

Freedom of Expression through Clothing: Teacher's Guide



Introduction

This learning activity is designed to help high school students think critically about freedom of expression, especially as it relates to expressing oneself through clothing choices. The activity asks students to consider when (if ever) it is reasonable and/or justified to restrict a person's freedom of expression as enshrined in section 2 of the *Canadian Charter of Rights and Freedoms*.

Overview

The **Freedom of Expression through Clothing** learning activity consists of two parts, which can be completed in different ways, depending on your preferences and the availability of internet-connected devices.

1. An **interactive online case study** students can work through independently or as a full-class exercise:
 - A short video is followed by a simulated social media discussion of the case in which students choose which comments to “like” to explore arguments for and against restricting expression through clothing.
 - This guide provides prompts and questions to facilitate a debrief of the online activity and expand on the issues raised.
2. Two in-class **facilitated case studies**:
 - Students discuss and debate the cases related to restrictions of expression through clothing by providing their own arguments for or against and by reacting to the arguments presented by their classmates.
 - This guide provides questions you can ask to get the discussion started and follow-up questions to continue the discussion. Each discussion starts with questions that test the reasonableness of the restriction using the Acorn Test.
 - This guide provides additional background information where it might be needed.

Learning Outcomes

By completing the **Freedom of Expression through Clothing** learning activity, students will:

- Apply their understanding of the *Charter of Rights and Freedoms* to specific cases involving restrictions of rights and freedoms
- Think critically about reasons given for restricting rights and freedoms
- Make rational arguments, based on rights and freedoms and the Acorn Test, for or against restrictions of rights and freedoms
- Critically engage with different opinions, assess the relative merit of each opinion, and make an informed judgement of that opinion
- Engage with social media and user-generated commentary in a critical and reasoned manner

Curriculum Links

This learning activity contributes to several curriculum expectations. Visit the Canadian Civil Liberties Education Trust website to see the curriculum links for your province/territory.

Instructions

1. Prepare for the learning activity

To work towards the outcomes of this learning activity, students should come into it with a certain base knowledge and with some ground rules established. Check out the Canadian Civil Liberties Education Trust's *Your Rights 101* page for some helpful preparatory resources.

- Knowledge of the *Canadian Charter of Rights and Freedoms*
- Knowledge of the **Acorn Test**
- Techniques for and guidelines on disagreeing in a respectful, informed and reasoned way

2. Complete the online activity

- This takes 5-6 minutes to complete once and can be done:
 - Independently: Have students work through the activity on their own computer or other internet-connected device, either in class or at home before class.
 - As a whole class: Using a screen everyone can see, walk through the online activity, taking suggestions from the class for which comment to “like”.
- Whether independently or as a group, feel free to work through the activity more than once, as “liking” different comments will result in different arguments for and against restricting freedom of expression.
- After completing the online activity, debrief the activity by having students reflect and expand on the comments they saw in the online activity. You can use the prompts and questions below to facilitate the debrief.

Guiding questions/prompts for online activity

- Are there any comments that really struck you?
- Are there any that made you rethink your initial opinion?
- Could different types of limits be appropriate in different settings (school vs. work vs. golf course etc.)?
 - Does the vulnerability of youth in schools to bullying necessitate more restrictions on speech than elsewhere? Schools, after all, impose other restrictions on speech and for a very practical reason. For example, you have to raise your hand to speak in school so that multiple people aren’t speaking at once and people can be heard. We don’t do that elsewhere.
 - On the other hand, should schools be a place where we can learn to engage with different opinions in a constructive way?
 - Golf courses are private companies providing recreation. You have to go to school, it’s a public service. Does this make a difference?
- The slogan on the shirt in this case is referring to Canada’s colonial history. Canada has a history of using policies, and in particular residential schools, to silence/eradicate Indigenous views and culture. Should this be taken into consideration when determining if it is reasonable to restrict this particular

slogan in a school setting? Could this historical context be more reason to not silence this statement or deprive an Indigenous person from using their own voice to express their own views about their own history, even if it offends some people?

- What other responses to the shirt are possible other than banning it?
 - Should students who were offended by the slogan have tried talking to the person wearing the shirt before complaining to the teachers? If not, why not? Do you think it would have been productive to do that?
 - In what situations do you think it is appropriate to discuss the issue with your fellow student first? Would it depend on what they were wearing and how what they are wearing makes you feel?
- Can attempts at censorship have the unintended consequence of exposing the controversial statements more than if no one made a big deal about it?

