



LESSON PLAN

Level: Grades 10 to 12

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Free Speech and the Internet



This lesson is part of *USE, UNDERSTAND & CREATE: A Digital Literacy Framework for Canadian Schools*: <http://mediasmarts.ca/teacher-resources/digital-literacy-framework>.

Overview

In this lesson students learn about the inherent tension within democratic societies between freedom of expression and freedom from hatred. They also learn how Canada has addressed these issues within the *Criminal Code of Canada*, the *Canadian Charter of Rights and Freedoms* and human rights legislation in Canada.

Learning Outcomes

Students will demonstrate the ability to:

- Understand how the *Criminal Code* and the *Canadian Charter of Rights and Freedoms* apply to hate on the Internet
- Understand the legal and ethical issues emerging from the tension between freedom of expression and freedom from incitement to hatred
- Discuss various free-speech related media issues
- Appreciate the challenges in applying laws to an international networked medium such as the Internet
- Explore the ways that new media, the Internet, and communications technologies problematize the ability for countries to regulate speech of any kind.

Preparation and Materials

For background reading, teachers may want to review MediaSmarts' "[Online Hate](#)" section.

Photocopy the following:

- *Freedom of Expression Poll*
- *Hate and the Law* handout

And familiarize yourself with the *Hate and the Law Answer Sheet*.



Procedure

Begin by distributing the *Freedom of Expression Poll* handout. Have students read it and circle "Yes" or "No" depending on whether they agree or disagree with each statement.

Once students have considered their opinions, lead a class discussion on the different statements. You do not need to address all of them, or spend the same amount of time on each one: focus on those where there is considerable disagreement within the class.

Once students have discussed the specific statements, ask them to generalize about their attitudes towards freedom of expression. What limits on expression do they feel are appropriate in our society? Is there a rough consensus in the class on these topics, or are there significant differences of opinion? (Don't feel a need to resolve this discussion -- it's fine to leave it with the observation that different people have different opinions on this topic.)

Ask students if their opinions are the same when it comes to the question of hate speech. What limits do they believe are appropriate to speech (or other content) that advocates hatred towards a particular group? (Again, don't feel a need to settle this question -- just draw out students' opinions.)

Distribute the handout *Hate and the Law* and have students read it and answer questions, singly or in pairs. Once they have completed the questions, take them up as a class.

Now ask students:

Why do we have relatively few laws that limit expression? (*Because the right to freedom of expression is guaranteed in the Charter of Rights and Freedoms.*)

In that case, why do we have laws that limit expression at all? (*Because the Charter says that all rights are "...subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." This means that individual rights are always limited by the potential negative effect the exercise of those rights may have on the public good.*)

Canadian laws only apply to speech or other expression that happens within Canada. Why might that be a problem when it comes to applying these laws online? (*Because of the Internet, it's easy for hate groups to have their material hosted in another country while allowing people around the world, including Canada, to access it. It's also easy to conceal the identity of the author of the content and to have multiple copies of it in different "places" on the Internet.*)

Activity: Debating the issue

Have students conduct a debate on issues that arose in the discussion above. Divide the students into groups of 6-8 and have each group select a topic to debate. Once students have researched their topic using the *Hate and the Law* handout, divide each group in half and randomly assign one half the "pro" position and the other the "con."

Have students present their points in a formal debate:

PRO: Opening statement (1 minute maximum)

CON: Opening statement (1 minute maximum)



PRO: First point (2 minutes maximum)

CON: Refute first PRO point (1 minute maximum)

CON: First point (2 minutes maximum)

PRO: Refute first CON point (1 minute maximum)

CON: Second point (2 minutes maximum)

PRO: Refute second CON point (1 minute maximum)

PRO: Second point (2 minutes maximum)

CON: Refute second PRO point (1 minute maximum)

PRO: Closing statement (1 minute maximum)

CON: Closing statement (1 minute maximum)

Suggested topics:

Be It Resolved That: There should be no limits on freedom of expression.

Be It Resolved That: All hate speech should be illegal.

Be It Resolved That: It should be possible to bring complaints of online hate before human rights commissions.

Be It Resolved That: Social networks (such as Facebook, Twitter, etc.) should not allow any hate speech to be posted on them, even if it doesn't meet the standard in the *Criminal Code*.

Be It Resolved That: The government should force Internet Service Providers to block access to hate sites from inside Canada.

Be It Resolved That: It should be a crime for anyone providing Internet access to allow users to access hate material.



Freedom of Expression Poll

For each of the statements below, circle either "Yes" or "No" depending on whether you agree or disagree with it. Be prepared to explain and defend your opinion in class discussion.

