

Backgrounders

BACKGROUND LISTING

B-1 Canada's Constitution

B-2 Economics

CHAPTER 1

B-3 Canada's Federal Political System

B-4 The Electoral Process

B-5 Majority and Minority Governments

B-6 The Supreme Court

B-7 The *Federal Accountability Act*

CHAPTER 2

B-8 The Criminal Code

B-9 What Was the Intention of the *Juvenile Delinquents Act*?

B-10 What Was the Intention of the *Young Offenders Act*?

B-11 What Was the Intention of the *Youth Criminal Justice Act*?

B-11A What Was the Intention of Restorative Justice?

B-12 What Was the Intention of Sentencing Circles?

CHAPTER 3

B-13 Charter of Rights and Freedoms

B-14 Role of Women

B-15 Internment

CHAPTER 4

B-16 Collective Rights

B-17 Aboriginal Rights

B-18 First Nations & the *Indian Act*

B-19 Treaties

B-20 Métis Legislation

B-21 Residential Schools

B-22 Protocol for First Nations, Métis and Inuit Elders

B-23 Language Rights

CHAPTER 5

B-24 Immigration and Rights

B-25 Immigration History

B-26 Some Immigration Issues, Past and Present

CHAPTER 6

B-27 Mixed and Market Economies

B-28 Economic Growth

B-29 Comparisons between Canadian and U.S. Economic Systems

B-30 Labour and Unions

B-31 The Hershey Plant Closure

B-32 The Winnipeg General Strike

CHAPTER 7

B-33 Consumerism

CHAPTER 8

B-34 Health Care

B-35 Social Safety Net

B-36 Taxation

B-37 Political Parties and Platforms in Canada

CHAPTER 9

B-38 Environmental Issues and Policies

B-39 Climate Change

B-40 An Inuit Perspective on Climate Change

B-41 Biodiversity

B-1 CANADA'S CONSTITUTION

I. Purpose

The 2007 Grade 9 Social Studies Program of Studies states the following:

“Grade 9 students will analyze the relationship between Canada’s political and legislative processes and their impact on issues pertaining to governance, rights, citizenship and identity.”

Therefore, the purpose of this document is to provide teachers with background on Canada’s constitution in order to better understand:

- the evolution of Canada’s constitution;
- Canada’s political system (as set out in the constitution);
- Canada’s Charter of Rights and Freedoms (which is part of the constitution);
- individual and collective rights (as set out in the Charter and the constitution)
- the rights of Aboriginal peoples (as set out in the Constitution).
- the rights of Official Language Groups (as set out in the Charter).

This “Constitutional Backgrounder,” therefore, is intended to support the teaching and learning of **General Outcome 9.1, Issues for Canadians: Governance and Rights**, (*“Students will demonstrate an understanding and appreciation of how Canada’s political processes impact citizenship and identity in an attempt to meet the needs of all Canadians.”*), which encompasses the following specific outcomes:

VALUES AND ATTITUDES OUTCOMES

STUDENTS WILL:

- 9.1.1 appreciate the impact of the Canadian Charter of Rights and Freedoms on rights and governance in Canada;
- 9.1.2 appreciate the various effects of government policies on citizenship and on Canadian society;
- 9.1.3 appreciate how emerging issues impact quality of life, citizenship and identity in Canada.

KNOWLEDGE AND UNDERSTANDING OUTCOMES

Note: These outcomes have been abbreviated for the purposes of this document. To consult the program of studies in its entirety, please visit the Alberta Education website.

STUDENTS WILL:

- 9.1.4 examine the structure of Canada’s federal political system;
- 9.1.5 analyze the role that citizens and organizations play in Canada’s justice system;
- 9.1.6 assess, critically, the impact of the Canadian Charter of Rights and Freedoms on the legislative process in Canada;
- 9.1.7 assess, critically, how the increased demand for recognition of collective rights has impacted the legislative process in Canada;
- 9.1.8 assess, critically, how legislative processes attempt to address emerging issues of immigration.

II. Understanding Canada's Constitution

A. Introduction to Political Systems

1. GENERAL

All societies have some form of government. In other words, all societies have some way of establishing rules, of determining how the rules are made and implemented, of deciding whether to accept or modify existing rules, and of dealing with those who do not respect the rules. Without some form of government, a society would be in a state of anarchy. Having a form of government not only establishes order in society, contemporary governments generally also provide services to those whom they govern.

2. CLASSIFYING POLITICAL SYSTEMS

One way of classifying political systems is according to those who hold power. Using this criterion, political regimes can be classified into two main categories:

- **Democracies:** where those who govern do so with the consent of those who are governed. In other words, it is the citizens who hold the power to govern, and who play a role in decision-making.
- **Dictatorships:** where those who govern (one person or a few people) do so without the consent of those who are governed. In other words, those who govern hold all the power to do so, and the role of citizens is limited to obeying decisions made by those in power.

This can be represented on a political spectrum:



There are other ways of classifying political systems, parties and currents of thought. Some criteria for classification include:

- degree of equality amongst citizens (e.g., communism, socialism, fascism);
- degree of willingness to change the current political system (e.g., radical, liberal, moderate, conservative, reactionary).

As Canadians enjoy a high degree of participation in the political process, Canada is considered a democracy. However, democracy itself can take several forms.

3. TYPES OF DEMOCRACIES

Generally speaking, liberal democracies share common values such as:

- **a belief in the value and dignity of the individual;**
- **political pluralism**—a recognition and acceptance of a broad range of political views, resulting in a range of political parties from which to choose when voting and in an institutionalized opposition to the government (i.e., within the country's legislature, there would be members of the governing party and members of opposition parties);
- **majority rule, with respect for minority rights;**

- **the rule of law** (i.e., respect for the constitutional rules that govern the state; the law is supreme, and the government of the state must obey it);
- **a separation of powers** (i.e., there exists a separation between the legislative, executive and judicial bodies of government to avoid a concentration of power that might lead to tyranny).

Three examples of liberal democracies: Canada, Britain and the U.S.

	Canada	Great Britain	United States
Type	Constitutional Monarchy (Federation)	Constitutional Monarchy (Unitary state)	Republic (Federal state)
System	Parliamentary democracy	Parliamentary democracy	Presidential system
Head of State	Monarch (Governor General)	Monarch	President
Head of Government	Prime Minister	Prime Minister	President
Executive Power	<p>Dual:</p> <ul style="list-style-type: none"> * Head of State * PM & Cabinet (Appointed by PM) <p>The executive power rests in the Head of State (the Queen, as represented by the Governor General, or Lieutenant Governor in the provinces) who acts (almost exclusively) on the advice of her ministers (a.k.a. the Prime Minister (or Premier) and his/her cabinet).</p> <p>Appointments to Cabinet are made by the Governor General (or Lieutenant Governor) on the advice of the Prime Minister or Premier.</p> <p>Members of the executive are elected members of Parliament (or very occasionally appointed members from the Senate).</p>	<p>Dual:</p> <ul style="list-style-type: none"> * Head of State * PM & Cabinet (Appointed by PM) <p>The executive power rests in the Head of State (the Queen) who acts (almost exclusively) on the advice of her ministers (a.k.a. the Prime Minister and his/her cabinet).</p> <p>Appointments to Cabinet are made by the Queen on the advice of the Prime Minister.</p> <p>Members of the executive are elected members of Parliament (or very occasionally appointed members from the House).</p>	<p>President</p> <p>The President does not act alone; he/she appoints a cabinet, the members of which are not elected.</p>
Legislative Power	<ul style="list-style-type: none"> * Governor General (appointed by Monarch—5 yr term) BICAMERAL (2-CHAMBER) PARLIAMENT: * Senate: 105, appointed—to age 75 * House of Commons: 308 MPs elected for up to 5-year term 	<ul style="list-style-type: none"> * Monarch BICAMERAL (2-CHAMBER) PARLIAMENT: * House of Lords: 745, appointed * House of Commons: 646 MPs elected for up to 5-year term 	<p>BICAMERAL (2-CHAMBER) CONGRESS:</p> <ul style="list-style-type: none"> * Senate: 100 elected (2 from each state) for 6-year term * House of Representatives: 435 elected for 2-year term
Judicial Power	<p>Supreme Court of Canada</p> <ul style="list-style-type: none"> * 9 judges appointed (by the Gov. Gen. on the advice of the PM and Cabinet) — can serve to age 75 * Other tribunals— Federal Court, Provincial Courts 	<p>The Supreme Court of the United Kingdom was established in law by the <i>Constitutional Reform Act 2005</i>. It will begin operating in 2009.</p> <p>The new judges will not be members of the House of Lords.</p>	<p>Supreme Court</p> <ul style="list-style-type: none"> * 9 judges chosen by the President, with approval by Senate

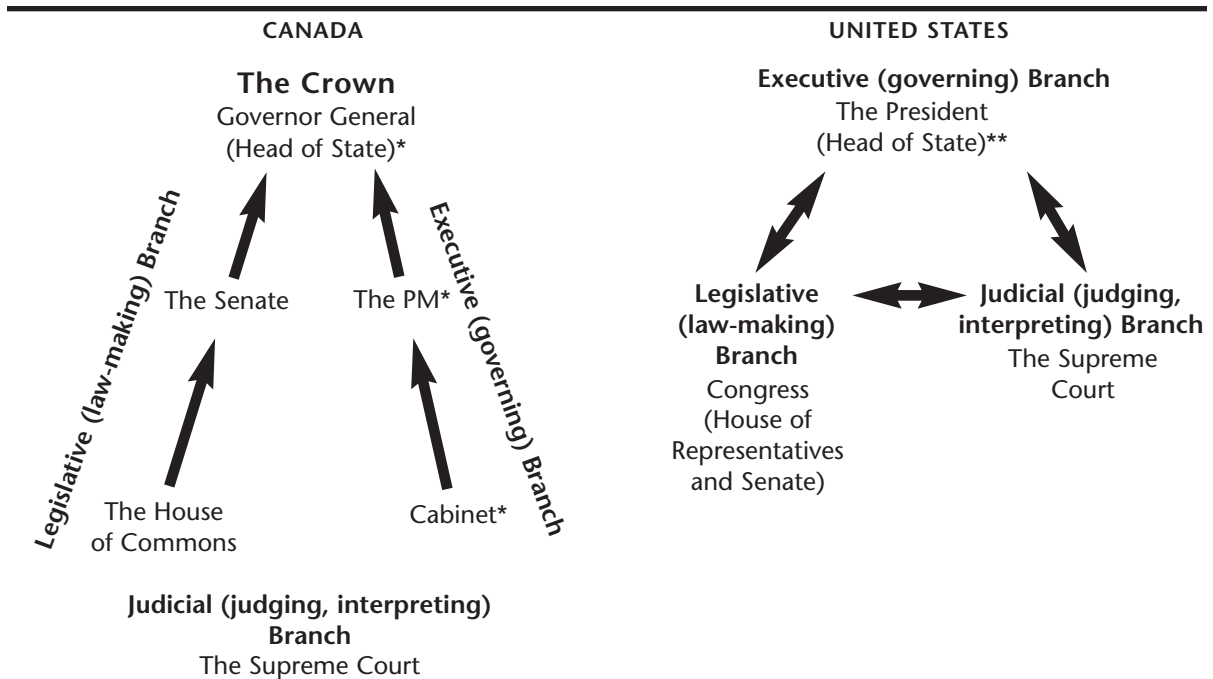
4. A COMPARISON: CANADA AND THE UNITED STATES

Other than the differences already mentioned above, one of the main distinguishing features between the Canadian parliamentary system and the American presidential system is in the relationships between institutions that embody the three powers of government. The three powers of any government are:

- **legislative** (the power to make laws);
- **executive** (the power to govern according to the law);
- **judicial** (the power to judge or interpret the law).

In the 1700s, during the “Age of Enlightenment,” the French philosopher Montesquieu wrote that liberty is most effectively safeguarded by the strict separation of these three powers of government into different bodies or branches of government. If all three powers are held by one person, he argued, the political regime can result in a tyranny.

This idea of the “strict separation of powers” was incorporated into the framing of the U.S. Constitution in the late 1700s, and provides for a system of “checks and balances” between the branches or powers of government. Canada, on the other hand, adopted a form of government “similar in principle to that of the United Kingdom,” where there isn’t a strict separation between the three branches (or powers) of government.



**As one can see, there is some overlap:*

- *The Gov. Gen. plays a role in both the legislative and executive branches*
- *The PM and Cabinet, who have the power to govern (exec.), are also MPs in the House of Commons (leg.).*

*** The President does not act alone; he/she also appoints a cabinet.*

THE POWERS OF GOVERNMENT

LEGISLATIVE

- Legislative power is held by an assembly of elected people (and can include appointed representatives from the Senate). Its function is to represent citizens and to act as intermediaries between citizens and government, to discuss and pass laws, and to act as a check on the power of the executive branch.
- There are two types of assembly:
 - **unicameral**, as in provincial legislatures, where the people are represented by members who are elected in a “representation by population” system;
 - **bicameral**, where there are two assemblies, each based on a different type of representation. In Canada’s parliamentary system, the House of Commons is elected on a “representation by population” basis, while the Senate*, whose role is to represent minorities as well as regions, is appointed based on representation by region.

*Note: See student textbook, pp. 31–33.

EXECUTIVE

- The function of the executive is to govern according to the laws passed by the legislative branch—i.e., execute the laws; however, the executive often proposes bills to the legislative branch for its consideration.
 - In parliamentary democracies like Canada, the executive is chosen from the elected members of the legislative assembly and must at all times enjoy the “confidence” of the elected members. Where this confidence no longer exists (i.e., in a “vote of non-confidence”), the government must resign and an election is held. This comes from the principle of “responsible government” proposed by Lord Durham and implemented in 1848 in the “Province of Canada.”
- There are two ways of organizing executive power:
 - **one person executive**, as in the United States, where the President holds executive power and is the head of state;
 - **dual executive**, as in Canada and Great Britain, where two people share executive power: the Monarch (or Governor General) and the Prime Minister (along with Cabinet). The monarch is the head of state and the Prime Minister is the head of government.
- The relationship between executive and legislative branches of government differs between Canada and the United States. In Canada, the Prime Minister and his/her cabinet are all generally elected representatives in the executive, and the Governor General, while technically having the power to act on his/her own, generally takes the advice of his/her councilors (ministers of cabinet), acting as a member of both the executive and legislative branches. In the United States, the President is elected; however, members of the President’s cabinet are appointed, not elected, and deal with elected members of congress. (Note: the president and his/her appointed cabinet have a similar function to the executive branch in Canada and congress has a similar function to Canada’s legislative branch.)

JUDICIAL

- The function of the judicial power is to interpret laws and the Constitution, and to judge those who do not abide by the law or the Constitution (e.g., interpretation of Section 23 of the Charter, *Mahé v. Alberta* [1990]).
- The judiciary can declare laws “unconstitutional” (e.g., Official Language Rights in Manitoba [1985], which overturned the “Act to Provide that the English Language shall be the Official Language of the Province of Manitoba, 1890 [Man.]”).

