

# The Case of the Racist Teacher

## *R. v. Keegstra* [1996]

### Teacher Resource

**Curriculum Links:** Understanding Canadian Law (CLU3E), Grade 11, Workplace Preparation

**Legal Focus:** Freedom of Expression, Hate Speech, Constitutional Law

**Estimated Time:** 1 period

#### **Overall Expectations:**

- Explain the rights and freedoms outlined in the *Canadian Charter of Rights and Freedoms* and explain how to exercise them.
- Explain how a criminal offence is defined under federal and provincial jurisdictions.

#### **Specific Expectations:**

- Explain the purpose of law in our community.
- Identify the legal rights and fundamental freedoms outlined in the *Charter of Rights and Freedoms*.
- Explain how rights and freedoms may be limited under the *Charter*.

#### **Description of the Case**

James Keegstra started teaching high school in the early 1970s in the small town of Eckville, Alberta. He had been a teacher in the town for about 10 years when parents began questioning his teachings. After reading their child's notes from Mr. Keegstra's social studies class, a parent complained to the local school board. Mr. Keegstra had been teaching his students racially prejudiced material targeting Jewish people. He taught his students that Jewish people seek to destroy Christianity and are responsible for depressions, anarchy, chaos, wars, and revolution. He also told his students that Jewish people "created the Holocaust to gain sympathy". Mr. Keegstra expected his students to include these views in class and on exams. If they did, they received good marks. If they did not, their marks suffered. A few months after the complaint, Mr. Keegstra was dismissed. In 1984, Mr. Keegstra was charged under section 319(2) of the *Criminal Code of Canada* with wilfully promoting hatred against an identifiable group by communicating anti-Semitic statements to his students.

At Mr. Keegstra's trial, his lawyer argued that s. 319(2) of the *Criminal Code* violated Mr. Keegstra's right to freedom of expression. The trial judge disagreed, noting that the *Charter* provides

individuals with equal protection and benefit of the law without discrimination on the basis of colour, race, religion, or ethnic origin. The willful promotion of hatred against an identifiable group would violate that person's equality rights (s. 15 of the *Charter*). On this basis, the trial judge held that s. 319(2) did not infringe s. 2(b) of the *Charter* and the jury convicted Mr. Keegstra of willful promotion of hatred.

Mr. Keegstra appealed his conviction. The Alberta Court of Appeal agreed with Mr. Keegstra. It found that statements which the speaker knows to be false are not protected by the *Charter*, however section 2(b) does protect "innocent and imprudent speech". Therefore, because section 319 could apply to false statements that the person might not know are false, the Court found that it violated the right to freedom of expression. The Court went on to determine that the violation of s. 2(b) was not justified under s. 1 of the *Charter*.

The Crown appealed the decision to the Supreme Court of Canada. The issue before the Supreme Court was whether section 319(2) of the *Criminal Code of Canada* violated section 2(b) of the *Charter* and, if so, whether it could be saved under section 1. Four out of the seven judges disagreed with the decision of the Alberta Court of Appeal.

To determine whether Mr. Keegstra's freedom of expression was infringed, the Court applied the two-step analysis for s. 2(b) cases. On the first step, the majority found that the expression conveyed meaning and was therefore protected by s. 2(b). The fact that the statements were offensive was irrelevant. On the second step, the majority determined that the very purpose of s. 319 of the *Criminal Code* was to restrict certain kinds of expression. Therefore, the majority found that s. 319(2) of the *Criminal Code* infringed section 2(b) of the *Charter*.

Section 1 of the *Charter* allows reasonable limits on the rights and freedoms in the *Charter* as long as they are justified. The Court found that the violation of freedom of expression was justified under section 1 because:

- preventing harm caused by hate speech is important in Canada;
- the law had a rational connection to its objective (i.e. to prevent harm);
- the law limits freedom of expression as little as possible; and
- the law creates good social relations between different groups in Canada.

As a result, the majority concluded that the infringement of s. 2(b) of the *Charter* by s. 319(2) of the *Criminal Code* was justified under s. 1 of the *Charter*.

### ***The Final Judgment***

Section 319(2) of the *Criminal Code* was held to be constitutional and Mr. Keegstra's conviction was restored.

### ***Teaching & Learning Strategies***

1. Review *The Big Question*, have a discussion with students about the question, and ask students to complete a rapid writing piece while briefly answering and detailing their views.

