



Justice & the Media

**Classroom Resources
on the relationships
between courts,
lawmakers, media
outlets and citizens.**



OJEN • ROEJ

ONTARIO JUSTICE EDUCATION NETWORK
RÉSEAU ONTARIEN D'ÉDUCATION JURIDIQUE





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Justice and the Media

Examining the relationships between courts, lawmakers, media outlets and citizens.

In January 2005, the Attorney General of Ontario appointed a panel to consider the relationship between the justice system and the media. In August of 2006 the Panel released its report. Among other recommendations, the report called for enhanced educational resources and opportunities through which young people could learn about the relationship between the media and the justice system and develop the critical thinking skills to consider the issues of accessibility to the courts and confidence in media reporting.

This resource, developed by the Ontario Justice Education Network with the support of the Ministry of the Attorney General and others, focuses on these issues. These four modules, developed for a high school audience, address some of the contemporary challenges of balancing interests and rights within the court system and adapting media practices to the demands of new technologies and new legal issues. The aim of this resource is to provide a foundation for students' understanding of these issues and to encourage critical thinking when reading the newspaper, reviewing decisions or considering new issues in justice reporting. The four modules included here can be used in sequence or selectively to meet a variety of course expectations in Law and Civics classes, as well as English, Media Studies, History and other courses. Developed by a team at The Critical Thinking Consortium, these modules have been reviewed by teachers, lawyers and representatives of the media.

Each module includes one fully developed Critical Challenge as well as a number of additional ideas that can be adapted by the classroom teacher. A list of ideas for extension activities or additional activities follows. The developed Critical Challenge is outlined, beginning with an overview that highlights the thinking skills and knowledge addressed in the challenge and lists the materials and preparation involved. The fully developed critical challenge is described in a step-by-step format, followed by handouts, worksheets and evaluation rubrics applicable to the Critical Challenge. Many of the activities in these four modules can be linked to other OJEN curriculum resources or can be combined with a visit to a courthouse. Information on OJEN programs and downloadable free resources are available, in French and English, at www.ojen.ca.

OJEN resources are maintained and improved as a result of the generous contribution of teachers, lawyers, judges and justice sector volunteers across the province. If you have a suggestion, a related activity, or an idea that might be of interest to other teachers using this resource, please contact OJEN directly at 416-947-5273.



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Module 4

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Curriculum Expectations

This resource has been developed for use in the variety of courses that deal with media, justice and social issues. Activities have been developed with various grade levels in mind. In particular, the resource has direct application to expectations in the following course curricula:

English

- Media Studies, Grade 11, Open (EMS3O)

The Arts

- Media Arts, Grade 10, Open (ASM2O)
- Media Arts, Grade 11, Open (ASM3O)
- Media Arts, Grade 12, Open (ASM4O)

Canada and World Studies

- Civics, Grade 10, Open (CHV2O)
- Canadian and World Issues: A Geographic Analysis, Grade 12, University Preparation (CGW4U)
- World Geography: Human Patterns and Interactions, Grade 12, University Preparation (CGU4U)
- The Environment and Resource Management, Grade 12, University/College Preparation (CGR4M)
- World Geography: Urban Patterns and Interactions, Grade 12, College Preparation (CGU4C)
- Canada: History, Identity, and Culture, University Preparation (CHI4U)
- World History: The West and the World, University Preparation (CHY4U)
- World History: The West and the World, College Preparation (CHY4C)
- Understanding Canadian Law, Grade 11, University/College Preparation (CLU3M)
- Understanding Canadian Law, Grade 11, Workplace Preparation (CLU3E)
- Canadian and International Law, Grade 12, University Preparation (CLN4U)
- Canadian Politics and Citizenship, Grade 11, Open (CPC3O)
- Canadian and World Politics, Grade 12, University Preparation (CPW4U)

Social Studies and Humanities

- Challenge and Change in Society, Grade 12, University/College Preparation (HSB4M)
- World Religions: Beliefs, Issues, and Religious Traditions, Grade 11, University/College Preparation (HRT3M)
- World Religions: Beliefs and Daily Life, Grade 11, Open (HRF3O)

Native Studies

- Expressing Aboriginal Cultures, Grade 9, Open (NAC1O)
- Aboriginal Peoples in Canada, Grade 10, Open (NAC2O)
- English: Contemporary Aboriginal Voices, Grade 11, University Preparation (NBE3U)
- Current Aboriginal Issues in Canada, Grade 11, University/College Preparation (NDA3M)
- Aboriginal Beliefs, Values, and Aspirations in Contemporary Society, Grade 11, College Preparation (NBV3C)
- English: Contemporary Aboriginal Voices, Grade 11, College Preparation (NBE3C)



- Aboriginal Beliefs, Values, and Aspirations in Contemporary Society, Grade 11, Workplace Preparation (NBV3E)
- English: Contemporary Aboriginal Voices, Grade 11, Workplace Preparation (NBE3E)
- Aboriginal Governance: Emerging Directions, Grade 12, University/College Preparation (NDG4M)
- Issues of Indigenous Peoples in a Global Context, Grade 12, University/College Preparation (NDW4M)

Interdisciplinary Studies

- Applied Journalism, Grade 11, Open
- Faith, Belief, and Imagery, Grade 11, Open
- Introduction to Information Studies, Grade 11, Open
- Issues in Human Rights, Grade 12, University Preparation
- Utopian Societies: Visions and Realities, Grade 12, University Preparation
- Information and Citizenship, Grade 12, Open
- Information Management and Community Leadership, Grade 12, Open
- Community Environmental Leadership, Grade 11, Open
- Faith and Culture, Grade 11, Open
- Local Field Studies and Community Links, Grade 11, Open
- Biology and Human Development, Grade 12, University Preparation
- Information and Civilization, Grade 12, University Preparation
- Science and the Community, Grade 12, Open

Undoubtedly teachers will find other links to classroom activities or current events. OJEN is always interested in sharing classroom resources through its website or posting additional ideas or culminating activities at www.ojen.ca. Ideas and feedback can be sent to info@ojen.ca.





Module One

The Relationship between the Justice System and the Media

Ideas for Critical Challenges

The following six activities can be used as extension activities or developed into full critical challenges. One of these critical challenges has been fully developed on the following pages, with handouts and resource material provided. While resources and handouts are not specifically provided for each of the other activities featured below, many of the resources, weblinks or handouts of the fully developed critical challenge could be useful to the development of other activities.



Representing the Justice-Media relationship: What metaphor best characterizes the Justice-Media relationship?

This critical challenge introduces students to the nature and complexities of the relationship between the media and the judicial system. This critical challenge asks students to develop and visualize a governing metaphor that powerfully explains the relationship between these institutions. Students learn about a governing metaphor by developing and critiquing a metaphor for a familiar event—a typical day at school. In groups, students then identify and develop powerful metaphors for the justice-media relationship. These are analyzed and critiqued by the others. Finally, students create a pictorial representation of their metaphor. They conclude by developing questions to ask guest speakers that will test the appropriateness of their proposed metaphors.



Restricting the press: What are the three most important restrictions that have been put on the freedom of the press in Canada?

Start by discussing freedom of expression and its limits. Move on to talk about freedom of the press as a subset of freedom of expression. Ask students to compile a short history of freedom of the press in Canada through internet research. In groups, direct students to examine significant cases in Canada involving restrictions on unlimited press freedom. Have students develop criteria by which to judge the importance of such cases (e.g. set legal precedent, affected a large number of people, set a limit that is still important today). Using these criteria, each group assesses the three most important restrictions on freedom of the press. Encourage students to discuss whether they agree with these restrictions.



Alternative reporting methods: Which alternate media source is the most credible source of information on legal issues?

Invite students to explore alternative media sources that cover legal cases and issues (e.g. blogs, podcasting, lawyer sites, official sites, Supreme Court material). Ask students to identify basic differences in these sources (e.g. timeliness, length, communication style). Discuss the criteria for a credible source of information. Arrange for groups of students to examine the coverage of a current case or legal issue in four alternative media. Ask students to assess which source is the most credible based upon the identified criteria. Each group will present its findings to the class, who will create a list of annotated links or resource suggestions that will be given to the school librarian for posting on the school website or, in some other way, may be made available for other students.



Revisiting landmark cases: How would new communications technology affect some of Canada's important legal decisions?

Divide the class into five groups and assign each group a landmark decision on an important social or legal issue. After researching the case on the internet or reviewing the OJEN Landmark case summary (if available), ask students to identify the ways that current technology, media sources or communication practices might have affected the case. For example:

- Does the widespread access to the internet create concerns about privacy?
- Are national border restrictions realistic in the electronic age?
- Are publication bans realistic if they only apply to Canadian media outlets?
- Has the courts' protection of the privacy interest of a complainant in sexual assault cases changed?
- How might electronic transmission of data affect the impartiality of the jury?
- Should texting or camera-phones be permitted in courtrooms?

Students can make a short presentation to the class on the impact that new media technologies and practices might have had on the decision in the case. The rest of the class can offer feedback. Groups can hypothesize about the factors the court might focus on if deciding this case today and prepare a re-enactment or present alternatives the court might take, based on modern changes in technology, communications and other aspects of contemporary society. Possible cases to refer to for this activity include:

**Auton v. B.C. (A.G.)* [2004] 3 S.C.R. 657
(equality rights and access to health care)

**Canadian Foundation for Children, Youth and the Law v. A. G. (Canada)* [2004] 1 S.C.R. 76 (Section 43: corporal punishment/spanking)

Chaoulli v. Quebec (Attorney General) [2005] 1 S.C.R. 791 (private vs. public health care)

**Dagenais v. CBC* [1994] 3 S.C.R. 835
(publication bans)

Eldridge v. British Columbia (Attorney General) [1997] 3 S.C.R. 624 (substantive



equality)

**Halpern et al. v. Attorney General of Canada et al.* (2003), 65 O.R. (3d) 161 (same sex marriage)

**Lalonde v. Health Services Restructuring Commission (Ontario)* (2001), 56 O.R. (3d) 505 (Montfort Hospital case)

Little Sisters Book and Art Emporium v. Canada [2000] 2 S.C.R. 1120 (community standards of obscenity)

Multani v Commission scolaire Marguerite-Bourgeoys [2006] 1 S.C.R. 256 (accommodating religious beliefs)

Reference re: *Same Sex Marriage* [2004] 3 S.C.R. 698 (same sex marriage reference)

R. v. Ewanchuk, [1999] 1 S.C.R. 330 (no means no)

**R. v. M. (M.R.)* [1998] 3 S.C.R. 393 (school searches and privacy)

**R. v. Marshall* [1999] 3 S.C.R. 456 (Aboriginal treaty rights)

R. v. Morgentaler, [1988] 1 S.C.R. 30 (abortion rights)

**R v. Powley* [2003] 2 S.C.R. 207 (Métis hunting rights)

R. v. Stinchcombe, [1991] 3 S.C.R. 326 (right to a fair trial)

United States v. Burns, [2001] S.C.R. 283 (no death penalty)

**Vriend v. Alberta*, [1998] 1 S.C.R. 493 (sexual orientation and the *Charter*)

The cases indicated with a '*' are the subject of an OJEN Landmark Case package that provides a plain language summary, worksheets and discussion points. Landmark case packages are constantly being developed. Please visit the OJEN website to download these resources or link to the case.



Balanced reporting of legal matters: Write, from a balanced perspective, a newspaper report of a recent legal event or issue.

Invite students to look at the characteristics of popular media coverage of legal events and issues. Direct students to look for sources in their community of media coverage that provide different perspectives from the mainstream media. Internet sites can be explored as well as different perspectives found within print media. As a class, identify the characteristics of a balanced perspective (e.g., does not use exaggerated language, does not over-emphasize the emotion attached to an event or issue, looks at the issue from the angle of all involved, does not fit a particular pattern of coverage such as '*crime is on the rise!*', '*the police never listen to people of colour*', '*the courts are too lenient on young people.*') Invite students to compare the language of opinion pieces to the language of news items. Ask students to select a current issue or legal case and research it from varying perspectives. Based on their research, students are to write an article or produce a news segment that would satisfy the criteria for balanced reporting on an event.



Help for historic appeals: To what extent does the media impact historic appeals or cases of wrongful conviction?

Invite the class to investigate the issue of wrongful convictions by first considering the problematic



nature of this term. Create a list of reasons why cases are appealed after many years have passed and discuss why this might happen (Do this before looking at specific cases – see *How Media Attention can Change the Result* pg. 19).

Distribute *Charting Public Influence* (pg. 20). Have students consider the role of the media in changing public policy by completing the charting exercise.

Ask students in groups to research a particular case catalogued on the Association in Defence of the Wrongfully Convicted website (www.aidwyc.org). Arrange for each group to present on the case, explaining why the appeal was justified and what resolution was reached. Invite the class to consider who (family and friends, individual lawyers, organizations like AIDWYC, forensic investigators, the media, the legal system) played a role in keeping these cases active. Each group is to assess the proportional influence of these individuals/agencies, based on an assigned case. Ask students to represent their apportioned credit in a pie chart (*Charting Public Influence on a Legal Issue* pg. 20). Each group displays its chart and, as a class, students decide to what extent the media, the justice system, changes in forensic technology or practice, or combinations of factors seem to be the primary force in reopening controversial convictions.

What role should governments play in preventing miscarriages of justice?

In Ontario, a committee has been established to provide expert leadership in the prevention of wrongful convictions. The mandate of the Ontario Criminal Conviction Review Committee is to:

- Review criminal convictions where a miscarriage of justice is alleged, including cases that engage reviews by the federal Minister of Justice under the *Criminal Code*
- Provide expert advice and guidance to Crowns across the province in dealing with some of the difficult issues relating to potential miscarriages of justice
- Develop educational and policy initiatives aimed at the prevention of miscarriages of justice
- Develop protocols and best practices for dealing with these cases and preventing of future miscarriages of justice

Its work is supported by an external advisor, a retired judge.

(See <http://www.attorneygeneral.jus.gov.on.ca/english/news/2006/20060524-wrco.asp>).

The Federal Department of Justice also has a Criminal Conviction Review Group.

(See http://www.justice.gc.ca/en/ps/ccr/report_06/02.html)

Governments across Canada, individually and as a group, are working on this important subject.

Have students form their own Conviction Review Committee and review a case where a miscarriage of justice is alleged. Cases can be obtained from the Association in Defence of the Wrongfully Convicted website (www.aidwyc.org). Instruct students to identify the key issues in the case, determining whether or not a conviction review should be granted. Arrange for each Committee to present their decisions to the class.



Critical Challenge: Representing the Justice-Media Relationship

Overview

What metaphor best characterizes the Justice-Media relationship?

This critical challenge introduces students to the nature and complexities of the relationship between the media and the judicial system. This critical challenge asks students to develop and visualize a governing metaphor that powerfully explains the relationship between these institutions. Students learn about a governing metaphor by developing and critiquing a metaphor for a familiar event— a typical day at school. In groups, students then identify and develop powerful metaphors for the justice-media relationship. These are analyzed and critiqued by other groups. Finally, students create a pictorial representation of their metaphor. They conclude by developing questions to ask guest speakers that will test the appropriateness of their proposed metaphors.

Broad Understanding

The relationship between the media and the judicial system is complex and multifaceted.

Preparation

This activity can be completed in approximately 120 minutes, including time for instruction and students to work on tasks.

Background knowledge

- understanding the concept of a governing metaphor
- basic familiarity with types of media in Canada
- introductory knowledge of the justice system
- introductory knowledge of the evolution of the relationship between the media and the justice system

Thinking strategies

- comparison chart

Criteria for judgment

- criteria for a powerful metaphor (e.g. represents important ideas and perspectives, revealing or engaging)
- criteria for an effective pictorial representation (e.g. effective techniques, detailed, covers key aspects)
- criteria for good questions for a guest speaker (e.g. focused, linked to the person's expertise)



Learning activity

Step 1



As a homework assignment, invite students to find a definition of a metaphor. Divide students into four groups and, if possible, organize each group in a circle. Ask each student to complete the following phrase: "If I were an animal I would be a _____." Students are to go around the circle sharing the name of the animal they would be and why. The 'why' can be a short sentence or two. Encourage students to refrain from questioning the accuracy or appropriateness of the answers offered by other class members. Although it may take more time, this activity is worth doing as a whole class.

Organize a newspaper scavenger hunt as a stimulus to invite students to think about the relationship between the media and the justice system. Form approximately seven small groups and give each group a newspaper (they don't all have to be the same) and a copy of the list of items *Scavenger Hunt* (pg. 14) they must find. Assign a limited amount of time for students to find all the items on the list in their newspaper and then discuss the results. Ask prompt questions such as:

Which ones were harder to find, and why?

Why do you think the word 'crime' is predictably in each of these papers?

Why is there so much coverage of law and law-related issues in every day's paper?

Give each group a piece of flipchart paper and two or three markers. Ask them to orient the paper sideways (landscape style) and think of it as having three equal sectors like the Canadian flag. In the left-hand third, ask students to list all the types of media they can think of. In the right-hand third, they are to list the roles/players/aspects of the justice system. Arrange for groups to share their findings with the rest of the class by circulating their sheets. Direct groups to brainstorm thoughts on the relationship between the media and the justice system, and record these ideas in the middle panel. This could mean various representations, such as:

times when the two intersect

literal connections that could mean drawing lines

noting jobs like court reporter and police spokesperson that bridge the two categories

cutting out examples from their newspaper, if applicable

Ask groups to summarize their findings with special attention to the centre section and discuss similarities and differences among the groups. As the groups discuss the relations, draw out the following observations:

at times the two areas seem opposed: the media want to tell as much as they can and to attract readers/viewers; the justice system tries to protect the privacy of victims or the accused, or the parties in a civil suit.

emerging forms of media bring forward different issues (lawyer's blogs, cameras in the courtroom, ability to gather the news)

sometimes the lines between the two areas are blurred (e.g. using media to help solve crimes; educating the public about the justice system).

in many cases, both areas are after the same thing: upholding societal values, protecting a



fair and responsive justice system

Post these charts for future reference.

Compare the students' charts of the relationship with some of the ideas or perspectives offered by respected members of the justice system and the media. *Justice and the Media - Five Principles* pg. 15)

Step 2



Introduce students to the idea of a metaphor. Arrange for them to sit in pairs and compare the definitions they collected for homework. After sharing these definitions, as a class, try to arrive at a comprehensive and helpful definition of a metaphor. Help students see that dictionaries (whether online or in print) provide a range of definitions for different meanings of a word.

Hand out or display on an overhead projector *What is a Metaphor?* (pg. 15). Ask students to talk briefly with their partner to clarify understanding. Use the "Spaceship Earth" metaphor, expressed by the astronauts who first saw the earth from space, as an example of a metaphor that meets the criteria.

Divide the class into groups of three. Ask students to create a powerful metaphor for a familiar event – a typical school day. Brainstorm possible metaphors for the event (e.g. circus, factory, vacation, a play, athletic event, chess game, type of dance) and ask each group to select a metaphor. Arrange for each group to share its metaphor with the class and explain briefly why it chose its metaphor.

After all the groups have shared some of the comparisons between school and their chosen metaphor, invite students to consider if these metaphors work. Which, if any, of the metaphors explain the key features of school in an effective or powerful way? Distribute a copy of *Analysing Metaphors* (pg. 16). Ask students to complete the sheet with reference to their school metaphor and then to compare with another group. Ask them to make only positive suggestions for improvement for each other's metaphor. As a class, share general suggestions for improvements in generating powerful metaphors.

Step 3



Direct students to develop a powerful metaphor for the relationship between the media and the justice system. In their groups, encourage students to review the flipcharts (developed earlier) to see if any metaphors come to mind. Distribute one copy of *Personal Opinions* (pg. 17) to each group. Explain that these are not real people but imaginary illustrations of a range of opinions that Canadians have about the relationship between the justice system and the media.

Ask students to rank these opinions in order of most convincing to least convincing. Encourage students to think of examples of cases, news stories or other material from their studies that support one of these opinions more than others. Emphasize that students are to come up with a metaphor that captures their understanding of the relationship between these two systems and



meets the criteria set out in *What is a Metaphor?* (pg. 15). Arrange for students to present their metaphors to the rest of the class and to mention at least one current case or legal situation that supports their metaphor.

Arrange for groups to critique each other's metaphors using *Analysing Metaphors* (pg. 16) by providing (in the right-hand column) specific evidence of how the metaphor meets or does not meet the four criteria. In the final column, students should offer and justify their overall assessment of the power of the metaphor. Encourage teams to critique more than one metaphor.

Step 4



Direct students to consolidate their information about the relationship between the media and the justice system by using their metaphors to inform their preparation of two sets of questions for guest speakers, one for a guest speaker from the media and one for a guest speaker from the justice system. This can be a hypothetical exercise that consolidates their learning or preparation for an actual guest speaker who could be arranged through OJEN's *Courtrooms & Classrooms* program.

Encourage students to think about the fact that guest speakers are only in class for a limited amount of time and that the class needs to make the best use of the speakers' time and expertise. Ask students to brainstorm what makes a good question that can be asked of guest speakers. Do this for about three minutes without passing judgment and then give each small group a copy of *Questions for a Guest Speaker* (pg. 18). Direct students to think about why each is an effective question of a guest speaker. Ask groups to write their criteria on the blackboard for the whole class to discuss.

Direct groups to generate 3 to 5 good questions they would ask a guest speaker from the media and 3 to 5 questions they would ask a guest speaker from the justice system. These questions should relate directly to the complexity of the relationship between the media and justice system as symbolized by the metaphors the class has generated. If possible, send the questions to the person in advance. On the day of the visit, arrange for students to ask their questions in a pre-determined or random order.

Assessment



Assess the metaphors using *Evaluation Rubric: Assessing Powerful Metaphors* (pg. 22). Use the criteria for good guest speaker questions to actually evaluate the questions generated by groups.