- The judiciary is characterized by its independence. To ensure their independence, judges cannot be removed from their function except for very serious reasons. In that way, the judicial power is protected from political or government interference.
- There are some differences between how the judiciary is appointed in Canada and in the U.S. For example, judges for all courts in Canada (e.g., county, provincial, supreme, etc.) are appointed by the federal government (except courts of probate in Nova Scotia and New Brunswick). Supreme Court judges in Canada are specifically appointed by the Governor General on the advice of the national Cabinet, and hold office until they reach age 75. Judges in the Supreme Court in the U.S. are appointed for life by the President and confirmed by the Senate, and can continue to hold office “during good behaviour” (e.g., generally until they retire, resign, etc.).

CANADA	UNITED STATES
<ul style="list-style-type: none"> • There is not a strict separation of powers in Canada as in the United States; some people in government play a role in both the executive and legislative branches (e.g., Monarch [Governor General], Prime Minister and Cabinet Ministers). • To ensure checks and balances between the powers of government, Canada has had the principle of “responsible government” since 1848. In other words, the executive power (PM and Cabinet) must have the support of the legislative power (majority of MPs in the House of Commons) to stay in office. This system works also because of the principle of “party discipline”; i.e., MPs generally vote with their party, except in the case of “free votes”. • Only the House of Commons has “the power of the purse”; i.e., the power to tax and spend (the Senate does not have this power). • The Judicial Power can declare a law or actions by the government “unconstitutional.” <p><i>Legislative Branch: Parliament (H of C, Senate, Crown)</i></p> <p><i>Executive Branch: Crown, Prime Minister, Cabinet</i></p> <p><i>Judicial Branch: The judicial branch of government is more than the Supreme Court. In fact, the provincial federally-appointed s. 96 (of the Constitution) courts are constitutionally mandated, while the Supreme Court’s powers derive from regular legislation.</i></p>	<ul style="list-style-type: none"> • The U.S. system is characterized by a strict separation of powers; i.e., people in government occupy a position in only one of the branches (e.g., the President [executive power] is not a member of Congress [legislative power]). • Some examples of checks and balances between the branches of government: <ul style="list-style-type: none"> – the President names ambassadors and Supreme Court judges, but the choice must be approved by the Senate; – the President signs international treaties but these must be ratified by the Senate; – congress adopts laws, but the President may veto them. However, if Congress votes on the law again, a 2/3 majority suffices for enactment; – the President is the Commander-in-Chief of the armed forces, but the Senate votes on whether to go to war or not; – congress can impeach the President for treason or criminal activity; – the judicial power can declare a decision by the President “unconstitutional”; it can declare laws adopted by Congress “unconstitutional”; – Congress (both the House of Representatives and the Senate) has the power of the “purse” (the power to tax and spend). <p><i>Legislative Branch: Congress (H of R, Senate)</i></p> <p><i>Executive Branch: President</i></p> <p><i>Judicial Branch: Supreme Court</i></p>

B. The Evolution of Canada's Constitution

1. CONSTITUTIONS IN GENERAL

Generally speaking, a constitution outlines the guiding principles and basic rules for governing a political state, including descriptions of the different functions assigned to each governing body. Therefore, whichever party ends up in power as the government following an election, the way it governs is bound by the constitution. Many constitutions also include some kind of bill of rights, outlining the rights of citizens, as well as mechanisms to allow for amending the constitution itself.

TIME PERIOD/DATE	DEVELOPMENTS
Government before European presence in North America	As today, there were many diverse Aboriginal peoples living in what would become Canada, each with its form of government. Some of these practices, such as seeking consensus or the sharing of power in a confederation (e.g., the Iroquois Confederacy), had an influence on the framing of the U.S. and Canadian constitutions.
1608–1763	<p>New France: France established a colony—New France—originally along the St. Lawrence River and then extended its reach from the Atlantic, around the Great Lakes and south into what is now part of the U.S. Some elements of French colonial governance survive to this day, such as a distinct system of civil law in Québec.</p> <ul style="list-style-type: none"> • The Hudson's Bay Charter, 1670: From a British perspective, this created Rupert's Land and sanctioned the HBC's presence there on behalf of the British Crown. It established fur trading networks and alliances in what become the Canadian northwest. • Early Atlantic Area Settlements: In the 18th century, treaties, generally referred to as "Peace and Friendship" treaties, were made with First Nations, such as the Micmac, often to establish alliances in the transition from French to British rule. • Treaty of Paris, 1763: Following the defeat of French forces by the British army in Québec (1759) and the British takeover of Montreal (1760) as part of the Seven Years' War between France and Britain, Britain gained almost all of the territory of New France (exceptions: islands of St. Pierre and Miquelon). As part of the Treaty of Paris, Britain agreed to allow free practice of the Roman Catholic religion and to allow continued property rights in the newly British "Province of Quebec."
1763	<ul style="list-style-type: none"> • Royal Proclamation, 1763: This was the <i>de facto</i> constitution of Quebec until the <i>Quebec Act</i> was passed in 1774. The Royal Proclamation: <ul style="list-style-type: none"> – withdrew the privileged status of the Catholic Church; – ended French civil law; – encouraged British soldiers to settle in Quebec in large numbers; – prevented the expansion of the territorial borders of the British colonies in North America into the lands of First Nations peoples without an agreement between the First Nations peoples and the British Crown (the basis for the establishment of treaties being reached with First Nations and governments of Canada). <p>This aspect of the Royal Proclamation, 1763, was reaffirmed in the Constitution Act, 1982.</p> • Land surrenders: The process of settlement, and the influx of loyalists from America, led the colonial government in Upper Canada (later Canada West) to obtain land surrenders from First Nations in these regions, in accordance with longstanding British policy set out in the Royal Proclamation. Land surrenders are similar to treaties, but less comprehensive and generally dealt with small groups of Aboriginal peoples.

TIME PERIOD/DATE	DEVELOPMENTS
1774	<ul style="list-style-type: none"> • The Quebec Act, 1774: As several of the terms of the Royal Proclamation were seen as unacceptable by the French-speaking Catholic majority in Quebec, a new “constitution” was passed in 1774 which: <ul style="list-style-type: none"> – established new, larger boundaries for Quebec; – allowed the free practice of the Catholic faith in Quebec, also allowing Catholics to serve in public office; – established French civil law and British criminal law; – provided for the continued use of the French landholding system (seigneurial system).
1791–1837	<ul style="list-style-type: none"> • The Constitutional Act, 1791: This new constitution came about as a result of the large influx of British Loyalists during and after the American War of Independence (1775–83), many of whom settled in the British Province of Quebec, west of the French-speaking Catholic <i>Canadiens</i>. The Loyalists brought with them expectations of representative government, and the <i>Constitutional Act</i> was passed in 1791, which: <ul style="list-style-type: none"> – divided the province of Québec into two new provinces: Upper Canada (now S. Ont.) and Lower Canada (now S. Que.); – provided for an elected House of Assembly in each province, along with an appointed Legislative Council (often friends and family of the Governor), which could overrule the Assembly; – gave the Governor the power to withhold assent to bills passed by the House of Assembly and Legislative Council. • 1812—Creation of the Red River Colony: It set the course toward the <i>Manitoba Act</i>, 1870.
1837–1840	<p>Problems arose from the <i>Constitutional Act</i>, 1791:</p> <ul style="list-style-type: none"> • unclear division of jurisdiction between the governments of Britain and of the provinces of Upper and Lower Canada; • governors were allowed to spend funds from Britain without consulting provincial governments; • the executive (appointed Legislative Council) was not responsible to the elected House of Assembly, and could even dissolve the Assembly. The Councils often dismissed or refused to act upon legislation passed by the elected members of the Assemblies. <p>These problems contributed to rebellions in Upper and Lower Canada in 1837 and 1838, where the main demand was for “responsible government” (where those governing [the executive branch of government] need the support of the elected members of the legislative assembly [the legislative branch]). William Lyon Mackenzie and Robert Baldwin (Upper Canada) and Louis Joseph Papineau and Louis-Hippolyte LaFontaine (Lower Canada) were the main leaders for reform.</p> <p>Britain appointed John Lambton, Earl of Durham, as Governor General, with a mandate to investigate and report on the 1837–38 rebellions in Upper and Lower Canada. In his 1839 report, Durham remarked that he found “two nations warring in the bosom of a single state,” and made the following recommendations:</p> <ul style="list-style-type: none"> • that Upper Canada and Lower Canada be united in a single province, with the possibility of including the other British North American colonies later; • that one of the goals of this union would be the assimilation of the <i>Canadiens</i>, and English would be the language of the assembly of the new united “Province of Canada”; • that a united “Province of Canada” have “responsible government.”

TIME PERIOD/DATE	DEVELOPMENTS
1840–1848	<ul style="list-style-type: none"> • The Act of Union, 1840: <ul style="list-style-type: none"> – united Upper and Lower Canada as the “Province of Canada”; – created an assembly with an equal number of seats from Canada East (formerly Lower Canada) and Canada West (formerly Upper Canada), even though Canada East had a greater population; – made English the only language of the Assembly. • Louis LaFontaine and Robert Baldwin reacted to this legislation: <ul style="list-style-type: none"> – they formed a united party of Upper and Lower Canada Reformers; – LaFontaine insisted on speaking French in the Assembly and persuaded the British government to repeal the <i>Act of Union</i> clause prohibiting the official use of French; – Baldwin was determined that Francophones obtain “<i>justice upon precisely the same footing in every particular as ourselves (Anglophones)</i>”; – LaFontaine laid out the egalitarian reality of our society: “<i>the social equity which is the distinctive characteristic as much of the population of Upper Canada as of Lower Canada.</i>”
1848	<ul style="list-style-type: none"> • By 1848, Baldwin and LaFontaine had succeeded in convincing the British government that legislative power should rest in the hands of the elected assembly of the colony. • Starting in 1848, even though they were appointed by London, the Colonial governors were obliged to choose members of the Executive Council from those elected to the House of Assembly. • According to John Ralston Saul, “1848 was the moment when the very legitimacy of our society was switched from the colonial elites to the citizens.” • The Great Ministry of LaFontaine and Baldwin passed hundreds of laws that laid the foundation of our state, civilization and the idea of the public good. It included public universities, public schools, a professional civil service, beginnings of labour laws, vast legal reforms, railroads, and the post office. • Neither LaFontaine nor Baldwin wanted a monolithic government as in the United States, the potential of civil war, or fights with Aboriginal peoples.
1848–1867	<p>1850—Robinson Treaties: Secured major part of Upper Canadian Northwest from First Nations for government use; gave the crown huge sections of Lake Huron and Superior shorelines.</p> <p>Challenges for the British Colonies: During this period, there were several challenges facing the British colonies in North America, including:</p> <ul style="list-style-type: none"> – political problems (especially between Francophones and Anglophones in the Province of Canada over representation); – economic problems (limited markets for the goods of each colony); – military considerations (for protection against the United States). <p>In the 1860s, the idea of all the British colonies in North America (the Province of Canada, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, and British Columbia) joining to make a new country became popular. Three conferences were held that led to Confederation:</p> <ul style="list-style-type: none"> • The Charlottetown Conference, 1864: The politicians from the Province of Canada convinced the politicians from New Brunswick, Nova Scotia and Prince Edward Island to consider a larger union than just a “Maritime Union.”

TIME PERIOD/DATE	DEVELOPMENTS
1848–1867 (<i>cont'd</i>)	<ul style="list-style-type: none"> • The Québec Conference, 1864: During this conference, the leaders had to work out how the new country—a union of several colonies—would be run. The decisions they came to were called the Quebec Resolutions and included the following: <ul style="list-style-type: none"> – forming a central (federal) government in Ottawa whose power would be limited and balanced by the power of provincial governments; – any new constitution would be based on Britain’s parliamentary model; – any new “Canadian Parliament” would be bicameral (have an elected House of Commons and an appointed Senate, each with a different basis of representation); – any new “Canadian Parliament” would have English and French as official languages. • 1866—Colony of British Columbia: Vancouver Island was made a Crown Colony in 1849. In 1858, the discovery of gold on the mainland resulted in the founding of the Crown Colony of British Columbia. In 1866 the two colonies were merged. • The London Conference, 1866–1867: Leaders from New Brunswick, Nova Scotia and the Province of Canada met in London, England, to take the Quebec Resolutions and come up with a final agreement. The document they created was called the <i>British North America Act</i>. Once the British Parliament passed it, Confederation could go ahead, and a new country could be formed through the union of these colonies.
1867	<ul style="list-style-type: none"> • The <i>British North America Act, 1867</i> (called “<i>The Constitution Act, 1867</i>” since its patriation to Canada in 1982): <ul style="list-style-type: none"> – passed as an act of the British Parliament; – Canada was created as a “Dominion” on July 1, 1987 (Confederation); – Canada’s four provinces in 1867 were Ontario, Québec, New Brunswick and Nova Scotia; 1st PM = John A. Macdonald; – the <i>BNA Act</i> was a constitution that set out the areas of jurisdiction of the federal and provincial governments, and established the legislative, executive and judicial branches of Canada’s political system; – Parliament was to act for “peace, order and good government.” – Canada did not become a fully independent, sovereign country. <p>Exceptions to complete sovereignty included:</p> <ul style="list-style-type: none"> – recognition of the British monarch as the head of state; – Canada following Britain’s foreign policy decisions; – Britain’s Privy Council being able to overturn Canadian Supreme Court decisions; – Canada’s constitution (the <i>BNA Act</i>) being an act of the British Parliament.

2. CONSTITUTIONAL EVOLUTION IN CANADA TO 1867

3. THE BRITISH NORTH AMERICA ACT, 1867
(NOW CALLED “THE CONSTITUTION ACT, 1867”)

Along with defining the roles and functions of the legislative, executive, and judicial bodies of the federal and provincial governments, Sections 91 and 92 of the *BNA Act* also set out the areas of jurisdiction of the federal and provincial levels of government.

<p>SECTION 91— AREAS OF FEDERAL JURISDICTION</p>	<p>SECTION 92— AREAS OF PROVINCIAL JURISDICTION</p>
<p>Some main areas of federal responsibility:</p> <ul style="list-style-type: none"> • The Public Debt and Property • Regulation of Trade and Commerce • The Raising of Money by any Mode or System of Taxation • Postal Service • Militia, Military and Naval Service, and Defence • Navigation and Shipping • Fisheries • Currency and Coinage • Banking, Incorporation of Banks, and the Issue of Paper Money • Patents and Copyrights • Indians, and Lands reserved for the Indians • Naturalization and Aliens • Marriage and Divorce • The Criminal Law • Penitentiaries <p>Section 91 also states that “to make Laws for the Peace, Order, and good Government of Canada,” the federal parliament shall have jurisdiction over all matters not specifically assigned exclusively to the provincial legislatures in Section 92 of the <i>BNA Act</i>.</p>	<p>Some main areas of provincial responsibility:</p> <ul style="list-style-type: none"> • Direct Taxation for Provincial Purposes • The Management and Sale of the Public Lands belonging to the Province • The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities • Shop, Saloon, Tavern, Auctioneer, and other Licences in order to raise Revenue for Provincial, Local, or Municipal Purposes • Local Works and Undertakings • The Solemnization of Marriage in the Province • Property and Civil Rights within the Province • The Administration of Justice in the Province • Generally, all Matters of a merely local or private Nature in the Province <p>(In 1982, additions were made to include the exploration, development, conservation and management of non-renewable and forestry resources as an area of provincial responsibility.)</p>
<p>SECTION 93—EDUCATION</p> <p>Under the Act, the provinces are responsible for education. The federal government has education responsibilities on First Nations reserves. In the three territories, the federal government has delegated responsibility for education to the territorial governments, similar to provincial arrangements.</p> <ul style="list-style-type: none"> • The terms by which each Province entered Confederation determined the educational system; e.g., if a Province had denominational schools at that time, such as Protestant and Catholic schools with separate boards, those systems remained in force. • These rights could not be altered legislatively by either the Canadian Parliament or the legislature of the province. 	
<p>SECTION 133—USE OF ENGLISH AND FRENCH LANGUAGES</p> <p>Either the English or the French Language may be used by any person in the Parliament and courts of Canada and of the Legislature and courts of Québec.</p>	

4. CONSTITUTIONAL EVOLUTION IN CANADA, 1867–1982

The following changes were made to Canada’s constitution between the passing of the *British North America Act* in 1867 by Britain’s Parliament and the passing of the *Constitution Act* in 1982 by Canada’s Parliament.

