

Values of the Justice System



A Resource for Grade 10 Civics

provided by

The Ontario Justice Education Network

Revised Edition, 2005

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Acknowledgements

The purpose of “Values of the Justice System” is to provide a resource for secondary school teachers teaching grade 10 civics courses. The material is intended to assist in stimulating discussion, debate, criticism, study and analysis of principles underlying our legal system, recognizing that the teacher is entitled to use any or all of the resource as considered appropriate for the discussion of what may be controversial issues. Input, assistance and feedback on various sections of this resource were received from a wide range of contributors from among the judiciary, and legal and education professions.

Ontario Justice Education Network (OJEN) extends its appreciation to the writers for their dedicated contribution to this project:

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Statements, examples, problems and issues raised within the resource are included only to assist in a study of the values of the legal system and should not be taken as necessarily representing an endorsement of a position respecting an issue, or the opinion or view of

any of its contributors, the Ontario Justice Education Network or any of the people, organizations or institutions affiliated with it.

This project is supported by grants made available by The Law Foundation of Ontario, the Ontario Trillium Foundation, the Ministry of the Attorney General, the Office of Francophone Affairs and Heritage Canada.

Table of Contents

Detailed Table of Contents

The Ontario Justice Education Network

Values of The Justice System Curriculum Project

Notes to the Teacher

Accommodations

Course Expectations

Section 1 – Canadian Rights and Responsibilities (300 minutes)

Section 2 – Fair Process (225 – 300 minutes)

Section 3 – The Citizen’s Role (225 – 300 minutes)

Section 4 – Resolving Disputes (150 – 225 minutes)

Section 5 – International Rights and Responsibilities (300 – 375
minutes)

Detailed Table of Contents

Section 1 - Canadian Rights and Responsibilities

		<u>Page</u>
Activity	Description	1-1
Appendix	1.1 The Charter of Rights and Freedoms	1-6
	1.2 Responsibilities of a Canadian Citizen/Resident	1-9
	1.3 The Evolution of Equality Rights	1-11
	1.4 The Issue of Sexual Orientation	1-16
	1.5 What is the Rule of Law – Magna Carta	1-17
	1.6 The Issue of Hate Crimes	1-19
	1.7 Unwritten Constitutional Principles: S.O.S. Montfort	1-22
	1.8 Courtroom Visit and Classroom Speaker Request Form	1-26
	1.9 The Great Debate	1-29
	1.10 Charter of Rights and Freedoms Landmark Cases	1-30

Section 2 - Fair Process

		<u>Page</u>
Activity 2.1	Fair Trial – Judicial Independence & Impartiality	2-1
Appendix	2.1 How are your Rights Protected? 3 Scenarios	2-4
	2.2 Cases	2-5
	1. FLQ	2-7
	2. Tunisia	2-9
	3. R. v Brown	2-10
	4. R. v Barnes	2-11
	2.3 A Question of Fair Trials: Responses	2-13
	2.4 Questions for a Judge's Visit	2-15
	2.5 <i>Try Judging</i>	2-17
Activity 2.2	Young Offenders	2-20
Appendix	2.6 Statistics on Youth Crime	2-22
	2.7 Comparing <i>The Youth Criminal Justice Act</i> and <i>The Young Offenders Act</i>	2-25
	2.8 Youth Court Sentencing Options	2-26
	2.9 Types of Restorative Justice Processes	2-28
	2.10 You Be the Judge: 5 Cases Studies in Youth Justice	2-33
	2.11 You Be the Judge: Responses	2-35
	2.12 Debate Topics	2-35

Activity 2.3	Can Canadian Citizens' Rights Be Restricted? The Charter of Rights and Freedoms	2-36
Appendix	2.13 Scenario and Case Studies	2-39
	2.14 Case Studies in Citizens' Rights: Responses	2-44

Section 3 - The Citizen's Role

		<u>Page</u>
Activity	Description	3-1
Appendix	3.1 Citizens Who Have Made a Difference	3-5
	3.2 Worksheet: Citizens Who Have Made a Difference	3-10
	3.3 Types of Non-violent Citizen Participation	3-13
	3.4 Decision-making and Conflict Resolution	3-14
	3.5 A Letter to the Editor	3-16

Section 4 - Resolving Disputes

		<u>Page</u>
Activity	Description	4-1
Appendix	4.1 Matching Sheet Various Administrative Tribunals	4-6
	4.2 Disputes at Administrative Tribunals or Agencies – 5 Scenarios	4-7
	4.3 1. Negotiation Game	4-13
	2. Negotiation Role Play	4-15
	3. Mediation Role Play	4-16
	4.4 The Office of the Ombudsman	4-19
	4.5 "Manager Sexually Harassed Female Colleagues"	4-20

Section 5 - International Rights and Responsibilities

		<u>Page</u>
Activity 5.1	The Convention on the Rights of the Child	5-1
Appendix	5.1 The Convention on the Rights of the Child	5-9
	5.2 Fighting for Human Rights and the Rights of Children	5-11
Activity 5.2	The International Criminal Court	5-15
Appendix	5.3 The International Criminal Court	5-18

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OVERVIEW

*A broader understanding of the law is an essential foundation for a civil society
- The Honourable R. Roy McMurtry, Chief Justice of Ontario*

Through the efforts of hundreds of volunteers including judges, justices of the peace, lawyers, Crown attorneys, managers of court operations, educators, and community representatives, OJEN facilitates public legal education opportunities for students and others to gain understanding of our justice system. Programs include initiatives with Ontario's Francophone, Aboriginal and immigrant communities.

Developed with collaborative committees throughout Ontario, activities include ***Courtrooms & Classrooms***, where students enjoy interaction with representatives of law-related professions in courthouses and schools and ***Summer Law Institutes*** for high school teachers. Related local activities include ***mock trial tournaments, student law symposia, Criminal Code donations, judge shadowing, Adopt-a-School programs, Law Day*** activities, and the ***Great Law Debate***.

With its Network partners, OJEN makes law-related resources available to justice sector volunteers and educators. Resources including ***Landmark Cases***, and ***Values of the Justice System***, a curriculum-linked resource for the Grade 10 Civics teachers, are available for free download at www.ojen.ca. The website also links to a range of law related resources, such as ***Try Judging***.

Bringing together the legal and educational communities, OJEN was launched by Ontario's three Chief Justices during the Law Day celebrations of the 20th anniversary of Canada's Charter of Rights and Freedoms.

MISSION

OJEN is dedicated to promoting public understanding, education and dialogue to support a responsive and inclusive justice system.

OBJECTIVES

1. Foster public understanding of the justice system and the challenges it faces.
2. Support and encourage the values of a public, transparent and accessible justice system through research and education.
3. Encourage dialogue between justice system participants and the public.
4. Develop, coordinate or deliver public legal education information and programs to students and others.

NETWORK PARTICIPANTS -

The Chief Justice of Ontario (Network Chair)
The Chief Justice of the Superior Court of Justice
The Chief Justice of the Ontario Court of Justice
The Department of Justice of Canada
The Deputy Attorney General of Ontario
The Deputy Minister of Education
The Law Foundation of Ontario
The Law Society of Upper Canada
The Advocates' Society
The County & District Law Presidents' Association
The Ontario Bar Association
The Ombudsman of Ontario
Legal Aid Ontario
The Ontario History & Social Science Teachers' Association
Community Legal Education Ontario
The Canadian Civil Liberties Education Trust
The Association of Community Legal Clinics of Ontario
The Institute for Catholic Education
The Ontario Principals' Council
The ESL/ELD Resource Group of Ontario
The Ontario Federation of Indian Friendship Centres
The Ontario Council of Law Deans
The Ontario Council of Agencies Serving Immigrants
The Association of French Speaking Jurists of Ontario

The Board

The Board of the Ontario Justice Education Network is linked to major areas of current organizational activity and public legal education providers. It is expected that the need for representation of different interests on the Board will evolve with the work of the organization. The composition of the Board of Directors will be reviewed from time-to-time to ensure that evolving needs are addressed. With the Chief Justice of Ontario as Honorary Chair, the Board has a quorum of 5, and is composed of 12 members:

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Further Information

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About the Project

In September of 2000, under the mandate of *The Ontario Curriculum, Grades 9 and 10: Canadian and World Studies*, secondary schools across Ontario began to offer the new Grade 10 Civics course, referred to as Civics, Grade 10, Open (CHV20).

This edition represents the revised 2005 version of *The Ontario Curriculum, Grades 9 and 10: Canadian and World Studies*.

This is a half-credit course that entails 55 hours of classroom time. In most schools, it falls under the auspices of the History or Social Science departments. Because it is a half-credit course that is often paired with the Career Education component, the teaching of the course can, and often does, fall into the hands of teachers with little or no background in the field.

The course itself contains three complete strands (Informed Citizenship, Purposeful Citizenship and Active Citizenship) containing 9 Overall Expectations and 34 Specific Expectations.

In the spring of 2002, the Ontario Justice Education Network commissioned a team of writers/educators to prepare a resource that would supplement its successful *Courtrooms & Classrooms* programme. With the *Courtrooms & Classrooms* initiative, hundreds of members of law-related professions have volunteered their time to meet with thousands of students in all regions of the province. In *Courtrooms & Classrooms*, students are engaging in interactive sessions with judges, members of the bar, and other legal professionals to develop an understanding of the dynamics and values of the justice system.

Values of the Justice System is a resource of optional material, from which teachers should feel free to select when designing their course and lesson plans. The lesson plans, appropriate to the curriculum, can be used before, during or after a court or classroom visit.

Prior to the writing of the curriculum, meetings were held with Chief Justices Roy McMurtry, Patrick LeSage and Brian Lennox, during which the Chief Justices were asked to identify the key values inherent in our justice system. The Chief Justices identified numerous values that were to be considered fundamental (examples: the rule of law, the need for impartiality in the justice system, rights and responsibilities, etc.). The activities found in this curriculum resource attempt to weave these values into the already-existent expectations. Five categories of civics expectations were identified: Canadian Rights and Responsibilities, Fair Process, Citizen's Role, Resolving Disputes and International Rights and Responsibilities.

With the wide-ranging and diverse selection of courses available under *The Ontario Curriculum*, it is possible, indeed conceivable, that this small two-week section of this already half-course will be the only time that many of Ontario's students are introduced

to these fundamental core values. Hopefully, the presence of this curriculum supplement will make this section of the course a meaningful and memorable one for these students.

Notes to the Teacher

The writing team is fully aware that the activity clusters created represent but a small portion of the entire course, estimated at about 20%, or 12-13 hours. Therefore, it is not necessarily intended that the classroom teacher utilize every activity found within the numerous appendices. Wherever possible, the activity packages were designed so that the classroom teacher could meet the expectations while engaging the students. Culminating activities, particularly in Section 5, enable students to delve into the nature and implications of legal rights and responsibilities. Beyond the immediate framework of the Grade 10 Civics course, it is anticipated that students will gain a greater, more nuanced understanding of their roles as citizens of local, national and international communities.

Please feel free to reproduce any part of these lesson plans for educational, non-commercial purposes.

The pilot edition was produced in 2003 and the revised edition was produced in 2005. Please forward any comments you may have to ojen@lsuc.on.ca.

Accommodations

The Grade 10 Civics course is an open course. The implications of this statement are that virtually every high school student in Ontario will be taking the course and will need to complete it successfully in order to graduate. Because this is an open course, the writing team has made every effort to ensure that the activities in this support curriculum are accessible to as broad a range of students as possible. However, some students will need additional support in order to achieve success. Below is a list of possible accommodations that can be offered to students who require them. (For a more extensive listing of accommodations, consult the Ontario Curriculum Unit Planner.)

Suggested Possible Accommodations:

- consult with the Special Education or Guidance departments on individual student needs
- access I.E.P.'s (Individual Education Plans) where available
- first language assistance may be provided for E.S.L. students
- ESL/ESD students to use bilingual dictionaries
- ESL/ESD students to use first language to plan and organize initial drafts
- pair or group weaker students with higher achieving peers
- encourage special needs students to develop word lists
- recording devices may be used by visually impaired students to capture definitions and classroom discussions
- hearing impaired students should be placed in areas (i.e. front of the class) where the effect of their impairment will be lessened
- teacher may need to rewrite appendices
- where students have difficulties following verbal commands, instructions may need to be reproduced in hard copy form
- students with special needs may need access to word processors and/or other technological aids.

COURSE EXPECTATIONS

Section 1 - Canadian Rights and Responsibilities (time: 300 minutes)

Overall expectations:

- ICV.02 -** explain the legal rights and responsibilities associated with Canadian citizenship.
- PCV.01 -** demonstrate an understanding of the beliefs and values underlying democratic citizenship and explain how they guide citizens' actions.

Specific expectations:

- IC1.02 -** compare the benefits and drawbacks of democratic and authoritarian forms of decision-making, drawing on examples from everyday contexts (e.g. with respect to the rights and responsibilities of citizens, the rule of law, the common good, the parliamentary system, majority rule and the rights of minorities, including Aboriginal peoples).
- IC2.01 -** identify the rights and responsibilities of Canadian citizenship, based on the Canadian Charter of Rights and Freedoms, and describe how these rights and responsibilities are exercised in schools, communities, and the nation.
- IC2.04 -** analyse cases that have upheld or restricted a citizen's rights and responsibilities, outlining the concerns and actions of involved citizens and the reasons for the eventual outcome.
- PC1.01 -** describe fundamental beliefs and values associated with democratic citizenship (e.g. rule of law, human dignity, freedom of expression, freedom of religion, work for the common good, respect for the rights of others, sense of responsibility for others).

Section 2 - Fair Process (time: 225 - 300 minutes)

Overall expectations:

- ICV.01 -** demonstrate an understanding of the reasons for democratic decision-making.
- ICV.02 -** explain the legal rights and responsibilities associated with Canadian citizenship.

- ICV.04 -** explain the legal rights and responsibilities associated with Canadian citizenship.
- PCV.01 -** examine beliefs and values underlying democratic citizenship, and explain how these beliefs and values guide citizens' actions.
- PCV.02 -** describe the diversity of beliefs and values of various individuals and groups in Canadian society.
- ACV.02 -** demonstrate an ability to apply decision-making and conflict-resolution procedures and skills to cases of civic importance.

Specific expectations:

- IC1.03 -** report on the elements of democratic decision-making (e.g. rights and responsibilities of citizens, rule of law, common good, parliamentary system, majority rule, rights of minorities).
- IC2.03 -** explain how the judicial system (e.g. law courts, trials, juries) protects the rights both individuals and society (e.g. the rights of the accused, the rights of the victim and the role of the judiciary)
- IC2.04 -** analyse cases that have upheld or restricted a citizen's rights and responsibilities, outlining the concerns and actions of involved citizens and the reason for the eventual outcome.
- IC3.02 -** compare how laws, regulations, public policies and decisions are made and enforced at the municipal, provincial, and federal levels.
- IC3.04 -** demonstrate an understanding of how the judicial system (e.g., law courts, trials, juries) protects the rights of both individuals and society (e.g., the rights of accused, the rights of the victim and the role of the judiciary).
- IC3.05 -** describe a case in which a citizen's rights and responsibilities have been upheld or restricted, outlining the concerns and actions of involved citizens and the reasons for the eventual outcome.
- PC1.01 -** describe fundamental beliefs and values associated with democratic citizenship (e.g. rule of law, human dignity, freedom of expression, freedom of religion, work for the common good, respect for the rights of others, sense of responsibility for others).

- PC1.02 -** explain, based on an analysis of cases in local, provincial, national and global contexts, how democratic beliefs and values are reflected in citizen actions.
- PC2.03 -** analyse Canadian issues or events that involve contrasting opinions, perspectives and civic purposes (e.g. constitutional debates, Quebec sovereignty, Oka Crisis of 1990, Native self-governance).
- PC3.03 -** describe examples of human rights violations (e.g. Nuremburg laws, hate crimes, torture, genocide, political imprisonment, recruitment of child soldiers, gender-based discrimination) and assess the effectiveness of responses to such violations (e.g. media scrutiny, political responses, military intervention, international tribunals, pressure from non-governmental organizations).
- AC2.02 -** analyze important and contemporary cases that involve democratic principles in the public process of conflict resolution and decision-making.

Section 3 - The Citizen's Role (time: 225 - 300 minutes)

Overall expectations:

- ACV.01 -** apply appropriate inquiry skills to the research of questions and issues of civic importance.
- ACV.02 -** demonstrate an understanding of the various ways in which decisions are made and conflicts resolved in matters of civic importance, and the various ways in which individual citizens participate in these processes.
- ICV.04 -** explain the legal rights and responsibilities associated with Canadian citizenship.

Specific expectations:

- IC2.02 -** explain why it is essential in a democracy for governments to be open and accountable to their citizens, while protecting the personal information citizens are required to provide to governments (e.g. Municipal Freedom of Information and Protection Act).
- IC3.05 -** explain the roles played by elected representatives, interest groups, and the media in the political process (e.g. legislative and constituency work, lobbying, providing public information on, and analysis of, issues facing government).

- AC1.01 -** formulate appropriate questions for inquiry and research, locate relevant information in a variety of sources (e.g. texts, reference materials, news media, maps, community resources, the Internet), and identify main ideas, supporting evidence, points of view, and biases in these materials.
- AC1.02 -** organize information, using a variety of methods and tools (e.g. summaries, notes, timelines, visual organizers, maps, comparison organizers).
- AC1.03 -** communicate the results of inquiries into important civic issues, using a variety of forms (e.g. discussions and debates, posters, letters to elected officials, visual organizers, Web pages, dramatizations).
- AC2.03 -** demonstrate an understanding of the ways in which individual citizens can obtain information and explanations or voice opinions about civic matters (e.g. by communicating with the appropriate elected officials or bureaucratic departments, by writing letters or e-mails to the media, by organizing petitions, by voting).
- AC2.04 -** compare the impact of various types of non-violent citizen participation (e.g. advocacy, community service, voting, serving on juries) in resolving public issues in Canada.
- AC2.05 -** demonstrate an understanding of their responsibilities as local, national, and global citizens by applying their knowledge of civics and skills related to purposeful and active citizenship, to a project of personal interest and civic importance (e.g. participating in food and clothing drives, visiting seniors, participating in community festivals, celebrations and events, becoming involved in human rights, antidiscrimination, or antiracism activities).

Section 4 - Resolving Disputes (Time 150 - 225 minutes)

Overall expectations:

- ICV.03 -** describe the main structures and functions of municipal, provincial and federal governments in Canada.
- ACV.02 -** demonstrate an understanding of the various ways in which decisions are made and conflicts are resolved in matters of civic importance, and the various ways in which individual citizens participate in these processes.

Specific expectations:

- IC1.03 -** identify similarities and differences in the ways power is distributed in groups, institutions and communities (e.g. in families, classrooms, municipalities) to meet human needs and resolve conflicts.
- AC2.01 -** compare and contrast different ways of resolving disputes (e.g. through the judicial process, through negotiation, mediation, arbitration, conciliation).
- AC2.02 -** analyse important contemporary cases and issues that have been decided or resolved through the public process of policy formation and decision-making (e.g. mandatory retirement, censorship, racial profiling) taking into account the democratic principles that underlie that process.

Section 5 - International Rights and Responsibilities (Time: 300 - 375 minutes)

Overall expectations:

- ICV.04 -** explain what it means to be a “global citizen” and why it is important to be one.
- PCV.03 -** analyse responses, at the local, national, and international levels, to civic issues that involve multiple perspectives and differing civic purposes.
- ACV.01 -** apply appropriate inquiry skills to the research of questions and issues of civic importance.