3. Engage students further by facilitating additional case studies.

- Read or project each of the following cases on screen.
- Ask one of the “Discussion questions” to guide the discussion.
- Facilitate the discussion by using the Acorn Test and responding to students’ answers with the suggested questions, as appropriate.
- If desired and appropriate, consider splitting the class into small groups to allow for a more in-depth exploration of the issues.

Case #1: Restriction of clothing specific to women

Several cases reported in the media recently suggest that school dress codes disproportionately target the clothing of young women and are therefore sexist. For additional details about these cases, conduct an internet search using the name of the student involved, the year and location.

- In 2014, Tallie Doyle, a grade 8 student in Ottawa, Ontario wore a top with spaghetti straps that showed her bra straps and received discipline from the school.
- In 2014, Lindsey Stocker, a grade 11 student in Montreal, Quebec, was told her jeans shorts were too short. She protested by posting fliers saying, “Instead of shaming girls for their bodies, teach boys that girls are not sexual objects”. In response, she was suspended for a day.
- In 2015, Lauren Wiggins, a 17-year-old from Moncton, New Brunswick was told to cover up when she wore a floor-length halter-style dress that exposed her back and bra straps. She was told the dress was a “sexual distraction”. She was later suspended for pushing back against the rule and the reasoning.
- In 2015, a grade 12 student in Etobicoke, Ontario, Alexi Halket, was called into the vice principal’s office for wearing a crop top deemed not to comply with the school’s dress code.

The common element through each case is that the school stated that the student’s clothing was immodest or a “distraction” to other students.

On the other end of the spectrum is Quebec Bill 62: *An act to foster adherence to State religious neutrality*. This act requires anyone providing public services and anyone receiving public services to do so without covering their face. So, for example, someone wearing a niqab or burka (which some Muslim women wear based on an interpretation of the Qur’an which encourages modest dress) would be unable to provide or access public services.

This means that people taking the bus, students in public schools and universities, or people wanting to use a public library, would all not be able to have their faces covered. It seems women can’t win either way with their clothing choices.

The government of Quebec claims that the law fosters religious neutrality (the government being seen to not favour the beliefs and practices of one religion over another). They argue that if a public employee were to provide services wearing a religious face covering, it would suggest that the government endorses or favours that religion.

Background information: This bill became law in November 2017, but in December 2017 it stopped being enforced due to a court order. As of May 2018, the law is still not yet in force. In anticipation of students asking whether it is now the law in Quebec, it might be worth doing a bit of research to see what has happened with the law. Or, you can simply discuss it in the abstract: whether it is reasonable/justified for a government to withhold public services from individuals who cover their face.

Discussion Question 1

Is it reasonable for schools to restrict students' freedom of expression through clothing by prohibiting items of clothing deemed too revealing, distracting or immodest?

Guiding Questions/Prompts

One way to look at this question is to see how the restriction stands up to the **Acorn Test**.

- What are dress codes that prohibit short skirts or shorts, crop tops, tight yoga pants/leggings/jeans, spaghetti straps, tight shirts, shirts that show cleavage, or visible bra straps or other underwear supposed to accomplish?
- Is what dress codes are meant to accomplish important?
- Do the dress codes, even when followed perfectly, accomplish what they are meant to accomplish?
- What are the “side effects” of dress codes? What fundamental rights and freedoms do they infringe upon?
- Dress codes often use terms like “appropriate” or “offensive”. How would you define those words? Does this make it more difficult to follow the dress code?
- Are these items of clothing a “distraction”? To whom? Can other items be a “distraction”? (Brightly coloured shirts, clothes or accessories that “jingle” or make noise when a student is moving, shoes that light up etc.)
- Is it reasonable to expect you to change the way you dress because it distracts another student?
- Schools often argue that they help prepare students for the workplace or “the real world” where dress codes also exist. Is this really the role of schools?
- If schools did not enforce dress codes, would it make it difficult to transition into the workplace? Would people not understand the difference?
- Are work dress codes reasonable?

- Can work dress codes be enforced? Could someone legally be fired for not adhering to a dress code?
- Do you think school dress codes intentionally target clothing traditionally worn by women?
- Is it easier for young men to comply with dress codes without having to make any extra effort in the clothing they choose to wear? Is that discrimination?

Background information:

Can work dress codes be enforced?

