

## Thank you for participating in CCLET's 2024-2025 Bernard Chernos Contest!

We are thrilled to have you joining the contest this year. Below, you will find a brief discussion of CCLET's Acorn Test, which may be helpful in framing your arguments, whether in video or essay format. Next you will find each of the challenge scenarios for 2024-2025, followed by a series of questions you may wish to consider when substantiating your positions. Good luck!

### The Oakes Test and the Acorn Test

When judges decide how to resolve legal disputes, they often rely on legal tests. These tests can be thought of as analytical tools that help them come to a fair decision, and they usually take the form of a set of questions or points to consider. In 1986, the Supreme Court of Canada (SCC) considered the case of *R v Oakes*, who was charged with drug-related criminal offenses. Mr. Oakes challenged the validity of the criminal law itself, so the SCC had to determine **how to decide** whether that law violated his rights under the *Canadian Charter of Rights and Freedoms* and, if so, whether that violation was reasonable. The result of this was the Oakes Test, which remains one of the most frequently used tests in Canadian courts. Courts use the Oakes Test to determine whether, in accordance with Section 1 of the *Charter*, a limitation on a *Charter* right is reasonable and justifiable.

CCLET developed the Acorn Test as a simplified version of the Oakes Test. The Acorn Test poses a set of questions we can use to determine whether a rule, policy, law, or limitation is reasonable and fair. [Please also refer to our Acorn Test document in the Basic Elements section of the contest instructions.] The questions are:

1. What is the purpose of the limit?
  - *What problem is it trying to solve?*
  - *How important is that problem?*
2. Does/will it work?
  - *Does/will it achieve what it is intended to do?*
3. What else does it do?
  - *Does it cause other problems?*
  - *Could it meet its objectives without causing other problems?*
  - *Does it do more harm than good?*

In other words, if there isn't a good reason for a rule, or the rule won't work, or if the rule will do more harm than good, there is a strong argument that it is probably unreasonable and unfair! In your analysis, remember that the questions always apply to the rule, law, action or limitation being imposed by the government or authority, and not the parties responding to that rule.

## Option One

According to the *Canada Elections Act*, the current federal voting age in Canada is set at 18 years old, but a group of young people are challenging this age-based restriction in court and advocating to lower the voting age to sixteen. Among other arguments, they have highlighted that denying younger Canadians the right to vote violates Section 3 (voting rights) and Section 15 (equality rights) of the *Charter of Rights and Freedoms*. Where do you stand on the issue of lowering the voting age from 18 to 16? Back up your position with relevant evidence, address counterarguments, and evaluate the merits of their legal arguments.

Some questions to consider:

- What is the role of voting in supporting Canada's democracy?
- How effective is it in this role?
- How is voter eligibility restricted?
- What reasons are there for these restrictions?
- Does eligibility ever change? Why or why not might this be?
- What is the difference between "enumerated" and "analogous" grounds within section 15 of the *Charter*?

## Option Two

Your public high school has recently banned the wearing of any political symbols on school grounds, citing potential hate speech as the reason. Your student council organizes a sit-in at the principal's office to protest this ban. The school's administration decides to suspend all participants from the sit-in and threatens to expel students who continue to protest the political symbols ban. What *Charter* rights are at play here? Does the ban on political symbols violate students' freedom of expression? Should students be allowed to protest the ban?

Some questions to consider:

- Does the school's administration have a valid concern? What harms might come from exposure to hate speech?
- How is "hate speech" defined in Canada? Would this definition work in this case?
- Do schools already have measures or regulations in place to deal with these concerns?
- Are these measures adequate?
- Should the school react to the *potential* for hate speech in the same way as it reacts to actual evidence of hate speech?
- What is a "political symbol"?
- Are school rules the same as laws in general? Is there a reason for a higher or lower degree of caution in a school setting?
- Are there potential benefits to allowing political symbols in school settings?
- Which is a more serious infringement: the ban, or the threat to punish protest?

## Option Three

Bail is the term used for when a person in Canada charged with a criminal offence is allowed to remain in the community, rather than in detention, while they wait for their trial. The burden is usually on the government to show why an accused person should be denied bail. However, the Premier of the province of New Island (NI) is pushing for changes to the bail system that would make it so that the burden would shift to the accused to show why they should be released. Do you support the Premier's proposal? Why or why not? What *Charter* rights and freedoms are at play?

Some questions to consider:

- How does the bail system work in Canada? Does the reality match what most people believe?
- Which *Charter* rights are most directly linked to bail?
- When does the burden currently shift to the accused to show why they should be released while awaiting trial?
- Under what circumstances (or "grounds") can a judge or a justice of the peace usually deny bail to an accused person?
- Which of these might align with the changes the Premier is seeking?
- How long might a person be incarcerated if denied bail?
- How frequently are people charged with new offenses while released on bail?
- What consequences might the proposed changes have for accused persons? Might they impact some accused persons and/or groups differently than others?