

YOUR ADVICE!

We know that lawyers go to court to represent their clients. But another important part of their job is to **meet people** to give them **legal advice**.

Imagine for a moment that you are a fundamental rights lawyer. You have to give advice to young people who come into your office. **Read their stories carefully** and **answer their questions**. Your answers should be short and should incorporate your understanding of the Charters.



I'm **Naomie**! Ever since I was little I have been swimming at my municipal swimming pool. Last summer I applied to become a life guard, but the city did not want to hire me!

The coordinator told me that I had all the required qualifications, but she could not hire me because my father held an important position with the city. She does not want to be perceived as favoring a boss's daughter.

I think that's discriminatory! I challenged the city's decision under the Quebec Charter. The Superior Court has just heard my case, but has upheld the city's decision. I would like to appeal this

1.1. In my opinion, the Superior Court judge made a monumental mistake! Without further delay, can you help me appeal this decision to the Supreme Court of Canada?

ANSWER: *No. Calm down. A judgment of the Superior Court cannot be appealed directly to the Supreme Court. You have to go through the Quebec Court of Appeal [pages 17 of the Teacher's Guide and 8 of the Student's Guide]. [Students could also write that the Supreme Court only hears files that are important to the public. This is a good answer, note that the Supreme Court heard a similar case in 1988: [Brossard \(City\) v. Quebec \(Human Rights Commission\)](#).]*



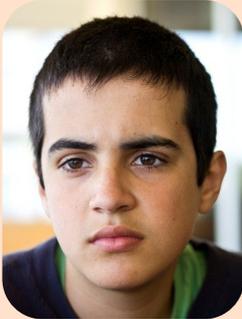
1.2. My swimming coach testified for me during the trial but he believes that he could have been more convincing ... Can we give him a second chance to testify on appeal?

***ANSWER:** No. Generally, new evidence cannot be appealed. Therefore, the Court of Appeal cannot hear new testimony [pages 20 of the Teacher's Guide and 10 of the Student's Guide: the same rule applies to all appellate courts].*

1.3. My father told me that he knows the Superior Court judge who rendered the judgment in my file. She was employed as a lawyer for the city a few years ago. In your opinion, does this situation pose a problem?

***ANSWER:** Students should discuss the impartiality of the judge or lack of bias [pages 21 of the Teacher's Guide and 11 of the Student's Guide]. They may however come to the conclusion they want.*
[Note that, in reality, this would not necessarily disqualify the judge: assuming that judges are impartial and proving the opposite is difficult].





Hello! My name is **Simon** and I go to a public high school. Last week I failed my math exam because I was away. But I had no choice! The exam fell on the same day as an important Jewish holiday, Yom Kippur. It is a tradition that I cannot miss because of my beliefs.

My teacher explained to me that I must be present at the exams like all other students. My parents called the principal, but she told them she could not do anything for me. I think it's unfair!

2.1. I know that it is the school that requires me to be present on the day of the examination. It is not a law! Do you think the Canadian Charter still applies to my situation? Why?

***ANSWER:** Yes. The Canadian Charter applies to government action. The decision of a public school is part of it [pages 31 of the Teacher's Guide and 15 of the Student's Guide]. Therefore, the Canadian Charter applies to Simon's situation.*

2.2. I would like to challenge my school's decision. Can I use one or more Charter sections before the tribunals?

***ANSWER:** Articles 2(a) of the Canadian Charter and 3 of the Quebec Charter (freedom of religion).*

Also, sections 15 of the Canadian Charter and 10 of the Quebec Charter (right to equality and non-discrimination based on religion).



Hello, my name is **Alexandra** and I am 18 years old. I will soon begin a technical degree in a CEGEP in another region. Last weekend I traveled with my parents to visit apartments. I found a small "3½" that is ideal and not too expensive!

Yesterday, I called the owner of the apartment. He refused to lease the apartment to me and would not tell me why! I feel that it is because I am black. During the visit, he repeated on several occasions that he had had problems with a former black tenant.

I really want this apartment and my parents think I can challenge the owner's decision.

3.1. Which Charter should I use to support my case? Why?

ANSWER: The Quebec Charter. The owner of the dwelling is not part of the government. He is thus a "private person". Only the Quebec Charter applies to the acts of private persons [pages 31 of the Teacher's Guide and 16 of the Student's Guide].

3.2. What section of this Charter can I rely on?

ANSWER: Article 10 of the Quebec Charter (right to equality and non-discrimination, based on race); Section 12 of the Quebec Charter (refusal to enter into a housing contract on discriminatory grounds). One article is enough.

3.3. My parents called the owner back. He told them that the only reason he refused to lease the apartment to me was because he found me too young. If that is true, is the section you mentioned above still relevant?

ANSWER: Yes. Article 10 also protects against exclusion based on "age except as provided by law".

[There is no legislation that allows for such discrimination in housing. Note, however, that an owner might refuse to rent housing to a young person because, for example, he or she does not have sufficient financial means.]



My name is **Inez** and I am 20 years old. Three weeks ago, I went out to a bar with my friends. At the end of the evening, I decided to take a nap in my car to "sober up" before driving. To my surprise, the police stopped me! They explained that it is illegal to sit in my car under the influence of alcohol, even if the engine is not turned on.

I was immediately released pending trial. Since that day, I am anxious and I cannot sleep anymore. I do not know if the judge will convict me or not!

I have been told that I will not be tried for at least another few months. I find it unreasonable to leave me in such a state of anxiety for so long!

4.1. I want to challenge this long waiting period. Is there anything in the Charters that would be relevant to my situation?

