

SOURCES

Jeremy Patfield spotted Governor General Adrienne Clarkson in the hall at Rideau Hall and wondered aloud: "Is that the woman that spends the money on the Queen when she comes?"

That comment was enough to get the Whitby youth and about 60 of his grade 8 schoolmates kicked out of the governor general's residence.

Even though Clarkson didn't hear the question, asked during a tour of the official residence, the guide immediately cut short the 45-minute tour and escorted out the students from John Dryden Public School in Whitby. To make matters worse, Jeremy said, he was told he was suspended from school for three days, starting that day.

"I guess it was [Clarkson's] house," Jeremy said, after returning from Ottawa. "But still, they basically treated me like a criminal, like I ran in there and assaulted her or something."

He added that he feels like he is "being punished for my freedom of speech."

Since she was appointed governor general in 1999, Clarkson has been criticized for her spending, including using government planes to fly to her Georgian Bay cottage and spending millions of dollars on allegedly exorbitant trips—such as \$5.3 million in 2003 for a three-week trip through Russia, Iceland, and Finland.

One day after the newspaper story appeared, Governor General Clarkson telephoned Jeremy to apologize and to invite him to a special tour of her residence. There are no inappropriate questions, only inappropriate answers, said the Queen's representative in Canada. At the same time, the school lifted Jeremy's three-day suspension.

Source: Unnati Gandhi, "Pupils Get Vice-Regal Ejection," *The Toronto Star*, February 17, 2005.

PAUSE, REFLECT, APPLY

1. Why do governments and courts limit our freedom of expression? Give three examples of limits on freedom of expression. In each case, explain why you agree or disagree with the limitation.
2. Why do you think the Supreme Court in 1985 declared the Sunday store closing law unconstitutional (not in keeping with the Charter)?
3. Should a student be able to ask any question in school or on a school excursion? If your answer is no, indicate what sorts of questions a student should not be able to ask.
4. In Canada, do we have too much or too little freedom? Give specific examples.

KEY QUESTION

How much power should courts have in interpreting Charter rights?

What Are Our Charter Rights?

Among the rights addressed by the Charter are democratic rights, mobility rights, legal rights, equality rights, minority language rights, and Aboriginal rights. Many of these rights are discussed in different sections of this text.

While the Charter outlines your basic rights, Canadian courts, especially the Supreme Court, clarify those rights. The courts interpret the

Charter to determine exactly what those rights mean. For example, what is meant by the right of "security of the person," the right "not to be subjected to any cruel and unusual treatment or punishment," or the right to "the equal protection and equal benefit of the law"? By responding to the cases brought before them, Canadian courts have been answering these questions since the Charter was created in 1982.

DEMOCRATIC RIGHTS

The **democratic rights** of Canadians are outlined in sections 3, 4, and 5 of the Charter. These rules guarantee Canadians a democratic government and the right to elect their representatives. These rules apply to federal, provincial, and territorial elections.

The voting age in Canada used to be 21. Based on a decision of the Supreme Court of Canada, the right to vote (franchise) has been extended to almost every Canadian citizen over the age of 18. Most recently, the franchise has been extended to all inmates in Canada's prison system, including those with life sentences.

LEGAL RIGHTS

Your legal rights (sections 7 to 14 of the Charter) ensure that you are treated fairly when dealing with the justice system. Section 8, for example, guarantees you "the right to be secure against unreasonable search." Section 9 says you have "the right not to be arbitrarily detained."

In most cases, searches are conducted because someone in authority suspects that a law or rule has been broken. When the person searching you is a police officer, the search is legal if there is

- a search warrant
- an arrest
- reasonable cause.

In a school, the principal or vice-principal is considered to be acting in place of your parents. This gives them the authority to search your person, your bag, or your locker if they have a good reason for doing so. School officials have this authority (backed by court decisions) so that they can maintain order and safety in schools.



FIGURE 6.4 Would it be legal for a school official to search your locker just because it's messy and he or she wants to check to see what's inside?

If there is no good reason for the search, school authorities can be punished for invading students' privacy. In 1998, in a high school in Kingsville, Ontario, 19 grade 9 boys were strip-searched after a classmate reported \$90 missing from a gym bag. The incident grabbed media attention. Eventually, the vice-principal and the gym teacher who ordered the students to remove their clothes were suspended without pay for 10 days and reprimanded by the school board. The \$90 was never recovered.

In some circumstances, it is legal to detain people, even if they are not suspected of committing a crime. For example, during highway spot checks, any driver can be detained to determine if he or she has consumed alcohol. Because alcohol-related traffic accidents are frequent and deadly, the Supreme Court has decided that spot checks are a reasonable limit on the right not to be detained.