Specific expectations:

- IC4.01 -** analyse contemporary crises or issues of international significance (e.g. health and welfare, disasters, human rights, economic development, environmental equality, terrorism).
- IC4.02 -** summarize the rights and responsibilities of citizenship within the global context, as based on an analysis of the United Nations Universal Declaration of Human Rights (1948) and Convention on the Rights of the Child (1989).
- IC4.03 -** evaluate civic actions of individuals and non-governmental organizations that have made a difference in global affairs (e.g. Cardinal Émile-Paul Léger, Jean Vanier, Nelson Mandela, Mother Theresa, Jody Williams, Craig Kielburger, David Suzuki, Stephen Lewis, The International Federation of Red Cross and Red Crescent Societies, Doctors Without Borders / Médecins Sans Frontières, YWCA / YMCA and YWHA / YMHA, Greenpeace, Inuit Circumpolar Conference).

- PC1.01 -** describe fundamental beliefs and values associated with democratic citizenship (e.g. rule of law, human dignity, freedom of expression, freedom of religion, work for the common good, respect for the rights of others, sense of responsibility for others).
- PC1.02 -** explain how democratic beliefs and values are reflected in citizen actions (e.g. Remembrance Day services, Montreal unity rally, National Aboriginal day, December 6 commemorations of the Montreal Massacre, White Ribbon campaign).
- PC3.02 -** demonstrate an understanding of a citizen's role in responding to non-democratic movements and groups (e.g. fascism, Stalinism, supremacist and racist organizations) through personal and group actions (e.g. the actions of individuals such as Medgar Evers, Emily Murphy, Norman Bethune, Alexander Solzhenitsyn, Simon Wiesenthal and those granted the title "Righteous Among the Nations," of groups such as the Canadian Civil Liberties Association).
- PC3.03 -** describe examples of human rights violations (e.g. Nuremburg Laws, hate crimes, torture, genocide, political imprisonment, recruitment of child soldiers, gender-based discrimination) and assess the effectiveness of response to such violations (e.g. media scrutiny, political responses, military intervention, international tribunals, pressure from non-governmental organizations).
- PC3.04 -** analyse the evolution of Canada's participation in international tribunals (e.g. the Nuremburg trials after World War II, the international Court of Justice's prosecution of war crimes, formation of the International Criminal Court).
- AC1.01 -** formulate appropriate questions for inquiry and research, locate relevant information in a variety of sources (e.g. texts, reference materials, news media, maps, community resources, the Internet); and identify main ideas, supporting evidence, points of view and biases in these materials.

Values of the Justice System



Section 1

Canadian Rights and Responsibilities

Section 1 – Canadian Rights and Responsibilities

Time: 300 minutes

Description:

This section examines the legal rights and responsibilities of Canadian citizens and how those rights have evolved over the years. It will focus on the *Charter of Rights and Freedoms*, as well as the fundamental beliefs and values that are associated with democratic citizenship, such as the rule of law and freedom of expression. This activity ideally culminates with a trip to the courts, or a guest speaker in the classroom.

Overall expectations:

- ICV.02 -** explain the legal rights and responsibilities associated with Canadian citizenship.
- PCV.01 -** demonstrate an understanding of the beliefs and values underlying democratic citizenship and explain how they guide citizens' actions.

Specific expectations:

- IC1.02 -** compare the benefits and drawbacks of democratic and authoritarian forms of decision-making, drawing on examples from everyday contexts (e.g. with respect to the rights and responsibilities of citizens, the rule of law, the common good, the parliamentary system, majority rule and the rights of minorities, including Aboriginal peoples).
- IC2.01 -** identify the rights and responsibilities of Canadian citizenship, based on the Canadian Charter of Rights and Freedoms, and describe how these rights and responsibilities are exercised in schools, communities, and the nation.
- IC2.04 -** analyse cases that have upheld or restricted a citizen's rights and responsibilities, outlining the concerns and actions of involved citizens and the reasons for the eventual outcome.
- PC1.01 -** describe fundamental beliefs and values associated with democratic citizenship (e.g. rule of law, human dignity, freedom of expression, freedom of religion, work for the common good, respect for the rights of others, sense of responsibility for others).

Planning Notes:

- Obtain copies of the *Charter of Rights and Freedoms*, either individual copies for the students, or a classroom copy.
- Create an overhead using Appendix 1.1.
- Reproduce copies of Appendices 1.2, 1.3, 1.4, 1.5 and 1.6.
- Arrange for computer lab time for the assignments that are a part of Appendices 1.3 and 1.6.
- Arrange for tv/dvd booking for work associated with Appendix 1.9.
- Obtain articles from newspapers or magazines that focus on legal issues such as sexual orientation and hate crimes.
- If anticipating the use of a guest speaker, make necessary arrangements in this regard.

Prior Knowledge Required:

Students should be familiar with their rights and responsibilities, as well as the *Charter of Rights and Freedoms*, as it is introduced in the Grade 5 *Aspects of Government in Canada* strand.

Teaching/Learning Strategies:

1. Introduce the concept of rights and responsibilities by using a brainstorming approach. Then, using the overhead found in Appendix 1.1- *The Charter of Rights and Freedoms*, introduce each of the legal rights and explain them using examples.
2. Explain to the students that, while they are able to enjoy a number of rights, they also have some responsibilities as citizens. Teachers may wish to introduce this concept by discussing students' rights and responsibilities at home, at school, and in their daily lives.
3. Divide the class into groups of 5-6 and ask students to brainstorm ideas regarding the responsibilities of a Canadian citizen. Ask students to record their group answers on the top part of Appendix 1.2 - Responsibilities of a Canadian citizen. (The second page of this appendix includes a list with some possible answers. This is meant for teacher use only.)

4. Bring the class back together and share all the group answers. After some discussion, ask the class to identify the five responsibilities that they feel are the most important and to record their answers on the bottom part of the handout.
5. Briefly outline for the students the concept of equality rights and how this has changed over the years to reflect the morals of an ever-changing society. Provide students with a copy of Appendix 1.3 - The Evolution of Equality Rights. Students are to read it and answer the questions provided. Ask the class to consider how and why moral codes are changing by making reference to current examples from the media.
6. Introduce the issue of sexual orientation and the law. Discuss the implications of homosexual marriage, survivor benefits for pension plans, immigration, child support and custody, and job discrimination. Provide students with a copy of Appendix 1.4 - Equality rights under the Charter, which examines the issue of sexual orientation in Canada, and have them research the required information using the internet, newspapers or any available resources. This could be introduced during class time and completed as homework. (In light of Catholic values, teachers in Catholic schools should exercise their professional judgment with regard to using this exercise.)
7. This assignment should be reviewed with the class in order to discuss the issues that may arise from it.
8. Introduce the students to the Magna Carta and the concept of the rule of law, either through a teacher-directed lesson or by reading the appropriate section in a text. Provide the students with copies of Appendix 1.5 -What is the Rule of Law? and have them work independently on the answers. Correct the assignment in class.
9. Discuss with the students the concept of freedom of expression and its significance in a democratic society. Provide students with a copy of Appendix 1.6 - Freedom of Expression and the Charter: The issue of Hate Crimes in Canada, and have them work in pairs to research and complete this assignment.
10. This activity could culminate with a visit by a judge, a prosecutor, or defence counsel. Students should prepare questions about some of the issues previously discussed in this unit. The teacher should also make the speaker aware of the topics covered so they can prepare for the visit. Appendix 1.7 is the teacher request form that can be used to arrange this visit.
11. Extension Activity – Have students view the DVD version of the Great Debate, as described in Appendix 1.9. Teachers can obtain the discs free of charge from OJEN – ojen@lsuc.on.ca. Either in groups or individually, have students identify main arguments made by the debaters and give a brief explanation of why they think a particular argument is a good one.

Teachers may want to personally attend the Great Debate (held annually in April, in Toronto at Osgoode Hall) and use their experience at the event to inform the classroom activity.

12. Extension Activity – Using Appendix 1.10, select a *Landmark Case* related to the Charter and have students prepare and perform in role and act out part of the trial.
13. Extension Activity – Copy and distribute to students the “Spanking Case” summary, questions and timeline found in Appendix 1.10. Have students work individually or in small groups to answer the questions.

Assessment/Evaluation Techniques:

(Please note that in this and all subsequent activities, the numbers listed below correspond to the numbers in the Teaching/Learning Strategies section above.)

3. Roving conference while students are working in their groups.
5. Summative evaluation of written responses to Appendix 1.3.
7. Formative assessment of verbal and written responses to Appendix 1.4.
8. Formative assessment of verbal and written responses to Appendix 1.5.
9. Summative evaluation of written responses to Appendix 1.6.

Resources:

Print:

Classroom Civics or Law textbooks
Newspapers and news magazines
The Canadian Charter of Rights and Freedoms

Non-Print:

<http://www.ojen.ca>

(Key resource for teachers: OJEN resources have been designed for teachers teaching law and for judges, lawyers, and other justice sector volunteers when speaking with students. To obtain a disc of The Great Debate, contact OJEN.)

<http://laws.justice.gc.ca/en/charter/>

(This site has a complete copy of the *Charter of Rights and Freedoms*.)

<http://www.samesexmarriage.ca/equality/incanada.html>

(This site has a great deal of information on the legal issues surrounding same sex marriages and links to a number of similar sites. It offers information on court cases and a timeline of legal marriages in Canada.)

<http://www.efc.ca/pages/chronicle/censor.html>

(This site has links to a number of sites related to the issue of freedom of expression.)

<http://www.uottawa.ca/hrrec/lawroom/freespch.html>

(This site is called the Law Room on Canada's SchoolNet and deals with Free Speech and Hate Crime.)

www.ojen.ca

(Teachers can access the request form for a courtroom visit or a guest speaker at this site. It also has a listing of the courthouses and their addresses and fax numbers. Teachers can access this information through the Courtrooms & Classrooms link.)

Television:

News in Review – C.B.C.

Studio Two – TV Ontario

Diplomatic Immunity – TV Ontario

Appendix 1.1

THE CHARTER OF RIGHTS AND FREEDOMS

The *Charter of Rights and Freedoms* was created in 1982 in order to entrench the fundamental rights and freedoms of Canadians into the existing Constitution. Below you will find the legal rights afforded to all Canadian citizens as they are listed in selected sections of the *Charter*.

GUARANTEE OF RIGHTS AND FREEDOMS

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

FUNDAMENTAL FREEDOMS

2. Everyone has the following fundamental freedoms:
- a) freedom of conscience and religion
 - b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication
 - c) freedom of peaceful assembly, and
 - d) freedom of association

LEGAL RIGHTS

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention

10. Everyone has the right on arrest or detention:
 - a) to be informed promptly of the reasons therefor;
 - b) to retain and instruct counsel without delay and to be informed of that right; and
 - c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right:
 - a) to be informed without unreasonable delay of the specific offence;
 - b) to be tried within a reasonable time;
 - c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
 - d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
 - e) not to be denied reasonable bail without just cause;
 - f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
 - g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

- h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Treatment or punishment

- 12.** Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-crimination

- 13.** A witness who testifies in any proceedings has the right not to have any incriminating evidence, so given, used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Interpreter

- 14.** A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

EQUALITY RIGHTS

- 15.** Every individual is equal before and under the law and has the right to equal protection and equal benefit of law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Appendix 1.2

RESPONSIBILITIES OF A CANADIAN CITIZEN/RESIDENT

In your group, discuss the responsibilities that you feel are associated with being a Canadian citizen. Come up with at least five responsibilities and list them below. Be prepared to justify your responses.

1.

2.

3.

4.

5.

List the five responsibilities that the class has determined are the most significant.

As a Canadian citizen/resident, I have a responsibility to...

1. _____

2. _____

3. _____

4. _____

5. _____

(Appendix 1.2 continued....Teacher's Copy)

Responsibilities of a Canadian Citizen/Resident

(The responsibilities of a Canadian citizen may include, but are not limited to, the following:)

As a Canadian citizen, I have a responsibility to...

- "faithfully observe the laws of Canada" (as stated in the oath of citizenship)
- vote in elections
- promote and preserve Canada's diverse and multicultural heritage
- defend Canada
- pay taxes that help to fund public services such as health care and education
- serve on a jury
- respect all Canadians
- allow all Canadians to enjoy their rights and freedoms without discrimination
- be an active participant in my community
- work towards the common good of the country
- be open to educating myself on my country's history, geography, laws, heritage etc.
- appear as a witness
- tell the truth in giving statements and describing events observed

Appendix 1.3

THE EVOLUTION OF EQUALITY RIGHTS

What is Equality?

Equality is a difficult idea to understand. In fact, there are different definitions of equality, and even these have changed over time. Providing people with equal protection and equal benefit of the law does not mean treating people exactly the same. Rather, in our quest for equality, it is often necessary to treat people differently, as long as we are treating them fairly, so that they do not suffer from discrimination.

Discrimination occurs when someone acts on a stereotype or prejudice that leads to the unfair treatment of a person, or group of persons. Discrimination imposes a penalty upon people for invalid reasons and prevents them from having an equal opportunity to be a part of society. Making our society equally accessible to all people is not easy. More often than not, our society is based upon the interests of the majority while the varying needs of minority groups are not taken into account. These actions may not be intentional, but they continue to occur.

Let us look at the case of Michael Huck. Mr. Huck relies on a motorized wheelchair for mobility. On May 16, 1980, he went to the Coronet Theatre in Regina to view a movie. Theatre personnel advised Mr. Huck that he could either transfer to a theatre seat or view the movie from his wheelchair in an area in front of the first row of seats. Mr. Huck was unable to transfer to a theatre seat because of the nature of his disability, and even if he could, his safety would be in danger if there should be a fire. The second option was also useless because there was very little space in the front of the theatre and it would have been difficult for him to view the movie.

Michael Huck claimed that he did not, as compared to the non-disabled public, have an equal opportunity to view a movie in a theatre and that this clearly constituted discrimination against him because of his physical disability. After a five-year court battle, Mr. Huck was successful in convincing the Court of Appeal that the theatre should provide places among the regular seats for wheelchairs to be parked. More than two decades later, handicapped parking spots and access for the disabled are accepted as a normal part of everyday life as they provide equal opportunities to an important segment of our society.

The Bill of Rights

Passed in 1960, *The Bill of Rights* was an early attempt by the federal government to introduce equality protection in Canada. Unfortunately, because of inconsistent interpretation by the courts, and because it was not part of the Constitution (it was simply a federal statute), it failed to provide the protection that many Canadians had hoped for.

In the case of *R v. Drybones* (1970), Joseph Drybones, a status Indian, had too much alcohol to drink and became intoxicated. He was picked up by the local police and charged. According to section 94(a) of *The Indian Act*, it was illegal for an Indian to be drunk while not on a reserve. Yet, it was not illegal for non-aboriginal Canadians to be drunk. The Supreme Court ruled that Mr. Drybones was denied equality under this law because it made it an offence for an Aboriginal to do something that other Canadians were legally free to do. That is unequal treatment. As a result, the Supreme Court declared section 94(a) of *The Indian Act* to be invalid because it discriminated against Native Canadians.

However, in another case involving *The Indian Act*, the Supreme Court adopted a narrower view of *The Bill of Rights*. In this case, *the Attorney General of Canada v. Lavelle* (1978), an Indian woman married a non-Indian man and lost her status as an Indian. Yet under the law, an Indian man who married a non-Indian woman would not only keep his status, but his wife would also gain status. ("Status" allows a person to enjoy the rights that native people are entitled to under a number of treaties.) Lavelle argued that by not allowing native women to keep their status, the Act discriminated against women. In this case, the Supreme Court ruled that this was not contrary to *The Bill of Rights*.

These cases are clear examples of the contradictory interpretations adopted by the courts that eventually weakened the authority of *The Bill of Rights*. In some instances, the Supreme Court would strike down a section of a law because it was considered discriminatory, while in other cases it allowed inequalities in the law to remain.

The Charter of Rights and Freedoms

These experiences with *The Bill of Rights* influenced the development of the *Charter of Rights and Freedoms*. The *Charter* was entrenched in the Constitution to ensure that the rights and freedoms contained in it would be recognized by the courts as basic principles that could not be violated by other pieces of legislation.

Section 15, the equality section of the *Charter*, states that:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

This section of the *Charter* is considered by many to be the most important. It establishes basic principles of equality and anti-discrimination. Because its potential impact was so great, section 15 did not come into effect with the rest of the *Charter* on April 17, 1982. Instead, the government delayed its enactment for three years to review existing laws and bring them into line with section 15.

Some excerpts have been reproduced in whole or in part with the permission of the Saskatchewan Human Rights Commission from the article "On Rights" - Schools Newsletter, Vol.2, No.1, April 1986, Reprinted March 1990

THE EVOLUTION OF EQUALITY RIGHTS - QUESTIONS

1. By using examples, outline your definition of discrimination and identify different kinds of discrimination.

2. Examine the Huck case and decision. Describe another situation where identical treatment would not provide equal benefit of the law.

3. What was the major problem with *The Bill of Rights*?

4. Do you agree with the decisions in the *Lavelle* and *Drybones* cases? Explain.

5. Which section of the Charter guarantees equality? _____
6. Which groups are specifically mentioned in this section?

7. Can you think of a group, other than those named in section 15, which should also be protected? Why?

8. When did section 15 come into effect and why?

In light of Catholic values, teachers in Catholic schools should exercise their professional judgment with regard to using Appendix 1.4.

Appendix 1.4

EQUALITY RIGHTS UNDER THE CHARTER: THE ISSUE OF SEXUAL ORIENTATION IN CANADA

Canadian courts have held that section 15 protects equality based on those specific characteristics set out in the *Charter* as well as those that are not specifically mentioned, such as sexual orientation. This is an issue that has been prevalent in the courts and in the media in recent years. Your assignment is to investigate this issue using newspapers, magazines, your textbook and the internet to examine the issues and the approach of the courts.

A few major cases may be found in OJEN's *Landmark Case* series at www.ojen.ca.

Describe three issues of discrimination based on sexual orientation that have been, or are being, challenged in the courts.

i) _____

ii) _____

iii) _____

Describe a case of discrimination based on sexual orientation that has been challenged in Canadian courts using section 15 of the *Charter*. Briefly state the facts of the case and outline the court's final decision.

Appendix 1.5

WHAT IS THE RULE OF LAW?

In 1215, a document was signed in England that would be crucial in the development of democracy. This document is known as the *Magna Carta*, or "Great Charter". It is also the first document to introduce the principle of the rule of law, a concept that is fundamental to our system of justice.

Using your textbook and other resources, describe the events that led to the need for the *Magna Carta*.

In your own words, explain the meaning of the following excerpts that have been taken from the *Magna Carta*.

38. No bailiff for the future shall, upon his own unsupported complaint, put anyone to his "law", without credible witnesses brought for this purpose.

39. No freemen shall be taken or imprisoned... or exiled or in any way destroyed, ...except by the lawful judgment of his peers or by the law of the land.

40. To no one will we sell, to no one will we refuse or delay, right or justice.

45. We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well.

Using your textbook, define the term "rule of law".

