisoned... or exiled or in any way destroyed, ...except by the lawful judgment of his peers or by the law of the land.

40. To no one will we sell, to no one will we refuse or delay, right or justice.

45. We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well.

Using your textbook, define the term “rule of law”.

Name two ways that the rule of law protects people by ensuring that our justice system is fair and impartial.

i)

ii)

Appendix 1.6

FREEDOM OF EXPRESSION AND THE CHARTER: THE ISSUE OF HATE CRIMES IN CANADA

The *Charter of Rights and Freedoms* clearly outlines the fundamental freedoms afforded to Canadians and guarantees that everyone has the right to freedom of expression. In order for any democracy to function properly, a constitutional commitment to freedom of expression is vital. Without it, those in power could promote their viewpoints while all others would be subject to censorship and suppression. Section 2(b) of the *Charter* states that:

Everybody has the following fundamental freedoms: freedom of thought, belief, opinion and expression, including freedom of the press and the other media of communication.

The manner in which the law is set out gives it the potential to cover a broad range of areas including the media, the internet, hate crimes and pornography. In recent years, numerous cases have come before the courts for clarification on the issue of freedom of expression.

This assignment requires you to examine two controversial *Charter* cases involving hate crimes, *R. v. Keegstra* (1990) and *R. v. Zundel* (1992). Using all available resources, research these two cases and answer the following questions.

R. v. Keegstra

Who is James Keegstra, and what actions led him to break the law?

With what *Criminal Code* offence was Keegstra charged?

How did Keegstra try to defend his actions?

Explain the role of section 1 of the *Charter* as it applies to this case.

What was the final decision of the court? In your opinion, was this a just decision? Explain.

R. v. Zundel

Who is Ernst Zundel, and what actions led him to break the law?

With what *Criminal Code* offence was Zundel charged?

How did Zundel try to defend his actions?

Explain the role of section 1 of the *Charter* as it applies to this case.

What was the final decision of the court? In your opinion, was this a just decision? Explain.

In what way are the two cases similar?

How did the two cases differ?

Appendix 1.7

Unwritten Constitutional Principles

Lalonde v. Health Services Restructuring Commission (Ontario)
Lalonde v Commission de restructuration des services de santé

S.O.S. Montfort

The Canadian Constitution is the basic framework for analyzing the relationship between people and the government. The “Constitution of Canada” is not a single document. It is made up of the constitutional texts which are named in s.52 (2) of the *Constitution Act of Canada, 1982*, as well as other written rules, acts, legislation, judicial decisions and agreements between the federal and provincial governments. The Constitution also includes unwritten rules and underlying principles. These rules and principles arise from an understanding of Canadian constitutional customs, traditions, and judicial decisions. Government agencies have to consider these rules and principles when they make their decisions.

In 1998 the Supreme Court of Canada in *Reference re Secession of Quebec* identified four unwritten Constitutional principles: federalism, democracy, constitutionalism and the rule of law, and respect for and protection of minorities. The Court talked about Canada’s historical commitment to its minorities, to aboriginals, and about equality, legal and language rights. It also talked about a number of written constitutional provisions protecting minority language, religion and education rights. The Court stated that the protection of minority rights is an independent principle which underlies Canada’s constitutional order.

In December 2001 the Court of Appeal of Ontario in *Lalonde v Commission de restructuration des services de santé*, sometimes called the “Montfort Hospital” case nullified a decision of the Health Services Restructuring Commission (the Commission) of the province to reduce services at Ottawa’s Montfort Hospital (Montfort). The Commission had the authority to close, amalgamate operations or change the amount of health services provided by hospitals in the province. The Commission made its decisions for reasons of administrative convenience and to save money. The Commission decided that the services that Montfort had provided would be provided by Ottawa General.

