

Episode 3: Express Yourself (with Professor Jamie Cameron)



Guide

Learning objectives

- To introduce students to the concept of freedom of expression as outlined in section 2(b) of the *Canadian Charter of Rights and Freedoms*
- To explore how freedom of expression is balanced with other legal considerations, such as reasonable limits under section 1 of the Charter
- To encourage students to critically analyze the challenges of freedom of expression in the digital age, particularly on social media platforms
- To inspire students to reflect on their own role in shaping and defending the right to freedom of expression in Canadian society

Materials

- Copies of the handout for Episode 3: Express Yourself
- Device to listen to the **“Law Syrup” podcast episode**

Teaching and learning strategies

- **Group discussion:** Have students read the provided materials and complete the discussion questions in pairs or small groups. After, reconvene as a class to share insights on topics like the broad interpretation of “expression” and balancing freedom with harm.
- **Collaborative exercise:** Divide students into groups to brainstorm types of expression they think the government should limit, such as hate speech or obscenity. After sharing their ideas within their group, encourage them to discuss whether and why they agree or disagree with their peers’ suggestions.
- **Social media policy exercise:** Ask students to imagine they are the owner of a popular social media platform. In groups, they will develop a free expression policy that balances protecting user safety and well-being with freedom of expression. Students will compare their policies with the protections under the Charter and discuss their reasoning.

- **Comparative discussion:** Lead a discussion on the differences between freedom of expression in Canada and the United States. Ask students to consider why the U.S. offers broader protection for speech, including hate speech, and how this compares to Canada's more limited approach. Encourage students to reflect on which approach they believe better balances freedom and protection in society.

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Handout

What is the Charter?

The *Canadian Charter of Rights and Freedoms* is a key part of the *Canadian Constitution*, which is the supreme law of Canada. The *Constitution* outlines the basic rules for how our country operates and ensures that all other laws in Canada must align with it.¹

The Charter protects the rights and freedoms of Canadians by limiting how much the government can interfere with certain fundamental rights that are essential to a free and democratic society.² These include the rights to freedom of expression, equality, and more.

The Charter came into effect on April 17, 1982, during a pivotal moment in Canadian history. Prior to 1982, Canada's original *Constitution* (passed in 1867) was an act of the British Parliament, meaning only Britain had the power to amend it. In 1982, the *Constitution* was "patriated," giving Canada full control over its own *Constitution*. As part of this process, the Charter was introduced to strengthen the protection of Canadians' rights and freedoms.

Before the Charter, rights were protected by other laws, such as the Canadian Bill of Rights. However, because the Bill of Rights was not part of the *Constitution*, its protections could be removed or

¹ <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html>

² <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/learn-apprend.html>

changed by a simple act of Parliament. The Charter was a major step forward because, as part of the *Constitution*, it is far more difficult to amend, making the rights and freedoms it guarantees much harder to take away.

Section 2

Section 2 of the Charter outlines the “fundamental freedoms” that apply to all Canadians. These include:

- Freedom of religion (s. 2[a]): The right to practice your faith or beliefs without interference.
- Freedom of expression (s. 2[b]): The right to share your thoughts, ideas, and opinions in various ways.
- Freedom of peaceful assembly (s. 2[c]): The right to gather in groups for peaceful purposes, such as protests or community events.
- Freedom of association (s. 2[d]): The right to form or join groups, like unions or clubs.

Together, these freedoms ensure that Canadians can share ideas, practice their beliefs, and participate in democratic society. They also allow for a free and independent press, peaceful protests, and collective organizing.

Pop-quiz matching exercise

Match each activity to the fundamental freedom from section 2 that protects it.

1. Participating in a protest demanding that the government commit to reducing its carbon emissions.

(Answer: s. 2[c])

2. Attending mass at your local church.

(Answer: s. 2[a])

3. Organizing a union at your place of work.

(Answer: s. 2[d])

4. Publishing a newspaper article criticizing a local politician.

(Answer: s. 2[b])

Section 2(b): Freedom of expression

One of the most important “fundamental freedoms” in section 2 is freedom of expression. This freedom is essential to Canadian democracy. It ensures that individuals can share ideas, opinions, and beliefs openly, fostering a free exchange of thoughts in society. It also plays a key role in helping Canadians explore and shape their own identities, beliefs, and values.

What is “expression”?

When we think of “expression”, we might immediately think of “speech”. However, expression includes much more. It can take many forms, such as the way people dress, the art they create, the posts they share online, or the causes they support through protest.

The Supreme Court of Canada defines expression as “any activity or communication that conveys or attempts to convey meaning.” By giving “expression” a broad interpretation, the Court ensured that Canadians are protected in many ways—from music and art to voting, advertising, and more.

Importantly, freedom of expression is content-neutral. This means:

- It protects both truthful statements and false ones.
- It protects expression even when it is offensive or disturbing.
- It protects not only those who express themselves, but also those who listen to or receive that expression.

Discussion questions

The Supreme Court of Canada chose to give “expression” a broad definition under section 2(b), protecting all kinds of expression—even ones that may be offensive or disturbing.

- Do you agree with this decision to protect such a wide range of expression? Why or why not?
- Are there any forms of expression you think *shouldn't* be protected? How would you decide where to draw the line?

Section 1: Reasonable limit on Charter rights

Section 1 of the Charter states that the rights and freedoms protected under the Charter are subject to “reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. In other words, the rights guaranteed by the Charter, including the freedom of expression under section 2(b), are not absolute. The government can limit these rights, but only if those limits are reasonable and can be justified.

For instance, while section 2(b) protects almost all forms of expression, even harmful or offensive expression, section 1 allows the government to place limits on expression that causes significant harm. A notable example of this is hate speech: although hate speech is considered “expression” and is technically protected under section 2(b), its restriction is seen as a “reasonable limit” under section 1 to prevent harm and promote equality.