TIME PERIOD/DATE	DEVELOPMENTS
1868	The government of Canada worked out the terms of the purchase of vast areas of land from the Hudson’s Bay Company (Rupert’s Land and the North-Western Territory).
1869	Red River Resistance: The government of Canada sent surveyors west to map and apportion the land, and began to encourage settlement of the West. The government ignored the land claims of the Métis and First Nations peoples who were already living in the region. Worried by the possibility that they might be pushed off their land, the Métis (led by Louis Riel) prevented the appointed Canadian governor from entering the region in 1869. The government of Prime Minister John A. Macdonald realized that the British had not yet ratified the transfer of the territories to Canada, so the Métis had not, in fact, broken any Canadian laws.
1870	The Province of Manitoba was created, with several key provisions: <ul style="list-style-type: none"> • no Métis land would be taken; • French and English would be official languages of the legislature; • Manitoba would have publicly-funded schools for Catholic (mostly French) and Protestant (mostly English) students.
1870	Rupert’s Land (most of modern-day northern Ontario and Quebec) and the North-Western Territory (modern day Manitoba, most of Saskatchewan and southern Alberta, and parts of Nunavut and the Northwest Territories) were admitted into Canada, following the purchase of land from the Hudson’s Bay Company by Canada.
1871	British Columbia joined Confederation.
1870s–1921	The numbered treaties from early 1870s through to 1921 (with “adhesions” to these treaties continuing on well past 1921).
1873	Prince Edward Island joined Confederation.
1885	The Second Métis Uprising (often previously referred to as The Northwest Rebellion)—an important moment of resistance by the Métis and several First Nations chiefs who did not want to take treaty. Ended with famous trials of chiefs like Big Bear and Poundmaker as well as Louis Riel (resulting in his hanging).
1898	Yukon was created as a territory of Canada.
1905	Alberta and Saskatchewan were created as provinces in Confederation.
1930	Natural Resources Transfer Agreements —become part of the Constitution. The Prairie provinces (and B.C.) were created without the full resources and powers of the original provinces in confederation. This set of agreements transferred beneficial ownership of provincial lands and resources to the provinces, and thus put them in the same place as the original provinces of confederation. The transfer also had implications for Indian harvesting rights under their treaties.
1931	The Statute of Westminster gave Canada sovereignty over its foreign policy (it no longer needed to follow Britain’s foreign policy decisions, and British law no longer applied to Canada).
1949	Newfoundland joined Confederation.
1949	Canada’s Supreme Court became “supreme”—prior to 1949, its decisions could be overturned by the Privy Council in Britain.
1982	Constitution (BNA Act) patriated from Britain’s parliament, and incorporated into Canada’s new <i>Constitution Act, 1982</i> (along with the Charter of Rights and Freedoms and an amending formula, among others).

5. THE CONSTITUTION ACT, 1982

Several new sections were added to the patriated Constitution in 1982.

Among these were:

- **The Charter of Rights and Freedoms** (Sections 1–34) (see part “C” of this document below).
- **Rights of the Aboriginal Peoples of Canada** (Section 35):
 - applies to First Nations, Inuit and Métis peoples;
 - existing Aboriginal and Treaty rights of the Aboriginal peoples of Canada are recognized and affirmed;
 - Aboriginal and treaty rights that survived until 1982 continue to exist today. As of 1982, these rights, as well as any rights created through land claim agreements, have become constitutionally protected. This means that the government cannot unilaterally extinguish these rights;
 - Aboriginal and Treaty rights are guaranteed equally to male and female persons. This is consistent with the guarantee set out in Section 28 of the Charter.

- **Equalization and Regional Disparities** (Section 36)

This section of the constitution reflects a commitment to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation. The key objectives are:

- to promote equal opportunities for the well-being of Canadians;
 - to further economic development to reduce disparity in opportunities;
 - to provide essential public services of reasonable quality to all Canadians.
- **Amending Formula** (Sections 38–49)

Any changes (amendments) to the Constitution can be made in Canada, since 1982, rather than in Britain. However, to make any changes, there is a specific approvals process. This process is deliberately difficult, to make sure that the rights of citizens remain paramount, and to ensure a wide consensus on any proposed amendments.

C. The Charter of Rights and Freedoms
(part of *The Constitution Act, 1982*).

SECTION	ARTICLES OR DESCRIPTION OF MAIN PROVISIONS	COMMENTARY
Guarantee of Rights and Freedoms	1. The <i>Canadian Charter of Rights and Freedoms</i> guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.	
Fundamental Freedoms	2. Everyone has the following fundamental freedoms: a) freedom of conscience and religion; b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; c) freedom of peaceful assembly; and d) freedom of association.	Charter cases: <ul style="list-style-type: none"> • section 2 (a)—Freedom of Religion * <i>Multani v. Commission Scolaire</i>: The kirpan case • section 2 (b)—Freedom of Speech <i>Canada (Attorney General) v. JTI-Macdonald Corp. (JTI)</i>: Tobacco advertising revisited * <i>R. v. Kouri, R. v. Labaye</i>: What constitutes criminal indecency? • section 2 (b)—Freedom of the Press * <i>Named Person v. Vancouver Sun</i> • section 2 (d)—Freedom to associate * <i>Health Services and Support—Facilities Subsector Bargaining Assn. v. British Columbia</i>: Union Rights
Democratic Rights	3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein. 4. No House of Commons and no legislative assembly shall continue for longer than five years (except during times of conflict, if agreed upon by 2/3 of the members of the assembly). 5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.	
Mobility Rights	6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada. (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right a) to move to and take up residence in any province; and b) to pursue the gaining of a livelihood in any province.	6. Everyone living in Canada can: – move to and take up residence in any province – work in any province. The rules of employment in that province may apply, such as provisions for affirmative action to give the socially or economically disadvantaged better opportunities.

SECTION	ARTICLES OR DESCRIPTION OF MAIN PROVISIONS	COMMENTARY
Legal Rights (not all are listed here)	<p>7. Everyone has the right to life, liberty and security of the person.</p> <p>8. Everyone has the right to be secure against unreasonable search or seizure.</p> <p>9. Everyone has the right not to be arbitrarily detained or imprisoned.</p> <p>10. Everyone has the right on arrest or detention</p> <p>a) to be informed promptly of the reasons therefore;</p> <p>b) to retain and instruct counsel without delay and to be informed of that right; and</p> <p>c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.</p> <p>11. Any person charged with an offence has rights including:</p> <p>a) the right to be informed without unreasonable delay of the specific offence;</p> <p>b) to be tried within a reasonable time.</p> <p>12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.</p> <p>14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.</p>	<p>7–14. These are basic legal protections that safeguard us in our dealing with the state and its machinery of justice. These rights are an extension of those included in the Canadian Bill of Rights of 1960. They include:</p> <ul style="list-style-type: none"> • right to life, liberty and security of person; • protect against unlawful search or seizure; • right to be informed immediately of specific offence if arrested; • right to retain counsel without delay; • to be tried within a reasonable time; • presumed innocent until proven guilty. <p>Any party or witness who does not understand or speak the language in which the proceedings are conducted, or who is deaf, has the right to the assistance of an interpreter.</p> <p>Charter Cases:</p> <ul style="list-style-type: none"> • section 7—the right to life, liberty, and security of the person <ul style="list-style-type: none"> * <i>Doe v. Alberta</i>: No right to not parent * <i>Health Services and Support—Facilities Subsector Bargaining Assn. v. British Columbia</i>: Union rights * <i>Morrow v. Zhang</i>—Alberta Court Strikes Down Damages Cap * <i>R. v. Hape</i>: Section 7 does not apply to extraterritorial searches * <i>R. v. Clayton</i>: Police searches for guns * <i>R. v. Rodgers</i>: The taking of DNA samples for government databanks * <i>Re B.C. Motor Vehicle Act</i>: The Right to Not be Arbitrarily Detained * <i>U.S.A. v. Ferras</i>: Evidence, extradition, & the Charter • section 8—the right to be secure against unreasonable search or seizure <ul style="list-style-type: none"> * <i>Hunter v. Southam Inc.</i>: Governments must use search warrants * <i>R. v. Rodgers</i>: The taking of DNA samples for government databanks • section 11 (c)—the right not to be compelled to be a witness in proceedings against yourself <ul style="list-style-type: none"> * <i>R. v. Rodgers</i>: The taking of DNA samples for government databanks • section 11 (d)—the right to be presumed innocent until proven guilty according to law <ul style="list-style-type: none"> * <i>R. v. Oakes</i>: The Oakes Test • section 12—the right not to be subjected to any cruel and unusual treatment or punishment <ul style="list-style-type: none"> * <i>R. v. Ferguson</i>—Supreme Court Upholds Mandatory Minimum Sentence and Refuses to Grant Constitutional Exemption

SECTION	ARTICLES OR DESCRIPTION OF MAIN PROVISIONS	COMMENTARY
Equality Rights	<p>15. (1) 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.</p> <p>(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.</p>	<p>15. These equality rights complement and add to the anti-discrimination provisions found in federal and provincial human rights legislation.</p> <p>This does not preclude any law, program or activity with affirmative action objectives to aid disadvantaged groups. The courts can decide whether grounds for affirmative action are discriminatory or not.</p> <p>Charter Cases:</p> <ul style="list-style-type: none"> * <i>Andrews v. Law Society of British Columbia</i> * <i>Health Services and Support—Facilities Subsector Bargaining Assn. v. British Columbia</i>: Union rights * <i>Morrow v. Zhang</i>—Alberta Court Strikes Down Damages Cap * <i>Vriend v. Alberta</i>—Gay Rights
Official Languages of Canada	<p>16–19. English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada and of New Brunswick, including their courts.</p> <p>20. Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where:</p> <ul style="list-style-type: none"> a) there is a significant demand for communications with and services from that office in such language; or b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French. 	<p>16–19. <i>“The people who speak French in this country are not minorities. That is what the Official Languages Act says and that is what I want to Constitution to say. They are Canadians who exercise a right to speak one of the Canadian languages.”</i></p> <p style="text-align: center;">— Richard Hatfield, Premier of New Brunswick, Dec 4, 1980</p> <p><i>“The federal Government and New Brunswick have demonstrated their commitment to official bilingualism in their jurisdictions.”</i></p> <p style="text-align: right;">— 1986 Chief Justice Brian Dickson</p> <p>20. This section guarantees the right to communicate with institutes of parliament or legislature; i.e., the head or main office of a federal organization, in the language of choice. For example, for major offices of the RCMP the Charter indicates that one may use either official language. These rights are limited when dealing with lower level offices.</p>

SECTION	ARTICLES OR DESCRIPTION OF MAIN PROVISIONS	COMMENTARY
Official Languages of Canada	<p>21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.</p> <p>22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.</p>	<p>21—Official Languages</p> <p>People in Quebec, New Brunswick and Manitoba will continue to have the right to use either French or English in the provincial legislatures and before the courts of those provinces. These rights were established in the <i>BNA Act</i> of 1867 and the <i>Manitoba Act</i> of 1870.</p> <p>Section 22—Languages other than official languages</p> <p>Political rights related to languages that are not English or French...Canada’s Aboriginal peoples have certain customary language rights.</p> <p>The governments of the Yukon, Northwest Territories and Nunavut allow Aboriginal languages to be spoken in their legislatures.</p> <p>Issue: disappearance of Aboriginal languages.</p> <p>Senator Serge Joyal in Canada’s Senate on May 18, 2005, suggested that Aboriginal languages, by custom, should have rights as to their usage under Section 22. Senator Joyal represents the district of Kennebec which covers in part the great region of the <i>Bois-Francs</i> in the heart of the province of Québec.</p>
Minority Language Education Rights	<p>23. (1) Citizens of Canada:</p> <p>a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside; or</p> <p>b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.</p> <p>(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada have the right to have all their children receive primary and secondary school instruction in the same language.</p>	<p>23.</p> <p>Anglophone minority language rights</p> <p>English has minority rights, notably in Québec. In the student book (p. 144), Devin Mens, an English-speaking student who attends Québec High School, is part of an Anglophone minority and able to take advantage of these rights.</p> <p>Minority Language Criteria</p> <p>Three main criteria determine the rights of Canadian citizens of the English- and French-speaking minorities in each province to have their children educated in their own language. This is a collective right and applies to citizens of Canada only.</p> <ol style="list-style-type: none"> 1. mother tongue—parents whose first language learned and understood is of the English or French linguistic minority population of the province in which they reside; 2. or, parents who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority; 3. or, the parents of any child that has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

SECTION	ARTICLES OR DESCRIPTION OF MAIN PROVISIONS	COMMENTARY
<p>Minority Language Education Rights</p>	<p>23. (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province:</p> <p>a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and</p> <p>b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.</p> <p>Note: In 1990, the Supreme Court stated that legislators have given to Section 23 three key functions in protecting the language and culture of the country's linguistic minorities:</p> <ol style="list-style-type: none"> 1. to preserve and promote the two official languages of Canada, and their respective cultures, by ensuring that each language flourishes, as far as possible, in provinces where it is not spoken by a majority of the population; 2. to correct on a national scale the progressive erosion of minority official language groups, and to give effect to the concept of equal partnership of the two official language groups in the context of education; 3. to create major institutional structures. Section 23 confers upon a group a right which places positive obligations on government to alter or develop major institutional structures—Francophone governance is one example. <p>Francophone schools and governance by Francophones become institutional structures and the principal tools that enable parents to exercise their Charter rights.</p>	<p>All three criteria depend on there being enough children eligible for minority language education in an area to warrant setting up schools in that language from public funds.</p>

SECTION	ARTICLES OR DESCRIPTION OF MAIN PROVISIONS	COMMENTARY
Enforcement	24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.	
General	<p>25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the Aboriginal peoples of Canada including:</p> <p>a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and</p> <p>b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.</p> <p>26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.</p> <p>27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.</p>	<p>25—Aboriginal Rights and Freedoms not affected by the Charter</p> <p>Issue: Some bands claim that self-government should be protected by the Charter. Some bands have certain autonomy under the <i>Indian Act</i> from Section 35. Many of these issues await resolution.</p> <p>Charter Case: * <i>Peavine Métis Settlement v. Alberta: Métis or Indian?</i></p> <p>27—Multicultural Heritage</p> <p><i>“Canada is a garden...into which has been transplanted the hardiest and brightest flowers of many lands, each retaining in its new environment the best of the qualities for which it was loved and prized in its native land.”</i></p> <p style="text-align: right;">— John Diefenbaker—1961</p> <p><i>“This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.” (Section 27)</i></p> <p>This multicultural heritage was recognized in the court case <i>R. versus Big M Drug Mart</i> dealing with Sunday openings. The guarantee of freedom of religion in Section 2 of the Charter was used to invalidate laws that required businesses to be closed on Sundays under <i>The Lord’s Day Act</i>.</p> <p>As the Court noted, the Parliament of Canada requiring Canadians to observe “the day of rest preferred by one religion” contradicted multiculturalism and Section 27.</p>