Montfort is a hospital that serves the Franco-Ontarian community in the Ottawa Carlton area. It is the only French-language teaching hospital in the province. The Court of Appeal decided that the Commission had not given serious weight and consideration to the linguistic and cultural importance of Montfort to the survival of the Ontario's francophone minority. The Court indicated that government decision-makers must consider underlying principles of the Constitution when they make decisions.

In February 1997 the Commission stated that it wanted to close Montfort. The decision caused an uproar in the Franco-Ontarian community. An organization named S.O.S. Montfort was founded to fight the Commission's decision. Gisèle Lalonde, a former Mayor of Vanier, became its President. In August 1997 the Commission decided not to close Montfort, but did order a significant reduction in services - the closure of the emergency ward, intensive care and general surgery and the elimination of other special services. The S.O.S. Montfort group was not satisfied with this change, and tried to negotiate other terms with the Commission but was unable to do so.

In August 1998 Lalonde and others brought an application to the Divisional Court of Ontario asking that the decision of the Commission be set aside. On November 29th 1999, the Ontario Divisional agreed. The Divisional Court stated that the Commission's orders did not violate equality rights of francophones under s.15 of the *Charter of Rights and Freedoms* (the *Charter*), but indicated that the Hospital did have Constitutional protection because it was an important linguistic, cultural institution essential to the minority francophone community of Ontario.

In December 1999 the Ontario government appealed the Divisional Court's decision, and in May 2001 a bilingual panel of judges of the Court of Appeal of Ontario heard the case. The Court affirmed the decision of the Divisional Court, nullified the Commission's directions and dismissed the government's appeal. Montfort would remain a full service hospital with no reduction in services.

In making its decision the Court of Appeal considered the following six issues:

1. Did the Divisional Court err in its findings of fact?

The Court of Appeal agreed with the Divisional Court that Montfort played a vital role in the life of the minority francophone population of Ontario. The Commission's directions would reduce available health care services in French, would jeopardize the training of French language health care professionals and would hurt the Hospital's role as a linguistic, educational and cultural institution.

2. Does s. 16(3) of the *Charter* protect the status of Montfort Hospital as a francophone institution?

The Court stated that Montfort was not protected by section 16 of the *Charter*, which is about the advancement of status or use of English or French. According to the Court, subsection 16(3) could not be used to gain new rights, but is used as a shield to protect rights from government action.

3. Do the Commission's directions infringe s. 15 of the *Charter*?

The Court upheld the Divisional Court's ruling that the Commission's directions did not violate section 15 of the Charter. S. 15, the equality section, could not be used to add to language rights already specifically guaranteed by the *Charter*.

4. What is the relevance to Montfort Hospital of the unwritten constitutional principle of respect for and protection of minorities?

Montfort is important to the survival of the minority francophone community of Ontario. The Court referred to the Supreme Court's decision in *Reference re Secession of Quebec*. In that decision the Supreme Court of Canada stated that respect for and protection of minorities is a fundamental structural feature of the Canadian Constitution. This feature of our Constitution explains and goes beyond the minority rights specifically guaranteed in the Constitution. These minority rights include section 16(1) of the *Charter* which proclaims French and English to be official languages of Canada, and Section 23 which guarantees the general right to primary or secondary school education to the English or French linguistic minorities of a province. Respect for and protection of minorities is a "bedrock principle" which influences the interpretation of laws.

5. Do the Commission's directions violate the *French Language Services Act*?

The Court looked to the *French Language Services Act* and stated that the underlying purposes of the *Act* included the protection of the Ontario francophone community, advancement of the French language and the promotion of its equality with English. These purposes go together with the unwritten principles of the Constitution. Under the *French Language Services Act* Montfort was named as a French language service provider. The Commission's decision would endanger the ability to train health professionals in French and would increase the assimilation of Franco-Ontarians. The Court found that the negative effects of the Commission's decision were contrary to the purpose and objectives of the *Act*.

6. Are the Commission's directions reviewable pursuant to the unwritten constitutional principle of respect for and protection of minorities?