Scavenger Hunt

Look through the newspapers provided and find the following items.

Item	Description and Page #
Photo related to a justice issue	
The word 'crime' or 'criminal'	
An international legal story	
Coverage of the making (or revising) of a law	
Article or photo of/about the police	
Article about sentencing or punishment	
Article about a trial	
An emotional word connected to a crime or some other legal issue	
Article about youth and crime	
An article that mentions a judge of a Canadian court	
An article that deals with an international law issue (human rights, trade issue, environmental protections etc.)	
An article where the legal system is used to resolve a dispute in a workplace	



Justice and the Media – 5 Principles

Professionals from the justice system and the media have developed a list of five key principles that guide the relationship between the two sectors. They are:

Openness: The administration of justice must be open. This means open access by the media and the public to court proceedings and court records, subject only to restrictions imposed by law.

Access: Procedures regarding access to information must be clear, consistent and timely.

Education: A high degree of information, understanding and education across the two professions is essential.

Equal yet independent players: The justice system and the media should not be perceived as partners, but rather as a relationship of equals. Each should respect the other's role in a constitutional democracy.

Respect for privacy rights: The privacy rights of children, victims of crime and other vulnerable people must be respected by both the media and the justice system.

What is a Metaphor?

Observers often give *straightforward* or *literal* descriptions of events and things. We might say, for example, that several thousand protesters came to Parliament Hill to argue for more gun control. But sometimes we use *metaphorical* descriptions. For example, a *flood* of protesters *swept* towards the Parliament buildings. The words “flood” and “swept” talk *as if* the protesters were an overflowing river rushing across the plain. The comparison of the protesters traveling across Ottawa with a flood is a metaphor. A metaphor is not a literal or actual description. In a sense all metaphors are wrong or inaccurate - there was no flood; nothing was swept. But metaphors help to describe things – and to explain them. They do this by giving us a powerful *mental picture* of the event being described. Astronauts' reference to our planet as “spaceship earth” is a famous metaphor that serves as a reminder of the fragility of life on earth.

Effective or powerful metaphors enable us to see things or come to believe things better than we otherwise might. But they can also mislead by exaggerating or misrepresenting things. The group of protesters might be described sympathetically as a flood of citizens or a wave of misguided activists.

Some metaphors are more powerful than others. Powerful metaphors often have these features:

Broad application: The metaphor presents an appropriate or accurate comparison, often on many points or details

Original or novel: The metaphor is not in common usage in the general public

Revealing or insightful: The metaphor reveals important insights that have not previously been noted

Surprising: The metaphor has an element of surprise or presents a puzzle. It is alive or intriguing.



Analysing Metaphors

Criteria of a powerful metaphor	Evidence that the metaphor is a powerful one
Broad application Often has many appropriate points of comparison with the object	Key points of comparison between metaphor and situation are: - - - - -
Original It is not commonly used to describe the object/situation	The metaphor ____ is ____ original because: ____ is not ____
Revealing Uncovers important insights that may not have been well understood	The insights revealed ____ are ____ interesting because: ____ are not ____
Surprising Often has an element of surprise or presents a puzzle – is alive and intriguing	The metaphor ____ is ____ unexpected or puzzling because: ____ is not ____



Personal Opinions

The following are fictional opinions, as examples of some of the common opinions about justice issues and the media. Consider these opinions, as well as your own, when thinking about the appropriate metaphor.

Pierre

"To me the whole thing comes down to this – the justice system and the media balance each other out. And out of this comes the truth. The media tries its best to report everything it can and find out all the details, especially when a case is exciting or involves celebrities. The justice system deals with people's requests to protect privacy and decides when to allow access and when not to. Overall I think this results in a good balance and continues the strong and stable traditions of the law."

Maria

"I think that most of the people in the justice system and in the media are after one thing – the truth. I came to Canada from a land where corruption was everywhere. The powerful families could get what they needed and this was partly because they owned the press and they bribed officials in the justice system if they needed to. Here I find things are much more protected. The ordinary person can get a fair trial and can get fair coverage in the newspapers and on television."

Abdul

"I think that the British system of law and the media we have in Canada means that these are two partners in getting at a just society. The police and courts have a long tradition of independently going about their jobs and the media keeps them honest by reporting on problems in the system, such as when it takes too long for cases to come to trial, when cases need to be re-opened and when laws need to be changed because times are changing."

Stefan

"I think that it all comes down to money. The media cover legal matters because this is the kind of news people want to know about. The trial of a serial killer can make headlines for weeks. The old

expression is "if it bleeds, it leads." Crime stories sell newspapers and TV spots. But the same is true for the justice system. It is independent, but if you have enough money you can hire better lawyers and this is what can make the difference in whether you get off with a rap on the knuckles or get a jail term."

Omar

"I'm glad the justice system is transparent. If we are going to let appointed judges decide who goes to jail or gets a big cash settlement, then I want to know what happens in the courts."

Cynthia

"I only read my local news. I don't trust the big papers. They talk about people's lives, and their tragedies as if no one ever gets hurt. When I was fired, unfairly, only the local paper told the story properly. In the TV news, they made it seem like I was petty and greedy. I just stick to what I know."

Justin

"I can't believe how expensive it is just to figure out what happens in your own court case. If they really wanted to fix the justice system, they would make it easier to understand, especially for a small business owner like me. I can't afford to go to court every time someone refuses to pay me what they owe. If the media would make it easier to understand, maybe I would actually read the paper."

Li

"I don't trust the courts. Sometimes you see someone get off for the most awful crime and then the next time someone who didn't even hurt anyone goes to jail. There is no justice in it. I read the headlines, I pay attention! People don't get treated the same in the courts."





Questions for a Guest Speaker

Sample Criteria for Good Questions

- *shows respect for the fact that the guest speaker has given their time to be there*
- *is not just an easy way to research*
- *makes use of expertise that students have limited access to*
- *asks for insight into a controversial or emerging issue*
- *asks about something that cannot easily be found in our textbook or on the Internet*
-
-

Proposed Question	Why is this a good question?



How Media Attention can Change the Result of a Case

Identify a case where each of the following situations occurred:

Change in the Case	Example (consider Canadian cases or fictional portrayals of cases)
Media coverage resulted in a new witness coming forward	
Publicity about new technology led to re-processing evidence	
Investigator's "tunnel vision" was exposed through media attention	
Ineffective assistance of defence counsel*	
New forensic evidence became available	
Later cases made a jailhouse informant seem unreliable	
New evidence about the identity of the accused was discovered after people heard about the case in the press	
Public outcry over the decision led to appointing an inquiry or commission to look into it	
After an unpopular decision, the government considered changing the law	
Someone, acquitted of a crime, was later investigated by an inquiry or lost their job.	

* An accused who has been convicted can appeal the conviction on the basis that there was "ineffective assistance of counsel": for example, an accused might argue that his lawyer chose not to call credible alibi witnesses thereby causing a miscarriage of justice. It is possible to sue the Crown for malicious prosecution, in a separate civil suit, where malice or an improper purpose in prosecuting a case can be proven.



Charting Public Influence on a Legal Issue

Consider the recent changes to Canadian laws on marriage and divorce that include same-sex marriage in the definition of marriage. Activists have been lobbying on this issue for many years. Starting in 2003, it was debated in legislatures and courts in all provinces, with 8 provinces permitting same-sex marriage. The Ontario, B.C. and Quebec Courts of Appeal released decisions on the issue. Parliament avoided an appeal to the Supreme Court of Canada by announcing that it would amend the legislation to include same-sex marriage. In 2004 the government asked the Supreme Court of Canada to consider these draft amendments. The Court decided that these changes protected the rights of gays and lesbians, in accordance with the *Charter of Rights and Freedoms*. The new legislation was passed in July of 2005. (see OJEN's Landmark Case Re: Same Sex Marriage, for more details, a summary of the decision and related classroom activities)

1. **Make a list** of all of the people or groups that you think influenced the progression of this legal issue:

(possible answers: gay marriage activists, church groups, civil libertarians, individuals, parents and children of gay men and lesbians, leaders of cultural communities, businesses, politicians from different regions, etc.)

2. Ask students to **consider the influence** of other countries' governments, or the lobby groups in the U.S. that came to Canada to try to attract media attention.

3. Have students **create a pie chart** indicating how influential they believe each of the identified groups were in getting media attention and coverage. A pie chart can be made with a compass and protractor. There are also websites that help you draw the chart once you have compiled the data. This one was created on <http://nces.ed.gov/nceskids/Graphing/classic/pie.asp> Now have your students make their own pie chart using their group's data on the same sex marriage debate.

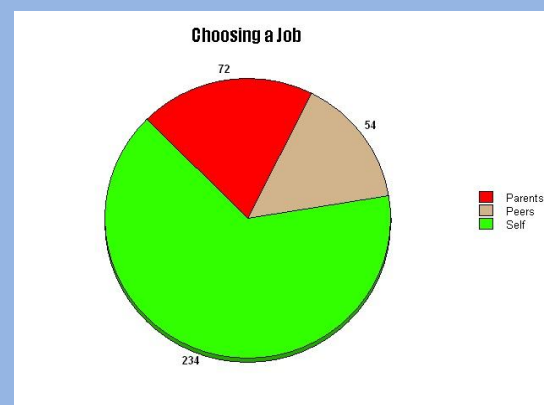
4. Consider how these different interest groups or perspectives **used the media** to sway public opinion. Did some groups only get involved in the debate at a later date? Try to create a timeline of when you think the different groups (both local, national and international) started to influence the media coverage. Compare this with the dates of the major court decision and the political reform process.

A simple pie chart example:

A student considering a summer job feels pressure – from her parents, from peers and from her own feelings about job satisfaction.

Data

- parental pressure 20% ($.20 \times 360^\circ = 72^\circ$)
- peer pressure 15% ($.15 \times 360^\circ = 54^\circ$)
- personal feelings 65% ($.65 \times 360^\circ = 234^\circ$)



5. Brainstorm a list of perspectives that were **not heard during the debate**. Are there reasons



why some people got more media coverage than others? Do you think that an individual needed money to run a public relations campaign on this issue in order to be part of the debate? Consider how lobby groups try to use the media to manipulate the debate in their favour. Create a second pie chart showing the amount of influence that *you think* each of the various groups *should* have had on the debate.





Evaluation Rubric: Assessing Powerful Metaphors

Use the following rubric to assess each of the suggested metaphors and analysis.

Criteria	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Identification of broad application	Five or more accurate points of comparison are presented between the metaphor and the justice-media relationship	At most, three accurate points of comparison are presented between the metaphor and the justice-media relationship	At most, two accurate points of comparison are presented between the metaphor and the justice-media relationship; others are weak	At most, one accurate point of comparison is presented between the metaphor and the justice-media relationship
Justification for original, revealing and surprising elements	All three of the explanations (i.e. original, revealing and surprising) are plausible and thoughtful	Two of the three explanations (i.e. original, revealing and surprising) are plausible and thoughtful	One or two of the three explanations (i.e. original, revealing and surprising) are plausible and thoughtful, but they are somewhat weak	At most, one of the three explanations (i.e. original, revealing and surprising) is plausible and thoughtful

Comments:



Module Two

Values of the Justice-Media Relationship

Ideas for Critical Challenges

The following five activities can be used as extension activities or developed into full critical challenges. One of these critical challenges has been fully developed on the following pages, with handouts and resource material provided. While resources and handouts are not specifically provided for each of the other activities featured below, many of the resources, weblinks or handouts of the fully developed critical challenge could be useful to the development of other activities.



Finding the Balance in Publication Bans: Develop and apply a balanced set of guidelines regarding the use of a publication ban

In this critical challenge, students consider the implications of publication bans on the competing interests of a variety of stakeholders including the justice system and the media by designing a set of guidelines and then using the guidelines to assist them in negotiating a balanced solution for a particular case. Students begin by identifying the stakeholders, interests and issues involved in publication bans. They consider a variety of cases in which publication bans have been granted and identify the most compelling reasons to justify a publication ban. After considering the request for a publication ban from the perspective of a particular stakeholder group, students prepare an effective press release presenting their stakeholders' perspective on the issue of a publication ban. Finally, students negotiate a balanced, best possible outcome solution for the use of publication bans.

For this activity, you may wish to refer to the information on publication bans listed on OJEN's website, including the Landmark Case package on *Dagenais v. Canadian Broadcasting Corporation*.

Other relevant reading includes:

R. v. Mentuck, [2001] 3 S.C.R. 442 and section 486 of the *Criminal Code of Canada*



As profiled on the news: To what degree does the media's portrayal of justice reflect the philosophical, historical and social foundations of law?

In this challenge, students explore through independent inquiry the important philosophical, historical and social foundations of Canadian law (e.g. principles of natural justice, equality before the law, judicial impartiality, judicial independence). After reading about the foundations of Canada's legal system, ask students to select three or four of the most significant principles. Provide students with a variety of media sources, including clips dealing with justice issues from television or radio news, newspaper or news magazine articles, or editorial cartoons. Invite students to examine the various media accounts for the degree to which the accounts are consistent with the underpinnings of Canada's justice system. Students could report their findings in a persuasive paragraph, a concept map or by selecting the Venn diagram that best reflects the relationship between the media's portrayal of justice and the foundations of law. Invite students to discuss whether these media portrayals are warranted.



Court records online? Develop a set of guidelines for access to court records in an electronic environment

Invite students to create a set of guidelines to determine which kind of court documents should be widely available on-line. Begin by identifying the key stakeholders and their interests. Once the key stakeholders and interests have been identified, provide students with a variety of case studies that address the issue of when to make court documents available online. Students could debate the issue representing the point of view of various stakeholders. From the debate, identify possible principles to guide decisions regarding the availability of court documents to ensure a fair and equitable balance between open courts and individual privacy.



Finding the Balance: Protecting Intellectual property in the information age

In this activity students consider how to best promote the democratization of the media while at the same time protecting intellectual property. Students will determine where to draw the line between allowing the public unlimited access to information and granting control over proprietary rights to the author/creator. To set the context for the challenge, prepare a questionnaire for students that asks questions such as:

Have you or a friend ever downloaded music without paying for it?

Have you or a friend ever borrowed a CD from a friend to make a copy?

Have you or a friend ever recorded your favourite T.V. show?

Have you or a friend ever photocopied an article to share with a friend without the author's



permission?

[Perhaps ask for a show of hands]

Ask students to imagine that they have written a brilliant poem, song, essay, or short story only to find their work being used freely by others without any acknowledgment or compensation. Does this seem fair? What might be the implications of songwriters, scriptwriters, novelists, and essayists having no protection for their intellectual property? Ask students to consider the creative work of journalists. Who owns the copyright on a newspaper article, an editorial cartoon or a TV broadcast? How should this type of work be protected, while still allowing for distribution of the information?

To provide some background information, have students compare copyright legislation from 1990 and currently. Ask students to identify the most significant changes (wide reaching, make a significant impact, etc.) to copyright legislation since 1990. Provide students with a few case studies that challenge the boundaries established by current copyright laws – downloading music or other information, sharing data (music, movies, information), etc.

Invite students to draft two changes to copyright legislation that would make a significant difference in finding the balance between unlimited access to information and total control of information by its creators. Suggest students consider the following criteria when deciding the best balance:

- protects the rights of users of information to have access to data;*
- ensures fair compensation to the creators;*
- is enforceable;*
- provides incentives for creators of knowledge to create and share their work.*



How Far Does My Freedom of Expression Extend?

In this activity students explore the balance between their right to freedom of expression and their responsibilities as citizens in a civil society by developing a charter of freedoms and responsibilities to guide the use of either *YouTube* or *Facebook*. Select some samples from both *YouTube* and *Facebook* that are appropriate to be shared with students. Invite students to discuss their responses to the selections. Encourage students to consider the various stakeholders involved, including those who may benefit or be harmed by the postings.

It may be helpful to describe scenarios involving student use of both *YouTube* and *Facebook*, such as cases dealing with cyber bullying, threats to teachers or other students, or posting videos that may be harmful to others. This could be done through the use of some brief case studies, a short lecture, or guided research.

Invite students to do a Think-Pair-Share activity during which they comment on the appropriateness of the actions of those involved, including the students, parents, school and school



board officials. They could consider whether or not the students acted responsibly, if the school/school board over-reacted, or if the justice system responded fairly. Have students attempt to cluster the issues around a few big ideas that emerge. Once students have identified the key issues and big ideas ask that they suggest criteria that could be used to assess the actions of *Facebook* or *YouTube* users as responsible and fair (e.g.: actions are lawful, consider the impact on others, are safe). Have students identify which of these issues are legal in nature (harassment) and which are ethical (honesty, fairness).

Finally, suggest students create a charter of freedoms and responsibility that effectively balances the rights of *Facebook* or *YouTube* users to communicate and express themselves, with the responsibility to ensure their postings do not threaten or bring harm to others or themselves.



Critical Challenge: Finding the Balance in Publication Bans

Overview

Develop and apply a balanced set of guidelines regarding the use of a publication ban to ensure balanced consideration for the interests and rights of all involved.

In this critical challenge, students consider the implications of publication bans for the competing interests of a variety of stakeholders including the justice system and the media by designing a set of guidelines and then using the guidelines to assist them in negotiating the best possible outcome for a particular case. Students begin by identifying the stakeholders, interests and issues involved in publication bans. They consider a variety of cases in which publication bans have been granted and identify the most compelling reasons to justify a publication ban. After considering the request for a publication ban from the perspective of a particular stakeholder group, students prepare an effective editorial article presenting their stakeholders' perspective on the issue of a publication ban. Finally, students negotiate a balanced solution for the use of publication bans.

Broad Understanding

The issue of publication bans is controversial and impacts on many stakeholder groups (e.g. the victim, the accused, and the families, among others). A publication ban might also limit the media's ability to report and sell its services, limit public knowledge, or inhibit either party from presenting its case.

Preparation

This activity can be completed in approximately 560 mins or about 7.5 periods, including time for instruction, research and student work on tasks.

Requisite Tools

Some access to computers is required, but it is not necessary to have a full lab.

Background knowledge

- knowledge of the nature and purpose of publication bans
- knowledge of the past use of publication bans (precedent cases)
- knowledge of the relevant constitutional rights
- knowledge of the benefits of media coverage
- knowledge of the dangers of media coverage

Criteria for judgment

criteria for an effective set of legal guidelines (e.g. broadly applicable, consistent with fundamental rights, is flexible, fairly balances the rights of all affected)

**Critical thinking vocabulary**

stakeholders
interests vs. rights

Thinking strategies

issue analysis
web of interests
5 W's

Habits of mind

open-minded
empathic

Learning activity**Step 1**

To set a context for the critical challenge, inform students that the school is conducting an investigation into a reported scheme by former students to sell research papers to other students. Charges are pending for a few people, and several students at the school may fail their courses as a result of their involvement in the scheme. The media has heard about the scandal and wishes to interview staff and students. How should the principal respond? Should she allow teachers and students to talk to the media? Whose interest would be well served by information being made public? Whose interests would be harmed?

Following a brief class discussion, explain to students that the courts have the option to order a publication ban when it is deemed necessary. It may be helpful for students to read *Publication Bans* (pg. 37) adapted from the Department of Justice website, and *Publication Bans: A Snapshot* (pg. 38).

Additional Reading:

- Ontario Ministry of the Attorney General, Criminal Law Division, Crown Policy Manual: Practice Memorandum [2005], No. 12: Victims of Crime: Privacy, Publication Bands and Exclusion of the Public from the Courtroom, March 31, 2006 (the Crown Policy Manual is a document that highlights important issues and recommended practices for Provincial Crowns in conducting prosecutions).

Help students realize that a judge must take into account the interests of different stakeholders when deciding whether or not to order a publication ban.

Suggest to students that it is useful to be able to identify the different people involved in a situation, how they may be affected by the situation, and the underlying issues that need to be addressed. Explain to students that they will begin by analyzing a situation involving a young person's desire to hold a large end-of-school backyard party. Distribute a copy of *To Party or Not to*



Party? (pg. 40) to each pair of students. Read the scenario aloud.

Ask students to name all of the individuals who may be significantly affected by the party. Explain that people who are likely to be affected, or, in other words, who have a stake in a situation, are sometimes called “stakeholders.” Suggest other, less significant individuals who have a potential stake in the situation (e.g., police, uninvited youth, local pizza parlour from which food might be ordered).

Invite individuals to identify the relevant facts and list them on their sheet. For each relevant fact, suggest that students identify the individuals or groups affected and the values or interests at stake. In doing this, help students distinguish the specific desire or concern (host the party) and the implied interest that will be affected if this result occurs (increased profile among peers). If necessary, provide an example and then do one example as a large group before asking students to complete the chart.

Sample Issue Analysis

Relevant Facts	Main Stakeholders	Implied interests or values
• Jim Kearns would like to hold a large year end party	Jim Kearns	• popularity among peers
• Jim Kearns’s friends are looking forward to the party	Jim’s friends	• fun evening with friends
• Jim Kearns’s parents have concerns about the safety of their home and of those attending the party	Jim’s parents	• protection of their home • safety of guests
• Jim has elderly neighbours who are bothered by loud parties	Elderly neighbours	• quiet, peaceful evenings
• Jim has neighbours with young children	Neighbours with children	• quiet evenings

Once students have identified the competing interests, invite them to look for issues that emerge from these competing interests. Invite students to frame the emerging issues in question form, as issue-based questions. Issue-based questions often begin with the following stems:

Should parents...?

Is it fair that...?

Would it be better to...?

Briefly discuss students’ opinions on each issue. Encourage students to suggest courses of action that promote as many of the stakeholders’ interests as possible.

Before moving on to a law-related example, review the following elements in the analysis of a



situation:

stakeholders: the main individuals or groups who are or will be affected by the situation

interests: the basic values that may be affected positively or negatively depending on the outcome of the situation

issues: the contested matters or disagreements that lie at the heart of the situation. Effective issue-based questions often identify the stakeholders and the competing interests that are at stake.

