

Cameras in the Courtroom: To Be or Not To Be?

Teacher Resource

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

Legal Focus: Cameras in courtrooms, publication bans

Estimated Time: 1 period

Overall Expectations:

- Describe the historical development of Canadian law.
- Communicate legal knowledge effectively.
- Evaluate the role of law in current controversies.

Specific Expectations:

- Present information on legal issues, using a variety of traditional and electronic formats (e.g., mock trials, debates, reports, multimedia presentations).
- Demonstrate an ability to listen and read critically, find relevant information, and express and support opinions, using proper legal terminology.
- Identify a variety of legal information services and use them effectively (e.g., Internet websites, legal help-lines, law libraries, community and government agencies).
- Assess the legal implications of various technological developments (e.g., cloning, surrogate motherhood, Internet censorship).

Description of the Issue

For detailed readings and exercises on the issue of cameras in the courtroom, refer to OJEN's *Justice and the Media* resource (Module Three: The Media in the Courtroom). To download this resource, please visit the *Resources* section of the OJEN website, www.ojen.ca.

The Final Judgment

Students should determine an appropriate judgment after completing the readings and exercises.

Teaching & Learning Strategies

1. Read *The Big Question* to students. Have a brief discussion and ask students to write their views on the issue in the space provided.

2. Review *The Issue* and *The Relevant Law* with students. Be sure to point out how the laws apply to this issue. You may want to refer to the activities in OJEN's Justice and the Media resource (Module Three: The Media in the Courtroom) for additional activities, scenarios, and resources.
3. With a partner or in small groups, ask students to read *The Arguments in Court*. Have students come up with arguments for and against cameras in the courtrooms and record them in the chart provided. Discuss as a class.
4. In groups of four, have students debate this issue. After three minutes, have students switch and debate the opposing perspective.
5. Have students complete *Taking a Closer Look*. Students will need access to the Internet to do this exercise. Make sure that you book time in the library or computer lab so that they can research these two cases.
6. Have students complete the exercises in *What's Your Opinion* and *You be the Judge*. Discuss their answers as a class.

Assessment & Evaluation

- Class discussions
- *The Arguments in Court* chart
- *Taking a Closer Look* worksheet
- *What's Your Opinion* worksheet
- *You Be the Judge* worksheet

Resources

Ontario Justice Education Network
www.ojen.ca

- Justice and the Media
- Landmark Case - Freedom of Expression, the Right to a Fair Trial, and the *Charter of Rights and Freedoms: Dagenais v. Canadian Broadcasting Corporation*

E-Laws (Ontario Courts of Justice Act)

www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c43_e.htm

Supreme Court of Canada Decisions – *Dagenais v. Canadian Broadcasting Corporation* [1994]

<http://csc.lexum.umontreal.ca/en/1994/1994rcs3-835/1994rcs3-835.html>

Supreme Court of Canada Decisions – *R. v. Mentuck* [2001]

<http://csc.lexum.umontreal.ca/en/2001/2001scc76/2001scc76.html>

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Student Handout

The Big Question

John Smith and his wife Mary have been charged with child abuse involving their two children, both of whom are under the age of five. Mary owns and operates Tiny Love Day Care Centre where she is responsible for the care of 50 children on a daily basis.

Should the names of these accused and the details of their case be made public? Should the media be allowed to film and broadcast this court proceeding? Why or why not? Think about the implications for the couple, their children, and the parents and children who attend the daycare.

The Issue

- Should cameras be allowed in courtrooms and if so, when, and under what circumstances?

The Relevant Law

Ontario Courts of Justice Act - Public Access
Section 135 - Public hearings
(1) Subject to subsection (2) and rules of court, all court hearings shall be open to the public.

Exception

(2) The court may order the public to be excluded from a hearing where the possibility of serious harm or injustice to any person justifies a departure from the general principle that court hearings should be open to the public.

Disclosure of information

(3) Where a proceeding is heard in private (without the public), telling information about the hearing is not against court rules unless the court has expressly prohibited the disclosure of the information. (Paraphrased)

136 - Prohibition against photography, etc., at court hearing

(1) Subject to subsections (2) and (3), no person shall,

- (a) take or attempt to take a photograph, motion picture, audio recording [. . .] by electronic means or otherwise,
 - i. at a court hearing,
 - ii. of any person entering or leaving the room in which a court hearing is to be or has been convened, or
 - iii. of any person in the building in which a court hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing;
- (b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a); or
- (c) broadcast or reproduce an audio recording made as described in clause (2) (b).

