

Fitzgerald v. Alberta –

Do kids have a right to vote in elections?

Designed for CTS:
Legal Studies (Module 1020) and
Grade 9 Social Studies



Lesson Summary

Time required:

45-60 minutes

Materials/Resources Required:

Handout of Case Summary for each student

Curricular Outcomes:

This activity will help students taking *CTS: Legal Studies (1020)* to:

- describe the relationship between rights and responsibilities;
- explore sources of protection of rights and freedoms; and
- discuss methods of protecting rights and responsibilities (Courts)

Grade 9 Social Studies students will:

- appreciate and explore the impact that the *Charter* has on rights and governance in Canada;
- appreciate the various effects of government policies on citizenship and on Canadian society.; and
- assess, critically, the impact of the Canadian *Charter of Rights and Freedoms* on the legislative process in Canada by exploring and reflecting upon how the *Charter* supports individuals in exercising their rights.

To the Teacher

As Canadian citizens, the youth of our country are subject to many of the same laws, rights and freedoms which affect their parents, yet they do not have the right to vote and play a role in political institutions which affect them on a daily basis. This case and subsequent discussion questions provide students with the opportunity to explore why laws regarding voting eligibility based on age exist, whether these laws are in contradiction to the *Charter*, and how the justice system determines when and how exceptions to the *Charter* can be made.

The handout *Fitzgerald v. Alberta: A Case Summary* will provide students with the necessary information to help them participate in discussion based on the accompanying questions. Teachers may choose to hand out copies of the case summary in advance so that students can read it for homework. Teachers may also wish to have students discuss the questions in small groups first, before sharing their opinions and ideas with the rest of the class.

A Brief Case Overview

Eryn Fitzgerald and Christine Jairamsingh, two sixteen year olds from Alberta, decided that they wanted to vote in the next election. They felt that the age restriction on voting was unconstitutional and unfair. They took their case to court in 2001, where the judge used a series of questions, known as the “*Oakes Test*,” to determine if the law regarding age restrictions on voting really was unconstitutional. However, *Charter* rights are not absolute, and Section 1 of the *Charter* allows for laws to exist which contradict the *Charter* as long as they do so in a reasonable way. This case demonstrates how the *Charter* is a complex document which is not as straightforward as many Canadians believe.

A note for teachers about Discussion Question #3

The questions which the judge asks to determine if the law about the age limit on voting is reasonable are part of a legal test called the “*Oakes Test*.” This test was developed during a previous landmark case in Canada and has been applied in other cases which challenge the *Charter*, such as this one. For more information about this test and the series of questions involved, please see the link provided in the “Additional Resources and Information” section of this document.

Additional resources and information

The *Oakes Test* – a short summary and description of the *Oakes Test*

www.law.ualberta.ca/centres/ccs/rulings/theoakestest.php

Apathy is Boring – a website that informs and helps youth find outlets to get engaged in politics <http://www.apathyisboring.com/>

Charter of Rights and Freedoms – helps Canadian citizens, students, and teachers explore the *Charter*, its history, and its impact. It also includes an interactive online *Charter*. <http://www.Charterofrights.ca/>

For the Student

Case Summary: *Fitzgerald v. Alberta* – Do Kids Have a Right to Vote in Elections?

Do Election Laws and the *Constitution* Say Opposite Things?

If you want to vote in Alberta, you have to wait until your eighteenth birthday. That rule is clear in Alberta’s election laws. These laws set out how elections are held for Alberta’s Legislative Assembly, and also for city and town governments.

Two sixteen year-olds, Eryn Fitzgerald and Christine Jairamsingh, wanted to vote in the next election. They had lived in Alberta their whole lives and they were interested in politics and community issues. It did not make sense to them that they could be stopped from voting just because they were not yet eighteen. The age restriction on voting seemed unfair to them.

The age limit also seemed unconstitutional. It did not seem to fit with what the *Charter of Rights and Freedoms* says about rights in Canada. Two parts of the *Charter*, Democratic Rights and Equality Rights, seem to say that you should be able to vote at any age.

The *Charter* is a part of the *Constitution*, the supreme law of Canada. Any ordinary law that conflicts with the *Constitution* can be “struck down” by a court. If someone can show in court that an ordinary law contradicts the *Charter*, then a judge can rule that the law is not enforceable.

Eryn and Christine went to court in Edmonton in 2001. They asked the judge to strike down the parts of the election laws that prevent young people like them from voting.

Do Election Laws Take Away Young People's *Charter* Rights?

Section 3 of the *Charter* says that “every citizen of Canada has the right to vote in an election.” Nothing could be clearer than this. There is no age limit on citizenship, so “every citizen” includes lots of people younger than eighteen. Eryn and Christine were both citizens. They read this part of the *Charter* and thought that no law could stop them from voting, even though they were only sixteen.

Section 15 of the *Charter* guarantees equality in law for everyone. It says that laws cannot discriminate based on things like ethnicity, sex and religion. It specifically mentions *age* as another way that laws may not discriminate against people. Eryn and Christine read this part of the *Charter* and thought that no law could use an age limit to keep some people from casting a vote.

