Values of the Justice System

Section 2

Fair Process

Section 2 – Fair Process

Activity 2.1: Ensuring a Fair Trial through Judicial Independence and Impartiality
Time: 75-120 minutes

Description:

Through the five activities included in this section, students will consider how the judicial process works to ensure a fair trial by protecting the rights of the accused, the victim(s), and the community at large. It also examines the way citizens' actions reflect democratic beliefs and values. The first activity introduces students to the concept of judicial independence and impartiality and demonstrates how these are essential to the upholding the presumption of innocence which is a fundamental democratic and legal right. Through an examination and discussion of a series of scenarios and case studies, students are given the opportunity to develop and demonstrate their understanding of these critical elements of a democratic society. Since these activities are intended to act as a preparation for a visit from a legal expert, students are asked to develop a few possible questions for that expert at the end of each activity. (Sample questions are included in Appendix 2.4.)

Overall Expectations:

ICV.02 - explain the legal rights and responsibilities associated with Canadian citizenship

Specific expectations:

IC2.03 - explain how the judicial system (e.g. law courts, trials, juries) protects the rights both individuals and society (e.g. the rights of the accused, the rights of the victim and the role of the judiciary).

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 reason 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:

- The scenarios in Appendix 2.1 can either be photocopied for students or read out by the teacher to initiate discussion.

- The teacher may choose to deal with one, some, or all of the case studies provided in Appendix 2.2 since each case deals with aspects of judicial fairness and independence. (Note: Case Studies #3 and #4 are complementary and should be used together.)

- The sample questions found in Appendix 2.4 can either be given to the students or used by the teacher to support a large group discussion in which students will generate questions for the legal expert's visit.

- Arrange for computer lab time for activities associated with Appendix 2.5.

Prior Knowledge Required:

Students should have some sense of what constitutes a fair trial based on the earlier unit in this package and their own experience. This activity presents an opportunity to expand upon and demonstrate this understanding.

Teaching/Learning Strategies:

1. After indicating to students that this activity will deal with the protection of their rights, begin by asking them what they understand by "a fair trial". Whether or not the responses raise the issue of the important role played by the judge, follow this discussion by referring to the scenarios outlined in Appendix 2.1. Some of the ideas that will likely emerge include the need for judicial impartiality and objectivity. Teachers may also wish to ask the class whether judges should be elected and whether this would have any effect on the qualities they have identified as necessary for a judicial position.

2. Distribute the FLQ case study found at Appendix 2.2. Students are to read the case and answer the assigned questions. In addition to correcting this exercise with the class, teachers may wish to clarify "retroactivity of the law" and membership in the FLQ. Teachers should emphasize the need to balance the citizen's right to join groups (i.e. freedom of association) with society's right to security and order. In answering question 2, which deals with anti-biker legislation, teachers should note that the main difference between the FLQ and the "biker situation", is that the FLQ members were guilty of an offence under a law that had not been passed when they became members.

3. Distribute the Tunisian case study and ask students to respond to the questions. Students might note that, in both the FLQ and Tunisian cases, those who argued for change in society were being prosecuted, but that at least the FLQ members had a fair trial.

4. Distribute Case Studies #3 and #4. Working in large groups or in pairs, students are to respond to the questions. Discuss these responses in a large group setting. The concept of "racial profiling" that is introduced might well produce other examples from students' experience or knowledge. Case study 4 found in Appendix 2.3, is intended to be a teacher resource. It provides an opportunity to discuss how changing community values continue to influence the law. It suggests that the ability to challenge jurors on their possible racial bias is the result of a fairly recent recognition that racism exists in the community and that, if unacknowledged in the judicial process, the right of the accused to be presumed innocent may be diminished.

5. Have students write what they understand by the terms judicial independence and judicial impartiality. Using their responses to the case studies, have students state how their right to a fair trial is protected.

6. Using the multi-media tool, *Try Judging*, outlined in Appendix 2.5, have students review the scenarios and answer questions in the online the quiz (Note: modules 1 and 4 have specific relevance to fair process. There are five modules in total). Lesson plans are included in the resource guide, available through the *Try Judging* website: www.tryjudging.ca.

Assessment/Evaluation Techniques:

Formative assessment of student responses to case studies.
Summative evaluation of written responses to #5 above.

Resources:

Judicial Independence is For You. Law Courts Education Society of British Columbia, 2001.

Try Judging. Canadian Superior Court Judges Association. www.tryjudging.ca

Appendix 2.1

How Are Your Rights Protected?

Scenario #1
Imagine you are charged with an offence of which you are innocent, but there are circumstances implicating you. What kind of judge would you want if your rights had been violated? Make a list of the characteristics that you would want this judge to possess.

Scenario #2
Your family believes in home schooling. The government ministry responsible for children takes you away from your parents because a social worker disagrees with the way your parents have chosen to home school you. What can your parents do to contest the government's decision to take you away? Who would you want to hear your case, a senior member of the government ministry in charge of children, or a judge? Explain.

Scenario #3
You are protesting against a logging operation and you are arrested for refusing to come down from a tree. When you arrive for your trial you recognize the judge as the parent of one of your school friends. You know for a fact that the judge's husband is the Chief Executive Officer of another large logging corporation. Will you receive a fair trial? Explain.

Appendix 2.2

A Question of Fair Trials: Case Studies

Case Study #1

Portions reprinted with permission from Law Courts Education Society of BC, *Judicial Independence is For You* (2001), page 22-25.

The FLQ Crisis:
***Gagnon* v. *The Queen* (Re: *The Public Order Act*)**
Quebec Court of Appeal, April 21, 1971 (C.R.N.S. Vol. 14, 321.)

In October, 1970, an organization calling itself Le Front de Liberation du Quebec (FLQ) created social unrest in Quebec. The FLQ kidnapped James Cross, a British diplomat, and Pierre Laporte, the Quebec Minister of Labour.

In an effort to control these events, the Canadian government used the *War Measures Act* to declare that a state of "insurrection" existed in the province of Quebec. Under the Act, the government had the right to arrest, detain, and/or deport members of the FLQ. One FLQ cell murdered Pierre Laporte, and another cell released Cross in exchange for safe passage to Cuba.

On October 16, 1970, a number of alleged FLQ members were arrested and imprisoned without a warrant (normally, there must be a warrant), and were kept in prison without charge (again, normally, not possible).

On December 1, 1970, in an effort to uphold the Canadian democratic governmental system, the House of Commons passed the *Public Order Act*, which stated, among other things, that it was a criminal offence to be a member of the FLQ, and that such membership was punishable by up to five years in prison. The offence was made retroactive to October 16, 1970.

The accused appealed their detention, arguing that the *Public Order Act* was unconstitutional because Parliament had undermined the power of the judiciary by passing a law that made membership in the FLQ a criminal offence. It was argued that Parliament, in essence, passed a "judgment" before the case was even tried.