Potentially, depending if it's in one's contract, or it's one of several expectations that someone isn't meeting, and if the dress code itself is not discriminatory.

If desired and if there is time, you can raise the issue of discriminatory work dress codes here. There have been cases of haircuts being required, such as a case of American Airlines prohibiting braided hairstyles, which discriminates against black women. A more recent case involves a company telling a black woman who interviewed for a job that in order to be hired she would need to cut off her dreadlocks.

Search "**Black hair discrimination is real but is it against the law?**" for more.

Discussion Question 2

Is it reasonable for a government to prevent people from receiving or providing public services while wearing a religious-based face covering such as a burka or niqab?

Guiding Questions/Prompts

Again, we can start by looking at how this restriction fares in the Acorn Test.

- What fundamental freedoms and rights does Bill 62 engage?
- Do you think that this law is really about religious neutrality? Why/why not?
 - If the law restricts one religion from expressing their sincerely held beliefs, but not others, is that neutral?
- Is religious neutrality an important goal?
- Would this law, if enforced consistently, achieve religious neutrality?
- What other reasons (besides "religious neutrality") do you think might be given to justify the law?

- Safety/security is one reason given (anyone could be under that face covering). Does banning niqabs and burkas make society safer?
- Women who wear face coverings already “unveil” to prove their identity when renewing their license, showing ID when riding a bus (to prove it is their bus pass) and at airports. Does the new law improve security if this is already the practice?
- Some might argue that seeing someone with their face covered in public makes them uncomfortable. Do people have a right not to be uncomfortable (for example, by seeing someone with a face covering riding a bus or at the library)?
- Is there a value to learning about other worldviews that make you uncomfortable?
- Another reason given is that some people believe that niqabs and burkas are symbols of oppression, and that banning them supports equality for women. What do you think of this argument?
- Do women who wear these items choose to do so? Are they adults?
- What are the consequences of banning these religious items?
 - Might it reinforce/legitimize anti-Muslim views within the general public?
 - Could it make Muslim people feel targeted and unsafe?
 - Could it diminish the ability of women who wear face-covering clothing to participate in public life?
- If women who wear these items now feel they can’t leave their homes because they won’t be able to ride the bus, use the library or pick up their children from day care, does this make society safer? Does it make those women more “liberated”?
- At what point could it be important/reasonable to restrict someone’s freedom of religion?
- Is this discrimination? Why or why not?
- *Charter* rights are rights for everyone in Canada. But they are often intended to protect minority, unpopular opinions. Do you think it’s important to protect unpopular opinions? Why/why not?

Case #2: Assumed gang affiliation based on clothing

Cadan, a 17-year-old Winnipeg, Manitoba student was reprimanded for wearing a black and white bandana print hat to school because it was deemed to be “gang clothing”. The hat was confiscated for the day, and Cadan was told not to wear it again when it was returned to him. The school division’s code of conduct says that “gang involvement or gang insignia will not be tolerated on school sites”. Cadan is not a gang member and the hat is a widely available item sold in mainstream stores as a fashionable accessory.

Again in Winnipeg, a 16-year-old First Nations youth known as “K.B.” was walking with three other youth (all male) when he was observed by two police officers in a marked cruiser. K.B. was wearing red, a colour associated with a local First Nations gang. The police officer believed that wearing gang colours indicated that a crime had just been committed or was about to be committed. K.B. was searched and found to have a 3-inch folding knife in his pocket. He was charged with carrying a concealed weapon.

In the US, some states and municipalities have tried to ban the wearing of baggy pants, hooded sweatshirts and shirts with certain college/university logos. Police are stopping and searching individuals wearing this type of clothing, and some state fairs are not allowing entry to those wearing certain items of clothing. (See **Profiling Clothes**, Cambridge University Press.)

A city in the Netherlands has tried to pass a law allowing police to seize items of clothing they deem the person unable to afford, with the logic being that they acquired the clothing through criminal activity such as drug dealing or gang membership.

All of these cases point to the same assumptions—that certain items of clothing signal criminal behaviour.

Discussion Questions

- 1. Is it reasonable to ban items of clothing that some people consider to be associated with gang membership or other criminal activity?**
- 2. Could bans on this type of clothing be more reasonable depending on the location (i.e. at school, at a fair/amusement park?)**
- 3. Is it reasonable to subject people wearing this type of clothing to closer scrutiny, such as being stopped, carded (asked for ID) and searched by police?**

Guiding Questions/Prompts

One way to look at these cases is to see how the restrictions stand up to the Acorn Test.

