



Youth Privacy and Freedom of Expression – British Columbia Unit Plan

These 5 lesson plans feature activities designed to be used alongside BCCLA's factsheets found at: <https://bccla.org/edevices>.

Big Idea

Privacy rights regarding Personal Electronic Devices (PEDs) (smartphones, tablets, etc.) and freedom of expression rights in Canada differ depending on context. Students have a diminished right of privacy while in school and their expression online, while a student, is subject to discipline regardless of whether the expression takes place off-campus and/or after school.

Curricular Competencies

- Adopt and integrate the legal language of privacy in Canada
- Compare and contrast privacy rights in different contexts
- Articulate the privacy and freedom of expression rights of students that are enrolled in a secondary school program
- Apply legal tests to specific scenarios and use legal reasoning to draw conclusions from a variety of differing perspectives
- Understand the different goals and interests of different legal actors affected by this legal issue
- Debate the merits and shortcomings of the law as currently established
- Identify potential gaps in privacy law governing students

Content

- The Canadian Charter of Rights and Freedoms (specifically s. 8)
- Structure of and powers within Canada's judicial system
- Jurisprudence regarding privacy rights and students in Canada
 - *R v M(MR)*, 1998 SCR 393
 - *R v AM*, 2008 SCC 19
 - *R v. Fearon*, 2014 SCC 77

First Peoples Principles of Learning

- Learning is holistic, reflexive, reflective, experiential, and relational (focused on connectedness, on reciprocal relationships, and a sense of place).

Possible key concepts:

- Privacy



- Freedom of expression
- Technology change in law
- Youth rights

Essential questions:

1. How does the law govern our privacy rights in Canada?
2. What rights do students have regarding their personal electronic devices while at school?
3. What privacy rights do students have regarding their devices when encountering police officers?
4. What are the laws and policies governing student expression online?

Thinking about Teaching

This lesson is designed to present students with an opportunity to explore a very important facet of their legal rights in Canada: privacy and freedom of expression. Students are now walking the hallways at school with a significant amount of their private life tucked in their pockets, and experiencing a social life at school that extends far past those hallways and into the online sphere. As such, it's critical that students be aware of their rights in these spaces, and the responsibilities of their teachers to honour those rights while upholding their duty to protect the student body. This is also an opportunity for students to engage critically with the way the law thinks about privacy generally, and in their specific student context, and ask themselves whether they agree or how they would approach this legal framework differently.

The aim of the lesson is for students to gain an understanding of this complex area of the law and how our societal values around privacy and freedom of expression inform legislation and judicial decision-making. In achieving this aim, the lesson acknowledges the First Peoples Principles of Learning that learning is *holistic, reflexive, reflective, experiential, and relational* and that knowledge does not exist in a vacuum. What and how we learn is greatly influenced by our environment, and this is especially true in learning and interpreting the law. The law itself is a reaction to societal mores and a reflection of our values. As such, it is critical that the learning about and practice of law be carried out in a way that incorporates multiple worldviews and experiences. These lessons aim to build this approach in students, with an emphasis on experiential and relational experiences that prioritize practicing skills and working together. An abundance of discussion, as well as a journaling activity, provide ample critical reflection opportunity.

The **Core Competencies** are embedded in all aspects of this lesson. Students' thinking is made visible at various points through discussion and debate about their values around privacy and freedom of expression (question and investigate), informed by legal decisions and scholars who have written on the issue, and their own subjective experience. Students make criteria-based judgments about legal decisions and current school



policies, based on comparisons of different points of view (analyze and critique). In so doing, students will recognize connections between the way our society frames privacy and freedom of expression, how decision-makers frame the same concepts, and discuss whether they think those societal values are appropriately reflected or whether there is any reason to challenge them (contributing to social discourse). Finally, students will communicate their thinking throughout the lesson (acquire, interpret, and present information) as a class, as a small collaborative group, and as individual learners (connect and engage with others).