The Appeal Court of Quebec found that:

- The *Public Order Act* indeed created a criminal offence, but did not constitute a "judgment";
- the *Public Order Act* was an exercise by Parliament of its power and capacity as the rightful guardian of peace and order in Canadian society; and,
- the *Act* in no way undermined the power of the judiciary - the accused still had the right to prove, before the court, that they were not members of the FLQ.

Discussion Questions:

1. Was it fair that being a member of the FLQ was made illegal?
   Why or why not?

2. Imagine that you are arrested for your involvement with a biker gang which has been involved in serious criminal offences, including the death of a news reporter. The government has just passed new anti-biker legislation, which includes automatic imprisonment for gang members.

(a) Does this anti-biker law violate your legal rights?

(b) Is this biker example different from the FLQ example? Why or why not?

3. You may have an opportunity to have a judge come to your class in the next little while. Write down at least three questions you would ask a judge about these cases.

Case Study #2

Reprinted with permission from Law Courts Education Society of BC, *Judicial Independence is For You* (2001), page 26-29.

(Joint press release from Amnesty International)

In the presence of numerous foreign observers, the trial of a female lawyer in Tunisia and 17 other co-defendants, who had all been imprisoned for more than 14 months awaiting trial, took place July 10, 1999 and lasted 20 straight hours from 10 a.m. until 5 a.m. the next morning.

The human rights lawyer, who stood accused in this case, was charged with "facilitating a meeting of an association which advocates hatred". The other defendants in this case, 14 men and 3 women who had been in pre-trial detention for about 15 months, faced various charges, notably links to "an association which advocates hatred", "unauthorized meetings", "insulting the public order and the judiciary", and "inciting citizens to rebel and to violate the laws of the country".

Aside from the "confessions" of the defendants themselves to the police during incommunicado detention, no physical evidence was produced or examined during the trial, and no other witnesses were called.

The trial was characterized by disrespect for the rights of the defendants. The judge repeatedly interrupted the defendants, especially when they tried to provide details of the torture they were subjected to during 15 months of detention, and he refused, on several occasions, to enter these complaints into the official trial record. This culminated in a unanimous walkout by all the defence lawyers to protest the judge's decision to prevent one of the lawyers from continuing his argument to the court.

The lawyer who was accused in this case received a six-month suspended prison sentence. Seventeen of her co-defendants, most of them young students, were sentenced to terms of imprisonment ranging from 15 months to four years.

Discussion Questions:

1. (a) Was this a fair trial? Write down whatever parts seem unfair.
   (b) Could this happen to you in Canada? Why or why not?

2. Compare this case to *Case Study #1* involving the FLQ (i.e. note any similarities and differences).

Case Study #3

(Note: The decisions in both of the following case studies were appealed.)

R. v. *Brown* (2002) 57 O.R. (3d) 615

Decovan Brown, a young black man, was driving a Ford Expedition on the Don Valley Parkway in Toronto. Before being stopped he was traveling slightly in excess of the posted speed limit. Traffic was moderate. Speeding is common on this highway. He was dressed in an athletic suit and baseball cap. He was polite and courteous to the police and cooperated in providing breath samples. He was charged with impaired driving "over 80".

At trial, defence counsel brought an application to exclude the results of the breathalyzer test arguing that Mr. Brown had been arbitrarily stopped as a result of racial profiling. The supporting evidence included the fact that the police had begun a vehicle registration check prior to stopping the car.
In the course of defence counsel's submissions the judge described the allegations as "nasty" and "malicious" and commented on the lack of tension and hostility between the accused and the arresting officer. The trial judge dismissed the application without calling for submissions from the Crown. The accused was convicted. During sentencing the trial judge referred to "distaste for the matters raised during trial" and suggested that an apology be given to the arresting officer. The accused appealed.

Case Study #4

R. v. *Barnes* [1999] O.J. No. 3296 (Ont. C.A.)

The accused, a black Jamaican male, was convicted of trafficking in cocaine, possession of cocaine, and possession of the proceeds of crime. The trial judge did not allow certain questions to be asked of prospective jurors which would have alerted them to the accused's nationality, the nature of the crime, or whether they would be more likely to believe a police officer; however, the trial judge did allow jurors to be asked whether their ability to judge the evidence without bias or prejudice would be affected by the fact that the accused was black. The trial judge accepted that within Metropolitan Toronto there exists a widespread prejudice about people of West Indian origin which suggests that they are more likely to commit crimes than people of other origins. However, the judge believed that the potential prejudice arising from this could be overcome by proper instructions to the jury and by jury dynamics.

Discussion Questions:

1. What do you think is meant by the term "racial profiling"?

2. Based on your understanding of the term "judicial impartiality", were the actions of the judge in each of these cases fair and impartial? Explain.

3. If you were the appeal judge, would you grant the appeal in Case Study #3? Explain.

4. In Case Study #4, did the judge go too far in allowing defence counsel to challenge jurors about their possible racial prejudice? Explain.

5. Write down three questions for a judge or a lawyer, based on these two cases.

Appendix 2.3

A Question of Fair Trials: Responses

Case Study #3

The appeal was allowed and a new trial ordered. The reasoning went as follows: A judge hearing an application must be scrupulously aware of the need to maintain public confidence in the court's fairness. The judge's comments were a significant departure from a judge's obligation, and inconsistent with the duty to hear and determine a matter with an open mind. The judge showed a failure to appreciate the evidence and failed to consider that racial profiling can be a subconscious factor when exercising discretionary power in a multi-cultural society. A reasonable person who was aware of the prevalence of racism in the community, the nature of the application, and the traditions of integrity and impartiality in the judiciary, would reasonably apprehend bias on the part of the trial judge.

Update to Case Study #3

The original decision was overturned on appeal by Justice W. Brian Trafford, who found that the original trial judge failed to maintain impartiality. A new trial was ordered. The crown subsequently appealed the judgment of Justice W. Brian Trafford "that set aside the respondent's conviction on a charge of driving 'over 80'". The Court of Appeal for Ontario, in a judgment released on April 16, 2003, dismissed the appeal. The court determined that "there was evidence before the trial judge which was capable of supporting a finding of racial profiling". Further, the court agreed with Justice Trafford's decision to set aside the conviction "based on his conclusion that the trial judge's conduct of the trial gave rise to a reasonable apprehension of bias". The Court of Appeal for Ontario's judgment meant that a new trial would be ordered.

For the complete decision, teachers should go to www.ontariocourts.on.ca and refer to April 16, 2003.

Case Study #4

The Appeal Court agreed that racial prejudice exists and stated that providing instruction to jurors after they have heard the case might not be enough to have jurors set aside their prejudice. The court decided that the offender should be allowed to challenge jurors for cause on the basis of racial bias, thereby adequately addressing the offender's concerns about nationality, type of crime and, police partiality. The Court referred to the right to challenge prospective jurors for cause on the ground of partiality and race in the S.C.C. decision *R.* v. *Williams* [1998].

