



# TRY JUDGING™

[www.tryjudging.ca](http://www.tryjudging.ca)



## Teacher's Manual

A multimedia educational program  
on the Canadian judiciary.





## Acknowledgements

## Introduction

## Preface

<b>1. Why do we need judges?</b>	<b>7</b>
Suggested Lesson Plans	10
Teaching Module	25
<b>2. Why must judges be fair and impartial?</b>	<b>44</b>
Suggested Lesson Plans	47
Teaching Module	53
<b>3. What is the judge's role in the justice system?</b>	<b>64</b>
Suggested Lesson Plans	67
Teaching Module	76
<b>4. How do judges make decisions?</b>	<b>91</b>
Suggested Lesson Plans	95
Teaching Module	101
<b>5. Why are judicial independence and judicial impartiality so important?</b>	<b>118</b>
Suggested Lesson Plans	121
Teaching Module	129
<b>Appendix</b>	<b>138</b>
Curriculum Correlation tables	139



## Acknowledgements

*Try Judging* is a multi-media educational program designed to be integrated into Canadian high school curricula wherein social studies, civics and law are mandatory courses of study. It introduces students to the role of judges in Canada's judicial system, and encourages students to explore important concepts such as the Rule of law, judicial independence and judicial impartiality.

This initiative of the Canadian Superior Courts Judges Association is national in scope and truly unique in that it was conceived, designed and produced by judges.

The Association expresses its thanks to The Right Honourable Beverley McLachlin, Chief Justice of Canada and to the other members of the Canadian Judicial Council for their enthusiastic and strong support.

The CSCJA extends its sincere appreciation to Mr. Dean Jobb, a university professor and professional writer, engaged to prepare the substantive content of the teacher's guide. The CSCJA wishes to thank our teacher-reviewers: Rick Valin, Craig Wallace, Alex MacKinnon, Teresa Kewachuk for their important contribution to this project and John Gann for reviewing and writing the suggested lesson plans.

The Association wishes to thank GAPC and Digg Design —the production team engaged by GAPC for the quality of their work and professionalism in designing our web site, producing our videos and for *Try Judging*, the online interactive program. Special appreciation is extended to Dene Rossouw

who served as the committee's technical advisor, editor and consultant in all phases of its work.

The Association gratefully acknowledges the contribution of Mr. Justice Douglas J. A. Rutherford in making courtroom facilities available to us for filming.

We owe considerable thanks to Mr. Luc Perrault at the Centre for Legal Translation and Documentation, University of Ottawa, and the people associated with the centre for their careful scholarship in translating our text as well as their assistance in liaising with other institutions.

The statements, examples, problems, issues and scenarios canvassed within this resource are intended to assist in a study of the subject and should not be taken as necessarily representing an endorsement of any particular position, or the opinion or view of the CSCJA, or its members, or those organizations or institutions who have supported the project. Any legal information in the resource materials is intended for general educational purposes and should not form the basis of legal advice of any kind.

The contents of this document may be reproduced for educational, non-commercial purposes.

*Try Judging* was produced by the Canadian Superior Courts Judges Association, Public Education Committee. The committee gratefully acknowledges the financial support of the CSCJA; The Canadian Bar Association Law for the Future Fund; The Law Foundation of Ontario; The Alberta Law



Foundation; The Law Foundation of British Columbia; The Yukon Law Foundation; and the Department of Justice, Canada.

Finally, the Association extends a special tribute to the members of its Public Education Committee for their tireless efforts and lasting contribution to a national understanding of the work and responsibilities of this country's judiciary.

### **CSCJA Public Education Committee**

Co-chairs:

Madame Justice Myra B. Bielby

Mr. Justice Jamie W. S. Saunders

Members:

Associate Chief Justice Jeffrey J. Oliphant

Mr. Justice Stephen T. Goudge

Mr. Justice J. Fraser Martin

Mr. Frank McArdle

Ms. Yolande Henry

Mr. Dene Rossouw

© 2004 Canadian Superior Courts Judges Association.

**Alberta LAW  
FOUNDATION**

**THE LAW  
FOUNDATION  
OF BRITISH COLUMBIA**



**CANADIAN BAR  
ASSOCIATION**  
cba.org



### **Yukon Law Foundation**



Department of Justice  
Canada

Ministère de la Justice  
Canada



Try Judging is a Trade Mark of the CSCJA

*Try Judging* is a multi-media educational program designed to be integrated into Canadian high school curricula wherein social studies, civics and law are mandatory courses of study. It introduces students to the role of judges in Canada's judicial system, and encourages students to explore important concepts such as the Rule of law, judicial independence and judicial impartiality.

The program consists of three components—this guide for teachers, a web site for teachers and the online interactive program for students. The program is built around five guiding questions, each forming a separate module, that lead students through five courtroom case scenarios and issues associated with the role of judges in Canada's judicial system.

Each module may be presented as a discreet topic or integrated as a whole in whatever sequence best suits the teacher's needs and resources.

The resource materials/lesson plans are available in downloadable PDF format on the website [[www.tryjudging.ca](http://www.tryjudging.ca) or [www.essayezdejuge.ca](http://www.essayezdejuge.ca)] and provide for learning outcomes, case study, additional exercises for classroom use and assignments, as well as internet links to additional resources. The interactive multi-media component of the *Try Judging* program for students can be reached at [www.tryjudging.ca](http://www.tryjudging.ca) or [www.essayezdejuge.ca](http://www.essayezdejuge.ca).

Each of the five modules begins with a lesson plan submitted by our teacher-reviewers and adapted by one of our reviewers as a suggested method of presenting the material covered in that module. The lesson plans were prepared on the assumption that

this course, or any one of its parts, would be taught in a high school social studies classroom and easily integrated within a course of study which focused upon Canadian law or government. While the course is geared towards Grades X and XI, it was also assumed that the classroom might comprise students ranging from 14 to 19 years of age, who represent a wide range of academic abilities and come from a diverse set of cultural backgrounds. Naturally, the method chosen in presenting this material will depend upon the teacher's own discretion and experience, as well as their students' interests and available resources. It is hoped that the organization of this material and the varying formats in which it may be accessed or reproduced will provide the necessary flexibility to accommodate a wide variety of user groups across the country.

Once a meaningful level of application has been achieved it is hoped that user feedback from both teachers and students will add to the body of lesson plans and other means developed to impart it. We encourage teachers to let us know what they think by using the feedback section of our website and suggesting how our project might be expanded or improved.

A chart appears as an appendix showing, by province and territory, a correlation of curricula found in high schools across the country. This may prove helpful in seeing how easily a course on the judiciary may be integrated as an important part of any unit or topic dealing with our Canadian constitutional democracy. It may also serve to facilitate access to different resources in other jurisdictions.



## Preface to the five Lesson Plans and Learning Modules

### Objectives

1. To provide a national short course, in both official languages, for Grade 10 (Grade 11 in Quebec) high school students across Canada concerning the Canadian judiciary;
2. To offer students a basic understanding of the principles of judicial independence and judicial impartiality, hallmarks of Canada's judiciary;
3. To instill in high school students, this country's next generation of informed citizens, a good understanding of what judges do on a daily basis, and how and why they do it;
4. To enable students to understand the role of the judiciary in Canada's constitutional democracy, defender of the constitution and arbiter between citizen and state;
5. To encourage students to appreciate why judicial independence is such an important public interest worth defending; and
6. To impart the subject in an exciting and challenging way, using practical, real life examples to illustrate certain core concepts like the rule of law, the presumption of innocence, the burden of proof—both in a criminal and civil context and the kinds of values and duties set out in our Canadian *Charter of Rights and Freedoms*.

### Rationale

This is not a course on the law, or about lawyers, or other participants in the justice system. It is unique in that it is about judges, and created by judges. What, how, where and why judges do what they do is the repeated focus of this course.

With the support teachers, *Try Judging* can become an important and necessary teaching tool throughout Canadian classrooms, intended as part of the regular teaching of such subjects as history, social studies, civics or Canadian law.

The course is organized and presented in the format of five modules. There will, naturally, be a certain overlap of the subjects canvassed in some of the modules. The examples and illustrations are relevant to both teachers and students. The teacher is free to present any single module as a discrete lesson (or lessons), or present all five as a short course on the Canadian judiciary to be included within that year's regular teaching of related subjects.

### The Five Study Modules

- Module 1: Why do we need judges?
- Module 2: Why must judges be fair and impartial?
- Module 3: What is the judge's role in the justice system?
- Module 4: How do judges make decisions?
- Module 5: Why are judicial independence and judicial impartiality so important?

## Lesson Plan Outline for the 5 Study Modules

### Lesson plan overview

#### Suggested lesson plans

- Teaching Objectives and Learning Outcomes
- Teacher and Student Learning Materials and Resources
- Teaching Plan and Strategy
- Evaluation /Assessment

### Teaching module

#### Application

The five modules of study associated with *Try Judging* allow for a wide latitude of application; its strengths can be identified as the following:

1. Collectively and academically, it flows logically;
2. Each module has a distinctive focus, as presented by the question at hand;
3. Each module has an abundant amount of quality support resources for the novice as well as the experienced teacher of law/civics/ and/or the social sciences; do refer to [www.tryjudging.ca](http://www.tryjudging.ca) for these excellent materials;
4. The curriculum supports a multi-resource approach, with hard copy, video, and online materials to work with;
5. Each module can be taught as a stand-alone item, or collectively, based upon the needs of students, the course curriculum, and time constraints; and
6. The curriculum, with its interactive online site and videos, is inviting, engaging, and reinforcing for positive student learning; it is pedagogically sound.

## The Online Interactive Program for Students

Students can explore the five interactive modules in any order. The online program for students is found at [www.tryjudging.ca](http://www.tryjudging.ca). Each module follows a similar instructional design. The first phase of the interaction is the court of public opinion scripted from the public's point of view [POV]. Students view a video case scenario which is thought provoking and relevant and challenges them to form an opinion. The five case scenarios and associated key questions are:

### Module 1 Case Scenario—Drugs in the back-pack

*Key question*—Who should hear this case and pass judgment?

### Module 2 Case Scenario—Hotel sues youths who damage hotel room

*Key question*—What is likely to happen when the hotel's claim for damages gets to trial?

### Module 3 Case Scenario—Teacher sued for assaulting student

*Key question*—What should be the outcome of this case?

### Module 4 Case Scenario—Bail hearing in armed robbery case

*Key question*—Should this woman be released on bail as she awaits trial?

### Module 5 Case Scenario—The protest

*Key question*—Was the judge right to strike down part of the law against possessing child pornography?

### Judge's point of view (POV)

After interacting with the court of public opinion, students enter the Judge's POV and get to deal with the evidence of each case. In order to deal with the evidence and ultimately balance the scales of justice, learners need to apply appropriate judicial principles and research. At the end of each section, i.e. at the end of evidence, principles and research,

the meter of justice will indicate if students have made correct or incorrect choices. Students can then go back and correct their choices.

The **Meter of Justice** activates at the end of each sub-unit and serves as a guide and indicator that students are on the right track [red = wrong, green = correct].

Once a student has completed all of the three learning units i.e. judicial principles, evidence and research and answered all the questions correctly for that unit, the **Scales of Justice** will move from an unbalanced to a balanced position and a graphic of a judge will provide audio **feedback**.

The final test of understanding is a multiple choice quiz that students can complete online and print out their score to show their teacher. Students can go back and correct in order to improve their score. It is time driven, humorous and challenging.

An online **resource** specific to the key learning points is available for students.





## Module I: Why Do We Need Judges?



### ➤ Case Study: Drugs in the Backpack

## Contents

### Module Overview

Module Learning Outcomes

Provided Resources

1. Resource Materials
2. Case Study
3. Additional Exercises for Classroom Use and Assignments
4. Internet Links to More Resources

### Suggested Lesson Plans

Teaching Objectives and Learning Outcomes

Teacher and Student Learning Materials and Resources

Teaching Plan and Strategy

**Lesson 1** — The Rule of Law

**Lesson 2** — The Role of the Courts

**Lesson 3** — Criminal and Civil Law

**Lesson 4** — Sources of Canadian Law

**Lesson 5** — The Charter of Rights and Freedoms

**Lesson 6** — Case Study: Drugs in the Backpack

**Lesson 7** — Culminating Activity

Optional Assignment for Students

Further Optional Assignment for Students

Evaluation/Assessment



## Overview: Why Do We Need Judges?

**T**he desired outcome for Module 1 is encapsulated in the following paragraph:

“Well done. Now you can see why it so important that an impartial third party decides what evidence can be used in court and whether someone is innocent or guilty of a crime. That’s the role of the judge—to bring an open mind to the task of resolving legal disputes and ensuring justice is done.”\*

(\*audio feedback to each student from the judge after the successful completion of the online task at [www.tryjudging.ca](http://www.tryjudging.ca))

*NB: all lettered Sections identified in the overview are referenced within the body of each of the 5 modules, with each module being located directly after each suggested lesson plan(s), and will be found at [www.tryjudging.ca](http://www.tryjudging.ca).*

### Module Learning Outcomes: Module 1, Section (A)

Students will:

- Demonstrate an understanding of why we have laws, the need for limits on the actions of individuals, and the importance of the rule of law in Canadian society;
- Explore the sources of Canadian law and the separation of powers in our federal state;

- Explore the role of Canada’s courts as an impartial forum for adjudicating legal disputes, and the role of judges in upholding the rule of law;
- Demonstrate an understanding of the role judges play in protecting the constitutional rights of citizens.