Invite students to join with a partner to analyse a case looking for the stakeholders, interests and underlying issues. Provide each student with a copy of *A Heinous Crime* (pg. 41) and the *Case Study Template* (pg. 41). Remind students that the issue they are considering is the court imposed publication ban regarding the identities or locations of the convicted murderers and the opposition to the ban by the media and the public. Suggest that students consider the various interests and underlying issues presented in the case in order to determine the most compelling reasons to support and/or oppose the use of a publication ban. Encourage students to look for broadly applicable reasons and not to suggest narrow, case specific reasons. Remind students that the value of case studies lies not in the specific details but in the transferability of what can be learned. Also, remind students that they may identify compelling reasons for and against the use of the publication ban given that they are to consider a variety of points of view. The challenge for the court is to arrive at decisions that fairly weigh these competing interests. Review Canadians fundamental freedoms enshrined in the *Charter*. A helpful summary can be found on the OJEN website (and at Canadian Heritage's site at http://www.canadianheritage.gc.ca/progs/pdp-hrp/canada/guide/fundamental_e.cfm). Remind students that their proposed guidelines must ensure the protection of Canadians' fundamental freedoms.

Once students have had an opportunity to read and discuss the case study with their partner, have them share their work. Encourage students to revise their answers on the Case Study Template as they listen to issues, ideas and/or compelling reasons raised by their peers. They can use the evaluation rubric to help in their assessment (pg. 52).

Step 2



Divide the class into five groups by assigning students a number from 1 to 5. Ask students with like numbers (1's, 2's, etc) to form a group. Provide each student with a copy of a case study (*Case Studies 1-5*, pgs 42-46). Group One receives Case Study #1, Group 2 receives Case Study #2, and so on. Invite students to read their case study and to identify the key stakeholders, interests and the most compelling reasons to support or oppose the use of a publication ban. Ask students to record each compelling reason for or against the ban on separate index cards. Students can work independently, in pairs or as a group to analyze the case study and determine the reasons for and against the publication ban.

Once the groups have carefully analyzed their case, request that one member from each group summarize, for the class, the findings and the reasons identified to support or oppose a publication ban. As each case is presented to the class, invite the group to post their index cards on the wall or black board. *Evaluation Rubric: Case Studies* (pg. 52) can be used to help with their assessment.



Considering the variety of case studies examined, ask the class to identify the most compelling reasons (e.g. considers the needs of all stakeholders, considers available evidence) for a publication ban by clustering the ideas. Ask students, without speaking, to sort the cards into "similar" groups based on their gut reactions. If they don't like the placement of a particular card, move it. This process continues until consensus is reached. Once the group has reached consensus, suggest they create header cards consisting of a concise 3 to 5 word description of the unifying concept for the grouping. Place the header card at top of each group. Finally, invite students to discuss the groupings and consider how the groups relate to each other.

In their groups, invite students to prepare draft guidelines that would provide judges with a consistent basis upon which to determine when a publication ban is or is not warranted. In creating the guidelines, remind students to consider the compelling reasons in support of and opposition to publication bans. Encourage students to consider the following criteria for effective legal guidelines:

- broadly applicable
- protects constitutional rights
- flexible
- considers the interests of all affected

Step 3



Explain to students that they are to test their group's guidelines by considering a new case study from particular points of view: the accused, the victim or victim's family, a witness, a party in a family law case, the public, the media, agents in the legal system (police, prosecution, defence). Each group is to prepare a story for the editorial page of the local newspaper supporting or opposing the use of a publication ban in their assigned case. Point out to the students that an effective article summarizes key information in a powerful but brief manner. An effective article should meet the following criteria:

- accurate
- concise
- comprehensive
- convincing

Distribute *Editorial Article Outline* (pg. 47) to each student and review each aspect of the article format:

headline: appears as the title at the top of the article, introducing "Who" and "What they want" in five words or less;

lead paragraph: the first paragraph presents the most important information, answering the 5W questions and "how:"

- Who are the stakeholders?
- What are the issues?
- Where do the issues arise?
- When did the issues arise?



Why do the issues need resolution? (i.e.what are the issues at stake?)

How does the stakeholder group propose to resolve the issue?

supporting paragraph: a second paragraph explains or supports key aspects of the first paragraph, indicating why it is significant and providing details, memorable quotes, statistics and specific examples.

Remind students that editorials are written in the present tense (e.g. 'says' rather than 'said').

Invite students to work collaboratively in their groups to complete the editorial article outline before independently writing their own article. Encourage students to peer assess each others' article using the identified criteria. Remind students that an effective peer critique focuses on the key aspects of the work, offers constructive support and leads with positive comments about what is working well. If desired, assess the editorial article using *Evaluation Rubric: Editorial Article* (pg. 54).

Step 4



Having applied the guidelines to a specific case and from a particular point of view, invite students to reflect on what is missing, what works well and what parts of the proposed guidelines may need further revision. To facilitate the discussion, reconstitute the groups by inviting students to form groups in which each of the following points of view are represented:

- the parties in a civil or family dispute
- the accused
- the victim or victim's family
- the public
- the media
- agents in the legal system (police, Crown, defence)

The new groups will have representatives who may have developed different guidelines for determining the use of publication bans. The first step should be to clearly set out the draft guidelines created by their former groups. The new group should identify the similarities and differences between the draft guidelines and see how many of the differences can be resolved with minor adjustments. Second, the groups should offer each member an opportunity to indicate which aspects of their guideline did not work well or what was missing from the point of view they represent. Once all concerns are expressed, ask the group to negotiate revised guidelines that account for the work of earlier groups and reflect the different points of view represented at the table.

Invite each group to record their revised guidelines on large chart paper and post them on a wall. Encourage all students to use post-it notes to post encouragement and/or constructive suggestions on the draft guidelines. Remind students to note the similarities as they review the various drafts. Once students have completed their walk-about, explain that the next challenge is to arrive at a common set of guidelines. This will entail identifying the ideas shared by most or all groups, and negotiating others. All groups should be prepared to defend their essential ideas and to let go of



those which are not vital so that consensus can be reached. Record and revise a class set of guidelines on chart paper or the black/white boards as the discussion unfolds. In reaching consensus, avoid the tyranny of the majority. It is preferable that a consensus (a list of guidelines everyone may not agree with but can live with) is arrived at through negotiation so that all voices are heard and honoured. Remind students of the need to be open-minded and empathetic. If desired, assess the guidelines using *Evaluation Rubric: Publication Ban Guidelines* (pg. 55).

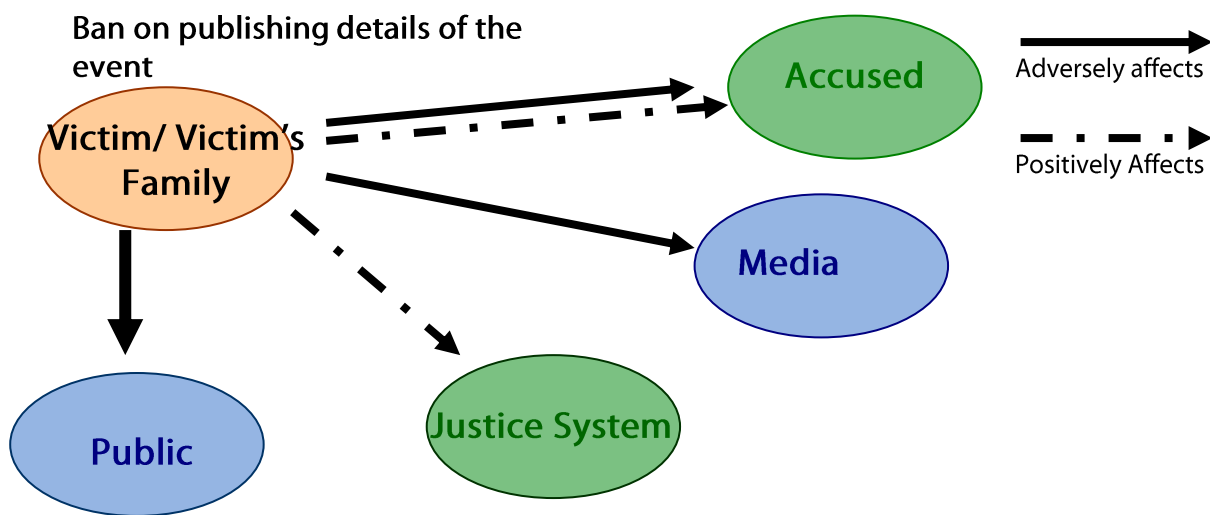
Step 5

Invite students to apply their guidelines by attempting to negotiate a balanced solution. For this challenge, select one of the *Case Studies* (pgs. 42-46) to act as the focus for the negotiations.

In order to prepare students to negotiate a balanced solution to the issue of publication bans, invite them to graphically represent the various stakeholders' interrelated interests. Distribute an enlarged copy of the *Web of Interests* (pg. 48) to each group of students. Refer students to the press releases from the above activity to help them recall each stakeholder group's interests. Record the interests in key words, around the outside of the relevant stakeholder circle. It should become obvious that stakeholders share overlapping interests (e.g. fair trial, safety, privacy).

Next, focus students' attention on each stakeholders' preferred use of a publication ban (e.g. not imposed, imposed with limitations, imposed). Refer to the editorial articles to remind students of various stakeholder positions. Ask students to work in their groups to create a web by drawing lines from the stakeholder recommending the particular action to all the other groups' interests that will be affected by this proposal. An action that adversely affects another group's interests should be represented with a solid line; an action that positively affects another group's interests should be represented with a broken line. The sample below indicates a partial web for a criminal case, representing a victim or victim's family urging a publication ban of all details of the case.

- a solid line from Victim/Victim family to Accused because the ban protects the family's privacy and avoids public knowledge of their ordeal
- a broken line from Victim/Victim family to Accused because the publication ban prevents the public from knowing about the accused's actions
- a broken line from the Victim/Victim family to the justice system because the publication ban ensures sensational details do not influence the testimony of witnesses or the jurors
- solid line from the Victim/Victim family to the public because the publication ban prevents the public from being fully informed and prevents the victim or family from lobbying public support
- solid line from Victim/Victim family to the Media because the publication ban prevents media reporting of all of the details of the case



Once the groups have considered the implications of a variety of responses to the use of a publication ban, invite students to comment on the emergent web of interests. Draw out the interrelation of interests and the disadvantages for each action.

Inform students that they will be working in their stakeholder groups to negotiate the possible use of a publication ban for the assigned case study. The aim is to reach a balanced approach that reflects the best possible outcome for the stakeholders involved. Explain the three phases of the negotiation process:

- develop with other members of their stakeholder group a proposal for how to use a publication ban in this particular case;
- negotiate with representatives from the four other stakeholder groups a common plan to present to the class;
- individually decide on the best plan for the use of a publication ban.

Explain that students will represent the stakeholder group they had represented earlier. Remind students that their goal is to agree on the use of a publication ban that provides the best solution for all involved. Remind students that they are to use the guidelines they developed earlier in order to reach a sound decision.

Organize students in their previous stakeholder groups. Distribute a copy of *Initial Planning* (pg. 49) to each stakeholder group. Within their stakeholder groups, ask students to discuss various options on the use of a publication ban that meet their interests and may also serve the interests of other groups. Direct each group to record possible solutions and the advantages to themselves and to other groups. Remind students that they will individually represent their stakeholder group at a negotiating meeting, so they must understand and be able to defend their group's proposals in a convincing and informed way.



Before students decide on which proposal their group will bring to the negotiations, discuss with the class the following criteria that should guide their deliberations:

- the proposals should meet their own groups interests;*
- the proposals' implications for other groups must be clearly understood;*
- the proposals must accommodate to some extent other groups' interests.*

When each group has selected the proposal they will present, distribute a copy of *Impact of Proposals* (pg. 51) to each student. In completing this sheet, ask students to work with their group members to identify how other stakeholder groups might be affected by their proposal. Remind students that the editorial articles and the webs of interests created by the groups are useful sources of information on the interests and positions of other stakeholder groups. Invite students to record possible modifications that might make their proposal more acceptable to other stakeholder groups.

Organize students into negotiating groups composed of one representative from each stakeholder group. Distribute a copy of *Notes on Suggested Plans* (pg. 50) to each student. Explain that each representative has two minutes to present its group's position regarding a publication ban and the reasons why other groups should accept this proposal. During each presentation, other students are to complete the relevant sections of the worksheet. Students may ask probing questions, but are not to debate or disagree with the proposal until all proposals have been presented.

Explain to students that after presenting their proposals, the negotiating groups will work to reach consensus on one proposal for how a publication ban should be used in the particular case under consideration. Ask students to define what it means to reach consensus (an agreement all can support), noting that it is not a decision made by a majority vote but instead reaching agreement by all parties.

Before negotiating their proposal, remind students of the following criteria for a balanced and negotiated solution - an outcome that is:

- feasible;
- respects everyone's (or almost everyone's) interests; and
- is fair to everyone concerned.

Invite students to discuss the proposals only after all the presentations are made. In their groups, students are to discuss the benefits and disadvantages of each proposal and try to reach consensus on the proposal that will best serve all group's interests. When a plan is reached that is agreeable to everyone, each group should record its proposal and the reasons on large chart paper for sharing with the rest of the class.

Distribute two copies of *Impact of Proposals* (pg. 51) to each student. Explain that, as each negotiating group makes its presentation, students are to record the suggested plans, the impact on each stakeholder group's interests and comments on the main strengths and weaknesses.

Call upon two representatives from each negotiating group to present their proposals to the class. After all the presentations, invite the class to discuss the degree to which each plan meets the



various stakeholders' interests. After a suitable amount of class discussion, ask students to put aside their assigned role (stakeholder group) and individually decide which proposal offers the most balanced/best possible solution. In a position paragraph, each student is to explain why the proposal they selected best serves all stakeholder groups. Remind students to consider the criteria discussed earlier.

Step 6



As a final step, invite students to reflect on the effectiveness of the guidelines they created. Have them re-visit the criteria for the effective use of publication bans (broadly applicable, protects constitutional rights, flexible, considers the rights of all affected). Students could apply their guidelines by acting in the role of a judge of the Ontario Superior Court of Justice asked to review the decisions made in each of the case studies to determine if the decision was the best one, or if they would recommend a different course of action. As an alternative wrap-up activity, ask students to compare their set of guidelines to those provided by the federal government at <http://www.attorneygeneral.jus.gov.on.ca/english/crim/cpm/2005/Victims.pdf>, in the Ontario Criminal Law Division's Practice Memorandum [2005], No. 12, Victims of Crime: Privacy, Publication Bans and Exclusion of the Public from the Courtroom, March 31, 2006, or on the OJEN website.



Assessment

Assess students' case analysis using *Evaluation Rubric: Case Study Analysis* (pg. 52)

Assess consensus building activity using *Evaluation Rubric: Reaching Consensus* (pg. 53)

Assess students' press releases using *Evaluation Rubric: Editorial Article* (pg. 54)

Assess students' guidelines for publication bans using *Evaluation Rubric: Publication Bans* (pg. 55)



Publication Bans

What is the purpose of a publication ban?

A judge's order prohibiting anyone from broadcasting or publicizing details about the incident, the identity of victims, parties or witnesses is intended to protect the privacy of those involved. The publication ban may enable the parties, victims and witnesses to participate in the justice system without suffering adverse consequences.

However, a publication ban is a tool that appears to conflict with some key principles of the justice system, such as openness and accessibility. Freedom of expression as it relates to media reporting on public controversies, disputes or allegations of wrongdoing is also a fundamental part of democracy. History has provided us with examples of investigative media reporting that has uncovered evidence of serious crime and corruption that affects the public interest.

Each time a publication ban is under debate, the parties must consider how to balance these many important interests: openness of courts, access to justice, individual privacy rights and freedom of expression.

When can a judge order a publication ban?

Open courts is one of the hallmarks of our justice system. As a general rule, all proceedings take place in open court and the names of witnesses, victims, parties and accused persons are made public. There are rare exceptions - avoiding simple embarrassment or inconvenience are not sufficient reasons to justify a publication ban.

The *Criminal Code* (section 486.5) provides that a judge may make an order to protect the identity of any victim or witness, or any information that could disclose his or her identity, if the judge is satisfied that the order is "necessary for the proper administration of justice."

The *Criminal Code* (under section 486.4(2)) also provides that a judge must, if requested, order a publication ban to protect the identity of all victims of sexual offences, and witnesses of sexual offences who are less than 18 years old. In these cases, the judge tells the victim, witness or Crown prosecutor that they may make a request for this protection. If a request is made, the judge must order a publication ban. The *Youth Criminal Justice Act* (section 110(1)) prevents the

names or identifying information about the young person (accused, witnesses etc.) from being published.

In civil law, the *Courts of Justice Act* in Ontario (section 135(2)) sets out the general principle that court hearings should be open to the public. However, judges also have the option of closing court to the public and placing a ban on publishing or reporting civil proceedings in cases where "the possibility of serious harm or injustice to any person" justifies a publication ban.

What happens in a hearing?

A hearing to decide whether to order a publication ban may be held in private, rather than in open court.

Where the judge agrees that a publication ban is necessary to protect the identity of one of the parties, the judge will order the ban. The order could have certain terms or conditions attached – for example, it may only last until a certain date, or may only apply to certain information.

What are the responsibilities of the person who successfully obtains a publication ban?

It is important to realize that if a judge makes a publication ban, the media is prohibited from publishing on this matter.

If the person later decides that he or she no longer wants the publication ban to continue, he or she must apply to the court for an order terminating it. It may be necessary to state how the circumstances have changed.

Are publication bans new?

The common law has, since the early 1900s, recognized that judges may protect the identity of any victim or witness in civil or criminal cases. Since 1988, the *Criminal Code* has allowed for publication bans to protect sexual assault victims and witnesses. On December 1, 1999, the common law procedures for publication bans were added to the *Criminal Code*.

Adapted from Department of Justice, Publication Ban http://www.justice.gc.ca/en/news/nr/1999/doc_24280.html



Publication Ban Cases: A Snapshot

Here are three examples of cases in which a publication bans were considered:

***Adult Entertainment Association of Canada v. Ottawa (City)* (2005), CanLii 16571 (Ont. S.C.)**

A group of adult entertainers asked the court to either allow them to submit testimony anonymously or to grant them a publication ban to protect their identities. The adult entertainers were going to testify in a case about the regulation of the adult entertainment business. The performers argued that they and their families would be harmed if they had to identify themselves publicly because of the social stigma and stereotypes people hold about the adult entertainment industry. The judge refused to grant an anonymity order or publication ban.

***R. v. Mentuck*, [2001] 3 S.C.R. 442**

The police asked for a publication ban to prevent the release of information about their undercover investigation methods and to protect the identity of their undercover officers. In this case, the police had used undercover methods to collect evidence for a charge of second-degree murder. The Supreme Court of Canada upheld the trial judge's decision not to grant a publication ban to protect police undercover methods but to grant a one-year ban to protect the identities of the undercover officers involved in the operation.

***Dagenais v. Canadian Broadcasting Corporation*, [1994] 3 S.C.R. 835**

Four men were charged with sexually assaulting young boys while they were teachers at an Ontario Catholic school. Before their trial ended, the CBC attempted to air a docudrama entitled "The Boys of St. Vincent", inspired by events in Newfoundland similar to those allegedly committed by the men. Defence counsel at trial sought and was granted an order banning the airing of the series until the end of the trial based on a threatened violation of the defence's right to a fair trial under the *Charter*. The Supreme Court of Canada overturned the lower courts' rulings and found that the ban violated the media's right to freedom of expression. Although the ban was meant to prevent a "real and substantial risk" to the fairness of the trials, it was too broad in its application, and there was no consideration of alternatives that might have protected the defendants' rights to a fair trial. This case is the subject of an OJEN Landmark Case package that provides a plain language summary, worksheets and discussion points. Please visit the OJEN website to download these resources or link to the case

***R. v. Canadian Broadcasting Corporation*, 2006 CanLii 13559 (Ont. S.C.)**

The CBC asked for access to videotape evidence of two young people charged with first-degree murder. The videos had been played in open court and transcripts were available, but the CBC wanted access to the actual videotapes in order to broadcast them, rather than just describing or reporting on the videos. In order to broadcast the videos while complying with the publication ban that protects the identities of young people charged with crimes (see s. 110 of the *Youth Criminal Justice Act*), the CBC would have had to distort the videos (e.g. black out the faces of the accused, distort their voices). The judge denied the CBC's request for access to the videos.

**Criminal Law (Adults): *Criminal Code***

Section 486. (1) Any proceedings against an accused shall be held in open court, but the presiding judge or justice may order the exclusion of all or any members of the public from the court room for all or part of the proceedings if the judge or justice is of the opinion that such an order is in the interest of public morals, the maintenance of order or the proper administration of justice or is necessary to prevent injury to international relations or national defence or national security

(2) For the purposes of subsection (1), the “proper administration of justice” includes ensuring that

- (a) the interests of witnesses under the age of eighteen years are safeguarded in all proceedings; and
- (b) justice system participants who are involved in the proceedings are protected

Civil Law: *Courts of Justice Act*

Section 135. (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.

Criminal Law (Youth): *Youth Criminal Justice Act*

Section 110. (1) Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.



To Party or Not to Party?

As the school year was drawing to a close Jim Kearns, a Grade 12 student, decided he would like to throw a huge end-of-year bash in his backyard. He planned to invite about sixty friends from school and around the neighbourhood to help celebrate the end of high school.