Proposed Scope and Sequence

Activities and Tasks	Materials	Considerations
Class 1: Intro to Privacy Law		
<p>1. Introduction: 4 Corners [30 mins] Set the stage for students’ thinking and engage their imaginations and opinions by getting them to orient themselves around the room according to whether they Strongly Agree, Agree, Disagree, or Strongly Disagree with the following 10 statements:</p> <ol style="list-style-type: none"> 1. My bedroom is a private space. 2. My closet is a private space. 3. My school locker is a private space. 4. If I put a lock on something at home, the contents of that something are private. 5. If I put a lock on something at school, the contents are private. 6. My text messages are private. 7. My photos are private. 8. My search history is private. 9. If I keep a journal, that journal is private. 10. I deserve a space that is for only me and that even my parents need my permission to access. <p>Record the numbers of how many students in each of the four corners for each statement. Use discussion</p>	<ul style="list-style-type: none"> • Poster board signs that state Strongly Agree, Agree, Disagree, Strongly Disagree 	<p>Engage students in thinking about the concept of privacy in their own lives:</p> <p>Ask: What areas/items/ aspects of their lives do they think are off-limits? Who are those spaces off limits to?</p> <p>Assessing learning:</p> <ul style="list-style-type: none"> • Are students able to articulate why they came to the conclusion they did for each statement? • Do those reasons accord with any of the factors we’ll be discussing later on?

<p>questions to prompt the students once all the categories have been completed.</p>		
<p>2. Introduction to Legal Framework: The Charter [Think/Pair/Share – 30 mins]</p> <p>Students will watch the brief video on The Charter of Rights and Freedoms: https://www.tv.org/video/the-charter-of-rights-and-freedoms</p> <p>They will then review the Charter and accompanying infographic (https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/img/7RF-Infographic-EN.jpg) independently and in groups of two will discuss what stood out most to them about the document and report back to the class.</p> <p>Once all discussion is concluded, ask the students:</p> <ol style="list-style-type: none"> 1. Why might we need a Charter of Rights and Freedoms? 2. Why might our rights need to be limited by the government? <p>Make sure students understand how rights are limited by the state by referring to s. 1 of the Charter.</p>	<ul style="list-style-type: none"> • Equipment for playing video • Charter guide booklets and infographic 	<p>Engage students in thinking about the law that ultimately guides all decision-making in this context.</p> <p>Assessing learning:</p> <ul style="list-style-type: none"> • What is the test used by Canadian courts to balance the rights of individuals and the responsibilities of the state?
<p>3. Introduction to Legal Framework: The Charter [Case Review - 20 mins]</p> <p>Students will be provided with short factual summaries from three cases (<i>Multani</i>, <i>Gilles</i>, and <i>Kapp</i>) and will use their knowledge of the Charter to determine what sections might be relevant to the decision.</p> <p>Let students get started on reviewing the summaries and jotting down initial</p>	<ul style="list-style-type: none"> • Handouts with general factual overview of cases. 	<p>Have students make apply their burgeoning knowledge of the Charter.</p> <p>This exercise introduces students to legal analysis and some of the challenges associated with trying to interpret the Charter.</p> <p>Assessing learning:</p> <ul style="list-style-type: none"> • Are students starting to make connections with how our everyday experiences may engage Charter rights?