SECTION	ARTICLES OR DESCRIPTION OF MAIN PROVISIONS	COMMENTARY
General	<p>28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.</p> <p>29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools. (93)</p>	<p>28—Rights guaranteed equally to both sexes.</p> <p>This special clause ensures that all rights in the Charter are guaranteed equally to men and women. It was added at the request of women’s groups to provide reassurance that their rights will be protected and cannot be overridden by a legislature or parliament.</p> <p>Section 29—Denominational Schools</p> <p>In 1867, the agreement on Catholic and Protestant Schools was part of the process to make the new federation work. The Charter upholds the rights and privileges enshrined in the <i>Constitution Act 1867</i> with respect to separate and other denomination schools. (Anglophone [Protestant] and Francophone [Catholic]).</p> <p>The establishment and operation of religious schools will not be adversely affected by any other provisions of the Charter. This ensures for example that neither the freedom of conscience and religion clause nor the equality rights clause, will be interpreted so as to strike down existing constitutional rights respecting the establishment and state financing of schools operating on a religious basis, with students and teachers selected according to their adherence to a particular religious faith.)</p> <p>Issue: Why not have public funding for other religious/ denominational schools?</p> <p>So far the court has said that the denominational schools approved under the Charter are those that pertain to the collective rights of Canada’s history as a bicultural nation, specifically those set up under Protestant and Catholic school boards.</p>
Application of Charter	<p>33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.</p>	<p>33—The Notwithstanding Clause</p> <ul style="list-style-type: none"> • Allows Parliament or provincial legislatures to override certain portions of the Charter. • This clause can be used by the Federal Government or any provincial legislature, to pass a law that is not in accordance with the Charter. The agreement is: <ul style="list-style-type: none"> – there is a time limit of five years. After that time the clause must either be voted on again, or dropped. <p>Use of the Notwithstanding Clause</p> <p>There have been over 15 occasions when the Notwithstanding Clause has been used. The first to use the clause was the Government of Saskatchewan that in 1986 invoked Section 33 to protect its legislation to end a strike by public service employees.</p> <p>The government said it needed to protect the general public from the harm associated with the disruption of government service caused by the strike. This turned out to be unnecessary because the Supreme Court later found similar legislation in Alberta to be constitutionally valid.</p> <p>Where the Notwithstanding Clause is inapplicable</p> <p>Section 33 applies only to sections 2, and sections 7–15 of the Charter of Rights and Freedoms.</p>

The Charter does not create any collective right for any specific immigrant culture. It is geared towards individuals. Section 27 guarantees multicultural diversity in Canada, making it an interpretative clause when it comes to deciding about individual rights. It creates an obligation to preserve and promote the multicultural heritage of Canadians, but only if it does not come into conflict with individual rights.

The only recognized collective rights in the Constitution at this time apply to the two official language groups, Aboriginal peoples, denominational (Roman Catholic and Protestant) schools, unions and the judiciary.

“These are the basic principles, the basic values and beliefs which hold us together as Canadians that beyond our regional loyalties there is a way of life and a system of values which make us proud of the country that has given us so much freedom and such immeasurable joy.”

— Pierre Trudeau, 1981

“The Charter is part of Canada’s identity...it expresses who we are as a people...it is well attuned to Canada’s values and sensibilities.”

— Beverly McLachlin—Supreme Court of Canada, 2002

“The Charter represents our own statement of values, made in Canada, by Canadians, to fit Canadians’ sense of themselves...because the affirming process that brought the Charter into being and nurtured it over the past two decades, captures the essence of what we hold dear as a people:

- *Respect for individual rights*
- *Respect for the collective interest and harmony between individual freedom and the greater good of all*
- *Respect for pluralism and a commitment to the fundamental equality of each and every one of us, religion, gender or ability.”*

— Beverly McLachlin, Supreme Court of Canada, 2002

III. Issues for Canadians: Governance and Rights

A: Issues identified in the Grade 9 program of studies:

- To what extent do political and legislative processes meet the needs of all Canadians?
- To what extent does the Canadian Charter of Rights and Freedoms meet the needs of Francophones in Québec?
- To what extent should federal and provincial governments support and promote the rights of official language minorities in Canada?
- To what extent does Canada benefit from immigration?

B: Other issues one may consider:

- To what extent should Canadians be able to influence the passing of federal laws?
- To what extent does the relationship between the legislative, executive and judicial branches of the federal government in Canada reflect the ideals of democracy?
- Should the Canadian political system be changed to better meet the needs of Canadians?
- To what extent should MPs and Senators be accountable to Canadians?
- To what extent should the Canadian political system protect minorities from “tyranny by the majority”?
- To what extent should Canada’s political system ensure equity among its provinces?
- Do pressure groups in Canada have too much influence on government decision-making?
- To what extent do the news media present a balanced view of government and of the issues governments are addressing?
- To what extent should citizens and organizations participate in Canada’s justice system?
- To what extent should the Charter of Rights and Freedoms guarantee all Canadians the same rights?
- To what extent is there equality of opportunity for individuals and groups in Canada?
- To what extent should Canadians have responsibilities that correspond to their Charter rights?
- Does the Charter of Rights and Freedoms provide enough protection of collective rights for Canada’s Aboriginal peoples?
- Does the Charter of Rights and Freedoms provide enough protection of collective rights for Canada’s official language groups?
- To what extent should the Charter of Rights and Freedoms protect the rights of immigrants to Canada?
- To what extent do immigrants face barriers to full participation in Canadian society?
- To what extent should Québec’s immigration policy be maintained?
- Is Canada’s present system of government fair and democratic in its treatment of minorities?
- Does the protection of individual rights limit the government’s ability to deal effectively with criminal offenders?



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IV. References

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B-2 ECONOMICS

I. Purpose

A major society objective is how to utilize its resources to best meet its basic needs and wants. Economic systems are tied to society's values, and therefore society's political systems. The student book lets students examine how economic systems impact the quality of life of citizens, such as themselves. This General Economic Backgrounder is designed to help teachers explain this information to their students.

The backgrounder is in line with the **9.2 General Outcome** that *“students will demonstrate an understanding and appreciation of how economic decision making in Canada and the United States impacts quality of life, citizenship and identity.”*

VALUES AND ATTITUDES OUTCOMES

STUDENTS WILL:

- 9.2.1 appreciate the values underlying economic decision making in Canada and the United States;
- 9.2.2 appreciate the relationship between consumerism and quality of life;
- 9.2.3 appreciate the impact of government decision making on quality of life

KNOWLEDGE AND UNDERSTANDING OUTCOMES

Note: These outcomes have been abbreviated for the purposes of this document. To consult the program of studies in its entirety, please visit the Alberta Education website.

STUDENTS WILL:

- 9.2.4 compare and contrast the principles and practices of market and mixed economies;
- 9.2.5 critically assess the relationship between consumerism and quality of life in Canada and the United States;
- 9.2.6 critically assess the interrelationship between political decisions and economic systems.

II. Introduction to Economic Systems

A. Basic Economic Issue: Choices Arising from Scarcity

Every country or society faces the following basic economic problem:



The basic goal that drives economic systems is solving scarcity.

Because resources are limited, whether those resources are money, materials or labour, four basic questions of economics concern how to resolve scarcity with limited resources. Decisions about how to deal with the issue of scarcity come down to **four basic economic questions**:

1. What goods and services should be produced?
2. How should goods and services be produced?
3. How should goods and services be distributed?
4. Who decides on the allocation of resources, methods of production and distribution of goods and services?

Depending on a society's economic culture, decisions about how to deal with the issue of scarcity will vary.

Beliefs and values regarding such things as:

- production of goods
- acquiring personal wealth
- ownership of property
- meeting the needs of individuals
- trade and exchange of goods

will vary from society to society, and over time.

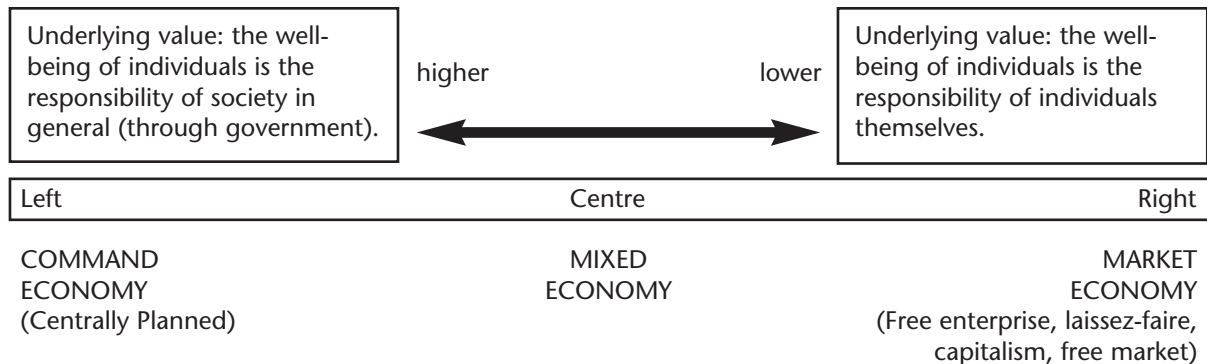
According to economists, economic systems may have six goals, depending upon a society's beliefs and values:

1. **Growth**: create jobs, reduce poverty
2. **Efficiency**: maximize output by careful use of resources
3. **Stability**: prevent rapid price increases and decreases
4. **Security**: provide steady, suitable and secure jobs for all
5. **Equity**: provide fair distribution of resources
6. **Freedom**: allow individual decisions on production, spending and jobs

B. Types of Economic Systems

To help understand and compare economic systems, they are often organized along an economic spectrum based on the level of government intervention in the economy.

Level of Government Involvement in the Economy



All economic systems face the issue of scarcity whether it is a:

1. free market economy
2. centrally planned economy
3. mixed economy

By identifying the main goals of each economic system, one can uncover their central focuses and values.

1. **Free market economy** places emphasis on:

- economic growth
- economic freedom
- economic efficiency

No country has a free market economy. Historically, the U.S. has embraced the principles of a free market economy, including individual initiative, competition, free enterprise, private ownership of property and limited government intervention.

- It is a system that is based on competition, where supply and demand play a significant role.

2. **Centrally planned economy** (a.k.a. command economy) places emphasis on:

- economic security
- economic stability
- economic equity

No examples of a pure centrally planned economy exist:

- the closest are North Korea and Myanmar.
- historic attempts to implement a planned economy include the former Soviet Union, China and Cuba.
- it is a cooperative system, not a competitive one.

3. **Mixed economy** combines elements from a free market economy and a centrally planned economy to deal with the problem of scarcity. A mixed economy tries to balance the public good with individual economic freedoms while attempting to address the six economic goals to varying degrees.

The world has a broad variety of mixed economies based on the degree of government involvement in the economy. For example:

- Traditionally, Sweden has had very high government involvement in the economy.
- South Korea has among the lowest government involvement in the economy.
- Historically, Canada's government has played a larger role in the economy than the government in the U.S.
- One way to check government involvement in an economy is to compare the government's share of a country's GDP (Gross Domestic Product) over time. For example:

	1985	2004	
Sweden	60%	52%	(highest in 1985 and in 2004)
Canada	45%	37%	
United States		33%	32%
South Korea		17%	25% (lowest in 1985 and in 2004)

- The trend seems towards less government compared to 20 years ago.
- Some countries continue to reflect more government involvement within their economy.

4. Why Canada is described as having a mixed economy

Canada's *Constitution Act* of 1867 (the first line of Section 91 of Canada's *Constitution Act* 1867) described the role of the Canadian government as in part, providing "Peace, Order and Good Government." Historically, consecutive Canadian governments over time have interpreted this to mean that the Canadian government has a role to play in the economy. This has led to Canada having a system characterized by a blend of private and public involvement in the economy:

- it dates from the start of confederation;
- it defines Canadian values;
- it articulates the journey toward peaceful accommodation throughout Canada's evolution as a nation.

5. Government Involvement in Canada's Mixed Economy

Government Laws & Regulations	<ul style="list-style-type: none"> • to protect consumers (e.g., safety standards, food inspection) • to protect producers (e.g., preventing monopolies, imposing tariffs and quotas on foreign goods, marketing boards) • to protect society in general (e.g., environmental laws, labour laws)
Government-Owned Businesses (Crown Corporations) <i>(Current trend = privatization)</i>	<ul style="list-style-type: none"> • to provide services that the private sector was unable or unwilling to provide (<i>in such a large country with such a small population</i>)—especially in utilities, transportation and communications, and essential services (e.g., police, armed forces, customs and immigration, etc.). • to stimulate regional economies • to rescue ailing firms • to make money for government itself
Government Budget & Financial Policies	<ul style="list-style-type: none"> • the government's fiscal policy (it can vary its taxing and spending—e.g., on health care, defense, education, welfare, infrastructure, national and international commitments, services to honour collective rights of Aboriginal peoples and official language groups). • the government's monetary policy (e.g., its central bank can vary interest rates to stimulate or to slow down the economy)
Income Redistribution <i>(Current trend = to limit the universality of these programs)</i>	<ul style="list-style-type: none"> • progressive taxation (increased rate of taxes as one's income increases), to pay for "social programs" (a.k.a., social welfare programs): <ul style="list-style-type: none"> – Old Age Security – Child Tax Credit (Family Allowance) – Employment Insurance – Social Security (welfare) – Health Care

6. Why the U.S. is described as having a market economy

The U.S. is closer to a full market economy than Canada and is based on the principle “Life, Liberty and the Pursuit of Happiness” (from the American Constitution):

- it serves as a model to understand market economies;
- it implies a different philosophy to Canada’s, placing less value on government involvement/support and more value on individual initiative and self-reliance;
- the history of the U.S., with its breaking away from Great Britain, its civil war, its pioneering of space, displays an independence and support for individual initiative reflected by its pro market economics;
- the U.S. marketplace is ten times that of Canada. (2008 U.S. population around 305 million—Canada 33 million.) It generates more private capital investment than Canada, supported by higher levels of research and development.

7. The health care comparison between Canada and the U.S.

The role of the U.S. Government is similar to that of Canada in many ways. One major exception is health care.

Canada’s position:

- universal access for everyone;
- funded by taxes and supported by health premiums in several provinces.

U.S. position:

- citizens with low incomes are eligible to receive health care paid by taxes through the *Social Security Act*;
- other citizens pay privately through personal or employment-based insurance programs;
- 15–20 % of U.S. citizens have no health care coverage.

III. What influences government involvement in economic systems?

Two of many factors that play a role are:

- A. the state of the world;
- B. a country’s ideology.