When Jim spoke to his parents about his desire to hold the party, they were less than enthused about his plan. First, they pointed out, 60 young people in their home and backyard posed significant risks – items could be broken or stolen, there would be a huge mess to be cleaned up after the party, and the pool posed a problem if not supervised. Furthermore, the party was to be held outdoors with music and as many as 60 people laughing and talking. Some of the neighbours were elderly and would be bothered by all the traffic and the noise. Other neighbours had young children who would be going to bed around 9:00 pm. Would the noise from the party prevent the young children from falling asleep? Who would supervise these young people? These concerns needed to be addressed before Jim's parents were willing to say yes to the party.

Jim was very upset by his parents' response. He had already been inviting many of his friends and they were looking forward to this end-of-year party. Besides, he argued, the party would be attended by Jim's peers, who were all young adults and did not need supervision. Not allowing the party would disappoint many of his friends and cause Jim to lose face among his peers.

Relevant Facts	Main stakeholders	Implied interests or values

Underlying Issues

*

*

*



A Heinous Crime

In 1993 the world was shocked by the brutal death of two year-old James Bulger at the hand of two 10 year-old boys in England. The boys had lured James away from a shopping mall to an isolated area near the train tracks. There they beat the toddler to death. Despite the ages of the accused, the public was outraged, leading the courts to worry about the safety of the two murderers.

When the two young murderers were released from prison in June 2002, they were given new identities and were moved to a new location. Upon their release the court imposed a permanent publication ban on any details relating to the new identities or whereabouts of the convicted killers. The court noted that the continued interest by the press and the on-going revulsion of the public created a legitimate fear of vigilante justice leaving the young men vulnerable to harassment and violence. Those opposed to the publication ban believed their safety was jeopardized by withholding information regarding the identity and whereabouts of the convicted murderers.

Case Study Template

Relevant facts	Main stakeholders	Implied interests or values

Underlying issues

*

*

Compelling reasons for a publication ban	Compelling reasons opposing a publication ban
*	*
*	*
*	*



Case Study #1: Sexual Assault

At a party following her school's prom, 17 year-old Chantile Morgan was drinking with many of her friends at the hotel where they were staying. Around 1:00 a.m. several young men, who were not students at the school, arrived at the party. Shortly after their arrival, Chantile became involved in friendly banter with a couple of the young men who had recently arrived. According to the accused, Chantile was flirtatious and suggestive in her behaviour. When the accused attempted to convince Chantile to become physically intimate, she abruptly left the room and went outside. She was followed by the accused where she states she was sexually assaulted. The accused claims that any sexual activity between him and the victim was consensual.

Chantile requested a publication ban to prevent the publication her identity, concerned that the details of the case will adversely affect her reputation among her peers and in the community. The accused requested that the publication ban be rejected believing that full public knowledge of the events is essential to a fair and public trial, and to vindicate his name with his peers and in his community.

As the *Criminal Code* requires that judges must order a publication ban to protect the identity of all victims of sexual offences when the request is made, the publication ban was granted.



Case Study #2: A Broken Trust

Peter Augthier was charged with stealing from a public charity while he was acting as the charity's accountant. Over a three-year period, Mr. Augthier allegedly skimmed 10% off of all transactions. It was alleged that he had amassed over \$400,000.

When brought to trial, Mr. Augthier requested a publication ban to prevent the publication of his identity, fearing the publicity from the case would destroy his reputation in the community and would make future employment in his area of expertise difficult to obtain. Furthermore, he argued the implications of the resulting publicity could severely damage his ability to earn income, causing a significant decline in his family's standard of living and possibly causing them to lose their home. His greatest concern was the harm the case would do to his wife and children.

The judge rejected Mr. Augthier's request for a publication ban, noting that the resulting embarrassment and inconvenience to the family is an insufficient ground upon which to grant the ban. Furthermore, the judge saw no immediate threat to Mr. Augthier or his family and suggested the possible implications of the resulting publicity are appropriate and could have been anticipated.



Case Study #3: Caught in the Act

In early 2007, rumours began to circulate about possible corrupt practices in the casinos around Ontario. In order to gather evidence of the corruption in Ontario casinos, the Ontario Provincial Police (OPP) set up a sting operation in which undercover police officers were hired as dealers and waiters in various casinos. Other undercover police officers visited the casinos posing as clients/guests. By befriending the employees of the casinos, the OPP undercover officers were able to gather enough evidence to lay charges.

During the trial, the OPP requested a publication ban on any details regarding the sting operation, arguing that public disclosure of their operation would undermine future sting operations making it virtually impossible for them to investigate future allegations of fraudulent behaviour in casinos.

Several media outlets, including major newspapers and television networks, opposed the publication ban citing their constitutional right to freedom of expression. Furthermore, they argued the public had a right to know how police gathered evidence, in part, to provide the public with the opportunity to assess whether they supported this kind of undercover work. Media representatives also argued that the ban was unnecessary as the information would create no threat to anyone, no minors were involved, the incident did not relate to a sexual assault and therefore there was no basis for the request.

The judge sided with the OPP by granting a limited publication ban. The ban pertained only to details regarding the sting operation. The judge noted in her ruling that full public disclosure of the sting operation would hinder the ability of the police to effectively conduct future investigation into illegal behaviour. She further noted that limiting the ban to the details of the sting operation was a reasonable restriction on the public's access to information, considering the benefit through more effective policing that would result.



Case Study #4: Unhappy Home

Elisabeth and her brother, Ivan, were rarely able to visit their elderly father, Harry, at his long-term care home. Elisabeth and Ivan grew up in a small, rural area, but had moved to the city. Harry hated the city, and had explicit instructions that he wanted to stay near familiar surroundings, despite the distance from his children.

Ivan and Elisabeth were shocked when they were contacted by police and informed that the care home had been closed by the authorities, and eleven staff members arrested relating to allegations of serious mistreatment and exploitation of the elderly residents. Allegations included violence against residents, harmful restraints, refusing medication, food or grooming. During the police investigation, several cameras were discovered, which featured digital images taken at the home. The images depicted serious assaults and aggression towards patients, including Harry.

The images became a key source of evidence used against the accused employees during their highly publicized trials. Elisabeth, Ivan and other families of the care home residents requested a publication ban apply to the images. Many media outlets opposed the request for a publication ban, arguing the ban would violate their right to freedom of expression and deny the public's access to information on an important public controversy. Media representatives argued that allowing the public to view the images was in the public interest, as increasing public knowledge about the mistreatment would ensure support for reform and increased regulation of care homes.

The courts agreed with the families' request for a publication ban, citing the graphic and disturbing nature of the images. The court decided that respect for the victims justified restricting the public's access to this evidence.



Case Study #5: A Matter of Poor Judgment

During the late summer of 2007, Brian Wong attended a party at a friend's house. At the time, Brian was 19 years-old and was looking forward to beginning university the next month. During the party, at which both drugs and alcohol were consumed, an argument broke out between some friends of the accused and some uninvited men who had shown up.

When Brian attempted to intervene, he was struck by one of the uninvited men. In retaliation, Brian punched the man, causing him to fall backwards to the ground. When the man hit the ground his head struck the concrete and he subsequently died from resulting head injuries. Brian was charged with manslaughter.

At the bail hearing, the lawyer for the accused asked for a publication ban arguing that without the ban his client's right to a fair trial would be jeopardized, and his safety compromised due to the possibility of vigilante justice by the friends of the deceased.

Both the media and the family of the deceased opposed the request for a publication ban, citing public safety issues, the right to access to information and freedom of expression and the public's right to know the circumstances leading to the death of the victim.

The judge ruled in favour of the accused, and ordered a publication ban on the information revealed at the bail hearing, in accordance with section 517(1) of the *Criminal Code*. This section states that when an accused person seeks a publication ban at a bail hearing, it *shall* be granted by the judge.

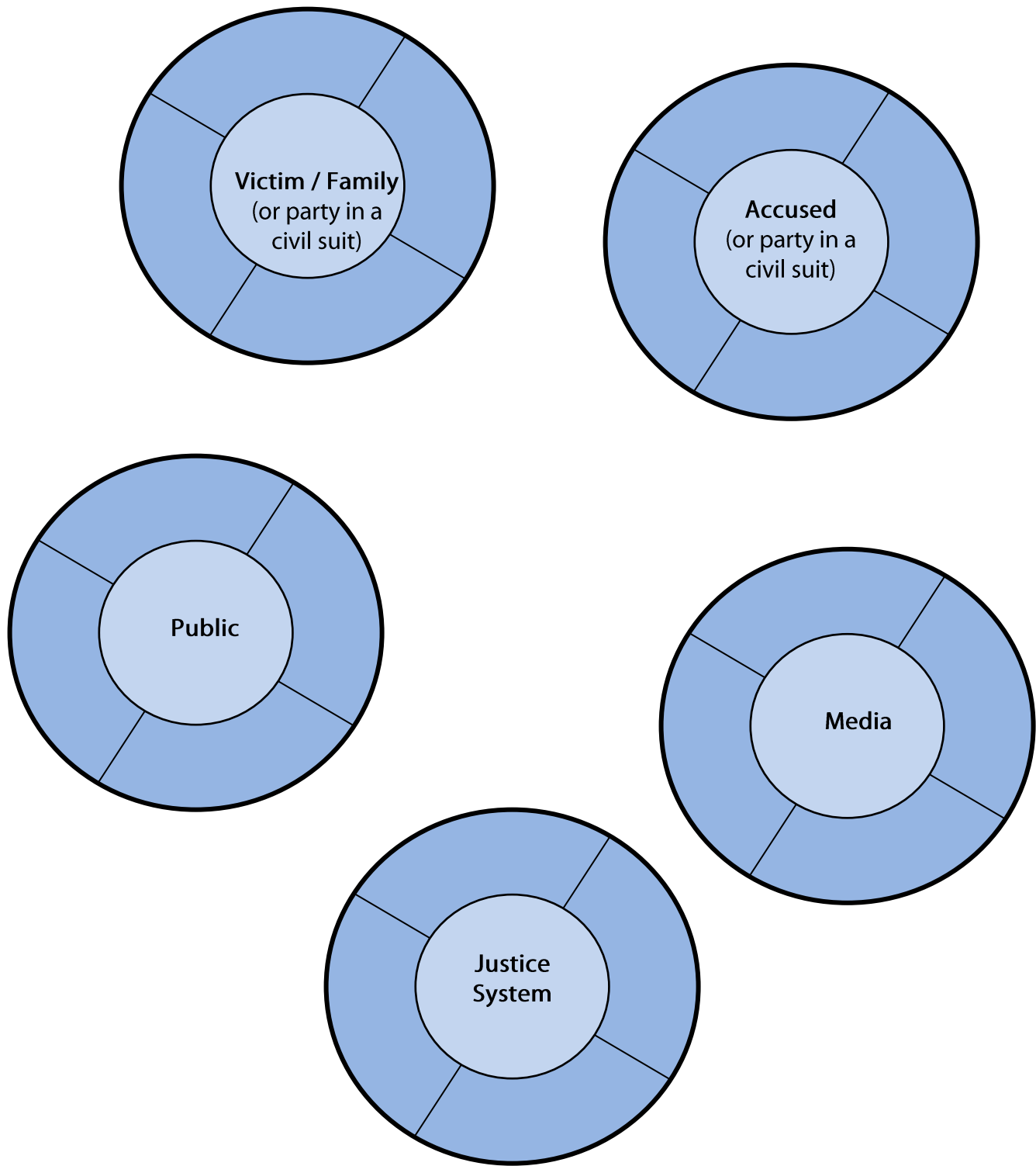


Editorial Article Outline

Headline:
Lead Who What Where When Why How
Memorable Quotes:
Key Supporting Facts:



Web of Interests





Initial Planning

Possible options	Advantages for our group	Advantages for other groups



Notes on Suggested Plans

Proposal:

Stakeholder group	Likely impact	Possible modifications



Impact of Proposals

For each proposal, record the impact on the interests of each stakeholder group using the following symbols "+" positive impact; "0" no impact; "-" negative impact

Proposals	Impact	Main strengths and weaknesses
	Victim/family + 0 - Accused + 0 - Parties + 0 - Media + 0 - Justice system + 0 - Public + 0 -	
	Victim/family + 0 - Accused + 0 - Parties + 0 - Media + 0 - Justice system + 0 - Public + 0 -	
	Victim/family + 0 - Accused + 0 - Parties + 0 - Media + 0 - Justice system + 0 - Public + 0 -	
	Victim/family + 0 - Accused + 0 - Parties + 0 - Media + 0 - Justice system + 0 - Public + 0 -	
	Victim/family + 0 - Accused + 0 - Parties + 0 - Media + 0 - Justice system + 0 - Public + 0 -	



Evaluation Rubric: Case Study Analysis

Criteria	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Identifies main stakeholders and relevant facts	Identifies all or almost all of the main stakeholders and relevant facts.	Identifies most of the main stakeholders and relevant facts.	Identifies some of the main stakeholders and relevant facts.	Identifies few or none of the main stakeholders and relevant facts.
Identifies implied interests or values	Always identifies accurately the implied interests or values of each of the main stakeholders.	Usually identifies accurately the implied interests of most of the main stakeholders.	Occasionally identifies with some accuracy the implied interests or values of some of the main stakeholders.	Rarely identifies and often with limited accuracy, the implied interests or values of the main stakeholders.

Comments:



Evaluation Rubric: Reaching Consensus

Criteria	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Background Knowledge accurate understanding of the purpose and use of publication bans accurate reference to the details of the cases being considered	Able to refer to many different issues relating to the use of publication bans and always with accuracy Always make relevant connections between the issues and the cases	Able to refer to several different issues relating to the use of publication bans and usually with accuracy Usually make relevant connections between the issues and the cases	Able to refer to some different issues relating to the use of publication bans and at times with accuracy Sometimes make relevant connections between the issues and the cases	Able to refer to a limited number of different issues relating to the use of publication bans with little accuracy Seldom make relevant connections between the issues and the cases
Open-Mindedness willingness to consider a variety of views willing to re-think view and position based on compelling arguments presented	Always carefully consider all viewpoints presented Always willing to reconsider a point of view when a compelling argument is made	Usually consider all viewpoints presented Usually willing to reconsider a point of view when a compelling argument is made	Occasionally consider a variety of viewpoints presented Sometimes willing to reconsider a point of view when a compelling argument is made	Seldom consider other viewpoints Rarely willing to reconsider a point of view even when a compelling argument is made
Reasoned Judgment uses evidence to make an informed decisions applies evidence against criteria to make an informed judgment	Decisions on issues are always based on available evidence Always consider the available evidence in light of the criteria to arrive at a decision	Decisions on issues are usually based on available evidence Usually consider the available evidence in light of the criteria to arrive at a decision	Decisions on issues are sometimes based on available evidence Sometimes consider the available evidence in light of the criteria to arrive at a decision	Decisions on issues are seldom based on available evidence Seldom consider the available evidence in light of the criteria to arrive at a decision

Comments:



Evaluation Rubric: Editorial Article

Areas of achievement	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Knowledge and understanding	Editorial Article captures all the important and relevant information	Editorial Article captures most of the important and relevant information	Editorial Article captures some of the important and relevant information	Editorial Article captures little of the important and relevant information
Thinking	Editorial Article is always consistent with the interests of the group represented	Editorial Article is generally consistent with the interests of the group represented	Editorial Article is at times consistent with the interests of the group represented	Editorial Article is seldom consistent with the interests of the group represented
Communication	Editorial Article is highly convincing, and very clear	Editorial Article is generally convincing, and clear	Editorial Article is somewhat convincing, and clear	Editorial Article is unconvincing, and confusing
Application	Editorial Article successfully uses all the features of an effective press release	Editorial Article effectively uses all the features of an effective press release	Editorial Article uses the features of an effective press release with some success	Editorial Article uses the features of an effective press release with limited success

Comments:



Evaluation Rubric: Publication Ban Guidelines

Areas of Achievement	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Knowledge and understanding	Guidelines consistently reflect an understanding of fundamental freedoms and the competing interests of diverse stakeholders	Guidelines generally reflect an understanding of fundamental freedoms and the competing interests of most stakeholders	Guidelines at times reflect an understanding of fundamental freedoms and the competing interests of key stakeholders	Guidelines seldom reflect an understanding of fundamental freedoms and the competing interests of key stakeholders
Thinking	Guidelines always reflect a consistent philosophical orientation	Guidelines mostly reflect a consistent philosophical orientation	Guidelines at times reflect a consistent philosophical orientation	Guidelines seldom reflect a consistent philosophical orientation
Communication	Guidelines are consistently clear and succinct	Guidelines are generally clear and succinct	Guidelines are sometimes clear and succinct	Guidelines are often unclear and wordy
Application	Guidelines are consistently fair and equitable to all groups	Guidelines are generally fair and equitable to all groups	Guidelines are fair and equitable to some groups	Guidelines are seriously unfair and inequitable to some groups

Comments:



Module Three

The Media in the Courtroom

Ideas for Critical Challenges

The following five activities can be used as extension activities or developed into full critical challenges. One of these critical challenges has been fully developed on the following pages, with handouts and resource material provided. While resources and handouts are not specifically provided for each of the other activities featured below, many of the resources, weblinks or handouts of the fully developed critical challenge could be useful to the development of other activities.



Cameras in the Courtroom: When, and under what circumstances, should cameras be allowed into the courtroom?

In this critical challenge, students explore the issue of cameras in the courtroom as students attempt to determine when, and under what circumstances, cameras should be allowed into the courtroom. Using a U-shaped discussion format, students discuss whether criminal trials should be televised. In addition, students determine to what extent cameras should be utilized in a specific criminal case.



Tried in the Press: Given current media practices, can high profile trials be conducted fairly?

The Canadian *Charter of Rights and Freedoms* guarantees all Canadians the right to a fair trial and the right to freedom of the press (the *Charter* is available on the Department of Justice site at <http://laws.justice.gc.ca/en/Charter/index.html>). In the category “legal rights”, the *Charter* states that Canadians have the right “to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal”. In addition, under “Fundamental Freedoms”, the *Charter* guarantees that Canadians have the right to freedom “of thought, belief, opinion and expression, including freedom of the press and other media of communication”. At first glance, these rights may not appear to clash; however, press coverage has at times created situations where these rights are in opposition. The case *Dagenais v. Canadian Broadcasting Corporation* illustrates this struggle between fair trial rights and freedom of expression. Refer to OJEN’s Landmark Case package on *Dagenais* on the OJEN website (www.ojen.ca) for a summary of the facts and arguments of this case to review with your class. A brief summary of this case is also provided on pg. 38)



Invite students to select a current criminal case that has received significant pre-trial publicity. Ask them to work in groups of five to evaluate the extent to which the pre-trial publicity has maintained the appropriate balance between the openness guaranteed by a “free press” and the right of an individual to a “fair trial”. Invite students to examine the issue through the eyes of different individuals, each of whom will prepare and present a statement to the presiding judge. The individuals to present might include: the victim, the accused, the media, the defence attorney, the Crown attorney, a member of the community, a witness who is nervous to testify, a lawyer working on a similar case, the police, and an attorney representing the Campaign for Press and Broadcast Freedom. Encourage students to utilize specific examples, gathered from newspapers, magazines, television, radio and the internet to support their point of view. They should utilize such criteria as:

- presumption of innocence is maintained,
- jury is not to be prejudiced,
- open access to information to ensure due process has been followed,
- respect for freedom of the press,
- privacy interests of victims, litigants, underage witnesses, etc.



Journalistic code of ethics: Prepare a code of ethics that balances media rights, the interests of the people affected, and the administration of justice.

Assign students to develop a code of ethics for journalists. Direct students to read the preamble to the Canadian Association of Journalists, Statement of Principles (<http://www.caj.ca/principles/principles-statement-2002.htm>):

It is our privilege and duty to seek and report the truth as we understand it, defend free speech and the right to equal treatment under law, capture the diversity of human experience, speak for the voiceless and encourage civic debate to build our communities and serve the public interest.

Ask students to provide and explain an example from the media (e.g. an article, radio report, television report, web report) illustrating how a journalist has demonstrated each of the following aspects of this preamble:

- privilege and duty to seek and report the truth
- defence of free speech
- defence of the right to equal treatment under the law
- capturing the diversity of human experience
- speaking for the voiceless
- encouraging civic debate

After finding the articles, have students develop a journalistic code of ethics addressing the following:

- Privacy
- Fairness and accuracy



- Diversity
- Freedom of the press
- Respect for the law
- Protection of victims' and children's rights

Arrange for students to compare their codes of ethics to those developed by journalists themselves and to identify similarities and points of difference.



Revealing Sources: Under what circumstances should journalists use confidential or anonymous sources?

Invite students to investigate the importance of protecting the identity of sources of information as a fundamental principle affecting the right to “freedom of the press”. Students might consider the issue from the perspective of either a journalist or a defence counsel. Arrange for students to choose one of two roles and write a letter in that role. In preparing their position statement, suggest that students use the following format: write from the perspective of a particular **role** (journalist/defence) for a specific **audience** (to be determined) in a specific **form** (a letter or a petition) on the assigned **topic** (journalists’ right to protect their sources). Share the letters or petitions with the class.

Suggest that students read about Ken Peters, a journalist for the *Hamilton Spectator* who was found guilty for contempt of court for refusing to reveal his sources. (See CBC News report “Hamilton reporter fined \$36,000.00 for contempt”

<http://www.cbc.ca/canada/story/2004/12/07/peters041207.html#skip300x250>.)

Students might write a letter to the editor outlining their response to the article. They will articulate their personal position on the issue of journalists revealing their sources.



Individual Rights vs. Collective Interests: Create an editorial cartoon that reflects how media coverage of justice issues can affect the balance between interests and rights.