### Provided Resources for Module 1

#### I. Resource Materials: Module 1, Section (B)

(Note: information on the first five sections below is in Module 1 (B) of the teacher’s guide and can also be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). Click ‘Resources for Teachers’.)

1. The Rule of Law
2. The Adjudicative Role of the Courts
3. Resolving Criminal and Civil Disputes: Standards of Proof
  - a) Criminal Cases
  - b) Civil Cases
4. Sources of Canadian Law
  - a) The Constitution and The Charter of Rights and Freedoms
  - b) Legislation
  - c) The Common Law and Principles of Equity
  - d) Quebec’s Civil Code

5. Protecting Canadians
6. Lesson #1: Handout Sheet—The Rule of Law (refer to Appendix A)
7. Lesson #2: Handout Sheet—The Role of The Courts (refer to Appendix B)
8. Lesson #3: Handout Sheet—Criminal and Civil Law (refer to Appendix C)
9. Lesson #4: Handout Sheets—Sources of Canadian Law (refer to Appendices D and E)
10. Lesson #5: Student Project—The Charter of Rights and Freedoms
11. Lesson #6: Video: Case Study #1—Drugs in the Backpack (<3minutes) available at **www.tryjudging.ca**
12. Video—Background and Script available at **www.tryjudging.ca**
13. *Try Judging* online interactive program for students is available at **www.tryjudging.ca**
14. Quiz (embedded within the online interactive student program)
15. Lesson #7—Classroom Culminating Activity
16. Optional, Individual Culminating Assignment (refer to Appendix F)
17. Additional Exercises for Classroom Use and Assignments (these are found in Module 1 (D of the teacher's guide) at **www.tryjudging.ca**)
18. Internet Links to More Resources (these are found in Module 1 (E) of the teacher's guide at **www.tryjudging.ca**)

## 2. Case Study: Module 1, Section (C)

(to be used in conjunction with the video and the online interactive site)

### ***Drugs in the Backpack***

[The case study can be accessed at **www.tryjudging.ca**. It is designed as an interactive exercise that can be adapted for an in-class activity and/or a written assignment. The website, furthermore, provides all resource materials for teachers in PDF format.]

## 3. Additional Exercises for Classroom Use and Assignments: Module 1, Section (D)

(all the following are elaborated upon at **www.tryjudging.ca**)

- 1) In-class activities to get students thinking about the role of judges in upholding our laws and rights
- 2) In-class discussion: Man charged with baseball-bat assault
- 3) Base a classroom discussion or a written assignment on this quote from Shakespeare: "The first thing we do, let's kill all the lawyers."
- 4) Build a class discussion around the case of William Sampson, the Canadian citizen jailed in Saudi Arabia on false charges
- 5) Suggested questions for class discussion or written assignments

## 4. Internet Links to More Resources: Module 1, Section (E)

These links, found at **www.tryjudging.ca**, provide information on the following: federal statutes, The Criminal Code, The Youth Criminal Justice Act, The Charter of Rights and Freedoms, recent decisions of most superior and federal courts, Supreme Court of Canada decisions, role of the judiciary, parole system, on-line legal dictionary, family law, contract law, criminal law, links to legal resources, etc



## Module 1: Why Do We Need Judges?

### Suggested Lesson Plans

#### Teaching Objectives and Learning Outcomes

Students will:

- Demonstrate an understanding of why we have laws, the need for limits on the actions of individuals, and the importance of the rule of law in Canadian society;
- Explore the sources of Canadian law and the separation of powers in our federal state;
- Explore the role of Canada's courts as an impartial forum for adjudicating legal disputes, and the role of judges in upholding the rule of law;
- Demonstrate an understanding of the role judges play in protecting the constitutional rights of citizens.

# Teacher and Student Learning Materials and Resources

(Note: information on the first five sections below is in Module 1 (B) of the teacher's guide and can also be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). Click on "Teacher Resources".)

## 1. The Rule of Law

## 2. The Adjudicative Role of the Courts

## 3. Resolving Criminal and Civil Disputes: Standards of Proof

- a) Criminal Cases
- b) Civil Cases

## 4. Sources of Canadian Law

- a) The Constitution and the Charter of Rights and Freedoms
- b) Legislation
- c) The Common Law and Principles of Equity
- d) Quebec's Civil Code

## 5. Protecting Canadians

### 6. Lesson 1:

Handout Sheet—The Rule of Law (refer to Appendix A)

### 7. Lesson 2:

Handout Sheet—The Role of The Courts (refer to Appendix B)

### 8. Lesson 3:

Handout Sheet—Criminal and Civil Law (refer to Appendix C)

### 9. Lesson 4:

Handout Sheets—Sources of Canadian Law (refer to Appendices D and E)

### 10. Lesson 5:

Student Project—The Charter of Rights and Freedoms

### 11. Lesson 6:

**Video: Case Study 1: Drugs in the Backpack**  
(<3minutes) available at [www.tryjudging.ca](http://www.tryjudging.ca)

### 12. Video:

background and script available at [www.tryjudging.ca](http://www.tryjudging.ca)

### 13. Try Judging

online interactive program for students is available at [www.tryjudging.ca](http://www.tryjudging.ca)

### 14. Quiz

(embedded within the online interactive student program)

### 15. Lesson 7:

Classroom Culminating Activity

### 16. Optional

Individual Culminating Assignment (refer to Appendix F)

### 17. Additional Exercises

for Classroom Use and Assignments  
(these are found in Module 1 (D of the teacher's guide) at [www.tryjudging.ca](http://www.tryjudging.ca))

### 18. Internet Links

To More Resources (these are found in Module 1 (E) of the teacher's guide at [www.tryjudging.ca](http://www.tryjudging.ca))



# Lesson 1 – The Rule of Law

**Objective**—students will understand the need for law and rules in our society

**Materials**—Appendix A

## Plan

- give students a copy of Appendix A
- class discussion and brainstorming
- have students come up with a list of rules that we have at home, school and for our society

**Example:**

Rules At Home	Rules at School	Rules for Society
<ul style="list-style-type: none"> <li>• home by 11:00</li> <li>• clean bedroom</li> <li>• T.V. time</li> <li>• obey parents</li> <li>• share with brothers and sisters</li> </ul>	<ul style="list-style-type: none"> <li>• no talking in class</li> <li>• no hats in class</li> <li>• no running in hallways</li> <li>• dress code</li> <li>• no smoking</li> </ul>	<ul style="list-style-type: none"> <li>• called laws</li> <li>• driver's age</li> <li>• illegal to steal, shoplift, etc.</li> </ul>

## Class discussion on why we need laws

(focusing questions)

- 1 Why do we have rules and laws?
  - what are some areas where the limits are an issue? (i.e. marijuana laws etc.)
- 2 How do rules and laws actually maintain individual freedom?
- 3 Why do we need to limit our conduct?  
(*Your right to swing your fist stops at the end of my nose.*)
  - no one above the law
  - Watergate case and Richard Nixon
  - examples of no rule of law – *Nazi Germany, Soviet Union*
- 4 How do we decide these limits?  
*morals, experience*
  - do these limits change over time?
  - can everyone agree on these limits?
  - how does parliament decide on these limits?
- 5 Why must the rule of law be the same for everyone?
  - no one above the law
  - Watergate case and Richard Nixon
  - examples of no rule of law – *Nazi Germany, Soviet Union*

## Lesson 2 — The Role of the Courts

**Objective**—students will understand the role of the court system in our society

### Materials—Appendix B

#### Plan

Provide students with a copy of Appendix C.

Lead the class in discussion based on the following question:

*“If you were accused of breaking the law, what characteristics would you want in the person who would decide if you were guilty or innocent?”*

- give students some time (10 minutes) to come up with their own list of characteristics
- discuss with the class those characteristics a judge should have once the discussion is completed have students complete the “Revised List of Characteristics”.

### The revised list should contain the following:

- 1 - the person is legally trained and knows the rules of law
- 2 - the person is fair
- 3 - decisions are based on law and evidence
- 4 - there is no favouritism
- 5 - decisions are not arbitrary
- 6 - decisions are rational
- 7 - the person is honest
- 8 - the courtroom is open for all to see
- 9 - the person is intelligent

# Lesson 3 – Criminal and Civil Law

**Objective**—students will understand the characteristics of criminal and civil law

**Materials**—Appendix C

## Plan

Provide the information listed below (kinds of law) for students to record in Appendix C

There are two basic kinds of law:

- A. **PUBLIC LAW**—these are the laws to protect all of society
  1. *Constitutional Law* – establishes the jurisdictions of federal and provincial governments
  2. *Administrative Law* – deals with labour standards, welfare and citizen interactions with government
  3. *Criminal Law* – acts that harm an individual and threaten the security of society as a whole set out in the *Criminal Code* to be a crime there must be two features:
    - a) *a guilty act* – something must be done i.e. hit, shoot or rob someone
    - b) *a guilty mind* – the act must be done on purpose
  4. *Burden of Proof and Proof Beyond a Reasonable Doubt*
    - the Crown (the state) has the burden of proof
    - they must prove a person is guilty
    - the person does not have to prove that they are innocent
    - the Crown must do this beyond a reasonable doubt
    - this is more than “probably” or “likely” guilty
    - the judge must be “sure” of the guilt

## Student Assignment

Students can research one of the following cases: *Donald Marshall Jr.*, *David Milgaard*, *Guy Paul Morin*

Why were they found innocent after being found guilty? Why is there now “reasonable doubt?”

## B. PRIVATE LAW

1. *Meaning*—this is a conflict between individuals or between businesses
  - Examples: contracts; family law such as divorce, child custody and division of matrimonial property; harm to someone else’s property; wrongful dismissal from a job; sale of property
  - The police and government usually play no role in these cases
2. *Torts*—the harm one party suffers as a result of the actions of another
  - one person is sued by another
  - Example: in a traffic accident, a homeowners “icy” sidewalk
3. *Contracts*—conflict when promises between individuals or companies are not kept
4. *Burden of Proof and the Preponderance of Evidence*
  - the burden of proof is with the *plaintiff* (the person making the accusation)
  - the standard is not as high as in the criminal code
  - “probably” true is sometimes enough to settle a case

## Student Assignment

Students can research the case of O.J. Simpson.

Why was he found innocent in the criminal case, but found guilty in the civil case?

## Lesson 4 — Sources of Canadian Law

**Objective—Students will learn the origins of Canadian laws**

**Materials—Appendices D and E and Internet**

### Plan

Provide students with the following:  
there are three major sources of Canadian Law

#### 1. *The Constitution and the Charter of Rights and Freedoms*

- students will use the following website to access the Charter of Rights:  
[http://canada.justice.gc.ca/Loireg/index\\_en.html](http://canada.justice.gc.ca/Loireg/index_en.html)
- students will then fill out the chart in Appendix D this will allow students to see the origins of many of our laws

#### 2. *Legislation*

- the federal, provincial and municipal governments pass laws, which are known as statutes, to govern matters within each of their jurisdictions
- students are to go to the website:  
<http://www.legalcanada.ca>
- students are to find an example of a law that was created by legislation
- the example should be a law that the student thinks is important, strange or unusual
- the student is to create a 5 minute presentation on the law they chose and why they chose this example
- students will take this information down on Appendix E

#### 3. *Common Law and the Principles of Equity* *Common Law*

- the concept of Common Law originates in Britain
- it is case law or judge-made law
- it is based on precedent
- Principles of Equity
- sometimes common law creates an unfair result
- judges will then use the Principles of Equity to ensure a fair judgment
- examples are: there must be a legal remedy for every wrong
- people must act honourably in a legal process
- students are to go to the following website:  
<http://www.canlii.org/ns/cas/nsca/index.html>
- students should find one example of a court decision that has been based on precedent
- in groups of three, students will show what they have found and add the information to Appendix E

#### 4. *Quebec Civil Code*

- used only in Quebec
- at times used along with common law to reach judgments
- it is a set of general legal principles
- it is a European-style Civil Code

## Lesson 5 — The Charter of Rights and Freedoms

**Objective**—students will understand the role of the Charter in legal discussion

**Materials**—library resources, including the internet

**Plan**—Provide the relevant background material given in the Module 1 (B)

### Student Project

Students are to create a scrapbook dealing with Charter issues and how the Charter protects rights

1. students will do research using library resources such as the internet, books, newspapers, etc.
2. students are to find a series of Charter decisions (8-10 decisions) made by the Supreme Court
3. students are to provide an explanation as to how each case protected the rights of Canadians
4. students are to find a case that is currently before the Supreme Court for which no decision has yet been made
  - based on what the student has learned about Canada's legal system, the student is to make their own decision about the case and explain the reasons for this decision
  - the student will then present this case to the class and ask their decision in this case—would they have made the same decision? Why or why not?

## Lesson 6 — Case Study: Drugs in the Backpack

Critical learning materials and resources 11, 12, 13, and 14 will enable students to fully analyse Module 1's Section (C) Case Study: *Drugs in the Backpack*.

The online video (approximately 3 minutes in length), subsequent online interactive exercise, and associated online quiz (all found at [www.tryjudging.ca](http://www.tryjudging.ca)), provide an excellent student-centred learning activity for teachers to use.