Appendix 2.4

Developing Questions for the Judge's Visit

Teachers should review students' questions to ensure that they relate to the topic of judicial independence and impartiality. It may be helpful to hand out a sheet of all questions prior to the judge's visit. Outside of the courtroom, all judges can be addressed as Judge "Smith".

Sample Questions:

- Under what circumstances are you able to express your own political opinions?
- Have you ever felt that your judicial independence has been threatened in any way?
- Have you ever presided over a case where you felt you were unable to make an unbiased decision? If so, what did you do?
- Have you ever presided over a case where there was a possible conflict of interest? If so, did you step down from the case?
- Do you ever have contact with plaintiffs or defendants from past cases?
- In your opinion, what are the most important characteristics of a judge?
- Have you or any of your fellow judges ever been offered a bribe? If so, what happened?
- What if a litigant believes that he or she has a good case and that a judge has acted unfairly, corruptly or maliciously to the litigant's detriment? How does the litigant file a complaint against a judge?
- Can a judge "lose his or her job"? If so, under what circumstances?
- What is your opinion on the issue of electing judges?
- How are judges to be held accountable, given there is so much emphasis on protecting their independence?
- Have you ever disagreed with the findings of a jury? Can you do anything about this?
- Has your life ever been threatened as a result of a decision you have made?

- How often have your decisions been appealed?
- Is it difficult being unable to speak out in public about your views on the law?
- Can you belong to any organizations once you become a judge?
- *Quel pourcentage des causes sont plaidées en français?*

Appendix 2.5

Try Judging (www.tryjudging.ca)

Try Judging (also known as *You Be the Judge*) is a multi-media educational program designed to be integrated into the social studies, civics and law courses in Canadian high school curriculum. Produced by the Canadian Superior Courts Judges Association, it introduces students to the role of judges in Canada's legal system and encourages students to explore important concepts such as the rule of law, judicial independence and judicial impartiality.

The program consists of three components – a 150 page guide for teachers, a website for teachers and the online interactive program for students. The resource materials/lesson plans are available in downloadable PDF format on the website www.tryjudging.ca and provide for the strands and expectations of the new curriculum, case studies, additional excercises for classroom use and assignments as well as Internet links to additional resources.

The interactive multi-media component of the *Try Judging* program for students can be reached at www.tryjudging.ca

The program is built around five guiding questions, each forming a separate module, that leads students through five courtroom case scenarios and issues associated with the role of judges in Canada's judicial system. The five case scenarios and associated questions are :

- **Module 1 : Case Scenario :** "Drugs in the Backpack"

Key Question – Who should hear this case and pass judgment?

- **Module 2: Case Scenario:** "Hotel sues youths who damage hotel room"

Key Question – What is likely to happen when the hotel's claim for damages goes to trial?

- **Module 3: Case Scenario:** "Teacher sued for assaulting student"

Key Question – What should be the outcome of this case?

- **Module 4: Case Scenario:** "Bail hearing in armed robbery case"

Key Question – Should this woman be released on bail as she awaits trial?

- **Module 5: Case Scenario:** "The protest"

Key Question – Was the judge right to strike down part of the law against possessing child pornography?

Activity 2.2: The Judicial System and Young Offenders: The Rights of the Accused, the Victim and the Community

Time: 75-120 minutes

Description:

This activity focuses on the youth criminal justice system and examines how it works to protect the rights of the accused, while at the same time addressing the rights of the victim(s) and the community at large. Students will be able to demonstrate their understanding of these concepts by examining and responding to information about youth sentencing. Using specific case studies, students will apply the principles of protection through the sentences they propose. These materials provide opportunities for students to add to their list of possible questions for a visiting judge or legal expert.

Overall Expectations:

ICV.04 - explain the legal rights and responsibilities associated with Canadian citizenship.

ACV.02 - demonstrate an ability to apply decision-making and conflict-resolution procedures and skills to cases of civic importance.

Specific Expectations:

IC3.04 - demonstrate an understanding of how the judicial system (e.g., law courts, trials, juries) protects the rights of both individuals and society (e.g., the rights of accused, the rights of the victim and the role of the judiciary).

AC2.02 - analyze important and contemporary cases that involve democratic principles in the public process of conflict resolution and decision-making.

Planning Notes:

- In determining which case studies to use, teachers will take into account the time available, the nature of the particular cases and student ability. The decisions in these cases are included in Appendix 2.11, *You Be The Judge: Responses*. (Teachers should note especially the results of case study #5.)

- Appendix 2.12, *Debates About Youth Justice*, is meant to provide support for a discussion of the issues arising from the activity and may provide further material for questions for a visiting legal expert.

- Review the Sentencing Options in Appendix 2.8 to ensure an adequate explanation to students at the appropriate time in the activity.

Prior Knowledge Required:

Although students are asked to respond to aspects of the *Youth Criminal Justice Act* that came into force in April 2003, no detailed knowledge of the Act is required. A class discussion about the possible sentences available should be sufficient for the purposes of the activity.

Teaching/Learning Strategies:

1. As an introduction to this activity, distribute Appendix 2.6, *Statistics on Youth Crime*. Ask students what the statistics indicate about the amount of crime and the types of crime that are most prevalent among young people. Students should also consider the significance of the age breakdown. Based on the conclusion that non-violent crime is the most prevalent type of crime committed by young people, ask students whether a new law dealing with youth justice should include more penalties calling for jail time for youth crime. Have students suggest other possibilities for dealing with non-violent crime. Since violent crime is still greater than it was 12 years ago, what should a new law do about it? (Perhaps the law dealing with youth crime should account for the different age groups, genders and categories of offences in addition to implementing new initiatives to deal with violent crime committed by young people. This is what the new *Youth Criminal Justice Act* does.)

2. Distribute Appendix 2.7, *New Directions in Youth Justice: Highlights of the New Legislation*. Working in pairs, students are to analyze the chart and examine how the new legislation deals with some of the issues raised in the earlier discussion.

3. Working as a class, ask students to find examples for each section of the chart where the new law takes into account all three groups: the accused, victims and the community. Discuss with students the appropriateness of this emphasis, especially with respect to the community, since this is one area where they may have difficulty understanding the need for legislation.

4. Distribute Appendix 2.8, *Youth Court Sentencing Options*, and review the various options presented. (Appendix 2.9, *Two Examples of Restorative Justice* might also be given to students to explain “Community Justice Conferencing” and “Healing Circles”.

5. The case studies in Appendix 2.10 may be given to groups of four. (The same case study may be given to more than one group depending on the size of the

class.) Ask groups to respond to the questions. Instruct the groups that, in formulating their answers, they must balance the rights of the accused, the victim, and the community.

6. Each group then chooses a spokesperson to explain the case to the class. Other group members will read out the questions and explain the group's responses. Additional explanations may be given if more than one group has the same case study. Discussion should focus on the appropriateness of the sentence in light of the instructions given.