EQUALITY RIGHTS

The rights of all Canadians to be treated equally are guaranteed by the Charter. Governments are prohibited from discriminating against anyone on specific grounds, as listed in section 15(1) of the Charter:

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.

Equality rights are meant also to ensure that everyone can access opportunity equally. How? Supreme Court Justice Rosalie Abella has said that "equality is not a concept that produces the same results for everyone. It is a concept that seeks to identify and remove, barrier by barrier, discriminatory disadvantage."

Equality Rights and Sexual Orientation

Some rights protected by the Charter are not explicitly stated. However, the Supreme Court of Canada has identified similar grounds for protection in addition to those listed in section 15(1). Among these grounds is sexual orientation.

FACE OFF To Spank or Not to Spank?

"Ouch! You didn't have to hit me! And you didn't have to hit me that hard!"

Are children's equality rights being violated when they are spanked? Do parents, guardians, and teachers have a right to strike children? Federal law states that they do—so long as the force used is "reasonable." That law, first written in 1892, is intended to permit children to be disciplined.

Some people argue that government rules have no place in family matters. They say that parents should not be charged with assault for spanking a misbehaving child. Similarly, a teacher should not be arrested for physically restraining a disruptive student. After all other means have failed, physical correction may be the only answer. At times, this may also be the only way to ensure safety in the classroom:

Spanking was good for me; I turned out OK. It should be good for my children.

— Caller to a phone-in radio program

Others argue that spanking is always wrong. Corporal (bodily) punishment, they say, is just a nice term for physical abuse. Spanking is an act of violence. Young people who are spanked get the idea that violence is permissible. Laws should protect children from physical assault, just as adults are protected. The Charter speaks about the right to "security of the person" (section 7), the right to "the equal protection and equal benefit of the law" (section 15), and the right not to be subjected to "any cruel and unusual treatment or punishment" (section 12).

Children are the only remaining Canadian citizens who can be legally assaulted for their correction.

— Catholic School Board spokesperson,
London, Ontario

The Supreme Court ruled in 2004 that children had limited rights and that parents can apply



FIGURE 6.5 After some Ontario children were removed from their family because they were spanked, members of their church congregation protested.

"reasonable force." The court banned the use of corporal punishment for children under age two and over age 12. It prohibited the use of instruments such as rulers and belts, or striking a child on the face or head. Teachers can no longer use corporal punishment. The court saw the new interpretation as achieving a balance between the needs of parents and the rights of children.

What Do You Think?

1. With reference to specific sections in the Charter, explain how children are not given full rights under the *Canadian Charter of Rights and Freedoms*.
2. Explain why you agree or disagree with this denial of full Charter rights.

DID YOU KNOW

In 2004, 12 European countries had "anti-smacking legislation." In most cases, the laws were intended to educate parents rather than punish them.

After the 2004 Supreme Court of Canada decision, a lawyer noted: "I can remember being strapped by my principal, and that was entirely acceptable by society 30 years ago. Attitudes are changing. In 20 years all spanking of children will be outlawed."

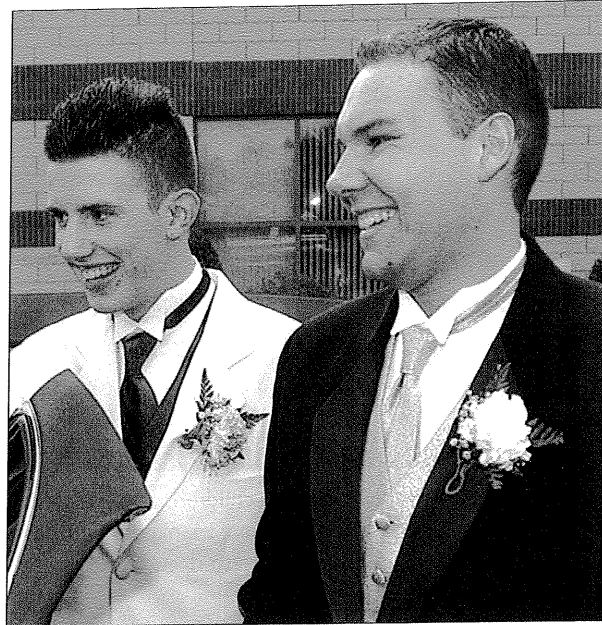


FIGURE 6.6 In 2002, 17-year-old Marc Hall (left) took the Durham Catholic District School Board to court after it ruled that he could not take his boyfriend to the high school prom. The board stated that Hall's action would violate Catholic teachings on homosexuality. Hall's lawyer argued, successfully, that the board's decision violated Hall's Charter rights to equality, freedom of expression, and freedom of association.