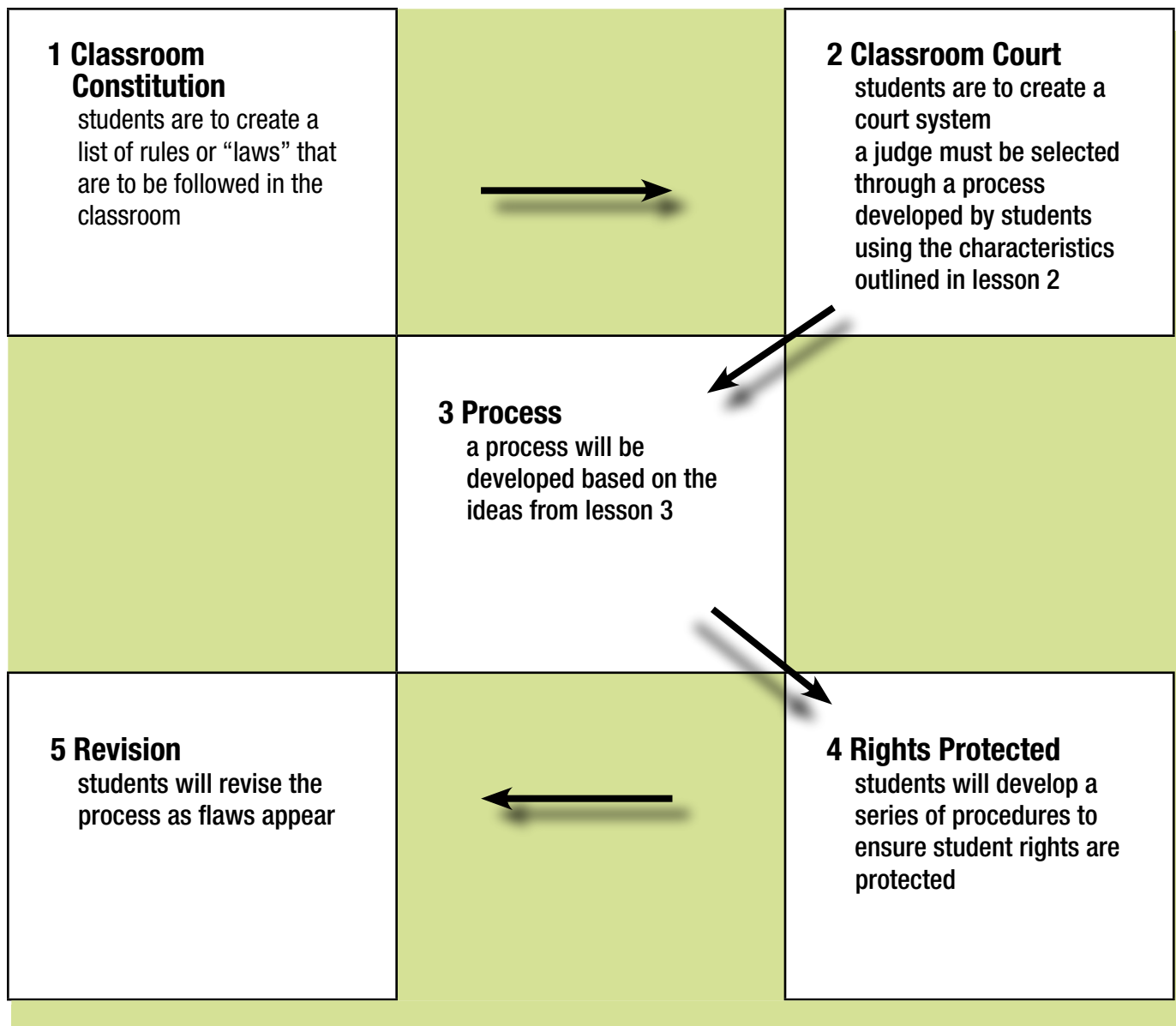


# Lesson 7 Culminating Activity

**Objective**—students are to tie all the concepts of Module 1 together

**Materials**—the resources used throughout this unit

**Plan**—students are to create a classroom legal process



## Optional Assignment for Students

Using the Supreme Court of Canada website, [www.scc-csc.gc.ca](http://www.scc-csc.gc.ca), students can complete the assignment found in Appendix E. Students are to identify the nine supreme court justices, and then choose one judge in order to write a biography. As a concluding task, the student is to list and describe three necessary attributes of a supreme court justice.

## Further Optional Assignment for Students

Follow up activities and assignments such as those outlined in Module 1 guide's Section (D), using the Internet links listed in Section (E) of the guide, can be considered for further study.

## Evaluation/Assessment

1. Any of the following appendices: A,B,C,D,and E (see Materials and Resources 6, 7, 8, and 9), as well as optional Appendix F (Materials and Resources 16) above
2. Student Project; see Materials and Resources, 10 above
3. Quiz for online interactive program (see Materials and Resources 14 above)
4. Creation of Classroom Legal Process; (see Materials and Resources 15 above)
5. Exercises or assignments associated with Module I, Section (D) and Section (E) (see Materials and Resources 17 and 18 above)

# Appendix A

## THE RULE OF LAW

Rules At Home

Rules at School

Rules for Society

### Why do we have rules and laws?

1. Individual freedom

2. Limits

3. Rule of Law

# Appendix B

## The Role of the Courts

**Judge:** *a person who sits in judgment of someone accused of breaking laws (Definition)*

**Question:**

“If you were accused of breaking the law, what characteristics would you want in the person who would decide if you were guilty or innocent?”

**Your list of characteristics:**

**Revised list of characteristics:**

# Appendix C

## Criminal And Civil Law

### A. Public Law

1. Constitutional Law
2. Administrative Law
3. Criminal Law
4. Burden of Proof and Proof Beyond a Reasonable Doubt

### B. Private Law

1. Meaning
2. Torts
3. Contracts
4. Burden of Proof and Preponderance of Evidence



## Appendix D

## Sources Of Canadian Law

## The Constitution and the *Charter of Rights and Freedoms*

List the rights in the Charter in the following columns

Political Rights	Legal Rights	Social Rights
The relationship between the government and the people	Criminal and Civil Law and the individual	The relationship between groups; and the individual and groups

# Appendix E

## Sources of Canadian Law

### A. Legislation

### B. Common Law

### C. Quebec Civil Code

# Appendix F

## Optional Assignment for Students: Canada's Supreme Court Judges

*Using the Supreme Court of Canada website, [www.scc-csc.gc.ca](http://www.scc-csc.gc.ca), identify Canada's nine supreme court justices. Choose one judge in order to write a one-two page biography. As a concluding task, list and justify three necessary attributes to become a supreme court justice.*

### Canada's Supreme Court Justices:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_

I shall be writing a biography (attached) on this Supreme Court Justice:

I consider the following to be necessary attributes and justifications to become a Supreme Court Justice:

A. \_\_\_\_\_

B. \_\_\_\_\_

C. \_\_\_\_\_



## Module I: Why Do We Need Judges?



### ➤ Case Study: Drugs in the Backpack

#### Contents

##### A. Learning Outcomes

##### B. Resource Materials

1. The Rule of Law
2. The Adjudicative Role of the Courts
3. Resolving Criminal and Civil Disputes: Standards of Proof
  - a) Criminal Cases
  - b) Civil Cases
4. Sources of Canadian Law
  - a) The Constitution and *The Charter of Rights and Freedoms*
  - b) Legislation
  - c) The Common Law and Principles of Equity
  - d) Quebec's Civil Code
5. Protecting Canadians

##### C. Case Study: Drugs in the Backpack

##### D. Additional Exercises for Classroom Use and Assignments

##### E. Internet Links to More Resources



## A. Learning Outcomes

*Students will:*

- ⊕ Demonstrate an understanding of why we have laws, the need for limits on the actions of individuals, and the importance of the rule of law in Canadian society;
- ⊕ Explore the sources of Canadian law and the separation of powers in our federal state;
- ⊕ Explore the role of Canada's courts as an impartial forum for adjudicating legal disputes, and the role of judges in upholding the rule of law;
- ⊕ Demonstrate an understanding of the role judges play in protecting the constitutional rights of citizens.





## B. Resource Materials

### I. The Rule of Law

**S**tudents know all about rules. At home, parents set times when they must be home at night or impose limits on how much television they can watch. At school, teachers and principals also have rules—students must have an excuse if they miss a class, they can’t act up in the classroom, they must not fight or roughhouse with other students on school grounds. Students who break the rules must face the consequences—they may be grounded for coming home late or ordered to serve detention for disrupting a class.

Students must obey other rules outside of their homes and schools, only these rules are known as laws and they apply to everyone. It is against the law to drive a car without a licence. It is illegal to shoplift from a store or to take things from other persons without their permission. It is against the law to paint graffiti on the side of a building. The law forbids a person from punching or kicking someone else. Some laws deal with relatively minor issues, such as where you can park your car; others outlaw dangerous conduct like street racing and impaired driving; still others aim to prevent serious, hurtful acts like violent robberies, sexual assault and murder. If parents divorce, there are laws to divide their property and to ensure the well-being of their children. If a department store buys damaged goods from a manufacturer, there are laws to protect the store owner from losing money. Laws also breathe life into our social policies, providing the framework for financial assistance to the poor, benefits to injured workers, and universal health care.

Laws reflect our shared belief in the limits that must be placed on the conduct of individuals in order to protect the greater good. One

Canadian legal scholar, S. M. Waddams, has described the law as “the knife-edge on which the delicate balance is maintained between the individual on one hand and the society on the other.” Laws reflect our most basic moral values: The commandment “Thou shalt not kill” is given the weight of law as the crime of murder. A society crafts laws “to protect its most basic and essential norms and values,” University of Ottawa law professor David Paciocco has noted. “Our law is the collected wisdom of generations of people working to find a way to protect the inherent dignity of human beings.”

“Our law is the collected wisdom of generations of people working to find a way to protect the inherent dignity of human beings.”

Laws are the ground rules for our society. That was the point William Shakespeare was making in his play *Henry VI, Part II*, when one of his characters proclaims, “Let’s kill all the lawyers.” The character wanted to spread mayhem and anarchy and Shakespeare was stressing the fundamental role of the law in preserving a civilized society. Get rid of lawyers and their laws, he was warning, and the social order will crumble.

Our democracy is said to be subject to the rule of law. No one is above the law, no matter how rich or powerful or well-connected they may be. The prime minister must obey the same laws as the rest of us. So must the police officers who enforce the law and the soldiers who take up arms to defend us. Everyone is bound by the same laws and everyone

Citizens are free—even encouraged—to demand changes in laws they see as unjust or unfair, but they must do so through the democratic process; they cannot violate laws they do not like.

has the same rights and privileges. The rule of law means that our laws are the product of consensus, created and implemented by the politicians we have elected to protect and promote society's interests. Our laws are not imposed by tyrants or enforced at their whim. It also means that citizens are free—even encouraged—to demand changes in laws they see as unjust or unfair, but they must do so through the democratic process; they cannot violate laws they do not like. Finally, the rule of law ensures that the rights of individuals and minorities are protected against the power of the state and the will of the majority.

## 2. The Adjudicative Role of the Courts

Laws make us feel safe and secure as we go about our daily lives, because we know that most people will obey them. But laws also ensure citizens do not take matters into their own hands and seek vengeance if they, members of their family or their friends are victimized. So what exactly does happen when someone breaks the law? Who sits in judgment of a person accused of drunk driving or assault? Who decides if one of the parties involved in a business deal has taken advantage of the other? Who interprets the wording of laws and decides whether allegations of wrongdoing have been proven? And if someone has broken the law, who decides how they will be punished or forced to make amends?

Our courts provide an independent and impartial forum to deal with these important issues. A judge—a person who is legally trained and sworn to uphold the rule of law—will determine what the law means, whether it has been broken and, if it has, the consequences for those responsible. This process of interpretation and enforcement through the courts is what sets the law apart from rules governing the members of a club or local customs. In

the words of British legal historian H. G. Hanbury, “law cannot be more accurately defined than as the sum of rules of human conduct which the courts will enforce.”

The rule of law demands that laws be applied in a rational way. Decisions must not be arbitrary or tainted by favouritism, spite or suspicion. Justice is administered with fairness and predictability, based on the law and provable evidence. “We will be governed not necessarily by decisions that we would like,” in the words of S. M. Waddams, “but by decisions made by impartial persons applying settled, consistent and rationally defensible general principles.” The symbol of justice as a blindfolded figure, balancing a set of scales, serves as a reminder that justice is achieved by weighing evidence free from internal bias and outside influences. In our system of justice, judges—and in some cases, juries of average citizens—balance the scales and ensure that cases are decided fairly and impartially. Court proceedings, with few exceptions, are open to public scrutiny, so citizens can judge for themselves whether justice has been done. To further ensure judges are accountable, their decisions can be appealed to a higher court and may be reversed if they are not firmly grounded on the facts or the law.

The symbol of justice as a blindfolded figure, balancing a set of scales, serves as a reminder that justice is achieved by weighing evidence free from internal bias and outside influences.

The Supreme Court of Canada has described the judge as “the pillar of our entire justice system.” The judge has many roles. In the words of the Greek philosopher Socrates: “Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.” The judge oversees the proceedings, keeping order in the courtroom and ensuring the case runs smoothly. Sometimes the judge takes on the role of an umpire, resolving disputes that arise over the law and how a case should proceed. The judge decides whether evidence is relevant to the issues before the court and, if it is not, will prevent it from being used.

Except for the limited number of trials heard by juries, the judge must assess the facts presented, decide who is responsible, and then determine what punishment or other action is appropriate.