This critical challenge builds on the skill of analyzing and creating editorial cartoons developed in the critical challenge on Cameras in the Courtroom. Introduce students to areas where private or individual rights might be different from or in opposition to public interests. For example, students might consider the RIDE program, where the police have the right to stop drivers and have them submit to an alcohol screening device where the officer has a reasonable suspicion they have alcohol in their body (e.g. their breath smells of alcohol), or if the driver admits to having had something to drink. Ask students to consider how this program balances the right of an individual “to be free of unreasonable search and seizure” (section 8 of the *Charter of Rights and Freedoms*) and the public expectation that our roads are safe. Other issues might include photo radar, or the environment. For example, at what point does an individual’s right to purchase a vehicle of their choice, even a large SUV, conflict with the collective interest in a sustainable environmental future?



How can these issues be balanced?

After students understand the concept of balancing rights, ask students to select and research a media story that highlights one of these issues. Invite students to rate on a scale of one to five (1 is weak/low and 5 is strong/high), the effectiveness of the media coverage of the issue in terms of the following criteria:

- public and private interest issues are fully explored and developed
- coverage involves a balanced account of private and public perspectives
- Legal issues are accurately portrayed
- Editorial perspectives are identifiable

Students might create an editorial cartoon that reflects the degree to which media coverage of the particular issue influenced respect for private and public rights. Review the *cartooning techniques* (pg. 73) and the *Evaluation Rubric* (pg. 78) developed for the Cameras in the Courtroom challenge.



Critical Challenge:

Cameras in the Courtroom: When, and under what circumstances, should cameras be allowed into the courtroom?

Overview

In this critical challenge, students explore the issue of cameras in the courtroom as students attempt to determine when, and under what circumstances, cameras should be allowed into the courtroom. Using a U-shaped discussion format, students discuss whether criminal trials should be televised. In addition, students determine to what extent cameras should be utilized in a specific criminal case.

Broad Understandings

Students will develop an understanding of the legal and societal issues involved in allowing cameras into courtrooms, which include:

- privacy interests of victims, witnesses and accused
- the public's rights to an open, readily accessible and transparent judicial system
- the right to a fair trial
- publication bans
- right to freedom of expression including freedom of the press and other media of communication
- the extent to which the media can be used to sway public opinion
- the challenges of ensuring that jury members are not influenced by media coverage
- the range of reasons that a litigant in a civil trial might want media coverage
- the range of reasons that an accused or victim in a criminal proceeding might want media coverage

Preparation

This activity can be completed in approximately eight classes, including time for instruction, research and student work on tasks.

Requisite Tools

Some access to computers is required, but it is not necessary to have a full lab.

Background Knowledge

Knowledge of legal issues:

- privacy interests of victims, witnesses and accused
- the public's rights to an open, readily accessible and transparent judicial system so that justice can be seen to be done
- the right to a fair trial
- publication bans
- contempt of court rulings against media outlets that violate a publication ban



- right to freedom of expression including freedom of the press and other media to communication (*Canadian Charter of Rights and Freedoms*)

Knowledge of historical precedents/timeline, including the jurisdictions with established guidelines

Knowledge of legislation, e.g., *Ontario Courts of Justice Act*, s. 136

Knowledge of key Canadian cases relevant to the issue of cameras in the courts:

- *Dagenais v. Canadian Broadcasting Corporation* [1994] 35 S.C.R 835. (1994 Supreme Court of Canada case on publication bans and the common law)

Knowledge of new initiatives regarding cameras in the courtrooms (Panel on Justice and the Media; Court of Appeal pilot project; Truscott Appeal video feed – information on these initiatives is available at www.ojen.ca).

Critical Thinking Vocabulary

- code of ethics
- rights
- fairness including “fair comment”

Thinking Strategies

- U-shaped discussion
- positive and negative factors (Comparing positive and negative factors, looking for implications, assessing positive and negative factors)

Habits of Mind

- open-minded
- fair-minded

Criteria for Judgment

Criteria for determining to what extent cameras should be allowed in the court:

- openness
- access
- education
- respect for privacy
- respect for freedom of expression
- public confidence in the judicial system

Learning activity

Step 1



Introduce the topic of media and justice by inviting students to consider the possible tensions between the individual’s privacy interests and the “freedom of the press and other media of communication”. Ask students to discuss if and when the right of the public “to know” should be limited to protect an individual’s privacy in each of the following situations:



A 17 year-old person has been charged with assault involving a weapon; three individuals were injured.

A business owner who runs a cheque-cashing service has been charged with using counterfeit money, which they used in the course of business.

A couple has been charged with child abuse involving their two children who are both under the age of five. One parent operates a day care center.

A trial is taking place involving a person charged with growing marijuana in their home for their own use.

A middle-aged hockey coach has been charged with sexually assaulting some of his under-12 year-old hockey players. He has been coaching for 15 years.

Arrange for students, initially in small groups and then as a class, to answer the following questions in connection with each of the preceding situations:

- Whose identity should be publicized in each case and why?
- To what extent should the public know about each case?
- Why does the public need to know?
- What issues regarding privacy are potentially involved in each case?
- How should the public be able to learn about these cases?
- What conditions would you put on access to or limitations to trial information?

Step 2



To introduce the topic of Cameras in the Courtroom, invite students to read the article *Video Cameras Coming to Ontario Courtrooms* (pg. 66) and *Timeline—Cameras in Court* (pg. 67). After reading the article and the timeline, discuss the following questions:

Would you watch television coverage of the Ontario Court of Appeal? Why or why not?

What are the main arguments raised in the article to explain why the Court of Appeal is piloting television cameras in court?

Do you agree with these arguments? Why or why not?

What are some of the reservations about televising court cases that you are aware of?

Do you agree with these reservations? Why or why not?

Step 3



Assign students to research the positive and negative factors related to allowing cameras into the courtroom and complete *Exploring Positive and Negative Implications* (pg. 68). A detailed list of potential implications is found in *Sample Comparison of Positive and Negative Implications* (pgs. 69-70). When examining potential implications of cameras in the courtroom, students might consider the positive and negative implications from the perspectives of witnesses, the accused, the defence, the victim(s), the jury, and the Crown. Encourage students to consult a range of sources. An excellent source is "Panel on Justice and the Media, Report to the Attorney General,



2006" (<http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/pjm/> or at www.ojen.ca). *Evaluation Rubric: Exploring Positive and Negative Implications* (pg. 76) may assist in assessing students' responses.

Step 4



Arrange for students to prepare for a U-shaped discussion and receive feedback on the topic "Should criminal trials be televised?". Details on how to structure this activity are found at pg. 71, *Instructions for U-shaped Discussions*. To help students prepare for the discussion, encourage them to use *Assessing U-shaped Discussions* (pg. 72) to peer- and self-assess their readiness. If desired, use *Evaluation Rubric: U-shaped Discussions* (pg. 77) to evaluate students during the formal discussion on the merits of televising criminal trials.

Step 5



Ask students to create two editorial cartoons, one expressing support for cameras in the courtroom and one expressing reservations against cameras in the courtroom. To introduce this activity, arrange for students to analyze the use of various techniques of cartooning to express an opinion. Post a collection of contemporary political cartoons. Invite students to examine the cartoons, first to identify the humour and the opinion expressed, and second to identify common techniques used by cartoonists. Help students compile a list of these strategies, including the following:

- caption
- relative size
- light and dark
- composition
- symbolism
- caricature

Next, invite students to identify examples of the techniques used by the cartoonists by completing a graphic organizer (*Techniques of Cartooning* pg. 73). Once students are familiar with these techniques, ask students to create two political cartoons – one which expresses a view supporting having cameras in the courtroom and one that expresses a view which opposes having cameras in the courtroom. If desired, assess students using *Evaluation Rubric: Cartooning Techniques* (pg. 78).

Step 6



Arrange for students to develop a set of guidelines that could assist judges when determining what restrictions to place on televising court cases. Ask students to consider if and when certain rights are subordinate to others (e.g. the right to a fair trial versus the right of freedom of the press; openness and access versus the right to security and privacy).

Ask students to develop guidelines for each of the following categories:

- People authorized to use cameras in the courtroom
- Consent required (of individuals being filmed and/or photographed)



- Restrictions (regarding types of cases [e.g. child abuse] and individuals [e.g. age])
- Legal restrictions (e.g. publication bans; *Youth Criminal Justice Act*)
- Equipment used in the courtroom

Direct students to use *Developing Camera-use Guidelines* (pg. 74) to prepare a legal brief identifying their guidelines and justifying each guideline in light of the competing rights at issue. If desired, assess this brief using *Evaluation Rubric: Camera-use Guidelines* (pg. 79).

Step 7



Invite students to apply these guidelines to a current legal case that is or soon will be heard before the Ontario Court of Appeal. Note that witnesses almost never appear in appellate court. Therefore, the privacy interests raised in this context relate to personal information about the individuals/parties involved in the case, or details of their previous testimony that would be relayed during the hearing. Direct students to use *You Be the Judge* (pg. 75) to report and justify their conclusions in the particular case. If desired, assess their answers using *Evaluation Rubric: Applying Camera-use Guidelines* (pg. 80).

Assessment



Assess students' identification of the positive and negative implications of televised criminal trials using *Evaluation Rubric: Exploring Positive and Negative Implications* (pg. 76).

Assess the U-shaped discussion using *Assessing U-shaped Discussions* (pg. 72) and *Evaluation Rubric: U-shaped Discussions* (pg. 77).

Assess students' editorial cartoons using *Evaluation Rubric: Cartooning Techniques* (pg. 78).

Assess students' camera-use guidelines using *Evaluation Rubric: Camera-use Guidelines* (pg. 79).

Assess the application of guidelines in a court case using *Evaluation Rubric: Applying Camera-use Guidelines* (pg. 80).

Resources



- Supreme Court of British Columbia, *Policy on Television in the Courtroom*, April 4, 2001.
- Supreme Court of British Columbia, *Guidelines for Television Coverage of Court Proceedings*, November 15, 2003.
- Provincial Court of British Columbia, *Media Policies*, April 20, 2004.
- "Court TV pushes for wider camera access in courtrooms", *USA Today*, October 5, 2004.
- *The Canadian Encyclopedia*
- The Campaign for Press and Broadcasting Freedom, Canada, <http://www.presscampaign.org/>
- *A Guide for Individuals, Your Privacy Rights*, Office of the Privacy Commissioner of Canada, http://www.privcom.gc.ca/information/02_05_d_08_e.asp
- The Young Offenders Act, "The right to privacy", <http://www.parl.gc.ca/information/library/PRBpubs/8613-e.htm#2.%20The%20Right-t>
- Reporters Without Borders, http://www.rsf.org/rubrique.php3?id_rubrique=20



- PEN Canada, <http://www.pencanada.ca/>
- *Canadian Charter of Rights and Freedoms*, <http://laws.justice.gc.ca/en/Charter/index.html>
- Available from OJEN (www.ojen.ca):
- OJEN Landmark case *Dagenais v. Canadian Broadcasting Corporation* [1994] 35 S.C.R. 835.
- Information on the 2007 broadcast of the Steven Truscott appeal (Ontario Court of Appeal)
- Ontario Ministry of the Attorney General, Report of the Panel on Justice and the Media, August 2006, Chapter 11.



VIDEO CAMERAS COMING TO ONTARIO COURTROOMS

CTV, With a report from CTV's Paul Bliss, Wed. Jan. 10 2007 6:30 PM ET.

Ontario is moving forward with plans to place video cameras inside courtrooms, Attorney General Michael Bryant announced Wednesday. The electronic devices will be positioned inside courtrooms at the Ontario Court of Appeal as part of a pilot project. Bryant said it is time Ontario moves in this direction, saying "our justice system is ready for its close-up." "That close-up is going to be coming into the living rooms of our province as we tune in to the Ontario Court of Appeal."

An implementation team will decide where the cameras are positioned, how many will be used and which cases will be broadcast.

Television cameras have been a fixture in many American courtrooms for years. Many instances of courtroom outbursts and altercations have been caught on videotape. Similar scenes should not be expected in Ontario courts when the cameras are

switched on, lawyer Steven Skurka said. "There has to be accountability," Skurka said. "People have a right to know what is actually happening in the courtrooms of this country." "It's just a question of setting the right balance." The pilot project only applies to the appeals court, but that should not prove to be dull television.

A source told CTV's Paul Bliss it is possible the upcoming murder appeal cases involving Steven Truscott and Robert Baltovich will qualify for broadcast. Some judges have already expressed reservations about the idea, but Bryant said Ontario's courts need to move with the times. Despite concerns, judges, lawyers and the attorney general all agree that the defendant's right to a fair trial is a priority.

Ontario is not alone in having television coverage of court proceedings. British Columbia, Nova Scotia, Manitoba and Newfoundland and Labrador all allow limited access to the courts by television news outlets. Dozens of Canadian public inquiries have also been televised.



Timeline—Cameras in the Courtroom

- 1981** - The Supreme Court of Canada first televised its hearings in 1981 when it allowed cameras to record the Repatriation Reference case. Today, most S.C.C. proceedings are televised on CPAC, the Cable Public Affairs Channel.
- 1980's** - Over 20 commissions of inquiry and other proceedings have been televised in whole or in part since the early 1980's.
- 1987** - Mr. Justice Zuber, in his report on Ontario court reforms, recommended a two-year experiment with cameras in the courts. In the same year the Law Reform Commission of Canada and the Canadian Bar Association recommended immediate camera access to appeal courts and also a two-year experiment with cameras in courts. The CBA felt judges should be allowed to order the cameras turned off if necessary.¹
- 1983, 1988, 1995** - The Canadian Judicial Council voted against cameras in the courts in 1983, 1988, and 1995.
- 1991** - Lower courts in the United States have embraced cameras in the courts. Since 1991, Americans have had a dedicated cable channel televising court proceedings. By 1995, forty-seven states permitted some form of televising of state trials.
- 1992** - Since 1992, cameras have been allowed in Scottish courts. Court cases can be televised if all sides involved give their consent.
- 1995** - The trial of O.J. Simpson convinced many that "cameras encouraged showboating and made the legal system appear tawdry".²
- 2007** - On January 10, 2007, Ontario's Attorney General, Michael Bryant, announced that cameras will be put in the Ontario Court of Appeal. Appellate cases do not usually hear directly from witnesses or victims of crime.

¹ The Canadian Encyclopedia, Cameras in the Courts.

² Winnipeg Free press editorial, 08/31/06.



Exploring Positive and Negative Implications

Examine the implications of the decision from the perspectives of various individuals and groups.

Positive Implications	Negative Implications



Sample Comparison of Positive and Negative Implications of Cameras in the Courtroom

Positive Implications	Negative Implications
1. Help to expose more of the population to the justice system.	1. Witnesses may be intimidated and reluctant to come forward to testify when faced with publicity.
2. Putting court proceedings on public display is a foundational principle of a democracy (anyone can visit a court and watch the proceedings – however relatively few do). Need to be able to see that justice has been done.	2. Lawyers will engage in “grandstanding”.
3. Without cameras in the courts, the public must rely on media reports which can focus on the unusual or sensational.	3. Cameras may promote “showboating”, sensationalism that may negatively impact both the progress of the proceeding and the reputation of the justice system (eg. O.J. Simpson trial).
4. Broadcasting court proceedings can educate the public and dispel misconceptions about the judicial system.	4. Privacy interests of witnesses, victims and the accused are affected.
5. Increased attention and scrutiny from the press on court proceedings can expose possible wrongful convictions or unjust treatment of individuals impacted by the justice system.	5. Might allow for broadcasting of racist views or hate speech.
6. People may be unaware of legal constraints, for example, of sentencing principles. Publicity might increase public understanding.	6. Some reporters say that courts could become media “circuses” counter to the dignity of the court system.
7. Inappropriate courtroom practices could be exposed (for example, following the O.J. trial broadcast, courtroom sensationalism has decreased).	7. Risk of 20 second sound bites on the evening news overshadowing legal issues.
8. Make the justice system as transparent and accessible as possible.	8. Concerns regarding protecting juror anonymity.
9. Help the newsroom and the courtroom to work together.	9. Media may select misleading or sensationalist clips that distort the public’s understanding of the case.
10. “The public relies on journalists to be their eyes and ears in the courtroom and to relay what happens in an accurate and comprehensive manner” Michael Bryant, Attorney General, Ontario, <i>Chronicle Journal</i> , Thunder Bay On, 01/16/05.	10. Media are primarily interested in commercial gain as opposed to educating the public and will thus not hesitate to exploit the private tragedies of individuals.



Positive Implications

11. One camera does not impede the dignity and decorum of the courtroom.
12. Electronic reports are more accurate; they do not distort. Television provides more balanced and complete coverage of trials than conventional media reports.
13. Publication bans can protect witnesses, victims and the accused.
14. Tapes of televised trials will be valuable educational tools.
15. Enhances fairness of the trial and the appearance of fairness that is essential to public confidence by exposing participants to public view.
16. Lawyers are more likely to be more prepared and present effectively if they are being televised; they don't want to appear foolish. The results will be more effective advocacy and improvement in the administration of justice.
17. In a democracy, media coverage helps to ensure government accountability and transparency and to ensure compliance with *Charter* rights.

Negative Implications

11. A witness may be more nervous testifying on camera or may refuse to testify.
12. Witness' testimony may be affected by what the witnesses see televised before they are called upon to testify.
13. Witnesses may use the cameras to seek fame for themselves.
14. Jurors may be placed under increased pressure and this might affect their judgment.
15. Television will only select certain trials to broadcast and these will be sensational trials.
16. Broadcast of trials and nightly analysis may give rise to a "feedback loop" and public response which lawyers and judges then take into account (with prejudicial effect).
17. Victims may be reluctant to come forward for fear they will be the centre of a televised trial.
18. Witnesses may be subjected to acts of revenge if they are recognized.
19. There may be safety concerns for lawyers, judges, and jurors.
20. Public scrutiny of segments of the judge's courtroom conduct may lead to negative opinions of the decision, without a contextual view of the whole trial.



Instructions for U-shaped Discussions

The *U-shaped discussion* strategy offers an alternative to the traditional two-sided debate. Instead of an adversarial debating format, this strategy encourages students to see the merits of all sides and to recast binary options as polar positions along a continuum.

To implement this approach with students, arrange the class in a “U-shape.” Students with polar views (either strongly agreeing or strongly disagreeing with the proposition) seat themselves at either tip of the “U”; students with mixed opinions sit at appropriate spots along the rounded part. Begin by asking students at each tip of the “U” to state their position and offer a few reasons only. If there is an imbalance in strong support for one side or the other, locate yourself (temporarily) in a polar position to get the discussion going. Alternate from side to side, as students from all parts of the “U” offer their views. Stress that students are not to try to convince others, but merely to explain why the position they are sitting in is the most defensible one for them. At several stages in the discussion, encourage students to physically move along the spectrum if they have heard reasons that cause them to want to shift their intellectual position on the issue. The goal of the “U-shaped” discussion is to encourage students to endorse positions provisionally and to listen to others in an attempt to figure out the most defensible personal stance along a continuum of possibilities.

In working with younger students it may be difficult to get them to volunteer a position along a continuum. A variation on the “U-shape” is to start with three options on an issue: No, Yes, Maybe. Invite students individually to decide which of the three answers best represents their thinking. Invite the “Maybe” group to stand in line across the front of the class and ask several spokespersons to explain their reasoning. When they are done, ask if any students in the audience have changed their mind and, if so, invite them to join the “Maybe” group. Next, ask those students who decided that “No” is the appropriate answer to form a line along the side of the classroom perpendicular to the “Maybe” group. Ask for a few spokespersons to present their reasons. When they are done, ask if any students have changed their mind and invite them to join one of the groups. Finally, arrange for those students who think “Yes” is an appropriate answer to line up on the other side of the classroom facing the “No” side (the three lines should form a “U” shape). Invite several spokespersons to present the “Yes” perspective. And again, when they are done, ask if any students have changed their mind and invite them to join one of the groups. Encourage students who are in the “Yes” or “No” line to move closer to the “Maybe” line, if they are so inclined. And conversely, invite students in the “Maybe” line to move to one end or the other, if they are attracted to that position.

When all groups have presented their reasons, invite further discussion, encouraging students to change their minds when they hear reasons that cause them to question their current position. There is no need to reach consensus on the issue.



Assessing U-Shaped Discussions

4= Exemplary 3 = Good 2 = Satisfactory 1= Developing R= Remedial

Student Names	Background Knowledge accurate understanding of important issues and events clear understanding of the concepts of challenge and opportunity	Open-Mindedness willingness to consider a variety of views willing to re-think view and position based on new evidence or arguments	Reasoned Judgment uses evidence to make an informed decision applies evidence against criteria to make an informed judgment
	4 3 2 1 R Comment:	4 3 2 1 R Comment:	4 3 2 1 R Comment:
	4 3 2 1 R Comment:	4 3 2 1 R Comment:	4 3 2 1 R Comment:
	4 3 2 1 R Comment:	4 3 2 1 R Comment:	4 3 2 1 R Comment:
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	4 3 2 1 R Comment:	4 3 2 1 R Comment:	4 3 2 1 R Comment:



Techniques of Cartooning



Technique	Example
Caption a sentence or phrase that is the title for the cartoon	
Labels words in the drawing to identify people or objects	
Relative size figures are drawn out of proportion to each other	
Light and dark use of dark shading and white space to create an effect	
Composition the arrangement or location of figures or objects in the cartoon	
Symbolism a sign or object to represent something else	
Caricature a distorted representation of a figure or a recognizable person	



Developing Camera-use Guidelines

Guideline statements	Rationale with regard to “rights” at issue (<i>Charter of Rights and Freedoms/Youth Criminal Justice Act</i> , the Protection of Privacy Legislation, publication bans, privacy interests and safety concerns)
1. Who is authorized to use cameras in the courtroom?	
2. What consent is required of individuals being filmed / photographed?	
3. What are the restrictions regarding types of cases (e.g. child abuse) and individuals (e.g. age)?	
4. What equipment may be used in the courtroom?	