While the Commission could change and limit services offered by Montfort, it can only do so when "reasonable and necessary". The Commission must also act in the public interest, therefore it must take into account constitutional principles. The Commission's objectives were not so important that it could justify its failure to give serious weight and consideration to the linguistic and cultural role of Montfort to the survival of the Franco-Ontarian community in Ontario.

Questions:

Explain how sections 15 and 23 of the *Charter* could relate to this case.

Explain how the members of S.O.S. Montfort won their case even though the Court decided that the *Charter* was not violated.

Do you agree that unwritten principles should have the same importance as written laws? Why or Why not?

Do you think the decision of the Ontario Court of Appeal was fair? Explain.

Appendix 1.8

Courthouse Visit and Classroom Visit

Please see the OJEN website at <http://ojen.ca/program/98> to book a courthouse visit .

Fax Number Contact List – Courtrooms and Classrooms Program

East Region

Ottawa-Carleton (Ottawa) 613-239-1491
Prescott-Russell (L'original) 613-675-4507
Hastings & Prince Edward (Belleville/Picton) 613-962-5143
Renfrew (Pembroke) 613-732-1766
Leeds-Grenville (Brockville) 613-345-4019
Frontenac (Kingston, Napanee, Kaladar, Sharbot Lake) 613-548-6818
Stor/Dun/Glen (Cornwall) 613-932-0507
Lanark (Perth) 613-267-7055

West Region

Essex (Windsor) 519-973-6698
Elgin/Oxford (St. Thomas/Woodstock) 519-631-6086
Chatham-Kent (Chatham) 519-352-7352
Middlesex (London) 519-660-3134
Wellington (Guelph) 519-824-5449
Huron/Perth (Stratford/Goderich) 519-271-2671
Bruce/Grey (Owen Sound/Walkerton) 519-371-5832
Waterloo (Kitchener/Cambridge) 519-741-3212
Lambton (Sarnia) 519-332-6647

North Region

Sudbury 705-564-4156
Parry Sound & Nippissing (North Bay) 705-495-8368
Algoma & Manitoulin (Sault Ste. Marie, Elliot Lake, Blind River, Thessalon, Wawa, Espanola, Gore Bay & Little Current) 705-945-5044
Chochrane & Temiskaming (Timmins, Haileybury & Kirkland Lake) 705-272-5100
Thunder Bay 807-345-6383
Kenora & Rainy River 807-345-6383

Central East Region

Tri-County (Peterborough, Cobourg & Lindsay) 705-755-1685
Simcoe/Muskoka (Barrie, Orillia, Bracebridge, Bradford, Midland, Elmvale, Huntsville, Penetanguishene & Collingwood) 705-739-6578
York (Newmarket & Richmond Hill) 905-853-4825

Durham (Oshawa/Whitby) 905-430-5811

Central West Region

Peel (Brampton) 905-456-4804

Niagara (St. Catharines, Welland, Niagara Falls & Fort Erie) 905-685-0990

Halton & Dufferin (Milton, Oakville, Burlington & Orangeville) 905-878-3147

Haldimand-Norfolk & Brant (Simcoe, Brantford & Cayuga) 519-426-3393

Hamilton-Wentworth 905-645-5280

Toronto Region

Central Criminal Courts 416-327-6003

Osgoode Hall – Court of Appeal 416-327-6209

Appendix 1.9

The Great Debate

The Great Debate is an annual OJEN Law Day event that brings together academics, legal professionals and educators to discuss a featured legal issue. Permission from Court TV Canada has been granted to allow teachers to use recordings of Great Debate broadcasts as teaching resources. To receive DVD copies of past Great Debates, please contact: info@ojen.ca. The Great Debate recordings can be used to complement or inspire classroom discussion.

Additional background material to the Great Debates can be downloaded from <http://ojen.ca/program/134>, click on "Great Debate".

The Great Debate 2005:

"Do we really need the Charter?"