The basic goal of section 15 is to protect human dignity. It does this by ensuring that the law treats all Canadians as equal in value and worth. In a series of court decisions, gay and lesbian Canadians have been guaranteed equal treatment under the Charter. This means that lesbian and gay Canadians are protected from discrimination in accommodation and employment. Same-sex couples are also entitled to the same benefits (such as pensions and support payments) as heterosexual couples. By June 2005, courts in eight provinces and one territory had recognized same-sex marriage. By the end of July 2005, the *Civil Marriage Act* became law, recognizing same-sex marriage across Canada.

Disability Rights

Disability activists fought hard to have **disability rights** included in the Charter. Their victory was considered a significant achievement for the disability movement. Since then,

many legal challenges have ensured that people with physical or mental disabilities have access to a full range of services. Access to buildings and facilities has also improved. In one landmark case, a person in British Columbia who was deaf won the right to communicate with health care providers using a sign language interpreter provided by the government.

Tracy Latimer: Equality Rights or the Right to Die?

Tracy Latimer was a 12-year-old girl living with severe cerebral palsy in rural Saskatchewan. She could not move her limbs and communicated only by means of facial expressions, laughter, and crying. Tracy enjoyed music from a radio, which she controlled with a special button. However, she was in constant pain.

When Tracy faced further painful surgery in 1993, her father, Robert, made a decision. He placed her in his pickup truck while her mother and siblings were at church. He then inserted a hose from the exhaust pipe into the cab. Tracy died from carbon monoxide poisoning.

CIVICSTAR

STEVEN FLETCHER

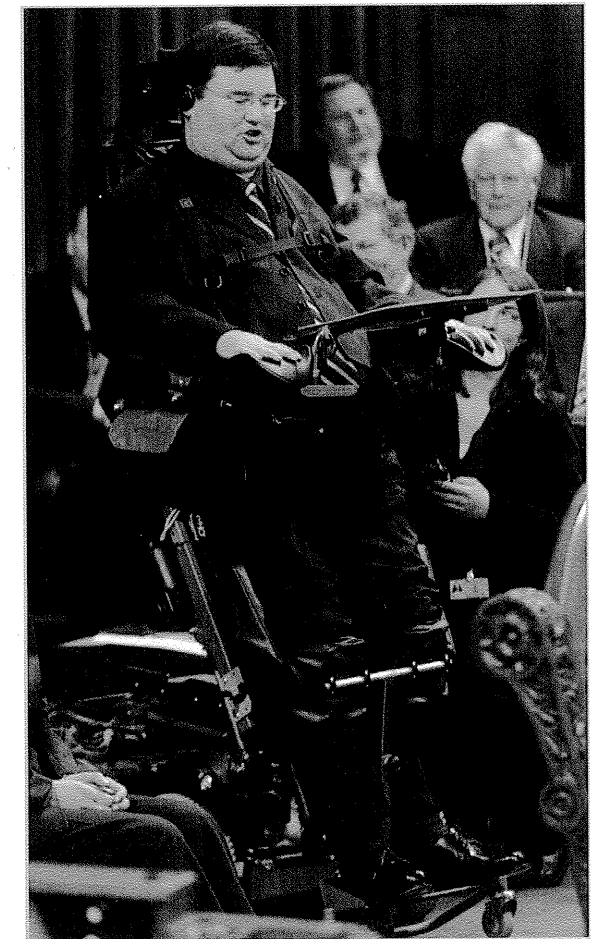
He clicks his mouse by means of an infrared remote attached to his forehead. He moves about in a high-tech wheelchair. He is Steven Fletcher, a Conservative MP who cannot move his body below the neck.

At age 23, Fletcher was a mining engineer. Driving home one day, he had an accident. A moose crashed through his windshield. Fletcher's life changed in a second. As a result of a spinal cord injury, he cannot feel hunger, pain, or pleasure. Yet his head works just fine.

Fletcher adapted to his condition. He returned to university. He earned a business degree and was elected student president. Several years later, he became leader of the Manitoba Progressive Conservative Party. In the 2004 federal election, Fletcher ran as a Conservative candidate in a Winnipeg riding, won the seat, and was appointed his party's health critic.

