

SECTION 1 OF THE CHARTER AND THE OAKES TEST

IN BRIEF

TEACHER RESOURCE

Learning Objectives

- To establish the importance of s. 1 in both ensuring and limiting our rights.
- To introduce students to the *Oakes* test and its important role in Canadian constitutional law.
- To teach students how a law can be declared unconstitutional and what remedies are available when that happens.

Materials

- Copies of the student handout, *Section 1 of the Charter and the Oakes Test* (one per student)
- Copies of *Case Study: R v LePage* (one per student)
- Copies of *In Brief: Canadian Charter of Rights and Freedoms*, available here: <http://ojen.ca/resource/3514> (optional; one per student)
- Copies of *Landmark Case: Sexual Orientation and the Charter – Vriend v Alberta*, available here: <http://ojen.ca/resource/585> (optional; one per student)
- Copies of *Landmark Case: Freedom of Expression and Advertising to Children - Irwin Toy Ltd v Quebec (AG)*, available here: <http://ojen.ca/resource/579> (optional; one per student)

Teaching and Learning Strategies

1. Assign the *Section 1 of the Charter and the Oakes Test* reading and have student complete the discussion questions either in pairs or small groups. Take up the answers as a class.

Teacher's Key - Discussion Questions

1. Section 1 of the *Charter* establishes that every Canadian is guaranteed the rights protected by the *Charter* while simultaneously providing for the possibility that these rights be limited by the government if such a limit could be demonstrably justified in a free and democratic society. As such, it both guarantees and limits *Charter* rights.
2. The *Charter* is in place to ensure that the rights and freedoms of Canadians are protected. Requiring the government to justify *Charter* infringements ensures that these rights and freedoms are not arbitrarily limited by the government. The government has the burden of proving that any limit is justified.
3. The ruling by the Supreme Court of Canada in *R v Oakes* established the *Oakes* test, which is used to determine whether or not a *Charter* infringement can be justified under s. 1.
4. Answers will vary.
5. Answers will vary (an issue regarding safety or the protection of children are possible examples).
6. Answers will vary (a situation where the government tries to prevent people from peacefully criticizing its decisions is a possible example).
7. Answers will vary. Students should consider that political representatives who make laws are elected while judges, who apply the law, are not.
8. There are several remedies available to the court if the government cannot prove that a *Charter* infringement is justified. Students should include the remedies of striking down, partial invalidity, reading down, reading in, constitutional exemption and temporary suspension of invalidity.

9. If a law is declared to have no force or effect, the government may invoke s. 33 of the *Charter*, the notwithstanding clause, which would exempt the government from following the court's directions.

2. Assign students the case study, *R v LePage*, and have them complete the related activities. These can be done individually or in pairs. For the first activity, students should apply the steps of a s. 1 analysis to the scenario. You may want to first consider what the purpose of the law is as a group before having students pair off. For activity two, have students assume that an infringement was found and determine what an appropriate remedy should be. Encourage students to consider the merits of the various remedial schemes. They should record their answers in the space provided. Take up the answers as a class and examine the various types of analyses students applied to the scenario.

Extension

1. To enhance students' understanding of the *Charter*, have them complete the OJEN resource, *In Brief: Canadian Charter of Rights and Freedoms*, available here: <http://ojen.ca/resource/3514>
2. Have students complete one of the following OJEN resources: *Landmark Case: Sexual Orientation and the Charter: Vriend v Alberta*, available here: <http://ojen.ca/resource/585> or *Landmark Case: Freedom of Expression and Advertising to Children - Irwin Toy Ltd v Quebec (AG)*, available here: <http://ojen.ca/resource/579>