Canadians should enjoy completely unrestricted freedom of speech and expression. **YES / NO**

Canadians should never have to hear or see anything on television, on the Internet, or in print media that offends them. **YES / NO**

Hateful speech should not be censored because it is only words and it cannot hurt anyone. **YES / NO**

Everyone should have the right to their opinion and no one should be allowed to criticize someone else for what they think. **YES / NO**

Canadians should not be allowed to engage in protests because we are able to make our voices heard when we vote during elections. **YES / NO**

It is the responsibility of individuals to avoid online content they might find offensive, not the responsibility of media producers to avoid offending people. **YES / NO**

You should have to show proof of age of majority to buy videogames with violent or sexist content, just like tobacco or alcohol. **YES / NO**

Newspapers and news outlets should be fined if they report something that is false, inaccurate, or that presents a biased opinion. **YES / NO**



Hate and the Law

Criminal Code

According to Canada's *Criminal Code*, hate propaganda becomes a crime when an action:

- purposely promotes or advocates killing members of an identifiable group (based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability) or creates living conditions which will kill them [section 318(1) under the *Criminal Code*] OR
- "incites" hatred against an identifiable group (based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability) [section 319(1-2) under the *Criminal Code*] by:
 - communicating statements by any means. This includes making such materials available via hyperlink or other digital access
 - occurring in a public place (anywhere the public is free to go or is invited to go)
 - inciting hatred against an identifiable group (based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability)
 - and where it's likely to result in a breach of the peace (i.e. it's likely to result in an outbreak of violence)

To be charged with inciting hate, an individual must be found guilty in all these areas:

- "willfully" (on purpose) promoting hatred against an identifiable group (based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability) [section 319(2) under the *Criminal Code*].

A criminal act occurs when an individual:

- communicates statements through any communication other than in a private conversation (courts would have to decide whether or not a conversation between two people on the Internet is considered private)
- promotes hatred (encourages people to hate or attempts to convince them it's a good thing to do)
- promotes hatred against an identifiable group (based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability)

There are four possible cases defined in the *Criminal Code* under which a publication that meets all of the above tests would not be a violation of the *Criminal Code*. They are:

- 1) If the statements are true (though this has never been used successfully as a defence, and there is some doubt whether a statement that met the test for criminal hate speech **could** be true)
- 2) If the statement is quoting or paraphrasing a religious text as part of an argument that does not otherwise meet the test (in other words, it's not criminal to quote a religious text that advocates hatred so long as you are not doing it to advocate hatred)
- 3) If the statement is relevant to the public interest and made for the public benefit (as in #1, there is doubt over whether this is possible).



- 4) If the statement appears as part of an effort to have hate content removed (such as if you were to quote from a hate site as part of a campaign to have it taken down.)

Advocating genocide may be punished by imprisonment for up to five years. Inciting hatred may be punished by imprisonment for up to two years. So far, there have only been three convictions of an individual under section 319 of the *Criminal Code* in relation to posting hate on the Internet.¹ Despite the low rate of conviction, a number of people have been arrested and charged for posting hate speech online and online content has been found to violate section 319 of the *Criminal Code* in other cases.²

Under section 302(1) of the *Criminal Code*, a judge can order hate propaganda removed from the internet before it is proven to advocate genocide or incite hatred. If a judge is satisfied there is reasonable grounds to consider online material hate propaganda, they can order the custodian of the computer system to:

- a) Give an electronic copy of the material to the court (since the court will need a copy to determine if it fulfills the requirements to be considered hate propaganda)
- b) To ensure that the material is no longer stored on and made available through the computer system (by deleting a forum post or a hosted blog, for example)
- c) To provide the information necessary to identify and locate the person who posted the material. (This is so that a judge can give notice to the person who posted the material, allowing them the opportunity to be represented before the court and justify why the material should not be deleted)

However, the court must still undergo proceedings to determine whether the material is available to the public and is hate propaganda. If the court is satisfied that the material is publicly available and is hate propaganda, the court can order the deletion of the material; if the court is not satisfied, it orders the electronic copy returned to the custodian. [sections 320(5) and 320(7) of the *Criminal Code*]

Previously, a section of the Canadian Human Rights Act made it illegal to use telecommunications (including the Internet) to expose a person to hatred or contempt based on similar grounds to those found in provincial human rights legislation. This section was repealed by Bill C-304 in 2012, leaving the sections of the *Criminal Code* addressing hate propaganda to deal with online hate speech.