You be the Judge

Use the following chart to apply a set of guidelines to a particular case and provide a rationale for each guideline with reference to specific rights.

Case: Name and Court of Appeal docket number: Heard by single judge or panel of three or five: Appeal is brought by (which party): Grounds for appeal (see the decision granting leave to appeal): Special circumstances:	
Guideline Statements	Judicial decision related to guidelines with a legal rationale related to rights
1.	
2.	
3.	
4.	
5.	
6.	



Evaluation Rubric: Exploring Positive and Negative Implications

Criteria	Remedial	Developing	Good	Exemplary
Identifies positive factors	Identifies none of the important positive factors.	Identifies a few positive factors, but overlooks many important positive considerations.	Identifies a variety of important positive results.	Identifies a significant range of positive results; some results indicate significant research into the issue and include specific examples.
Identifies negative factors	Identifies none of the important negative factors.	Identifies a few negative results, but overlooks many important negative considerations.	Identifies a variety of important negative results.	Identifies a significant range of negative results; some results indicate significant research into the issue and include specific examples.

Comments:



Evaluation Rubric: U-Shaped Discussions

Criteria	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Background Knowledge accurate understanding of important issues and events clear understanding of the concepts of challenge and opportunity	Able to refer to many different issues and events and always with accuracy Always make relevant connections between the issues and events and the degree to which they reflect a challenge or opportunity	Able to refer to several different issues and events and usually with accuracy Usually make relevant connections between the issues and events and the degree to which they reflect a challenge or opportunity	Able to refer to some different issues and events at times with accuracy Sometimes make relevant connections between the issues and events and the degree to which they reflect a challenge or opportunity	Able to refer to a limited number of different issues and events with little accuracy Seldom make relevant connections between the issues and events and/or to the degree to which they reflect a challenge or opportunity
Open-Mindedness willingness to consider a variety of views willing to re-think view and position based on new evidence or arguments	Always carefully consider all viewpoints presented Always willing to reconsider a point of view when evidence or arguments warrant	Usually consider all viewpoints presented Usually willing to reconsider a point of view when evidence or arguments warrant	Occasionally consider a variety of viewpoints presented Sometimes willing to reconsider a point of view when evidence or arguments warrant	Seldom consider other viewpoints Rarely willing to reconsider a point of view even when evidence or arguments warrant
Reasoned Judgment uses evidence to make an informed decision applies evidence against criteria to make an informed judgment	Decisions on issues are always based on available evidence Always consider the available evidence in light of the criteria to arrive at my decision	Decisions on issues are usually based on available evidence Usually consider the available evidence in light of the criteria to arrive at my decision	Decisions on issues are sometimes based on available evidence Sometimes consider the available evidence in light of the criteria to arrive at my decision	Decisions on issues are seldom based on available evidence Seldom consider the available evidence in light of the criteria to arrive at my decision

Comments:



Evaluation Rubric: Editorial Cartoons

Criteria	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Clear expression of opinion	The issue is clearly identified beyond one dimension and the point of view is also clearly communicated	The issue is clearly identified but may only illustrate one dimension of the issue. The point of view is evident.	The issue can be identified but the point of view is not clearly established.	The issue is not evident nor is the point of view.
Effective use of cartoonists' techniques	Cartoon includes more than four techniques used by cartoonists.	Cartoon includes three or four techniques used by cartoonists.	Cartoon includes at least one or two techniques used by cartoonists.	Not able to discern techniques used by cartoonists.

Comments:



Evaluation Rubric: Camera-use Guidelines

Criteria	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Clearly articulated, comprehensive guidelines	Guidelines are provided for all of the categories, and all are clearly articulated so as to offer clear direction to judges	Guidelines are provided for all of the categories, and most are clearly articulated so as to offer clear direction to judges	Guidelines are provided for some of the categories but are not all clearly articulated so as to offer clear direction to judges	Guidelines are not provided for each category and are not clearly written
Understanding of the competing rights at issue	Guidelines indicate insightful and detailed understanding of the competing rights	Rationale indicates a basic understanding of the competing rights	Rationale indicates some understanding of the competing rights	Rationale does not indicate an understanding of the competing rights

Comments:



Evaluation Rubric: Applying Camera-use Guidelines

Criteria	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Appropriately applied guidelines	Guidelines are applied appropriately to the case and indicate a clear understanding of the nature of the case.	Guidelines are applied appropriately to the case and indicate an understanding of the nature of the case.	Guidelines are applied appropriately to the case and indicate some understanding of the nature of the case.	Guidelines are not applied appropriately to the case.
Clear and thoughtful rationale	The rationale for all of the guideline statements are clearly stated and indicate an insightful understanding of the rights issues involved.	The rationale for most of the guideline statements are clearly stated and indicate an understanding of the rights issues involved.	The rationale for some of the guideline statements are clearly stated and indicate some understanding of the rights issues involved.	The rationale for each guideline statement is not clearly stated and does not indicate an understanding of the rights issues involved.

Comments:



Module Four

Encouraging Public Confidence

Ideas for Critical Challenges

The following five activities can be used as extension activities or developed into a full critical challenge. One of these critical challenges has been fully developed on the following pages, with handouts and resource material provided. While resources and handouts are not specifically provided for each of the other activities featured below, many of the resources, weblinks or handouts of the fully developed critical challenge could be useful to the development of other activities.



Media coverage – Balanced or one-sided: How effectively do Canadian media offer balanced coverage of international justice issues?

In this activity, students write a media account to reflect a more balanced reporting of various perspectives on the issue.

The purpose of the challenge is to examine the extent to which media coverage of justice issues represents a balanced reporting of varying perspectives. The provocative case of Canadian Omar Khadr's detention in the American prison at Guantanamo Bay, Cuba, is the vehicle to explore the broader issue of multiple perspectives in the media. The structure and supporting tools in the challenge work equally well with domestic issues dealing with the justice system. To begin, students assess the degree to which selected Canadian media provide balanced reporting. Based on their assessment, students write their own media report to provide a balanced account of varying perspectives on the issue.



Profiling, privacy and policing: Under what conditions should the personal profile of victims and suspects be reported in the news?

In this activity, students consider the efficacy of media reporting on the personal profile (race, nationality, age, affiliations, socio-economic status) of either a victim, witness or a suspect. Students begin by examining selected case studies to determine the circumstances under which additional information is required to advance an investigation. Based on the case studies, students prepare a set of guidelines for use by the media and the justice system to determine when publicizing personal information is an effective and justifiable option.

To complete this task, students read various case studies in which any personal references are



deleted. Based on each case study, students identify what they know from the case, what additional information is required to resolve the case, and what they learned about the warranted use of personal information. When determining warranted use, students weigh the benefits to the police of reporting the personal profile against the risks to the people involved. For example:

- Will reporting on a suspect's personal profile contribute to the stereotyping of a group?
- Will the release of vague information result in inaccurate tips and harm the reputation of innocent people?
- Will the use of the media to aid the investigation result in negative attention on a specific neighbourhood?
- Under what circumstances would this be an acceptable cost?

Provide students with a list of 10-15 additional pieces of information about the investigation and invite them to select the 8-10 most relevant and important pieces of information. This step is intended to assist students in determining if and when personal information should be shared with the public.



Rating the reporting on crime: How effective is the media at accurately reflecting trends in crime?

In this activity, students will: (1) uncover the media's message on crime; and (2) rate the accuracy of media reporting on trends in crime.

In this two-part activity, students consider the role of the media in shaping the public's confidence, beliefs and perceptions about crime and safety in their community by first identifying the trend in crime rates suggested in media reports on crime, and then by considering the accuracy of media reporting in light of statistical evidence.

Set the context for the discussion by asking students if they believe crime is becoming a more or less serious issue in their community and if violent crime is on the rise or decline. Once students have had an opportunity to think by themselves, invite them to share their thoughts with a partner. Then invite students to share their thoughts with the class. As they do so, ask them to explain the basis of their beliefs about crime trends:

- is it from empirical evidence (they have experienced the change)?
- is it from hearing from others how things have changed?
- is it from statistics gathered about crime?
- are their perceptions based on media reports?

It is likely that media reports will figure somewhat prominently in the discussion. If not, ask students how significant the media is at shaping our beliefs about crime trends.

To have students examine how the media influences our beliefs about crime trends, provide students with a number of news articles, television news clips or radio reports on crime from a variety of sources. Invite _____ students to read or listen actively to



the reports with a critical eye/ear and consider: What message the headline sends? What words, body language, voice and facial features are used to persuade the reader or listener? Whether the story focuses on the event or attempts to persuade the reader of a problem?

Invite students to work in groups of six. Provide each group with 3 different articles. Suggest the students pair up in their groups and each pair read and discuss one of the articles before sharing their conclusions. Inform the students that their challenge is to prepare a concise, accurate statement that explains the dominant message about crime prevalent in the media.

The second step is for students to examine current statistics on crime and crime prevention to determine if the dominant message in the media reflects a fair and accurate conclusion or if media reporting on crime is creating false impressions among the public regarding crime trends and public safety. Students may be invited to compare these conclusions with those arrived at in the first part of this challenge.



Media Coverage of Private Matters: Should the media be allowed to report on divorce and custody cases?

In this activity, students will:

- Consider the application of media restrictions and privacy protections in the family law context; and
- Write a letter to the editor regarding the hypothetical proposal for changes to the procedure in divorce and custody proceedings .

Provide each student with the following hypothetical proposal for changes to the procedure for divorce cases. In groups of three or four, invite students to analyze the proposal's impact on the privacy interests of the spouses, any children or other family members and the possible impact that the changes might have on families in the divorce proceeding.

As a class, discuss some of the factors that affect divorce and custody hearings, including:

- Spousal conduct
- History of conflict or assault
- Financial situation of each spouse
- The age of any children
- The public reputation of each spouse

**Hypothetical Proposal:**

Current court procedure requires spouses filing for divorce to fill out multiple forms and to submit completed forms in hard copy to the courthouse. For more information on the procedure, see the publication "A Guide to Procedures in Family Court" available at: <http://www.attorneygeneral.jus.gov.on.ca/english/family/guides/fc/>

A lobby group has proposed changing the legislation affecting divorce and custody cases to make it cheaper and easier to file for divorce. Either spouse would be able to fill out an application online, including the personal information of the couple, as well as any children. Financial details including all assets, bank accounts, annual salary and tax returns would be entered into the online application. Calculation of child support and spousal support could be made automatically, without the cost of a hearing.

Any history of conflict, past assaults, violence, infidelity or other factors leading to the breakdown of the relationship could be added. Once the application is complete, the other spouse would be asked to respond. A clerk at the court would review the documents and propose a resolution. If either spouse is not happy with the resolution, they could choose to file a legal suit and begin full proceedings before the court. In the interest of transparency, anyone named in the application (children, employers, neighbours, etc.) would have access to the application. Members of the press could request a copy of any active application.

Is there a public interest that warrants the disclosure of this information? Should that even figure into whether this information should be disclosed?

Remind students that the court aims to resolve these types of proceedings in a fair and equitable way, taking into account the best interests of the children, the needs and rights of the spouses, and the stability and harmony of the resulting arrangement. Finding a legal resolution to family law disputes requires:

- being fair-minded (weighing the needs of all involved) and
- being open-minded (willing to consider a variety of options and creative alternatives).

Ask students to consider the level of personal information that is appropriate when reporting on family law issues. Discuss the security of the internet and whether students believe that the proposed online process would protect against hacking and internet searching. Consider the different impacts that the proposal would have on a high profile or famous person. Contrast this proposal with the level of access to information in the typical court process. Does the proposed legislation strike the appropriate balance between disclosing private names and details, and providing information and accessibility? Are alternative options available?

Once students have had an opportunity to consider the impact of the new proposal, in light of the variety of factors, ask students to prepare a letter to the editor in favour of, or opposed to, the new proposal. Encourage students to include an effective headline for their letter. An effective headline should be concise, informative and engaging. The letter should be accurate, persuasive and engaging.



Judging: An examination of how judges are portrayed in the media

In this activity, students consider the role of judges and how they are portrayed in the media by examining a variety of media reports that address the role of judges in the judicial process.

To set the context for this challenge ask students to silently write down three words they believe best describe the role of judges in the justice system. Suggest that students set aside the three words and then provide them with a brief case study that describes a situation in which a judge's decision results in a current law being overturned or challenged. Ask the students to read the case study and then review the three words they had set aside – did their 3 words capture the role of the judge in the case study? If not, what additional words or phrases would they need to add? The discussion may focus on whether judges should apply the laws, or interpret the laws, or both.

After a brief discussion on the role students believe judges should play, provide them with a variety of recent media reports that address the issue of the role of judges in the judicial system. Invite students to explore one or more of the articles and to determine if the result was an application of established law, or the development of a new principle or legal rule. Also, invite students to assess whether the media was supportive of the role played by the judge. Invite students to share their conclusions so that they have a large sampling of media reporting on the role of judges. Suggest students attempt to detect any trends in the way the media reports on the role of judges as the conclusions are shared: how does the media portray the role of judges?

To conclude this activity, invite students to create an editorial cartoon or to write an editorial that explains how the media portrays the role of judge in the judicial system and that expresses a supportive or critical response to the nature of media coverage as it concerns judges.



Critical Challenge: Media coverage – Balanced or one-sided?

Overview

How effectively do Canadian media offer balanced coverage of international justice issues? Re-write a media account to reflect balanced reporting of various perspectives on the issue.

The purpose of the challenge is to examine the extent to which media coverage of justice issues represents a balanced reporting of varying perspectives. The provocative case of Canadian Omar Khadr's detention in the American prison at Guantanamo Bay, Cuba is the vehicle to explore the broader issue of multiple perspectives in the media. The structure and supporting tools in the challenge work equally well with domestic issues dealing with the justice system. To begin, students assess the degree to which selected Canadian media provide balanced reporting. Based on their assessment, students rewrite the media report to provide a balanced account of varying perspectives on the issue.

Broad Understanding

Encouraging public confidence in the reporting of international justice issues is complex as there are multiple perspectives to be considered and a variety of forces that influence media reporting decisions.

Preparation

This activity can be completed in approximately 485 mins or about 6.5 periods including time for instruction, research and student work on tasks.

Background knowledge

- understand the factors that shape media reporting of international justice issues
- know what makes a justice issue one of international concern
- understand the various individuals and groups involved in particular justice issues
- introductory knowledge of international law and cooperation between states
- introductory knowledge of Canada's response to international human rights and war crimes issues

Critical thinking vocabulary

- points of view
- perspective
- one-sided
- bias

Thinking strategies



- vocabulary decoding strategies
- brainstorming
- 5W's
- identification of bias

Habits of mind

- open-mindedness
- full-mindedness
- fair-mindedness

Criteria for judgment

- Balanced reporting:
 - open-minded (willing to consider range of views)
 - full-minded (considers the interests of all the key stakeholders)
 - fair-minded (gives careful consideration to all the evidence)

Re-written account

- credible
- accurate
- comprehensive

Learning activity

Step 1



Begin an investigation into the media's handling of international justice issues by introducing the case of Canadian Omar Khadr's detention in the American prison at Guantanamo Bay, Cuba. Clarify that the focus of the activity is not the particulars of this case but the broader issue of balanced media coverage.

Ask students to consider the concept of justice in the international context. Encourage students to use a variety of vocabulary building strategies to assist them in defining this term. For example, they may wish to use the strategies in *Vocabulary Decoding Strategies* (pg. 93) to develop a definition for the term "international law" or "international human rights". Once students arrive at a working definition, invite them to brainstorm a list of issues falling within this concept. Encourage students to list the characteristics that identify issues of international justice (e.g. involves two or more nations, is centrally concerned with the administration of justice). Ask students to extend this list by reviewing a newspaper, newsmagazine such as *Maclean's*, or a news broadcast.

Step 2



To build background knowledge, invite students to prepare a fact sheet on the Khadr case. Provide students with a copy of *Overview of the Omar Ahmed Khadr Case* (pg. 94). Their challenge is to



sort out the factual information from the author's interpretation of the events. If desired, provide students with a copy of *Summary of the Facts* (pg. 95) to record the key ideas using the 5W questions (who, what, where, when, why) as a guide. Their account should meet the following criteria:

- concise: fewer than 250 to 300 words
- accurate: contains only factual statements—no speculations or opinions
- relevant: contains only the important information needed to understand the issue
- comprehensive: does not omit any important facts.

Step 3



Hand out copies of *Summary of Canada's International Obligations* (pgs. 96-97). Have students assess the article about the Khadr case to determine if the article provides information about Canada's obligations under international law. As students read more articles on this issue, ask them to identify which of those articles best explain the legal aspects of the situation to the reader. Do the selected media accounts accurately describe the legal issues or contribute to the reader's understanding? Should reporters be obliged to provide background or educational information? In what ways do these articles contribute to the reader's understanding of Canada's International Obligations and in what ways do the articles distort or obscure the legal issues?

Step 4



Invite students to investigate the factors that influence the media's reporting on international law issues and to propose plausible explanations why the media reports on these issues in the way that it does. To assist in examining this question, provide students, working in groups of four, with a series of eight quotes placed on cards (see *Quotations on Media Bias* (pg. 98). Direct students to shuffle the cards and place them in the centre of the table. In a round-robin fashion, moving clockwise around the group, ask each student to pick up the card at the top of the stack, read it aloud to the rest of the group, and invite each member of the group to identify the key message in the quote suggesting evidence from the quote to support it. The student holding the card listens actively to others and records the group's ideas on the backside of the card. This process continues until each student has read and recorded key ideas on two of the quotation cards. Direct students to flip the stack of cards over so that they may view the back of the cards and sort the ideas on the cards according to common messages about how media reporting may be subjected to external, biasing factors. Once the sorting is complete, ask students to share their list of possible factors with the whole class.

Provide students with two fictional articles based on media coverage of the Khadr case—one from *The Muslim Monthly* [Article: *The Muslim Monthly* (pg. 99)] and the other from the *Synchronized Press* [(Article: *Synchronized Press* (pg. 100)]. Direct students to consider the following questions:

- Who are the key individuals or groups involved in this issue according to the reporting?
- According to the reporting, how are they involved and what are their perspectives on the issue?
- Are there any other groups involved in the issue that have not had their perspective included in the reporting?



- What might be their perspective on the issue?
- What is the primary purpose of the reporter in reporting the way s/he does? In other words, what effect on the audience is the reporter trying to achieve?

Ask students to identify the factors that appear to have played a role in shaping how the event is reported. Encourage students to add other factors that may be specific to their particular issues. Once students have read the articles, ask them to assess the degree to which a particular perspective is apparent in either or both of the articles.

Based on their assessments of the reporting by the two sources, ask students to write a supported opinion paragraph briefly outlining how one of the media reports handled the issue with evidence to support why they believed the media reported on the issue the way they did (i.e. which factors appear to have played a role in influencing the reporting). Ask students to orally present this information to the class.

Step 5



Direct students' attention to the coverage of the Khadr case in the Canadian media. To frame the student assessment of the media reports, explain that the media often purports to adopt an independent stance in search of truth. Often public confidence in the media is dependent on the degree to which the public believes the media has presented information in a balanced manner.

To illustrate this with an historic example, explain that prior to the French Revolution, society was traditionally divided into the Three Estates (The Clergy, The Aristocracy, and everyone else). At the outset of the Revolution, the press declared itself "The Fourth Estate" indicating that it was independent of any segment of society and served to report the truth. In the 1970's, when the CBC decided to launch an investigative news show that would explore issues important to Canadians, they opted for the name The Fifth Estate.

In order to assist students in reflecting on the issue of public confidence and balance in the media, provide the following quote that addresses an objective that has generally been accepted by the media, the justice system and the general public:

"It is historically accepted that the media assumes the role of a public representative, informant and educator on the socio-political issues of the day. . . . People working within the media generally agree that they are entrusted with a broad and powerful objective: to comprehensively gather and disseminate news and opinion, and to actively engage its audience, while legitimately seeking to shape, filter, and question issues in the public arena."

—Diana Lowe, Naomi Schmold, Mary Stratton, *Beyond the Headlines*, Canadian Forum on Civil Justice

To further clarify the concept of *perspective*, explain that every time we look at something, it must always be from a point of view: everything we view, we must do so from somewhere. The position—either physical or intellectual—from which we view things will shape what we see.



Illustrate this by standing in different spots in the classroom and indicate how viewing the classroom from one viewpoint leads you to see different things and, perhaps, to see things differently. For example, when viewed from the front of the classroom it may look as though everyone is paying attention; when viewed from the back of the classroom, you may see the passing of notes and change your conclusion about the students. Ask students to think of a sports event (e.g. scoring a goal, hitting a home run, getting a penalty) and to describe how that event will be viewed depending on whether students are fans of that team or of the opposing team, or whether they do not care which team wins. Illustrate how you can often tell whether or not someone is a fan from the words used to describe the event (e.g. calling a goal “great” as opposed to “disastrous”, or “well deserved” versus “lucky”). You may want to ask students to offer the point of view of someone who is not a fan of either team—this perspective is likely to be more “balanced”, recognizing the talents and weaknesses of both teams.

Invite the class to brainstorm a list of the key players in the Khadr case. Remind them to think broadly when identifying these individuals or groups beyond Khadr and his family. Once the class has brainstormed many possible stakeholders, direct students to work in small groups to identify the five most significant different perspectives in this case. Explain that different individuals or groups may share similar perspectives—for example, individual members of the Khadr family may see the issue from a relatively similar point of view (although we should not presume that this is the case). Ask students to identify five key perspectives on this issue and to summarize the main points of each of these perspectives. Information about the perspectives of groups such as the Canadian government, the United States government, the United Nations, Al Qaeda, the Muslim community, civil liberty organizations and Canadian citizens can be gathered through independent student research or brief teacher-led discussions.