- Have students arrange themselves along a value line, and be able to justify their opinions on the issue.
2. Review *The Facts of the Case* using a teacher- or student-centred reading strategy. After each paragraph, stop to paraphrase and answer any questions. Discuss *The Issue* with students.
  3. Review *The Relevant Law* with students and point out how the law applies to the facts of the case.
  4. Have students read aloud *The Progression through the Courts* section. This is a good opportunity for students to ask clarifying questions and provide personal opinions.
  5. Review *The Final Judgment* and ask students their views on the judgment, and whether they agree or disagree with the Supreme Court decision.
  6. Ask students to complete the *Check for Understanding* exercise and take up the answers as a class.
  7. Have students complete the *Reflecting* section. You may wish to have students discuss their answers after they provide written responses.

### **Assessment & Evaluation**

- Class discussions
- Rapid writing
- Value line
- *Check for Understanding* worksheet
- *Reflecting* worksheet

### **Resources**

Ontario Justice Education Network  
[www.ojen.ca](http://www.ojen.ca)

- Landmark Cases - Freedom of Expression, Wilful Promotion of Hatred, and the *Charter: R. v. Keegstra*

Supreme Court of Canada Decisions – *R. v. Keegstra* [1996]  
<http://scc.lexum.umontreal.ca/en/1996/1996rcs1-458/1996rcs1-458.html>

# The Case of the Racist Teacher

## R. v. Keegstra [1996]

### Student Handout

#### *The Big Question*

Do you think your right to free expression allows you to say anything you want, even if it may be hurtful to others? Do you think there should be limits on what you are allowed to say? Does it matter where you say it?

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Individually, decide on a scale of 1 to 10 how you feel about the issue, with 10 being “I think that people should be able to say anything they want because freedom of expression is guaranteed by the *Charter*,” and 1 being “we should have very tight controls on everything we say to prevent people from being hurt or offended.”

Form a value line in the classroom, arranging yourselves at one end of the room for 1 to the other end of the room for 10. Defend your position to the other members of the class.

#### *The Facts of the Case*

James Keegstra started teaching high school in the early 1970s in the small town of Eckville, Alberta. He had been a teacher in the town for about 10 years when his teachings came under scrutiny. After reading their child’s notes from Mr. Keegstra’s social studies class, a parent complained to the local school board. Mr. Keegstra had been teaching his students racially prejudiced material targeting Jewish people. He

taught his students that Jewish people seek to destroy Christianity and are responsible for depressions, anarchy, chaos, wars and revolution. He also told his students that Jewish people “created the Holocaust to gain sympathy”. Mr. Keegstra expected his students to include these views in class and on exams. If they did, they received good marks. If they did not, their marks suffered. A few months after the complaint, Mr. Keegstra was dismissed. In 1984, Mr. Keegstra was charged under s. 319(2) of the *Criminal Code* with wilfully promoting hatred (meaning, that he “meant to promote hatred”) against an identifiable group by communicating anti-Semitic statements to his students.

The Crown appealed the decision to the Supreme Court of Canada. The issue before the Supreme Court was whether s. 319(2) of the *Criminal Code of Canada* violated s. 2(b) of the *Charter* and, if so, whether it could be saved under s. 1 of the *Charter*.

## The Issue

- James Keegstra was charged with wilful promotion of hatred under s. 319(2) of the *Criminal Code of Canada* after making anti-Semitic comments to students. Is this a violation of his freedom of expression under s. 2(b) of the *Charter*, and if so, is it justifiable under s. 1?

## The Relevant Law

### *Criminal Code of Canada*

318. (4) In this section, "identifiable group" means any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation.

319. (2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

319. (3) No person shall be convicted of an offence under subsection (2)

- (a) if he establishes that the statements communicated were true;
- (b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;
- (c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or
- (d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

### **Canadian Charter 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.
2. Everyone has the following fundamental freedoms:
  - (a) freedom of conscience and religion;
  - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
  - (c) freedom of peaceful assembly; and
  - (d) freedom of association.

### **The Progression through the Courts**

The *Canadian Charter of Rights and Freedoms* (1982) is part of Canada's *Constitution*, and is meant to protect people's freedoms against the actions of the government. Section 2(b) guarantees "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." The courts long ago decided that the scope of freedom of expression is very wide. Expression will be protected if it focuses on seeking and attaining truth. It encourages people to participate in social and/or political decision making, and it cultivates diversity of opinion. Section 1 of the *Charter* indicates that rights and freedoms are not absolute and can be reasonably limited.