7. The teacher may conduct a summary discussion based on the actual results of the cases presented in Appendix 2.11.

Assessment/Evaluation Techniques:

Formative assessment of class and group discussions.

Resources:

All About Law, Teacher's Resource, Fourth Edition, ITP Nelson, 1996.
Juvenile Delinquency in Canada - A History, by Carrigan, D. Owen, Irwin Publishing, 1998.
New Directions in Youth Justice. Law Courts Education Society of B.C., 2001.

Non-print:

Department of Justice Canada: *www.justice.gc.ca/eng/index.html*
Ministère de la justice du Canada : *www.justice.gc.ca/fra/*

Appendix 2.6

Portions reprinted with permission from Law Courts Education Society of BC, *New Directions in Youth Justice, Law 12 Activity Guide* (2001), page xiii. Statistics have been updated by OJEN.

Statistics on Youth Crime

(All figures are from the Department of Justice.)

Youth crime is decreasing in Canada.

- Convictions for youth crime went down 23% between 1991 and 1997.
- Youth crime was 26% of all crime in 1991. By 1997 it was 20%. The rate at which youth are being charged with offences is declining. It fell from 71 per 1000 youth in 1991 to 47 per 1000 youth in 1997.

What kinds of crime do youth commit?

- In 1997, 18% of youth crime was violent crime.
- The charge rate for violent crime by youth has fallen slightly. In 1994 it was 11 charges per 1000 youth. In 1997 it had dropped to 10 charges per 1000 youth.
- Currently, 82% of all youth crime is "non-violent." That includes offences such as car theft, drug possession and shoplifting.
- The charge rate for "property-related" crime by youth has fallen by almost half. In 1991, it was 91 charges per 1000 youth. In 1997 it had dropped to 52 charges per 1000 youth.
- The charge rate for things like prostitution, gaming and disturbing the peace fell 15% between 1991 and 1997.

What this means - the *Youth Criminal Justice Act* distinguishes clearly between serious violent offenders, who are in the minority, and non-violent offenders.

At what age do youth commit crime?

Older youth are more likely to become involved in criminal acts. In 1997, the age breakdown was as follows:

- 24% of crimes committed by youth were committed by those 17 years of age;
- 24% of crimes committed by youth were committed by those 16 years of age;
- 22% of crimes committed by youth were committed by those 15 years of age;
- 15% of crimes committed by youth were committed by those 14 years of age;
- 8% of crimes committed by youth were committed by those 13 years of age;
- 3% of crimes committed by youth were committed by those 12 years of age;

One half of youth crime is committed by youth who are 16 or 17 years of age. The other half involves youth under the age of 16.

Are young men or young women more likely to commit violent crime?

Young men are still more than twice as likely to be involved in violent crime as young women. In 1997, male youth had a violent charge rate of 14 per 1000 compared with 6 per 1000 for female youth.

Appendix 2.7

Reprinted with permission from Law Courts Education Society of BC, *New Directions in Youth Justice, Law 12 Activity Guide* (2001), page xi-xii.

New Directions In Youth Justice: Highlights of the New Legislation
A Comparison of The Youth Criminal Justice Act 2001*
and The Young Offenders Act

	Youth Criminal Justice Act	Young Offenders Act
	Has a clear statement about what the Act is about and its purpose -Principles include: protection of society; prevention of crime; accountability of youth offenders; social values; proportionality of sentences; rehabilitation and reintegration; protection of youth rights; respect for victims -includes guidance for police, prosecutors, judges and others at different stages of the process	-contains similar themes but lacks specific principles and guidance at different stages of the youth justice process
Measures Outside The Court Process	-creates a presumption that measures other than court proceedings should be used for a first, non-violent offence -is clear about how or why to use measures or sanctions as alternatives to the court process -encourages use of extrajudicial measures and extrajudicial sanctions when they are adequate to hold a young person accountable -authorizes Crown to use measures such as cautions and referrals where the offence is less serious -authorizes Crown to use extrajudicial sanctions such as cautions and referrals where the offence is more serious or where there is a repeat offender as long as certain conditions are met.	-does not create a presumption that other measures other than court proceedings be used for minor offences -provides less direction re. how to use alternative measures to the court process, and when they are appropriate
Youth Sentences	-custody reserved for violent or repeat offenders -says that the purposes of youth sentences is to hold youth accountable. Includes other principles, including the importance of rehabilitation and proportionality in sentencing -new options like reprimand, intensive support and supervision encourage non-custodial sentences, where appropriate, and support reintegration -other new options such as intensive rehabilitation, custody, and conditional supervision are aimed at helping serious violent offenders	-no restrictions on use of custody -contains no statement re. the purpose of sentencing has no requirement for community supervision following custody -does not have the same range of sentencing options
Adult Sentences	-Youth justice courts can impose an adult sentence -the lowest age for adult sentence is 14 -an adult sentence is presumed to be appropriate if the youth is 14 or older when he or she commits the serious violent crime. These crimes are called presumptive offences, and include murder, manslaughter, attempted murder and aggravated sexual assault -a pattern of at least three serious, repeat violent offences is another factor in deciding whether to	-requires a court hearing before youth can be transferred to adult court. This can cause lengthy delays before trial. -the courts presume they can give youth 16 or older an adult sentence if they are convicted of a serious offence -has no specific provision

	impose an adult sentence -Attorney General seeking an adult sentence must give notice to youth before plea and with leave of the court before trial -The Crown can renounce the application of the presumption of adult sentence. In this case, the judge who finds the young person guilty has to impose a youth sentence	re. considering the pattern of repeat violent offences but the Crown can request an adult sentence for any offence for which an adult could be sentenced to than two years of custody -The Crown cannot renounce the application of the presumption of an adult sentence
Victims	-Victim's concerns are now recognized in the principles of the Act -victims have the right to request access to certain youth records -victims have a role in formal and informal community-based measures for the offender -victims have a right to request information about measures or sanctions used for the offender that do not involve going to court -victims have a right to information about proceedings and a right to be given an opportunity to participate and be heard -victim impact statements can be submitted at the time of sentencing	-the principles of the Act do not mention victims -victims must ask for access to youth records -there is no formal recognition of victim's role -no right of victims to information on alternate measures taken
Involving Partners (Conferences)	-allows advisory groups or "conferences" to advise police officers, judges, or other decision makers -conferences may include parents of the young person, the victim, community agencies or professionals -conferences can advise on appropriate informal measures, conditions for release from pre-trial detention, appropriate sentences and conditions, and re-integration plans	-there are no similar provisions
Custody and Reintegration	-the province has more discretion to determine the level of custody. This may make the system more efficient -ensures that all youth with custodial sentences will also serve a period of supervision with conditions in the community. Youth can be returned to custody if they do not keep these conditions -increases planning for the reintegration of youth and encourages the community to take an active role in that reintegration -a plan for reintegration in the community must be prepared for each youth in custody -reintegration leaves may be granted for up to 30 days	-youth court determines custody level at the time it imposes the sentence -the decision to transfer a youth to a different custody level is made at youth court only -youth with custodial sentences may also serve a period of supervision in community with conditions but no requirement that there be supervised reintegration post custody -no requirement to plan reintegration during custody -temporary leaves may be granted for up to 15 days