When determining whether a limit on expression is reasonable, courts carefully balance competing interests. The government must demonstrate that the harm being addressed by the limit is significant enough to justify restricting the freedom of expression. However, if the threshold for “reasonable limits” were too low, it could undermine the purpose of protecting freedom of expression in the first place. To address this, the Supreme Court has established a high standard for when a limit is considered reasonable.

Discussion questions

There is often tension between protecting the right to free expression and addressing the harm that certain types of harmful or offensive expression can cause.

- In your opinion, does the balance struck by the Charter between protecting free expression and allowing reasonable limits effectively serve Canadian society? Why or why not?
- What factors do you think should be prioritized when deciding if a limit on free expression is justified—individual freedoms or protecting people from harm?

Freedom of expression and social media

Social media has become one of the most popular ways for Canadians to express their opinions, share ideas, and discuss important topics. However, this raises important questions about freedom of expression in the digital age.

Unlike government-controlled platforms, social media platforms are usually owned and operated by private companies. This means that Canadians do not have the same section 2(b) rights on social media as they would in public spaces or government-run forums. As a result, social media companies can regulate the content that appears on their platforms, often by creating and enforcing their own rules about what is or isn't allowed. This self-regulation leads to the question: should private companies be allowed to control free expression in ways that might be inconsistent with the Charter's protections?

While social media platforms are free to set their own rules, this has sparked concerns. Large tech companies increasingly shape what is considered "acceptable" speech, which may not always align with the values of free expression guaranteed by the Charter. This raises significant questions about the balance between private companies' control over online spaces and individual freedom of expression.

Discussion questions

- Do you think social media platforms should be allowed to restrict the expression of users, even if the restricted expression would be permissible under the Charter? Why or why not? What are the risks and benefits of allowing social media companies to set and enforce their own rules on free expression?
- Canadians use social media to express themselves in many ways—posting photos, sharing news, or engaging in debates. How do you use social media to express your opinions and identity? If you didn't have access to social media, how might you express yourself differently?

American concepts of freedom of expression

Both Canada and the United States guarantee freedom of expression in their constitutions, but but these guarantees are different. In the United States, the First Amendment offers an absolute guarantee, stating that “Congress shall make no law... abridging the freedom of speech”. This means that the *U.S. Constitution* provides broad protection for expression, with very few exceptions.

In contrast, the *Canadian Charter of Rights and Freedoms* provides a limited guarantee of freedom of expression. Section 1 of the Charter makes it clear that the rights protected by the Charter, including freedom of expression, are subject to “reasonable limits”. This means that the government can place restrictions on expression if they are deemed necessary and justifiable in a free and democratic society. For example, the government can limit expression that promotes hate or incites violence, as these limits are considered “reasonable” under Canadian law.

Although the *U.S. Constitution* seems to offer an absolute guarantee of free speech, the U.S. Supreme Court has still found it necessary to place limits on certain types of speech, such as “obscene” speech or speech that incites violence. However, in Canada, these types of restrictions are more explicitly recognized as reasonable limits on freedom of expression. As a result, Canada’s approach to freedom of expression is often seen as narrower than that of the United States. For example, in Canada, hate speech laws are more robust, and what might be considered a reasonable limitation on speech in Canada may be seen as an infringement on free expression in the United States.

Exercises

1. Reflection exercise: I used to think....Now I think...

Freedom of expression can be complex and open to interpretation. Think about what you've learned from the discussion above and complete the following sentence stems:

- I used to think...
- Now I think...

Prompt: You may want to reflect on a particular idea or belief about freedom of expression that has changed after learning about the Charter, or think about an area where you have a new perspective on the balance between rights and limits.

2. Group discussion: Governmental limits on expression

Students will critically examine whether civic participation truly drives meaningful change for these groups or if other approaches might be more effective. In addition, they will have the chance to practice their public speaking and presentation skills.

In Canada, the government can place reasonable limits on certain types of expression. Individually, brainstorm types of expression that you believe the government should be allowed to limit (e.g., hate speech, obscenity). Then, in small groups, share your lists with your groupmates.

- Do people in the group agree? Why or why not?
- Can you think of examples where limits might conflict with the freedom to express personal beliefs or opinions? How would you address this conflict?

3. Social media policy exercise:

Imagine you are the owner of a popular social media platform. You need to create a free expression policy for your platform. What kinds of expression would you allow, and what would you limit? Consider the following when developing your policy:

- How would you balance protecting freedom of expression while also ensuring the safety and well-being of your users?
- Would your policy be more or less restrictive than the protections under the *Charter of Rights and Freedoms*? Why?

4. Discussion: Comparing Canada and the U.S. on free speech

In the United States, the First Amendment protects freedom of speech more absolutely than the Canadian Charter. For example, hate speech is more heavily protected in the U.S. than it is in Canada.

- Why do you think the United States has chosen to protect this kind of speech, even though it may be offensive or harmful?
- How does this compare to the Canadian approach, which allows for reasonable limits on expression (such as restrictions on hate speech)?
- In your opinion, which approach is more effective for balancing freedom and protection in society? Why?

Further information and resources

For additional discussion of the *Canadian Charter of Rights and Freedoms* generally and the right to freedom of expression specifically, please consult the following resources:

[Learn about the Charter](#)

[Guide to the *Canadian Charter of Rights and Freedoms*](#)

[Charterpedia - section 2\(b\) – freedom of expression](#)

[In Brief – *Canadian Charter of Rights and Freedoms*](#)

[Freedom of expression landmark case – *R. v Keegstra*](#)

[Protecting constitutional rights: a comparative view of the United States and Canada](#)

[What does free speech mean? \(US\)](#)