### **The Trial**

At Mr. Keegstra's trial, his lawyer argued that s. 319(2) of the Criminal Code violated Mr. Keegstra's freedom of expression. The trial judge disagreed, noting that the *Charter* provides individuals with equal protection and benefit of the law without discrimination on the basis of colour, race, religion, or ethnic origin. The willful promotion of hatred against an identifiable group would violate that person's equality rights (s. 15 of the *Charter*). On this basis, the trial judge held that s. 319(2) did not infringe s. 2(b) of the *Charter* and the jury convicted Mr. Keegstra of willful promotion of hatred.

### **Appeal to the Alberta Court of Appeal**

Mr. Keegstra appealed his conviction. The Alberta Court of Appeal agreed with Mr. Keegstra. It found that statements which the speaker knows to be false are not

protected by the *Charter*; however s. 2(b) does protect “innocent and imprudent (not wise) speech”. Therefore, because s.319 could apply to false statements that the person might not know are false, the Court found that it violated the freedom of expression. The Court went on to determine that the violation of s. 2(b) was not justified under s. 1 of the *Charter*.

## The Final Judgment

The Crown appealed the decision to the Supreme Court of Canada. The issue before the Supreme Court was whether s. 319(2) of the *Criminal Code of Canada* violated s. 2(b) of the *Charter* and, if so, whether it could be saved under s. 1. Four out of the seven judges disagreed with the decision of the Alberta Court of Appeal. The Supreme Court of Canada found that Mr. Keegstra’s s.(b) rights were infringed but that the infringement was justified under s. 1 of the *Charter*. Therefore, Mr. Keegstra’s conviction was reinstated.

To determine whether Mr. Keegstra’s freedom of expression was infringed, the Court applied a two-step analysis for determining if s. 2(b) has been violated:

1. On the first step, the majority of the judges found that the expression had meaning and was therefore protected by s. 2(b). The fact that the statements were offensive was not important.
2. On the second step, the majority of the judges determined that the very purpose of s. 319 of the *Criminal Code* was to restrict certain kinds of expression. Therefore, the majority found that s. 319(2) of the *Criminal Code* infringed section 2(b) of the *Charter*.

**Section 1** of the *Charter* allows reasonable limits on the rights and freedoms of the *Charter* as long as they are justified. The Court found that this infringement of freedom of expression was justified under s. 1 because:

- preventing harm caused by hate speech is important in Canada;
- the law had a rational connection to its objective (i.e. to prevent harm);
- the law limits freedom of expression as little as possible; and
- the law creates good social relations between different groups in Canada.

As a result, the majority concluded that the infringement of s. 2(b) of the *Charter* by s. 319(2) of the *Criminal Code* was justified under s. 1 of the *Charter*.

## Check for Understanding

1. Mr. Keegstra was a talk radio personality in Edmonton, Alberta. **TRUE/FALSE**
2. Mr. Keegstra was fired from his job for making anti-Semitic comments. **TRUE/FALSE**
3. According to Mr. Keegstra, the Holocaust never happened. **TRUE/FALSE**
4. Mr. Keegstra was charged with wilful promotion of hatred under s. 300 of the *Criminal Code of Canada*. **TRUE/FALSE**
5. In Mr. Keegstra's first trial, the judge ruled that his freedom of expression had been infringed and acquitted Mr. Keegstra of the charges. **TRUE/FALSE**
6. The Alberta Court of Appeal ruled that s. 2(b) protects "innocent and imprudent speech." **TRUE/FALSE**
7. The Supreme Court of Canada ruled that Mr. Keegstra's speech should be protected by s. 2(b) of the *Charter*. **TRUE/FALSE**
8. The Supreme Court of Canada ruled that s. 319(2) of the *Criminal Code* did not infringe Mr. Keegstra's freedom of expression. **TRUE/FALSE**
9. According to the Supreme Court of Canada, the violation of Mr. Keegstra's freedom of expression was justified under s. 1 of the *Charter*. **TRUE/FALSE**
10. Once the Supreme Court of Canada rules on a case, there is no further place to appeal. **TRUE/FALSE**



## Reflecting

1. What is hatred? Do you think people should be allowed to promote hatred against a specific group of people?

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2. Why do you think that s. 319(2) of the *Criminal Code of Canada* exists in the first place? Why would a country or a government want to pass laws against the spreading of hatred? (Hint: think of some examples from history).

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3. What are some ways that you can think of to counter or stop hatred?

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4. Mr. Keegstra was successfully fired as a teacher and went back to being a garage operator and mechanic. Did the Crown need to prosecute him to show that his anti-Semitic behaviour was wrong? Do you think there were other alternatives?

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