The Parliament buildings also had to be adapted to accommodate Fletcher, Canada's first quadriplegic MP. In Ottawa, Fletcher has continued to advocate for *community living*—the integration of physically or mentally challenged individuals into society. He has said, "Community living is better for the individual for sure, better for their families, and in most cases—not all—it's better on the taxpayer too."

Fletcher's words express his optimism: "I'd rather be paralyzed from the neck down than the neck up." In his determination and accomplishments, Steven Fletcher tests and strengthens Canada's commitment to equal opportunity and equal treatment for all members of society.



Your Play

1. How would your home or school have to be adapted in order to be accessible to Steven Fletcher?
2. Fletcher has observed that politicians in Parliament had no real grasp of what it means to be seriously physically disabled before he arrived. He says there's a difference between dealing with "issues" and dealing with people. Describe what you think that difference involves.

DID YOU KNOW

Assisted suicide and euthanasia are illegal in Canada. Under section 241(b) of Canada's *Criminal Code*, anyone who aids a person in committing suicide can be jailed for up to 14 years. Suicide itself, by contrast, is legal.

The legal case pitted Tracy's equality rights against her father's claim that he was releasing her from a life that was too painful. At trial, he was convicted and sentenced to one year in jail and one year of house arrest. A higher court, however, ruled that he was guilty of second-degree murder. He would have to serve the same sentence as anyone else: life, without parole for 10 years. Latimer defended his action as euthanasia, or "mercy killing." He argued that it would be "cruel and unusual treatment or punishment" (section 12 of the Charter) to incarcerate him for an act of compassion.

Disability activists disagreed, passionately. The Charter, they said, gives no one the freedom or right to kill anybody. Instead, section 15 guarantees equal protection of the law "without discrimination based on ... mental or physical disability." Canada's Supreme Court agreed. In 2001, it ruled that Latimer had other options. For example, he could have placed Tracy in a group home.

PAUSE, REFLECT, APPLY

1. Rights are clustered under different categories within the Charter. What are those categories, and how do they differ?
2. Justice Abella said that "equality is not a concept that produces the same results for everyone. It is a concept that seeks to identify

and remove, barrier by barrier, discriminatory disadvantage." Write a two-paragraph opinion piece on the meaning of these comments. Use examples from real life to illustrate your point of view.

REPLAY

This chapter has informed you of these civics concepts:

1. Democracies have a tradition of rights and responsibilities.
2. Canadians' rights are protected in human rights codes, in the *Canadian Charter of Rights and Freedoms*, and in privacy law.
3. Rights always imply responsibilities.
4. There are reasonable limits on individual rights in order to protect the needs of society.
5. If you feel you have been treated unfairly, you may take your case before a human rights commission or the courts.
6. When individual and societal rights clash, courts interpret which rights will prevail.

CIVICS TOOLKIT**How Can I Break This Down?**

To analyze means to break something down into its parts. Keep this in mind when analyzing information from books, newspapers, reports, and so on. It's a good idea to read the whole item first. Then approach the item as you would a puzzle.

Start by doing the following:

- Take your time.
- Look up unfamiliar words in a dictionary.
- Use an Internet search engine to learn more about unfamiliar phrases, concepts, or people.
- Examine all the parts. For example, with a statistical table, make sure you know exactly what is being measured. Look at all the labels. Check the legend, if there is one. If it is a report, scan the headings to get a sense of the main structure. Use the headings to zero in on the information that is pertinent to your research. Examine photographs and captions.

Next, go a little deeper:

- Try to grasp the purpose of the piece. Why did the author write it? The answer to that question is usually the "big idea" of the piece.
- In a written piece, examine the first and last sentence of a paragraph for clues about the main idea.
- Look for chronology (time order) as an organizing principle. That way, you can sometimes jump to particular events that interest you or relate to your research.

- Look for the arguments the author makes, as well as evidence to support those arguments. What cause-and-effect claims does the author make?
- Remember that words and images may have a symbolic meaning. In political cartoons, the artist often uses symbolism or exaggeration to make a point.
- Remember that words in italics can be the names of published works, the names of ships, or phrases from a language other than English.

Skill Practice

1. Read Face Off: Freedom of Religion versus Right to Security on page 100. Identify points of comparison between different views. Identify cause-and-effect sequences (one thing happens because of something else).
2. Read the Sources feature on page 102. What is the main message of the article? Identify and explain key words and phrases that reporter Unnati Gandhi uses to get her message across to the reader.
3. Find a political cartoon in this book or in a magazine or newspaper that you think is very effective. Analyze the techniques that the cartoonist has used to give the political message humour or impact.