Exceptions

(2) Nothing in subsection (1),

- (a) prohibits a person from [quietly] making handwritten notes or sketches at a court hearing; or
- (b) prohibits a lawyer, a party acting in person or a journalist from [quietly] making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes.

Exceptions

(3) Subsection (1) does not apply to a photograph, motion picture, audio recording or record made with authorization of the judge,

- (a) where required for the presentation of evidence or the making of a record or for any other purpose of the court hearing;
- (b) in connection with any investigative, naturalization, ceremonial or other similar proceeding; or
- (c) with the consent of the parties and witnesses, for such educational or instructional purposes as the judge approves.

Offence

(4) Every person who contravenes this section is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months, or to both.

Canadian Charter of Rights and Freedoms

- (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;
- (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.
- (11) Any person charged with an offence has the right
 - d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

The Arguments in Court

A publication ban is a court order preventing the public or the media from publishing certain details of a court proceeding. They are used to protect the safety and privacy of victims and witnesses by not having their identities publicized. This is especially true when the case involves young children or the crime is sexual in nature.

Without a doubt, television is the most accessible and popular way that Canadians inform themselves of what is going on in the world around them. Television allows us to see things in a way that cannot be duplicated by radio broadcasts or pictures and articles in a newspaper. Allowing cameras into Canadian courtrooms would increase the public's ability to observe court proceedings and become more aware of what takes place in our judicial system.

Most people believe that new technology equals progress, and that anyone who is against the implementation of new technology is an opponent to progress. The truth is that anytime a new technology is introduced it has the potential for good and bad. On the one hand, cameras in the courtrooms may provide a more open and accessible judicial system where lawyers work harder and witnesses are more honest because they know they are being watched by a lot of people. On the other hand, they could infringe on the rights of people who don't want to be filmed, get in the way of a fair and unbiased trial or could lead to participants trying to get the attention of the public by showboating and grandstanding during the proceedings. Publication bans apply to any type of publication, including posting it on personal websites or YouTube.

There will always be two sides to this debate. There are many factors to consider and, in the end, you must decide which side of this debate you support. On the chart below, try to come up with as many reasons as possible for and against cameras in the courtrooms. Be sure to look at this issue from various perspectives and consider the feelings of the participants in a court proceeding including the victim and the accused, their families, witnesses, the police, the Crown, the defense, and the judge and jury.

	REASONS <u>FOR</u> CAMERAS IN THE COURTROOM	REASONS <u>AGAINST</u> CAMERAS IN THE COURTROOM
Victim		
Accused		
Family of Victim		
Family of Accused		
Witnesses		
Police		
Crown Counsel		
Defence Counsel		
Judge		
Jury		

What's Your Opinion?

1. In the Paul Bernardo case, a partial publication ban was put in place in the name of public decency and to protect the families of the victims. The ban related directly to videotapes that showed the victims being viciously sexually assaulted and brutally murdered. Some news organizations tried to fight this ban claiming it infringed on their freedom of expression. Do you agree with the publication ban? Why or why not?

2. In 1993, two 10 year-old boys, Robert Thompson and Jon Venables, took a two year-old boy, James Bulger, from a shopping mall in Britain and beat him to death. People around the world were outraged at the actions of these young boys. In June 2002, they were released from jail and given new identities. In order to protect them, a judge imposed a permanent publication ban on the details of their new identities and relocation, fearing that they would be prone to harassment and violence by the press and the public in general. How do you feel about this publication ban? Do you agree or disagree with it?

3. One of the biggest challenges with publication bans is the Internet. In many cases, people in the United States posted information on the Internet which had a publication ban in Canada. This information was then readily available to anyone in the world. How do we prevent this from happening? Is it possible to police the Internet? Do you think we should do that?

4. In January 2007, the Attorney General of Ontario announced that cameras would be put in the Court of Appeal for Ontario. Keeping in mind that these cases usually do not hear directly from the victim or witnesses of the crime, answer the following:

a) If cameras are restricted strictly to the Court of Appeal, will the public be getting a full understanding of how the whole judicial system functions? Explain.

b) If the victims or witnesses are not involved, do you think that people would be as interested in watching the cases, as compared to if they are involved?

5. How do you think that publication bans will be affected if cameras are allowed in courtrooms? Explain.

You Be the Judge

Now that you have examined this issue from a number of perspectives, explain your reasons for or against cameras in the courtrooms. In addition, provide two of the most compelling reasons for your stance.

If cameras were to be allowed into Canadian courtrooms, what three things would you insist be a part of the regulations to ensure a balance of rights and freedoms and fairness as much as possible.

1.

2.

3.