<p>notes, and pick up the activity again the next day.</p> <p>Three guiding questions:</p> <ol style="list-style-type: none"> 1) What is the problem the court is addressing in each summary? 2) Which section categories of the Charter does this relate to? 3) In your own words, what specific rights or freedoms are involved in this decision? 		<ul style="list-style-type: none"> • Are students able to demonstrate some issue-spotting skills? • Are students beginning to notice the ways in which state actions may infringe on our rights? • Are students using evidence from the summaries to support their conclusions?
Class 2: Digging Deeper – Privacy Law in Context		
<p>1. Introduction to Legal Framework: The Charter [Returning to previous day activity – 20 minutes]</p> <p>Students will use sticky tack to put up case names beside the Charter section(s) they think is most relevant to the case.</p> <p>As a class, we will have a short discussion after seeing where all of the blurbs ended up!</p>	<ul style="list-style-type: none"> • Poster Board Signs with different charter sections up around the room • Laminated cards with case names on them • Sticky tack for putting the case names beside the Charter section engaged by the facts of the case 	<p>Assessing learning:</p> <ul style="list-style-type: none"> • Are students starting to make connections with how our everyday experiences may engage Charter rights? • Are students able to demonstrate some issue-spotting skills? • Are students beginning to notice the ways in which state actions may infringe on our rights? • Are students using evidence from the summaries to support their conclusions?
<p>2. Introduction to Legal Framework: Case Law – R v MR, 1998 SCC 393 [Stand on a Line, 30 mins]</p> <p>Students will be given 15 minutes to read a case summary of the leading decision governing teacher searches of students: <i>R v MR</i>.</p> <p>Students will also be provided with the <i>R v MR</i> framework of factors that must be</p>	<ul style="list-style-type: none"> • Copies of <i>R v MR</i> Case Study and legal test/factors • Tape to put down on the floor so students can arrange themselves accordingly 	<p>Assessing Learning:</p> <ul style="list-style-type: none"> • Are students able to form an opinion after reading a set of facts? • Are students able to articulate that opinion and own it in front of their peers?

<p>fulfilled in order for a search to be found reasonable.</p> <p>Once they've read all material, they will be asked to what degree they agree with the Supreme Court of Canada's decision and stand on a line according to how they feel. One end of the line is a definite yes, while the opposite is a definite no.</p> <p>You can post the following discussion questions on the board to help students reflect on their position:</p> <ol style="list-style-type: none"> 1) What argument might you give for increased privacy rights of students? 2) What argument might you give for limited privacy rights of students? 3) Would you change the framework for student searches established by the SCC? If so, how? 		
<p>3. Debate Formation and Preparation [30 mins]</p> <p>Select 5 students at random from the line (ensure you get a cross-section of the spectrum), then divide remaining students down the middle of the line into two groups.</p> <p>In each of the groups, students will develop 5 statements of their position, and 5 questions to put to the other team.</p> <p>The 5 chosen panelists will determine what they are looking for in order to be swayed.</p> <p>Remind students that they may look to the notes they took for the discussion questions to help guide them in forming statements, questions, and for the panelists, to remind them of their</p>	<ul style="list-style-type: none"> • Note cards for students to record statements and supporting arguments 	<p>The following questions may also be used to help guide the students in forming their questions and statements:</p> <ol style="list-style-type: none"> 1) Why might the vice-principal think he had the right to search the students? 2) Why might the students consider it a breach of privacy? 3) What is meant by a "limited expectation of privacy" in the school context? 4) Do students have the same rights in school as regular citizens have in the outside world? Why shouldn't they? Why should they? <p>Assessing Learning:</p> <ul style="list-style-type: none"> • Are students able to articulate the reasons why they agree or

<p>positions and what they might be looking for from the debaters.</p>		<p>disagree with the SCC judgement?</p> <ul style="list-style-type: none"> • Are they able to think of creative questions that will challenge their own opinions and those of the team they disagree with? • Are students bridging the gap between opinion and argument? • Are students using examples from the facts to support their conclusions? • Are students collaborating well with their team members?
<p>Class 3: Digging Deeper – What is a reasonable search?</p>		
<p>1. Debate [25 minutes]</p> <p>The two groups will alternate asking and answering the questions and making their statements.</p> <p>The 5 panelists will listen, take notes, deliberate, and decide on a winner. They will also explain why and how they made their decision.</p>	<ul style="list-style-type: none"> • Podiums, if possible 	<p>Students in the panelist group will have the opportunity to assess the arguments of their peers.</p> <p>Have the panelists reflect on what they were looking for in the team arguments, who they found persuasive, and why.</p> <p>Assessing Learning:</p> <ol style="list-style-type: none"> 1) What is the level of confidence of the students in presenting argument orally? 2) Are students able to be a team player? 3) How do students handle opinions that differ from their own?
<p>2. Introduction to Legal Framework: Privacy is Contextual [Search Location Activity – 20 minutes]</p> <p>Ask students whether they think their right to privacy differs depending on where they are.</p>	<ul style="list-style-type: none"> • Search location cards 	<p>This activity allows the students to practically engage with the concept that we all have different expectations of privacy depending on who and where we are. It is a tactile activity that allows students to break down the reasons why an expectation of privacy might be higher or lower depending on context.</p>