Step 6



Using the context and quote suggested above, discuss the criteria for assessing whether media coverage represents a balanced reporting of the main perspectives on a justice issue. Students should identify criterion such as providing a variety of differing opinions (open minded), being full-minded (comprehensive in its reporting), and presenting each opinion in a fair-minded way.

Invite students, in pairs (or larger groups, if desired), to examine one media report on the Khadr case (articles from *The Gazette*, and *The Hamilton Spectator* (pgs. 102-105)). Inform students that while reading their assigned article they are to look for the five different perspectives identified above and the degree to which the coverage is open, full and fair to these perspectives. In the left-hand column of *Looking for Balanced Reporting of Perspectives* (pg. 101), ask students to record the previously identified key perspectives and to summarize some of the main points of each of these perspectives. Direct students to look for evidence that suggests which of these perspectives are represented in the assigned news report. Suggest that students read the article looking for the following clues:

- explicit references to a particular or to several perspectives (e.g. a UN representative was concerned, while locals in Afghanistan were heartened by the turn of events);
- loaded language or controversial interpretations that might suggest a preference for a particular perspective over others (e.g. Khadr is clearly a terrorist, not a freedom fighter);



- omission of key facts that might suggest a preference for a particular perspective (e.g. Khadr was wounded three times during an American attack prior to killing a soldier).

Invite students to record any evidence suggesting that each of the five perspectives have been included in the report in the middle column of the chart (*Looking for Balanced Reporting of Perspectives* (pg. 101)) and to record any evidence suggesting that each of the perspectives have been excluded in the right-hand column. Once students have read and discussed their assigned article, invite each pair to reach consensus on how successful the report is at representing a balanced coverage of the issue. Invite students to place the media report on a continuum from blatantly one-sided to consistently and thoroughly balanced.

Step 7



The Khadr situation touches on issues that were also considered by the Arar Commission. The Commission was appointed by the Canadian government to look into the circumstances of the detention of Maher Arar in Syria (refer to http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/index.htm for the details, testimony and findings of the Arar Commission). Review *Summary of Recommendations from the Arar Inquiry* (pg. 105). Do the recommendations made by the Arar Commission relate to the Khadr situation? Have students identify the specific recommendations made by the Arar Commission that relate to Canada's response to the Khadr situation. Ask students to articulate the reason for the Recommendations they select.

Consider the people and groups who made presentations to the Arar Commission (refer to the website for a complete list http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/index.htm). Is the same range of perspectives being heard in the media coverage of the Khadr's trial?

Consider the different legal responses to breaches of international law and of domestic (Canadian) law, including criminal trials, civil trials, public inquiries, Royal Commissions, diplomatic measures, International hearings, trade sanctions, etc. Ask students to consider the effectiveness of different avenues for addressing international law issues.

Step 8



As a final activity, invite students to re-create one of the media reports studied by the groups. The re-creation could take the form of a written news report, an oral news broadcast, or a political cartoon. Encourage students to write a more balanced account, considering the various groups and their perspectives. (If students have concluded that the reports they read were balanced, suggest they develop a report from a particular perspective).

You may want to explain that the attempt to place oneself in the shoes of someone else is referred to as *empathy*. Trying to empathize—to see things from the perspective of someone else—is difficult. Ask students to recall the introduction of point of view in an earlier session. One of the examples suggested was to imagine a sporting event seen from the perspective of the home team



versus the opposing team. People who are sports fans have an easier time imagining how the other side feels when a goal is scored against their team, since they have had very similar feelings. On the other hand, people who are not sports fans often cannot understand how anyone could get so excited (happy or upset) by a goal being scored. If we have not experienced the event ourselves, we must try to imagine what it is like by drawing from other experiences that we might have had. For example, someone who is not a sports fan might be helped in understanding how it feels to see a home team lose an important game by connecting it to feelings the person had when, say, a long awaited dream vacation or special gift was suddenly withdrawn. Invite students to suggest events they may have personally experienced that may be similar (in some respects) to those with whom they do not share common experiences or backgrounds.

To assist students in re-interpreting the news report from a different perspective, organize the class into pairs (or threes) and distribute one copy of *Balancing the News* (pg. 107) to each group. Review the inferences developed earlier about the reports with the class. Ask students to record these answers under the “initial heading” in each box and to suggest a way to offer a more balanced reporting on three levels:

- adding explicit references to various perspectives;
- correcting controversial interpretations or loaded language that favoured one side over others;
- adding facts that have been omitted that favoured one side over others.

Each group is to recreate the report so that it is a more balanced reporting of different perspectives and to provide reasons for their proposed changes. When all groups have completed the chart, invite a few students to share their interpretations with the rest of the class. Use this opportunity to help students see that balanced coverage should be consistent with the facts, inclusive of varying perspectives, and empathic (i.e. sensitively represents how key others might view this issue). Students are to explain and justify the re-interpretation of their assigned news report using the completed *Balancing the News* chart. They should then prepare a draft outline of their news report, a sketch for their political cartoon, or a storyboard for their news broadcast. Invite students to share their drafts with their peers for feedback using the *Evaluation Rubric: Balanced News Report* (pg. 108).

As a closing activity, encourage several students to share their balanced reports of the issue. Invite other students to comment on the extent to which these student-developed reports are balanced. Discuss as a class the problems that arise in terms of public confidence in the system when news reporting is not balanced.

Assessment



Assess students' re-created news report using *Evaluation Rubric: Balanced News Report* (pg. 108).

Other relevant evaluation rubrics for assessment purposes:

Evaluation Rubric: Gathering Information (pg. 109).

(for Step 3) *Evaluation Rubric: Supporting Opinion Paragraph* (pg. 110).

(for Step 5) *Evaluation Rubric: Assessing Balanced Media Coverage* (pg. 111).



Vocabulary decoding strategies

Legal decisions, and media stories on justice issues often use terms that are unfamiliar to most people. Use the following clues to find the meaning of a word, term or concept that is unfamiliar to you:

- Look at the parts of the word.
- Recognize parts you already know and think of their meaning.
- Think about a similar word that might have a similar or related meaning.
- Re-read the surrounding sentences to look for clues to meaning.
- Look at any visual supports such as diagrams, graphs and pictures in the selection to find clues to meaning.
- Try to use another word you are familiar with and that you believe may be a synonym for the unfamiliar word. Test your synonym in the sentence to see if it makes sense.
- Look up the word in a dictionary or look for synonyms or antonyms in a thesaurus to help you understand its meaning.

If the dictionary gives more than one meaning, choose one and test it in the sentence to see if it makes sense until you find the one that works best in the context of the sentence.

Once you have determined the meaning, create a mental picture of the word to help you remember it.

Write the word and its meaning in an ongoing list in case you come across it again. Try to put it into your own words so that next time you need to read or use it, it will make sense to you.

Adapted from *Everyday Learning Strategies*, Peel District School Board



Overview of the Omar Ahmed Khadr case

Omar Ahmed Khadr was born in Toronto, Ontario on September 19, 1986 and grew up in Canada, Pakistan and Afghanistan. He is currently detained at Guantanamo Bay and faces war crimes charges including murder, attempted murder, and conspiracy in relation to a 2002 firefight in Afghanistan. Omar Khadr belongs to a family that newspapers have called Canada's first "family of terrorism". American officials allege that his father, Ahmed Said Khadr, was a senior deputy to Osama bin Laden before he was killed in a shootout with Pakistani forces in 2003. Reports also claim that Zaynab Khadr and Abdullah Khadr, Omar's older sister and brother, were involved in running an al-Qaeda training camp in Afghanistan in the 1990s.¹

The Khadr family was living in Afghanistan when NATO forces invaded in October 2001. Soon afterwards, Omar Khadr's father allegedly handed him over to translate for a suspected Al-Qaeda member. On July 27, 2002, Omar Khadr was captured and seriously injured in a firefight against American troops. He is accused of throwing a grenade that killed Sgt. First Class Chris Speer, 28, in the course of that firefight.

Omar Khadr arrived at Guantanamo Bay detention camp in October 2002. He is currently the youngest detainee at Guantanamo Bay and faces charges stemming from acts that occurred when he was 15 years old. Numerous legal experts say he is the first child fighter in decades to face war crimes charges. The legal community is deeply divided on the issue of whether or not Omar Khadr should be prosecuted.

Defence lawyers argue that the prosecution of Omar Khadr violates international law because the charges against him date from events that occurred when he was 15 or even younger. They contend that instead of charging children, war crimes prosecutors should focus on adults who pressure children into service. Khadr's lawyers also allege that their client has been subject to physical and psychological torture in violation of international principles that children be granted special protections in detention.

Military prosecutors, on the other hand, argue that international law does not prohibit prosecution of an individual under 18 for war crimes. Omar Khadr, prosecutors say, is an example of a young man who should be held to adult standards. They claim Omar Khadr made a choice to fight, emphasizing his family's deeply rooted connections with al-Qaeda. While prosecutors admit that certain treaties require special treatment for children caught in warfare, they point out that several of those treaties have not been ratified by the US.²

Although Omar Khadr's case has not yet proceeded to trial, several pre-trial issues have emerged. On June 4, 2007 a judge at Guantanamo ruled that his case could not proceed because a military tribunal had classified him as an "enemy combatant" instead of an "unlawful enemy combatant." This decision was overruled on September 24 when the Court of Military Commission Review found that judges in military commissions could determine whether terrorism suspects are "unlawful enemy combatants" and therefore subject to trial.

¹ Abdullah Khadr denies these allegations.

² William Glaberson. "A legal debate in Guantanamo on boy fighters: The case of Omar Ahmed Khadr", International Herald Tribune, 2007-06-03; "Indepth: The Khadr family", CBC News Online, 2006-10-30; Michelle Shephard. "Khadr goes on trial", Toronto Star, 2007-04-29; Josh White. "Court Reverses Ruling on Detainees", Washington Post, 2007-09-25.



Summary of the facts

Facts	
Who?	
What?	
When?	
Where?	
Why?	



Excerpts of Canada's International Obligations relating to children and armed conflict

Canada is a party to many international human rights instruments, meaning that Canada has agreed to abide by the provisions in these agreements, and to respect the rights that are contained in the treaties (international agreements).

By signing the *Convention on the Rights of the Child* Canada has agreed to respect the following children's rights:

- Article 2 - Freedom from discrimination: States have an obligation to protect children (defined as a person under 18 years of age) from discrimination and to take positive action to promote and advance their rights.*
- Article 6 - The State has an obligation to ensure a child's survival and development.*
- Articles 12 & 13 - Free expression: Children have the right to express their opinions freely and to have that opinion taken into account in any matter or procedure affecting them.*
- Article 19 - Freedom from maltreatment: The State agrees to protect children from all forms of maltreatment by parents or others responsible for the care of the child.*
- Article 37 (c) (d) Legal rights: A child who is detained/imprisoned has a right to have legal and other assistance, including contact with their family. Any child detained or imprisoned must be separated from adults (unless it is considered in the child's best interest not to do so). A child in conflict with the law also has the right to be treated in a way that promotes the child's sense of dignity and worth.*
- Article 37 (a)- No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest, or deprivation of liberty. Both capital punishment (the death penalty) and life imprisonment without the possibility of release are not permitted for any offenses committed by children.*
- Article 38 - Child soldiers: States agree to do all they can to ensure that children under 15 years old do not participate in armed conflict or war. No child below 15 shall be recruited into the armed forces.*

Canada is a party to the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts* which includes the following principles:

- Articles 1 & 2 - The State agrees that it will try to ensure that any members of its armed forces under 18 don't take direct part in hostilities, and that it will not draft or forcibly recruit children under 18 into the armed forces.*
- Article 4 - The State will take all measures possible to prevent the recruitment of children under 18 into non-state armed groups.*
- Articles 6 & 7 - Support for child soldiers: The State agrees to ensure that child victims of armed conflicts, torture, maltreatment, or exploitation receive treatment for their recovery and reintegration back into the community.*



The *Convention on the Rights of the Child* and the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts* are available on the website of the UN Office of the High Commissioner for Human Rights:

<http://www.unhchr.ch/html/menu3/b/k2crc.htm> and <http://www.unhchr.ch/html/menu2/6/protocolchild.htm>

Canada is a party to the *Geneva Conventions*, a set of rules that countries agree to follow in times of war and international conflict. Canada had agreed to the following obligations concerning armed conflict:

Article 13 (Third Geneva Convention) - Prisoners of war must be treated humanely and cannot be subject to torture or medical or scientific experiments. Prisoners of war must be protected against acts of violence or intimidation and against insults and public curiosity.

Articles 82, 84 & 105 (Third Geneva Convention) - Prisoners of war are subject to the laws of the power detaining them and can be tried or disciplined by their captors. Prisoners of war must be tried in an independent and impartial court or tribunal and must be provided with an advocate and if necessary with an interpreter.

Article 118 (Third Geneva Convention) - Prisoners of war must be released without delay at the end of the conflict.

Article 77 (Protocol I Additional to the Geneva Conventions) - Children under 15 may not be recruited into the armed forces or allowed to take part in armed conflict. Children must be given special respect, must be protected from assault, and must be provided with the care and aid that they need. Children under 15 who take direct part in hostilities and are captured continue to benefit from this special protection provided to children by the Geneva Conventions.

The *Geneva Conventions* are available on the website of the International Committee of the Red Cross: <www.icrc.org>

Canada signed the *International Covenant on Civil and Political Rights (CCPR)* which requires a fair trial.

Article 14 - All persons charged with a criminal offence have the right to be presumed innocent until proved guilty and to have a trial that meets basic requirements of fair process. When a young person is tried, the procedure should take into account their age and the desirability of promoting their rehabilitation.

The *International Covenant on Civil and Political Rights* is available online on the website of the UN High Commissioner for Human Rights: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm



Quotations on media bias

"...companies who own and control the media want to keep us in our private worlds, cut off from other peoples and from too much knowledge about the world. They prefer us tranquilized, pacified, entertained."

Danny Schechter, Globalization Limits Media Change

"With few exceptions...programming is carefully noncontroversial, light, and nonpolitical in order to create a 'buying mood', ...If an advertiser is large enough to make the initial payment for the high costing commercials, each household is reached at a relatively low cost."

Ben H. Bagdikian, The Media Monopoly, Sixth Edition.

"Corporations have multimillion-dollar budgets to dissect and attack news reports they dislike. But with each passing year they have yet another power. They are not only hostile to independent journalists. They are their employers."

Ben H. Bagdikian, The Media Monopoly, Sixth Edition

"We live in a dirty and dangerous world. There are some things the general public does not need to know about and shouldn't. I believe democracy flourishes when the government can take legitimate steps to keep its secrets..."

David McGowan, Derailing Democracy

"When you critique the media...they get very angry. They say, quite correctly, 'nobody tells me what to write. I write anything I like...' Which is completely true, but the point is that they wouldn't be there unless they had already demonstrated that nobody has to tell them what to write because they are going to say the right thing."

Noam Chomsky, Studying the Media: What Makes Mainstream Media Mainstream.

"Chomsky and Herman point out that because sources such as the government and businesses are often well known, they are deemed reputable and therefore not questioned much."

Anup Shah, Mainstream Media

"The media is in the midst of transformation which the government is keen to foster. They have discovered that ...media can be controlled, manipulated and used to an unprecedented degree."

Paul Harris, The mole, the US media and a White House coup.

"Journalists there (North Korea) simply relay government propaganda. Anyone out of step is harshly dealt with...Harassment, psychological pressure, intimidation and round-the-clock surveillance are routine."

Reporters Without Borders for Free Press, 2005



The Muslim Monthly News

The Muslim Monthly Newspaper, June 9, 2007

In a decision that is sure to jolt America's current system of military rule, United States military judge Patrick Whitehead dismissed charges against both Canadian Omar Khadr and Salim Ahmed Hamdan, of Yemen, on Friday.

This verdict puts a wrench into the United States' newest system of trying terror suspects long held at the Guantanamo Bay naval base in Cuba. Judges who tried the two men say they were arraigned due to the government's failing to establish jurisdiction.

Khadr is alleged to have killed a U.S. soldier in Afghanistan via a grenade that he purportedly threw.

Khadr's family in Toronto, Canada are thrilled with the verdict although the ruling by Col. Patrick Whitehead does not mean that Khadr, who was captured when he was 14 years old, will be able to join his family back in Canada any time soon.

Legally, Khadr can be held as an enemy soldier as long as the war on terror continues.

The military judge ruling on Hamdan, Navy Captain Kenneth Black, said that the detainee's case is "out of the realm of this committee." This, based on legislation passed by Congress and signed by President George Bush last year.

Hamdan is being held on charges that he worked as a security guard for Osama bin Laden's regime.

This ruling by the two military judges is a significant setback for U.S. President George W. Bush and his administration. Simultaneously, it renews the faith of defence lawyers and human rights activists who have long argued that all detainees at Guantanamo Bay should be tried in regular American courts.

Whitehead, the presiding judge, said that the military committees did not have jurisdiction over Khadr because he was not declared an "unauthorized enemy soldier" initially – only an "enemy soldier." The latter has the right to fight in the eyes of the current American justice system.

"The charges are dismissed without prejudice," said Whitehead. "A person could be waiting for their trial for weeks without being given the facts as to whether a court has legitimate jurisdiction over their case."

The newest Military Committee Act, written to establish military trials after the Supreme Court discarded the previous system, is riddled with faults say many within the justice system.

A key issue in the arraignments was that of terminology: the detainees were not properly labelled as "unauthorized enemy soldiers" and only those with such a label may be tried within the current military

committee system.

Khadr and Hamdan had not been identified in this manner – they were labelled as "enemy soldiers" only and lack the critical "unauthorized" description.

The chief of military defence attorneys at Guantanamo Bay naval base, Marine Colonel Dean Sutton, said that the dismissal of the case against Khadr could mean that "military personnel, detained soldiers and attorneys can no longer function within our current system."

Jessica DePaul at Global Rights Now said, "If the American government is at all clever, this will be the end of the military committees."

The Supreme Court ruled in favour of Hamdan last July when it discarded the previous military tribunal system, put together in the wake of the September 11, 2001 attacks.

Congress reacted by setting up new guidelines for war crime trials which Bush signed into law.

Hamdan was charged with conspiracy to commit violence against civilians and civilian targets and material support for terrorism.



Charges thrown out for two detainees at Guantanamo Bay Naval Base

June 4, 2007

GUANTANAMO BAY NAVAL BASE, Cuba (SP) -- Military judges dropped charges Friday against two Guantanamo detainees. One man, Salim Ahmed Hamdan, of Yemen, chauffeured Osama bin Laden and the other, Canadian Omar Khadr, is accused of throwing a grenade that allegedly killed an American soldier in Afghanistan.

In closely scheduled arraignments, the American military's cases against the two alleged al Qaeda workers dissolved because, the two judges said, the government fell short in establishing jurisdiction.

Hamdan and Khadr were the only two out of about 380 prisoners at Guantanamo charged with crimes. The rulings will make attempts by the U.S. government to try others linked to al Qaeda and the Taliban difficult.

Navy Capt. Kenneth Black, Hamdan's military judge, said the detainee "does not fit within the confines of this committee" referring to new legislation passed by Congress and signed by President Bush last year. Hamdan is accused of working

as a bodyguard and chauffeur for Osama bin Laden.

The new Military Committee Act is in disarray contend defense attorneys working with the new system.

The Military Committee Act states that only persons labelled as "unauthorized enemy soldiers" may be tried under the new act. But Khadr and Hamdan had been identified only as "enemy soldiers" – the critical "unauthorized" terminology was missing.

Omar Khadr was 15 years old when he was captured in Afghanistan and accused of killing a U.S. soldier in 2002 with a grenade. Khadr was wounded himself in the firefight. He is now 20.

Khadr appeared passive when Army Col. Patrick Whitehead, his judge, threw out the case. Wearing an orange prison uniform and a beard, Khadr focused on his own image which was displayed on a computer screen streaming live TV footage of the court case.

The head of military defense attorneys at Guantanamo Bay, Marine Col. Dean Sutton, said that the dismissal of the case against Khadr could mean the

termination of the new war-crimes trial system set up in the wake of the September 11, 2001 attacks. The Military Committee System was set up by Congress after its predecessor was thrown out by the Supreme Court.

But Khadr may have to face a retrial say some legal experts. The Defense Department may be able to run a new trial by holding "combat status overview" sessions for each detainee prior to their court date.

Sutton said the dismissals have a "very great" impact because not one of the detainees in the remote military base in southeast Cuba has been found to be an "unauthorized" enemy soldier.

"It is more than semantics, it's the latest in a series of examples that this new system is not working," Sutton told reporters. "The committee system does not mesh with the ethics of Americans."

The Military Committee Act, signed by President Bush in 2006, states that only those persons classified as "unauthorized" enemy soldiers can face war crimes trials in the U.S. Whitehead commented.



Looking for balanced reporting of perspectives

Main perspectives on the issue	Indicators of inclusion of this perspective	Indicators of exclusion of this perspective



Article #1

The Gazette

Omar Khadr - child soldier; Ottawa turns blind eye to plight of a Canadian kid in a U.S. prison, who was close to becoming the first child ever tried for war crimes

Montreal Gazette

Wednesday, June 27, 2007, Page: A23

Byline: JANET BAGNALL

Source: The Gazette

Because they're small and easy to push around, children make good soldiers, if by good one means cheap and expendable. As many as 200,000 to 300,000 minors around the world are forced to sweep for landmines, carry supplies or blow themselves up in suicide missions, according to Human Rights Watch.

In Afghanistan, a bewildered 6-year-old boy recently was found by coalition forces with an explosives vest draped on him. The child told soldiers he didn't know why he had to wear the vest, the Guardian newspaper reported.

An important step toward ending the immoral practice of conscripting children into armed conflict was taken last week with the conviction, the first by an international court, of three military leaders from Sierra Leone. Among the 11 counts of war crimes of which the men were found guilty was the recruitment of children to fight in an armed conflict.

