

Section 1: The Law and You

Lesson Plan 5: Legal and Equality Rights

SNAPSHOT

Grade Level	8-10
Duration	1-3 periods; if the multicultural day activity is done it will take 2 additional periods

Introduction

The *Canadian Charter of Rights and Freedoms* (*Charter*) includes legal rights for all Canadians and people living in Canada. Students will learn about what rights they have and how the courts have interpreted those rights especially in the area of legal and illegal searches. They will look at case studies to see how the law is being applied and how the courts balance the issue of a lawful search with the students' expectations of privacy. Students will also explore the Canadian identity, multiculturalism and equality rights in the *Charter*.

Objectives

At the end of this lesson students will:

- Demonstrate an understanding of their legal rights and freedoms as protected by the Canadian Charter of Rights and Freedoms
- Understand the implications of a society without legal rights or fundamental freedoms
- Understand how Charter decisions impact the criminal process
- Articulate an opinion about Canadian Identity and Canada's multiculturalism policy
- Identify the equality rights of Canadian citizenship based on the Charter
- Compare different points of view of Canadian citizenship based on political views and ethno-cultural background
- Collaborate with their peers

Focus Questions

1. How is the *Canadian Charter of Rights and Freedoms (Charter)* applied to cases?
2. What are our legal rights under the *Charter*?
3. What is a “Canadian”?
4. What is “Multiculturalism”?
5. What are our equality rights under the *Charter*?

Teaching Summary

Topic 1: Legal Rights

Students will be asked to critically examine issues of legal rights, particularly as they relate to search and seizure on school premises. The first activity builds a base of knowledge about the legal rights contained in the *Canadian Charter of Rights and Freedoms (Charter)* and how the *Charter* is applied to cases. In activity two the students read three precedent setting cases and prepare a school policy for lawful searches and student expectations of privacy. Students also learn about their legal rights and the *Charter* warnings.

Topic 2: Equality Rights

Students are asked to consider what being a Canadian means and have a discussion about our national identity. Then the students will engage in a unique activity entitled “Coffee Talk” where they will cooperatively work with different partners and are encouraged to consider specific questions regarding poignant multiculturalism quotes. They will also consider the Equality section of the *Canadian Charter of Rights and Freedoms*.

An optional activity is included where the students will participate in a Multicultural Day. Their presentations can be one of the highlights of the school year and build a strong sense of inquiry and community in the classroom.

CONTENT

Topic 1: Legal Rights

The *Charter* guarantees legal and equality rights.

Application of the Charter

The *Charter* applies in cases where rights or fundamental freedoms are being infringed by other government legislation or government actions.



Does the Charter Apply?

A case falls within the domain of the *Charter* if it:

- Falls within the “sphere of government action”. The first step is to determine if the statute in question was enacted by one of the three levels of government.
- Involves a law that has not been excluded by “expressed exemption”. This means that the law may violate our rights because it is allowed under s. 33 of the Charter (e.g. French only sign law in Quebec).

What Right is Being Infringed?

To determine whether or not a right has been infringed:

- Identify the appropriate section(s) of the Charter that protects us from this particular violation.
- Clarify the section(s) and break down the section into its “right” and “right holder” categories. Who and what is protected by the Charter right? Match the facts - decide whether the particulars of the case fall within the types of situations covered by the section(s). In simple terms does the case clearly show a violation of rights?

Is the Infringement of the Right Justified?

An infringement of the *Charter* is justified in some cases. The courts will allow our rights to be violated but all steps in the following test must be met:

- Is it “prescribed by law” - meaning that the law must be written in some statute.
- Does it have a “clearly justified objective” - the general objective being sought must be sufficiently important to justify overriding the Charter. There must be a purpose for violating our rights - is it more important than the violation?
- Does it employ a “clearly justified means” – the means must be carefully designed to impair as little as possible and not cause more harm than it avoids.

If There is a Charter Violation, How Can it be Redressed?

If it is established that a *Charter* violation has occurred, redress may include any of the following:

- Invalidating legislation that offends the Charter. This means the law in question will become of “no force or effect” and will cease to be used.
- Compensation for the victim. This depends on the nature of the violation.
- Evidence may be excluded from a criminal trial. For example, if the court rules that the police violated your right to “unreasonable search or seizure” then they will exclude any evidence gathered during that search. This provision leads to an acquittal or stay of proceedings if no other evidence is available.