Name two ways that the rule of law protects people by ensuring that our justice system is fair and impartial.

i)

ii)

Appendix 1.6

FREEDOM OF EXPRESSION AND THE CHARTER: **THE ISSUE OF HATE CRIMES IN CANADA**

The *Charter of Rights and Freedoms* clearly outlines the fundamental freedoms afforded to Canadians and guarantees that everyone has the right to freedom of expression. In order for any democracy to function properly, a constitutional commitment to freedom of expression is vital. Without it, those in power could promote their viewpoints while all others would be subject to censorship and suppression. Section 2(b) of the *Charter* states that:

Everybody has the following fundamental freedoms: freedom of thought, belief, opinion and expression, including freedom of the press and the other media of communication.

The manner in which the law is set out gives it the potential to cover a broad range of areas including the media, the internet, hate crimes and pornography. In recent years, numerous cases have come before the courts for clarification on the issue of freedom of expression.

This assignment requires you to examine two controversial *Charter* cases involving hate crimes, *R. v. Keegstra* (1990) and *R. v. Zundel* (1992). Using all available resources, research these two cases and answer the following questions.

R. v. Keegstra

Who is James Keegstra, and what actions led him to break the law?

With what *Criminal Code* offence was Keegstra charged?

How did Keegstra try to defend his actions?

Explain the role of section 1 of the *Charter* as it applies to this case.

What was the final decision of the court? In your opinion, was this a just decision? Explain.

R. v. Zundel

Who is Ernst Zundel, and what actions led him to break the law?

With what *Criminal Code* offence was Zundel charged?

How did Zundel try to defend his actions?

Explain the role of section 1 of the *Charter* as it applies to this case.

What was the final decision of the court? In your opinion, was this a just decision? Explain.

In what way are the two cases similar?

How did the two cases differ?

Appendix 1.7

Unwritten Constitutional Principles

Lalonde v. Health Services Restructuring Commission (Ontario)

Lalonde v Commission de restructuration des services de santé

S.O.S. Montfort

The Canadian Constitution is the basic framework for analyzing the relationship between people and the government. The "Constitution of Canada" is not a single document. It is made up of the constitutional texts which are named in s.52 (2) of the *Constitution Act of Canada, 1982*, as well as other written rules, acts, legislation, judicial decisions and agreements between the federal and provincial governments. The Constitution also includes unwritten rules and underlying principles. These rules and principles arise from an understanding of Canadian constitutional customs, traditions, and judicial decisions. Government agencies have to consider these rules and principles when they make their decisions.

In 1998 the Supreme Court of Canada in *Reference re Secession of Quebec* identified four unwritten Constitutional principles: federalism, democracy, constitutionalism and the rule of law, and respect for and protection of minorities. The Court talked about Canada's historical commitment to its minorities, to aboriginals, and about equality, legal and language rights. It also talked about a number of written constitutional provisions protecting minority language, religion and education rights. The Court stated that the protection of minority rights is an independent principle which underlies Canada's constitutional order.

In December 2001 the Court of Appeal of Ontario in *Lalonde v Commission de restructuration des services de santé*, sometimes called the "Montfort Hospital" case nullified a decision of the Health Services Restructuring Commission (the Commission) of the province to reduce services at Ottawa's Montfort Hospital (Montfort). The Commission had the authority to close, amalgamate operations or change the amount of health services provided by hospitals in the province. The Commission made its decisions for reasons of administrative convenience and to save money. The Commission decided that the services that Montfort had provided would be provided by Ottawa General.

Montfort is a hospital that serves the Franco-Ontarian community in the Ottawa Carlton area. It is the only French-language teaching hospital in the province. The

Court of Appeal decided that the Commission had not given serious weight and consideration to the linguistic and cultural importance of Montfort to the survival of the Ontario's francophone minority. The Court indicated that government decision-makers must consider underlying principles of the Constitution when they make decisions.

In February 1997 the Commission stated that it wanted to close Montfort. The decision caused an uproar in the Franco-Ontarian community. An organization named S.O.S. Montfort was founded to fight the Commission's decision. Gisèle Lalonde, a former Mayor of Vanier, became its President. In August 1997 the Commission decided not to close Montfort, but did order a significant reduction in services - the closure of the emergency ward, intensive care and general surgery and the elimination of other special services. The S.O.S. Montfort group was not satisfied with this change, and tried to negotiate other terms with the Commission but was unable to do so.

In August 1998 Lalonde and others brought an application to the Divisional Court of Ontario asking that the decision of the Commission be set aside. On November 29th 1999, the Ontario Divisional agreed. The Divisional Court stated that the Commission's orders did not violate equality rights of francophones under s.15 of the *Charter of Rights and Freedoms* (the *Charter*), but indicated that the Hospital did have Constitutional protection because it was an important linguistic, cultural institution essential to the minority francophone community of Ontario.

In December 1999 the Ontario government appealed the Divisional Court's decision, and in May 2001 a bilingual panel of judges of the Court of Appeal of Ontario heard the case. The Court affirmed the decision of the Divisional Court, nullified the Commission's directions and dismissed the government's appeal. Montfort would remain a full service hospital with no reduction in services.

In making its decision the Court of Appeal considered the following six issues:

1. Did the Divisional Court err in its findings of fact?

The Court of Appeal agreed with the Divisional Court that Montfort played a vital role in the life of the minority francophone population of Ontario. The Commission's directions would reduce available health care services in French,

would jeopardize the training of French language health care professionals and would hurt the Hospital's role as a linguistic, educational and cultural institution.

2. Does s. 16(3) of the *Charter* protect the status of Montfort Hospital as a francophone institution?

The Court stated that Montfort was not protected by section 16 of the *Charter*, which is about the advancement of status or use of English or French. According to the Court, subsection 16(3) could not be used to gain new rights, but is used as a shield to protect rights from government action.

3. Do the Commission's directions infringe s. 15 of the *Charter*?

The Court upheld the Divisional Court's ruling that the Commission's directions did not violate section 15 of the *Charter*. S. 15, the equality section, could not be used to add to language rights already specifically guaranteed by the *Charter*.

4. What is the relevance to Montfort Hospital of the unwritten constitutional principle of respect for and protection of minorities?

Montfort is important to the survival of the minority francophone community of Ontario. The Court referred to the Supreme Court's decision in *Reference re Secession of Quebec*. In that decision the Supreme Court of Canada stated that respect for and protection of minorities is a fundamental structural feature of the Canadian Constitution. This feature of our Constitution explains and goes beyond the minority rights specifically guaranteed in the Constitution. These minority rights include section 16(1) of the *Charter* which proclaims French and English to be official languages of Canada, and Section 23 which guarantees the general right to primary or secondary school education to the English or French linguistic minorities of a province. Respect for and protection of minorities is a "bedrock principle" which influences the interpretation of laws.

5. Do the Commission's directions violate the *French Language Services Act*?

The Court looked to the *French Language Services Act* and stated that the underlying purposes of the *Act* included the protection of the Ontario francophone community, advancement of the French language and the promotion of its equality with English. These purposes go together with the unwritten principles of the

Constitution. Under the *French Language Services Act* Montfort was named as a French language service provider. The Commission's decision would endanger the ability to train health professionals in French and would increase the assimilation of Franco-Ontarians. The Court found that the negative effects of the Commission's decision were contrary to the purpose and objectives of the *Act*.

6. Are the Commission's directions reviewable pursuant to the unwritten constitutional principle of respect for and protection of minorities?

While the Commission could change and limit services offered by Montfort, it can only do so when "reasonable and necessary". The Commission must also act in the public interest, therefore it must take into account constitutional principles. The Commission's objectives were not so important that it could justify its failure to give serious weight and consideration to the linguistic and cultural role of Montfort to the survival of the Franco-Ontarian community in Ontario.

Questions:

Explain how sections 15 and 23 of the *Charter* could relate to this case.

Explain how the members of S.O.S. Montfort won their case even though the Court decided that the *Charter* was not violated.

Do you agree that unwritten principles should have the same importance as written laws? Why or Why not?

Do you think the decision of the Ontario Court of Appeal was fair? Explain.

Appendix 1.8

Courthouse Visit and Classroom Speaker Request Form

School Name _____ School phone _____
Address _____ School fax _____
Name of Teacher _____ Teacher e-mail _____
Teacher Home Phone (Optional) _____ Subject & Grade Taught _____

Are you asking for:

1. Courthouse visit: Yes ☐ No ☐ Classroom visit: Yes ☐ No ☐ Either: ☐

Half day ☐ Whole day ☐ Number of students _____ Length of class (minutes) _____

Local Courthouse requested:

OR

2. As a classroom speaker, rank your first 3 choices

[] [] [] [] []
Judge Lawyer Crown Attorney Legal Aid Representative Court Operations Manager

List 3 possible dates for courthouse or classroom visits

_____; _____; _____

What is the goal of the session?

What topics will be of interest to the students?

Fax this form to your local Courthouse at (see list below): _____

Confirmation of Courthouse Visit or Classroom Visit

Courthouse visit:

Name of speaker at court _____

Date of Courthouse visit _____ Address of
Courthouse: _____

Time of Courthouse visit: _____ Duration: _____

Contact person at courthouse on arrival will be:

Name: _____ in
room _____

Classroom visit:

Name of speaker for class _____

Date of classroom visit _____ Address of school: _____

Time of classroom visit: _____ Duration: _____

Contact person at school on arrival will be:

Name: _____ in
room _____

Send this form to the teacher indicated above

Fax Number Contact List – Courtrooms and Classrooms Program

East Region

Ottawa-Carleton (Ottawa) 613-239-1491

Prescott-Russell (L'original) 613-675-4507

Hastings & Prince Edward (Belleville/Picton) 613-962-5143

Renfrew (Pembroke) 613-732-1766

Leeds-Grenville (Brockville) 613-345-4019

Frontenac (Kingston, Napanee, Kaladar, Sharbot Lake) 613-548-6818

Stor/Dun/Glen (Cornwall) 613-932-0507

Lanark (Perth) 613-267-7055

West Region

Essex (Windsor) 519-973-6698

Elgin/Oxford (St. Thomas/Woodstock) 519-631-6086

Chatham-Kent (Chatham) 519-352-7352

Middlesex (London) 519-660-3134

Wellington (Guelph) 519-824-5449

Huron/Perth (Stratford/Goderich) 519-271-2671

Bruce/Grey (Owen Sound/Walkerton) 519-371-5832

Waterloo (Kitchener/Cambridge) 519-741-3212

Lambton (Sarnia) 519-332-6647

North Region

Sudbury 705-564-4156

Parry Sound & Nipissing (North Bay) 705-495-8368

Algoma & Manitoulin (Sault Ste. Marie, Elliot Lake, Blind River, Thessalon, Wawa, Espanola, Gore Bay & Little Current) 705-945-5044

Chochrane & Temiskaming (Timmins, Haileybury & Kirkland Lake) 705-272-5100

Thunder Bay 807-345-6383

Kenora & Rainy River 807-345-6383

Central East Region

Tri-County (Peterborough, Cobourg & Lindsay) 705-755-1685

Simcoe/Muskoka (Barrie, Orillia, Bracebridge, Bradford, Midland, Elmvale, Huntsville, Penetanguishene & Collingwood) 705-739-6578

York (Newmarket & Richmond Hill) 905-853-4825

Durham (Oshawa/Whitby) 905-430-5811

Central West Region

Peel (Brampton) 905-456-4804

Niagara (St. Catharines, Welland, Niagara Falls & Fort Erie) 905-685-0990

Halton & Dufferin (Milton, Oakville, Burlington & Orangeville) 905-878-3147

Haldimand-Norfolk & Brant (Simcoe, Brantford & Cayuga) 519-426-3393

Hamilton-Wentworth 905-645-5280

Toronto Region

Central Criminal Courts 416-327-6003

Osgoode Hall - Court of Appeal 416-327-6209

Appendix 1.9

The Great Debate

The Great Debate is an annual OJEN Law Day event that brings together academics, legal professionals and educators to discuss a featured legal issue. Permission from Court TV Canada has been granted to allow teachers to use recordings of Great Debate broadcasts as teaching resources. To receive DVD copies of past Great Debates, please contact: ojen@lsuc.on.ca. The Great Debate recordings can be used to complement or inspire classroom discussion.

Additional background material to the Great Debates can be downloaded from www.ojen.ca/eng/programs/courtrooms_classrooms.htm, click on "Great Debate".

The Great Debate 2005:

"Do we really need the Charter?"

Panelists:

- ❑ Allan C. Hutchinson, professor at Osgoode Hall Law School, York University
- ❑ Patrick J. Monahan, Dean of Osgoode Hall Law School
- ❑ Dr. Ted Morton, Member of the Legislative Assembly of Alberta and past professor of political science at the University of Calgary
- ❑ Lorraine E. Weinrib, professor of law and political science at the University of Toronto

The Great Debate 2004:

"How Will Same-Sex Marriages Affect the Future of Canada?"

Panelists:

- ❑ Martha McCarthy of Epstein Cole LLP - Counsel for the applicant couples in *Halpern et al. v. Attorney General of Canada et al.*
- ❑ Doug Elliot of Roy Elliott Kim O'Connor LLP - Counsel for the Metropolitan Community Church of Toronto in *Halpern*
- ❑ David Brown of Stikeman Elliott LLP - Counsel for the Association for Marriage and the Family in Ontario in *Halpern*
- ❑ Professor Margaret Somerville - of the McGill University Centre for Medicine, Ethics and Law

Appendix 1.10

Canadian Charter of Rights and Freedoms Landmark Cases

Visit www.ojen.ca/resources/resources_main.htm and click on "Landmark Cases". Six important Canadian cases are summarized in student-friendly format. Other materials include:

1. Notes for teachers.
2. Case summary and relevant terminology (with questions and guidelines).
3. Tracking the case through the court system/a look at the law.
4. Link to the Supreme Court of Canada's decision.

OJEN's *Landmark Cases* are:

R v. Powley (Métis hunting rights)
The Canadian Foundation for Children, Youth and the Law v. the Attorney General of Canada ("The Spanking Case")
Lalonde v. Health Services Restructuring Commission (French language rights)
Halpern v. Attorney General of Canada (same-sex marriage)
Vriend v. the Queen (sexual orientation)
Nancy Law v. Canada (age discrimination)

**"The Spanking Case": Testing the Validity of Section 43
The Canadian Foundation for Children, Youth and the Law
v. The Attorney General of Canada**

CASE SUMMARY

The Canadian Foundation for Children, Youth and the Law (CFCYL) is an organization dedicated to the protection of children's rights. It provides legal representation for youth as well as examining and responding to existing and proposed legislation related to the rights of children. In November 1998, the CFCYL applied to a court asking for a **declaration** that section 43 of the Canadian *Criminal Code* is invalid because it legalizes the use of corporal punishment against children for the purpose of correction. In other words, children are the only group in society that can be legally assaulted as a means of discipline. The Ontario Association of Children's Aid Societies supported the CFCYL position.

The validity of the challenged statutory provision was defended by the Attorney General of Canada whose position was supported by the Canadian Teachers' Federation and the Coalition for Family Autonomy. The Attorney General of Ontario was not a party, and did not intervene in the challenge to a provision of the federally enacted Criminal Code.

Section 43 of the Criminal Code states that:

Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

The basis for the challenge initiated by the CFCYL was that s.43 was unconstitutional and violated numerous sections of the *Canadian Charter of Rights and Freedoms*, as well as the United Nations *Convention on the Rights of the Child*.

The challenge was based on the following sections of the *Charter*:

s.7 - Everyone has the right to life, liberty and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

s.12 - Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

s.15(1) - Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

In addition to this, the challenge also relied on Canada's commitment to comply with the UN *Convention on the Rights of the Child*. The primary objective of the *Convention* is to establish an international standard of human rights for all children, everywhere.

Aside from the **applicant** (CFCYL) and the **respondent** (Attorney General of Canada), there were also a number of groups that felt they had an interest in the outcome of this challenge. These groups applied to the court for **intervener** status so that they too could participate in this legal proceeding. Status was not granted to all applicants. The only group to be granted intervener status in support of this challenge was the Ontario Association of Children's Aid Societies. On the other hand, parties opposed to this challenge that were granted intervener status were the Canadian Teachers' Federation and a group of organizations that joined forces to form the Coalition for Family Autonomy.

This application for a declaration began in the Ontario Court (General Division), now the Ontario Superior Court of Justice. Mr. Justice McCombs heard the application of the CFCYL from December 6-10, 1999 but did not make a ruling until July 5, 2000. In his decision, the judge ruled that s.43 was consistent with the *Charter* and that it did not violate Canada's obligations under the UN *Convention on the Rights of the Child*. He dismissed the application. However, in his reasons, the judge suggested that federal Parliament should examine the use of reasonable force, as set out in s.43, and come up with more clearly defined parameters to guide teachers, parents and caregivers.

The CFCYL was dissatisfied with this ruling. It felt that Justice McCombs misinterpreted the evidence and that he was also wrong in the way he interpreted the law. In January 2001, CFCYL appealed the decision to the Court of Appeal of Ontario where it was heard by Justices Catzman, Doherty and Goudge from September 10-12, 2001. On January 15, 2002 the Court of Appeal upheld the

decision of the lower court stating that the purpose of s.43 was to allow parents and teachers to "apply strictly limited corrective force to children without criminal sanctions so that they can carry out their important responsibilities to train and nurture children without the harm that such sanctions would bring to them, to their tasks and to the families concerned". The appeal was dismissed.

In March 2002, the CFCYL applied for **leave** to appeal to the Supreme Court of Canada, the highest court in the country. The Supreme Court of Canada can refuse to hear a case. It usually hears cases that are of national significance, on appeal from a provincial appeal court. Often the cases deal with **constitutional** issues. CFCYL's argument was that the Ontario Court of Appeal made an error in law and did not give adequate consideration to the expert evidence before them and, as the matter was of national significance, permission to appeal should be granted. In October 2002, the Supreme Court announced that it would hear the appeal, although no date had been set. Since about 90% of applications to the Supreme Court for leave to appeal are rejected, the decision to hear this appeal was a clear indication that this constitutional challenge was important. On March 4, 2003, the Supreme Court of Canada announced that the hearing would take place on June 6, 2003. The Court granted intervener status to those groups that had participated in the two previous hearings in the lower courts, as well as to two other organizations that applied for status, the Child Welfare League of Canada and the Quebec Human Rights Commission.

On January 30, 2004, the Supreme Court of Canada held, that s.43 was constitutional, upholding the previous decisions of the lower courts. The decision was in a 6-3, meaning six judges (the majority) agreed with the judgement, while three judges **dissented** (the minority). Despite upholding the previous decisions, the Supreme Court established some legal guidelines and limitations to be used when determining what degree of force would be considered "reasonable under the circumstances". The Supreme Court held that spanking is only acceptable for children between the ages of 2-12, that the use of objects such as belts or hitting in the head is not permissible, and that no child should be hit in anger or out of frustration. The Supreme Court also added that teachers should not be permitted to strike students, but that limited force is allowed in order to restrain students during a violent outburst.

QUESTIONS

1. Using the "Timeline of Events" provided, write a brief description of the importance of each date on the timeline to this case.
2. Examine your timeline. What observation can you make about the litigation process?
3. Why did the Canadian Foundation for Children, Youth and the Law decide to challenge the validity of S.43 of the *Criminal Code*?
4. Using your textbook or a dictionary, define the term "corporal punishment".
5. The Canadian Teacher's Federation had stated that their position was that teachers should not use corporal punishment on students and yet they stood as interveners in support of s. 43 throughout all three trials.
 - a) How does s.43 affect the teacher's role in the classroom?
 - b) What **do you think** teachers feared could happen if s.43 were repealed?