A. *The state of the world*

- Everything is in a constant state of change. Economic systems react to regional, national or global change. As of 2008:
 - Canada’s economy was slowing;
 - the U.S. was heading towards recession;
 - oil prices were at an all-time high;
 - the price of foodstuffs, particularly in the developing world, was rising fast;
 - wars continued in Iraq and Afghanistan;

- the Canadian dollar was virtually at par with the U.S. dollar;
- a minority Conservative government was in power in Canada under Stephen Harper;
- in the U.S., the tenure of President George W. Bush was winding down and a new Presidential election campaign was under way. The House of Representatives and the Senate were both under Democrat control;
- climate change was a major issue.
- These situations impact Canada's economic system and quality of life because the world is interconnected. For example:
 - although Canada exports to and imports from many countries, Canada's main trading partner is the United States;
 - China and India need increasing sources of energy and raw materials and place additional pressures on supplies from the Middle East (oil), Australia (raw materials like iron ore).
- The pressures, such as those listed above, increase the price and availability (scarcity) of resources, energy, transportation, food. They all impact Canada. For example:
 - 2008, with the Canadian dollar virtually at par with the U.S. dollar, Canadian exporters saw dramatic declines in sales and profits. According to Statistics Canada (*The Daily*, Tuesday Feb 13, 2007) the United States accounted for 79% of Canada's exports in 2006, down from 81% the year before. Canada's trade surplus with the United States amounted to \$96.5 billion, the lowest value since 2003.
 - March 2008—travel to Canada hit a record low for the fifth consecutive month in the wake of substantial declines in both same-day car trips from the United States and the number of visitors from overseas nations. In total, foreign visitors made 2.3 million trips to Canada in March, 2008, the lowest since record keeping started in 1972. (Statistics Canada, *The Daily*, May 20, 2008).
 - 2008—Alberta continued to have a booming economy due to the oil sands, but was experiencing severe housing shortages, higher prices for tradespeople (if they could be found) and dramatic shortages of labour, especially in service industries unable to match higher wages paid in other sectors of Alberta's economy.

B. A country's ideology

- A country and its political and economic system is shaped by what individuals and groups of people value. In Canada, these include health, security, job opportunities, living in a safe environment, education for children and support for the collective rights of Canada's founding races of Aboriginal peoples, Anglophones and Francophones.
- The more agreement on the same values, the more it is reflected in the actions of the elected government.
- Political parties are made up of groups of people with the same ideology. The ideology of the party elected helps determine the economic system and whether there will be more or less government intervention in the economy.

As a general rule...

- The healthier the economy, the less likely citizens will want government involved.
- The more challenging the economy, the more likely citizens will want government intervention; e.g., since 2002, almost 18 000 jobs have been lost in Windsor, Ontario and the city has Canada's highest unemployment rate at 9.7%. General Motors announced (May 13, 2008) that it would close its transmission plant there by mid-2010 in a move that will affect 1400 people. To help Ontario adjust to such economic changes, the Ontario government is providing more than \$3 billion in investments and tax reductions.

IV. Government Action in Economic Systems

A. Choosing a political party to reflect and act on your values

- Choosing a political party can be a challenge:
 - voters may agree totally with the ideology and party platform;
 - voters may agree, for example, with policy on the economy but not on the environment;
 - political platforms can be vague.

B. Economic Challenges

1. WHEN GOVERNMENT HAS TO ACT

- 1980, with inflation out of control, extremely high interest rates and an international oil crisis, the Liberal Government under Trudeau introduced the National Energy Program. The goal:
 - develop a “made in Canada” oil policy;
 - encourage lower prices, particularly to support Canada's manufacturing industries hard hit by high oil prices;
 - provide additional taxes to the federal government in a time of recession to support social programs.

2. HOW AN ELECTED GOVERNMENT MAKES ECONOMIC CHANGES

- A newly elected party wants to implement its economic policies. It can attempt to do this if it:
 - reflects the will of the people/support from the electorate;
 - balances competing issues;
 - allocates scarce resources to best promote the values of the party;
 - budgets the required funds;
 - introduces laws to implement its policies; e.g., in 2006 and 2007, the Conservative Government under Stephen Harper reduced the GST in two stages, from 7% to 5%.

3. LIMITATIONS AND CONSTRAINTS IN THE SYSTEM

- By law, governments have certain commitments; many of these are entrenched constitutional rights and Treaty rights, such as payments to Canada's Aboriginal peoples. These obligations can include pensions, unemployment insurance, government payrolls, debt payments.
- Equalization payments must be made to the provinces.
- Revenue is required from taxes, royalties, fees in order to meet government's obligations. Are these sufficient to incorporate a new program or will some other programs have to be cut back or cancelled? A classic scarcity situation, the allocation reflects key priorities and values.
- A government is impacted by the state of the world, as described earlier.
- The state of Canada's economy can determine options:
 - Is the country healthy economically?
 - Is it experiencing growth or recession?
 - What are the costs of borrowing—i.e., interest rates on government debt?
 - Is inflation an issue?
 - Are consumers spending, and therefore helping the economy and generating tax revenues?

4. HOW MUCH MANEUVERABILITY DOES A GOVERNMENT HAVE IN ECONOMIC DECISION MAKING?

- A government's maneuverability is affected by its actions:
 - If a sales tax is increased, that action has an impact on other parts of the economic system. For example, will it increase tax revenue, or persuade consumers to buy less?
 - If government needs funds to finance a program, and puts together a special bond issue, will lenders invest in those bonds?

It's like a set of gears. Turn one gear and the rest start to move. Some may only move a little. Others may move a lot.

- How one part of the system affects another plays an important role in how far a government can implement an economic policy or program.

5. HOW WILL QUALITY OF LIFE BE AFFECTED BY WHO FORMS THE GOVERNMENT?

- This depends on the view of the individual or the perspective of the group.
- The economic system impacts quality of life, citizenship and identity.
- There are trade-offs between supply and demand due to scarcity.
 - The money may not be there, or the resources, or the skilled people.
 - If higher education is to be funded, less may be available for affordable housing.
 - If money goes into research for solar energy, less may be available for foreign aid.

6. WHICH ECONOMIC DECISION WILL DELIVER THE GREATEST VALUE FOR MONEY?

- The criteria is “what are the values of the political party in power?”
 - Is it economic growth?
 - Is it enhanced social programs?
 - Is it a combination of both?
- Economists call this type of thinking “opportunity cost,” and it’s an important concept dealing with scarcity and choice.
- Opportunity cost asks the question “What is the cost of going with one decision and not another?” Examples (in the context of 2008):
 - an auto manufacturer with limited resources must decide whether to develop a new SUV or an environmentally produced hybrid family sedan;
 - Alberta’s government might debate over whether to provide more subsidized day care or support a high-speed train between Calgary to Edmonton.

V. Issues for Canadians: Economic Systems

A. Issues identified in the Grade 9 program of studies

- To what degree should governments be involved in economic decision making to improve the quality of life of all Canadians?
- To what extent should trade agreements between Canada and the United States impact government decision making?
- How important is consumerism to the future economic growth of Canada and the United States?
- How should Canadians and Canada’s government respond to ongoing technological change?
- Is Canada putting enough emphasis on immigration in order to meet the future needs of the labour force in Canada’s economy?
- Are Canada’s taxation levels or taxation models sufficient to meet the needs of this country’s social programs at a time when the population is aging more quickly?
- What steps will Canada need to take to resolve issues of climate change while limiting any damage to the economy and quality of life?

VI. References

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How effectively does Canada's federal political system govern Canada for all Canadians?

BACKGROUNDERS

Canada's Federal Political System, The Electoral Process, Majority and Minority Governments, The Supreme Court, *The Federal Accountability Act*

PURPOSE

9.1.4 examine the structure of Canada's federal political system

- How are laws passed in the federal political system? (PADM)
- What is the relationship between the executive, legislative and judicial branches of Canada's federal political system? (PADM)—(See *Constitutional Backgrounder*)
- What processes are used to determine Members of Parliament (MPs) and Senators? (PADM)

(NB: The *Constitutional Backgrounder* contains a broad background on Canada's development as a nation, including its political systems. Please refer to that backgrounder first, and to this one for additional information.)

B-3 CANADA'S FEDERAL POLITICAL SYSTEM

Form

- Canada is a constitutional monarchy, the head of state being a monarch (king or queen). The monarch's representative in Canada is the Governor General who fills the role of approving laws made in Canada and other formal functions. The representative of the monarch in the provinces is the Lieutenant Governor.
- The Governor General is appointed by the monarch on the recommendation of the prime minister. The Lieutenant Governor is appointed by the Governor General following a recommendation by the premier of a province to the prime minister.
- The Governor General has the power to appoint the Prime Minister, who is usually the leader of the political party that holds the most seats in the House of Commons. The Governor General and Lieutenant Governor generally act on the advice of the prime minister or premier of the province respectively.
- No bill gets passed in either parliament or a provincial legislature without royal assent—from the Governor General or Lieutenant Governor.

Constitution and the Executive, Legislative and Judicial Branches

(See the *Constitutional Backgrounder*)

Levels of Government—Federal and Provincial Responsibilities

(See the *Constitutional Backgrounder*)

Institutions

THE HOUSE OF COMMONS

- made up of 308 elected Members of Parliament;
- is the principal law-making body in Canada;
- members devote most of their time to debating and voting on bills.
They also:
 - represent constituents' views;
 - discuss national issues;
 - call on the government to explain its actions.
- the House of Commons meets for about 130 days a year. Daily events include:
 - **Members' Statements**—a 15-minute period is set aside each day for any Member who is not a Cabinet Minister to make a statement on a subject of national, regional or local importance. Each statement lasts a maximum of one minute.
 - **Question Period**—a 45 minute session where opposition Members, and sometimes government Members ask questions of the Prime Minister and Cabinet Ministers. It is an exercise in accountability: Members can ask Ministers any question about their area of responsibility, without giving advance notice.
 - **Private Members' Business**—for one hour each day, Members who are not Cabinet Ministers can have their bills and motions debated by the House.
 - **Routine Proceedings**—these can cover the tabling of committee reports, announcements about government policy, petitions, introduction of bills for first reading. The House of Commons elects a presiding officer, known as the Speaker, at the beginning of each new parliamentary term, and also whenever a vacancy arises. The Speaker (assisted by deputy speakers), presides over the House. He or she is almost always present during question period and major debates.
- The government introduces its policy/strategy for the year in the Throne Speech at the opening session of parliament;
- The government's annual budget, introduced by the Minister of Finance, sets out government monetary and fiscal policies for the year, what it plans to spend and what its expected revenue will be.

THE SENATE

- The Senate is made up of 105 individuals appointed by the Governor General on the advice of the Prime Minister. Senators can hold their position until the age of 75.
- This Senate's power is entrenched in the *Constitutional Act of 1867*, originally the *British North America (BNA) Act of 1867*.
- The *Constitutional Act of 1867* protects the role of the Senate, by not allowing the government to reduce its role or to eliminate it.

- The Senate can introduce legislation that does not involve finances. Its approval is required for all legislation.
- In 1981, the Senate voluntarily amended the *Constitution* giving the ability for governments to change or eliminate the Senate, although this must happen with the assent of all the provinces. This prevents the federal government in power from just deciding to eliminate the Senate.
- The Senate rarely rejects a bill sent from the House of Commons. It may stop bills from becoming law by not adopting them prior to the end of a session. If this happens, the bill simply dies.

Key Issues: Senate reform

As of 2008, Alberta has a system in place to elect Senators. Saskatchewan plans an election for Senators in 2009 and Manitoba is considering the idea. It is important to note, however, that the election of senators cannot be fully implemented without a constitutional amendment. Currently, any senators that are “elected” by a province/region need to then also be selected for appointment according to the current constitutional process. Some Canadians oppose changing the system, possibly with the opinion that it functions well as is, with regional senators not having to worry about re-election but, rather, about doing what is best for all Canadians (“sober second thought”). Since there are several points of view on this issue, and it’s very complex, including changes that could be required in the Constitution, it is not discussed further in this backgrounder but rather left for your reflection.

B–4 THE ELECTORAL PROCESS

BACKGROUND

- Canada has a parliamentary democracy where elections determine the Members of the Parliament or legislative assembly.
 - Political parties choose leaders whom they expect to make a good a Prime Minister or Premier if the party wins the election.
 - The electoral process determines which political parties have representation in Parliament and the provincial legislatures and how much representation each will have.
 - Electoral boundaries determine the size of constituencies. How these electoral boundaries is determined is a complex formula available on the Elections Canada website. In general, this process is referred to as representation by population.
-



Parliament of Canada
Canada Minister Portfolios



Elections Canada
Canadian Elections Riding
Information



Key Issues: fixed election dates; electoral reform

FIXED ELECTION DATES

- Canada—Bill C-16 received Royal Assent in May 2007. It sets fixed federal election dates every four years, beginning October 19, 2009. After each general election, the legislation sets the date of the following election for the third Monday in October, four calendar years in the future. Opposition parties will still have the power to force an election earlier than the fixed date if a minority government is defeated in a confidence vote.
- As of 2008, four provinces have fixed election dates; B.C., Newfoundland & Labrador, Ontario, Saskatchewan.

ELECTORAL REFORM

- **first past the post**—Canada has a “first past the post” system in which the candidate in an electoral district with the most votes wins the seat.
- **proportional representation**—Limited discussion has been given to incorporating proportional representation into the election process. In this system, the number of seats given to a particular party is determined by the percentage of the popular vote which that party receives. The most advanced discussions and voter consideration has been for provincial elections in British Columbia. As of 2008, no decision has been made.

B-5 MAJORITY AND MINORITY GOVERNMENTS

- **Majority government:**
 - a party winning more seats than any other parties combined;
- **Minority government:**
 - a party that wins the most seats, but less than the other parties combined;
 - a party that decides to govern with a minority of seats;
 - average length in office of a minority government in Canada is less than a year and a half;
 - support from an opposition party/parties is essential to keep a minority government in office.
- **Coalition government**—two or more parties combining to form a government, usually with enough seats to form a majority; e.g., Israel, Italy. Since confederation, Canada’s only coalition government was one formed by Sir Robert Borden in 1917 during World War I, and known as the Union Government. It lasted until the 1921 general election.
- Except in exceptional circumstances, the Governor General asks the leader of the party that won the most seats to form the next government.



Parliament of Canada



Key Issues: low voter turnout

- 64.7% of registered voters actually voted in the 2006 federal election.
- 41.4% of registered voters actually voted in Alberta’s 2008 provincial election, the lowest turnout of any province in recent provincial elections. The following figures come from an article in the *Edmonton Journal* for June 29, 2008:

Jurisdiction	Date of vote	% who voted
Canada	2006	64.7%
B.C.	2005	62.4%
Alberta	2008	41.4%
Saskatchewan	2007	76%
Manitoba	2007	56.8%
Ontario	2007	52.8%
Quebec	2007	71.2%
PEI	2007	83.8%
Nova Scotia	2006	59.9%
New Brunswick	2006	67.5%
Newfoundland & Labrador	2007	62%
Yukon	2006	72.9%
Northwest Territories	2007	67%
Nunavut	2004	80.1%

B-6 THE SUPREME COURT

BACKGROUND

- The Supreme Court has jurisdiction over disputes in all areas of the law, including constitutional law, administrative law, criminal law and civil law and has the final court of appeal from all other Canadian courts.
- The Court consists of a Chief Justice and eight other judges, all appointed by the federal government. The *Supreme Court Act* requires that at least three judges must come from Quebec. Traditionally, of the other six judges, three come from Ontario, two from western Canada, and one from the Atlantic provinces.
- Before a case can reach the Supreme Court of Canada, it must have used up all available appeals at other levels of court.
- The Supreme Court of Canada also plays a special role as adviser to the federal government. The government may ask the Court to consider questions on any important matter or issue regarding interpretation of the Constitution. These special requests are called “references” and some notable recent examples of the Court acting in this role can be found at Links @ Nelson.
- The Court has three sessions a year and handles around 80 cases per session.
- In terms of accepting cases, the Supreme Court will only take certain criminal cases “as a right.” On all other cases, the Court must be asked for “leave” to appeal the case to them.