Case Studies: Legal and Illegal Searches in School

Case 1: R. v. M.R.M., [1998] S.C.J. No. 83

A student attending a school dance was searched by the vice-principal and was found to be hiding a bag of marijuana in his sock. The vice-principal had acted on information he received from “several students that the appellant was selling drugs on school property” and “had reason to believe this information because the students knew the appellant well and one of them had, on an earlier occasion, given the principal information which had proven to be correct”. The question for the court to consider was whether the search was “reasonable” in accordance with s. 8 of the *Charter*.



The judgment went in favour of the school and is explained by Justice Cory as follows:

- A warrant is not essential in order to conduct a search of a student by a school authority.
- The school authority must have reasonable grounds to believe that there has been a breach of school regulations or discipline and that a search of a student would reveal evidence of that breach.
- School authorities will be in the best position to assess information given to them and relate it to the situation existing in their school. Courts should recognize the preferred position of school authorities to determine if reasonable grounds existed for the search.
- The following may constitute reasonable grounds in this context: information received from one student considered to be credible, information received from more than one student, a teacher’s or principal’s own observations, or any combination of these pieces of information which the relevant authority considers to be credible. The compelling nature of the information and the credibility of

these or other sources must be assessed by the school authority in the context of the circumstances existing at the particular school.

The ruling upheld the right of teachers and administrators to search bags, lockers and clothing if all the prescribed conditions are met. The ruling grounds itself in a legal concept '*in loco parentis*' that in translation means 'in the place of parents'. It is this concept that gives ground to many school rules, policies, consequences and violations of common rights. In essence it would be like stating that your parents have no legal right to search your room, cabinets or personal things for drugs or weapons. You might wish they did not but you do not have any legal right to refuse.

Case 2: *R. v. Z. (S.M.)*, [1998] 131 C.C.C. (3d) 136 (Man. C.A.)

This case gives clarity to the issue of locker searches, as different from searching the personal effects or clothing of a student like in the case *R. v. M.R.M.* In that case the courts ruled that searches of the person, their clothing or bags is a violation of rights held under s. 8 but is reasonable for the safe operation of schools and protection of students. However, the judgment only related to searches conducted by school personnel, not the police.

It was explained in *R. v. M.R.M.* that via the concept of 'loco parentis' school lockers are the property of the school board and are used by students with the permission of the school and are not the private property of the students. Schools are advised to inform each student of the school's right to search lockers and should have policies in place so that the students have a reduced expectation of privacy, as they would in their own homes with respect to parent searches.

In this case the vice-principal of a junior high school conducted a locker search of a 15-yearold student's locker, after reports of drug use in the school. Classmates had reported that the student was present when drug use took place or was associated with other students thought to be involved in drugs.

On the morning of the search, the student was absent without permission and had returned to the school through an entrance that was not usually open during the day. These factors caused the vice-principal to suspect that he may have picked up drugs that day. The vice-principal searched the locker and found marijuana. The trial judge acquitted the accused, stating that the search infringed the s. 8 rights of the student. The decision was appealed but upheld by the Manitoba Court of Appeal.

Case 3: *R. v. A.M.*, [2008] S.C.J. No. 19

In the most recent judgment from the Supreme Court of Canada the issue of drug sniffing dogs, locker searches and warrantless searches in high school was discussed. The case built upon earlier rulings with respect to searches at schools but differed significantly because of the involvement of police.

In *R. v. A.M.* the police had a long-standing invitation from the principal of a high school to bring sniffer dogs into the school to search for drugs. The police had no knowledge that there were drugs in the school and they would not have been able to obtain a warrant to search the school. During the police's visit to the school, the students were confined to their classrooms as a trained police dog sniffed their backpacks in an empty gymnasium. The dog led police to a backpack containing marijuana and magic mushrooms. A youth was subsequently charged with possession of marijuana for the purpose of trafficking. In 2004, the Ontario Court of Appeal upheld a trial judge's decision to exclude the drugs as evidence and acquit the youth. The Crown appealed to the Supreme Court of Canada (SCC).