6. The courts are often required to decide between the rights of the individual and the needs of society. In this case, was the Supreme Court decision in favour of individual rights, the needs of society or a balance of both? Explain.

TIMELINE OF EVENTS

November 1998 -

December 1999 -

July 2000 -

January 2001 -

September 2001 -

January 2002 -

March 2002 -

October 2002 -

March 2003 - _____

June 2003 - _____

January 2004 - _____

Values of the Justice System



Section 2

Fair Process

Section 2 – Fair Process

Activity 2.1: Ensuring a Fair Trial Through Judicial Independence and Impartiality

Time: 75-120 minutes

Description:

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

Overall Expectations:

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

Specific expectations:

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

IC2.04 - analyse cases that have upheld or restricted a citizen's rights and responsibilities, outlining the concerns and actions of involved citizens and the reason for the eventual outcome.

PC1.01 - describe fundamental beliefs and values associated with democratic citizenship (e.g. rule of law, human dignity, freedom of expression, freedom of religion, work for the common good, respect for the rights of others, sense of responsibility for others).

Planning Notes:

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

- The teacher may choose to deal with one, some, or all of the case studies provided in Appendix 2.2 since each case deals with aspects of judicial fairness and independence. (Note: Case Studies #3 and #4 are complementary and should be used together.)
- The sample questions found in Appendix 2.4 can either be given to the students or used by the teacher to support a large group discussion in which students will generate questions for the legal expert's visit.
- Arrange for computer lab time for activities associated with Appendix 2.5.

Prior Knowledge Required:

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

Teaching/Learning Strategies:

1. After indicating to students that this activity will deal with the protection of their rights, begin by asking them what they understand by “a fair trial”. Whether or not the responses raise the issue of the important role played by the judge, follow this discussion by referring to the scenarios outlined in Appendix 2.1. Some of the ideas that will likely emerge include the need for judicial impartiality and objectivity. Teachers may also wish to ask the class whether judges should be elected and whether this would have any effect on the qualities they have identified as necessary for a judicial position.
2. Distribute the FLQ case study found at Appendix 2.2. Students are to read the case and answer the assigned questions. In addition to correcting this exercise with the class, teachers may wish to clarify “retroactivity of the law” and membership in the FLQ. Teachers should emphasize the need to balance the citizen's right to join groups (i.e. freedom of association) with society's right to security and order. In answering question 2, which deals with anti-biker legislation, teachers should note that the main difference between the FLQ and the “biker situation”, is that the FLQ members were guilty of an offence under a law that had not been passed when they became members.
3. Distribute the Tunisian case study and ask students to respond to the questions. Students might note that, in both the FLQ and Tunisian cases, those who argued for change in society were being prosecuted, but that at least the FLQ members had a fair trial.
4. Distribute Case Studies #3 and #4. Working in large groups or in pairs, students are to respond to the questions. Discuss these responses in a large group setting. The concept of “racial profiling” that is introduced might well produce other examples from students' experience or knowledge. Case study 4 found in Appendix 2.3, is intended to be a teacher resource. It provides an opportunity to discuss how changing community values continue

to influence the law. It suggests that the ability to challenge jurors on their possible racial bias is the result of a fairly recent recognition that racism exists in the community and that, if unacknowledged in the judicial process, the right of the accused to be presumed innocent may be diminished.

5. Have students write what they understand by the terms judicial independence and judicial impartiality. Using their responses to the case studies, have students state how their right to a fair trial is protected.
6. Using the multi-media tool, *Try Judging*, outlined in [Appendix 2.5](#), have students review the scenarios and answer questions in the online quiz (Note: modules 1 and 4 have specific relevance to fair process. There are five modules in total). Lesson plans are included in the resource guide, available through the *Try Judging* website: www.tryjudging.ca.

Assessment/Evaluation Techniques:

Formative assessment of student responses to case studies.

Summative evaluation of written responses to #5 above.

Resources:

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

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

Appendix 2.1

How Are Your Rights Protected?

Scenario #1

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

Scenario #2

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

Scenario #3

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

Appendix 2.2

A Question of Fair Trials: Case Studies

Case Study #1

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

The FLQ Crisis:

Gagnon v. The Queen (Re: The Public Order Act)

Quebec Court of Appeal, April 21, 1971 (C.R.N.S. Vol. 14, 321.)

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

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

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

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

The accused appealed their detention, arguing that the *Public Order Act* was unconstitutional because Parliament had undermined the power of the judiciary by

passing a law that made membership in the FLQ a criminal offence. It was argued that Parliament, in essence, passed a "judgment" before the case was even tried.

The Appeal Court of Quebec found that:

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

Discussion Questions:

1. Was it fair that being a member of the FLQ was made illegal?

Why or why not?

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

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

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

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

Case Study #2

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

(Joint press release from Amnesty International)

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

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

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

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

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

Discussion Questions:

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

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

Case Study #3

(Note: The decisions in both of the following Case Studies were appealed.)

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

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

At trial, defence counsel brought an application to exclude the results of the breathalyzer test arguing that Mr. Brown had been arbitrarily stopped as a result of racial profiling. The supporting evidence included the fact that the police had begun a vehicle registration check prior to stopping the car.

In the course of defence counsel's submissions the judge described the allegations as "nasty" and "malicious" and commented on the lack of tension and hostility between the accused and the arresting officer. The trial judge dismissed the application without calling for submissions from the Crown. The accused was convicted. During sentencing the trial judge referred to "distaste for the matters raised during trial" and suggested that an apology be given to the arresting officer. The accused appealed.

Case Study #4

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

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

Discussion Questions:

1. What do you think is meant by the term "racial profiling"?
2. Based on your understanding of the term "judicial impartiality", were the actions of the judge in each of these cases fair and impartial? Explain.
3. If you were the appeal judge, would you grant the appeal in Case Study #3? Explain.
4. In Case Study #4, did the judge go too far in allowing defence counsel to challenge jurors about their possible racial prejudice? Explain.
5. Write down three questions for a judge or a lawyer, based on these two cases.

Appendix 2.3

A Question of Fair Trials: Responses

Case Study #3

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

Update to Case Study #3

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

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

Case Study #4

The Appeal Court agreed that racial prejudice exists and stated that providing instruction to jurors after they have heard the case might not be enough to have jurors set aside their prejudice. The court decided that the offender should be allowed to challenge jurors for cause on the basis of racial bias, thereby adequately addressing the offender's concerns about nationality, type of crime

and, police partiality. The Court referred to the right to challenge prospective jurors for cause on the ground of partiality and race in the S.C.C. decision *R. v. Williams* [1998].

Appendix 2.4

Developing Questions for the Judge's Visit

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

Sample Questions:

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

- How are judges to be held accountable, given there is so much emphasis on protecting their independence?
- Have you ever disagreed with the findings of a jury? Can you do anything about this?
- Has your life ever been threatened as a result of a decision you have made?
- How often have your decisions been appealed?
- Is it difficult being unable to speak out in public about your views on the law?
- Can you belong to any organizations once you become a judge?
- *Quel pourcentage des causes sont plaidées en français?*

Appendix 2.5

Try Judging (www.tryjudging.ca)

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

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

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

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

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

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

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

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

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

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

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

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

Module 5: Case Scenario: "The protest"

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

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

Time: 75-120 minutes

Description:

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

Overall Expectations:

- ICV.04 - explain the legal rights and responsibilities associated with Canadian citizenship.
- ACV.02 - demonstrate an ability to apply decision-making and conflict-resolution procedures and skills to cases of civic importance.

Specific Expectations:

- IC3.04 - demonstrate an understanding of how the judicial system (e.g., law courts, trials, juries) protects the rights of both individuals and society (e.g., the rights of accused, the rights of the victim and the role of the judiciary).
- AC2.02 - analyze important and contemporary cases that involve democratic principles in the public process of conflict resolution and decision-making.

Planning Notes:

- In determining which case studies to use, teachers will take into account the time available, the nature of the particular cases and student ability. The decisions in these cases are included in Appendix 2.11, *You Be The Judge: Responses*. (Teachers should note especially the results of case study #5.)
- Appendix 2.12, *Debates About Youth Justice*, is meant to provide support for a discussion of the issues arising from the activity and may provide further material for questions for a visiting legal expert.
- Review the Sentencing Options in Appendix 2.8 to ensure an adequate explanation to students at the appropriate time in the activity.

Prior Knowledge Required:

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

Teaching/Learning Strategies:

1. As an introduction to this activity, distribute Appendix 2.6, *Statistics on Youth Crime*. Ask students what the statistics indicate about the amount of crime and the types of crime that are most prevalent among young people. Students should also consider the significance of the age breakdown. Based on the conclusion that non-violent crime is the most prevalent type of crime committed by young people, ask students whether a new law dealing with youth justice should include more penalties calling for jail time for youth crime. Have students suggest other possibilities for dealing with non-violent crime. Since violent crime is still greater than it was 12 years ago, what should a new law do about it? (Perhaps the law dealing with youth crime should account for the different age groups, genders and categories of offences in addition to implementing new initiatives to deal with violent crime committed by young people. This is what the new *Youth Criminal Justice Act* does.)
2. Distribute Appendix 2.7, *New Directions in Youth Justice: Highlights of the New Legislation*. Working in pairs, students are to analyze the chart and examine how the new legislation deals with some of the issues raised in the earlier discussion.
3. Working as a class, ask students to find examples for each section of the chart where the new law takes into account all three groups: the accused, victims and the community. Discuss with students the appropriateness of this emphasis, especially with respect to the community, since this is one area where they may have difficulty understanding the need for legislation.
4. Distribute Appendix 2.8, *Youth Court Sentencing Options*, and review the various options presented. (Appendix 2.9, *Two Examples of Restorative Justice* might also be given to students to explain “Community Justice Conferencing” and “Healing Circles”.
5. The case studies in Appendix 2.10 may be given to groups of four. (The same case study may be given to more than one group depending on the size of the class.) Ask groups to respond to the questions. Instruct the groups that, in formulating their answers, they must balance the rights of the accused, the victim, and the community.
6. Each group then chooses a spokesperson to explain the case to the class. Other group members will read out the questions and explain the group’s responses. Additional explanations may be given if more than one group has the same case study. Discussion should focus on the appropriateness of the sentence in light of the instructions given.

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

Assessment/Evaluation Techniques:

Formative assessment of class and group discussions.

Resources:

All About Law, Teacher's Resource, Fourth Edition, ITP Nelson, 1996.

Juvenile Delinquency in Canada - A History, by Carrigan, D. Owen, Irwin Publishing, 1998.

New Directions in Youth Justice. Law Courts Education Society of B.C., 2001.

Non-print:

Department of Justice Canada: <http://canada.justice.gc.ca/en/ps/yj/legis/explan.html>

Ministère de la justice du Canada : <http://canada.justice.gc.ca/fr/ps/yj/legis/explan.html>

Appendix 2.6

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

Statistics on Youth Crime

(All figures are from the Department of Justice.)

Youth crime is decreasing in Canada.

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

What kinds of crime do youth commit?

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

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

At what age do youth commit crime?

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

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

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

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

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

Appendix 2.7

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

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

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

- | | |
|--|---|
| <ul style="list-style-type: none"> -an adult sentence is presumed to be appropriate if the youth is 14 or older when he or she commits the serious violent crime. These crimes are called presumptive offences, and include murder, manslaughter, attempted murder and aggravated sexual assault -a pattern of at least three serious, repeat violent offences is another factor in deciding whether to impose an adult sentence -Attorney General seeking an adult sentence must give notice to youth before plea and with leave of the court before trial -The Crown can renounce the application of the presumption of adult sentence. In this case, the judge who finds the young person guilty has to impose a youth sentence | <ul style="list-style-type: none"> This can cause lengthy delays before trial. -the courts presume they can give youth 16 or older an adult sentence if they are convicted of a serious offence -has no specific provision re. considering the pattern of repeat violent offences but the Crown can request an adult sentence for any offence for which an adult could be sentenced to than two years of custody -The Crown cannot renounce the application of the presumption of an adult sentence |
|--|---|

Victims

- | | |
|---|---|
| <ul style="list-style-type: none"> -Victim's concerns are now recognized in the principles of the Act -victims have the right to request access to certain youth records -victims have a role in formal and informal community-based measures for the offender -victims have a right to request information about measures or sanctions used for the offender that do not involve going to court -victims have a right to information about proceedings and a right to be given an opportunity to participate and be heard -victim impact statements can be submitted at the time of sentencing | <ul style="list-style-type: none"> -the principles of the Act do not mention victims -victims must ask for access to youth records -there is no formal recognition of victim's role -no right of victims to information on alternate measures taken |
|---|---|

Involving Partners (Conferences)

- | | |
|--|--|
| <ul style="list-style-type: none"> -allows advisory groups or "conferences" to advise police officers, judges, or other decision makers -conferences may include parents of the young person, the victim, community agencies or professionals -conferences can advise on appropriate informal measures, conditions for release from pre-trial detention, appropriate sentences and conditions, and re-integration plans | <ul style="list-style-type: none"> -there are no similar provisions |
|--|--|

Custody and Reintegration

- | | |
|--|--|
| <ul style="list-style-type: none"> -the province has more discretion to determine the level of custody. This may make the system more efficient -ensures that all youth with custodial sentences will also serve a period of supervision with conditions in the community. Youth can be returned to custody if they do not keep these conditions -increases planning for the reintegration of youth | <ul style="list-style-type: none"> -youth court determines custody level at the time it imposes the sentence -the decision to transfer a youth to a different custody level is made at youth court only -youth with custodial |
|--|--|

and encourages the community to take an active role in that reintegration

- a plan for reintegration in the community must be prepared for each youth in custody

- reintegration leaves may be granted for up to 30 days

sentences may also serve a period of supervision in

community with conditions but no requirement

that there be supervised reintegration post custody

- no requirement to plan reintegration during custody

- temporary leaves may be granted for up to 15 days

Appendix 2.8

Youth Court Sentencing Options

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

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

Appendix 2.9

Two Types of Restorative Justice Processes

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

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

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

Community Justice Conferencing:

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

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

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

Healing Circles:

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

Healing Circles can take many different forms, depending on the needs of the parties and the traditions of the community. They can, for example, be sentencing circles or healing circles. The focus of the dialogue in the circle is broader than a family group conference. The offending behaviour is seen largely as a community problem to be shared by all.

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

Appendix 2.10

You Be The Judge: Case Studies in Youth Justice

Case #1: The Dare

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

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

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

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

Discussion Questions:

1. Is a police warning sufficient here? Why or why not?
2. Should Crown counsel proceed to trial in a Youth Justice Court? Explain.
3. Does the public need to see that the offender for this offence receives a major punishment? Explain.
4. What other options for dealing with Jason are available in the community?
5. Does this crime have a victim? Explain your answer.

Case #2: Mrs. Myers' Garden

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

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

Discussion Questions:

1. Is this a case for a police warning or should Jeannine be charged and prosecuted in court? Why?
2. What is the best way to deal with this situation? Why?

Case #3: An Unforgettable Evening

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

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

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

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

Discussion Questions:

- 1. Is this an offence that requires imprisonment? Why or why not?**
- 2. Should Roland receive an adult sentence?**
- 3. Do the victim impact statements have any influence on you? How much weight should a judge give them? Is it fair for the same offence to have different punishments based on the victims' feelings?**
- 4. What sentence can your group come up with that would show this is a serious crime, that justice has been served, that victims of crime are listened to in the court system, and that the community will be better protected from others who might drink and drive dangerously?**

Case #4: A Troubled Life

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

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

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

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

Discussion Questions:

- 1. What advantages and disadvantages might come from imprisoning Frank?**
- 2. What are some alternatives that might be considered?**
- 3. What sentence do you suggest? Why?**

Case #5: Flames of Frustration

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

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

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

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

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

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

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

Discussion Questions:

- 1. What should be considered before determining whether Joey should receive an adult sentence?**
- 2. Do you think the fact that Joey is affected with FAS should have any impact on this case? Explain.**
- 3. Given the facts of this case, what do you think should happen to Joey?**

Appendix 2.11

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

Responses to "You Be The Judge" Cases

Case #1 The Dare

The investigating officer referred this case for Community Justice Conferencing.

Case #2 Mrs. Myers' Garden

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

Case #3 An Unforgettable Evening

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

Case #4 A Troubled Life

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

Case #5 Flames of Frustration

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

Appendix 2.12

Debate Topics - Youth Justice

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

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

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

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

Time: 75 minutes

Description:

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

Overall Expectations:

- ICV.01 - demonstrate an understanding of the reasons for democratic decision-making.
- PCV.01 - examine beliefs and values underlying democratic citizenship, and explain how these beliefs and values guide citizens' actions.

Specific Expectations:

- IC1.03 - report on the elements of democratic decision-making (e.g. rights and responsibilities of citizens, rule of law, common good, parliamentary system, majority rule, rights of minorities).
- IC3.05 - describe a case in which a citizen's rights and responsibilities have been upheld or restricted, outlining the concerns and actions of involved citizens and the reasons for the eventual outcome.
- PC1.02 - explain, based on an analysis of cases in local, provincial, national and global contexts, how democratic beliefs and values are reflected in citizen actions.

Planning Notes:

- Familiarize students with the *Charter of Rights and Freedoms*. Focus on section 8 which deals with search and seizure, section 15 which deals with equality, section 7 which deals with fundamental justice, section 12 which deals with cruel and unusual punishment, and section 1, which sets out the basis by which the rights and freedoms guaranteed by the *Charter* can be limited.
- The basis of the judges' decision in each case can be found in Appendix 2.14, Case Studies in Citizens' Rights: Responses.

Prior Knowledge Required:

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

Teaching/Learning Strategies:

1. Indicate that in each of the situations that follow, citizens were acting in defence of democratic beliefs and values in the course of defending what they believed to be their rights. The scenario found in Appendix 2.13 introduces the case studies.
2. Review with students the idea of fundamental rights and freedoms and the protections afforded them by the *Charter of Rights and Freedoms*, 1982. Ask students whether these rights and freedoms existed before 1982. Provide a brief overview of our common law tradition inherited from Britain, and the *Bill of Rights*. Ask students to provide examples of restrictions on citizens' rights from earlier in Canada's history. These might include discrimination against various people based on race, religion or gender. (Women were kept out of universities and denied the vote. Recent immigrants were denied the vote in 1917. Innocent citizens were interned in both World Wars.)
3. The case studies should be examined in sequence or assigned to small groups and dealt with concurrently (the same case being given, if necessary, to more than one group).
4. Have the groups dealing with the same case meet, compare results, and attempt to reach a consensus. If they are unable to agree on a decision, each group can report separately and offer their dissenting opinions.
5. In the oral presentations, groups should outline the case, state their decision, explain how they arrived at this decision, and respond to questions from the class.
6. Provide the class with the decisions reached by the Supreme Court of Canada.
7. For homework, students should write a brief (half-page) "opinion" stating why they agreed or disagreed with the decision that applied to their case.