### 3. Resolving Criminal and Civil Disputes: Standards of Proof

#### *Public Versus Private Law*

There are two major divisions of the law, public law and private law. As the name suggests, public law deals with issues and disputes that affect society as a whole. Constitutional law, which establishes the jurisdictions of governments, is one area of public law. Another is administrative law, which deals with labour standards, welfare entitlements and other aspects of citizens' interactions with their governments. Criminal law deals with wrongful acts that harm individuals and are offences against the peace and security of society as a whole. While a robber may wound a store clerk and take money from the store's owner, it is in everyone's interest to ensure the robber is caught and punished. Private law, known as civil law, deals with the relationship between individuals or between businesses. It is used to settle private disputes over such matters as the terms of contracts; family law matters including divorce, custody and the division of matrimonial property; the ownership of property; and the harm someone causes to other persons or their property.

#### a) Criminal Cases

A crime is a deliberate or reckless act that injures a person, damages property or takes it away from its owner, or breaches society's moral standards. A teenager steals a car and goes joyriding; a burglar breaks into a home in search of valuables; the Internet is used to disseminate child pornography; two men get into a fight outside a tavern, leaving one bruised and bloodied; someone in the wrong place at the wrong time may be injured or even killed in a violent robbery. It may also be a crime for a person to neglect his or her duty to protect others from harm—for instance, if tenants died in

an apartment building fire and it was found that the landlord had failed to ensure the building met fire safety codes, the landlord could be charged with criminal negligence causing death. Our criminal law, set out in a statute known as the *Criminal Code*, is designed to protect citizens from such acts and to punish those who have committed the offence.

For an act to be considered a crime, two features must be present. There must be a guilty act, known by the Latin term *actus reus*. For instance, the *Criminal Code* (section 265(1)) defines assault as applying, on purpose, physical force to another person. The definition includes any attempt or threat to apply physical force to someone. So if a person slaps or punches or kicks someone else, the guilty act has occurred. But this is not enough to convict the person of assault. To meet the definition, the slap or kick or punch must have been done on purpose. This is the second element of a crime, known as *mens rea* or guilty mind, and it is fundamental to our concept of what constitutes a criminal offence. Society has no interest in seeing people punished for accidents or honest mistakes. So a person who accidentally kicked another commuter while trying to leave a crowded bus cannot be found guilty of assault, because there was no intent to strike the other person.

#### *Burden of Proof and Proof Beyond a Reasonable Doubt*

As noted, crimes are considered an offence against us all. Citizens have the right to pursue criminal charges as a private prosecution, but these are rare. In virtually every case, the state—known as the Crown—is responsible for proceeding against a person charged with committing a crime.

This contest between the state and the individual charged with a crime is invariably an unequal one. No one, no matter how wealthy or powerful, can match the resources of the state. Two features of the criminal law help to ensure a level playing field. First, the Crown—the accuser—is responsible for presenting the evidence needed to prove that the person accused of a crime is guilty. This is known as the burden of proof. It is unfair and unjust to

Two features of the criminal law help to ensure a level playing field. First, the Crown—the accuser—is responsible for presenting the evidence needed to prove that the person accused of a crime is guilty. This is known as the burden of proof. It is unfair and unjust to expect defendants to establish their innocence.

Secondly, the Crown must prove beyond a reasonable doubt that the person is guilty.

expect defendants to establish their innocence.

Secondly, the Crown must prove beyond a reasonable doubt that the person is guilty. This is the standard of proof and it means judges or jurors cannot convict someone they believe is probably guilty, or even is likely guilty of a crime. The Supreme Court of Canada, in the 1997

case of *R. v. Lifchus*, said the Crown is not expected to prove a person's guilt with absolute certainty—if a judge or jury is “sure” the accused committed the offence, the person should be convicted. The bar is set high and the Crown's failure to produce enough evidence to prove guilt beyond a reasonable doubt makes it inevitable that some guilty persons will escape punishment. It also makes it less likely that innocent people will be sent to prison. William Blackstone, a British judge of the 1700s, probably put it best when he said: “It is better that ten guilty persons escape than one innocent suffer.” The ordeals of Donald Marshall Jr., David Milgaard, Guy Paul Morin and others who were wrongfully convicted of murder, only to be exonerated years later, show why it is so important that the justice system protect citizens from such a fate. When persons are found to have been wrongly convicted, it is often because the judge or jury was misled or relied on the testimony of witnesses who lied. DNA analysis and other scientific advances have helped clear the names of innocent people while providing the courts with reliable evidence.

### b) Civil Cases

The civil law is concerned with resolving disputes between private parties. Examples are disagreements over the sale of property, complaints of patent infringement, claims of wrongful dismissal from

a job, and divorces and other family law matters. If such disputes cannot be settled by negotiation or mediation, the party making the claim (known as the plaintiff) can file a civil action, or lawsuit, asking a court to make a ruling. The police play no role in civil cases and the government becomes involved only if it is a party to a lawsuit.

Most civil actions involve family law matters. When couples separate, a number of issues must be settled: How will their property be divided? Will one parent have custody of the children, or will custody be shared? What will be the terms of access to the children? Will one parent support the other financially and pay child support and, if so, how much? If the couple is unable to settle these issues, a judge may be called upon to review the law and the evidence and make a decision.

Another major form of civil dispute is known as torts, which deal with the harm one party suffers as a result of the actions or failings of another. Most torts are based on acts of negligence that cause personal injury, such as traffic accidents, malpractice by a doctor or a fall resulting from a homeowners' failure to clear an icy walkway. The courts will decide whether the person being sued has acted reasonably and, if not, make an award of damages—money the defendant (the person being sued) must pay to compensate the plaintiff. Insurance covers most successful claims for negligence, so while lawsuits may be filed in the names of the individuals involved, the legal battle is often waged between their insurance companies.

The law of contracts is concerned with promises and duties that have been agreed to between parties. So if Company A agrees to buy a certain quantity of goods from Company B, and Company B fails to deliver, Company A has the right to sue for breach of contract. If the action is successful, the defendant may be ordered to pay damages or to fulfil the terms of the contract. Most contracts are set out in writing but the courts will enforce a valid verbal contract.



The burden of proving a civil claim lies on the plaintiff. Since the liberty of the individual is not at stake, the standard of proof is not as high as it is in criminal cases. A judge or jury must be satisfied on a balance of probabilities that the injury or loss has occurred and the defendant is responsible

### *Burden of Proof and the Preponderance of Evidence*

The burden of proving a civil claim lies on the plaintiff. Since the liberty of the individual is not at stake, the standard of proof is not as high as it is in criminal cases. A judge or jury must be satisfied on a balance of probabilities that the injury or loss

has occurred and the defendant is responsible. The court must be convinced the claim is probably true, a measure sometimes defined as better than 50-50, or in legal terms as a preponderance of evidence. The contrast between the standard of proof in criminal cases and civil ones is perhaps best illustrated by the O.J. Simpson case. Simpson was acquitted of a double murder by a California jury but later was found responsible in the civil courts for causing the deaths.

## 4. Sources of Canadian Law

### a) The Constitution and *The Charter of Rights and Freedoms*

**T**he *Constitution Act, 1982*, is the basis for the Canadian state. It incorporates the *British North America (BNA) Act*, the British statute that united the first four provinces in 1867 and created the legal framework for our nation. The *BNA Act* established the responsibilities of each level of government. The federal government makes laws dealing with matters of national scope and importance, such as defence, foreign policy, transportation, banking and the criminal law. Provinces and territories make laws governing matters of local and regional concern—public education, land ownership, hospitals, and the exploitation of natural resources. Cities, towns and other municipal governments, in turn, receive their powers from legislation passed by provincial and territorial governments.

In the field of justice, the division of responsibility can create confusion. The federal government, through Parliament, formulates the *Criminal Code* as well as laws that govern divorces and control illicit drugs, ensuring the law on these important matters is the same in all parts of the country. Provincial and territorial governments provide court facilities and staff and are responsible for civil law matters such as disputes over property and who is to blame for accidents.

The courts are often called upon to settle disputes when one level of government is accused of intruding on the jurisdiction of the other. If a government is found to have the constitutional power to enact a law, it is said to be *intra vires* or within the scope of its powers. A court will strike down a law found to be outside the scope of a government's powers as *ultra vires*. A provincial government, for instance, might try to fight prostitution by passing a law that enables the police to seize the vehicles of those caught trying to pick up prostitutes. The courts may rule the law invalid because it infringes on the federal power over the criminal law, since the *Criminal Code* already makes it an offence to communicate with a prostitute.

*The Constitution Act, 1982* includes *The Charter of Rights and Freedoms*, a declaration of every citizen's legal, social and political rights. The Charter shields citizens from unfair laws, arbitrary police actions and discriminatory government policies. It is important to bear in mind that these are the rights of every citizen, not special rights created to protect criminals.

*The Constitution Act, 1982* includes *The Charter of Rights and Freedoms*, a declaration of every citizen's legal, social and political rights. The Charter shields citizens from unfair laws, arbitrary police actions and discriminatory government policies. It is important to bear in mind that these are the rights of every citizen, not special rights created to protect criminals.

The Charter protects the following rights of those arrested and charged with crimes:

The Charter provides a general guarantee that all Canadians have the right to “life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice” [s. 7].

The Charter imposes limits on police powers, shielding citizens from arbitrary detention or arrest [s. 9] as well as police searches and seizures of property that are unreasonable [s. 8]. Police officers have the right to search a person who is placed under arrest but in most cases can seize evidence only after obtaining the person’s consent or a court authorization known as a search warrant.

Once a person is arrested, he or she has the right to be told the reason for the arrest [s. 10 (a)], to consult a lawyer without delay [s. 10(b)] and to appear before a court to apply for release [s. 10 (c)]. In order to arrest someone, a police officer must have “reasonable and probable grounds” to believe the person has committed an offence or is attempting to break the law. An arrest must be based on more than suspicion, but police are not expected to have absolute proof of guilt before taking someone into custody.

The right to silence ensures suspects are never required to explain or justify their actions. From the moment of arrest, every citizen has the right to remain silent. Suspects must provide their name and address but are not required to answer questions or to give a statement to police. The Supreme Court of Canada, our highest court, has ruled that this long-standing right is protected under s. 7 of the Charter.

In most Canadian jurisdictions the decision to charge someone with a crime is made by the police, usually after consulting a prosecutor about the appropriate charge and the evidence needed to support a prosecution. Persons charged with crimes have the right to stand trial within a reasonable time [s. 11 (b)], cannot be compelled to testify

[s. 11(c)], and are presumed innocent until proven guilty after a trial that is fair, open to the public and held before an independent and impartial court [s. 11(d)]. Accused persons seeking release while awaiting trial have a right to expect bail conditions will be reasonable [s. 11(e)], and they can demand a jury trial if the charges they face are serious [s. 11(f)]. Witnesses who incriminate themselves while testifying in court are assured their words will not become the basis for a prosecution [s. 13]. No one can be tried or punished twice for the same offence [s. 11(h)], and those convicted of crimes are protected from cruel and unusual punishment [s. 12].

### *Other rights protected under the Charter:*

Practising religion, gathering for meetings and associating with others are fundamental freedoms enjoyed by all Canadians. Another is “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication” [s. 2].

Democratic rights, including the right to vote in federal and provincial elections and to run as a candidate [s. 3]. The Charter requires governments to face an election at least once every five years. A government may seek to extend its mandate in a time of national emergency such as war, but must have the support of two-thirds of the members of Parliament or a legislature [s. 4].

Mobility rights enable Canadians to enter, leave or stay in the country as they choose. Citizens and permanent residents have the right to seek work anywhere in Canada, and provinces cannot prevent qualified newcomers from pursuing their occupations or professions [s. 6].

Equality rights [s. 15] protect Canadians from laws that discriminate on the basis of race, religion, ethnic origin, gender, age, or physical or mental disability. Governments remain free to establish programs to help visible minorities, the disabled and other disadvantaged groups.

Language rights [ss. 16-23] include the recognition of English and French as Canada's official languages. Both can be used in Parliament and in federal courts, and federal laws and services are available in English and French. Where numbers warrant, French-speaking Canadians outside Quebec have the right to send their children to French schools, and English-speaking residents of Quebec have the same right of access to English schools.

Aboriginal and treaty rights in existence before the Charter are recognized and afforded constitutional protection [s. 25].

Since the Charter protects individuals and minority groups from laws and government actions that violate their constitutional rights, it does not apply to civil actions where there is no state involvement. The Supreme Court of Canada, however, has ruled that the civil law should reflect the values of fairness and justice enshrined in the Charter.

## b) Legislation

Each level of government creates and imposes laws, known as statutes, to govern matters within its jurisdiction. New laws and amendments to existing ones are introduced in Parliament or a legislature as bills; they become law, and are transformed into acts, once passed by the majority vote of elected representatives, given royal assent, and proclaimed by the government to be in force.

Regulations are laws created under the authority of a statute. While statutes set out the broad principles underlying the law and how it should apply, regulations fill in the details. Cabinets have the power to draft and amend regulations without going through the time-consuming process of seeking Parliamentary or legislative approval. A provincial legislature, for instance, might pass a statute establishing the requirements for getting a driver's licence—an age limit of 16 and curfews for young drivers. The fee to apply for a licence, however, would likely be set out in a regulation that could be changed to keep pace with inflation. Cabinets can

also issue orders-in-council to implement routine decisions authorized by statute, such as appointing officials and providing loans or grants.