In a 6-3 majority, the SCC held that the dog sniff amounted to a "search" within s. 8 of the *Charter* and that students in school have a reasonable expectation of privacy. The SCC held that the subject matter of the sniff was the concealed contents of the backpack and not the 'air' around the backpack. Teenagers may have little expectation of privacy from the searching eyes and fingers of their parents, but they expect the contents of their backpacks not to be subject to the random searches of the police. This expectation is a reasonable one that society should support.

The use of the sniffer dog allowed the policeman to "see" through the fabric of the backpack, thus invading the expectation of privacy assumed by the accused. The SCC also noted that a warrantless search using sniffer dogs would be justified in the case where the police held a reasonable suspicion; but in this case there was no proper justification for the search. The search was deemed unreasonable and the SCC upheld the earlier judgment of the Ontario Court of Appeal and dismissed the appeal.

The case adds another layer to the issue of searches in our high schools. The top court ruled that a warrantless and unreasonable search by drug-sniffing dogs is not constitutional. However, drug-sniffing dogs could conduct searches, even warrantless searches if reasonable grounds were established prior to conducting the search. The Abbotsford School District conducted several warrantless searches in its high schools between 2005 and 2006 and has stated that it will consider searches for the 2009 school year notwithstanding the decision of the SCC. Further cases will be required to establish more precise guidelines for school administrators and students with respect to searches in our schools.

Legal Rights

- Everyone has the right to be secure against unreasonable search and seizure.
- The police must have reasonable grounds for searching you or your home and any evidence that is unlawfully obtained may be excluded at trial.
- Everyone has the right not to be arbitrarily detained or imprisoned. A person must be held in custody on reasonable grounds and must be brought before a judge or justice as soon as possible or within 24 hours of detention to decide if the detention is lawful (habeas corpus).

- Everyone has the right on arrest or detention to be informed promptly of the reasons and to consult counsel without delay and to be informed of that right.
- The police use the Charter warning to provide this information.
- Everyone has the right to a fair trial within a reasonable time.
- Everyone is innocent until proven guilty beyond a reasonable doubt. Crown counsel must present evidence to an unbiased judge or jury in an open court to prove the accused's guilt. The accused does not have to prove anything or call any evidence.
- Everyone has the right to be tried by a judge and jury where the punishment for the offence charged is over five years' imprisonment. This provision guarantees the right to be judged by one's peers and it keeps our justice system in touch with the opinions of ordinary people and with changing community standards.
- Everyone has the right not to be compelled as a witness and to remain silent when accused of a crime.
- Everyone has the right not to be subjected to any cruel and unusual treatment or punishment. The punishment should fit the crime and it should meet with the broad public standard of acceptability.



Charter Warning

I am arresting you for: (state reason for arrest including the offence and provide known information about the offence, including date and place).

It is my duty to inform you that you have the right to retain and instruct counsel in private without delay. You may call any lawyer you want. There is a 24-hour telephone service available which provides a legal aid duty lawyer who can give you legal advice in private. This advice is given without charge and the lawyer can explain the legal aid plan to you. If you wish to contact a legal aid duty lawyer, I can provide you with a telephone number. Do you understand? Do you want a lawyer?

If an arrested or detained person initially indicated that he or she wished to contact legal counsel and subsequently indicates that he or she no longer wishes to exercise the right to counsel, read the following additional *Charter* warning:

You have the right to a reasonable opportunity to contact counsel. I am obligated not to take a statement from you or to ask you to participate in any process which could

provide incriminating evidence until you are certain about whether you wish to exercise that right. Do you understand? What do you wish to do?

Official Warning

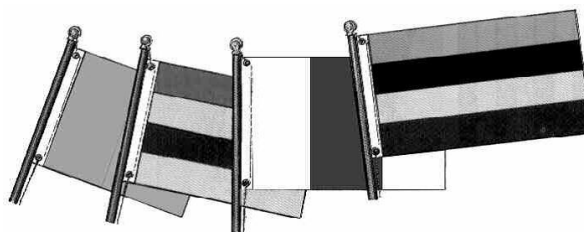
You are not obligated to say anything, but anything you do say may be given in evidence.

Legal Rights for Youth are covered in more depth in [Section 2: Criminal Law, Lesson 3](#) and as a topic in [Lesson 5](#). There are animated videos on a number of topics including searches in [Lesson 3](#). [Provide links to the lesson.](#)

Topic 2: Equality Rights

Equality Rights: Section 15

- Every citizen is equal before and under the law.
- Every citizen has the right to equal protection and benefit of the law.
- These rights are to be applied equally and without discrimination based on race, nationality, ethnic origin, colour, religion, sex, age or mental or physical disability.