Assessment/Evaluation Techniques:

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

Resources:

Citizenship Teaching Module. British Columbia Civil Liberties Association
Kindler v. Canada (Minister of Justice) [1991] 2 S.C.R. 779

R. v. M.R.M. [1998] 3 S.C.R. 393

Vriend v. Alberta [1998] 1 S.C.R. 493

United States of America v. Burns [2001] 1 S.C.R. 283

<http://www.ijcan.org/ca/cas/scc/1991/1991scc70.html>

http://www.lexum.umontreal.ca/csc-scc/en/pub/1998/vol1/html/1998scr1_0493.html

http://www.lexum.umontreal.ca/csc-scc/en/pub/1991/vol2/html/1991scr2_0779.html

http://www.lexum.umontreal.ca/csc-scc/en/pub/2001/vol1/html/2001scr1_0283.html

Appendix 2.13

Case Studies - Citizens' Rights

Scenario:

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

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

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

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

Case Study #1: Search and Seizure (section 8 of the *Charter of Rights and Freedoms*)

***R. v. M.R.M.* [1998] 3 S.C.R. 393**

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

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

Discussion Questions:

1. Was this search unreasonable and therefore a violation of the Charter right to protection from unreasonable search and seizure? Why or why not?
2. What criteria would you set for a reasonable search in a school setting?

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

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

Discussion Questions:

1. If the *Charter of Rights and Freedoms* conflicts with provincial laws, which takes precedence?
2. Was the president's question to Mr. Vriend appropriate? Why or why not?
3. How would you decide this case?

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

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

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

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

Discussion Questions:

1. How would you decide this case? Explain your reasoning.
2. Do you think the death penalty constitutes cruel and unusual punishment? Explain.

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

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

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

Discussion Questions:

1. Is this case any different from Case Study #3? Explain.
2. Should the circumstances of this case result in a different decision by the Supreme Court? Why or why not?

Appendix 2.14

Case Studies in Citizens' Rights: Responses

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

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

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

Case Study #2 *Vriend v. Alberta*

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

The Supreme Court of Canada decided that the *Charter* applied to the case since the "omission" was an act of the legislature. The Supreme Court of Canada stated that the rights enshrined in section 15(1) of the *Charter* are fundamental to Canada. In order to achieve equality, the intrinsic worthiness and importance of

every individual must be recognized regardless of personal characteristics. While legislatures ought to be accorded deference, this does not give them unrestricted license to disregard an individual's *Charter* rights. When the *Charter* was introduced in 1982, Canada went from a system of Parliamentary supremacy to constitutional supremacy. Canadians had individual rights and freedoms which no government could take away; however, these rights and freedoms are not absolute. Governments and legislatures can justify qualification and infringement of constitutional rights under section 1 of the *Charter of Rights and Freedoms*, but in this case, the Court found that the province failed to demonstrate any reasonable basis for excluding sexual orientation from the IRPA. Rather than find the whole of the IRPA unconstitutional, the Court chose, as the least intrusive and expensive mechanism, to read in the words, "sexual orientation". By reading in those words, sexual orientation became a prohibited ground of discrimination.

For further discussion:

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

Case Study #3 *Kindler v. Canada*

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

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

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

Questions for further discussion:

1. Account for the different decision given in this case based on the explanation above.
2. What is your reaction to the explanation given by the Court? Explain.

Values of the Justice System



Section 3

The Citizen's Role

Section 3 – The Citizen’s Role

Time: 240 minutes – approximately

Description:

This section enables students to research citizens of varying backgrounds who have made a difference in public life and to examine the different types of civic involvement they represent. Students will examine various types of non-violent citizen participation. In addition, students will analyze approaches to decision-making and conflict resolution and apply them to their lives. Finally, by writing a letter to the editor of a local newspaper on a community issue of their choice students will become “active” citizens.

Overall Expectations:

- ICV.04 -** explain the legal rights and responsibilities associated with Canadian citizenship.
- ACV.01 -** apply appropriate inquiry skills to the research of questions and issues of civic importance.
- ACV.02 -** demonstrate an understanding of the various ways in which decisions are made and conflicts resolved in matters of civic importance, and the various ways in which individual citizens participate in these processes.

Specific Expectations:

- IC2.02 -** explain why it is essential in a democracy for governments to be open and accountable to their citizens, while protecting the personal information citizens are required to provide to governments (e.g. Municipal Freedom of Information and Protection Act).
- IC3.05 -** explain the roles played by elected representatives, interest groups, and the media in the political process (e.g. legislative and constituency work, lobbying, providing public information on, and analysis of, issues facing government).
- AC1.01 -** formulate appropriate questions for inquiry and research, locate relevant information in a variety of sources (e.g. texts, reference materials, news media, maps, community resources, the Internet), and identify main ideas, supporting evidence, points of view, and biases in these materials.
- AC1.02 -** organize information, using a variety of methods and tools (e.g. summaries, notes, timelines, visual organizers, maps, comparison organizers).
- AC1.03 -** communicate the results of inquiries into important civic issues, using a variety of forms (e.g. discussions and debates, posters, letters to elected officials, visual organizers, Web pages, dramatizations).

- AC2.03 -** demonstrate an understanding of the ways in which individual citizens can obtain information and explanations or voice opinions about civic matters (e.g. by communicating with the appropriate elected officials or bureaucratic departments, by writing letters or e-mails to the media, by organizing petitions, by voting).
- AC2.04 -** compare the impact of various types of non-violent citizen participation (e.g. advocacy, community service, voting, serving on juries) in resolving public issues in Canada.
- AC2.05 -** demonstrate an understanding of the responsibilities as local, national, and global citizens by applying their knowledge of civics, and skills related to purposeful and active citizenship, to a project of personal interest and civic importance (e.g. participating in food and clothing drives, visiting seniors, participating in community festivals, celebrations and events, becoming involved in human rights, anti-discrimination, or antiracism activities).

Planning Notes:

- Create an overhead of Appendix 3.1. (if you choose to share it with the class)
- Reproduce copies of Appendices 3.2, 3.3, 3.4, and 3.5
- Arrange for computer lab time for the assignment found at Appendix 3.2

Prior Knowledge Required:

Students will likely already be familiar with some of the citizens listed in Appendix 3.2.

Teaching/Learning Strategies:

1. Discuss with students the importance of civic involvement and the various ways this can take place. This may be achieved by asking students to brainstorm a list of people they know of who have been actively involved in their community, province, or country.
2. Inform students that they will be doing a research project that will involve writing a profile on citizens of varying backgrounds who have made a difference to public life. Provide students with a copy of Appendix 3.2. *Citizens Who Have Made a Difference*.
3. Students are to write a research paper on a citizen who has contributed to the community in a positive way. Teachers may wish to assign the students a “citizen” or may wish to let them choose one on their own. Each student should research a different person. Teachers may wish to make an overhead of Appendix 3.1 - Citizens Who Have Made a Difference, and review it with students prior to asking them to make their selection.
4. Inform students that they will be making a brief three-minute presentation to the class, or to a group within the class, after their profiles are completed. Allow at least 1 – 2 weeks for research and preparation before having the speeches in class.

5. Using library resources and the internet, students are to work on their profiles.
6. Students then present this material to the class. The teacher should try to organize them in chronological order so the students can see how various aspects of society have changed over the years (e.g., the role and rights of women).
7. Explain to the students that there are various types of non-violent citizen participation and explain what each type means.
8. Provide the students with a copy of Appendix 3.3 Types of Non-Violent Citizen Participation and ask them to fill in the blank spaces with examples of a type of community service, etc.
9. Take up the answers in class and have the students add at least one more example from the class discussion to each of the blank spaces.
10. Apply the use of non-violent citizen participation to a current issue and show how it can be used to resolve public issues in Canada. There are a number of environmental issues that could be used for this exercise. (e.g., garbage to Kirkland Lake, the Oak Ridges Moraine preservation issue).
11. Provide the students with a copy of Appendix 3.4 - Decision Making and Conflict Resolution and ask them to complete it using their textbooks and/or other available resources. This should then be taken up with the class.
12. Finally, students are to choose a topic of importance to the community and themselves and write a letter to the editor (Appendix 3.5 - A Letter to the Editor). Be sure to explain what the letter should include and that its purpose is for them to participate effectively in a civil action. You may want to give them some examples of issues to choose from such as school closings, cutting of music programs, the need for crosswalks, deteriorating and dangerous playgrounds, speeding on local streets, etc. (It may be helpful to provide the students with an example of an editorial from a local newspaper).
13. Having your local MP, MPP, counselor, trustee or a police officer as a guest speaker to speak on local community issues could enhance this exercise. If this takes place, be sure to brief the speaker on the issues discussed in class and ask the students to prepare questions for the speaker prior to the visit.

Assessment/Evaluation Techniques:

(Note that numbers below correspond to the teaching/learning strategies listed above)

6. Summative evaluation of the profile and oral presentation.
9. Formative assessment of verbal responses for Appendix 3.3.

10. Formative assessment of verbal and written responses to Appendix 3.4.
12. Summative evaluation of written response to Appendix 3.5.

Resources:

Print:

Classroom Civics or Law textbooks

An example of an editorial and letters to the editor from a local newspaper

Kielberger, Craig and Mark Kielberger, *Take Action*, Toronto: Gage Learning, 2002.

Non-Print:

http://www.globeandmail.com/series/nationbuilders/stories/public_life.html

<http://radio-canada.ca/histoire/>

This site has a number of short biographies on prominent Canadians, many of whom are listed in Appendix 3.1.

Appendix 3.1

Teacher's Copy

CITIZENS WHO HAVE MADE A DIFFERENCE

Lincoln Alexander

- First black MP and the first member of a racial group to serve as Ontario's Lieutenant Governor

Louise Arbour

- Justice on the Supreme Court of Canada
- Chief prosecutor for the International Criminal Tribunal for the former Yugoslavia and Rwanda

Margaret Atwood

- Poet, novelist and critic
- Strong supporter of Amnesty International and PEN Canada

Dr. Frederick Banting

- Doctor and scientist who invented insulin
- Recipient of the Nobel Prize for medicine

James Karl Bartleman

- First Canadian Aboriginal to be named Lieutenant Governor of Ontario
- One of Canada's most successful and recognized diplomats

Napoléon Belcourt

- Leader of the movement in favour of separate bilingual schools in Ontario. He fought regulation 17 before the Ontario Supreme Court and then before the last judicial resort Court of Appeal, i.e., the Judicial Committee of the Privy Council in London

Rosemary Brown

- First black woman elected into political office in British Columbia
- Advocate of equality issues related to men, women, and children
- Served as Human Rights Commissioner

Kim Campbell

- First female Prime Minister of Canada

Emily Carr

- One of Canada's leading female artists
- Her artwork reflected her love for Canada, the landscape and its people

Adrienne Clarkson

- Second woman chosen as the Governor General of Canada
- Award winning television journalist, writer and host

Roméo Dallaire

- Lieutenant General in the Canadian Armed Forces who served as Commander of the UN Assistance Mission in Rwanda and Uganda
- Publicized the dilemma of military inaction in the face of genocide

Béatrice Desloges

- Challenged regulation 17, which prohibited teaching in French more than one hour a day

John Diefenbaker

- Prime Minister who introduced the Canadian *Bill of Rights* in 1960

Tommy Douglas

- First leader of the NDP
- Largely responsible for the introduction of universal health care in Saskatchewan and inspired its introduction to the rest of Canada

Terry Fox

- Founder of the Marathon of Hope, an organization that raises money for cancer research
- Widely recognized as a Canadian folk hero

Wayne Gretzky

- Arguably the greatest hockey player of all time
- Ambassador for the game of hockey and more importantly for the country of Canada

Rick Hansen

- Founder of the Man in Motion Foundation and President of the Rick Hansen Institute which, combined, have raised over \$135 million for spinal cord research
- Chair of the Pacific Salmon Endowment Fund Society working to conserve and increase salmon stocks in British Columbia and the Yukon

Roberta Jamieson

- First Aboriginal woman in Canada to graduate from law school
- First woman appointed as Ontario Ombudsman
- First woman to become Chief of the Six Nations

Craig Kielburger

- Activist for children's rights around the world
- Founder of Free the Children

Philippe Kirsch

- First President of the International Criminal Court

Jeanne Lajoie

- Fought regulation 17. She challenged her local school board when she taught in an independent school, the Free School of Pembroke.

Gisèle Lalonde

- A teacher by training, a manager and a politician, she is an advocate for the rights of Franco-Ontarians. She was the president of SOS Montford.

Bora Laskin

- First jurist of the Jewish faith appointed to the Supreme Court (went on to become the Chief Justice of the Supreme Court of Canada)
- Presided over numerous landmark cases, including the patriation of the *BNA Act*

Sir Wilfred Laurier

- Canada's first French Canadian Prime Minister
- Established the Canadian Navy, the Department of External Affairs, and the Department of Labour.

Cardinal Paul Émile Léger

- Ambassador to the Holy See. During his 17 years leading the Archdiocese of Montréal, he created works for children, the elderly and the chronically ill.

Stephen Lewis

- Former leader of the Ontario New Democratic Party and Canadian ambassador to the United Nations
- United Nations Special Envoy for HIV/AIDS in Africa

Sir John A. Macdonald

- Canada's first Prime Minister
- Promoted Confederation, drafted the *BNA Act*, oversaw building of the first trans-Canada railway, fought to prevent "Manifest Destiny"

William Lyon Mackenzie King

- Canada's longest serving Prime Minister (22 years)

- Responsible for the introduction of Unemployment Insurance and the Old Age pension

Agnes Macphail

- First woman elected to the House of Commons
- Fought for penal reform as well as other social issues

Vincent Massey

- First Canadian appointed as Governor General in 1952
- Tireless promoter of the arts and Canadian culture and diversity

Nellie McClung

- Activist for women's rights who helped to establish that women were considered "persons" in Canada. As a result of her efforts, men and women were recognized as equally eligible for public office, including the Senate
- Teacher, author, legislator, suffragette, lecturer, and devoted member of the Christian temperance movement

Beverley McLachlin

- First woman to be appointed Chief Justice of the Supreme Court of Canada

Ovide Mercredi

- Chief of the Assembly of First Nations, 1991-1997
- Played key role in Aboriginal people's protest of the Meech Lake Accord

Emily Murphy

- Activist for women and children
- First female judge in Canada
- Member of the "Famous Five" which took the "Persons" case all the way to the Privy Council in England and won

Paul Okalik

- First Premier of Nunavut

Lester B. Pearson

- Canadian Prime Minister who introduced the Canada Pension Plan, and the Canadian flag
- Recipient of the Nobel Peace Prize

Louis Riel

- Leader of the Metis people who fought for their rights as a minority group in Western Canada and helped to create the Province of Manitoba

Svend Robinson

- Openly homosexual MP who has fought for equal rights for same-sex couples, environmental protection, and the right to die with dignity

Jeanne Sauvé

- First woman speaker of the House of Commons
- First woman appointed as *Governor General*

Pierre Elliott Trudeau

- Former Prime Minister of Canada
- as Justice Minister, introduced amendments to laws allowing easier divorce and decriminalizing homosexuality among consenting adults
- Responsible for the patriation of the Constitution and the introduction of the *Charter of Rights*

George Vanier

- Canada's first French-Canadian Governor General and a highly decorated officer
- Considered Canada's greatest hero by many and recognized by the Canadian government as a person of national historic importance in 1983

Jean Vanier

- Founded L'Arche in 1963, a community for developmentally challenged people (there are now 115 around the world)
- Philosopher and philanthropist

Bertha Wilson

- First woman appointed to the Supreme Court of Canada in 1982
- Academic writings and judgments were influential in shaping Canadian law

Appendix 3.2

Citizens Who Have Made A Difference

Below you will find a list of people of different backgrounds who have made significant contributions to public life in Canada. You are to choose one of these people to research. You will be expected to write a profile on your selection and present this information to your classmates in a brief oral presentation.

Lincoln Alexander
Margaret Atwood
James Earl Bartleman
Brown
Emily Carr
Roméo Dallaire
Béatrice Desloges
Tommy Douglas
Wayne Gretzky
Philippe Kirsch
Jeanne Lajoie
Gisèle Lalonde
Sir Wilfred Laurier
Sir John A. Macdonald
Wm. Lyon Mackenzie King
Bertha Wilson
Nellie McClung
Emily Murphy
Lester B. Pearson
Svend Robinson
Pierre Elliot Trudeau

Louise Arbour
Dr. Frederick Banting
Napoléon Belcourt Rosemary
Kim Campbell
Adrienne Clarkson
John Diefenbaker
Terry Fox
Rick Hansen
Roberta Jamieson
Craig Kielburger
Bora Laskin
Cardinal Paul-Émile Léger
Steven Lewis
Ovide Mercredi
Agnes Macphail
Vincent Massey
Beverly McLachlin
Paul Okalik
Louis Riel
Jeanne Sauvé
Georges Vanier
Jean Vanier

Using your textbook, library material, the internet and any other available resources, research the following information on the person you have selected:

- When and where was this person born?
- Include any relevant information on the background of this person. This could include, but is not limited to, things such as culture, religion, gender, socio-economic status and nationality.
- Important contributions this person has made to public life. These are to be placed in chronological order on a timeline. Be prepared to justify or explain why you selected these contributions.
- Current status of this person

Worksheet

CITIZENS WHO HAVE MADE A DIFFERENCE

Name: _____

Background

Timeline

-----/-----/-----/-----/-----/-----/-----/

Significance

Appendix 3.3

TYPES OF NON-VIOLENT CITIZEN PARTICIPATION

ADVOCACY

**COMMUNITY
SERVICE**

TYPES OF NON-VIOLENT CITIZEN PARTICIPATION

SERVING ON JURIES

VOTING

Appendix 3.4

DECISION-MAKING AND CONFLICT RESOLUTION

Decision-Making:

Using your textbook or any other available resources, define these terms:

- Autocratic decision-making

- Democratic decision-making

- Collaborative decision-making

Using the definitions above, indicate what decision-making process is most commonly used when decisions are made:

a) at home - _____

b) in your group of friends - _____

c) at school- _____

Give an example of a decision that was made at home, in your classroom or with your friends and indicate which process was used and how it turned out.

Conflict Resolution:

There are a number of ways to resolve conflicts. The methods that are most commonly used are negotiation, mediation, and arbitration. Using your textbook, define each of these terms.

- Negotiation

- Mediation

- Arbitration

Choose an issue that is important to you or your community and write a letter to the editor of your local newspaper. Your letter should briefly outline the issue and clearly state your point of view.

Dear Editor,

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery.

Page 119

Values of the Justice System



Section 4

Resolving Disputes

Section 4 – Resolving Disputes

Time: 180 - 225 minutes

Description:

This section focuses on administrative decision-making agencies and other dispute resolution processes that take place outside of the traditional courtroom.

Background Information:

Administrative regulatory bodies, agencies and tribunals are created by statute to resolve conflicts that cannot or would not necessarily be brought to court. These administrative tribunals are decision-making bodies established by the government. The government appoints most of the people who serve on these bodies. Generally they are appointed for terms of three to five years. Some, but not all, of the appointees are lawyers. Administrative tribunals have rules and procedures, but these vary in complexity from agency to agency. Some agencies have formal proceedings which resemble court proceedings, and others do not. Some have investigatory roles. Each administrative tribunal or agency has its own area of responsibility and expertise. The authority or jurisdiction of each administrative body is set out by statute. The type of dispute or problem will determine which tribunal or agency is used to resolve the conflict.

There are many different dispute resolution processes parties can use to resolve their dispute without necessarily having a third party decision-maker like a judge or an adjudicator decide. Dispute resolution processes such as negotiation, mediation and arbitration, emphasize the parties' roles in resolving their problems and reaching a settlement of their dispute. Each of these processes provides for varying degrees of control by the parties over their dispute:

In **arbitration** the parties mutually agree to the appointment of the arbitrator who will make the decision about their dispute. This is a quasi-judicial process.