Supreme Court of Canada



Key Issues: delays, high costs of trials, lengthy trials

Supreme Court representatives have been meeting with lawyers, law societies, and governments to try to resolve these issues. These “access to justice” issues are broadly felt across the justice system and are being worked on by many people involved in the system.

CHANGES IN THE APPOINTMENT PROCESS.

- Changes to the appointment process to make it more transparent are under consideration. Currently, an advisory committee is formed whenever there is a vacancy on the court. The committee works with a list of seven candidates, given to them by the federal Minister of Justice. The committee shortlists three candidates from which the Prime Minister then chooses the appointee. Under the current government (Conservative under Stephen Harper, 2008), an ad hoc committee was allowed to directly question the nominee. At this time (2008), the final decision remains with the Prime Minister.

SECTION 2—HOW DO BILLS BECOME LAWS?

B–7 THE FEDERAL ACCOUNTABILITY ACT

The process

- The process of a bill becoming a law can be a complex one. Here is an example of the process that took place with one complex bill—*The Federal Accountability Act* (FAA).
- The FAA went through all the committee stages and approval processes:
 - witnesses included Canadians of many skills, expertise and experience;
 - any Canadian with an interest in a particular piece of legislation can speak to his or her MP, submit letters or proposals, or aid groups that support particular legislation.

The FAA

- The FAA was introduced by Prime Minister Stephen Harper on April 11, 2006. The goal of the FAA was to make the government more accountable and transparent.
- The FAA was enacted in part because of concerns raised by the Sponsorship Scandal—a scandal that was one factor in the Liberal Party losing the 2006 federal election.

Key Issues: ongoing accountability

- While some recommendations from the FAA have been implemented (e.g., whistleblower legislation) others have not (e.g., limits to the power of the Prime Minister’s office).



Federal Accountability Act

To what extent is the justice system fair and equitable for youth?

SECTION 1—IN WHAT WAYS DOES THE JUSTICE SYSTEM ATTEMPT TO TREAT YOUNG OFFENDERS FAIRLY AND EQUITABLY?

BACKGROUNDERS

The Criminal Code, *Youth Criminal Justice Act*, *Young Offenders Act*

PURPOSE

What are citizens' legal roles and their responsibilities? (C, PADM)

B-8 THE CRIMINAL CODE

BACKGROUND

- In 1892, the Criminal Code of Canada was passed by Canada's Parliament. It sets out the crimes, defenses, principles and procedures used by the courts to make decisions about criminal justice.
 - Criminal law involves moral culpability, the choice to perform acts that Canadian society has prohibited because they are "wrong."
 - Parliament has a separate statute that criminalizes drug offences as outlined in the *Controlled Drug and Substances Act*.
 - The 1982 Canadian Charter of Rights and Freedoms provides constitutionally guaranteed legal rights to all people living in Canada (e.g., Sections 7–14: right to life, liberty and security of the person; right to be secure against unreasonable search or seizure; right not to be arbitrarily detained or imprisoned; specific rights upon arrest or detention and upon being charged with an offence; right not to be subjected to cruel and unusual treatment; specific rights for witnesses; right of the assistance of an interpreter).
-

LINKS@NELSON

Canadian judicial system



Key Issues

When should young offenders who commit serious crimes be transferred to adult court? Should young offenders be named? These are some of the issues being raised.

Youth Justice

1908–1984 *Juvenile Delinquents Act*

1984–2003 *Young Offenders Act*

2003– *Youth Criminal Justice Act*

B–9 WHAT WAS THE INTENTION OF THE JUVENILE DELINQUENTS ACT?

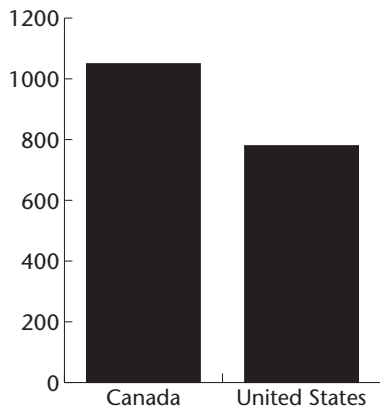
Early History

- Youth justice in Canada has its origins in English common law. Prior to 1300, age was not considered with respect to criminal conduct and punishment. In the 1600s, age 7 was determined as the minimum age for criminal responsibility (the same age the Romans had used since 407 A.D.).
- In 1857 the judges of Upper and Lower Canada were given the authority to deal with young offenders. In 1892 Canada’s Criminal Code outlined that children be tried separately from adults and without publicity. These provisions were initiated in an atmosphere of concern for child welfare and labour issues, poor, abused or abandoned children and public education.
- In 1908, Parliament passed the *Juvenile Delinquents Act* and created a separate juvenile court to handle the specific needs of the child. The underlying beliefs motivating the legislation were that children could be reformed through therapeutic treatment; that young people are not responsible for their actions; and that it must be society’s fault if a child offends.

The *Juvenile Delinquents Act*

- The *Juvenile Delinquents Act* was considered to be “social welfare legislation” and applied to youth ages 7–16 (or 18 depending on the jurisdiction). An offence was considered a “delinquency” and the person was considered “in a condition of delinquency and therefore requiring help and guidance and proper supervision” (section 3 *Juvenile Delinquents Act*).
- The objective of the *Juvenile Delinquents Act* was to rehabilitate and reform—not to punish. Young people who broke the law were considered not as criminals but victims of poverty, abuse and neglect.
- There was no *Charter* to protect a juvenile’s rights, and no right to a lawyer. Judges, police and probation officers could impose whatever sentence they thought best for the youth. Because there were no formal guidelines, sentences ranged from incredibly harsh to extremely lenient.
- If found to be delinquent, juveniles could be sent indefinitely to correctional or training institutions. Staff decided when the delinquent was rehabilitated and could be released. In 1984, the *Young Offenders Act* replaced the *Juvenile Delinquents Act*.

The overall rate (per 100 000 youth age 12–17) of youth court judges imposing custody in Canada and the U.S. (1997)



Source: Statistics Canada (2000). Youth Court Statistics 1997–98. Ottawa: Canadian Centre for Justice Statistics. Snyder, H., Finnegan, T., Stahl, A. and Poole, R. (1999). Easy Access to Juvenile Court Statistics (1988–97). Pittsburgh, PA: National Center for Juvenile Justice.

B–10 WHAT WAS THE INTENTION OF THE YOUNG OFFENDERS ACT?

- The 1984 *Young Offenders Act* replaced the *Juvenile Delinquents Act*. Provincial offences were to be dealt with under separate provincial legislation.
- The *Young Offenders Act* created a separate court system and process for dealing with crimes committed by youths. The term “juvenile delinquent” was no longer used in legal documents and actions and the term “young offender” was adopted.
- The *Young Offenders Act* stipulated a minimum age of 12 and maximum age of 17 throughout Canada.
- The *Young Offenders Act* introduced a more “legalistic” model for youth justice and moved away from the “social welfare” approach. Youth were now to be “held accountable” and “bear responsibility for their contraventions”.
- The *Young Offenders Act* recognized that young persons were not adults and that they should not “be held accountable in the same manner or suffer the same consequences ... as adults”.
- The Government of Canada was concerned that the country had one of the highest youth incarceration rates in the world, even higher than the United States. The attached graphic comes from the Department of Justice website.
- A major review of the YOA led to the the Minister of Justice releasing a report on “The Strategy for the Renewal of Youth Justice” in May 1998. The principles set out in the Strategy form the basis for the many changes introduced in the *Youth Criminal Justice Act*.

B–11 WHAT IS THE INTENTION OF THE YOUTH CRIMINAL JUSTICE ACT (YCJA)?

Information

- The *Youth Criminal Justice Act (YCJA)* was passed in 2002 and proclaimed law in April 2003.
- The objectives of the YCJA are to prevent crime; rehabilitate and reintegrate young persons into society; and ensure meaningful consequences for these offences. The system can contribute to the long-term protection of society.
- The philosophy of the YCJA is that young offenders should be treated differently from adults who are expected to understand and be fully accountable for their actions.
- 75% of all youth crime is non-violent—most crimes with which youth are charged are against property, like theft and mischief.

- Many young people who break the law have a history of having their rights violated, poverty issues, family difficulties, child abuse and neglect. According to statistics about 1 in 6 have Fetal Alcohol Spectrum Disorder (FASD).

LINKS@NELSON

Youth Criminal
Justice Act
Alberta Youth Justice Act



Key Issues: Does the YCJA strike the right balance between goals of rehabilitation and goals of deterrence and punishment?

THE YCJA WORKS WELL AS IT IS

Coalition of Child and Youth Advocates spokesperson Agnes Samler, Ontario's Provincial Advocate for Children and Youth (quoted in *Globe & Mail*, Friday May 16, 2008) says the coalition want the YCJA left alone...

*"The number of young offenders sentenced to secure custody—at an average cost of \$80 000 a year, dropped to 2758 in 2004 from 6958 in 2000 (under the **Young Offenders Act**). Ontario saved \$18.5 million between 2004 and 2006 because of unused detention facilities. The money was reinvested in alternatives to custody and community interventions."*

THE YCJA REQUIRES CHANGES

"More can and should be done to keep violent young offenders from repeating destructive behaviour. Changes to the Youth Criminal Justice Act need to be made in order to keep chronic, violent young criminals behind bars longer, where they'd be able to receive the help they need."

— Saskatchewan Provincial Justice Minister, Don Morgan
(*Saskatoon Star-Phoenix*, February 13, 2008)

SUPREME COURT OF CANADA DECISION—MAY 16, 2008

"By a 5 to 4 margin, the deeply divided court struck down provisions of the Youth Criminal Justice Act that presume youths who have committed serious crimes will be treated as adults unless they can convince a judge otherwise." Justice Rosalie Abella wrote for the majority...

"The onus on the accused is unconstitutional because it violates the Charter of Rights principle of fundamental justice and is also an affront to a century-old system that holds young people differently accountable for their crimes. Young people are entitled to a presumption of diminished moral blameworthiness or culpability from the fact that because of their age, they have heightened vulnerability, less maturity and a reduced capacity for moral judgement."

— Taken from *Edmonton Journal*—May 17, 2008

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Department of Justice



B-11A RESTORATIVE JUSTICE

PURPOSE

9.1.5 analyze the role that citizens and organizations play in Canada's justice system

- How do citizens and organizations participate in Canada's justice system (i.e., jury duty, knowing the law, advocacy, John Howard Society, Elizabeth Fry Society)? (C, PADM)
- What are citizens' legal roles and their responsibilities? (C, PADM)

The Department of Justice website (see LINKS@NELSON, above) describes restorative justice in this way:

Restorative justice is one way to respond to a criminal act. Restorative justice puts the emphasis on the wrong done to a person as well as on the wrong done to the community. It recognizes that crime is both a violation of relationships between specific people and an offence against everyone—the state.

Restorative justice programs involve the voluntary participation of the victim of the crime and the offender and ideally members of the community, in discussions. The goal is to "restore" the relationship, fix the damage that has been done and prevent further crimes from occurring.

Restorative justice requires wrongdoers to recognize the harm they have caused, to accept responsibility for their actions and to be actively involved in improving the situation. Wrongdoers must make reparation to victims, themselves and the community.

Requirements for Restorative Justice Program

According to the Canadian Department of Justice, restorative justice can only occur when:

- offenders recognize the harm they have caused, accept responsibility for their actions and are actively involved in improving the situation;
- the victim and the community are involved;
- trained facilitators are available in the community and a restorative justice program is in place.

People who have been charged with a crime must first have an opportunity to prove their innocence in court, if this is applicable to their situation/case.

The John Howard Society believes in Restorative Justice. The following is taken from the Society's website:

Through programs like Restorative Resolutions, offenders can repair harm by providing services to the community or to individual victims, or by paying back money they have stolen." As one client explained, "Going to jail would have been easier for me because I would not have had to be accountable for what I have done.

Key Issues: Is the community willing to get involved?

B-12 SENTENCING CIRCLES

Introduction

Sentencing circles are part of the restorative justice mandate and are intended to promote healing for all members of the community. They can only take place after a trial or guilty plea has been entered.

Why a Sentencing Circle?

A Sentencing Circle is modelled on traditional Aboriginal processes or practices where the community itself takes on the responsibility for resolving a situation. When a community member offends, the community itself is damaged. A Sentencing Circle allows the offender to be accountable, the victim to have restitution and the community to heal.

How a Sentencing Circle works

The accused, the victim, their families, the judge, lawyers, police, Elders and interested members of the community sit in a circle.

- a blessing is given by an Elder;
- everyone in the circle is considered equal and has a chance to talk;
- the offender, the offense and restitution are discussed;
- decision is made by consensus;
- judge imposes the sentence if within the boundaries of the law.

Conditions

- a judge must approve using the Sentencing Circle process;
- justice representatives; i.e. judge, lawyers, police, must be willing to participate;
- the offender must admit responsibility and be willing to make amends;
- the victim (or victim's representative) is willing to participate and be involved;
- the community must assume responsibility for:
 - sentencing the offender;
 - follow up and support.

Results

Restorative justice practices like sentencing circles are not a panacea to all the problems of criminal justice system. There are emotional risks, especially in domestic violence cases, in bringing the victim and offender together through a sentencing circle.

General research on restorative justice points to high levels of victim satisfaction and low levels of recidivism, according to the Saskatchewan Department of Justice. These results could be considered skewed because only offenders who have accepted responsibility for their crimes are allowed to participate.

Key Issues: According to the Canadian Department of Justice, the length of the process can be an issue for some participants.



Sentencing circles



How effectively does Canada's Charter of Rights and Freedoms protect your individual rights?

SECTION 1—HOW DOES THE CHARTER PROTECT INDIVIDUAL RIGHTS AND FREEDOMS?

BACKGROUNDERS

Charter of Rights and Freedoms, Role of Women, Internment

PURPOSE

9.1.6 assess, critically, the impact of the Canadian Charter of Rights and Freedoms on the legislative process in Canada

- In what ways has the Canadian Charter of Rights and Freedoms fostered recognition of individual rights in Canada? (PADM, I)
 - How does the Canadian Charter of Rights and Freedoms support individuals in exercising their rights? (PADM, C, I)
 - In what ways has the Canadian Charter of Rights and Freedoms affected conditions in the workplace (i.e., issues of gender, age, race, religion)? (PADM, I, C)
 - What is the relationship between the rights guaranteed in the Canadian Charter of Rights and Freedoms and the responsibilities of Canadian citizens? (PADM, C)
-

LINKS@NELSON

Canada human rights program
Youth guide to the Canadian Charter of Rights and Freedoms



B-13 CHARTER OF RIGHTS AND FREEDOMS

This area is covered comprehensively in the Constitutional Backgrounder. As well as references in the Constitutional Backgrounder to Supreme Court cases concerning the Charter, the references cited at left may be of value.