Municipal governments also have lawmaking powers. Their legislation, known as bylaws or ordinances, deals with grassroots issues such as land use, building permits, parking zones and garbage disposal.

## c) The Common Law and Principles of Equity

A vast body of Canadian law is derived from the common law that originated in Britain. Sometimes referred to as case law or judge-made law,

The common law is the sum of countless rulings made as judges interpret statutes and apply legal principles to disputes.

the common law is the sum of countless rulings made as judges interpret statutes and apply legal principles to disputes. Judges draw on the lessons of past cases to help them craft a just decision. In some areas of law, legislators have enacted statutes to formalize and build upon common law rules. The common law brings certainty and stability to the law. Under a principle known as *stare decisis*—Latin for “standing by former decisions”—judges must follow the precedents of higher courts within their jurisdiction. So a lawyer can scour law books and on-line databases for previous rulings on an issue and advise a client on the likelihood a case will be won or lost.

With its emphasis on adherence to precedent, the common law has the potential to produce rulings that may be unfair or unjust. Judges apply a set of rules known as the principles of equity to ensure no one with a worthy case will fall through the cracks of the justice system. One equitable principle holds that there must be a legal remedy for every wrong. Another demands that litigants come to court with clean hands—the courts will not readily side with a person who has failed to act honourably or has tried to take advantage of someone else. The concept of a trust flows from the law of equity, ensuring that a dominant party does not profit at the expense of a weaker one.



Judges apply a set of rules known as the principles of equity to ensure no one with a worthy case will fall through the cracks of the justice system.

#### d) Quebec's *Civil Code*

Quebec enjoys a dual or mixed system of law comprising on one hand a civil law system regulating legal relationships

between private individuals and on the other, elements of a common law system derived from statutory law enacted by the government of Quebec. Federal statutory and regulatory enactments also apply in Quebec with the same force and effect and in the same manner as elsewhere in Canada.

To understand the dual system which applies in Quebec one must start with Jacques Cartier's voyage of discovery in 1534 and the subsequent establishment in the name of the King of France of the colony of New-France in North America.

The first settlers of predominantly of maritime stock, brought with them the laws and customs of their native Normandy and Brittany. As settlements sprang up along the principal river highways reaching deep into North America, problems of governance required greater intervention and attention by the central authority in Versailles.

In 1663 the King decreed the Custom of Paris (the prevailing law in Paris and on l'Ile de France) to be applicable in New-France.

Reduced to writing in 1580 and complemented by principles drawn substantially from Roman law and Canon law, the Custom of Paris became the underlying law of New-France. It was further shaped and developed over the years by royal ordinances and edicts issued from time to time dealing with such matters as Procedure, Commercial and Maritime law. It was in turn further adapted to meet the evolving needs of the colony through a series of edicts and regulations emanating from the principal governing body of New-France, the "Conseil souverain" or Sovereign Council headed by the trinity of the Governor, the Bishop and the Intendant.

In the course of the Seven Years War, the conflict between the British and French spilled over into North America culminating in the military engagements of 1759 and 1760 in the course of which the British forces prevailed. The Treaty of Paris of 1763, marking the end of the war, mandated the cession of the French colonies in North America to the British crown.

Through the operation of the theory of Reception, which was part of the public law of Britain, the law of the previous colonial power (in this instance France) remains unchanged unless and until modified by competent authority. As a result the Civil law applying in New-France (which included the old Province of Quebec) continued in force and was indeed subsequently re-affirmed by the Quebec Act of 1775.

Quebec enjoys a dual or mixed system of law comprising on one hand a civil law system regulating legal relationships between private individuals and on the other, elements of a common law system derived from statutory law enacted by the government of Quebec.

With them, the British brought their Public law notably Constitutional law, Criminal law and Procedure together with a plethora of other statutory enactments. Some of these enactments supplanted the pre-existing French law especially in the fields of commerce, taxation and customs and excise. On the whole however, the private law regulating relationships between individuals remained in substance, intact, although, naturally enough, procedure and court structure changed and evolved along the lines set out in the laws of the new colonial authority.

Political, demographic, and military considerations in the years following 1775 played a significant role in the legal evolution of what was now British North America. In 1791, the Constitutional Act divided the old Province of Quebec into Upper and Lower Canada. This situation prevailed through a number of crises notably the War of 1812 and the

Rebellion of 1837. Following the latter, the Act of Union temporarily re-united Upper and Lower Canada while preserving the dichotomy between the Civil law of one and the Common law of the other.

In the years between 1840 and 1867—the years of countdown to the birth of Canada—a commission was struck to draft a Civil Code for Lower Canada. While the codifiers followed the structure of the Code Napoleon of 1804, the new Civil Code, in the words of Professor William Tetley of McGill University, “reflected the conservative family oriented views of a largely rural and mostly francophone society of 19th century Quebec as well as the economic liberalism of the developing commercial and industrial elites.” The Code of Civil Procedure followed in 1867.

Together both these Codes with their respective origins in French and English law constituted the bedrock of Quebec Civil law from 1867 until recent years.

While the Code of Civil Procedure was radically revised in the 1960’s, the Civil Code remained substantially in effect with few amendments until the 1980’s. A changing and evolving society required however a reform removing the incapacity of married women in 1964.

By 1966, work was already underway aimed at bringing about a far-reaching reform. In 1980, new provisions relating to marriage, divorce, filiation, adoption, parental authority and the obligation of support came into effect. These in turn were incorporated into the present Civil Code which came into force on 1 January 1994. The Code of Civil Procedure has also been subsequently re-amended to transform it into an effective vehicle through which rights and duties set out in the Civil Code and other statutes can be exercised.

Canada’s Constitution, notably the BNA Act of 1867, sets out the division of legislative powers between the Federal and Provincial governments. The Civil

law of Quebec embodied in the Civil Code falls by design within the legislative jurisdiction of Quebec under the heading of “Property and civil rights in the province” set out in Sec. 92(14) of the BNA Act. The principles of the Rule of Law, and the independence of the Judiciary apply in Quebec as they do in the rest of Canada.

The Civil Code is, of course, much more than a statute. Rather it embodies a system of law which is rooted in the sources outlined above and which has evolved to meet the changing needs of a modern Quebec society. The principles of interpretation vary from those relating strictly to statutory interpretation in that they go frequently to the various historical sources of the Code and look at the Code as a whole system. While the notion of “*stare decisis*” does not apply in civil law the reality is that decisions bearing upon the interpretation of the Code, especially those emanating from the Quebec Court of Appeal or the Supreme Court of Canada are binding upon the lower courts.

While the notion of “*stare decisis*” does not apply in civil law the reality is that decisions bearing upon the interpretation of the Code, especially those emanating from the Quebec Court of Appeal or the Supreme Court of Canada are binding upon the lower courts.

Federal legislation and regulatory enactments apply in Quebec with the same force and effect as in the rest of Canada and are subject to the same rules and principles of interpretation as elsewhere. In this context the principle of *stare decisis* is as applicable in Quebec as in Ontario or British Columbia. A good example is the *Criminal Code* but the same could be said of any other Federal statute or regulation.

Beyond the Civil Code, the law of Quebec also includes a vast body of statutory and reglementary enactments sanctioned over the years by the National Assembly of Quebec including numerous rules and regulations of Administrative bodies. Decisions of the Courts and Administrative bodies relating to

these enactments are subject to the same rules of interpretation and are applied in much the same manner as legislation emanating from Provincial legislatures and administrative bodies in the other provinces.

Quebec then enjoys a dual system. To that very significant degree the law of Quebec differs from that of the rest of Canada for the Civil law remains one of the foundation stones upon which Quebec society rests.

## 5. Protecting Canadians

As noted, the rule of law ensures that anyone charged with a crime or pursuing a civil action is dealt with fairly. Persons accused of crimes are treated as if they are innocent and have the right to defend themselves, to seek legal help, and to have an impartial judge or jury assess whether there is enough solid, believable evidence to prove, beyond a reasonable doubt, that the offence occurred and the defendant is the one responsible.

If a court finds a right has been violated, it can take any action it considers “appropriate and just.” Judges can strike down all or part of a law as invalid, or give the government a deadline for changing the law to conform with the Charter.

Judges ensure the legal rights of citizens are respected and enforced. It is their job to make sure police officers and lawyers acting for the Crown do not abuse their powers. This role has become even more important since *The Charter of Rights and Freedoms* came into force in 1982. Section s. 52 (1) of the *Constitution Act, 1982* declares that the constitution, which includes the Charter, is “the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force and effect.” That means the federal and provincial governments cannot pass a law that limits or denies rights granted by the Charter, unless they can prove

that such restrictions are reasonable and in keeping with our democratic principles.

While most cases do not involve Charter issues, anyone who claims their rights have been violated can apply to the courts for a remedy. If a court finds a right has been violated, it can take any action it considers “appropriate and just.” Judges can strike down all or part of a law as invalid, or give the government a deadline for changing the law to conform with the Charter. As a result, court rulings on the Charter have expanded the rights of gays and lesbians, aboriginal peoples and other minorities.

In criminal cases, judges can halt an unfair prosecution that abuses the court process or prevent the Crown from using evidence obtained by methods that violate Charter rights. If police investigators have ignored a suspect’s request to speak to a lawyer, a judge may find it would bring the administration of justice into disrepute to allow the suspect’s admissions to be used in court. In a 2003 ruling, for instance, the Supreme Court of Canada found that police officers violated the Charter when they seized marijuana from a bus station locker without a search warrant. To remedy the breach of the Charter’s protection against unreasonable search and seizure, the court ordered that the drugs could not be used as evidence and a man who rented the locker was acquitted of a charge of drug possession.

As noted, the federal and provincial governments have the power to limit Charter rights. Under Section 1 of the Charter, the courts must be satisfied that these limits are reasonable, prescribed by law and are justified in a free and democratic society. This mechanism enables the courts to balance the interests of society against the rights of individuals. In many cases, the courts have ruled that while a law limits a Charter right, the limit is reasonable and justified. The Charter, however, does not give judges the final say on our laws. It gives Parliament and the provinces the power to enact laws that violate the Charter under the so-called “notwithstand-

ing clause” [s. 33]. To remain in effect, such laws must be reviewed and re-enacted every five years. The clause has been invoked rarely, since few governments seem willing to risk the possible political fallout from a decision to override constitutional rights that have been upheld by the courts.



## C. Case Study: Drugs in the Backpack

*The following case study will be created at [www.tryjudging.ca](http://www.tryjudging.ca) as an interactive exercise that can be adapted for an in-class activity or a written assignment. The website will provide teachers with all resource materials in PDF format as well as worksheets that can be downloaded and distributed to students. These worksheets will list the questions posed below and ask students to supply the answers based on their exploration of the website.*

### Scenario

A student and a friend line up for two hours to get into a stadium where an all-day band extravaganza is being held. They pass the time chatting and, at one point, the friend agrees to watch the student's backpack while he finds a washroom. As they near the entrance, they see that police officers are checking backpacks for alcohol and drugs. One of the police officers opens the backpack and pulls out a small plastic bag containing a white powder. He asks what it is, and the student replies that he has no idea, that he has never seen it before. The student is pulled out of the line, taken to the police station and charged with possession of a narcotic.

What will happen next? What are the student's legal rights and how do they protect him? Who should decide whether the student has broken the law?

To an outsider, this may appear to be an open-and-shut case of a young drug user caught in the act. But what if ...

- ...someone slipped the bag into the backpack, planning to retrieve it later if the student made it through the security check?
- ...the friend was trying to smuggle drugs into the concert, spotted the police officers and stashed the bag in the backpack while the student was in the washroom?
- ...the student mistakenly grabbed someone else's backpack at school before rushing off to get a place in line?
- ...after the arrest, police officers tossed the bag onto a pile of other suspicious substances they have seized, without marking it for identification?
- ...the suspected drug is analyzed at a lab and turns out to be a harmless powder?
- ...the officers or a prosecutor also charge the student with the more serious offence of trafficking, claiming the student intended to sell drugs to other concert-goers?

*The goal is to show students that there could be a number of explanations for the substance being found in the backpack and that questions may arise about police procedures and the strength of the Crown's evidence. These scenarios underline the need to have an independent and impartial process for assessing the evidence and determining guilt.*

What are the student's legal rights?

Do the police have to explain why the student is being arrested and charged? (Right to be informed of reason for arrest and on what charge—Charter sections 10(a), 11(a))

Is the student assumed to be guilty? (Presumption of innocence—Charter s. 11(d))

Does the student have to explain himself? (Right to silence—Charter sections 7, 11(c))

Is the student entitled to consult a lawyer? (Right to counsel—Charter s. 10(b))

Can police keep the student in custody indefinitely? (Right to court review of detention—Charter s. 10 (c))

Can the student be locked up while awaiting trial? (Right to release on reasonable bail—Charter s. 11(e))

Will the allegation hang over the student's head indefinitely? (Right to trial within a reasonable time—Charter s. 11(b) )

Does the student have the right to dispute the allegation? (Right to full answer and defence—Charter s.7)

Does the student have to establish his innocence? (Burden on Crown to prove guilt)

*These questions can be used to illustrate what might happen if these legal rights did not exist. For example, without the right to silence, the student may claim to own the drug simply to end a long police interrogation. If the student did not have the right to consult a lawyer, he may give information to the police without realizing that it can be used in court. Without the right to be presumed innocent and the right to release on reasonable bail, the student could spend months in jail awaiting trial despite being innocent. If the burden of proof were not on the Crown to prove your guilt, the student would have to undertake his own investigation to prove the drugs belonged to someone else.*

Who should decide whether the student is guilty of an offence? *The Charter of Rights and Freedoms* says that everyone charged with an offence has the right to have their guilt or innocence decided at “a fair and public hearing” before “an independent and impartial tribunal” [s. 11(d)].