Every individual is equal before and under the law and has the right to equal protection and benefit of the law without discrimination based on race, nationality, or ethnic origin, color, religion, sex, age or mental or physical disability.

It may be surprising to note that this clause was one of the more controversial issues of the constitutional debate. Some provinces did not see the need for equality rights to be written into the *Charter* since provincially human rights codes were seen as protection enough.

The phrase "before and under the law" is significant because it means that not only do people have equal access to the courts and to equal administration of justice (the "before" part) but that the laws that are discriminatory will be struck down by the courts (the "under" part).

Here is a recent case on equality rights.

A group of 15 women skiers challenged their exclusion to compete in ski jumping at the 2010 Winter Olympics. In *Sagen v. Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games [2009] BCSC 942*, a decision by the BC Supreme Court released in July 2009, the Court ruled that the event will still be open to men only. Why? Madam Justice Fenlon in her 42-page ruling stated that the International Olympic Committee is not subject to government control. The Court held that the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games “cannot be held to be in breach of the *Charter* in relation to decisions it cannot control.” The Court also stated that although the Court could not affect the skiers’ exclusion, “there is something distasteful about a Canadian governmental activity subject to the *Charter* being delivered in a way that puts into effect a discriminatory decision made by others.



Section 15 (1) of the *Charter* gives Canadian citizens equal benefit and protection of the law without being discriminated upon because of race, ethnic origin, colour, religion, sex, age, mental or physical disability. It also protects personal qualities like sexual orientation, marital status and citizenship. It only applies to government and laws and not to personal relationships and private businesses. It does not mean that everyone must be treated the same but rather that everyone benefits equally from the law.

Handout 4: Multiculturalism Quotes and Equality Rights

“There cannot be one cultural policy for Canadian of British and French origin, another for the original peoples and yet a third for all others. For although there are two official languages, there is no official culture, nor does any ethnic group take precedence over any other. No citizen or group of citizens is other than Canadian, and all should be treated fairly...” (*Pierre Trudeau announcing the policy of multiculturalism in 1971*)

“Pluralism, the side-by-side existence of many forms of human association, is an essential quality of modern Canada. Official multiculturalism...was a bad idea in the beginning and in time will probably be seen as one of the gigantic mistakes of recent public policy in Canada.” (*Robert Fulford, Globe & Mail*)

“Someone recently called me a ‘banana,’ yellow on the outside, white on the inside. I told him I’m Canadian on the outside and Canadian on the inside. I’m just one piece of the mosaic. In this country, we don’t all look alike.” — A second-generation Chinese-Canadian.” (<http://newsinreview.cbclearning.ca/wp-content/uploads/2000/04/ujjal.pdf>)

“Canada is not a melting pot in which the individuality of each element is destroyed in order to produce a new and totally different element. It is rather a garden into which have been transplanted the hardiest and brightest flowers from many lands, each retaining in its new environment the best of the qualities for which it was loved and prized in its native land.” (*John Diefenbaker, Prime Minister of Canada, 1957-1963*)

“Equality before and under law and equal protection and benefit of law. Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.” (*Canadian Charter of Rights and Freedoms, section 15 (1)*)

ACTIVITIES

Activity 1: Application of the Charter

Students will begin this activity by examining the application of the *Charter*. Review the information in the content section on how the *Charter* is applied and discuss the following case with your students to illustrate the point.

The case is fictional but based on the precedent set by the Abbotsford school district: “The Abbotsford Board of Education plans to resume searches by drug detection dogs this fall, and that has the BC Civil Liberties Association scrutinizing a Supreme Court of Canada ruling. That decision determined that police cannot use random dog searches to find drugs at schools or in public places, except airports. Searches were last in place at Abbotsford middle and high schools in the 2005-06 school year, on a random basis, but were halted after the private company contracted for the work had some of its dogs stolen, said Kevin Godden, acting secretary-treasurer for the school district.”

Read the following facts to the class and answer the questions posed.

Application of Charter Framework - You Be the Judge!

Has a *Charter* violation occurred? If so, decide what action is required.