Key Issues: Court Charter interpretations and potential for judicial activism

B-14 ROLE OF WOMEN

History

- Prior to the 20th century, only women who owned land were occasionally allowed to vote.
- 1860s the suffragists became influential in changing views about the role of women and the right to vote.
- In 1918, some women were granted the right to vote, but for many other women, their race, ethnicity and religion still barred them from that right.

- 1929—Five determined suffragettes (the *Famous Five*) pushed forward to change the *British North America Act* in 1929 so that women were considered “persons” who were qualified for appointment to the Senate. This declaration further opened the door to equality for women that the right to vote had unlocked in 1918.
- World War II—Women took over factory jobs as the men were at war. Post-war the shift continued.
- 1985—The equality provision (Section 15) was included in the Charter of Rights and Freedoms. Section 15 ensured that all individuals were equal under the law and entitled to equal rights regardless of gender, age, race, religion, ability and national or ethnic origin.
- Section 28 of the Charter guaranteed rights equally to both sexes. This guarantee cannot be overridden by a legislature or parliament via the use of the Notwithstanding Clause.
- As of 2006, 57% of university students were women according to Human Resources and Social Development Canada (HRSDC).
- According to the 2001 Census women represent 44 % of all income earners in Canada and 40 percent of all full-time, full-year earners.

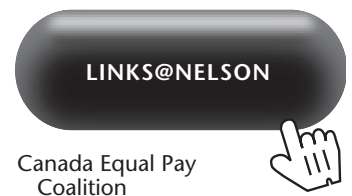
Key Issues: equity between men and women

According to the Equal Pay Coalition, there is still a substantial gap in the pay that men and women receive for the same work:

“In 2005, the most recent year for which we have figures, women working full-time for the full year earned an average of \$39,200, or 70.5% as much as comparable men who earned an average of \$55,700. In the mid 1990s, such women earned 72% as much as men. The pay gap is even greater for university-educated women, who earned just 68% as much as men in 2005, down from 75% a decade ago. The gender pay gap in Canada is the fifth greatest in the advanced industrial (OECD) countries and even bigger than in the U.S.”

JUNE 2003—SUPREME COURT OF CANADA—BELL CANADA VS CANADIAN TELEPHONE EMPLOYEES ASSOCIATION

Between 1990–1994 the complainants and others alleged gender discrimination in the payment of wages, contrary to s. 11 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H–6 (the “Act”). The complaint went to the Canadian Human Rights Tribunal. Bell claimed that the Tribunal was not impartial and therefore should not hear the complaint. After extraordinary litigation between the parties through several courts, the case arrived at the Supreme Court. The Court said that Bell’s arguments were without merit and ordered the complaints to proceed before the Tribunal. A settlement was reached between the parties in 2006.





B-15 INTERNMENT

Definition: detention or confinement of a person in time of war

During World War I and World War II, the *War Measures Act* was used to permit the internment of groups of Canadians. This act was always implemented via an Order in Council, rather than through approval via the democratically elected parliament.

What is an Order in Council (OIC)?

According to the Treasury Board, an Order in Council is an instrument that serves notice of a decision taken by the executive arm of government. For example, an Order in Council accompanies all regulations. The OIC says “we’ve decided to put these regulations into force” and presents the regulations.

World War I—Ukrainians

At the beginning of World War I, more than eight thousand people of Ukrainian and German descent were arrested and sent to camps because of their identity; the majority of these internees were Ukrainian. Canada and its allies were at war with Germany and Austria-Hungary—and Ukraine fell within enemy territory. Because of this, the *War Measures Act* was put into force in Canada, declaring that Ukrainian people were enemy aliens. As a result, these people were denied their legal rights and some were confined to 24 different camps across Canada. 10 000 additional Ukrainian people were also required to report to the local authorities every month and an additional 80 000 people were disenfranchised (denied the right to vote). After the end of the war and the *War Measures Act* was no longer in force, some Ukrainian people still remained interned in the camps until 1920.

- *Conditions of internment:*
 - money and property were taken by the government upon arrest;
 - internees were denied access to newspapers and their correspondence was censored;
 - internees were sometimes mistreated by the guards;
 - one hundred and seven internees died, including several shot while trying to escape;
 - internees were forced to work on maintaining the camps, road-building, railway construction and mining, including Banff National Park.
- Sir Wilfred Laurier opposed the Borden government on the issue. He said:

“When the war is over, when peace is restored, and when we come to normal life, when we shall send our Immigration agents to Europe again as we did before, do you believe that our Canadian immigration agents, when they go among the Galicians, Bukovinians (Ukrainians), that these different races will be disposed to come to this country, when they know that Canada has not met its pledges and promises to these people, who have settled in our midst. . .”

- The forced labour program was so beneficial to Canadian corporations that the internment was continued for two years beyond the end of the war in 1918.

REDRESS

- Bill C331 acknowledged this internment, received royal assent in 2005. Liberal Prime Minister Paul Martin promised Ukrainians, through the Community Historic Recognition Program (CHRP), to provide \$2.5 million in compensation. Stephen Harper's Conservative government promised to honour the commitment.
- Toronto, May 9, 2008—The Honourable Jason Kenney, Secretary of State (Multiculturalism and Canadian Identity), today announced that the Government will provide a grant of \$10 million to the Ukrainian Canadian Foundation of Taras Shevchenko to establish an endowment fund to support initiatives related to the First World War internment experience that predominantly affected the Ukrainian and other East European ethnic communities in Canada.

World War II—Germans, Italians and Jews

- The *War Measures Act* was used and defined enemy aliens as “all persons of German or Italian racial origin who have become naturalized British subjects since September 1, 1922.”
- It is estimated that some 30 000 individuals were forced to register with the RCMP and to report to them on a monthly basis. The government interned approximately 500 Italians and over 100 Communists.
- In New Brunswick, 711 Jews, refugees from the Holocaust, were interned at the request of British Prime Minister Winston Churchill because he thought there might be spies in the group.

REDRESS TO ITALIANS

- On November 4, 1990, speaking to a biennial convention of the National Congress of Italian Canadians, Prime Minister Mulroney **acknowledged the injustices committed against Canadians of Italian origin during World War II** and apologized to all Canadians of Italian origin on behalf of the Government of Canada for the injustices perpetrated on a quiet, law-abiding community. In his speech, he pledged that the violations of democratic rights so apparent during World War II should not ever happen again. Finally, he accepted the principle of redress for the wrongs committed.
- November 12, 2005, Liberal Prime Minister Paul Martin promised to provide reparations of up to \$12.5 million dollars, including \$2.5 million in the current budget for educational purposes to help people learn about what happened re: the internment of Italian Canadians. As of 2008, no agreement has been made although the Conservative Government under Stephen Harper has been in negotiation with the National Congress of Italian Canadians (NCIC) regarding potential reparations.

World War II—Japanese Canadians

- Following the bombing of Pearl Harbor in 1942, the *War Measures Act* was used to remove “enemy aliens” within a 100-mile radius of the B.C. coast. On March 4, 1942, 22 000 Japanese Canadians were given 24 hours to pack before being interned.
- Women, children and older people were sent to internment camps in B.C. and Alberta, such as Kananaskis.
- The property of Japanese Canadians—land, businesses and other assets—were confiscated by the government and sold, and the proceeds used to pay for their internment.
- In 1945, the government extended the Act to force Japanese Canadians to go to Japan and lose their Canadian citizenship, or move to eastern Canada. Even though the war was over, it was illegal for Japanese Canadians to return to Vancouver until 1949.

REDRESS

- In 1988 Canada apologized to Japanese Canadians. The government signed a redress agreement providing a small amount of financial compensation. This authorized the provision of \$21 000 (CND) to each of the survivors of wartime detention.

Key Issues: treatment of some Muslim and Middle Eastern people in Canada and the United States following the events of September 11, 2001.

To what extent has Canada affirmed collective rights?

SECTION 1—WHAT LAWS RECOGNIZE THE COLLECTIVE RIGHTS OF FIRST NATIONS PEOPLE?

BACKGROUNDERS

Collective Rights, Aboriginal Rights, First Nations and the *Indian Act*, Treaties, Métis Legislation, Residential Schools, Protocol for First Nations, Métis, and Inuit Elders, Protocol, The Roles of Elders, Requesting the Help of an Elder, Hosting an Elder in the Classroom, Tobacco and Print

PURPOSE

9.1.7 assess, critically, how the increased demand for recognition of collective rights has impacted the legislative process in Canada

- In what ways has the Canadian Charter of Rights and Freedoms fostered recognition of collective rights in Canada? (PADM, I)
 - How does the *Indian Act* recognize the status and identity of Aboriginal peoples? (PADM, I, C)
 - How does legislation* such as Treaty 6, Treaty 7 and Treaty 8 recognize the status and identity of Aboriginal peoples? (I, PADM, LPP)
-

B–16 COLLECTIVE RIGHTS

Definition

Rights guaranteed to specific groups in Canadian society for historical and constitutional reasons. These groups are: Aboriginal peoples, including First Nations, Métis and Inuit peoples; Francophones and Anglophones. As well, in different sections of the sections of the Constitution, there are also collective rights provided to the Judiciary, unions and to denominational schools (Roman Catholic and Protestant). The aforementioned groups have collective rights entrenched in the Charter or in the Constitution.

- Section 35 of the Constitution recognizes and protects the group rights of Aboriginal peoples living in Canada. Section 35 and the courts have played an important role in recognition of collective rights for Aboriginal peoples in Canada.
- Section 25 of the Charter was enacted to ensure that the rights set out in the Charter would not be interpreted to “abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the Aboriginal peoples of Canada.” It provides the courts with an interpretative direction when faced with cases that require the courts to balance the collective rights of Aboriginal peoples and the guarantee of individual rights to all Canadians.
- Within sections 16–22 of the Charter, official language rights in Canada are identified, notably French and English language rights with respect to federal public institutions and the delivery of federal government services.

* From a legal perspective, technically, treaties are not legislation, but are rather their own legal and political instruments, which have been recognized (implemented) by Section 35 of the Constitution Act, 1982 and also in some sections of the Indian Act. As well, treaties could be seen to play an important role in protecting Aboriginal rights and affirming identity. Treaties in and of themselves, however, do not define Indian Status under the Indian Act.

- Section 23 of the Charter identifies minority language education rights for Francophone and Anglophone minority communities in Canada. Section 23 and the courts have played a role in communities being able to access minority language education rights in Canada.

Key Issues: individual and collective rights and the common good; UN Declaration on the Rights of Indigenous Peoples

B-17 ABORIGINAL RIGHTS

- The *Constitution Act* of 1982 includes sections that recognize the rights of Aboriginal peoples. It reads:
 35. (1) The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed;
 - (2) In this Act, ‘Aboriginal peoples of Canada’ includes the Indian, Inuit and Métis peoples of Canada.
 - (3) For greater certainty, in subsection (1) ‘treaty rights’ includes rights that now exist by way of land claims agreements or may be so acquired.
 - (4) Notwithstanding any other provision of this Act, Aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.
- **Definition:** An Aboriginal right stems from a custom, a practice or a tradition that characterizes the culture of an Aboriginal group. This right had to exist prior to the contact with the Europeans; it is most often associated with a territorial occupation since that period. Moreover, the courts have ruled that an Aboriginal nation present on a territory when the Europeans arrived—and that has continued to frequent the territory ever since—has specific rights on that territory, known as “Aboriginal rights.”
- Treaty rights are special rights to lands and entitlements that Indian people legally have as a result of treaties; rights protected under section 35 of the Constitution.

Key Issues: settlement of land claims

- Introduction of Bill C-30: The Specific Claims Tribunal Act (2008); designed to speed up the land claims process.
- More than 800 specific land claims in Canada are outstanding according to the Indian Claims Commission
- Treaty rights and obligations are linked with issues pertaining to Crown lands, natural resources and private property. This often requires federal and provincial government involvement for resolution.
- B.C. is still largely unceded territory and subject to First Nations land claims. Some bands have formally joined the government-sanctioned, six stage B.C. Treaty process. Other bands have proceeded to direct litigation to pursue their claims.
- Some different land claims resolution processes in Canada: Comprehensive Claims, where there was either no treaty or a very problematic treaty; Treaty Land Entitlement (TLE) claims, for land allegedly promised through existing treaties but never delivered; and

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Contemporary examples and extensions

Department of Indian and Northern Affairs



Specific Claims, which are currently dealt with through the Indian Claims Commission or through direct negotiation or litigation against the government.

B–18 FIRST NATIONS AND *THE INDIAN ACT*

BACKGROUND

- *BNA Act 1867* granted the federal government authority over “Indians, and Land Reserved for the Indians.”
 - 1876, the *Indian Act* reflected the government’s concern with land ownership, First Nations membership and local government, and assimilation of Canada’s Aboriginal population.
 - The *Indian Act* is the main legislation for federal authority over “status Indians.”
 - The *Indian Act* defines “status Indians” for the purposes of administering the *Indian Act*, while First Nations peoples and their bands or nations define and affirm their own identity, culture, membership, etc.
 - The *Indian Act* regulates band membership and government, taxation, lands and resources, money management, wills and estates, and education.
 - Aboriginal peoples have consistently criticized the limitations and paternalism of the *Indian Act*.
 - The complexities of reforming the *Indian Act* centre on roles and responsibilities and differing views of Aboriginal self-government.
 - Some bands regulate their own membership under Bill C-31 amendments to the *Indian Act* (1985). Thus, sometimes a band or nation will define its members differently than who the government recognizes as a “Status Indian.”
-
- In 1985, Parliament passed Bill C–31, an *Act to Amend the Indian Act*. Bill C–31 attempted to bring the Act into alignment with the Canadian Charter of Rights and Freedoms. The three principles that guided the amendments to the *Indian Act* were:
 - removal of discrimination;
 - restoring status and membership rights;
 - increasing control of Indian bands over their own affairs.
 - 1. Bill C–31 dealt with membership and registration issues. It was motivated by the coming into force date of Section 15 of the Charter (in 1985) and aimed at addressing prior membership rules whereby many Indian women and their children lost their status while striking a balance with the self-government concerns of the band governments.
 - 2. Bill C–31 changed the registration system so that entitlement was no longer based on sexually discriminatory rules. The amendments, effective April 17, 1985:
 - treat men and women equally;
 - treat children equally whether they are born in or out of wedlock and whether they are natural or adopted;
 - prevent anyone from gaining or losing status through marriage;
 - restore Indian status for those who lost it through discrimination

First Nations
self-governance:

- Assembly of First Nations
- Indian and Northern Affairs Canada
- Miawpukek First Nations Self Governance



or enfranchisement;

- allow first-time registration of children (and in some cases descendants of subsequent generations) of those whose status is restored; and
- allow for the registration of children born out of wedlock if either parent was a registered Indian, regardless of their date of birth.

3. Bill C–31 failed to meet these objectives. There has been litigation both by bands asserting self-government rights and by women asserting continued discrimination under s. 15 of the *Charter*. The latter challenge recently succeeded at the British Columbia trial court level (see *McIvor v. The Registrar, Indian and Northern Affairs Canada*, 2007 BCSC 827).