Will the trial meet these criteria if the decision whether to convict or acquit is made by ...

...a police officer?

...a lawyer working for the government, which has a zero-tolerance drug policy?

...the student's parents?

...the parent of a child who died of a drug overdose?

...the principal of the student's school, who is under pressure to keep drugs out of the school?

...one of the student's best friends?

...a kid the student has never gotten along with?

...an unknown person who holds a hearing in private?

...the president of a citizen's group seeking tougher penalties for illegal drug use?

...a judge who is an objective third party, with no interest in the outcome?

*The above scenarios can be used to illustrate what would happen if each of these persons decided the student's guilt or innocence. This could be done by posing a standard set of questions: Could this person be expected to treat the student fairly? Could this person be unbiased? Would this person appear to be fair and unbiased? Is it likely this person would have a personal agenda or a hidden motive?*





## D. Additional Exercises for Classroom Use and Assignments

### I. In-class activities to get students thinking about the role of judges in upholding our laws and rights:

a) Ask students to identify features of Canada's justice system based on what they have learned from previous classes, media reports and other sources. What is law? What is justice? What basic freedoms and legal rights do we enjoy as Canadians? What is the role of the judge in the quest for justice?

b) Assign students to find a recent story, in the newspaper or on the Internet, about a court case. Ask each student to identify what the story tells them about the justice system by posing the following questions: What laws are involved? What legal rights are involved? Who is pursuing the legal action and who is the defendant? If the case is before the courts, what is the role of the judge or judges involved? What needs to happen for the public to be confident justice will be done?

### 2. In-class discussion:

Copy a recent newspaper account of an arrest (or use the sample provided below) and distribute it to the class. After students have read it, ask for a show of hands—based on the information the media has reported, who believes the suspect is guilty? Who believes the suspect may be innocent of the crime?

Tally the results, then ask individual students to explain their choice. Direct the discussion toward the presumption of innocence and the burden on

the state to prove guilt. Why is it risky to jump to conclusions about who is responsible for a crime? If those who read the story assume the person charged is guilty, can that person receive a fair trial? Who should decide whether the person charged is guilty? At the end of the discussion, ask students to re-read the story, this time substituting their own name for the name of the person charged. Do they feel they are being portrayed as innocent? Poll the class again to see if attitudes have changed. Ask students who have changed their vote to explain why.

#### *Sample story:*

#### **Man charged with baseball-bat assault**

RIVERTON—A 28-year-old Riverton man will stand trial in February after being arraigned on a charge of assault causing bodily harm.

John E. MacDonald of Smith Street made a brief appearance in court Monday and pleaded not guilty to the charge. He had been in custody since his arrest on Sunday but was released Wednesday on \$5,000 bail.

Police say Mr. MacDonald was arrested early Sunday morning after a man was struck in the head with a baseball bat outside Mr. MacDonald's house, where a noisy party was under way. The victim, who lives next door, remains in hospital but is expected to make a full recovery.

Adapt this exercise as a written assignment, asking students to answer the questions outlined above.



3)

Base a classroom discussion or a written assignment on this quote from Shakespeare: “The first thing we do, let’s kill all the lawyers.”

These words are spoken by a character who wants to create anarchy and disorder. Ask the class what they think Shakespeare meant by the phrase. Was he making fun of lawyers, or was he saying something fundamental about the role of law in a civilized society? Why do we need lawyers and laws, or judges for that matter? Draw the class into a discussion of individual freedoms versus the need for laws to protect the rights and safety of all citizens. Steer the discussion toward the role of the judge as an impartial third party who can resolve legal disputes and protect the rights of citizens.

4)

Build a class discussion around the case of William Sampson, the Canadian citizen jailed in Saudi Arabia on false charges. Sampson was refused access to a lawyer, tortured until he confessed to committing murder, and denied a fair and open trial. Was this justice? Why or why not? Even if he had committed the crime, would such treatment be justified? Could the public have confidence that justice was done? What rights should a person in his position have? Who should be responsible for ensuring those rights are protected? How would Sampson be treated if he were arrested and charged with murder in Canada?

*He would have the right to remain silent, to be informed of the charge against him and to speak to lawyer. The authorities would have to bring him before a judge within 24 hours to answer to the charge and to deal with his possible release on bail. It is illegal for the authorities to torture a suspect and a judge would refuse to allow the use of any confession extracted through threats or acts of violence.*

Refer students to the following legal rights enshrined in the *Charter of Rights and Freedoms*:

*Background information about the William Sampson case:*

### **Sampson’s Journal Tells of Torture, Survival**

TORONTO—He was subjected to torture, humiliation and sleep deprivation during his “two years, seven months, three weeks and two days” inside a Saudi Arabia jail, William Sampson wrote in an exclusive diary for The National Post published Saturday.

“At the beginning of my incarceration, I was chained upright in my cell, 24 hours a day and subjected to sleep deprivation. I was punched, kicked, hung upside down from a metal bar and beaten with a bamboo cane on the soles of my feet,” Sampson wrote.

The Saudis say Sampson and five Britons, who were freed on Aug. 8 after they were granted clemency by King Fahd, were terrorists who took part in a bombing campaign between rival gangs dealing in bootlegged alcohol. They were charged with the murder of a British engineer in a car bombing in Riyadh in November, 2000. The six men have denied the charges.

Sampson, 44, who was born in Nova Scotia but also has British citizenship, was sentenced to death by beheading. He was shown on Saudi television confessing to the crime, but later retracted it, saying he was tortured until he admitted guilt.

**Life, liberty and security of person**

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

**Search or seizure**

*8. Everyone has the right to be secure against unreasonable search or seizure.*

**Detention or imprisonment**

*9. Everyone has the right not to be arbitrarily detained or imprisoned.*

### Arrest or detention

10. *Everyone has the right on arrest or detention*

- a) *to be informed promptly of the reasons therefor;*
- b) *to retain and instruct counsel without delay and to be informed of that right; and*
- c) *to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.*

### Proceedings in criminal and penal matters

11. *Any person charged with an offence has the right*

- a) *to be informed without unreasonable delay of the specific offence;*
- b) *to be tried within a reasonable time;*
- c) *not to be compelled to be a witness in proceedings against that person in respect of the offence;*
- d) *to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;*
- e) *not to be denied reasonable bail without just cause;*
- f) *except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;*

## 5)

Suggested questions for class discussion or written assignments:

- a) Who prosecutes criminal offences in Canada and why?
- b) What are the differences between criminal and civil cases?
- c) Identify four Charter rights and explain why each is important.

d) A British judge once said: “It is better that ten guilty persons escape than one innocent suffer.” What did he mean? State whether you agree or disagree and explain your answer.

e) How does the rule of law ensure the same laws apply to everyone?

f) How do the principles of presumption of innocence, burden of proof and proof beyond a reasonable doubt apply in criminal cases?



## E. Internet Links to More Resources

**The Government of Canada** website posts federal statutes including the *Criminal Code* and the Youth Criminal Justice Act, as well as *The Charter of Rights and Freedoms*.

[http://canada.justice.gc.ca/Loireg/index\\_en.html](http://canada.justice.gc.ca/Loireg/index_en.html)

**Canadian Legal Information Institute (CanLII):**

This fully searchable site provides access to the full text of recent decisions of most superior and federal courts.

<http://www.canlii.org/ns/cas/nsca/index.html>

Full-text of **Supreme Court of Canada decisions** since 1989, searchable by keyword:

<http://www.droit.umontreal.ca/doc/csc-scc/en/index.html>

**A Compendium of Law and Judges:** A primer on Canadian law, the Charter, the role of the judiciary, and the parole system, with a focus on the British Columbia courts.

[http://www.courts.gov.bc.ca/legal\\_compendium/](http://www.courts.gov.bc.ca/legal_compendium/)

Justice Canada's overview of **Canada's Court System:**

<http://canada.justice.gc.ca/en/dept/pub/trib/index.html>

**Duhaime's Canadian Legal Information Centre:**

Background on family, contracts, criminal and other areas of law and links to legal websites in all provinces. Includes an on-line legal dictionary.

<http://www.wwlia.org/ca-home.htm>

**Overview of the Criminal Justice System of Canada:** A primer on criminal law, policing, and corrections, with useful parallels to the American justice system.

<http://www.cjprimer.com/canada.htm>

**Links to Canadian legal resources:**

**Canadian Legal Resources on the Web:**

<http://www.legalcanada.ca/>

**Access to Justice Network:**

<http://www.acjnet.org/splash/default.aspx>

**Canadian Forum on Civil Justice** site includes links to court, government and other law-related websites.

<http://www.cfcj-fcjc.org/links.htm>



## Module 2: Why Must Judges be Fair and Impartial?



### Case Study: Hotel sues youths who damaged room

## Contents

### Module overview

Module Learning Outcomes

Provided Resources

1. Resource Materials
2. Case Study
3. Additional Exercises for Classroom Use and Assignments
4. Internet Links to More Resources

### Suggested lesson plans

Teaching Objectives and Learning Outcomes:

Teacher and Student Learning Materials and Resources

Teaching Plan and Strategy

Evaluation/Assessment



## Overview: Why Must Judges be Fair and Impartial?

**T**he desired outcome for Module 2 is encapsulated in the following paragraph:

“Well done. Now you know that it is not enough for a judge to be impartial. Judges must speak and act in ways that ensure no one will doubt their impartiality. Appearances are important and judges strive to appear impartial so citizens can have confidence in their decisions.”\*

(\*audio feedback to each student from the judge after the successful completion of the online task at [www.tryjudging.ca](http://www.tryjudging.ca) )

*NB: all lettered Sections identified in the overview are referenced within the body of each of the 5 modules, with each module being located directly after each suggested lesson plan(s), and will be found at [www.tryjudging.ca](http://www.tryjudging.ca).*

### Module Learning Outcomes: Module 2, Section (A)

Students will:

- Explore why it is vital that judges be impartial – and appear to be impartial;
- Explore how judges conduct themselves in ways that promote the appearance of impartiality;
- Understand civil law and how lawsuits proceed through the courts.

### Provided Resources for Module 2

#### I. Resource Materials: Module 2, Section (B)

(Note: information on the first five sections below is in Module 2 (B) of the Teacher’s guide and can also be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). Click on “Teacher Resources”.)

- I. The Need for Impartiality
2. Maintaining the Appearance of Impartiality
  - a) Grounds for Disqualification from Hearing a Case
  - b) Conduct Outside the Courtroom
  - c) Conduct Inside the Courtroom
  - d) Community Involvement and Other Activities
3. Understanding Civil Law
4. Procedure in Civil Cases
5. Video: Case Study #2  
*Hotel Sues Youths Who Damaged Room*  
(<3 minutes) available at [www.tryjudging.ca](http://www.tryjudging.ca)
6. Video:  
Background and Script available at [www.tryjudging.ca](http://www.tryjudging.ca)
7. Try Judging Online  
interactive program for students is available at [www.tryjudging.ca](http://www.tryjudging.ca)

8. Quiz  
(embedded within the online interactive student program)
9. Additional Exercises for Classroom Use and Assignments  
(these are found in Module 2 (D) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))
10. Internet Links to More Resources  
(these are found in Module 2 (E) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

## 2. Case Study: Module 2, Section (C)

*To be used in conjunction with the video and the online interactive site*

Case Study: Hotel Sues Youths Who Damaged Room  
*The case study can be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). It is designed as an interactive exercise that can be adapted for an in-class activity an/or a written assignment. The website, furthermore, provides all resource materials for teachers in PDF format.*

## 3. Additional Exercises for Classroom Use and Assignments: Module 2, Section (D)

*All the following are elaborated upon at [www.tryjudging.ca](http://www.tryjudging.ca)*

1. Understanding Judicial Impartiality:  
A Class Exercise
2. A Trip to the Principal's Office: A Class Discussion
3. Being Impartial, Appearing Impartial:  
A Class Discussion
4. Judicial Conduct and Impartiality: An Exercise
5. Suggested questions for class discussion and/or written assignments

## 4. Internet Links to More Resources: Module 2, Section (E)

These links, found at [www.tryjudging.ca](http://www.tryjudging.ca), provide information on the following: ethical principles for judges, qualifications and duties of superior court judges, etc.



## Module 2: Why Must Judges be Fair and Impartial?

### Suggested Lesson Plans

#### Teaching Objectives and Learning Outcomes

Students will:

- Explore why it is vital that judges be impartial — and appear to be impartial;
- Explore how judges conduct themselves in ways that promote the appearance of impartiality;
- Understand civil law and how lawsuits proceed through the courts.

# Teacher and Student Learning Materials and Resources

(Note: information on the first four sections below is in Module 2 (B) of the teacher's guide and can also be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). Click on "Teacher Resources".)