“Schoolhouse Rocks”

A local school district has a serious drug trafficking and drug use problem in its high schools, particularly with rock cocaine and ‘crystal meth.’ The recently-elected members of the school board want serious action taken to reduce the problem and catch the offenders, however the budget is tight and there is little money for increased security, surveillance cameras or extra administrators. They have decided to use drug-sniffing dogs in the gym areas, school lockers, parking lot and hallways of the high schools. Police officers will bring drug dogs into the schools on a random basis so that drug dealers and users will not know when the checks will happen. All drugs seized will be turned over to the administration and criminal charges will be laid against offenders.

Activity 2: Case Studies and Charter Rights

Students will examine the specific legal issue of search and seizure as it applies to high school locker searches, bag searches and seizure of student property. Provide students with *Handout 1: Case Studies and Charter Rights*. To save time have them read it for homework.

Each of these cases has given direction to drug searches in high schools whether by police or school administrators and represent the most recent rulings from our highest court. Provide students with *Handout 2: Legal and Illegal Searches in School* and take some time to review the steps required to complete all tasks. Allow students sufficient

time to analyze the cases and complete the first two steps. At this point you will want to review and debrief the students' interpretations of the cases, the law and their application to school life.

Step three asks students to prepare a policy statement for the high school agenda book outlining the privacy expectations of students and the school's lawful right to search and seize student property.

Step four is offered as a bonus or extension assignment but you may want to bring in a school official or administrator to talk with the students about the existing policy.

Activity 3: Legal Rights under the Charter

Give students *Handout 3: Legal Rights under the Charter* and discuss it with them. Have them complete the questions.

To see the answer key for *Handout 3*, see the Assessment section.

You may want to select one or two of the animated videos in Section 2: Criminal Law Lesson 3 to show your class. Then ask them to record some of the topics that are being addressed by the video. **Provide a link to the lesson.**

Activity 4: What is a Canadian?

Hold a two minute brainstorm on What is Canadian? Have the students list everything they can think of that pertains to being Canadian. Examples: Maple syrup, hockey, Wayne Gretzky, Sidney Crosby, CBC, Canadian back bacon, Don Cherry, John A. MacDonald, Bryan Adams, Nickelback, the CN Tower. Compile a giant list of "What is Canadian?" Then discuss the quote: "Canada is the only country in the world that knows how to live without an identity." - *Marshall McLuhan*

Activity 5: What is Multiculturalism and what are Equality Rights?

Brainstorm on the definition of "culture" and ask students what they think the term multiculturalism means to them? Write up some of their different suggestions on the board. Give the students *Handout 4: Multiculturalism and Equality Rights*. Read and ensure that your student understand what they mean. Discuss the difference between the American "Melting Pot" and the Canadian "Mosaic" (like a stained glass window). The idea is to get students to consider the uniqueness of multiculturalism, its benefits and downfalls. The following are simply some suggestions that may come up in the discussion.

Pros:

- Multiculturalism strengthens a society making it more tolerant of different cultures and open to new ideas.
- Many people see Canada's Multicultural policy as the key feature that allows Canadians of all cultures to live together in peace.
- Less racism.
- Promotes understanding of cultures, which means we are less likely to go to war over different religious or cultural beliefs.
- Many different types of foods, cultures and religions present in society.
- Less likely to lose our identity in one homogenous culture.
- Less likely to be ethnocentric and more likely to embrace a more pluralistic view of society.
- In order to govern, we must strive to understand all the cultural elements that exist in our society.

Cons:

- In accepting so many different cultures, there is no one Canadian culture.
- We have created a clash of cultures – English vs. French vs. First Nations.
- Allowing different cultures but forcing them to speak English or French means that we are not truly tolerant of all cultures.

Activity 6: Coffee Talk

Hand out *Handout 5: Coffee Talk*. Walk the students through the instructions. Students will change partners three times and have different discussions with their peers. Spend approximately three to five minutes per section. When finished, call upon some students to read their answers to the last questions— what they agreed to regarding multiculturalism.