Provincial Human Rights Legislation

All provinces and territories have human rights legislation that provides some measure of protection to classes of people vulnerable to discrimination, and most these Human Rights Acts or Codes include some provisions which limit freedom of expression. These are not criminal laws, but they do make it illegal to publish or display discriminatory messages. Only *The Yukon Human Rights Act* does not include provisions which forbid discriminatory publications or broadcasts. These legislative provisions vary from province-to-province, the main differences being:

- 1) Whether the legislation covers a broad range of communication, or only signs and notices.
 - Most provincial legislation only refer to any “notice, sign, symbol, emblem, or other representation,” while some also include broader terms like ‘statement.’

1 R. c. Castonguay, 2013 QCCQ 4285, R. v. Noble, 2008 BCSC 216, R. v. Mueller, 2004 ABPC.

2 *McCorkill v. Streed, Executor of the Estate of Harry Robert McCorkill (aka McCorkell)*, 2013 NB QB 88176.



- 2) Whether the legislation defines the unlawful consequences in terms of discrimination and/or intent to discrimination or in terms of exposing people to hatred and/or contempt.
 - Currently British Columbia, Alberta, Saskatchewan, and the Northwest Territories consider both publications which indicate discrimination or intent to discriminate *and* those which are “likely to expose” a person or group of people to hatred or contempt unlawful. This means that many provinces make it illegal to display notices signifying discrimination—such as a sign reading “White customers only” or bearing racist imagery—while some provinces’ human rights legislation protects against the promotion of hatred, similar to the *Criminal Code*. Unlike the *Criminal Code*, however, this legislation is not based on the actions of the perpetrator, but on the probable effect of publication (s) on the targeted group.
- 3) The identified people or groups covered by the legislation.
 - Each province’s human rights legislation ensures protection to individuals from being discriminated against on various grounds. Generally this includes a person’s race, colour, ancestry or national origin, religion, sex, gender or gender identity, sexual orientation, physical or mental disability, and marital or family status.
 - Some provinces include a wider variety of grounds; for example, Alberta, Manitoba, Newfoundland and Labrador, Nunavut, and Prince Edward Island forbid discrimination against an individual because of their source of income, while Saskatchewan specifies “receipt of public assistance.” Several provinces also specify political beliefs or association and social condition.

Accusations of discriminatory publications or hate speech are brought before the province’s human rights commission, which may decide to pass the complaint to a human rights tribunal for further investigation and dispute resolution. If the provisions against discriminatory publishing are found to have been violated, the tribunal may order the respondent to a) cease and desist the activity violating the provision, b) compensate a specific victim, if they have been singled out by the publication, and/or c) pay a penalty.

Canadian Charter of Rights and Freedoms

In cases relating to hate, where rights to freedom of expression are pitted against freedom from incitement to hatred, Section 2 of the *Canadian Charter of Rights and Freedoms* is often cited as justification for hate speech. Section 2 is the part of our constitution that guarantees freedom of thought, belief, opinion and expression to all Canadians.

At the same time, the *Charter* also states that our rights to free speech are subject to “reasonable limits that can be demonstrably justified in a free and democratic society.”

In the case of hate crimes, courts have ruled that although section 319(2) of the *Criminal Code* limits free speech by preventing people from expressing their opinions; in a democratic society it is reasonable that we limit speech that may incite violence against others.

The Supreme Court of Canada has also ruled that the prohibition of hate speech in human rights legislation is consistent with the *Canadian Charter of Rights and Freedoms*, citing similar reasoning.



Questions

Answer in full sentences on a separate piece of paper.

1. What is the definition of an "identifiable group" in the *Criminal Code*?
2. Under section 320 of the *Criminal Code*, what does a judge have the authority to do before a trial begins?
3. Would an email sent to a single person, containing hate propaganda, be in violation of the *Criminal Code*? Why or why not?
4. Why might a statement that met the tests for "inciting hatred" under the *Criminal Code* not be illegal?
5. Almost every province and territory has human rights legislation that prohibits discriminatory publication. What are the three main ways in which this legislation differs between provinces?
6. How many convictions have occurred under the *Criminal Code* for hate material distributed on the Internet?
7. What is the maximum sentence a person can receive for being convicted of advocating genocide? What about that for inciting hatred?
8. Which provinces have human rights legislation intended to protect people or groups of people from "exposure to hatred and/or contempt"?



Hate and the Law Answer Sheet

Answer in full sentences on a separate piece of paper.

1. What is the definition of an "identifiable group" in the *Criminal Code*?

A group defined by "colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability."
2. Under section 320 of the *Criminal Code*, what does a judge have the authority to do before a trial begins?

A judge can order material removed from the Internet before it has been judged by a court to be intended to promote genocide or incite hatred, as long as they are satisfied there's "reasonable grounds" to consider it hate propaganda.
3. Would an email sent to a single person, containing hate propaganda, be in violation of the *Criminal Code*? Why or why not?