***ANSWER:** Yes. The right to be tried within a reasonable time: sections 11 (b) of the Canadian Charter and 32.1 of the Quebec Charter [N.B. : This right does not appear in the guide itself: it must be found in the texts of the charters, in the appendices].*

4.2. In your opinion, do the Charters forbid the State from making me wait so long before I am tried? Why?

***ANSWER:** Students must indicate the internal limit of the law (pages 34 of the Teacher's Guide and 17 of the Student's Guide): the charters allow Inez to be judged within a certain timeframe, if "reasonable". Students can answer that a few months is reasonable or not, depending on what they think.*

[In fact, a period of a few months would most likely be considered reasonable. According to a Supreme Court decision of 2016, [R. v. Jordan](#), the time limits are presumed to be unreasonable if they are more than 18 months for most trials before the Court of Québec, or more than 30 months for those in the Superior Court (see box on page 18 of the Teacher's Guide).]



I am **Thomas** and I have major problems! A few days ago, while we were in class, the police entered our school with sniffer dogs. It was not the first time, since they have randomly come from time-to-time to look for drugs.

As they walked around the gym, one of the dogs sniffed at my backpack, which I had left unattended. The police opened the bag and found ten small bags of marijuana. I was charged with possession of drugs for the purpose of trafficking.

The lawyer I called suggested that I challenge the legality of the search because the police did not get a warrant to come to school. The lawyer told me that section 8 of the Canadian Charter prohibits "unreasonable searches," but he does not know what my chances are because he is not a fundamental rights specialist ...

5. In your opinion, were the police abusive in their search by entering my school with

ANSWER: *Students should explain why it was an unreasonable search in their opinion.*

There is no right or wrong answer. Some examples of relevant factors:

- *The lack of a **warrant**, or the difficulty of getting one in a timely manner;*
- *The fact that the police were conducting a **random** search;*
- *The presence or absence of **suspicion** of the presence of drugs before entering the school or before opening the backpack;*
- *A student's expectation of **privacy** at school;*
- *The fact that the bag seemed to be abandoned, etc.*

[Note that the amount of drugs found or the gravity of the charge are not relevant factors to determine whether the search was abusive. This situation is inspired by a ruling of the Supreme Court in 2008: [R. v. A.M.](#) The judges concluded that it was an unreasonable search because the police were searching for drugs randomly. They did not need a warrant to enter the school or open the bag, but needed to have a reasonable suspicion at least.]



My name is **Ross**, I'm 19 and I'm a very engaged student. I am on a committee for environmental protection at my college. Last month, I went and glued small posters on the telephone poles of my neighborhood to express our opinions.

A policeman saw me and gave me a ticket! I did not know, but there is a by-law that prohibits people from posting things on poles. It seems that the goal of the by-law is to preserve the beauty of the streets and avoid the costs of cleaning.

I complained to the policeman that this was censorship and that the by-laws violate my freedom of expression. He said, "You may be right, but sometimes the government has permission to censor people."

6.1. It seems to me that the Charters prohibit any violation of protected rights, do they not? What sections of the Charter did the policeman rely on when making his statement?

***ANSWER :** Section 1 of the Canadian Charter and section 9.1 of the Quebec Charter.*

6.2. In your opinion, is the city really justified in infringing my freedom of expression in this way?

To answer Ross's question, repeat the test explained on pages 18 to 19 of your Guide. Briefly answer each sub-question.

A) What is the objective of the by-law? Is this objective important enough to justify an infringement of Ross's freedom of expression?

***ANSWER:** The objective (according to the facts) is to "preserve the beauty of the streets and avoid the costs of cleaning".*

Students should then explain why this goal is important or not to them. There is no right or wrong answer.

[This situation is inspired by a 2003 judgment: [Montréal \(Ville\) v. Singh](#). The same objectives had been raised among others. Together, these objectives were deemed sufficiently important by the Municipal Court of Montreal.]

B) Is there a logical connection between the municipal by-law and its objective?

ANSWER: Students should explain why this criterion is respected or not. There is no right or wrong answer.

[In the 2003 judgment, the Court found that there was a logical link between the municipal by-law and its objective.]

C) In trying to meet its objective, does the by-law infringe Ross's rights in a reasonable and necessary manner? Are there other alternatives that would cause Ross less harm?

ANSWER: Students should explain why this criterion is respected or not. There is no right answer.



Ideas of less damaging means:

prohibiting nailing or stapling posters, obtaining an authorization of the city, etc.

[In the 2003 judgment, the Court found the infringement to be reasonable.]

D) Are the positive effects of the by-law greater than the negative effects of the infringement on Ross's freedom of expression?

ANSWER: Students need to think about the positive effects of the regulation (eg, maintaining the poles, reducing the maintenance costs) and the adverse effects on Ross's rights (eg, removing a simple and inexpensive way to communicate with the public). There is no right or wrong answer.

[In the 2003 Judgment, the Court held that this test was met. The conclusion of the test was that the municipal by-law was justified and the city was successful.]



Hello, I'm **Sophie** and I am 25 years old. Recently, I have been receiving social assistance payments from the government because I cannot find a job.

I find that I do not receive a lot of money ... Actually, the law provides that social assistance recipients who are young and healthy and who are not enrolled in any training programs are entitled to less money than participants who are over the age of 30.

This seems unfair to me! The government does not have the right to discriminate.

7. In your opinion, what is the purpose of this legislation?

***ANSWER:** Students should suggest at least one objective. Several answers are possible: it's a question of opinion.*

Examples of objectives that can be deduced from the facts:

- ***Encourage** young people receiving social assistance to find employment or training;*
- ***Deter** young people who are healthy but use social assistance;*
- ***Save money, etc.***

[This question is inspired by the Supreme Court of Canada decision: [Gosselin v. Québec](#), 2002, and does not necessarily reflect the current state of law.]