<p>Students will be broken up into groups of 3-4 and given a stack of search location cards. Each card will have one of the following locations:</p> <ol style="list-style-type: none"> 1. Bedroom closet 2. School locker 3. Rental locker at a train station 4. Airport 5. Concert venue/arena 6. Pockets 7. Backpack/purse while wearing it 8. Backpack/purse while left unattended 9. Public washroom 10. Sidewalk 11. Prison cell 12. Cell phone <p>Students will then organize the cards in order from least to greatest in terms of how much privacy they expect at each location. Then have a representative from each class arrange their cards from least to greatest on the board, and discuss as a class the similarities or differences between the arrangements of the cards. What was the rationale of each group in arranging them this way?</p> <p>Explain to the students that judges approach privacy issues in a similar fashion, by considering the unique context of the search at issue and weighing various factors.</p>		<p>Students should be identifying patterns in their thinking—what are the similarities and differences between the locations, in terms of the privacy issues they present?</p> <p>Assessing learning:</p> <ol style="list-style-type: none"> 1) Are students able to notice a pattern in the places they think should have a higher expectation vs. lower expectation? 2) Are they asking similar questions that judges would ask, or entirely different ones?
<p>3. Case Review and Activity: <i>R v AM</i>, 2008 SCC 19 [Unreasonable v Reasonable Searches – 20 minutes]</p> <p>The facts of <i>R v AM</i> will be reviewed as a class using a case summary of the decision.</p> <p>Students will then do a quick activity where they decide whether searches</p>	<ul style="list-style-type: none"> • <i>R v AM</i> Case Summary • Reasonable – Unreasonable Search Related to School Activities Chart 	<p>Assessing learning:</p> <ol style="list-style-type: none"> 1) Are students able to apply the <i>R v MR</i> and <i>R v AM</i> frameworks to these examples? 2) Are students able to justify their decisions by referencing the cases or other Charter background they have learned so far?

<p>related to school activities are reasonable or unreasonable, according to the chart provided.</p> <p>Essential Question: What does “unreasonable” mean in the context of s. 8 of the Charter?</p>		
<p>4. Case Studies: Reasonable and Unreasonable Search [25 minutes]</p> <p>The students will review 5 short case studies and answer the following questions:</p> <ol style="list-style-type: none"> 1) Were there reasonable grounds for conducting the search? 2) Where is the search taking place? 3) Did the person subjected to the search have a reasonable expectation of privacy in that location? 4) Who is conducting the search? 5) How was the search conducted? 	<ul style="list-style-type: none"> • Handout with 5 short case studies 	<p>Assessing learning:</p> <ol style="list-style-type: none"> 1) Are students able to apply the R v MR and R v AM frameworks to these examples? 2) Are students able to justify their decisions by referencing the cases or other Charter background they have learned so far?
<p>Class 4: Student Privacy and Police</p>		
<p>1. Class Discussion: R v AM and police searches [20 minutes]</p> <p>In <i>R v AM</i>, the Supreme Court makes a distinction between police and school officials in terms of the standards they must meet in order to justify a search under the Charter. The results of <i>R v AM</i> suggest that police must be held to a stricter standard than school officials in determining whether or not they have reasonable grounds to conduct a warrantless search.</p> <p>Students will get into groups of 3 and brainstorm the similarities and differences between teachers, principals, and police officers.</p>	<ul style="list-style-type: none"> • Copies of discussion questions 	<p>Students have gained some experience in the previous class with thinking about searches contextually. Now, they will think about authority figures in context. Again, this is a good opportunity to think about patterns and draw out for the students why they might be making the distinctions or drawing the similarities as they are doing. This class activity will be a good foundation for the next one.</p> <p>Assessing learning:</p> <ol style="list-style-type: none"> 1) Are students able to identify ways in which authority figures have different powers? 2) Are students able to articulate why they agree or disagree with previous court decisions?

