

Key Information:

Date: Wednesday, Oct 21: 3-6 PM & Thursday, Oct 22: 1-3 PM

Location: The Medium Office, UTMSU

Register for a timeslot: <https://docs.google.com/spreadsheets/d/e/>

Instructions:

Read the **scenario** and the **two Charter provisions** below.

Two Charter interests are in direct **tension**. You **must** determine which should receive **greater protection** in **this** particular situation.

Charter Provisions:

Section 2(b) – Freedom of Expression

“Everyone has the following fundamental freedoms: freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.”

Section 7 – Life, Liberty and Security of the Person

“Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

Relevant Case Law:

Grant v. Tortsar Corp., 2009 SCC 61

The Supreme Court Of Canada recognized the defense of responsible communication on matters of public interest. The analysis asks:

1. Is the publication about a matter of public interest?
2. Was the communication responsible? In assessing responsibility, relevant considerations include the seriousness of the allegation, the public importance of the matter, the urgency of publication, the status and reliability of the sources, whether the affected person’s side of the story was sought and accurately reported, whether including the disputed statement was justified, and any other relevant circumstances.

The case emphasizes the importance of protecting expression concerning matters that legitimately concern the public, while also requiring publishers to act responsibly when serious allegations may harm an individual's reputation.

Sherman Estate v. Donovan, 2021 SCC 25

The Supreme Court recognized that privacy and personal dignity can justify limits on court openness in sufficiently serious circumstances. A person seeking such a restriction must establish a serious risk to an important public interest, show that the order is necessary because a reasonable alternative will not adequately address that risk, and demonstrate that the benefits of the order outweigh its harmful effects, including its impact on freedom of expression and court openness.

The court also explained that privacy concerns become particularly significant where disclosure affects information sufficiently sensitive to strike at a person's "biographical core" and meaningfully threaten their dignity or integrity.

Dagenais v. Canadian Broadcasting Corp., [1994] 3 S.C.R. 835

The Supreme Court held that courts should not automatically give one Charter right priority over another. Where a court order would restrict expression, competing rights must be balanced, and any restriction should go no further than necessary to protect the competing interest.

R v. Oakes, 1986 1 S.C.R. 103

Provides a four-step legal framework used by Canadian courts to determine if a government action infringed upon a right protected by the *Canadian Charter of Rights and Freedoms* can be legally justified under Section 1. This case established that the burden of proof is entirely on the government, as it must show that a limit of a right is reasonable and demonstrably justified in a free society. The four steps are the following, and all steps must be satisfied for the infringement to be justified;

1. Pressing and substantial objective: the objective being pursued is urgent, important, and addresses a real societal concern.
2. Rational connection: the measures chosen are logically and rationally connected to achieving the objective.
3. Minimal impairment: the action impairs the targeted Charter right as minimally as possible.
4. Proportionality or balancing: the overall positive benefit of the action in reaching its objective must outweigh the negative, harmful effect the action has on the individual's Charter right.

Scenario:

Eight years ago, Alex Morgan was charged with the murder of a close friend. The case attracted significant national attention. The prosecution alleged that Alex was the last known person to see the victim alive and relied heavily on circumstantial evidence, including text messages, witness testimony, and inconsistencies in Alex's initial statement to police. Alex maintained their innocence throughout the proceedings.

After a lengthy trial, Alex was acquitted. No other person has ever been charged; the murder remains unsolved. Several years later, a documentary company began producing a series about the case. The documentary examines the police investigation, the prosecution, the defence, media coverage, and why the case remains unresolved. The filmmakers intend to use Alex's real name, photographs, portions of publicly available courtroom footage, and interviews with people involved in the original investigation.

The documentary does not state that Alex committed the murder. However, it includes interviews with individuals who continue to believe Alex was responsible, as well as others who argue that the investigation was focused too heavily on Alex and ignored alternative suspects. The documentary repeatedly reminds viewers that Alex was acquitted and is legally presumed innocent.

The filmmakers reviewed the publicly available court record and attempted to verify factual claims made by interviewees against material from the original proceedings. Some interviewees, however, discuss their own interpretations of the evidence and events surrounding the investigation, which cannot be independently established as fact. The filmmakers distinguish these opinions from established facts within the documentary. The filmmakers also contacted Alex before completing the documentary, explained the general allegations and issues that would be discussed, and offered Alex an opportunity to participate in an interview or provide a written response. Alex declined to participate but asked that their identity be concealed.

Alex learns about the documentary before its release. **The documentary must be submitted to a government film-review agency before it can be publicly broadcast. The agency is responsible for reviewing films and documentaries for compliance with applicable broadcasting standards. After reviewing the documentary, the agency informs the filmmakers that it will not approve the documentary for broadcast unless Alex's real name is replaced with a pseudonym and all photographs and other identifying images of Alex are obscured.**

The agency does not object to the documentary's discussion of the murder, the police investigation, the trial, the evidence presented in court, the prosecution's theory, criticism of the criminal justice system, or the fact that Alex was charged and later acquitted. Its only objection is that Alex's identity is revealed. The agency expressly

threatens to withhold approval for broadcast if the filmmakers refuse to anonymize Alex.

The filmmakers refuse to make the changes. They argue that the government's condition prevents them from communicating the documentary in the form they created and constitutes a restriction on their freedom of expression. The filmmakers challenge the government's decision in court and argue that the agency's requirement violates s. 2(b) of the Canadian Charter of Rights and Freedoms.

Alex has moved to another city since the acquittal, established a career, and largely disappeared from public attention. Alex argues that renewed national exposure would permanently reconnect their identity to a murder for which they were acquitted. They also provide evidence that the original proceedings caused significant psychological distress and argue that being publicly scrutinized again would seriously affect their security and ability to rebuild their life.