In **negotiation** the parties themselves reach an agreement with or without the help of others.

In **mediation**, a neutral third party assists the parties in negotiating a settlement.

These processes are beneficial because they are generally voluntary and flexible, and provide the opportunity for the parties themselves to decide on the rules and procedures. Parties can attempt arbitration, negotiation, or mediation at any time, even after a lawsuit is filed.

Arbitration, negotiation, and mediation have proven so successful in settling disputes that both the court and many administrative tribunals have adopted them. If a lawsuit has been filed, the Ontario Court requires parties to attend at least one Mandatory Mediation Session and a Pre-trial Settlement Conference. Some administrative tribunals also provide for mediation and pre-hearing conferences. While administrative tribunals can require parties to attend a pre-hearing conference, the great majority cannot force parties to attend mediation.

These dispute resolution processes are less costly and less time-consuming than litigation, which is why Mandatory Mediation was introduced in Ontario. These processes have also resulted in an increased number of cases being settled before trial which has reduced judicial caseloads and lessened the delay for trials involving other matters. Through negotiation, mediation, and

arbitration the parties are able to design their own settlements which may involve interests that a court cannot address. Another advantage to these dispute resolution processes is privacy as the settlements are usually confidential. (Court and administrative tribunal processes are normally open to the public.)

Overall Expectations:

- ICV.03 -** describe the main structures and functions of municipal, provincial and federal governments in Canada.
- ACV.02 -** demonstrate an understanding of the various ways in which decisions are made and conflicts are resolved in matters of civic importance, and the various ways in which individual citizens participate in these processes.

Specific Expectations :

- IC1.03 -** identify similarities and differences in the ways power is distributed in groups, institutions and communities (e.g. in families, classrooms, municipalities) to meet human needs and resolve conflicts.
- AC2.01 -** compare and contrast different ways of resolving disputes (e.g. through the judicial process, through negotiation, mediation, arbitration, conciliation).
- AC2.02 -** analyse important contemporary cases and issues that have been decided or resolved through the public process of policy formation and decision-making (e.g. mandatory retirement, censorship, racial profiling) taking into account the democratic principles that underlie that process.

Planning Notes:

While the various Grade 10 Civics texts give rather short shrift to dispute resolution processes outside of Courtroom adjudication, it should be noted that Grade 12 texts issued for the 2002-2003 school year at least give explanations of such concepts as negotiation, mediation, and arbitration. Prepare a reading or lecture on the basics of different dispute resolution processes from these or other sources. See the resource list at the end of this section for specifics.

- Arrange for a staff or student with experience in Peer Mediation to visit the class.
- Reproduce Appendices 4-1, 4-2, 4-3 and/or 4-4, as needed.
- Arrange for computer lab time, as activity 4-4 requires research on a specific website. If computer facilities are unavailable, the teacher may either download and reproduce information from the website, or contact the Office of the Ombudsman for printed materials.

Prior Knowledge Required:

While students will be unfamiliar with most of the material to be learned in this section, they should be familiar with the concepts of Rule of Law, justice and equity, mediation, negotiation and arbitration as these have been introduced in the previous activities of this mini-curriculum guide.

Teaching/Learning Strategies:

1. Suggest to students that legal disputes do not always go to a court for judicial resolution. Students should be informed, for example, that disputes between unions and employers go to the Ontario Labour Relations Board (OLRB) an administrative tribunal specifically designed for this purpose. At the OLRB, arbitrators hear disputes. Use other examples of disputes which are taken to administrative bodies such as human rights complaints (Human Rights Commission), complaints about physicians (College of Physicians and Surgeons of Ontario), a claim for severance pay, overtime or unpaid vacation (Employment Standards), violations of the Immigration Act and refugees claims (Immigration and Refugee Board), or problems between landlords and tenants (Rental Housing Tribunal).
2. While few of the students in the class will be intimately familiar with the concepts of negotiation, mediation or arbitration, most will have experienced these in some form or other, primarily through the various Peacekeeper-styled groups (such as Peer Mediation or Conflict Resolution teams) that are common in most schools. Determine if anyone in the class has had experience with such groups, either as a Peacekeeper, or perhaps as one who has been counseled by such a person. If possible, determine if a staff advisor or, better yet, a senior student who is involved in this sort of activity is available to come into the class to discuss his or her experiences with the project. You may wish to have each student prepare a question or two in advance of the presentation.
3. Use a pre-selected reading, board note, overhead, or lecture to explain that some party interests can be obtained in negotiation or mediation that cannot be obtained in court. Parties who use negotiation, mediation or arbitration to resolve their own disputes feel empowered. They gain flexibility in choosing and designing the resolution process. Suggest to students that there are also benefits in terms of money and time in using these processes rather than litigation and that the participants are able to safeguard privacy and confidentiality. The teacher should also remind students that these processes are sometimes not appropriate i.e. in spousal abuse, medical malpractice, or refugee claims for example or in cases where confidentiality and/or privacy of settlements may not be in the public interest, i.e., in medical malpractice, disciplinary, or environmental cases.
4. Distribute Appendix 4-1. This is a matching sheet that lists various administrative agencies and boards in Ontario which are specially designed to adjudicate particular kinds of disputes between particular persons, companies or government. This sheet is not intended to be used as a quiz, but should be used as a starting point for discussion. Be sure that each student has a corrected sheet before moving on to Appendix 4-2.

5. Distribute Appendix 4-2. Students are to use the information found in the previous activity to do this assignment. Students are to read the case studies and answer the questions that follow. See the Accommodations section at the front of the Curriculum guide for alternative approaches to lessons such as these. Discuss student responses. This activity may also be done in pairs or small groups. Assign the five disputes to different groups and then have the pairs/groups report their responses.
6. Students may wish to use the suggested websites or professional literature to research responses to the questions posed in 4-2.
7. Distribute Appendix 4-3. After the negotiation games and role plays students should discuss and/or write brief commentaries on the concepts practiced and learned.
8. Discuss with the students the concept of sexual harassment and its significance as a reflection of the morals of a changing society. Provide students with a copy of Appendix 4-5, and have them work in pairs to discuss and complete this assignment.

Assessment/Evaluation Techniques:

1. Formative assessment of role in discussion and/or pre-prepared questions, if assigned.
2. Formative assessment of written responses to Activity 4-2.
3. Formative assessment of verbal responses and discussions in response to Activity 4-2.
4. Formative assessment of participation and comments/written responses to Activity 4-3.
5. Formative assessment of participation and comments/written responses to Activity 4-5.

Print Resources:

Blair, Costiniuk, O'Malley, Wasserman, *Law In Action, Understanding Canadian Law*, Prentice Hall Publishing, 2002, pages 358-360.

Non-Print Resources:

Office of the Ombudsman - Ontario

<http://www.ombudsman.on.ca>

<http://www.ombudsman.on.ca/french/french.asp>

Ontario Labour Relations Board

<http://www.gov.on.ca/lab/olrb/eng/what.htm>

<http://www.gov.on.ca/lab/olrb/fre/whatf.htm>

Ontario Municipal Board

<http://www.omb.gov.on.ca>

<http://www.omb.gov.on.ca/index-f.html>

Ontario Rental Housing Tribunal

<http://www.orht.gov.on.ca/main.html>

<http://www.orht.gov.on.ca/home-f.html>

Law Society of Upper Canada

<http://www.lsuc.on.ca>

<http://www.lsuc.on.ca/index.jsp?lang=f>

Ontario Human Rights Commission

<http://www.ohrc.on.ca>

<http://www.ohrc.on.ca/french/index.shtml>

Dispute Resolution Group, Financial Services Commission

<http://www.ripuc.org/regs/comishrules.html>

Canadian Motor Vehicle Arbitration Plan

<http://www.apa.ca>

<http://www.apa.ca/template.asp?lang=french>

Ontario New Home Warranty Program

<http://www.newhome.on.ca>

Canadian Banking Ombudsman

<http://www.bankingombudsman.com>

<http://www.bankingombudsman.com/ombud/french/pages/home/fhome.html>

Appendix 4.1

Matching Sheet - Various Administrative Tribunals and Agencies in Ontario

Match the agencies listed in the column on the left with their statutory role and purpose stated in the column on the right.

- | | |
|--|---|
| 1. Ontario Labour Relations Board | () hears disputes between buyers and sellers |
| 2. Ontario Municipal Board | () social workers etc. who mediate between individuals on family related issues (i.e. child custody) |
| 3. Ontario Rental Housing Tribunal | () inquires into disputes between parties in which discrimination under the Ontario Human Rights Code has been alleged |
| 4. Ontario Ombudsman | () hears complaints by employers and non-union employees concerning termination, severance, overtime and vacation pay |
| 5. Better Business Bureau | () hears complaints between public authorities and those who oppose decisions, usually in matters dealing with land usage, zoning etc. |
| 6. Ontario Human Rights Commission | () hears disputes between landlords and tenants |
| 7. Dispute Resolution Group, Financial Services Commission of Canada | () receives complaints between individuals or bodies and the Government |
| 8. CAMVAP | () provides mandatory mediation of disputes between insurance companies and claimants over claims involving motor vehicle accidents |
| 9. Ontario New Home Warranty Program | () receives complaints from new home builders and new home buyers |
| 10. Mediation Services at Family Court locations | () hears complaints about automobile manufactures from new car purchasers |
| 11. Canadian Banking Ombudsman | () investigates complaints about banks |
| 12. Employment Standards | () hears complaints and grievances made by employers, unions and union members |

Appendix 4.2

Disputes at Administrative Tribunals or Agencies

Read over the following case studies. For each scenario, decide which of the twelve Administrative Tribunals or Agencies listed in Activity 4-1 might be involved in resolving the dispute. Then answer the questions that follow.

1. Old Mr. Allen realized it was time for a new car when, on turning the ignition key in his 1991 minivan, he ended up with a face full of air bag. "Well, I got 300,000 clicks out of the thing," he rationalized. Taking \$20,000 out from under his mattress, he went out and purchased a brand new, right-from-the-showroom-floor Satellite 341Z Sports Coupe.

Overjoyed with his new purchase, he decided to take the car out for a ride in the country. Imagine his surprise when his brand new Satellite sputtered to a stop 200 kilometers out of town. Fortunately, he had broken down right outside of a garage, Gil's Lube and Fresh Bait Emporium.

"Ah think it's yer car-be-rater," said Gil, and set out to fix it.

Unfortunately, while Gil was fixing Mr. Allen's fuel system, a few fresh nightcrawlers fell unnoticed out of his breast pocket and into the gas tank.

Two hours later, Mr. Allen was back on the road. Even though his car didn't seem to be running just right, he decided to take the highway home to save time.

Again, his car sputtered to a stop. This time, Mr. Allen wasn't so lucky. As his car drifted slowly to the side of the road, a truck from Hux's Chicken Farms smashed into the car's rear end. Mr. Allen's car was a total wreck. He was now out \$20,000, and had no car.

- A. What Administrative Tribunal or Agency could Mr. Allen file a claim with to deal with his problem?
- B. There are two sides to every story, and in Mr. Allen's case, both he and the **Satellite** Automobile company will have points to make to the adjudicator. If you were Mr. Allen, what would be the core of your argument for compensation?
- C. What argument could the **Satellite** Automobile Company make on its own behalf?
- D. If you were the adjudicator called upon to make a decision in this case, how might you decide? (Keep in mind that you want to reach a decision that is right and fair.) Is **Satellite** totally responsible? Does Mr. Allen share some of the blame? Give reasons for your decision.

2. Julia was a first year student at The University of Northern Ontario in Huntsville, Ontario. Student housing in Huntsville was in short supply, but she managed to find a house to share with four other people. She met the property manager of the house, paid him a \$200 deposit in case any damage was done to the house during the year, and moved in.

Julia found out pretty quickly that her new housemates were slob. They let dirty dishes pile up for days on end, would forget to toss out the garbage, and had occasional food fights which resulted in condiment stains on the kitchen walls. Julia did her best to be clean and orderly, but decided that she wasn't being paid to clean up her room-mates' messes: She kept her own bedroom clean, but decided not to deal with the rest of the house.

At the end of the year, after Julia had returned home, she got a call from the enraged property manager. "It's going to cost me a fortune to get the house ready for next year," the property manager yelled. "I'm keeping your deposit, plus I'm sending you a bill for \$500 dollars to cover my cleaning and painting expenses." Julia decided that this was unfair, and that she would not pay.

- A. To which Administrative Tribunal could Julia apply to have her case decided?
- B. Summarize the argument Julia will make before the Administrative Tribunal.
- C. Summarize the argument that the Property Manager will make on behalf of the owner of the property.
- D. If the parties decide they want to mediate their dispute before an adjudicator decides, how might the parties settle their disagreement? Would the parties' settlement be the same as the adjudicator's decision? Explain.

3. Mr. Skinner, the principal of Thames River Private School in Wingham, Ontario, looked over the class lists for his school. "Golly," he exclaimed. "Look at all those kindergarten kids. Old Mrs. Shaw will never be able to manage that lot by herself. It looks as if I will be able to hire an Educational Assistant for that class."

Mr. Skinner began the process of interviewing for the position. The candidate that Mr. Skinner liked best was Ms. Shiply. She was attractive, soft-spoken, seemed to be intelligent and caring, and gave a very good interview. Although she had a University degree in Communications from Moosenee University, she had no previous experience as an E.A. "What the heck", thought Mr. Skinner, "She looks like the right person for the job, and everybody has to start somewhere". He hired her for the position.

Things went well for a day or two. Ms. Shiply worked well with the children, and was so well-organized that Mrs. Shaw was able to slip away periodically to the copying machine. But one day soon thereafter, something unexpected happened. Ms. Shiply fell writhing to the floor, and began thrashing about. She was having an epileptic seizure. Eventually, the seizure subsided, but not without creating a great deal of pandemonium.

"This," decided Mr. Skinner, "will never do in a kindergarten class". The next day, he called Ms. Shiply into his office and told her that her services would no longer be required.

Ms. Shiply is determined to fight the decision.

- A. If Ms. Shiply decided she did not want to go to court to which Administrative Tribunal/Board might she complain?
 - B. Summarize the arguments Ms. Shiply could make before the board.
 - C. Summarize the arguments Mr. Skinner could make before the board.
 - D. This is a difficult case, but one in which a decision must be rendered nonetheless. If you were deciding this case, what would your decision be? Do you think this is a fair decision? Summarize your arguments for deciding the way you did.
-

4. Old Bert Farnsworth looked out over the peace and serenity of the back fifty acres of his farm. Bert had worked the land on his farm for forty years, and had been looking forward to the day when he could finally retire, put up his feet, and gaze out over the rolling landscape without having to go and stick soybean seeds in it.

These days, however, Old Bert wasn't happy. He'd read in the newspaper that "The Goober-The-Clown Corporation" had purchased the farm next to his property, and had applied to construct a new amusement park there called "Gooberland". The township, seeing an opportunity to raise revenue from tourists and taxes, quickly moved to rezone the land from Agricultural to Commercial. It looked as if "Gooberland" was about to become a reality.

"Not without a fight," Old Bert promised himself. "Not without a fight."

- A. Where might Bert go to complain about what is happening?
- B. Realistically, what problems do you think Bert will face in this venture?
- C. What arguments do you think Bert will bring to the discussion?
- D. What arguments do you think the Township will bring to the table?
- E. Decisions made by adjudicators are decided according to the law. Usually that means that there is a winner and a loser. What other solutions might be available if the parties decide to mediate their dispute? What, in your opinion, might be a fair settlement between Bert and the Township? Does a compromise mean both parties are winners or that both parties are losers? Explain.

5. Jamie Chamberlain was a maintenance worker at a brick factory. His job was to fix just about anything that went wrong in the factory. One day, Jamie was informed that the asbestos lining inside a series of ovens would have to be removed. There was just one catch. The ovens could not be completely shut down because they would take too long to heat up again, and productivity might be lost. The foreman told Jamie that he and some other workers would have to work inside the ovens, where the temperatures would be maintained at 130 degrees Celsius. The foreman also said that because of the extremely high temperatures, the workers would only be required to work inside the ovens for sixty seconds at a time. Then they would have to rest for fifteen minutes before their next sixty second interval. The foreman said that a safety inspector would be on the spot to act as a timer for the workers inside the ovens. The foreman also said that the workers would receive a hefty bonus for doing the work.

Jamie realized that the strain on his heart would reach dangerous levels and told the foreman that he would refuse the assignment because he considered it unsafe. The foreman told Jamie that the work had to be done, and if Jamie would not do it, he would be fired, and replaced by someone who would. Jamie refused the assignment, and was indeed fired.

- A. To which of the listed Administrative Tribunals could Jamie present his case?
- B. Summarize Jamie's case against his employer.
- C. What counter arguments do you think the brick factory representatives will use against Jamie?
- D. If you were ruling on this case, what would you decide? (Keep in mind the need to be fair and equitable to both sides in the dispute.) Explain your answer.

Appendix 4.3

1. Negotiation Game: "Win as Much as You Can" (4 players)

Negotiator tactics range from cooperative to aggressive. Games theorists have proven that cooperative behaviour tends to increase the total value of any settlement to both parties. Aggressive behaviour tends to reduce the total value of a settlement, although one party may benefit more than the other. This game demonstrates this theory.

Negotiation Game "Win as Much as You Can"

There are 4 players in each group. Each player has a card marked "C" (for cooperative move) on one side and "A" (for aggressive move) on the other. The payoff for each player and each group as a whole depends on the combinations of Cs and As played on each round.

RESULTS PAY OFF SCHEDULE

4 As	Lose \$1 each
3As	As win \$1 each
1C	C loses \$3
2As	As win \$2 each
2Cs	Cs lose \$2 each
1A	A wins \$3
3Cs	Cs lose \$1 each
4Cs	Win \$1 each

A game consists of 10 rounds. Each round, you decide whether to play a "C" or an "A", then place your card on the table with your hand covering the letter. When all four players are ready, you all remove your hands at the same time to show what letter you have played. Record your scores for each round on the accompanying score sheet.

You may not discuss strategy except at the bonus rounds (5, 8, and 10) as indicated on the score sheet. Before each bonus round you have 3 minutes to discuss

strategy, although you remain free to play as you choose despite any decision by the group. On bonus rounds, you multiply your score by 3.

It is **ILLEGAL** for the group to bypass the game and simply fill in the score sheets, or for players to let others see how they intend to play the upcoming round.

If all the members in a group play a *C* on every round, you could hypothetically earn \$16 each for a group total of \$64. If you use an aggressive strategy, it is only profitable if you earn more than \$16.

SCORE SHEET

Round	Time Allowed	Group Discussion	Multiplier	Gain or Loss
1	30 seconds	no	No	
2	30 seconds	no	No	
3	30 seconds	no	No	
4	30 seconds	no	No	
5	3 minutes	yes	Multiply score by 3	
6	30 seconds	no	No	
7	30 seconds	no	No	
8	3 minutes	yes	Multiply score by 3	
9	30 seconds	no	No	
10	3 minutes	yes	Multiply score by 3	
			YOUR TOTAL SCORE	

When you are finished, choose a group member to record the scores of each player in the group and the total score for the group.

Your score _____ Player 2 _____ Player 3 _____ Player 4 _____
 Total Group Score _____

2. Negotiation Role Play

Two student groups have to decide which group gets to use the gym during the lunch period. One group is the soccer team the other is the band. The soccer team is scheduled to play in the finals of the provincial championship. This is the first time the school has been in the finals. The members of the team have been unable to practice on the school field. It is absolutely essential that the team trains together for the event during the day as well as after school.