<p>Discussion questions:</p> <ol style="list-style-type: none"> 1) What is a teacher’s job? What is a principal’s job? What is a police officer’s job? Are there any similarities between them? 2) In your own words, what special authority powers does a police officer have? What about a teacher or principal? 3) What are the disciplinary consequences from a teacher, principal, or police officer? What about from your parents? <p>Essential Question: Should police should be held to a stricter standard than principals when conducting searches at school? Why or why not?</p>		
<p>2. Think Like Judges [30 minutes]</p> <p>In this activity, students will read different sections of the <i>R v AM</i> judgement and record whose reasoning they agree/disagree with and why.</p> <p>We will then do a show of hands for each judge and see who would have achieved a majority, and if that may have changed the way the original judgement was decided.</p>	<ul style="list-style-type: none"> • Excerpts from decision 	<p>This task will be challenging for students as it introduces them to the language used by SCC judges in their written decisions. Have students underline sections of the reasoning that they do not understand, and help them translate! See if they are able to put each section of reasoning in their own words.</p> <p>Assessing learning:</p> <ol style="list-style-type: none"> 1) Are students developing the language and knowledge required to critique the reasoning presented in this decision? 2) Are students able to recognize the competing privacy interests at play in <i>R v AM</i>? 3) Are students able to identify the interests of police in investigating crime, the interests of school administrators in providing a safe and orderly school environment, and the interests of students in retaining some

		<p>level of privacy while attending school?</p> <p>1) Can students explain the public safety interests being protected by school administrators and police officers? How are they similar and/or different?</p>
<p>3. Introduction to Legal Framework: Case Law – <i>R v Fearon</i>, 2014 SCC 77 [30 minutes]</p> <p>We will read the facts of <i>R v Fearon</i> together as a class. Then, a handout will be provided that outlines an excerpt from the majority reasoning and the dissenting reasoning. Students will vote for which reasoning they agree with, and we will see if their votes would change the direction of the court on this issue.</p> <p>Then students will complete the following discussion questions individually:</p> <ol style="list-style-type: none"> 1) How much could a person learn about you if they were able to examine your cell phone? Without being specific, is any of this private? 2) Do people the police suspect of crimes still have a right to privacy? Why or why not? 3) Why do you think there are laws in place that allow police to search suspects without a warrant during the course of an arrest? 4) Refer to the rules the Court set out for determining whether a warrantless search of a cell phone during an arrest has been constitutional. In your own words, what does it mean? 	<ul style="list-style-type: none"> • <i>R v Fearon</i> case summary • Excerpts from majority and dissenting reasoning • Discussion questions 	<p>Students will again be presented with competing perspectives of the SCC judges. A goal of this lesson is to demonstrate for students how contentious these issues are and that it is okay to disagree.</p> <p>Given the detail covered by the discussion questions, gather the students' answers for review to assess learning, in addition to the assessing learning question below.</p> <p>Assessing learning:</p> <ol style="list-style-type: none"> 1) Can students explain what police need to consider when determining whether to search a personal electronic device after an arrest?