Activity 7: Multicultural Day Optional

Introduce and hand out *Handout 6: Multicultural Day* and *Handout 7: Multicultural Day Rubric*. Review the expectations, clarify and review the rubric. Ask students to describe what they think a perfect speech would look like. Then you could model some things not to do (i.e., read with speech in front of your face so the class can't see you, shifting back and forth, speaking really quietly, pacing back and forth or talking with your back to the class). Also, give your students *Handout 8: Oh Canada, Eh?* Explain that this is where they will keep track of what they learned and who has presented. This will be collected at the conclusion of all multicultural presentations.

The Multicultural Day will most likely take two classes to complete. Be clear about your expectations and the due date. Tell the students that they must all be ready to go on the first day. Ensure all those students who brought food or large props do their presentation first. The keeners will be ready for the first day and the others will have the opportunity to go on the second day. It is always a good idea to assign this towards the end of the week so that the students have a weekend to get organized

RESOURCES

Activity 1: Application of the Charter

Copy of the Canadian Charter of Rights and Freedoms

Activity 2: Case Studies and Charter Rights

Handout 1: Case Studies and Charter Rights

Handout 2: Legal and Illegal Searches in School

Activity 3: Legal Rights under the Charter

Handout 3: Legal Rights under the Charter

Activity 5: What is Multiculturalism and Equality Rights

Handout 4: Multiculturalism Quotes and Equality Rights

Activity 6: Coffee Talk

Handout 5: Coffee Talk

Activity 7: Multicultural Day *Optional*

Handout 6: Multicultural Day

Handout 7: Multicultural Day Rubric

Handout 8: Oh Canada, Eh?

ASSESSMENT

Activity 1: Application of the Charter

This activity is designed to encourage thoughtful discussion of the balance between the expectation of privacy held by students, and guaranteed under the *Charter* and the right of school administrators to maintain a safe, drug and weapon free learning environment. Participation in the discussion can be graded as appropriate.

Activity 3: Legal Rights under the Charter

Answer Key: Handout 3: Legal Rights under the Charter:

1. *False*
2. *True*
3. *False*
4. *True*
5. *True*

Activity 6: Coffee Talk

Collect the Handout 5: Coffee Talk for formative assessment.

Activity 7: Multicultural Day *Optional*

Use Handout 7: Teacher Evaluation Multicultural Day Rubric to evaluate each student individually and collect Handout 8: Oh Canada! Eh? Students will give a mark out of five for each of the students. You can use their marks to form your final mark out of 25.

ENRICHMENT

Legal Rights

1. Contact a school board official in the Abbotsford School District and conduct a brief interview on the use of drug sniffing dogs in the district's high schools. Prepare your questions in advance and be respectful of the position taken by the official. You will find contact information on the website <http://www.sd34.bc.ca>
2. Conduct research on a precedent-setting case from the Supreme Court of Canada on one or more of the legal rights found in s. 7-14 of the *Charter*. Prepare a summary of each case, including parties involved, issue, legal ruling and final judgment. You will find the website <http://canlii.org/> very useful for searching out digital copies of important SCC decisions.
3. Research the protection of legal rights in Canada pre-*Charter*. Rights such as habeas corpus have existed for several centuries in English Common law. Write a report outlining if and how these rights were protected in law or practice before 1982. See *British North America Act, 1867*.
4. Research legal rights protection in the United States and create a compare and contrast chart between Canadian and American legal rights. You find the legal rights of Americans protected under the Fourth to Eighth Amendments to the Constitution of the USA. <http://www.usconstitution.net/const.html>
5. Students can research and report on any number of cases related to student legal rights and the *Charter* outside of the school context. Start with a recent decision of the Supreme Court of Canada in *R. v. Kang- Brown, (2009) SCC 18*.
6. Attend a school board (board of trustees) meeting in your school district and direct a question at the board with respect to the use of drug sniffing dogs. Report back with the response from the board. Alternatively you can write (email) a trustee with your question and report back on their response. <http://www.bcsta.org>

Equality Rights

1. Watch Canadian Identity video (Classroom Videos).
2. Listen to the "I am Canadian" Molson Canadian Advertisement and then write your own ideas for an ad. (<http://www.youtube.com/watch?v=Dzn0UiiOYLs>).
3. Listen to the Spirit of the West's song "Far Too Canadian" and discuss the meaning of the lyrics.

4. Create: a poem, song/rap, collage with words and images or a final summary paragraph with the topic — “What is a Canadian?”
5. Find out what is happening in your community during Citizenship and One World Week and report back to the class on activities they can take part in.