The government defends the film-review agency's decision by arguing that requiring Alex's identity to be concealed protects Alex from serious and potentially permanent harm while imposing only a limited restriction on the documentary. The government emphasizes that the filmmakers remain free to discuss virtually every substantive aspect of the case.

The government does not prohibit discussion of:

- The murder
- The police investigation
- The trial
- The evidence presented in court
- The prosecution's theory
- Criticism of the criminal justice system
- The fact that a person was charged and later acquitted

The government argues that the restriction is therefore narrowly tailored: the documentary may still communicate the entire story, but it cannot reveal the identity or recognizable image of the acquitted individual.

The filmmakers argue that concealing Alex's identity would nevertheless materially alter the meaning and impact of the documentary. They argue that Alex was not merely an incidental person connected to the case but was the individual who was formally charged, prosecuted, and acquitted in a public criminal trial.

They argue that concealing Alex's identity would make it more difficult to accurately examine how police, prosecutors, journalists, and the public treated Alex during the investigation. They also argue that the justice system itself is part of the story. In their view,

the public should be allowed to examine how a real person became the focus of a major criminal prosecution and whether the system treated that person fairly.

They further argue that identifying Alex gives the documentary historical and journalistic accuracy, particularly because Alex's identity was already publicly connected to the prosecution and remains available in public records.

The filmmakers argue that the government has therefore directly interfered with their ability to communicate their chosen message and that the restriction must be justified under the Oakes test. The government responds that even if the requirement limits the filmmakers' freedom of expression under s. 2(b), the limit is justified under s. 1 because it serves the important objective of protecting an acquitted individual from renewed and potentially serious harm while minimally interfering with the documentary's broader discussion of the criminal justice system.

Prompt:

Which Charter right should receive greater protection in these circumstances?

- A) Section 2 (b): Freedom of expression, allowing the documentary to identify Alex and use truthful material from the public criminal proceedings

OR

- B) Section 7: Security of the person, allowing Alex to require the documentary to conceal their identity after having been acquitted?

You must choose one.

You must engage with the case law given to you in your submission; please refrain from consulting outside sources and rely only on the provided cases and the degree of information provided.

Guidelines:

You may consider:

- The purpose and importance of each Charter right
- Whether the information being published is truthful
- Whether an acquittal should affect how a person may later be portrayed publicly
- The difference between reporting historical events and continuing to associate someone with an allegation
- Whether concealing the person's identity would materially weaken the documentary
- Whether the public has a legitimate interest in knowing the person's identity
- Whether a person's right to move on from an accusation should ever outweigh the public's ability to discuss a real criminal case
- The broader consequences your position could have for future documentaries, journalism, and public discussion
- You must ultimately select one right that should prevail
- You may not avoid the issue by simply saying that both rights should be balanced equally

You do not:

- Need to cite cases directly; rather, state the name of the case (R v. Oakes, for example) when referencing.
- Need to consult outside sources

Guidelines for your submission:

- There is no predetermined correct answer
- Mooters have creative liberty in how they structure their argument. There is no required format.
- Mooters must directly engage with the question and the facts provided
- Mooters must take a clear position on which Charter right should receive greater protection in the circumstances
- Mooters cannot simply conclude that both rights are equally important in the scenario
- Mooters must be able to define any legal terms used in their submissions.

Requirements for the mooters:

- Business casual
- Mooters must come prepared to present their submissions off-script
- Mooters' submissions must be 3 minutes long
- Mooters will be interrupted and asked questions mid-submission, and they must engage with each question to the best of their abilities
- When asked a question, mooters should immediately stop and listen
- Mooters must be respectful and kind at all times
- Mooters should have fun!!
- Mooters should aim to be as professional as possible

- Mooters must address the bench as “*Justice (s).*”
- Mooters should maintain eye contact with the judges and avoid reading directly from their written work for the entire presentation.

Rubric:

Submissions		/45
Presentation and Reliance on Notes		/15
Interaction with the Bench		/15
Persuasiveness		/15
Research & Knowledge		/40
Use of Precedents		/20
Understanding of the Case		/20
Formalities		/15
Time Management		/5
Professionalism and Demeanor		/5
Submission Structure (Introduction, Roadmap, Conclusion)		/5
Penalties		
Rule Violation		-5 points
Repeated Rule Violation		-10 points
Total		/100

Try-Out Breakdown:

At the start of each tryout, a Justice will:

1. Welcome you and ask for your name.
2. Confirm that you may begin.
3. Start the 3-minute timer.

During Your Tryout:

- The Justice Bench will observe your performance and record their notes and observations.
- Mooters will have 3 minutes to present and defend their position
- Judges may interrupt the mooter at any point during the presentation to ask questions
- When interrupted, mooters must stop speaking, listen to the full question, answer it directly, and then continue their argument
- Judges may challenge an argument, change a fact, introduce a hypothetical, or ask the mooter where they would draw the line

After Your Tryout:

- The Justice Bench will score your performance out of 10.
- We will not be providing individual feedback or taking questions following your tryout.
- Please hand in a printed copy of your submission with your full name clearly written at the top of the page. Failure to have your full name written on your submission will disqualify your tryout.
- The Justice Bench will thank you for coming out and dismiss you.
- The next mooter will enter and begin their tryout.

Selection Process:

We will be selecting **20** students for this year's Competitive Team. The **20 highest scores** make the competitive team. Should there be any issues, final decisions for the Competitive Team will be determined by **majority vote** of the Justice Bench.

Results will be sent out on **Monday, October 26, 2026**, regardless of whether you made the team or not.

Individual scores and feedback will **not** be shared with mooters following the release of tryout decisions.

Questions? Please email us at moot@utmsu.ca! Best of luck preparing for tryouts!