The band has been invited, for the first time, to participate in a city-wide concert of school bands. If the band plays well at the concert it could be invited on a world tour. The band can only practice at noon since several members have after school jobs.

Students must negotiate to solve this dilemma.

Note: The purpose of the negotiation is to have the students "expand the pie". While there may appear to be a fixed number of resources, one gym and one lunch period, the students should be encouraged to explore each group's interests and needs. By exploring these interests, students may be able to arrive at solutions which can satisfy the needs of each group and which are more creative than "one gets it to use the gym and the other does not".

3. Mediation Role Plays

In these conflict situation role plays, students try to negotiate an agreement to end their dispute with the help of a mediator. The mediator assists the parties with the negotiations.

Mediation Process: Ground Rules and the Mediator's role

1. Neither party should interrupt the other. The mediator helps enforce this rule.
2. Parties are angry, but neither party is allowed to abuse the other party or the process by swearing, yelling or trying to intimidate the other.
3. The mediator is neutral - he or she does not favour one side or the other. The mediator must not fix the problem or decide for the parties how to settle their dispute. The parties make the deal.
4. The mediator's role is to assist the parties in communicating openly, to put both sides of the story on the table, to enable the parties to get beyond their positions and recognize underlying shared interests, and to assist the parties in reaching a settlement that will permit them to live as neighbours without future lawsuits or police action.

Remember:

The mediator's role is not to make the agreement or determine which agreement is best: The role of the mediator is to promote communication between the parties.

Scenario #1:

Chris is 18. He has recently moved to a new neighborhood. Chris likes music, the louder the better. Chris frequently invites friends home on weekends. These informal parties can get pretty loud, but the friends usually try to keep it down, especially when Chris' parents are home. Sometimes, however, Chris' parents have to be away from home. On occasion, particularly when the weather permits, the parties move outdoors to Chris' front lawn where they will eat pizza that has been ordered. Sometimes Chris and his friends forget to clean up after eating and leave the pizza boxes and soda bottles on the lawn, or even in the street. One night during a party, the police arrived and told Chris that a neighbour had complained about the noise. The party ended, but the next day the neighbour's car got two flat tires when it ran over glass bottles that had been left in the neighbour's driveway. About a week later, Chris' parents received a letter from a lawyer saying that the neighbour wants \$1000 to buy four new tires for his car, and threatening Chris with a lawsuit if he does not put an end to all parties at the house.

Chris' parents have a lawyer friend who advises them that Chris has a good defense. It will be hard to prove Chris deliberately damaged the tires. This lawyer suggests that \$1000 is too much money for used tires and questions why Chris should be responsible for four tires instead of two. She says that a court cannot order Chris not to have parties and that, while she would be happy to defend Chris, her fee is \$200 per hour.

Leslie is 65. Leslie is retired. He gets up early and likes to go to bed early as well. Leslie has lived in the same house for 35 years. About a year ago, the house next door was sold to a family with an 18 year old. This was the first time a teenager had lived next door in a very long time. Leslie loves classical music and frequently plays it at home, but when the weather is good and his windows are open he can barely hear his own music because of the loud rock music blaring from the neighbour's house. Leslie is away from home most of the week visiting his elderly aunt, so he really looks forward to quiet weekends. It seems to him that now, every weekend, he is unable to enjoy his music or even sit out in his yard, since there are huge parties going on next door. He has never seen so many teenagers. He can't believe some of the clothes they wear. He notices that sometimes the teens sit outside to eat. Leslie frequently finds garbage on his property after these parties. Recently the noise was so loud he called the police. The next day when he drove out of his garage, he ran over some glass bottles which were on his driveway. Leslie believes Chris left the bottles on purpose because of the complaint to the police. Two tires were cut by the glass. The tires are about 3 years old, but were still good for another season. While only two tires were damaged, these were specially made European tires which must be bought in sets of four. The tires cost \$250

each. Now all four must be replaced immediately. Leslie wants to sue Chris for the money to replace the tires and he wants a court to ban weekend parties after 10 p.m.

Leslie has a lawyer friend who wrote a letter to Chris' parents asking for the \$1000 and threatening a lawsuit; however, the lawyer also advised Leslie to mediate his dispute with Chris as Chris is a neighbour and would probably be living next door to him for a long time. The lawyer is not sure that there is enough evidence to prove that Chris was responsible for the damage to the tires. The lawyer also warns Leslie that since the tires weren't new, even if Chris were found liable, Leslie may not get all the money he wants. In addition, litigating may be much more costly than settling the dispute.

Students should answer the following questions.

1. Most disputes are about the "rights" of the parties.
What rights did Chris have?
What rights did Leslie have?
2. Courts decide about legal rights and who wins and who loses.
If this dispute went to Court, who do you think would win and why?
Would one side "winning" at court help Chris and Leslie's relationship as neighbours? Explain.
3. In this dispute were there problems between Chris and Leslie that a Court could not decide?
Could a Court tell Chris he could not have friends over?
Could a Court order music to be played at a particular level?
Would a Court want to decide these things?
How could such a Court order be enforced?
Explain your answers.
4. Why might mediation be a better process for settling the dispute between Chris and Leslie?

Appendix 4.4

The Office of the Ombudsman

Access the website of the Ombudsman of Ontario (www.ombudsman.on.ca).

Use the information you find there to answer the following questions.

- A. What does the Ombudsman do?
- B. How can the Ombudsman help an individual?
- C. What can't the Ombudsman do?
- D. How does one register a complaint with the Ombudsman?
- E. Does it cost anything to file a complaint with the Ombudsman?
- F. Copy and colour the symbol of the Ombudsman's office. (This can be found in the top right-hand corner of the website's homepage).

Appendix 4.5

"MANAGER SEXUALLY HARASSED FEMALE COLLEAGUES": **Canadian Human Rights Tribunal**

Ottawa - June 19, 2002 - The Canadian Human Rights Tribunal has ruled in favour of four women who suffered varying degrees of sexual harassment from their former manager, in contravention of section 14 of the Canadian Human Rights Act.

Kindra Woiden, Lisa Falk, Joan Yeary, and Sharla Curle each filed a complaint with the Canadian Human Rights Commission in December 1998, alleging that Dan Lynn, of Skycable Inc. in Brandon, Manitoba, sexually harassed them on the job. They claimed that Lynn made inappropriate remarks, sexual advances, and derogatory comments to them on an ongoing basis. In fact, the women said the harassment and abuse of authority by Mr. Lynn was so bad that they each went on sick leave, eventually resigning from their jobs.

"There was a time when women had no choice but to tolerate sexual harassment in the workplace," noted the Commission's Acting Chief Commissioner, Anne Adams. "Thankfully, Canadian women today have the protection of legislation against this entirely inappropriate behaviour."

In its ruling, the Tribunal ordered Mr. Lynn to pay the four women various amounts in lost wages, ranging from \$698 to \$13,979 and compensation for hurt feelings from \$6000 to \$8000 each. In addition, he was ordered to pay \$10,000 each in special compensation for reckless or willful conduct. Finally, he must follow training and counselling and provide a letter of apology to three of the complainants.

The Tribunal's decision is particularly significant because the respondent was the complainants' supervisor and was found to be personally liable for the harm they suffered.

"I hope this ruling also sends a clear signal to women faced with this kind of abuse in the workplace. The Canadian Human Rights Act is there to protect them. If they are being subjected to sexual harassment, they need to speak up for their rights," Ms. Adams concluded.

The women had also filed complaints against their former employer, Skycable Inc., which were later withdrawn when the parties reached a settlement in 1999.

http://www.chrc-ccdp.ca/news-comm/2002/NewsComm061902_2.asp?l=e

Topics for Discussion or Written Response:

Give examples of inappropriate remarks, sexual advances, and derogatory comments made in a classroom environment. Give examples of what can be considered as sexual harassment in the work place.

What is the Tribunal's decision?

Do you think this ruling is fair and equitable to both sides in the dispute? Explain your answer.

Why is the Tribunal's decision particularly significant?

Values of the Justice System



Section 5

International Rights and Responsibilities

Section 5 – International Rights and Responsibilities

Activity 5.1: The Convention on the Rights of the Child

Time: 225-300 minutes

Description:

This multi-faceted activity, under the broader umbrella of the Universal Declaration of Human Rights, emphasizes and familiarizes students with the origins and development of children's rights, and the nature, scope and current state of those rights. The main part of the activity is a research investigation and presentation on child labour. The culminating activity for this unit is the development of an action plan to address specific concerns about child labourers. These activities are designed to prepare students for a visit by a legal or other expert (e.g., Amnesty International, Human Rights Watch, Free the Children) on the subject of international law and human rights.

Overall Expectations:

- ICV.04 -** explain what it means to be a “global citizen” and why it is important to be one.
- PCV.03 -** analyse responses, at the local, national, and international levels, to civic issues that involve multiple perspectives and differing civic purposes.
- ACV.01 -** apply appropriate inquiry skills to the research of questions and issues of civic importance.

Specific Expectations:

- IC4.01 -** analyse contemporary crises or issues of international significance (e.g. health and welfare, disasters, human rights, economic development, environmental equality, terrorism).
- IC4.02 -** summarize the rights and responsibilities of citizenship within the global context, as based on an analysis of the United Nations Universal Declaration of Human Rights (1948) and Convention on the Rights of the Child (1989).
- IC4.03 -** evaluate civic actions of individuals and non-governmental organizations that have made a difference in global affairs (e.g. Cardinal Émile-Paul Léger, Jean Vanier, Nelson Mandela, Mother Theresa, Jody Williams, Craig Kielburger, David Suzuki, Stephen Lewis, The International Federation of Red Cross and Red Crescent Societies, Doctors Without Borders / Médecins Sans Frontières, YWCA / YMCA and YWHA / YMHA, Greenpeace, Inuit Circumpolar Conference).

- PC1.01 -** describe fundamental beliefs and values associated with democratic citizenship (e.g. rule of law, human dignity, freedom of expression, freedom of religion, work for the common good, respect for the rights of others, sense of responsibility for others).
- PC1.02 -** explain how democratic beliefs and values are reflected in citizen actions (e.g. Remembrance Day services, Montreal unity rally, National Aboriginal day, December 6 commemorations of the Montreal Massacre, White Ribbon campaign).
- PC3.02 -** demonstrate an understanding of a citizen's role in responding to non-democratic movements and groups (e.g. fascism, Stalinism, supremacist and racist organizations) through personal and group actions (e.g. the actions of individuals such as Medgar Evers, Emily Murphy, Norman Bethune, Alexander Solzhenitsyn, Simon Wiesenthal and those granted the title "Righteous Among the Nations," of groups such as the Canadian Civil Liberties Association).
- PC3.03 -** describe examples of human rights violations (e.g. Nuremburg Laws, hate crimes, torture, genocide, political imprisonment, recruitment of child soldiers, gender-based discrimination) and assess the effectiveness of response to such violations (e.g. media scrutiny, political responses, military intervention, international tribunals, pressure from non-governmental organizations).
- PC3.04 -** analyse the evolution of Canada's participation in international tribunals (e.g. the Nuremburg trials after World War II, the international Court of Justice's prosecution of war crimes, formation of the International Criminal Court).
- AC1.01 -** formulate appropriate questions for inquiry and research, locate relevant information in a variety of sources (e.g. texts, reference materials, news media, maps, community resources, the Internet); and identify main ideas, supporting evidence, points of view and biases in these materials.

Planning Notes:

- Although the full text of the Convention on the Rights of the Child is available in some of the Civics textbooks in use, a "non-legalese" version is included in Appendix 5.1.
- The small group research activity must be carefully planned so that students have sufficient time to research and organize their material for the brief presentations which will follow. Following the introductory activity in Part 1, students should be given a week to do their research and organization. During this time, teachers will conference with student groups to ensure time-line goals are being met.

- Teachers may wish to have on hand textual or other materials to assist in the brainstorming exercise about the types and sources of child labour. The ideas developed in the brainstorming session will provide the focus for the students' research and the group presentations.
- One period should suffice for the five-minute presentations, however, one additional period should be set aside for any presentations not completed on day one. This second class should be used to consolidate the recommendations and practical strategies students made in their presentations and should be used to develop a class action plan for dealing with the problems they identified.
- A short list of print and non-print materials to support the research investigation is provided in the "Resources" section below.

Prior Knowledge Required:

It will be useful for the teacher to review basic research, organizational and presentation techniques with the class.

Teachers should also emphasize the need for student groups to develop:

1. A clear plan that includes specific responsibilities for each group member.
2. A time-line for their research.
3. A schedule for group meetings to enable students to organize and prepare for the presentation.

Teaching/Learning Strategies:

Part 1: Introduction: 100 minutes

1. Inform the class that the purpose of this lesson is to provide an in-depth investigation into the "real world" of children's rights. Indicate that the intention is to extend their understanding of the state of children's rights, and to develop an action plan for the class to address the concerns their research will reveal. The teacher can generate interest in children's rights and provide a context for further discussion by asking questions such as: Why are children's rights important? What rights do grade 10 students have? Do you consider yourselves to be children? How would your rights be different without legal safeguards?
2. Distribute copies of the Appendix 5.1 Convention on the Rights of the Child. Briefly review the introductory material on the origins and development of the children's rights movement.
3. Have students label each of the rights according to the applicable category:
 - Survival Rights** ensure that children survive and grow.
 - Developmental Rights** enable children to develop the varied aspects of themselves.

Protection Rights protect children from harmful treatment and influences.

Participation Rights allow children to express what they think and to play an active part in society at large.

4. Initiate a brief discussion on the state of these rights in Canada and worldwide. Students will likely suggest problems of inadequate food. (Millions of children are among the approximately 36 million people who continue to die annually from malnutrition. This has occurred in spite of the United Nations-sponsored, Rome Declaration on World Food Security (1996), which committed signatories to reducing the number of malnourished people by 50% by 2015).

Students may mention the millions of children who are dead or dying of AIDS, the millions more devastated by on-going wars, or the millions of children who receive no formal education. Students might also make reference to the additional problem of the illegal abduction and/or purchase and transportation of children for various illegal purposes, including cheap labour and sexual exploitation. (A recent report from the Solicitor General of Canada indicates that this practice takes place here too, involves 8,000 to 16,000 people a year, and generates \$120 to \$160 million.) A further indication that Canada mirrors the world situation to some degree can be found in a recent government sponsored survey entitled, *A Canada Fit for Children*, in which the top two concerns identified by children across the country were “poverty” and “abuse and violence”.

5. Whether or not it is mentioned in the foregoing discussion, one of the major problems afflicting children worldwide is child labour. This will be the focus of the students’ group research investigations. Teachers should indicate that the International Labor Organization, a U.N. agency, estimates that 250 million children between the ages of 5 and 14 are working in developing countries. Half of these children work full time. If the number of “hidden” or unreported child workers and street children were added to this figure, it is estimated that the number of children working as child labourers would climb to well over half a billion.
6. Discuss the meaning of “child labour”. Although working children may be different ages in one or another geographic location, the main principle is that they are young people working full or part time for long hours for little or no pay at jobs that are often dangerous, unhealthy, and are not in their best interest.
7. Conduct a brainstorming exercise on the types (and sources) of child labour that exist, indicating that these topics will form the basis of their research. Types that will emerge include: street kids, sex workers, child soldiers, agricultural workers (both for the family and for commercial purposes), factory workers, migrant workers, minority group workers, work that involves girls in particular (and the special problems girls face in developing countries), bonded labour, and the role of globalization in generating child labour. Child labour in developed countries could form a distinct topic or could be blended into one or more of the others.

8. Divide students into groups of two or three and have them choose a topic for their research and presentation.
9. Ask students to indicate the names of the members of the group, their topic, a time-line for their research, a schedule of their group meetings and a date to meet with the teacher to review their progress. The teacher should emphasize that there are three main parts to each topic and that students must provide:
 - (a) evidence of the existence/prevalence of the type of child labour they are investigating;
 - (b) a clear description of what life is actually like for the children doing this type of labour; and
 - (c) one or two practical “doable” suggestions for improving or doing away with this type of labour.

This will be the focus of their short, clear, five-minute presentations.

10. Discuss with students the implications of a five-minute presentation. Emphasize the need for organization both of their material and the responsibilities of presenters and the need to know exactly how and when visual or other aids are to be used, if they choose to use them.
11. Review the basis for evaluation using an Oral Presentation Rubric (as can be found in the *ESL/ESD Resource Guide for CIVICS CHV20*, Toronto District School Board, February, 2001, Handout 3.17.)

Part 2: Presentations: 75-90 minutes

12. As the presentations are made, make an ongoing list of the suggestions for addressing each of the types of child labour.

Part 3: Follow up and Development of Action Plan: 45 – 60 minutes

13. Introduce the action plan phase of the activity with materials that demonstrate how individuals and groups are fighting successfully to promote human rights and those of children through national and international actions. Examples can be found in Civics textbooks. Additional information about the work of the recent winners of the John Humphrey Freedom Award can be found in [Appendix 5.2](#). This material also demonstrates the supporting work of human rights NGOs such as *Rights and Democracy* which may be taken into account in developing a class action plan.
14. Review, with the students, the recommendations for action contained in the presentations. Develop a class consensus on what practical, “doable” action the class should take. This may take the form of letter writing to a government

official, a human rights organization or an individual human rights promoter. It might also involve forming or participating in an existing human rights group to monitor on-going developments in the area of child labour.

15. The final activity in this section involves inviting a representative from a human rights or international law organization to come and speak to the class. Teachers might try contacting someone for Amnesty International, Human Rights Watch, Free the Children or another organization that focuses on the problems of child labour. To ensure a successful class teachers should:
 - (a) Prepare the speaker by specifying the topic and the objective of the presentation. Inform the speaker of the knowledge the class has gained from completing this unit and indicate any follow-up activities the class has decided upon. The teacher should also indicate the length of the class and provide details about the size of the class and the academic ability of the students.
 - (b) Provide students with background information about the organization and the speaker. Encourage students to prepare some questions in advance and to have their list of concerns about child labour prepared to discuss with the “expert”. The class may decide to make a priority list of two or three possible actions and address them to this international law/human rights “expert” for final advice.
 - (c) Ensure that any equipment the speaker requests functions and is available.

Assessment/Evaluation Techniques

Formative assessment of class discussion.

Summative evaluation of group research and presentations.