Appendix 2.8

Youth Court Sentencing Options

If one has been found guilty of a crime in Youth Court, judges can impose a variety of youth sentences according to the *Youth Criminal Justice Act*. They are:

- a reprimand of the young person
- an absolute or conditional discharge:
- (absolute discharge: though convicted, no conviction is registered against the youth; conditional discharge: conditions may include going to school regularly, being home by a set curfew, staying out of trouble)
- an order to participate in an intensive support and supervision program
- an order to attend a program offered at a facility
- attendance at a similar program offered at a facility
- a fine of up to $1000
- order for restitution
- payment of compensation to the victim
- payment of compensation or service to a third party with the consent of that party
- order of prohibition, seizure, or forfeiture
- payment of the costs of the crime (for example, replacing stolen goods)
- up to 240 hours of community service
- ordering the offender to report to a probation officer regularly
- ordering the offender to abide by certain conditions for up to two-year's probation
- deferred custody and supervision order: custody and supervision not imposed if conditions set by the judge are complied with.
- intermittent custody if less than 90 days
- custody and supervision order
- intensive rehabilitative custody and supervision order
- consecutive sentences

Appendix 2.9

Two Types of Restorative Justice Processes

Portions reprinted with permission from Law Courts Education Society of BC, *New Directions in Youth Justice, Law 12 Activity Guide* (2001), page 13-15.

Restorative Justice allows victims and community members, such as family members of the victim or offender who were affected by the crime to assist in finding a resolution. It treats a criminal act as harm done to victims and communities and it seeks a solution to the problems caused by the criminal offence. Thus, instead of punishment, restorative justice emphasizes:

- the offender's shared responsibility for a lasting solution
- the offender's acknowledgment and willingness to take responsibility for the victim's suffering
- forgiveness

Community Justice Conferencing:

Community Justice Conferencing is one type of restorative justice process. Police officers or volunteers who have received special training often run community justice conferences. Neither offenders nor victims are forced to participate. The police, the Crown, or the judge decides whether the offender is eligible for this type of conferencing based on the particulars of each case.

If Community Justice Conferencing is to take place, the conference facilitator arranges a meeting between the investigating police officer, the offender, the victim, and those people who are willing to support the victim and/or the offender - parents, grandparents, siblings, and friends. (A proxy may stand in for the victim if that person does not wish to attend.) The participants then sit in a small circle and the facilitator leads them through a process that requires the offender to accept responsibility for wrongdoing.

- Victims have an opportunity to tell the offender how the wrongdoing has affected them. Other participants may do the same.
- Apologies are usually made to all who have been adversely affected.
- The victim may suggest ways the offender can mitigate the harm done.
- Once an agreement is reached by the group, the facilitator writes it up and it is signed by everyone.

Healing Circles:

Healing Circles are another form of restorative justice. Although the process originated with North America's First Nations, one need not be a member to participate.

Healing Circles can take many different forms, depending on the needs of the parties and the traditions of the community. They can, for example, be sentencing circles or

healing circles. The focus of the dialogue in the circle is broader than a family group conference. The offending behaviour is seen largely as a community problem to be shared by all.

(Note: Both Community Justice Conferencing and Healing Circles require significant planning and forethought before they begin.)

Appendix 2.10

You Be The Judge: Case Studies in Youth Justice

Case #1: The Dare

Reprinted with permission from Law Courts Education Society of BC, *New Directions in Youth Justice, Law 12 Activity Guide* (2001), page 20.

Jason, 17, visited his friends at a neighbouring school one day during the lunch hour. As the lunch hour drew to an end, his friends dared him to pull the fire alarm before returning to his own school. "I just might!" he called as his friends headed to their classrooms. Jason surprised himself by pulling the alarm before walking out of the school. He was also a little surprised and overwhelmed by the number of people who filed out of the school - and a little nervous that someone might have seen him pull the alarm. He headed back to his own school, but he didn't run as he didn't want to appear suspicious. "Oh I hope they enjoy the sunshine", he muttered as he glanced back towards the students and staff standing outside the school.

It wasn't long before the rumours began to spread. The police questioned Jason's friends. They admitted that they had dared Jason to pull the alarm. When a police officer visited Jason, he admitted to the offence. He had had a couple of run-ins with police before - like the time they dumped his beer when he was in the park with a bunch of other kids, but he had never been to court.

Jason is in grade 11. He's not great in school, but he is getting by. Jason doesn't have a job, but hopes to get work as a mechanic one day.

Discussion Questions:

1. Is a police warning sufficient here? Why or why not?

2. Should Crown counsel proceed to trial in a Youth Justice Court? Explain.

3. Does the public need to see that the offender for this offence receives a major punishment? Explain.

4. What other options for dealing with Jason are available in the community?

5. Does this crime have a victim? Explain your answer.

Case #2: Mrs. Myers' Garden

Reprinted with permission from Law Courts Education Society of BC, *New Directions in Youth Justice, Law 12 Activity Guide* (2001), page 21.

Twelve-year-old Jeannine sneaked into Mrs. Myers' garden to pick some of her favourite berries. Mrs. Myers was tired of children stealing from her garden. She had chased many children away before, but they always seemed to come back. Often they walked over her plants, as Jeannine had just done, destroying many hours of patient hard work. Mrs. Myers phoned the police and said, "I've just found another child in my garden. This time it's one I recognize - Jeannine Lebordier".

Discussion Questions:

1. Is this a case for a police warning or should Jeannine be charged and prosecuted in court? Why?

2. What is the best way to deal with this situation? Why?

Case #3: An Unforgettable Evening

Reprinted with permission from Law Courts Education Society of BC, *New Directions in Youth Justice, Law 12 Activity Guide* (2001), page 22.

Roland and two friends, all 14 and over, had a few beers and began cruising the streets hoping to find something to make their evening a little more interesting. Roland was already driving too fast when the three noticed a car full of girls. They tried to catch up with the girls and attract their attention, but Roland lost control on a sharp curve and his two friends were fatally injured.

Roland was convicted of two counts of dangerous driving causing death.

Roland felt terrible remorse for the accident and the families of the deceased made submissions to the judge in the form of victim impact statements. In their statements, they told the judge they didn't think a jail term was warranted as Roland had already suffered the loss of two friends and his ongoing feelings of guilt.