Key Issues: questions of autonomy; settling land claims

B–19 TREATIES

BACKGROUND

- May 1670—Charles II of England granted to the Hudson’s Bay Company Ontario north of the Laurentian watershed, all of Manitoba, most of Saskatchewan, southern Alberta and a portion of the Northwest Territories and Nunavut. It was called Rupert’s Land in honour of Prince Rupert, the king’s cousin and the Hudson Bay Company’s first governor.
- 1725–1779—**Peace & Friendship Treaties:** colonial governments in what is now New Brunswick and Nova Scotia signed peace agreements with the Aboriginals so that European settlers could live safely on the land and use its natural resources.
- 1764–1862—**Upper Canada Treaties** and 1850–1854 **Vancouver Island Treaties:** First Nations surrendered interests in lands in areas of what are now Ontario and British Columbia, in exchange for certain other benefits that could include reserves, annuities or other types of payment, and certain rights to hunt and fish.
- 1870—Rupert’s Land became part of Canada. Treaties were negotiated between the federal government and the various First Nations. Treaties that significantly affect Alberta are Treaty 6 (signed 1876), Treaty 7 (1877) and Treaty 8 (1899).
- In exchange for Aboriginal peoples giving up lands, the federal government agreed to provide them certain benefits, including the provision of Indian reserves.
- Most Treaties guarantee some traditional fishing and hunting rights.
- Since 1982, Treaty rights have been recognized and affirmed under the Constitution.
- The courts have ruled that the oral history and Aboriginal peoples’ understanding of a Treaty must be considered when determining the true nature of a Treaty.
- Aboriginal peoples see Treaties as symbols of an ongoing relationship. Government interpreted things differently—that, in signing Treaties, Aboriginal peoples had agreed to release ownership of most of their traditional territory and live under Canadian law.
- Existing Aboriginal and Treaty rights are entrenched in Section 35 of the Constitution Act, 1982, which states that these rights are recognized and affirmed.
- Section 15 of the Charter asserts equality before the law to all persons within Canada, including Aboriginal people, regardless of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.
- Treaties are administered through the Department of Indian and Northern Affairs.

NB: The meaning and spirit and intent of Treaties and particular Treaty rights are often disputed because, historically, Aboriginal peoples and government/the Crown had different oral and written interpretations and had language and communication barriers.

There are over 600 reserves in Canada, and around 100 in Alberta, many of them small. 40% of First Nations live on reserve and 60% off reserve.

2006 Census Data for Aboriginal Population

	First Nations	Métis	Inuit	Total
Canada	698 025	389 785	50 485	1 138 295
Alberta	97 275	84 495	1 610	183 380
Calgary	10 875	14 770	250	25 895
Edmonton	22 440	27 740	590	50 770
Red Deer	915	2530	40	3485

Adapted from: Statistics Canada, *Aboriginal Peoples Highlight Tables, 2006 Census*, 97-558-XWE2006002, January 15, 2008.

NB: This census data is largely drawn from people who self-identified as First Nations, Métis or Inuit, and the figures may not be exact.

Key Issues: settlement of outstanding claims

B–20 MÉTIS LEGISLATION

- Alberta is the only province that has passed legislation specifically for Métis people.
- The *Métis Settlements Act* established eight settlements: Buffalo Lake, East Prairie, Elizabeth, Fishing Lake, Gift Lake, Kikino, Paddle Prairie and Peavine. Originally there were twelve temporary Métis settlements established in 1938. Four were closed between 1940 and 1960 as they were not required for farming, hunting and fishing.
- Each settlement is run by a five-person elected council.
- Bylaws must be approved by the members of the settlement. Settlement Councils are also responsible for determining the membership of, and land allocations within, their settlements.
- The constitutional authority of Alberta or other provinces to pass legislation such as that described above remains uncertain in a legal sense, as does the federal jurisdiction over Métis peoples and their lands.

Key Issues: Métis hunting rights

B–21 RESIDENTIAL SCHOOLS

BACKGROUND

- Treaties decreed that the federal government would provide education for Canada's Aboriginal population.
- 1884—the federal government legislated mandatory school attendance for all Aboriginal children. By 1920 it became mandatory for every Indian child between the ages of six and fifteen to attend school.
- Residential Schools were built in every province and territory except Prince Edward Island, New Brunswick and Newfoundland and were managed jointly by the church and government until 1969. The last government-administered school was closed in 1996.

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Contemporary examples and extensions

LINKS@NELSON

Contemporary examples and extensions

- In all there were over 130 residential schools across Canada and children from every Aboriginal culture (First Nations, Inuit and Métis) were registered. It is estimated that over 80 000 native children attended residential schools.
 - Aboriginal children were separated and isolated from their families for as many as ten years, and prevented from adopting their parents' traditional way of life.
 - Children received a few hours of academic instruction with the remainder of the day filled with domestic, farming and/or gardening chores.
 - Many of these children received a second-rate education for more than a century and were sexually, physically and emotionally abused.
 - The sad legacy of these schools was the loss of language and culture that students of residential schools would be unable to pass on as adults to their children.
-

REDRESS

June 11, 2008, Prime Minister Stephen Harper, on behalf of the federal government and all Canadians apologizes to former students of Residential Schools in the House of Commons.

Key Issues: Acknowledgement and recompense for Residential School survivors

The *Indian Residential Schools Settlement Agreement (IRSSA)* was approved by the Courts and came into effect on September 19, 2007. It is the largest class action settlement in Canadian history. This agreement transpired after many years of litigation, Alternative Dispute Resolution (ADR) processes and various other attempts by residential schools survivors and governments and churches to resolve the large number of legal and other claims arising from the residential schools experience.

- The IRSSA stipulates that \$1.9 billion be set aside for the direct benefit of former Indian Residential School students. Subject to verification, each eligible former student who applies would receive \$10 000 for the first school year or portion; this \$10,000 payment is known as the "Common Experience Payment." For individuals who were sexually or physically abused, there is additional compensation available through an adjudicative process that verifies their claims.

TRUTH AND RECONCILIATION

- A Truth and Reconciliation Commission will be established with a budget of \$60 million over five years. It is mandated to promote awareness about the Indian Residential School system and its legacy.

B–22 PROTOCOL FOR FIRST NATIONS, MÉTIS AND INUIT ELDERS; PROTOCOL; THE ROLES OF ELDERS; REQUESTING THE HELP OF AN ELDER; HOSTING AN ELDER IN THE CLASSROOM; TOBACCO AND PRINT

PURPOSE

- To help anyone appreciate the protocol involved in speaking with Elders and requesting their help, or inviting them to the classroom

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Contemporary examples
and extensions



BACKGROUND

- **Elders** are the spiritual librarians of their communities and the keepers and teachers of oral tradition and traditional cultural knowledge. They keep and share knowledge of traditional ceremonies, stories and teachings from centuries past. Elders can be men or women of any age, but often they are older members of the community, individuals who are recognized as having spiritual and cultural wisdom.
 - Elders are considered vital to the survival of Aboriginal cultures. The transmission of cultural knowledge is an essential part of the preservation and promotion of cultural traditions and their protocols. Elders are always to be treated with great respect. It is an honour to have an Elder visit your classroom.
-

Protocol

- Many Aboriginal people believe that in order for the balance of all living things to continue, proper protocols must be followed. Protocol is a traditional set of rules or etiquette that helps maintain harmony and respect between individuals. Protocols ensure that ceremonies will be remembered from generation to generation and that the values of the culture will be upheld through time.
- Before making any requests or attempting to communicate with Elders, familiarize yourself with proper and respectful protocol. While similarities exist among First Nations, Métis and Inuit groups—protocol always ensures that the Elder and his or her knowledge is shown respect—traditions vary from community to community. Not all Métis or Dene Elders, for example, would customarily be given a gift of tobacco, but in the Cree and Blackfoot cultures, that is a common form of invitation. Tobacco is also not part of protocol in the Inuit culture: in Inuvialuit customs, if an Elder is asked to say a prayer at a conference, nothing is given; but if an Elder is requested to attend the conference, usually he or she is given an honorarium. If travel is involved, all related costs are covered and a per diem allowance may be provided. With Elders from a Christian background, a gift of tobacco would not be appropriate. An Elder will not ask for payment or state an amount, but often an honorarium is the most appropriate gift.
- Always ascertain the proper protocol before issuing an invitation. Demonstrate respect for teachings and traditions. Provide places of honour at school events. Know and respect that certain information, such as teachings about spiritual ceremonies, is considered private and will not be shared outside the community.

The Roles of Elders

- The roles of Elders vary greatly from community to community, as do the protocols and traditions they teach. Elders can be spiritual guides, healers, medicine men and women, artists, seers, and councillors. Many Elders today are involved in community-owned business enterprises and economic development operations.
- Elders often assist or advise in ways such as:
 - saying prayers before meetings;
 - describing or performing traditional ceremonies;

- sharing traditional knowledge;
 - giving spiritual advice to individuals;
 - demonstrating traditional crafts and practices;
 - teaching the community’s protocols.
- The wisdom of the Elders can be generally divided into two types: spiritual advice and traditional knowledge. According to Elders’ teachings, spiritual advice may include the teaching of prayers to be used in addressing the Creator for personal well-being or ceremonial activities. Traditional knowledge has to do with knowing how to live in a way that is respectful to Mother Earth.
 - Some Elders may subscribe to Christian beliefs rather than traditional spirituality, or to a combination of the two.

Requesting the Help of an Elder

When requesting the help of an Elder, follow these guidelines or the advice of someone in your community who works with the Elders:

- Ask an Aboriginal community leader who works with the Elders or an experienced fellow teacher which Elder would be best suited for your request. For example, depending on your area of study, you might wish to speak to an Elder who has specific knowledge of a ceremony or the history of the community or a traditional skill.
- With the help of the Aboriginal community leader and the permission of the governing body—perhaps a chief, band council, school authority or school board, settlement council, or friendship centre—arrange to meet with the Elder. To develop a trusting relationship, one or more home visits should be arranged with the Elder before making your request.
- Prior to your visit, find out if an offering of tobacco is appropriate or required. In many First Nations communities, tobacco is a traditional and sacred plant that is often offered before a consultation with an Elder. When offering tobacco, your mind must be clear, open and honest.
- When the Elder indicates that he or she is ready and introductions have been made, state your request in a respectful way. For example:

“I would be honoured to benefit from your advice and guidance.”

“We would be honoured if you would visit our class to share your knowledge on...”

It is important that the Elder understand what kind of guidance you are requesting: spiritual advice or traditional knowledge.

- If the Elder accepts the tobacco, he or she is accepting your invitation or request. The tobacco is then offered to the Creator during a prayer for life and good health.

If the Elder declines the tobacco, he or she is declining your invitation or request. The Elder may have prior commitments or be unable to help you. If he or she does not have the information you are requesting, usually you will be referred to another person who does know. Ask your community leader for clarification.

Gift-giving

- Honorariums and gift-giving are honoured traditions founded on the principle of reciprocity: when you take, something must be given in return. Once the Elder has fulfilled your request, an honorarium or gift should be given to express your gratitude and appreciation. The Aboriginal community leader or guide will be able to give you some ideas of what is appropriate.

Hosting an Elder in the Classroom

When hosting an Elder in your classroom, follow these guidelines:

- Have an Aboriginal leader who works with Elders assist you in approaching an Elder and making your request. See “Requesting the Help of an Elder.”
- Prepare the students for the visit by reviewing good listening practices and discussing suitable manners. Behaviour expectations include the usual, such as demonstrating respect and not asking inappropriate questions, but also culturally specific actions, such as not passing in front of where the Elder is sitting. In some more traditional communities, avoiding eye contact with the Elder shows respect. Again, expectations and traditions vary, so find out what is appropriate in your situation.
- Ensure students are aware that they should not touch or handle without permission any items that the Elder might bring to the school, especially sacred objects associated with ceremonies, such as a drum.
- Explain to students the importance of the role of Elders in the community and the value of their knowledge.
- Invite the Elder to meet informally with students and staff before he or she visits the class, so that the Elder can become familiar with and comfortable in the school environment.
- While the Elder is visiting the class, remember to:
 - ensure that students listen politely and are helpful and welcoming;
 - have one student show the Elder around the classroom and the sitting area, and where to find the washroom;
 - have breaks during which the Elder can relax in another room (if the visit is long);
 - supervise students’ interaction with the Elder to ensure that he or she is treated with respect and courtesy;
 - provide a light lunch or snack for the Elder, such as tea with bannock and jam.
- At the end of the visit, thank the Elder formally. A handshake is appropriate in some but not all circumstances.
- Have the students express their appreciation. Present a gift, such as a blanket, towel set or slippers and socks, and encourage students to present a class gift, such as a food basket containing preserves, cheese, crackers, fruit, bannock and cans of soup.



Tobacco and Print

- In many Cree nations, Elders are traditionally given gifts of tobacco (usually a package of pipe tobacco) and print (flag)—a cotton broadcloth material of two metres in length. The traditional colours of a print are white, yellow, red, blue and green. Be aware of the significance of the colours and the preferences of the Elder, and choose accordingly.
- The practice of offering tobacco in exchange for stories and information goes back hundreds of years. Whether the Elder smokes is irrelevant. Respect that in First Nations cultures, tobacco is traditionally a sacred plant. For many First Nations cultures, tobacco represents honesty that is carried in one's heart when words are spoken between people. Elders use the tobacco as an offering in seeking guidance from the spirit world. The pipe is the sacred way to pray for good things in a spirit of respect, honest, getting along with people, and all things positive.
- The offering of tobacco is a longstanding cultural protocol; however, the practice may not be appropriate for all Elders today. Attempt to determine this before any interactions. In decisions for or against offering tobacco, be guided by the Elder's preference rather than your own cultural and personal beliefs.

Key Issues: respect for Elders

SECTION 2: WHAT COLLECTIVE RIGHTS DO FRANCOPHONES HAVE UNDER THE CHARTER?

PURPOSE

- 9.1.7 assess, critically, how the increased demand for recognition of collective rights has impacted the legislative process in Canada
- In what ways does the Canadian Charter of Rights and Freedoms meet the needs of Francophones in minority settings? (I, PADM)
 - To what extent does the Canadian Charter of Rights and Freedoms meet the needs of Francophones in Québec? (PADM, I, C)
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B-23 LANGUAGE RIGHTS

More information is available in the **Constitutional Backgrounder (B-1)**

Charter of Rights and Freedoms: Official Languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.
- (2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.
- (3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.
- 16.1 (1) The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

- (2) The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.
- 17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.
 - (2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.
- 18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.
 - (2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.
- 19. (1) Either English or French may be used by any person in, or any pleading in or process issuing from, any court established by Parliament.
 - (2) Either English or French may be used by any person in, or any pleading in or process issuing from, any court of New Brunswick.
- 20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where:
 - (a) there is a significant demand for communications with and services from that office in such language; or
 - (b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.
 - (2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

Charter of Rights and Freedoms: Minority Language Rights

- 23. (1) Citizens of Canada:
 - (a) whose first language learned and still understood is that of the English or French linguistic minority of the province in which they reside; or
 - (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.
- (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary language instruction in the same language.
- (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province:
 - (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
 - (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.