The judge agreed with the way they understood these two parts of the *Charter*. He said that the minimum voting age of eighteen did not fit with the right of *every* citizen to vote, guaranteed in the *Charter*. He also said that the age limit was contrary to the guarantee of equality rights. Prohibiting young people from voting is discrimination: it “promotes the view that they are less capable or worthy of recognition” than older people.

Eryn and Christine had won the first part of their case. The judge agreed with them that the election laws are contrary to two *Charter* rights. But winning these points did not mean winning the whole case and getting the judge to strike down the age limit on voting. The judge had to think about another part of the *Charter*.

Limits on Rights

The rights listed in the *Charter* are not absolute. For example, one of the rights in the *Charter* is freedom of speech. But just because free speech is in the *Charter*, it does not mean we can say anything, anywhere. For example, we are not free to yell “fire” in a crowded movie theatre.

This does not mean that there is no real freedom of speech in Canada. It just means that some ways of limiting free speech are necessary, and judges recognize this when they use the *Charter* to decide cases. Rights have to be balanced against other important needs, and a judge's job is to find the best balance.

The *Charter* itself recognizes this need for balance. It does not give total protection to rights. Section 1 of the *Charter* says that the guarantee of rights and freedoms allows “reasonable limits prescribed by law” that are “justified in a free and democratic society.” In other words, a law that contradicts the *Charter* in a *reasonable* way will not be struck down by a court.

Is It Reasonable for the Law to Deny Young People Their Right to Vote?

In the first part of the case, Eryn and Christine persuaded the judge that the age limit in the Alberta election laws violated two *Charter* rights. The laws prevented them from doing something – voting – that they had a right to do. But this was not the end of the case.

After a law is shown to violate the *Charter* rights of individuals, the government has a chance to show that the limit on rights is reasonable. The judge must consider the reasons for limiting *Charter* rights in a careful, step-by-step way, looking for the best balance. The judge answers a series of questions – a legal test.

First of all, the judge must decide if the law has a “pressing and substantial” purpose. Does the law try to achieve something really important? In this case, the judge saw that the election laws have an important purpose: a “rational and informed electorate.” Without an age limit, even babies would be allowed to vote. In other words, the law needs to connect the ability to vote to a person’s maturity. The judge accepted that this purpose is important.

But even when a law has a good purpose, it does not mean that any way of achieving the purpose is reasonable. The next question a judge must consider is whether there is a “rational connection” between the general purpose of the law and the specific way it limits rights. In this case, the judge had no trouble tracing a rational connection. The objective is mature voters. Children become more mature with age. So, the age limit on voting is rationally connected to the purpose of mature decision-making in elections.

A rational way of limiting rights could still go too far. The law must limit *Charter* rights no more than necessary to achieve its purpose. Basically, it must limit rights as little as possible. The next question in the legal test is to compare the limit in the law to other limits that could be used instead. In this case, the judge recognized that *any* age-based limit would take the vote away from some mature individuals, just as it would allow some immature people to vote. After all, some teenagers understand important political issues better than many adults. The judge thought about less strict ways to limit voting rights, but he could see no realistic alternative to an age limit. For example, he could not see a practical way to give every citizen a test of “voting ability.”

Since the judge could see no good alternative to a limit based on age, he next considered whether a *lower* age limit would be better – maybe fifteen or sixteen. But he did not see how this would be any more reasonable than eighteen. He also thought that “common sense” supports the age of eighteen as a cut-off. He explained:

In general, 18 year olds as a group have completed high school and are starting to make their own life decisions. They must decide whether to continue with their schooling or join the work force. This often coincides with the decision whether to remain at home with their parents, or move out on their own. It makes sense that they take on the responsibility of voting at the same time as they take on a greater responsibility for the direction of their own lives.

Although any age limit would be “imperfect,” the judge concluded that eighteen is a reasonable choice: “no other age relates more closely to this relevant changing point in an individual’s life.”

A Justifiable Violation of *Charter* Rights

The judge concluded that the *Charter* rights of young citizens – like Eryn and Christine in 2001 – are “violated” by the age limit on voting. Without a good justification, the government would not be able to enforce that part of the rules for elections.

However, the government persuaded the judge that the rights of young people are limited for a good purpose, and in a rational way that is no stricter than necessary. The age limit for voting is a reasonable way to limit rights, so it does not have to be struck down and the government can continue enforcing it.

Questions for Discussion

- 1. Do you agree that 18 is a good age to allow voting? Why or why not?

- 2. Can you suggest an alternative way to determine voting eligibility which is not based on age?

3. What questions did the judge ask himself to when making his decision about the legal validity of the voting law?

4. The section “Limits on Rights” describes how Section 1 of the *Charter* can allow other laws to contradict the *Charter* as long as it is “reasonable.” What do you think about this section? Is it important that it exist? Or does it make it easier for the government to make laws which contradict the rights and freedoms we have as Canadians?

5. If youth under the age of 18 had the right to vote, do you think that our government would be different than it is today? Do you feel like the government represents youth and the issues that concern them?

Created in collaboration with the Centre for Constitutional Studies.
<http://www.law.ualberta.ca/centres/ccs/>