Print Resources:

- Bequele, A. and W. Myers. *First Things First in Child Labour: Eliminating Work Detrimental to Children*. Geneva: UNICEF and ILO, 1995.
- Black, Maggie. *In the Twilight Zone: Child Workers in the Hotel, Tourism and Catering Industry*. ILO, 1995.
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Amnesty International: list of all public documents relating to the International Criminal Court: http://web.amnesty.org/web/web.nsf/pages/fact_sheets

Amnesty International Canada: www.amnesty.ca

Canadian Government's Department of Foreign Affairs and International Trade: <http://www.dfait-maeci.gc.ca/>

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Child Workers in Asia: <http://www.cwa.tnet.co.th/>

Human Rights Watch: www.hrw.org , www.hrw.org/french/

International Criminal Court: <http://www.icc.int/>

International Human Rights Law Group: <http://www.hrlawgroup.org/> ,
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Kids Can Free The Children: www.freethechildren.com

Save the Children: www.savethechildren.ca , www.savethechildren.ca/fr/index.html

United Nations: www.un.org

United Nations High Commissioner for Human Rights: <http://www.unhchr.ch/>,
http://www.unhchr.ch/french/hchr_un_fr.htm

The Universal Declaration of Human Rights: <http://www.un.org/Overview/rights.html> ,
<http://www.unhchr.ch/udhr/lang/frn.htm>

Programme focal sur le travail des enfants: IPEC
<http://www.ilo.org/public/french/standards/ipecc/index.htm>

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<http://www.unicef.org/french/>

NI – Child labour (No.292, July 1997)
<http://www.newint.org/issue292/contents.html>

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<http://www.infosud.org/showArticle.php?article=258>

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<http://www.terredeshommes.org/fr/activities/default.asp>

Fédération internationale des Travailleurs du Textile, de l'Habillement et du Cuir
<http://www.itglwf.org/focus.asp?Issue=CHL&Language=FR>

Appendix 5.1

The Convention on the Rights of the Child

Background:

Beginning in the 1880's, an international social movement began for the purpose of giving children basic civil rights, primarily because of concern for their safety in the workplace. Important milestones in this movement included: the formation in 1919, in the aftermath of World War I, of *Save the Children* by Englishwoman Eglantyne Jebb; in 1924, Jebb's seven point *Charter of the Rights of the Child* was adopted by the League of Nations, forerunner of today's United Nations.

Several groups within the United Nations spent many years working on what is now the most widely ratified Convention - the Convention on the Rights of the Child. This document was unanimously approved by the United Nations General Assembly in 1989 and came into force in September, 1990 when 149 countries ratified it. It came into force in Canada on January 12, 1992. Only two countries have not ratified this document: the United States and Somalia. Neither country has indicated any willingness to ratify.

The Convention is now part of international law and is used as a guide to interpret national laws. Every country that has ratified it is bound to develop programs and policies that will respect the rights set out in the Convention. In Canada, the Convention does not have the same legal effect as if enacted in a statute, but the government must ensure that its policies and laws comply with the Convention or face embarrassing political criticism by its own citizens and other member nations.

For more information on the Convention, as well as the full text, see: <http://www.unicef.org/crc/crc.htm> (<http://www.unicef.org/french/crc/crc.htm>)

The Convention (in non-legal language)

1. A child is any person under 18.
2. All the rights in the Convention apply to all children equally and regardless of race, colour, gender, language, religion, place of birth or any other factor.
3. Children have the right to express opinions about things that affect them personally.
4. Children have the right, if disabled, to special care and training which will help enable them to lead a dignified, independent and active life.
5. Children who belong to a minority group, have the right to have their own culture, practice their own religion and speak their own language.
6. Children have the right to meet with other children and to join and create clubs, groups, and associations.
7. Children have the right to be protected from abuse of any kind.
8. Children have the right to the best health care available.

9. Children have the right to benefit from money given by the government to their parents and guardians to assist in their upbringing.
10. Children have the right to a name and nationality.
11. Children have the right not to be tortured or to be treated or punished in a cruel, unkind, or humiliating way.
12. Children have the right to be protected from unjustified interference with privacy, family, home, or correspondence.
13. Children have the right to freely communicate views to others through various media (e.g., through letters, posters, petitions, artwork).
14. Children have the right to access information and ideas from various sources, but also to be protected from written and other materials that might affect them in a harmful way.
15. Children have the right not to be exploited for purposes of money-making (e.g., doing dangerous work or working long hours for little pay).
16. Children have the right to have fun, to play, and to join in leisure and cultural activities.
17. Children have the right to an education that considers their real needs and develops their talents and abilities.
18. Children have the right to living standards and conditions that will enable their growth and maturity (e.g., enough food, warm clothing, money, good housing).
19. Children have the right to be protected from drugs or practices that endanger their health.
20. Child refugees and children deprived of their families have the right to special assistance and protection.
21. Children have the right to be protected from ill-treatment by parents and others who are responsible for them.
22. Children have the right to life.
23. Children have the right to their own thoughts and beliefs and, if religious, to practice their faith.
24. Children have the right not to be recruited into the armed forces or to fight in wars.

Appendix 5.2

Fighting for Human Rights and the Rights of Children

A Nigerian Citizen, Ayesha Imam, fights Discriminatory, Anti-democratic Laws.

Each year the International Centre for Human Rights and Democratic Development awards the *John Humphrey Freedom Award* to an individual who has demonstrated exceptional achievement in the promotion of human rights. The award was named after Canadian citizen, John Humphrey, who prepared the first draft of the Universal Declaration of Human Rights. In 2002, the award, which includes a \$25,000 grant and a speaking tour of Canada, was endowed to Ayesha Imam founding director of the Nigeria women's rights group BAOBAB for her exemplary contribution to the movement to protect the rights of women and girls from the restrictive and discriminatory criminal laws recently enacted in Nigeria. The award was presented to Ms. Imam, in Montreal, on International Human Rights Day, Tuesday, December 10, 2002.

The human rights situation in Nigeria has become pivotal in determining the success or failure of its newly emerging democratic system. Nigeria is a populous and multi-ethnic country constitutionally recognized as a secular state. Its secular nature has been challenged in recent times and tensions are rising as Muslims claim a right to implement the Sharia (or strict religious) criminal legal code. For the past two years, in Northern Nigeria, 12 of the 19 states have begun implementing the controversial judicial system, which has led to judicial killings, amputations, deaths by stoning, and other human rights abuses.

For twenty-one years Ayesha Imam, through her human rights association BAOBAB (for more information, see http://www.whrnet.org/partners_baobab.htm <http://www.whrnet.org/fr/index.html>), has courageously protested against violations of the rights of women and girls whether under Islamic, secular, or customary laws. She has mobilized organizations across the country to show how conservative religious laws have been used in some Muslim countries to perpetuate violence against women. Through her advocacy work, she has also brought international attention to the discriminatory application

and conservative nature of Nigerian Sharia law through such notable cases as that of Bariya Ibrahim Magazu, sentenced to 100 strokes of the cane for having a baby out of wedlock; Hafsatu Abubakar, sentenced to death by stoning (on appeal by BAOBAB, the conviction was quashed); and Safiya Hussein, who was sentenced to death by stoning for adultery while the alleged partner was set free.

Ayesha Imam has risked her life to ensure that women's voices are heard. Her life and the lives of BAOBAB staff have been threatened and she has often been derided and abused. She has been accused of being anti-Muslim for using her knowledge of Islam to challenge conservative interpretations of Sharia; however, Ms. Imam's work in interpreting the Qu'ran from a female viewpoint and exposing male-dominant interpretations of it has drawn attention to the plight of women and girls not only in Nigeria, but also of women living under Muslim, secular and customary laws around the world.

For more information, see: <http://www.ichrdd.ca/frame.iphtml?langue=0>
<http://www.ichrdd.ca/frame.iphtml?langue=1>

Canadian Human Rights Organization Supports Human Rights Fighter

Rights and Democracy (International Centre for Human Rights and Democratic Development; <http://www.ichrdd.ca/flash.html>) is a Canadian institution with an international mandate to promote, advocate, and defend the democratic and human rights set out in the International Declaration of Human Rights. On June 27, 2002, Interim President of Rights and Democracy, Kathleen Mahoney, wrote to the Honourable Bill Graham, Canada's Minister of Foreign Affairs, on a matter of serious concern. In part, her letter reads as follows:

I am writing to express my concern regarding the recent intimidation of Dr. Sima Samar, former Deputy Prime Minister and Minister of Women's Affairs of the Afghan Interim Administration.

A formal charge of blasphemy against Dr. Samar was dismissed by the Supreme Court of Afghanistan on Monday, 24 June, 2002, after a letter to the editor in a weekly newspaper published by Jamiat-e Islami, Payman-e Muhajid ("message of holy warrior"), had previously alleged that Dr. Samar told a Canadian newspaper that she did not believe in sharia. The name of the Canadian newspaper was withheld. The writer had demanded that she be given "appropriate punishment" and the judicial authorities carry out an investigation. After Dr. Samar complained to President Karzai, the court dropped the charge on June 24, saying that it was not supported by sufficient evidence. However Deputy Chief Justice, Fazel Ahmad Manawi, was quoted by the BBC as saying, "Maybe, if we get stronger evidence, we will reopen the case".

The blasphemy charge is connected to reports of political repression and threats during the loya jirga. During the loya jirga, Dr. Samar and other female delegates were targeted for intimidation on several occasions. According to Human Rights Watch, the blasphemy allegation was repeatedly highlighted by warlords threatening Dr. Samar and helped to marginalize Dr. Samar during and after the loya jirga.

I urge you to call on President Karzai to carry through on his promise to investigate all cases of intimidation during the loya jirga, and to ensure security for those who report such abuses.

As you may know, Dr. Samar was the recipient of the 2001 *John Humphrey Freedom Award* for her efforts to strengthen the human rights of women and girls in Afghanistan and in refugee camps on the Northern border of Pakistan. Last December she traveled across Canada on a speaking tour. She also met privately with Prime Minister Chretien who assured her of Canada's commitment to support women's rights in Afghanistan.

Dr. Samar has recently been appointed as President of the Human Rights Commission of Afghanistan. We count on the Canadian Government to support Dr. Samar's new mandate and urge President Karzai to ensure that she will be able to carry out her functions in a climate of peace, security and respect for human rights.

Please do not hesitate to call on me if *Rights and Democracy* can be of assistance to the Canadian government on these important matters.

I look forward to hearing from you.

Kathleen Mahoney, Interim President of Rights and Democracy

Source: <http://www.ichrdd.ca/frame.iphtml?langue=0>

Activity 5.2: The International Criminal Court

Time: 75 minutes

Description:

This activity focuses on the establishment of the most recent international tribunal, the International Criminal Court. Teachers should begin this lesson by reviewing twentieth century developments in international criminal law based on the Nuremberg Trials, the Geneva Conventions and the International Criminal Tribunals instituted to deal with the war crimes that occurred in Rwanda and the former Yugoslavia. Students will then examine and discuss material related to the development of the International Criminal Court. The purpose of this activity is to weigh the arguments given by supporters of the Court, such as Canada, against the arguments made by countries such as Iran, Iraq, Israel, Russia and the United States who oppose it. Students will then write a persuasive “editorial” about the necessity of the International Criminal Court based on their own perspective.

Overall Expectations:

ACV.01 - apply appropriate inquiry skills to the research of questions and issues of civic importance.

Specific Expectations:

PC3.04 - analyse the evolution of Canada’s participation in international tribunals (e.g. the Nuremburg trials after World War II, the international Court of Justice’s prosecution of war crimes, formation of the International Criminal Court).

AC1.01 - formulate appropriate questions for inquiry and research, locate relevant information in a variety of sources (e.g. texts, reference materials, news media, maps, community resources, the Internet), and identify main ideas, supporting evidence, points of view and biases in these materials.

Planning Notes:

- Teachers may wish to use the websites listed below to develop brief materials dealing with the Nuremberg trials, Geneva Convention, International Court of Justice and International Criminal Court.
- Opinion pieces on the support and opposition to the International Criminal Court continue to appear in most newspapers. An online search will readily provide samples of both perspectives. These can either be provided to students or, preferably, obtained by students and brought to class.

Prior Knowledge Required:

Earlier activities in this package will have introduced students to some of the basic concepts of international law.

Teaching/Learning Strategies:

1. Review the concept of international law by referring to the work of Louise Arbour, the former Chief Prosecutor of the International Criminal Court for the former Yugoslavia and Justice of the Supreme Court of Canada, and currently the United Nations High Commissioner for Human Rights, or refer to the work of other international legal figures.
2. Ask students why some international law proponents began to argue for a permanent international tribunal. (Students will likely note the inadequacy of temporary tribunals or tribunals devoted to a specific situation. They will likely argue that these tribunals were not objective, but were dictated by the “winners” or the most powerful.)
3. Provide students with a brief overview of the development of the International Criminal Court and the role played by Canada. (Canada is not only a signatory and ratifier of the 1998 founding Rome Treaty, but an important member of the Preparatory Commission which did the legal “leg work” that led to the establishment of the International Criminal Court in July, 2002. Philippe Kirsch, a Canadian, is also the first President of the International Criminal Court.)
4. Provide students with examples of countries that have signed and ratified the Rome Treaty and of those that have not. Remind students that ratification of, and not merely the signing of, the Treaty is necessary for the Court to apply to a particular country. Examine and discuss with students the differing perspectives on the desirability/workability of such a Court.
5. Have students write an “editorial” in which both sides of the argument are presented and in which students argue, ultimately, for or against the Court based on their own perspective.

Assessment/Evaluation Techniques:

Formative assessment of class discussion.

Summative evaluation of student “editorials.”

Resources:

The Geneva Convention: <http://www.unhchr.ch/html/menu3/b/92.htm>

http://www.icrc.org/fre/parties_cg

International Criminal Court: <http://www.icc.int/>

International Criminal Tribunal for the Former Yugoslavia: <http://www.un.org/icty/>
<http://www.un.org/icty/index-f.html>

International Criminal Tribunal for Rwanda: <http://www.icttr.org/>
<http://www.icttr.org/wwwroot/french/index.htm>

The Nuremberg Trials (historical accounts):
<http://history1900s.about.com/cs/nurembergtrial/index.htm?terms=Nuremburg+Trials>
http://fr.encyclopedia.yahoo.com/articles/sy/sy_930_p0.html
http://www.espace-citoyen.net/site_justice/version/intro/photosemaine6.htm

Appendix 5.3

The International Criminal Court

1. What is the International Criminal Court?

The International Criminal Court (ICC) will be a permanent independent judicial body created by the international community of states to prosecute the gravest possible crimes under international law: genocide, other crimes against humanity and war crimes.

2. When was the ICC established?

The Rome Statute of the International Criminal Court established the ICC on 17 July 1998, when 120 States participating in the Rome Conference adopted the Statute. This is the first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished.

The Statute sets out the Court's jurisdiction, structure and functions and it provides for its entry into force 60 days after 60 States have ratified or acceded to it. The 60th instrument of ratification was deposited with the Secretary General on 11 April 2002, when 10 countries simultaneously deposited their instruments of ratification. Accordingly, the Statute entered into force on 1 July 2002. Anyone who commits any of the crimes under the Statute after this date will be liable for prosecution by the Court.

3. Why is the Court necessary?

Although, over the past half century the international community has created international and regional systems of human rights protection, millions of people have continued to be the victims of genocide, crimes against humanity and war crimes.

Shamefully, only a handful of those responsible for these crimes have ever been brought to justice by national courts - most perpetrators have therefore committed these crimes in the knowledge that it was extremely unlikely they would be brought to justice for their actions.

The ICC will serve the following purposes :

- It will act as a deterrent to people planning to commit grave crimes under international law;

- It will prompt national prosecutors - who have the primary responsibility to bring those responsible for these crimes to justice - to do so;
- Victims and their families will have the chance to obtain justice and truth, and begin the process of reconciliation;
- It will be a major step towards ending impunity.

4. What effect will the ICC have on national courts?

The national courts will always have jurisdiction over such crimes. Under the principle of 'complementarity,' the ICC will only act when the national courts are unable or unwilling to do so. For example, a government may be unwilling to prosecute its own citizens, especially if they are high ranking, or where the criminal justice system has collapsed as a result of an internal conflict, there may be no court capable of dealing with these types of crimes.

5. When can the court prosecute individuals suspected of committing grave crimes under international law?

The court has jurisdiction to prosecute individuals when :

- Crimes have been committed in the territory of state which has ratified the Rome Statute;
- Crimes have been committed by a citizen of a state which has ratified the Rome Statute;
- A state which has not ratified the Rome Statute has made a declaration accepting the court's jurisdiction over the crime;
- Crimes have been committed in a situation which threatens or breaches international peace and security and the UN Security Council has referred the situation to the Court pursuant to Chapter 7 of the UN Charter.

6. Will the Court be able to prosecute individuals for crimes committed before the Court's establishment?

No. The Court will only have jurisdiction over crimes committed after the Rome Statute enters into force (after the 60th ratification).

7. Who will decide which cases the Court will prosecute?

The Rome Statute provides that cases can originate in the Court three different ways :

1. The Court's Prosecutor can initiate an investigation into a situation where one or more of the crimes has been committed, based on information from any source, including the victim or the victim's family, but only if the Court has jurisdiction over the crime and individual (see questions 4 and 5).
2. States which have ratified the Rome Statute may ask the Prosecutor to investigate a situation where one or more of the crimes has been committed, but only if the Court has jurisdiction.
3. The UN Security Council can ask the Prosecutor to investigate a situation where one or more of the crimes has been committed. Unlike methods 1 and 2, the ICC will have jurisdiction when the UN Security Council refers the situation to the Prosecutor, even if the crimes occurred in the territory of a state which has not ratified the Rome Statute or was committed by the national of such a state.

In each of these situations, however, it is up to the Prosecutor, not the states or the Security Council, to decide whether to open an investigation and, based on that investigation, whether to prosecute, subject to judicial approval.

8. Why is it essential that as many countries as possible ratify the Rome Statute

The Prosecutor can only initiate an investigation where the crime has been committed in the territory of a state party to the Statute or the accused person is a citizen of a state party to the Statute, unless the Security Council refers a situation to the Court. The reluctance of the Security Council to establish *ad hoc* international criminal tribunals for situations other than the former Yugoslavia and Rwanda suggests that it is not likely to refer many situations to the Court. Therefore, to a great extent, the court's effectiveness will be measured by how many states ratify the Statute.

A publication of the International Justice Project, reprinted from:

<http://web.amnesty.org/ai.nsf/index/ior400022000?OpenDocument&of=T>

[HEMES\INTERNATIONAL+JUSTICE](#) and

http://www.icc.int/en/ICC_origin_page.html

KEYWORDS: ICC1 / HUMAN RIGHTS INSTRUMENTS / INVESTIGATION OF ABUSES



Teacher Feedback Form

The *Values of the Justice System* programme was designed by the Ontario Justice Education Network to help students understand and appreciate the core values of justice system, and prepare students for classroom visits and visits with the *Courtrooms & Classrooms* initiative. We would appreciate your feedback on the program so we can ensure that it is effective, relevant, and as easy to use as possible.

Please indicate the extent to which you agree with the following statements. The scale is as follows:

1: Very True 2: Often True 3: True 4: Occasionally True 5: Not True

1. The resource material is helpful in teaching students about core values of the justice system. 1 2 3 4 5

Additional Comments:

2. This curriculum supplement effectively met the expectations as outlined in the Course Profile. 1 2 3 4 5

Additional Comments:

3. The layout of the entire document makes the material easy to access and use. 1 2 3 4 5

Additional Comments:

4. The activity header sheets provide sufficient information about planning notes, Teaching/Learning Strategies, resources etc. 1 2 3 4 5

Additional Comments:

5. The time suggested for the activities is sufficient. 1 2 3 4 5

Additional Comments:

6. The activities are interesting to the students. **1 2 3 4 5**

Additional comments:

7. The activities are effective in helping the students understand the information that is being taught. **1 2 3 4 5**

Additional Comments:

8. Can you provide us with detailed feedback on a specific activity that you used in your classroom?

9. What other resources would be helpful to you?

10. What grade, course, etc. did you use this material for?

Teacher Name:

School:

School Board:

E-Mail Address:

Phone #:

Thank you for taking the time to provide us with your feedback.

Kindly return or fax the feedback form to:

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