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Learning Unit on the Right to Protest: Prezi Guide

Introduction

The CCLA is a national, non-profit, non-governmental organization that works to protect and promote fundamental human rights and civil liberties through litigation, law reform, advocacy and public education.

Since 1964, the CCLA has been actively standing up to power by fighting against rights violations, abuse of police powers, inequality, and discrimination. We stand for freedom, equity, and a better future for all people in Canada. We were successful in putting an end to the use of prolonged solitary confinement in Canadian prisons, and fought a ban on public service workers in Quebec from wearing religious symbols such as crosses, hijabs, turbans and yarmulkes. We've stood up for LGBTQ2S+ rights in the courts and published a resource to educate students and teachers about LGBTQ2S+ rights in schools.

Through challenging the law and educating youth on their rights, we are able to effect systemic change in our communities.

This Learning Unit discusses the right to protest as a quasi constitutional right *under the Canadian Charter of Rights and Freedoms*. Many global and local protests have garnered attention in recent memory. For example:

- G-20 (2010)
- Occupy movement (2011)
- Climate Strikes (2018 - present)
- Wet'suwet'en protests (2019-20)

Learning about this right and thinking critically about its limits will help you understand why it is an integral part of healthy democracies and worthy of strong legal protection.

Protest and Democracy

Protests are ways for people to come together to demand change. If you have ever witnessed a protest, you may have noticed how disruptive they can be to everyday life. Perhaps you can't drive down a street or enter a public park in your city because they are being occupied by protesters. If these types of demonstrations can cause so much disruption in society, why should the right to protest deserve such strong legal protections?

It's worth remembering that protests are often intended to cause disruption. When a protest causes a significant interruption to your daily routine, you can't help but take notice of the issues being raised by those participating. For this reason, protest can be a particularly useful tool for amplifying the voice of minority groups, or any group seeking change.

As stated in Maclean's magazine on the need to protest: ["Protest is meant to bring a reality that lurks beyond the sightlines of most people crashing down in front of them"](#).

Protests help democracies by giving voice to different groups and viewpoints. They can unite people around a common cause and create space for dialogue and debate.

Strong protections for the right to protest are essential to meaningful and informed political debate and discussion. A democratic society welcomes debate and disagreement on the key issues of the day, and protest is a big part of this process. Protests can be messy and disruptive, but they are also crucial to our well-being as a society. As history has shown, protests can be a force for change, even though that change is not always immediate.

The right to protest is important in a democracy. Not everyone has the right to vote, and even those who do only get to do it every couple of years. So, we need the right to take to the streets, to rally, to engage in protest if we want the government to know what's important to us.

Where does the right to protest come from?

The Canadian Charter of Rights and Freedoms is part of the Constitution of Canada. It applies in every province and territory, and provides a guarantee of rights and freedoms to every person in Canada, regardless of their immigration status, age, gender, race etc.

The right to protest is found at the intersection of 3 Charter rights working in tandem.

Section 2 of the Charter guarantees everyone in Canada:

- freedom of expression (s.2(b));
- freedom of peaceful assembly (s. 2(c));
- and freedom of association (s.2(d)).

Together these form the basis of the right to protest.

- 1) The supreme court of Canada case, *Irwin Toy Ltd. v. Quebec* established that the protection of freedom of expression is premised upon fundamental principles and values that promote the search for and attainment of truth, participation in social and political decision-making and the opportunity for individual self-fulfillment through expression.
- 2) Past legal decisions have not provided a lot of guidance on the purpose of section 2(c). However, what little there is suggests that freedom of peaceful assembly is geared towards protecting the physical gathering together of people.
- 3) Freedom of association is intended to recognize the profoundly social nature of human endeavours and to protect the individual from state-enforced isolation in the pursuit of their ends.

Limits on the Right to Protest

While section 1 guarantees all the rights and freedoms found within the Charter, it also states that these rights and freedoms are subject to limitations. The fundamental freedoms underlying the right to protest are no exception. When the government believes it is necessary to place limits on our Charter rights or freedoms through legislation, it is required to ensure those limits

are reasonable and justified. Laws may be challenged in court if the public feels those laws limit rights or freedoms in ways that are unreasonable.