Discussion Questions:

1. Is this an offence that requires imprisonment? Why or why not?

2. Should Roland receive an adult sentence?

3. Do the victim impact statements have any influence on you? How much weight should a judge give them? Is it fair for the same offence to have different punishments based on the victims' feelings?

4. What sentence can your group come up with that would show this is a serious crime, that justice has been served, that victims of crime are listened to in the court system, and that the community will be better protected from others who might drink and drive dangerously?

Case #4: A Troubled Life

Reprinted with permission from Law Courts Education Society of BC, *New Directions in Youth Justice, Law 12 Activity Guide* (2001), page 23.

Frank Brown was a very angry 17-year-old of First Nations descent who grew up in Bella Bella. Frank and some friends decided to steal some alcohol from a local bootlegger, but they didn't anticipate running into the man. They assaulted him very seriously and the community felt that Frank was a dangerous young man. To make matters worse, Frank was carrying a loaded gun.

This wasn't the first time Frank had been in trouble. He had a previous conviction for breaking and entering and had been sent to a corrections camp for 16 months. His time in corrections didn't seem to have any kind of positive impact on his life. In fact, he had been negatively influenced by other troubled teens.

People in the community were aware that Frank's early home life had been unstable and probably contributed to his troubled teen years, but this latest crime was too serious to be overlooked.

Discussion Questions:

1. What advantages and disadvantages might come from imprisoning Frank?

2. What are some alternatives that might be considered?

3. What sentence do you suggest? Why?

Case #5: Flames of Frustration

Reprinted with permission from Law Courts Education Society of BC, *New Directions in Youth Justice, Law 12 Activity Guide* (2001), page 24.

Joey's birth mother was an alcoholic who drank heavily while she was pregnant with Joey. Joey was born with Fetal Alcohol Syndrome (FAS). Joey's mother abandoned him in a hospital shortly after his birth. The infant was taken by the Superintendent of Family and Child Services when he was 10 days old and he has been a ward of the government ever since.

A caring foster family raised Joey until he was 14 when his foster mother became too ill to do any more fostering. Joey was moved to a new foster home, but his new foster parents didn't understand his needs very well. Joey needed a lot of structure in his daily life and the new family couldn't provide it. Joey got into trouble with the law and ended up in a group home in a rural area of the province.

Joey managed quite well in the group home until a number of staffing changes occurred. He then became quite confused and frustrated. One day, he tried to start a fire under the home porch, hoping he would be sent away from the place. However, another resident put it out and the staff didn't do much more than express anger at Joey.

One evening, while all but a couple of the boys were asleep, Joey set another fire. He removed the fire extinguishers from the home, pushed a couch against one of the doors, doused the place with kerosene and torched it. Most of the residents were awakened and escaped, but one teenager could not get out and died.

The psychiatrist who interviewed Joey explained that the brain of a child afflicted with FAS is injured before birth. She went on to say Joey displayed many of the characteristics of individuals with FAS such as:

- being easily frustrated
- being quick to anger (the extent of the anger often seems out of proportion to the event that caused the anger)
- being extremely impulsive
- not learning from being told what to do or not to do
- being immature for his age
- having difficulty relating cause and effect
- having no ability to grasp abstract concepts
- living only in the present and being unable to consider future events.

Discussion Questions:

1. What should be considered before determining whether Joey should receive an adult sentence?

2. Do you think the fact that Joey is affected with FAS should have any impact on this case? Explain.

3. Given the facts of this case, what do you think should happen to Joey?

Appendix 2.11

Portions reprinted with permission from Law Courts Education Society of BC, *New Directions in Youth Justice, Law 12 Activity Guide* (2001), page 25.

Responses to "You Be The Judge" Cases

Case #1 The Dare

The investigating officer referred this case for Community Justice Conferencing.

Case #2 Mrs. Myers' Garden

This case is included to add historical context to the discussion. In a similar case in 1880 a young girl served 14 days in common jail in Charlottetown, P.E.I., before her trial. She was then sentenced to six months in an Ontario reformatory. Her crime was stealing one gooseberry. This case was included in *Juvenile Delinquency in Canada - A History*, by D. Owen Carrigan, Irwin Publishing, 1998.

Case #3 An Unforgettable Evening

This case is well-known because of the support the parents of the deceased showed for the accused, Kevin Hollinsky (Ontario Supreme Court, 1991) and the sentence given by the judge. Hollinsky was banned from driving for two years. He was placed on probation and given 750 hours of community service. Hollinsky agreed to speak to high school students in the Windsor, Ontario area about the tragic results of his decisions that evening. Police towed the wreckage of his vehicle to display at the schools where Hollinsky spoke and the father of one of the deceased attended the speaking engagements to show his support for Hollinsky. (*All About Law, Teacher's Resource*, Fourth Edition, ITP Nelson, 1996.)

Case #4 A Troubled Life

Frank was not jailed, even though the judge believed that was going to have to happen when he first heard the circumstances of the case. Frank was put on an isolated island near Bella Bella, B.C., where he came to terms with himself and changed his life.

Case #5 Flames of Frustration

Joey was transferred to adult court on a second-degree murder charge. He was convicted of manslaughter and sentenced to time in a B.C. Provincial Correctional Facility for adults. There, older inmates brutalized him until the Provincial Ombudsman became involved and removed Joey from the institution. Under the *Youth Criminal Justice Act*, which came into force after this case, youth can receive adult sentences under some circumstances, but they are no longer transferred to adult court and will not serve time in an adult facility while under the age of eighteen.

Appendix 2.12

Debate Topics - Youth Justice

Portions reprinted with permission from Law Courts Education Society of BC, *New Directions in Youth Justice, Law 12 Activity Guide* (2001), page 38 .

Students may wish to create their own debate topics, but here are some to consider. Be it resolved that:

- when giving statements to police, young people should not have more protections of their rights than adults have.
- children as young as 10 should be held responsible through the criminal justice system for serious crimes.
- the law should allow youth as young as 14 to receive adult sentences for serious violent offences including murder, attempted murder, manslaughter and aggravated sexual assault.
- the media should be able to publish the names of all youth convicted of offences.
- criminal trials are a better way of preventing crime and protecting the public than extrajudicial measures or extrajudicial sanctions.
- parents should be financially responsible for crimes committed by their children.
- special consideration should be given to youths who commit crimes if they have disabilities such as Fetal Alcohol Syndrome.
- extrajudicial measures or sanctions under community justice are better ways of preventing crime and protecting the public than are criminal trials and sentences.

Activity 2.3: Can Citizens' Rights be Restricted? Case Studies - The Charter of Rights and Freedoms

Time: 75 minutes

Description:

Charter cases from the Supreme Court of Canada have been chosen for this activity because that body makes the ultimate decision in significant cases where rights of citizens guaranteed by the *Charter* come into conflict with the rights of others or those of the community at large. Students may best understand concepts such as the rule of law and democratic decision-making by examining specific situations where judges have applied law to decide when and if a *Charter* right will be restricted.