<p>5) Do you think <i>R v Fearon</i> might be decided differently in 2022? Why or why not?</p>		
<p>Class 5: Student Conduct Online</p>		
<p>1. Journaling Reflection [20 minutes]</p> <p>Provide students with the question prompt: Was there a time that you were concerned that something you posted online might attract discipline? Did you take any steps to determine whether your concerns were warranted? What did you conclude?</p>	<ul style="list-style-type: none"> Paper for journaling 	<p>Students will have the opportunity to privately reflect on a time when they may have been unsure about their conduct online.</p> <p>To respect students' privacy, the reflections will be anonymous and only marked for completion.</p>
<p>2. Compass Points Activity [30 minutes]</p> <p>The Provincial Standards for Codes of Conduct Order, which are the guidelines for the creation of school codes of conduct, define unacceptable behaviour to include not only behaviour that happens at school or at a school function, but in any other circumstances where the behaviour could have an impact on the school environment.</p> <p>This activity is intended to get students to engage with a very vague disciplinary threshold that directly impacts them and encourages critical thinking in an area of the law that is relevant to their lives.</p>	<ul style="list-style-type: none"> Chart paper Marker Statement posted somewhere in the room (e.g., via PPT): Student conduct, either online or offline, on or off school property, during or outside of school hours, is subject to discipline if it has a negative impact on the school environment. 	<p>While students are journaling, post chart paper around the room. Students rotate in groups to add ideas to each of the four charts:</p> <ul style="list-style-type: none"> N – What do I need to know or find out about? E – What excites me about this proposition? S – What is my stance on this proposition? (i.e., How much do I agree?) W – What worries me about this proposition? <p>Follow up on the Compass Points activity by discussing and reviewing students' ideas.</p> <p>Reflection questions:</p> <ol style="list-style-type: none"> 1) What are some things a school administrator might consider in determining whether to discipline a student based on their online expression? <p>Assessing learning:</p> <ul style="list-style-type: none"> Are students considering other viewpoints? Are students able to form arguments for and against a certain outcome?

		<ul style="list-style-type: none"> • Are students able to identify big picture privacy concerns with this statement, given what they have already learned about privacy?
<p>3. Case Study: Freedom of Expression at School [30 minutes]</p> <p>Provide students with the appropriate excerpt from the Provincial Standards or an excerpt from their own Code of Conduct that addresses conduct warranting discipline, and walk them through the relevant sections.</p> <p>Then have students review the following scenario:</p> <p><i>Jordan tried out for her high school senior cheerleading team but did not get a spot. She was instead placed on the junior team. Jordan was disappointed, and later that weekend while shopping with her friend, she posted a TikTok of her and her friend giving the middle finger with the caption “f*** school, f*** softball, f*** cheer, f*** everything”. She later had a change of heart and deleted the post, but in the meantime one of her friends had screenshot the images and shared them with the rest of the cheerleading squad and the coaches. On Monday, Jordan was brought to the principal’s office and formally suspended from the junior team for the rest of the year.</i></p> <p>Then individually answer the following discussion questions:</p> <ol style="list-style-type: none"> 1) Based on the rules set out by the code of conduct given to you, do you think the school administration acted appropriately in suspending Jordan? Why or why not? 	<ul style="list-style-type: none"> • Copies of the relevant <i>Provincial Standards</i> provision • Copies of the relevant excerpt from the applicable school board Code of Conduct (if there is one) • Copies of case study and discussion questions 	<p>This activity provides students with the opportunity to apply the law in their province to a specific scenario and interpret it from multiple perspectives. In this case study, they are not reviewing reasons and deciding with whom they align, but actually building the reasons themselves using the law as it currently stands.</p> <p>Be sure to note that this case study is adapted from a real case out of the United States: https://harvardlawreview.org/2021/11/mahanoy-v-b-l/#:~:text=39-,%20and%20online%2Dbased%20learning.</p> <p>The student in question won!</p> <p>The student in question won! Students will probably enjoy hearing how the case was decided and seeing how their reasoning aligned with the US Supreme Court.</p> <p>Assessing learning:</p> <ol style="list-style-type: none"> 1) Are students able to identify some things a school administrator might consider in determining whether to discipline a student based on their online expression?



2) If you were to challenge Jordan's suspension, what arguments would you raise?		
--	--	--