Panelists:

- Allan C. Hutchinson, professor at Osgoode Hall Law School, York University
- Patrick J. Monahan, Dean of Osgoode Hall Law School
- Dr. Ted Morton, Member of the Legislative Assembly of Alberta and past professor of political science at the University of Calgary
- Lorraine E. Weinrib, professor of law and political science at the University of Toronto

The Great Debate 2004:

"How Will Same-Sex Marriages Affect the Future of Canada?"

Panelists:

- Martha McCarthy of Epstein Cole LLP – Counsel for the applicant couples in *Halpern et al. v. Attorney General of Canada et al.*
- Doug Elliot of Roy Elliott Kim O'Connor LLP – Counsel for the Metropolitan Community Church of Toronto in *Halpern*
- David Brown of Stikeman Elliott LLP – Counsel for the Association for Marriage and the Family in Ontario in *Halpern*
- Professor Margaret Somerville – of the McGill University Centre for Medicine, Ethics and Law

Appendix 1.10

Canadian Charter of Rights and Freedoms Landmark Cases

Visit <http://www.ojen.ca/resources/cat/88> and click on “Landmark Cases”. Over forty important Canadian cases are summarized in student-friendly format. Other materials include:

1. Notes for teachers.
2. Case summary and relevant terminology (with questions and guidelines).
3. Tracking the case through the court system/a look at the law.
4. Link to the Supreme Court of Canada’s decision.

Some of OJEN’s *Landmark Cases* are:

R v. Powley (Métis hunting rights)
The Canadian Foundation for Children, Youth and the Law v. the Attorney General of Canada
 (“The Spanking Case”)
Lalonde v. Health Services Restructuring Commission (French language rights)
Halpern v. Attorney General of Canada (same-sex marriage)
Vriend v. the Queen (sexual orientation)
Nancy Law v. Canada (age discrimination)

“The Spanking Case”: Testing the Validity of Section 43
The Canadian Foundation for Children, Youth and the Law
v. The Attorney General of Canada

CASE SUMMARY

The Canadian Foundation for Children, Youth and the Law (CFCYL) is an organization dedicated to the protection of children’s rights. It provides legal representation for youth as well as examining and responding to existing and proposed legislation related to the rights of children. In November 1998, the CFCYL applied to a court asking for a **declaration** that section 43 of the Canadian *Criminal Code* is invalid because it legalizes the use of corporal punishment against children for the purpose of correction. In other words, children are the only group in society that can be legally assaulted as a means of discipline. The Ontario Association of Children’s Aid Societies supported the CFCYL position.

The validity of the challenged statutory provision was defended by the Attorney General of Canada whose position was supported by the Canadian Teachers’ Federation and the Coalition for Family Autonomy. The Attorney General of Ontario was not a party, and did not intervene in the challenge to a provision of the federally enacted Criminal Code.

Section 43 of the Criminal Code states that:

Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

The basis for the challenge initiated by the CFCYL was that s.43 was unconstitutional and violated numerous sections of the *Canadian Charter of Rights and Freedoms*, as well as the United Nations *Convention on the Rights of the Child*.

The challenge was based on the following sections of the *Charter*:

s.7 – Everyone has the right to life, liberty and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

s.12 – Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

s.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.

In addition to this, the challenge also relied on Canada's commitment to comply with the UN *Convention on the Rights of the Child*. The primary objective of the *Convention* is to establish an international standard of human rights for all children, everywhere.

Aside from the **applicant** (CFCYL) and the **respondent** (Attorney General of Canada), there were also a number of groups that felt they had an interest in the outcome of this challenge. These groups applied to the court for **intervener** status so that they too could participate in this legal proceeding. Status was not granted to all applicants. The only group to be granted intervener status in support of this challenge was the Ontario Association of Children's Aid Societies. On the other hand, parties opposed to this challenge that were granted intervener status were the Canadian Teachers' Federation and a group of organizations that joined forces to form the Coalition for Family Autonomy.