Overall Expectations:

ICV.01 - demonstrate an understanding of the reasons for democratic decision-making.

PCV.01 - examine beliefs and values underlying democratic citizenship, and explain how these beliefs and values guide citizens' actions.

Specific Expectations:

IC1.03 - report on the elements of democratic decision-making (e.g. rights and responsibilities of citizens, rule of law, common good, parliamentary system, majority rule, rights of minorities).

IC3.05 - describe a case in which a citizen's rights and responsibilities have been upheld or restricted, outlining the concerns and actions of involved citizens and the reasons for the eventual outcome.

PC1.02 - explain, based on an analysis of cases in local, provincial, national and global contexts, how democratic beliefs and values are reflected in citizen actions.

Planning Notes:

- Familiarize students with the *Charter of Rights and Freedoms*. Focus on section 8 which deals with search and seizure, section 15 which deals with equality, section 7 which deals with fundamental justice, section 12 which deals with cruel and unusual punishment, and section 1, which sets out the basis by which the rights and freedoms guaranteed by the *Charter* can be limited.

- The basis of the judges' decision in each case can be found in Appendix 2.14, *Case Studies in Citizens' Rights: Responses*.

Prior Knowledge Required:

Students need not have a detailed knowledge of Canada's court system, but they should understand the kinds of cases that the Supreme Court of Canada hears and something of the process by which a case arrives there. Students should also know how the Supreme Court arrives at decisions, including the idea of majority decisions and dissenting opinions.

Teaching/Learning Strategies:

1. Indicate that in each of the situations that follow, citizens were acting in defence of democratic beliefs and values in the course of defending what they believed to be their rights. The scenario found in Appendix 2.13 introduces the case studies.

2. Review with students the idea of fundamental rights and freedoms and the protections afforded them by the *Charter of Rights and Freedoms*, 1982. Ask students whether these rights and freedoms existed before 1982. Provide a brief overview of our common law tradition inherited from Britain, and the *Bill of Rights*. Ask students to provide examples of restrictions on citizens' rights from earlier in Canada's history. These might include discrimination against various people based on race, religion or gender. (Women were kept out of universities and denied the vote. Recent immigrants were denied the vote in 1917. Innocent citizens were interned in both World Wars.)

3. The case studies should be examined in sequence or assigned to small groups and dealt with concurrently (the same case being given, if necessary, to more than one group).

4. Have the groups dealing with the same case meet, compare results, and attempt to reach a consensus. If they are unable to agree on a decision, each group can report separately and offer their dissenting opinions.

5. In the oral presentations, groups should outline the case, state their decision, explain how they arrived at this decision, and respond to questions from the class.

6. Provide the class with the decisions reached by the Supreme Court of Canada.

7. For homework, students should write a brief (half-page) "opinion" stating why they agreed or disagreed with the decision that applied to their case.

Assessment/Evaluation Techniques:

Formative assessment of group discussions
Summative evaluation of written "opinions."

Resources:

Citizenship Teaching Module. British Columbia Civil Liberties Association
Kindler v. *Canada (Minister of Justice)* [1991] 2 S.C.R. 779
R. v. *M.R.M.* [1998] 3 S.C.R. 393
Vriend v. *Alberta* [1998] 1 S.C.R. 493
United States of America v. *Burns* [2001] 1 S.C.R. 283

http://www.iijcan.org/ca/cas/scc/1991/1991scc70.html
http://www.lexum.umontreal.ca/csc-scc/en/pub/1998/vol1/html/1998scr1_0493.html
http://www.lexum.umontreal.ca/csc-scc/en/pub/1991/vol2/html/1991scr2_0779.html
http://www.lexum.umontreal.ca/csc-scc/en/pub/2001/vol1/html/2001scr1_0283.html

Appendix 2.13

Case Studies - Citizens' Rights

Scenario:

In the fall of 2000, as a federal election approached, Ron Churchill and two other citizens were distributing election materials to commuters at a transit station operated by a publicly owned company. They were approached by company security and told that they were not allowed to hand out materials on company property, as they were violating a company policy that prohibited such activities without prior approval. They were then forced to leave the station.

Mr. Churchill, an informed citizen, knew that he had the right to exercise free speech in public spaces, and that transit stations are public property. Refusing to accept this policy, he immediately set out to challenge it using a variety of means including contacting the media and telling his story, contacting organizations that specialize in rights issues and seeking their assistance, contacting Elections Canada and learning about his rights under the *Elections Act*, and asking a court to review the company's policy and to rule on whether it violated the *Charter of Rights and Freedoms*.

Each of Mr. Churchill's activities combined to achieve a very successful result. The media spotlighted the unfairness of the policy. The B.C. Civil Liberties Association wrote to the company in support of changing the policy to permit free speech. Elections Canada advised Mr. Churchill of the current state of the law, information that he used in his court challenge. Finally, a judge ruled that the request that Mr. Churchill leave the company property because of his electioneering activities violated his right to free expression.

After some months of waging his battle, Churchill's campaign resulted in the company's changing its policy. Today, individuals are allowed to distribute non-commercial literature to public within designated areas, without prior approval, on all transit properties.

Case Study #1: Search and Seizure (section 8 of the *Charter of Rights and Freedoms*)
***R.* v. *M.R.M.* [1998] 3 S.C.R. 393**

A junior high school vice-principal was told that a student would be attending a school dance to sell drugs. He asked the student and his companion to his office, asked each if they were in possession of drugs, and then he told them he was going to search them. A plainclothes RCMP officer was present but did not speak or act. The vice-principal found a small amount of marijuana in a bag taped on the student's ankle under his sock. The marijuana was turned over to the RCMP officer who arrested the student and advised him of his rights. The student tried to call his mother, but she was not at home and he declined to call anyone else.

At trial, the judge decided that the vice-principal was not an agent of the police, and that the search had violated the accused's rights under the *Charter*. The judge excluded the evidence and the case was dismissed. The Court of Appeal allowed the Crown's appeal and a new trial was ordered. At issue before the Supreme Court of Canada is when, and under what circumstances, can a search by an elementary or secondary school official be considered unreasonable and in violation of a student's rights under the *Charter*.

Discussion Questions:

1. Was this search unreasonable and therefore a violation of the Charter right to protection from unreasonable search and seizure? Why or why not?

2. What criteria would you set for a reasonable search in a school setting?

Case Study #2: Equality (section 15 of the *Charter*)
***Vriend* v. *Alberta* [1998] 1 S.C.R. 493**

Mr. Vriend became a full-time employee of a college in Alberta in 1988. In 1990, when asked by the college president, he disclosed that he was a homosexual. In early 1991, the college adopted a position on homosexuality and Mr. Vriend was asked to resign. He did not and he was fired for non-compliance with the college's policy on homosexual practice. Mr. Vriend attempted to file a complaint with the Alberta Human Rights Tribunal but could not because, under the province's *Individual Rights Protection Act* (IRPA), sexual orientation was not a protected ground. Mr. Vriend and others filed a motion in court to challenge the ruling of the Tribunal that sexual orientation was not a protected ground.