No, because the statement must be in a "public place." In 2013, the Supreme Court of Canada ruled in that police required a wiretap authorization in order to access e-mails instead of a general warrant, referring to e-mails as "private communications."¹
4. Why might a statement that met the tests for "inciting hatred" under the *Criminal Code* not be illegal?

There are four possible defences: if the statement is true (though it may not be possible for hate content to be true); if the statement is a quote from or reference to a religious text which is not being used as part of an argument that is itself hateful; if the statement contributes to a legitimate public debate (again, this may not be possible); or if the statement is being quoted as part of an effort to have hateful content removed.
5. Almost every province and territory has human rights legislation that prohibits discriminatory publication. What are the three main ways in which this legislation differs between provinces?"

The three main difference between various prohibitions against discriminatory publication include; the range of communication considered 'publications' by the legislation; if the unlawful consequences are only defined in terms of discrimination and/or intent to discriminate, or whether they include exposing people to hatred and/or contempt; and what groups and/or people the legislation identifies as being protected from discrimination.
6. How many convictions have occurred under the *Criminal Code* for hate material distributed on the Internet?

Two.
7. What is the maximum sentence a personal can receive for being convicted of advocating genocide? What about that for inciting hatred?

The maximum sentence for advocating genocide is five years; for inciting hatred, two years.
8. Which provinces have human rights legislation intended to protect people or groups of people from "exposure to hatred and/or contempt"?

British Columbia, Alberta, Saskatchewan, and the Northwest Territories all include provisions against publications likely to expose people to hatred and/or contempt.

1 Makin, Kirk. The Globe and Mail. *Top court ruling upholds privacy of e-mail, texts*, March 2013. <<http://www.theglobeandmail.com/news/national/top-court-ruling-upholds-privacy-of-e-mail-texts/article10422574/>>



Task Assessment Rubric: Debate

	Learning Expectations	Achievement
<p>Use</p> <p>Skills and competencies that fall under “use” range from basic technical know-how – using computer programs such as word processors, web browsers, email, and other communication tools – to the more sophisticated abilities for accessing and using knowledge resources, such as search engines and online databases, and emerging technologies such as cloud computing.</p>	<p><i>Ethics and Empathy:</i></p> <p>demonstrate an advanced sense of suitable behaviour, finely tuned to media context, audience and legal provisions</p> <p><i>Community Engagement:</i></p> <p>exhibit leadership as a digital citizen</p> <p>advocate and practice safe, legal, and responsible use of information and technology</p>	<p>Insufficient (R);</p> <p>Beginning (1);</p> <p>Developing (2);</p> <p>Competent (3)</p> <p>Confident (4)</p>
<p>Understand</p> <p>Understand includes recognizing how networked technology affects our behaviour and our perceptions, beliefs and feelings about the world around us.</p> <p>Understand also prepares us for a knowledge economy as we develop information management skills for finding, evaluating and effectively using information to communicate, collaborate and solve problems.</p>	<p><i>Ethics and Empathy:</i></p> <p>show understanding of the concepts of ethical behaviour and online ethics</p> <p>understand the dynamics of online hate content and how it affects all of the people involved</p> <p>practice perspective-taking with respect to a complex issue</p> <p><i>Community Engagement:</i></p> <p>show awareness of the discourse on the balance of rights and responsibilities in relation to digital media and hate content</p> <p>show an understanding of the roles and responsibilities of different stakeholders in relation to hate content</p>	<p>Insufficient (R);</p> <p>Beginning (1);</p> <p>Developing (2);</p> <p>Competent (3)</p> <p>Confident (4)</p>



	Learning Expectations	Achievement
<p>Create</p> <p>Create is the ability to produce content and effectively communicate through a variety of digital media tools. It includes being able to adapt what we produce for various contexts and audiences; to create and communicate using rich media such as images, video and sound; and to effectively and responsibly engage with user-generated content such as blogs and discussion forums, video and photo sharing, social gaming and other forms of social media.</p> <p>The ability to create using digital media ensures that Canadians are active contributors to digital society.</p>	<p><i>Ethics and Empathy:</i></p> <p>Create a work (debate or essay) that clearly communicates their understanding and expresses their opinion on the issues of cyberbullying and the law</p> <p><i>Community Engagement:</i></p> <p>identify and participate responsibly in discussions that foster positive community</p> <p>show an understanding of the interrelationship between rights and responsibilities online</p>	<p>Insufficient (R);</p> <p>Beginning (1);</p> <p>Developing (2);</p> <p>Competent (3)</p> <p>Confident (4)</p>