The Charter protects many of the rights that are crucial to effective protest, but there are a number of laws that limit this right in very real ways. Protesters have been arrested for breaching the peace and unlawful assembly. Provincial legislation may restrict blockades on public roadways and assemblies on certain pieces of public property. Finally, municipal by-laws that deal with noise, nuisance and land use often limit how, when, and where, protests can be held.

Let us look at 2 sections of the federal Criminal Code of Canada that place limits on the right to protest:

[Limits from the Criminal Code of Canada](#)

Section 31 of the Criminal Code of Canada

Arrest for breach of peace

31 (1) Every peace officer who witnesses a breach of the peace and every one who lawfully assists the peace officer is justified in arresting any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace.

Section 63 (1) of the Criminal Code of Canada

63 (1) An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when they are assembled as to cause persons in the neighbourhood of the assembly to fear, on reasonable grounds, that they

(a) will disturb the peace tumultuously; or

(b) will by that assembly needlessly and without reasonable cause provoke other persons to disturb the peace tumultuously.

So protests must be peaceful to be legal, and you are subject to arrest if, for example, you gather with others to engage in a violent disturbance like a riot.

It is important to remember that although police enforce these laws limiting the right to protest, they also have an obligation to protect and facilitate the right to protest too. Police have an important role to play in ensuring that both protesters and the general public are safe, and that the voices of protesters are not silenced simply because they may be an inconvenience to the public.

In its review of policing practices during the G20 Summit of 2010 in Toronto, the Office of Independent Police Review Director wrote, "Policing in such an environment requires the balancing of competing rights and must be recognized as a considerable challenge... Police services have a responsibility to protect and facilitate the opportunity for people to protest peacefully. To fail to do so would be counter to Canadian democratic principles and jeopardize several Charter rights, including the right to freedom of peaceful assembly and the right to freedom of expression."

Case Study

Villeneuve v Montreal, 2018 QCCA 321

This case comes from Montreal amid the student protests which arose in 2012 after the Quebec government raised tuition rates at the province's post secondary institutions.

A philosophy professor named Julien Villeneuve became better known as the unofficial mascot of the Montreal student protests when he began showing up dressed as a giant furry panda he called Anarchopanda. His goal was to use the undeniably cute costume as a way to protect protesters by standing as a peaceful barrier between protesters and the police. At times, Anarchopanda would even try to pacify tense situations by offering hugs to police and protesters alike.

Anarchopanda's role as a peacekeeper evolved when Montreal decided to pass municipal bylaw P-6, which placed significant limits on protests in the city. Believing these limits to be unfair and unreasonable, Anarchopanda began a legal challenge to ask the court to rule that 2 articles of the bylaw were invalid.

Article 2.1 of the bylaw required prior disclosure of the exact location and the itinerary of an assembly, parade or other gathering. Under Article 2.1, police had issued \$637 fines to hundreds of peaceful student protesters and used a tactic called kettling where they surrounded protesters on all sides to confine them to a specific area.

Article 3.2 prohibited participants from covering their face absent a “reasonable motive”.

Anarchopanda himself was fined \$637 twice for violating both articles of the bylaw, and even had his panda head confiscated as evidence by police.

In its decision, the court found that Article 2.1 does indeed limit the rights to freedom of speech and peaceful assembly and it fails the minimal impairment criteria under the Oakes test (the test used by courts to assess whether limits on rights are reasonable under section 1 of the *Charter*). The application of Article 2.1 to **any** assembly, parade or other gathering taking place anywhere in the public domain is not the least intrusive means of fulfilling the city’s objective. Given its broad wording, the article could apply to a group of students participating in a school trip to the museum and walking on the sidewalk. The court also found that article 3.2 was overbroad, unreasonable, and arbitrary, and thus invalid and nullified (struck down). So the Panda won on both counts!

Conclusion

Protests often inspire positive social change and the advancement of human rights, and they continue to help define and protect civic space. Protests strengthen democracy by encouraging direct participation in public affairs. Protests are especially important for those whose interests are otherwise poorly represented or marginalized.

The right to protest is constitutionally protected by the Charter which guarantees freedom of association, peaceful assembly and expression. Protest is an important part of democracy as it allows for varied viewpoints to be heard on important questions of the day. Protest can be a particularly important tool for bringing minority viewpoints to the mainstream. While protest may inconvenience us in our daily lives, that is often the point in order to gain visibility for differing viewpoints.