This application for a declaration began in the Ontario Court (General Division), now the Ontario Superior Court of Justice. Mr. Justice McCombs heard the application of the CFCYL from December 6-10, 1999 but did not make a ruling until July 5, 2000. In his decision, the judge ruled that s.43 was consistent with the *Charter* and that it did not violate Canada's obligations under the UN *Convention on the Rights of the Child*. He dismissed the application. However, in his reasons, the judge suggested that federal Parliament should examine the use of reasonable force, as set out in s.43, and come up with more clearly defined parameters to guide teachers, parents and caregivers.

The CFCYL was dissatisfied with this ruling. It felt that Justice McCombs misinterpreted the evidence and that he was also wrong in the way he interpreted the law. In January 2001, CFCYL appealed the decision to the Court of Appeal of Ontario where it was heard by Justices Catzman, Doherty and Goudge from September 10-12, 2001. On January 15, 2002 the Court of Appeal upheld the decision of the lower court stating that the purpose of s.43 was to allow parents and teachers to "apply strictly limited corrective force to children without criminal sanctions so that they can carry out their important responsibilities to train and nurture children without the harm that such sanctions would bring to them, to their tasks and to the families concerned". The appeal was dismissed.

In March 2002, the CFCYL applied for **leave** to appeal to the Supreme Court of Canada, the highest court in the country. The Supreme Court of Canada can refuse to hear a case. It usually hears cases that are of national significance, on appeal from a provincial appeal court. Often the cases deal with **constitutional** issues. CFCYL's argument was that the Ontario Court of Appeal made an error in law and did not give adequate consideration to the expert evidence before them and, as the matter was of national significance, permission to appeal should be granted. In October 2002, the Supreme Court announced that it would hear the appeal, although no date had been set. Since about 90% of applications to the Supreme Court for leave to appeal are rejected, the decision to hear this appeal was a clear indication that this constitutional challenge was important. On March 4, 2003, the Supreme Court of Canada announced that the hearing would take place on June 6, 2003. The Court granted intervener status to those groups that had participated in the two previous hearings in the

lower courts, as well as to two other organizations that applied for status, the Child Welfare League of Canada and the Quebec Human Rights Commission.

On January 30, 2004, the Supreme Court of Canada held, that s.43 was constitutional, upholding the previous decisions of the lower courts. The decision was in a 6-3, meaning six judges (the majority) agreed with the judgement, while three judges **dissented** (the minority). Despite upholding the previous decisions, the Supreme Court established some legal guidelines and limitations to be used when determining what degree of force would be considered “reasonable under the circumstances”. The Supreme Court held that spanking is only acceptable for children between the ages of 2-12, that the use of objects such as belts or hitting in the head is not permissible, and that no child should be hit in anger or out of frustration. The Supreme Court also added that teachers should not be permitted to strike students, but that limited force is allowed in order to restrain students during a violent outburst.

QUESTIONS

1. Using the “Timeline of Events” provided, write a brief description of the importance of each date on the timeline to this case.

2. Examine your timeline. What observation can you make about the litigation process?

3. Why did the Canadian Foundation for Children, Youth and the Law decide to challenge the validity of S.43 of the *Criminal Code*?

4. Using your textbook or a dictionary, define the term “corporal punishment”.

5. The Canadian Teacher’s Federation had stated that their position was that teachers should not use corporal punishment on students and yet they stood as interveners in support of s. 43 throughout all three trials.

a) How does s.43 affect the teacher's role in the classroom?

b) What **do you think** teachers feared could happen if s.43 were repealed?

6. The courts are often required to decide between the rights of the individual and the needs of society. In this case, was the Supreme Court decision in favour of individual rights, the needs of society or a balance of both? Explain.

TIMELINE OF EVENTS

November 1998 - _____

December 1999 - _____

July 2000 - _____

January 2001 - _____

September 2001 - _____

January 2002 - _____

March 2002 - _____

October 2002 - _____

March 2003 - _____

June 2003 - _____

January 2004 - _____