The ruling was hailed as a milestone. "This verdict is a very concrete demonstration of criminal prohibition of the conscription of child soldiers," said Jo Becker, children's rights advocacy director at Human Rights Watch, in an interview with the Institute for War and Peace Reporting. "These prosecutions are a major step toward bringing justice to hundreds of thousands of children worldwide." With the possible exception of Omar Khadr.

Canadians like to think they are on the side of the angels. We oppose the use of child soldiers. We sign onto one international law after another, including ratifying in 2000 the United Nations Optional Protocol to the Convention on the Rights of the Child. The protocol upholds the right of ex-child soldiers to be treated humanely and as minors, not to be imprisoned or otherwise punished for involuntary participation in a conflict.

Yet when it comes to the one Canadian citizen to whom all of this legal protection and presumed sympathy might apply, we leave him to rot for five years in an illegal prison - on the expedient grounds that it is run by a major ally, the United States, and besides, we don't like the boy's family.

Neither of these objections qualifies as principled. Omar Khadr has been held in Guantanamo prison since 2002,

the year he was accused at age 15 of having thrown a grenade in a battle between Taliban and U.S. forces in Afghanistan. An American medic died as a result. Omar had been sent to Afghanistan by his father, Ahmed Said Khadr, an Egyptian-born Canadian who worked as a senior deputy to Osama bin Laden. The older Khadr was killed in 2003 by Pakistani forces.

Kept incommunicado in Guantanamo, Omar Khadr has not told his side of the story. His brother, Abdurahman Khadr, however, talked about his and his brother's upbringing in a CBC interview. "The first time I went to training I was 11 1/2 years old," Abdurahman told Terence McKenna. "My brother was 12. ... We took ... the assault rifles course.

"Two times," Abdurahman continued, "... my father himself tried to get me to become a suicide bomber. He sat me down with the Al-Qa'ida scholar, he sat me down with the person to train people to become suicide bombers. ... He's like, you know, you'd be our pride in this family, you'd be our pride if you do this." Had his U.S. military trial gone ahead, Omar Khadr would have been the first child tried for war crimes in the world, according to Brookings Institution scholar Peter Singer, quoted in a news report.

Even in Sierra Leone, the most notorious country in the world for its use of child soldiers, children do not face war-crimes charges; they appear before a truth-and-reconciliation commission.

In Canada, groups ranging from civil-liberties advocates to opposition politicians have lobbied to have Omar Khadr returned to Canada. This week, they were joined by his U.S. military legal defence team. In a published report, U.S. Lieutenant-Commander William Kuebler said, Canadian officials "have given the United States the benefit of the doubt long enough ... the Canadian government has been noteworthy for its silence." And so has the Canadian public. Either we believe in rule of law, or we don't. If we do, we should demand Omar Khadr be brought home, to Canada



News article #2

“Canada has failed Omar Khadr,”

by Merita Ilo and Abdul Latheef, *The Hamilton Spectator*. The Canadian Press, June 12, 2007

Canada may be finally waking up to the fact that it should protect the human rights of one of its citizens held in a U.S. military prison in Cuba on terror-related charges, even though it condemns the crimes he is alleged to have committed, a human rights organization says.

The claim follows the recent dismissal by U.S. military judges of charges against Omar Khadr, the youngest member of a Canadian family linked to al-Qaeda, who is accused of killing a U.S. soldier in Afghanistan in 2002, when he was 15 years old.

The dismissal prompted editorials critical of the U.S. government's handling of his case and brought out other public comment that possibly heralds a shift in opinion on his treatment.

John Tackaberry, a spokesperson for Amnesty International Canada, said the Khadr family's connections to al-Qaeda chief Osama bin Laden have made some people reluctant to speak out on principles at stake in his treatment because they did not want to be associated with the family.

"What the politicians have had difficulty doing is differentiating between the rights and responsibilities of themselves in terms of protecting human rights and looking at the mechanisms that are being used -- and the individual who is involved."

The human rights group thinks "it's not innocence or guilt, but the issue is that everyone deserves to be treated in a way that respects the highest standards of human rights protection," including Khadr, Tackaberry said.

"The fact that they are beginning to speak out and that there is an editorial recognition

and a beginning of a change of opinion is a positive sign."

But experts caution that dealing with Khadr and other detainees in Guantanamo Bay poses problems not contemplated in the past.

John Thompson of the Mackenzie Institute, a think-tank specializing on security and terrorism issues, said al-Qaeda has exposed "a hole" in international law, making it difficult to try terror suspects using the existing international conventions.

"An international terrorist organization was unheard of when the Geneva Convention was being written up and that's a central problem," Thompson said.

According to article four of the Third Geneva Convention, prisoners of war are members of an armed forces that belong to a party in the conflict, have fixed distinctive signs, carry arms openly, conduct their operations in accordance with the laws and customs of war and profess allegiance to a government or an authority not recognized by the detaining power.

But in the case of al-Qaeda, "Who do you actually release the prisoner to? Do you hold them until the war with al-Qaeda is over? How do you release somebody and guarantee that they won't go fight them again?" asked Thompson.

Thompson suggested the only trial Khadr could face in Canada would be that on high treason charges, and "that has not been tested here since 1946."

This is why the U.S. administration, soon after the 9/11 terrorist attacks, came up with the term "enemy combatants" to distinguish terror suspects arrested in Afghanistan and other countries from

regular soldiers who, when captured, would become prisoners of war entitled to protection under the Geneva Convention.

On Oct. 17, 2006, U.S. President George W. Bush signed the Military Commissions Act law. The act, among other things, established a system of military commissions for trials of non-U.S. citizen individuals who have been determined to be "unlawful enemy combatants."

Military judges ruled last week that the Pentagon could not prosecute Khadr and another detainee because they had not first been identified as "unlawful" enemy combatants.

Khadr previously had been identified by military panels only as enemy combatant, lacking the critical "unlawful" designation.

The Pentagon called the issue a slight difference in terminology that should be settled quickly and is appealing the ruling.

However, the judges' decision dealt a blow to the Bush administration in its efforts to begin prosecuting dozens of detainees regarded by the United States as the most dangerous terrorist suspects.

Thompson agreed the military commissions were not working. But until a better system is brought up, he said he believed Khadr and the other detainees would likely remain incarcerated.

Human rights organizations and many governments around the world have blasted the commissions as a blunt violation of the international law.

The governments of Britain, Australia and Saudi Arabia, all close allies of the Bush administration, managed to get their citizens out of Guantanamo and back to their countries.



The Canadian government has been reluctant to publicly criticize the Military Commissions Act and has maintained its hands-off approach, something Amnesty International called appalling.

A government spokesperson said calls for Khadr's return to Canada were premature and speculative.

The opposition reaction to the Khadr case has not differed much from that of the Conservative government.

The Liberals broke a long silence when Michael Ignatieff made a vague comment, calling on the government to "take up" Khadr's case actively with U.S. authorities.

Zaynab Khadr, Omar's sister, described the latest media buzz surrounding Khadr's case as a "positive and encouraging reaction."

Khadr's former U.S. lawyer said this is the best chance for Ottawa to get on the right

side of history with respect to Guantanamo.

"Omar is the last westerner left at Guantanamo. And, one has to ask, why is it there is only a Canadian left ... everyone else knows to get out," Muneer Ahmed said from Washington, where he teaches at American University Washington College of Law.

"I think it has to do with the fact that the other governments have actually stepped up to the plate on behalf of their citizens and Canada has clearly not."



Summary of Recommendations from the Arar Inquiry

On September 16, 2006, Justice Dennis O'Connor published his report on Canada's involvement in the extraordinary rendition and torture in a Syrian jail of Canadian Maher Arar. Justice O'Connor made 23 recommendations to the government:

THE RCMP AND NATIONAL SECURITY

Mandate: The RCMP should ensure it stays within its mandate as a police force to prevent and prosecute crime. Above all, it should respect the distinct role of CSIS, the Canadian Security Intelligence Service, in collecting and analyzing information and intelligence relating to threats to Canadian security.

Cooperation: The RCMP should continue to work, in an integrated and co-operative way, in national security investigations (with other police forces, government agencies and foreign agencies), with agreements or arrangements relating to this work set out in writing.

Training: The RCMP should ensure that those involved in national security investigations are properly trained in the particular features of such investigations. National security investigations are unique, and involve subject matter not within the expertise or experience of normal criminal investigators.

Supervision: The RCMP should maintain its current approach to centralized oversight of national security investigations.

Guidance from Minister: The minister responsible for the RCMP should continue to issue ministerial directives to provide policy guidance to the RCMP in national security investigations, given the potential implications of such investigations.

Information sharing: The RCMP should maintain its policy of sharing information obtained in the course of national security investigations with other agencies and police departments, both domestic and foreign, in accordance with the principles discussed in these recommendations.

CID: The RCMP's Criminal Intelligence Directorate (CID), or another centralized unit with expertise in national security investigations, should have responsibility for oversight of information sharing related to national security with other domestic and foreign departments and agencies.

Policies for sharing information: The RCMP should ensure that, whenever it provides information to other departments and agencies, whether foreign and domestic, it does so in accordance with clearly established policies respecting screening for relevance, reliability and accuracy of the information and with relevant laws respecting personal information and human rights.

Written caveats: The RCMP should never share information in a national security investigation without attaching written caveats (requirements or stipulations) in accordance with existing policy. Failure to attach caveats is unacceptable because it increases the risk that information will be distributed by the recipient to unanticipated institutions and that it will be used for unintended and possibly unacceptable purposes.

Review: The RCMP's information-sharing practices and arrangements should be subject to review by an independent, arms-length review body.

INFORMATION SHARING AND SAFEGUARDS

Similar policies for information sharing: Canadian agencies other than the RCMP that share information relating to national security should review these recommendations to ensure their information-sharing policies conform, to the appropriate extent, with the approaches being recommended for the RCMP.

Objection for improper use: Where Canadian agencies become aware that foreign agencies have made improper use of information provided by a Canadian agency, a formal objection should be made to the foreign agency and the foreign minister of the recipient country.

COUNTRIES WITH QUESTIONABLE RECORDS



Share human rights information: The Department of Foreign Affairs and International Trade (DFAIT) should provide its annual reports assessing the human rights records of various countries to the RCMP, CSIS and other Canadian government departments that may interact with such countries in investigations.

Sharing information with states with poor human rights records: The RCMP and CSIS should review their policies governing the circumstances in which they supply information to foreign governments with questionable human rights records. Information should never be provided to a foreign country where there is a credible risk that it will cause or contribute to the use of torture. Policies should include specific directions aimed at eliminating any possible Canadian complicity in torture.

Receiving information from states with poor human rights records: Canadian agencies should accept information from countries with questionable human rights records only after proper consideration of human rights implications. Information received from countries with questionable human rights records should be identified as such and proper steps should be taken to check its reliability.

CANADIANS DETAINED ABROAD

Develop protocol regarding Canadians detained abroad: The Government of Canada should develop a protocol to provide for co-ordination and coherence across government in addressing issues that arise when a Canadian is detained in another country in connection with terrorism-related activity. Provisions may include consultation among relevant Canadian agencies, a coherent and unified approach in addressing the issues and political accountability for the course of action adopted.

Training on interviewing detainees: Canadian consular officials posted to countries that have a reputation for abusing human rights should receive training on conducting interviews in prison settings to be able to make the best possible determination of whether torture or harsh treatment has occurred.

Advising detainees: Consular officials should clearly advise detainees in foreign countries of the circumstances under which information obtained from the detainees may be shared with others outside the Consular Affairs Bureau before any such information is obtained.

PROFILING

No racial, religious or ethnic profiling: Canadian agencies conducting national security investigations, including CSIS, the RCMP and the CBSA, should have clear written policies stating that such investigations must not be based on racial, religious or ethnic profiling.

Training for staff: Canadian agencies involved in anti-terrorism investigations, particularly the RCMP, CSIS and the CBSA, should continue and expand on the training given to members and staff on issues of racial, religious and ethnic profiling and on interaction with Canada's Muslim and Arab communities.

Guidelines regarding 'border lookouts': The RCMP and CSIS should develop guidelines governing the circumstances in which "border lookouts," alerts to customs and immigration officers at ports of entry, may be requested both in Canada and in other countries.

Objection: The Government of Canada should register a formal objection with the governments of the United States and Syria concerning their treatment of Maher Arar and Canadian officials involved.

COMPENSATION

The Government of Canada should assess Arar's claim for compensation in the light of the findings in this report and respond accordingly.

Sources: Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations*, available at <http://www.ararcommission.ca/> and *CBC News In Depth: Maher Arar* website, available at: <http://www.cbc.ca/news/background/arar/>



Balancing the news

	Changes made		Reasons for changes
Explicit references to different perspectives	initial	altered	
Omissions in factual evidence	initial	altered	
Controversial interpretations	initial	re-interpreted	



Evaluation Rubric: Balanced News Report

Areas of achievement	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Knowledge and understanding	News report captures all the important and relevant information	News report captures most of the important and relevant information	News report captures some of the important and relevant information	News report captures little of the important and relevant information
Thinking	News report is consistently balanced in its representation of key perspectives	News report is generally balanced in its representation of key perspectives	News report is at times balanced in its representation of key perspectives	News report is seldom balanced in its representation of key perspectives
Communication	News report is highly convincing, and very clear	News report is generally convincing, and clear	News report is somewhat convincing, and clear	News report is unconvincing, and confusing
Application	News report successfully uses all the features of the medium choice (cartoon, broadcast, written news report)	News report effectively uses some of the features of the medium choice (cartoon, broadcast, written news report)	News report uses some of the features the medium choice (cartoon, broadcast, written news report) with adequate success	News report uses few of the features of the medium choice (cartoon, broadcast, written news report) with limited success

Comments:



Evaluation Rubric: Gathering Information

Areas of achievement	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Knowledge and understanding	All information gathered is factual; no speculations, personal opinions or inferences are included	A considerable amount of the information gathered is factual; few speculations, personal opinions or inferences are included	A moderate amount of the information gathered is factual; some speculations, personal opinions or inferences are included	Some of the information gathered is factual; many speculations, personal opinions or inferences are included
Thinking	Information gathered includes only important and relevant facts; evidence of sorting information clearly evident	Information gathered includes a considerable amount of important and relevant facts; evidence of sorting information evident	Information gathered includes a moderate amount of important and relevant facts; some evidence of sorting information provided	Information gathered includes some important and relevant facts; little or no evidence of sorting information provided
Communication	Information summarized is highly concise (written in less than 250 words)	Information summarized is considerably concise (written in 250 – 300 words)	Information summarized is moderately concise (written in slightly more than 300 words)	Information summarized is somewhat concise (written in much more than 300 words)

Comments:



Evaluation Rubric: Supporting Opinion Paragraph

Areas of achievement	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Knowledge and understanding	The paragraph makes reference to all key stakeholders explicitly identified; includes the involvement and perspectives of all of the key stakeholders with complete accuracy	The paragraph makes reference to most of the key stakeholders explicitly identified; includes the involvement and perspectives of most of the key stakeholders with considerable accuracy	The paragraph makes reference to some of the key stakeholders explicitly identified includes the involvement and perspectives of some of the key stakeholders with a moderate degree of accuracy	The paragraph makes reference to a few of the key stakeholders explicitly identified; includes the involvement and at times the perspectives of the key stakeholders with a moderate degree of accuracy
Thinking	The paragraph includes only correctly inferred additional stakeholders and their perspectives based only on the most relevant stated and implied ideas from the report as evidence to support this inference; draws highly plausible conclusions on primary purpose of the report based on the application of highly appropriate textual clues and evidence, and the factors that shape media reporting.	The paragraph includes mostly correctly inferred additional stakeholders and their perspectives based on mostly relevant stated and implied ideas from the report as evidence to support this inference; draws plausible conclusions on the primary purpose of the report based on the application of appropriate textual clues and evidence, and the factors that shape media reporting	The paragraph includes some correctly inferred additional stakeholders and their perspectives not explicitly identified in the report based on relevant stated and implied ideas from the report as evidence to support this inference; draws conclusions on the primary purpose of the report that are somewhat plausible based on the application of textual clues and evidence, and some of the factors that shape media reporting	The paragraph includes few correctly inferred additional stakeholders and their perspectives based on only stated ideas that are at times relevant from the report as evidence to support this inference; draws conclusions that are somewhat plausible with limited connection to textual clues and evidence, yet no connection to the factors that shape media reporting.
Communication	The paragraph is written in a highly clear and coherent manner with... a clear topic sentence identifying purpose of writing; ideas logically presented and developed; minimal spelling and grammar errors; and the highly effective use of linking words.	The paragraph is written in a considerably clear and coherent manner with... a clear topic sentence identifying purpose of writing; ideas logically presented and developed; some spelling and grammar errors; and the effective use of linking words.	The paragraph is written in a somewhat clear and coherent manner with... a topic sentence indicating purpose of writing; ideas logically presented; several spelling and grammar errors; and the use of some linking words.	The paragraph is written with a limited degree of clarity and coherence with... a topic sentence generally indicating sense of purpose in writing; ideas presented with limited sequencing; spelling and grammar errors making reading difficult; and the limited use or absence of linking words.

Comments:



Evaluation Rubric: Assessing Balanced Media Coverage

Areas of achievement	Level 4 (80-100)	Level 3 (70-79)	Level 2 (60-69)	Level 1 (50-59)
Knowledge and understanding	Students record all perspectives explicitly referenced in the media report; Student considers all five major perspectives in their assessment.	Students record most of the perspectives explicitly referenced in the media report; Student considers all five major perspectives in their assessment.	Students record some of the perspectives explicitly referenced in the media report; Student considers most of the five major perspectives in their assessment.	Students record few of the perspectives explicitly referenced in the media report; Student considers some of the five major perspectives in their assessment.
Thinking	Students record a wide range of highly relevant sources of evidence to support the inclusion of a perspective; Students record a wide range of highly relevant sources of evidence to support the exclusion of a perspective; Students draw a highly plausible conclusion on the reporter's preference towards a particular perspective reflecting their assessment findings with a high degree of accuracy	Students record a wide range of considerably relevant sources of evidence to support the inclusion of a perspective; Students record a wide range of considerably relevant sources of evidence to support the exclusion of a perspective; Students draw a considerably plausible conclusion on the reporter's preference towards a particular perspective reflecting their assessment findings with considerable accuracy	Students record a moderate range of somewhat relevant sources of evidence to support the inclusion of a perspective; Students record a moderate range of somewhat relevant sources of evidence to support the exclusion of a perspective; Students draw a somewhat plausible conclusion on the reporter's preference towards a particular perspective reflecting their assessment findings with some degree of accuracy	Students record a limited range of sources of relevant evidence to support the inclusion of a perspective; Students record a limited range of relevant sources of evidence to support the exclusion of a perspective; Students draw a conclusion of limited plausibility on the reporter's preference towards a particular perspective reflecting a limited application of their assessment findings

Comments:



Culminating Task

The following activity could be assigned as a culminating task for students who have worked through a Justice and the Media unit.



Culminating Task Justice & Media Town Hall

Students will prepare a proposed agenda for a Town Hall style meeting between representatives of the media and of the justice system. The proposed agendas can be graded individually, or the class can proceed to arrange for the Town Hall event at the school and invite students from other related classes (Civics, Law, Media Studies etc.).

Students can prepare for this culminating activity by reading over their notes from the other critical challenges contained in this resource.

An effective Town Hall includes:

- Participants that reflect a balanced range of perspectives
- An agenda or list of topics to facilitate focused and relevant discussion
- A facilitator who can moderate discussion and questions
- An interested and lively audience

Have students prepare for a Town Hall (whether hypothetical or actual) by designing the panel of speakers to invite, the topic, an agenda to guide discussion and a set of questions to provide to the audience in advance to prepare them for the presentations. An effective agenda or topic will:

- be made available to both groups (media and the justice system) in advance,
- address the issues of both groups, and
- provide an opportunity for each group to share their perspectives.

Step 1

Place the students in small groups and have them choose a best metaphor for the relationship between the media and the justice system. (This could be the metaphor their group or some of the members devised before, or it could be one that was developed by another group). Students will summarize in point form how other activities in this package helped underscore the relevance of that metaphor and the complexity of that relationship. Students may choose to alter the metaphor based on their further study of the relationship between the media and the justice system.

Step 2



Introduce the groups to the task of planning a Town Hall. Remind students that representatives of the media and the justice system participated in the Task Force sessions that resulted in the original recommendations (<http://www.paneljusticeandmedia.jus.gov.on.ca/pjm/en/rpjm-EN.pdf>.) Holding a Town Hall at the school is one way of building on the Task Force Recommendations to encourage dialogue and education.

Students are to work within their small groups to identify potential speakers and develop an agenda for the Town Hall meeting. Students may use the *Suggestions for an Agenda* chart as a worksheet to help them focus their ideas.

When the agendas are complete, student groups may exchange their draft agendas for review and peer editing. Student groups could also report back to the class on their agenda items, with the class pooling the ideas of the different groups to try to devise a single set of suggestions to shape the discussion.

Step 3

Students can organize the Town Hall in the school by working with OJEN to contact the potential speakers, and working with their teacher to coordinate with the school schedule. Once the student audience has been identified, students can present their suggested topics to the other students, a few days in advance of the Town Hall. After the Town Hall event, students may be asked to submit a report on the event, highlighting the most interesting areas of discussion, the points of disagreement and the aspects of the event that they found most interesting. The OJEN Template for holding a Town Hall event in a school may be a helpful guide for the planning process. It is available at www.ojen.ca



Suggestions for an Agenda

Category	Suggestion	Why would this help promote dialogue between the justice and media systems?
Speakers / Panelists	1. 2. 3. 4.	
Current issues that may arise		
Current cases that might be examples		
Discussion topics identified by students	• • •	
Who should be invited		