- What are school authorities trying to achieve by banning clothing that they associate with gangs? What are police trying to achieve by assuming gang membership based on clothing? Are these goals important?

- Did targeting Cadan for wearing a black and white bandana print hat succeed in identifying gang activity? Did targeting K.B. for wearing red succeed in preventing crime?
- Does banning certain items of clothing or searching those wearing it make people safer?
- Is clothing colour or style a reliable indicator of being in a gang? Is it likely to lead to false positives/false negatives?
- Are teachers and school administrators in touch with what constitutes “gang clothing”? Are the police?
- Have clothing fashions that traditionally signaled gang affiliation become part of mainstream fashion?
- What fundamental rights and freedoms are engaged in these cases?
- What impact do you think being told not to wear the hat might have had on Cadan? What impact might it have had on other students?
 - Could this make someone feel worried and fearful about getting into trouble because of their clothes?
 - Might this make a person in this situation feel stigmatized or singled out?
- What are some of the unintended consequences of making assumptions about gang membership and criminal activity based on clothing?
 - Do rules related to baggy clothing, sports jerseys and hooded sweatshirts target males more than females?
 - Do these rules affect some races more than others? Would anyone wearing red have been stopped and searched as K.B. and his friends were?

Background information: Many gangs no longer use particular clothing to identify themselves. Gang “signalling” might change over time, so it requires up-to-date knowledge. As a result, investigating individuals based on the clothing they wear might not be the most effective use of school or police resources. In the specific case of K.B., the police officer did not provide any evidence to back up his claim that wearing gang colours indicated that a crime had been committed.

Background information: Sometimes, a law can seem neutral, but it can be applied in unfair, uneven ways. The ability of the police to stop people on the street for suspicious behaviour can sometimes result in unfair treatment. Often, gang membership is assumed to be associated with particular ethnicities or races. So, while baggy jeans, sports jerseys, and hooded sweatshirts are clothes that all kinds of teenagers wear, the police might be less likely to stop and question a white teenager who is wearing a particular piece of clothing that they may associate with a gang. When people assume that someone is more likely to be involved in criminal activity because of their race, that's called racial profiling.

A bit more information about racial profiling:

- The Ontario Human Rights Commission defines racial profiling as “any action undertaken for reasons of safety, security or public protection that relies on stereotypes about race, colour, ethnicity, ancestry, religion, or place of origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment.”
- Statistically speaking, a broad cross-section of society engages in criminal activity (see Commission on Systemic Racism in Ontario Criminal Justice System, 1995, at page 99, and Robyn Maynard, *Policing Black Lives: State Violence in Canada from Slavery to the Present*, Fernwood Publishing, 2017, pp 84-88.).
- The problem with racial profiling is that it can become a self-fulfilling prophecy: a false belief that seems true because we act as if it is already true. For example, all kinds of people in all kinds of communities commit the offence of jay-walking. But if you assume one community jay-walks more, and then decide to put more police in that neighbourhood to monitor jay-walking, more people are going to be caught jay-walking in that community than elsewhere. You might then draw the inaccurate conclusion that people from that community are more likely to be dangerous jay-walkers than anywhere else. Racial profiling works the same way: if you devote more police resources to targeting Indigenous and Black community members because you assume they are more prone to crime, then more people from those communities will be arrested and imprisoned, and you might wrongly conclude Indigenous and Black people are more likely to commit crimes than anyone else.

- If schools or the police assume that anyone who wears a certain print or colour is in a gang, and then a search of those people in fact reveals criminal activity some of the time, is it fair for the schools or police to conduct searches based on those assumptions?
 - Why or why not?
 - What would make it fair or unfair?

Further information and guiding questions about the K.B. case:

- K.B. was searched not only because he was wearing red shorts, but also because he was walking around with someone who was a gang member. Does that make a difference? Do you think that it's fair to be searched because you're hanging out with someone who seems dangerous?
- If there was a rule in your school banning all red clothing because there was a known gang in your town that wore red, would you think that would be fair?
- The Manitoba Court of Appeal ruled that the police had no reasonable cause to suspect K.B. of any criminal activity, and so their search of him was unlawful. (Despite the ruling that the search was unlawful, the court admitted the evidence of the knife and upheld K.B.'s conviction anyway).