## 1. The Need for Impartiality

## 2. Maintaining the Appearance of Impartiality

- a) Grounds for Disqualification from Hearing a Case
- b) Conduct Outside the Courtroom
- c) Conduct Inside the Courtroom
- d) Community Involvement and Other Activities

## 3. Understanding Civil Law

## 4. Procedure in Civil Cases

## 5. Video: Case Study #2: Hotel Sues Youths Who Damaged Room (<3 minutes) available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 6. Video: background and script available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 7. Try Judging online interactive program for students is available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 8. Quiz (embedded within the online interactive student program)

## 9. Additional Exercises for Classroom Use and Assignments

(these are found in Module 2 (D) of the teacher's guide) at [www.tryjudging.ca](http://www.tryjudging.ca))

## 10. Internet Links to More Resources

(these are found in Module 2 (E) of the teacher's guide at [www.tryjudging.ca](http://www.tryjudging.ca))



# Teaching Plan and Strategy

## I. Case Study: hotel suing group of students for damage caused to rooms

### A. Pre-lesson Preparation:

- a. Divide the class into three (3) sections.
- b. Assign each section a role to play, based upon three opinions, and note that each group should not know what position the other groups have:
  - (i) teenagers: “Judges are a part of the establishment, man...”
  - (ii) hotel owners: “Teenagers these days are far too rowdy...”
  - (iii) John & Jane Citizen: “The owners of the hotel have plenty of money...”

B. The teacher will then show the scene from Video: Case Study #2, available at [www.tryjudging.ca](http://www.tryjudging.ca), showing just the youths trashing a hotel room during a party and the ensuing damage; refer to Learning Materials and Resources #5.

C. The teacher will then pose the question: “What is likely to happen when the claim for damages gets to trial?”

D. All the groups then prepare a list of reasons why they feel the way they do, and what their expectations of the judge are. Each student then writes a paragraph based on all of this, and come to class prepared to role play.

E. Set up the room so that there are three areas for the three groups to face each other.

F. Have each group explain their positions. After this initial phase, each group can challenge the positions of the other groups, keeping in mind of their expectations of a judge. Let this discussion/debate go on for 10 minutes.

G. Working backwards from the ‘research’ and ‘principles’, the teacher is to read each of the seven scenarios under evidence and ask each group: “Would the judge be in a position to hear the case if...”

### Evidence:

- (i) a decade earlier, when practising law, the judge did some legal work for the large company that bought the hotel a year ago,
- (ii) the judge was recently seen dining with the hotel manager at a popular local restaurant,
- (iii) the judge lives in the same neighbourhood as the hotel manager, but they do not know each other,
- (iv) at a break in the trial, the judge invites the hotel manager to come to his office for a chat about some future consulting work,
- (v) the judge once stayed at the hotel while attending a legal conference,
- (vi) the week before, in a speech to a local service group that was reported in the media, the judge said harsh penalties were needed to battle a rash of vandalism by teenagers,
- (vii) the judge discovers that her daughter goes to the same school as the defendants and hangs out with them.

Having established a free form position based on their role play, introduce the Research Points. Ask each student to read over the research points and determine whether or not their position on judges has changed. Ask the student to explain his/her position.

### Research Points:

- (i) Judges were originally prohibited from voting in federal or provincial elections because they were expected to remain totally independent from politics. Their job is to take the laws passed by Parliament and the Legislature and apply them to the facts of individual cases. Deciding on what laws should be passed, even indirectly through voting to select a party to govern, was viewed as conflicting with their job. While limits on voting have now been relaxed, many judges continue to choose not to vote for these reasons.
- (ii) “The judge is a pillar of our entire justice system, and the rights and freedoms which that system is designed to promote and protect”, the Supreme Court ruled in 2001 in the case of *Therrien (Re)*. “The public will therefore demand virtual irreproachable conduct from anyone performing a judicial function...(Judges) must be and must give the appearance of being an example of impartiality, independence, and integrity.”
- (iii) “No judge shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his judicial duties, but every judge shall devote himself exclusively to those judicial duties.” Source: Judges Act, s. 55
- (iv) Judges must conduct themselves, in and out of court, in a way that would not cause a reasonable person to conclude a judge cannot be objective and impartial in hearing a case. “A system of justice, if it is to have the respect and confidence of its society, must ensure that the trials are fair and that they appear to be fair to the informed and reasonable observer...If the words or actions of the presiding judge give rise to a reasonable apprehension of bias to the informed and reasonable observer, this will render the trial unfair.” (from the Supreme Court of Canada’s ruling in *R.D.S. v. The Queen*, 1997)
- (v) To be chosen to be a judge, an applicant must have been a lawyer for at least 10 years. In fact, most judges practice law for 20-25 years prior to becoming a judge. (red herring)
- (vi) “Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary...Judges must be and should appear to be impartial with respect to their decisions and decision-making.” Source: Ethical Principles for Judges, Canadian Judicial Council.

# List of Principles:

Explain what a principle is. Ask the students what principles do they think are involved with the judicial system. Read over the following list of principles and ask the students to reflect on their own positions as the list is read

## (i) Public Confidence in Court Decisions:

Citizens must have confidence that justice will be administered in a fair and impartial manner and the courts will respect the rule of law when making decisions. If judges do not act fairly, or leave an impression that their minds are made up before the case is heard, members of the public will lose faith in the ability of the justice system to resolve disputes. This can lead to citizens 'taking the law into their own hands', which at its worst can lead to open violence, fear, and inability to work and support oneself.

## (ii) Equal Access to Justice:

While lawyers can be expensive, and it may appear that the person with the most money can hire the 'best' lawyer, judges must ensure that the same rules (laws) apply to all parties in a dispute no matter who represents them, or even if they do not have a lawyer.

## (iii) The Appearance of Impartiality:

Judges make every effort to avoid conduct and situations that could undermine public confidence in their impartiality. They must not, by their words or actions, appear to have pre-judged a case or to favour one of the parties involved in the cases that come before them.

## (iv) Problems Can be Solved Without a Lawsuit:

Everyone who has been a victim of a crime or suffered a financial loss as a result of the broken promises or negligence of another may sue. However, many situations are settled by parties coming to an agreement without suing, or before a trial starts. Other times people decide that a problem is simply too small to worry about.

## (v) The Separation of Powers:

In order to fulfill their roles properly and ensure public confidence in their actions, judges should not engage in conduct which might form the substance of lawsuits they later decide. Judges also must step back and allow another judge to hear a lawsuit where they are related to one of the parties or had been the lawyer for one of the parties before they became a judge.

## (vi) Limits on Public Comments by Judges:

Judges should, as a rule, reserve their public comments and opinions for the courtroom. While judges can make public appearances and speeches, they must take great care not to express opinions that could be seen as pre-judging conduct or issues that they may be called upon to decide upon in future cases.

To end the lesson, ask each student to reflect on the 'judges and impartiality' theme of the lesson. Each student must write a second paragraph explaining to what degree they have changed their position on the topic.

## 2. Critical learning materials and resources 5, 6, and 7

will enable students to fully analyse Module 2's Section (C) Case Study: Hotel Sues Youths Who Damaged Room.

The online video (approximately 3 minutes in length), subsequent online interactive programme, and associated online quiz (all found at [www.tryjudging.ca](http://www.tryjudging.ca)), provide an excellent student-centred learning activity for teachers to use.

## 3. Using the Supreme Court of Canada website,

[www.scc-csc.gc.ca](http://www.scc-csc.gc.ca), students can complete the assignment found in Appendix E. Students are to identify the nine supreme court justices, and then choose one judge in order to write a biography. As a concluding task, the student is to list and describe three necessary attributes of a supreme court justice.

## 4. Follow up activities

such as those outlined in Module 2 guide's Section (D), using the Internet links listed in Section (E) of the Module guide, can be considered for further study.

## Evaluation/ Assessment

1. From 1. (above), either 1 (d) or 1 (j), or both, could be assessed
2. Quiz for online interactive programme (see Materials and Resources #8 above)
3. Exercises or assignments associated with Module 2, Section (D) and Section (E) (see Materials and Resources #9 and #10 above)



## Module 2: Why Must Judges be Fair and Impartial?



Case Study:  
Hotel Sues Youths Who Damaged Room

### Contents

#### A. Learning Outcomes

#### B. Resource Materials

1. The Need for Impartiality
2. Maintaining the Appearance of Impartiality
  - a) Grounds for Disqualification from Hearing a Case
  - b) Conduct Outside the Courtroom
  - c) Conduct Inside the Courtroom
  - d) Community Involvement and Other Activities
3. Understanding Civil Law
4. Procedure in Civil Cases

#### C. Case Study: Hotel Sues Youths Who Damaged Room

#### D. Additional Exercises for Classroom Use and Assignments

#### E. Internet Links to More Resources



## A. Learning Outcomes

*Students will:*

- ⊕ Explore why it is vital that judges be impartial – and appear to be impartial;
- ⊕ Explore how judges conduct themselves in ways that promote the appearance of impartiality;
- ⊕ Understand civil law and how lawsuits proceed through the courts.



## B. Resource Materials

### I. The Need for Impartiality

**T**he *Charter* enshrines the right of persons accused of crimes to have their cases heard “by an independent and impartial tribunal.” This right would be meaningless if citizens did not have confidence that judges approach a case with an open mind and free of ties to those involved in a case. “The rule of law, interpreted and applied by impartial judges, is the guarantee of everyone’s rights and freedoms,” Antonio Lamer, a former chief justice of the Supreme Court of Canada, has said. “Judicial independence,” he added, “is, at its root, concerned with impartiality, in appearance and in fact.” To this end, judges must conduct themselves—both on the bench and when outside the courtroom—in a way that enhances the appearance of impartiality. The legal test that our courts apply is whether a reasonable person could conclude that the judge would be unable to be fair, objective and impartial when hearing a particular case.

### 2. Maintaining the Appearance of Impartiality

#### a) Grounds for Disqualification from Hearing a Case

**J**udges seek to avoid placing themselves in a conflict-of-interest situation, one where their impartiality might be questioned. Consequently they would decline to preside over cases involving relatives or close friends, or companies and organizations to which they have ties. For example, a judge with knowledge of (or owning shares in) a company involved in a lawsuit would likely declare that fact to the parties and, depend-

ing on their views, might decide to disqualify himself or herself from hearing the case—also known as “recusing.” In that same way judges would seek to avoid potential conflicts by declining to preside, for some period of time, in

cases arising from their former work as a lawyer or involving lawyers from the judge’s former law firm or place of business. After a judge is appointed, a “cooling off” period of two or more years is often recommended before the judge agrees to hear cases involving former clients, business associates or members of the judge’s old law firm. Resolving such matters is most often a matter of propriety, proximity and common sense. For example, there may be no dispute about a judge presiding over a case where his nephew works in the mail room of one of the law firms involved; whereas more difficult questions arise where the judge’s husband is a partner in that law firm.

“The rule of law, interpreted and applied by impartial judges, is the guarantee of everyone’s rights and freedoms,”

#### b) Conduct Outside the Courtroom

Judges must make every effort to avoid conduct that could undermine public confidence in their impartiality. The judge is “the pillar of our entire justice system,” the Supreme Court of Canada has said, and the public has a right to demand “virtually irreproachable conduct from anyone performing a judicial function.” A judge must show respect for the law in his or her private life. As well, a judge must behave in public in a manner that fosters respect for the judiciary. Judges are not expected to be hermits and are entitled to enjoy life with their friends and families. But by the same token, they



Judges must not, by their words or actions, appear to have prejudged a case or to favour one of the parties involved in a case.

must be wary of socializing or associating with anyone connected with the cases that come before them. This is not a matter of questioning a judge's integrity, but of avoiding the *appearance* of favouritism.

Judges must not, by their words or actions, appear to have prejudged a case or to favour one of the parties involved in a case. For this reason, judges exercise caution in granting interviews to the media and in accepting invitations to speak in public. Judges are not barred from speaking in public and, indeed, it is recognized that judges can make an important contribution to public debate about the role of the courts and the importance of judicial independence. But judges must be wary of commenting on political, legal or social issues that could become the subject of a court case. If, for instance, a judge makes a public statement advocating a particular approach to the rights of a minority or youth crime, the judge might be expected to withdraw from future cases involving such issues. Such restraint is not so much to avoid embarrassment or public controversy; rather it is seen as a way to guarantee a fair trial, both in fact and in appearance.

“A system of justice, if it is to have the respect and confidence of its society, must ensure that trials are fair and that they appear to be fair to the informed and reasonable observer,” the Supreme Court of Canada noted in its 1997 ruling in the case of *R. D. S. v. The Queen*. “If the words or actions of the presiding judge give rise to a reasonable apprehension of bias to the informed and reasonable observer, this will render the trial unfair.”

### c) Conduct Inside the Courtroom

Judges must maintain control over proceedings, ensuring trials and hearings are conducted smoothly and efficiently, while affording each party an opportunity to present their case as they see fit. Judges must strive to treat each party and witness with courtesy and civility. It is the judge's job to

make tough decisions, and this may lead the judge to criticize the conduct of a party or lawyer or to question the credibility or motives of a witness. It is proper for the judge to make such findings if they are reasoned and supported by the law and the evidence. In the words of the Canadian Judicial Council's *Ethical Principles for Judges*: “Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary .... Judges must be and should appear to be impartial with respect to their decisions and decision making.”

### d) Community Involvement and Other Activities

Outside the courtroom, judges must approach community or charitable work with caution. In general, a judge may be able to serve as an officer, director, trustee or advisor to an educational, religious, charitable or civic organization, as long as the judge is not involved in legal issues, does not provide legal or investment advice, and does not participate in soliciting donations (unless otherwise approved by the judge's ethical advisory body). Since the judge would be disqualified from presiding over any case involving the organization, judges should avoid taking part in organizations that are routinely involved in legal actions.