Discussion Questions:

1. If the *Charter of Rights and Freedoms* conflicts with provincial laws, which takes precedence?

2. Was the president's question to Mr. Vriend appropriate? Why or why not?

3. How would you decide this case?

Case Study #3: **Fundamental Justice** (section 7 of the *Charter*) and **Cruel and Unusual Punishment** (section 12 of the *Charter*)

Kindler v. *Canada (Minister of Justice)* [1991] 2 S.C.R. 779

The accused, Kindler, was found guilty of first-degree murder, conspiracy to commit murder, and kidnapping in the state of Pennsylvania. The jury recommended the imposition of the death penalty.

Before he was sentenced, the appellant escaped from prison and fled to Canada where he was arrested. After a hearing, the extradition judge allowed the U.S.'s application for his extradition and committed the appellant to custody. The Minister of Justice of Canada, after reviewing the material supplied by the appellant, ordered his extradition pursuant to s. 25 of the *Extradition Act* without seeking assurances from the U.S., under Article 6 of the Extradition Treaty between the two countries, that the death penalty would not be imposed or, if imposed, not carried out. Both the Trial Division and the Court of Appeal of the Federal Court dismissed the appellant's application to review the Minister's decision. The Supreme Court agreed to hear the appeal. The issue was whether the Minister's decision to surrender the appellant to the U.S., without first seeking assurances that the death penalty would not be imposed or that Kindler would not be executed if it was imposed, violated the appellant's rights under section 7 or section 12 of the Canadian *Charter of Rights and Freedoms*.

Discussion Questions:

1. How would you decide this case? Explain your reasoning.

2. Do you think the death penalty constitutes cruel and unusual punishment? Explain.

Case Study #4: Cruel and Unusual Punishment Revisited
United States of America v. *Burns* [2001] 1 S.C.R. 283

Canadian citizens, Glen Burns and Atif Rafay, were wanted in Washington State on three counts of aggravated first degree murder of Mr. Rafay's parents and sister. The accused were 18 at the time of the murders. They were apprehended in British Columbia as the result of an RCMP sting operation during which they claimed responsibility for organizing and carrying out the murders.

The United States began proceedings to extradite the accused to Washington State to face trial there. If the accused were found guilty they would face either the death penalty or life in prison without possibility of parole. Under the Extradition Treaty between the United States and Canada, a fugitive may be extradited from Canada to the United States with or without assurances that the death penalty not be imposed. The Minister of Justice of Canada decided not to ask for assurances from the United States. The British Columbia Court of Appeal set aside the Minister's order and directed her to seek assurances as a condition of surrender. The Minister appealed.

Discussion Questions:

1. Is this case any different from Case Study #3? Explain.

2. Should the circumstances of this case result in a different decision by the Supreme Court? Why or why not?

Appendix 2.14

Case Studies in Citizens' Rights: Responses

Case Study #1 *R.* v. *M.R.M.*

The *Charter's* guarantee against unreasonable search and seizure (section 8) is applicable to schools because they constitute part of government. However, the S.C.C. decided that the vice-principal was not acting as an agent of the police, and that different standards apply to teachers and school authorities who conduct searches of students.

Firstly, students have a lower expectation of privacy at school because they know that teachers and school authorities are responsible for providing a safe learning environment and that safety concerns may require teachers to search students and their personal effects and seize prohibited items. Second, teachers and principals cannot perform their duties without the flexibility to deal with discipline problems in schools and the ability to act quickly and effectively. Therefore, teachers are not required to obtain a search warrant when there are reasonable grounds for them to believe that a school rule has been violated and the evidence will be found on the student. And third, reasonable grounds may be provided by information received from one student considered to be credible, from more than one student, or from observations of teachers or principals or a combination of these which are believed to be credible.

Case Study #2 *Vriend* v. *Alberta*

The trial judge found that the omission of protection against discrimination on the basis of sexual orientation was an unjustifiable violation of section 15 of the *Charter*. She ordered that the words "sexual orientation" be read into the IRPA as a prohibited ground of discrimination. The Court of Appeal allowed the government's appeal.

The Supreme Court of Canada decided that the *Charter* applied to the case since the "omission" was an act of the legislature. The Supreme Court of Canada stated that the rights enshrined in section 15(1) of the *Charter* are fundamental to Canada. In order to achieve equality, the intrinsic worthiness and importance of every individual must be recognized regardless of personal characteristics. While legislatures ought to be accorded deference, this does not give them unrestricted license to disregard an individual's *Charter* rights. When the *Charter* was introduced in 1982, Canada went from a system of Parliamentary supremacy to constitutional supremacy. Canadians had individual rights and freedoms which no government could take away; however, these rights and freedoms are not absolute. Governments and legislatures can justify qualification and infringement of constitutional rights under section 1 of the *Charter of*

Rights and Freedoms, but in this case, the Court found that the province failed to demonstrate any reasonable basis for excluding sexual orientation from the IRPA. Rather than find the whole of the IRPA unconstitutional, the Court chose, as the least intrusive and expensive mechanism, to read in the words, "sexual orientation". By reading in those words, sexual orientation became a prohibited ground of discrimination.

For further discussion:

1. Explain the difference between "parliamentary supremacy" and "constitutional supremacy".

Case Study #3 *Kindler* v. *Canada*

The majority of the Court decided that the case was one of fundamental justice (section 7) and that section 12 did not apply. The Minister's actions do not constitute "cruel and unusual punishment" because the execution, if it takes place, will be in the United States under American law against an American citizen in respect of an offence that took place in the U.S. It does not result from any initiative taken by the Canadian government. Therefore, the extradition order was upheld.

Case Study #4 *U.S.A* v. *Burns*

The Minister (the executive branch of the government) has a broad discretion to decide to request assurances, but it must exercise this discretion in accordance with the *Charter*. The Court has traditionally given deference to the Minister in extradition cases, stating that the Court should not interfere with international relations. However, the Court (the judicial branch of the government) is the guardian of the Constitution and death penalty cases are uniquely bound up with basic constitutional values, particularly with respect to s. 7 of the Charter, which requires that principles of fundamental justice be adhered to where liberty and security of a person are at issue. Abolition of the death penalty is a major Canadian international initiative. Since earlier court decisions there has been a change in attitude toward capital punishment in Canada, the United States and Great Britain. A refusal to request assurances from the United States that the death penalty not be imposed would not undermine Canada's international obligations or good relations. The Extradition Treaty provides for assurances. Given the provisions of the Charter, it is the view of the Court that assurances are constitutionally required in all but exceptional cases of extradition.

Questions for further discussion:

1. Account for the different decision given in this case based on the explanation above.

2. What is your reaction to the explanation given by the Court? Explain.