If a judge was politically active as a lawyer, such activities must end when the person is appointed to the bench. Judges cannot belong to a political party and they cannot attend political meetings or fundraising events. As well, they must not raise money for a political party or make donations to a party. Members of a judge's immediate family may have to curtail their political activities, to ensure such activities do not undermine the appearance that the judge is impartial. Judges must refrain from signing petitions, but they are allowed to vote in elections should they be so inclined.

Judges cannot take on paying work outside of their judicial duties. The *Judges' Act* stipulates that no superior court judge “shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his judicial duties,



but every judge shall devote himself exclusively to those judicial duties.” This does not prevent judges from accepting a government request to conduct a royal commission, public inquiry or other official investigation into a disaster, the misuse of public funds or other controversy. Indeed, the selection of judges to take on such roles is a measure of their independence from government and the public’s respect for their impartiality.

*The Judges’ Act stipulates that no superior court judge “shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his judicial duties, but every judge shall devote himself exclusively to those judicial duties.”*

### 3. Understanding Civil Law

**T**he civil courts settle a wide range of legal disputes that arise between citizens of a complex modern society. A person or a corporation can sue the party responsible for injuries or losses resulting from an accident, a business deal gone sour or a malicious act that falls short of a crime. For example, a dispute may arise over the sale of a home or where the survey line runs between adjoining properties. A company or inventor may claim that a rival has stolen ideas and infringed on a patent. An employee demoted or fired may sue his employer, claiming wrongful dismissal. Shareholders may sue the directors of a corporation for breaching their duty to run the company in a way that protects the interests of investors. When married couples separate, they turn to the courts to grant a divorce and to settle disputes over support payments, which parent will have legal custody of the children and the terms of parental access to the children.

Many civil actions involve claims for money to compensate for the harm that someone suffers due to the actions or failings of someone else. These are known as torts and most are based on acts of negligence that cause personal injury, such as traffic accidents and medical malpractice. To determine

whether such claims are valid, a judge or jury will compare the defendant’s conduct to the standard of care that is reasonable in the circumstances. A nuisance claim can be made against someone who interferes with a person’s right to enjoy their property—people living near a factory that produces a stench could sue for damages or for an injunction to suppress the odour. Battery is the tort of assault, and the victim of an assault or beating can sue for damages as well as file a complaint asking the police to consider filing criminal charges.

The law of contracts is concerned with the promises and duties that have been agreed to between parties. For instance, if a person agrees to buy a car from a dealership at a specific price, and the car dealer refuses to complete the transaction, the would-be buyer may have the right to sue for breach of contract. Most contracts are set out in writing but a court will enforce the terms of a valid verbal contract.

### 4. Procedure in Civil Cases

**C**ivil actions start with a written application to the court or documents known as pleadings, depending on the nature of the legal action or lawsuit. The document in which a plaintiff launches a lawsuit, and pleads his or her case, is known as an originating notice and statement of claim. It names the plaintiff or plaintiffs, identifies the defendants, recites the facts and allegations that form the basis for the claim, and indicates the damages or other remedies sought. If defendants plan to fight the lawsuit, they must file a statement of defence that denies some or all of the allegations. Failure to file a defence by a certain deadline (usually within a few weeks) may cause a judge to grant a default judgment—an order requiring the defendants to pay damages to the plaintiff. A defendant may launch a lawsuit known as counterclaim, seeking damages from the plaintiff for alleged wrongdoing related to the initial claim. A defendant who contends others are fully or partly to blame for the plaintiff’s losses can file a third-party action that draws those parties into the lawsuit and adds them as defendants.

Most lawsuits are settled out of court before trial, and courts in some provinces require litigants to take part in pre-trial conferences, chaired by a judge, to explore the possibility of a settlement.

Most civil cases are bound for trial in the superior court, where there is no limit on the amount or type of damages that can be awarded to a successful plaintiff. (Small claims courts hear disputes involving smaller amounts of

money and modest claims for damages—in most provinces, these courts can deal with disputes involving no more than \$15,000.) After the pleadings stage, the two sides exchange letters, memos, experts' reports and other documents relevant to the claim. Then lawyers for each party have the right to question the opposing side's witnesses at private sessions known as examinations for discovery. At these hearings, witnesses take an oath to tell the truth but their testimony remains private unless it is produced at the trial or as part of a pre-trial hearing. This is the fact-finding stage of a lawsuit, enabling each side to assess the strengths and weaknesses of its case and to decide whether it makes sense to seek a settlement or to proceed to trial. Most lawsuits are settled out of court before trial, and courts in some provinces require litigants to take part in pre-trial conferences, chaired by a judge, to explore the possibility of a settlement. If there is no settlement, the lawsuit proceeds to a trial. [How a civil trial unfolds is discussed in the Teacher's Guide for Unit 3.]

Sometimes a party is applying for quick action, such as an injunction to stop a building from being demolished, or to have a law interpreted or struck down as unconstitutional. Since such applications focus on legal issues, the procedure is streamlined—legal arguments are filed with the court in writing and most evidence is presented in written declarations known as affidavits.



## C. Case Study: Hotel Sues Youths Who Damaged Room

*The following case study will be created at [www.tryjudging.ca](http://www.tryjudging.ca) as an interactive exercise that can be adapted for an in-class activity or a written assignment. The website will provide teachers with all resource materials in PDF format as well as worksheets that can be downloaded and distributed to students. These worksheets will list the questions posed below and ask students to supply the answers based on their exploration of the website.*

### Scenario

A group of young persons causes extensive damage to a room in the hotel where they are staying. The hotel files a lawsuit against each guest, seeking compensation for the damage and the disruption to other guests and its business.

*The goal of this exercise is to explore the need for objective decision-making and how judges conduct themselves to ensure they act—and are seen to act, by the parties involved in a case as well as the general public—with fairness and impartiality*

Would the judge be in a position to hear the case if:

- 1) A decade earlier, when practicing law, the judge did some legal work for the large company that bought the hotel a year ago [Yes]
- 2) The judge was recently seen dining with the hotel manager at a popular local restaurant [No]
- 3) The judge lives in the same neighbourhood as the hotel manager, but they do not know each other [Yes]

- 4) At a break in the trial, the judge invites the hotel manager to come to his office for a chat [No]
- 5) The judge once stayed at the hotel while attending a legal conference [Yes]
- 6) The week before, when sentencing two youths convicted of criminal charges for damaging property, the judge said harsh penalties were needed to battle a rash of vandalism by teenagers [No]
- 7) The judge discovers that her daughter goes to the same school as the defendants and hangs out with them [No]

*This exercise is designed to challenge students to think about what is considered proper conduct for a judge, and how a judge's relationships and activities outside the courtroom may affect his or her ability to act fairly and impartially. Just as importantly, students are challenged to consider the limits on conduct that are necessary to ensure a judge appears to others to be able to act fairly and impartially.*



## D. Additional Exercises for Classroom Use and Assignments

### I. Understanding Judicial Impartiality: A Class Exercise

**A**sk five students to volunteer to be judges (or select students, if there are not enough volunteers). Ask these students to assemble behind a table or desk facing the class. The remainder of the class is to take on the role of people coming before the court in a dispute over a traffic accident, either as plaintiffs or defendants. Ask the judges to discuss why it would be difficult for them to preside over a case that involves their friends and classmates. Could they be impartial? Would they favour one person over another? Would it be possible for them to put their friendships aside and hear the case objectively? Who should be hearing this case? Pose similar questions to the rest of the class—how would they feel if their friends/classmates were sitting in judgment over them? Would they feel they have had a fair hearing if they lose their case? Would it appear that they had been given a fair chance? What would they think of the outcome of a court case if they knew that the judge was friends with those involved in the case? Who would they want to see passing judgment on whether they had broken the law or should pay damages?

### 2. A Trip to the Principal's Office: A Class Discussion

**A**sk the students to consider the following scenario: Two students are summoned to the principal's office for fighting on the school playground. Under the school's policy, fighting on school property can be punished with a suspension or expulsion.

Ask students to discuss whether it would appear that the principal acted fairly and impartially in imposing punishment if:

One of the students is the principal's nephew [No]

Both students have been previously punished for using a key to scratch the principal's car [No]

The father of one of the students plays golf with the principal on a regular basis [No]

The principal spoke briefly with the parents of both students during the school's orientation activities in September [Yes]

The parents of one of the students are active in the school's PTA and often deal with school administrators [Yes]

The principal has been overheard saying he considers both students to be troublemakers and the school would be better off they were expelled [No]

The principal rents a flat from the parents of one of the students [No]

*In this exercise the principal, like a judge, must be seen to act fairly and without favouring one side or the other. This discussion can be used to stress how the appearance of partiality is just as important as the ability of a principal or judge to act fairly and impartially.*

### 3. Being Impartial, Appearing Impartial: A Class Discussion

Use the following scenarios as the basis for a class discussion of judicial impartiality.

#### Scenario

A bitter legal dispute between two companies, involving millions of dollars in potential damages, reaches trial. Based on the information that follows, ask students whether the judge can or cannot hear the case, and to explain why or why not.

Should the judge slated to preside at trial hear the case if:

The judge owns shares in one of the companies? [No]

The judge's wife is the lawyer for one of the companies? [No]

The judge has been on the bench for 10 years, and members of his former law firm are the lawyers for one of the companies? [Yes]

The judge is on the board of governors of a university that has no connection with either company? [Yes]

The judge recently spoke to the local Rotary Club denouncing the kinds of business practices involved in the lawsuit? [No]

The judge was employed as an in-house lawyer for one of the companies before being appointed to the bench a year ago? [No]

The judge is an acknowledged expert in business law and has no connection with either company? [Yes]

One of the companies makes cars, and the judge drives one of its models? [Yes]

One of the companies has made large donations to a political party that the judge supported before being appointed? [Yes]

*Use all or some of the circumstances set out above as the basis for a written assignment. Ask students whether, in each situation, the judge could be impartial—and would appear to be impartial—if he or she presided over the trial, and to explain why or why not.*

### 4. Judicial Conduct and Impartiality: An Exercise

As a class discussion or written assignment, ask students whether they think the following conduct would be proper for a judge, and to explain why or why not:

A judge asks a lawyer to repeat part of his legal argument, saying she is not sure the lawyer's description of the law is correct. [Proper]

A judge attends a \$100-a-plate fundraising dinner for a political party. [Improper]

A judge notes that a trial is taking far longer than expected, and asks the lawyers to try to speed up their questioning if they can. [Proper]

A judge joins a committee set up to improve the relationship between the media and the courts. [Proper]

A judge accepts a government appointment to head the inquiry into the collapse of an unfinished bridge, which killed four workers. [Proper]

A judge agrees to be a guest speaker at a political party's annual convention. [Improper]

A judge accepts an offer to speak to a high school class about the judge's role in the justice system. [Proper]

The chief justice of a court gives a media interview to comment on whether a government plan to freeze judges' salaries is a threat to judicial independence. [Proper]

The judge hearing a criminal case does not reveal that the man on trial is her daughter's boyfriend. [Improper]

A judge criticizes the government's handling of welfare reform in a ruling that strikes down new welfare regulations because they discriminate against single mothers. [Proper]

A judge rules that a plaintiff's lawsuit is frivolous and without merit and should be dismissed. [Proper]

A judge displeased with the way a lawyer is conducting a case secretly phones the managing partner of the lawyer's firm and demands that the lawyer be replaced. [Improper]

A judge accepts a company's offer to do consulting work on legal issues. [Improper]

A judge rules that she accepts the plaintiff's testimony as true and rejects the defendant's version of events as unreliable. [Proper]

## 5. Suggested questions for class discussion and/or written assignments

- a) List five types of conduct that a judge must avoid in order to appear impartial.
- b) What is the legal test for deciding whether a judge appears to be impartial and can hear a case?

- c) Identify five types of legal disputes that would be classified as civil actions.
- d) What are the differences between the trial route and the application route in civil cases?
- e) What forms of political activity are off limits for judges?



## E. Internet Links to More Resources

**Ethical Principles for Judges.** Available online, in PDF format, through the website of the Canadian Judicial Council:

[http://www.cjc-ccm.gc.ca/english/publications/ethic\\_e.pdf](http://www.cjc-ccm.gc.ca/english/publications/ethic_e.pdf)

**A Compendium of Law and Judges:** Chapter 4: The Qualities Expected of a Judge.

[http://www.courts.gov.bc.ca/legal\\_compendium/](http://www.courts.gov.bc.ca/legal_compendium/)

**The *Judges Act*** sets out the qualifications and duties of superior court judges. An electronic version is available online:

<http://laws.justice.gc.ca/en/C-46/index.html>)





## Module 3: What is the Judge's Role in the Justice System?



### ➤ Case Study: Teacher Sued for Assaulting Student

## Contents

### Module overview

#### Module Learning Outcomes

#### Provided Resources

1. Resource Materials
2. Case Study
3. Additional Exercises for Classroom Use and Assignments
4. Internet Links to More Resources

### Suggested lesson plans

#### Teaching Objectives and Learning Outcomes

#### Teacher and Student Learning Materials and Resources

#### Teaching Plan and Strategy

#### Evaluation/Assessment



## Module 3: What is the Judge's Role in the Justice System?

**T**he desired outcome for Module 3 is encapsulated in the following paragraph:

“Well done. Socrates would be proud. Now you know what a judge does—and doesn’t do—when a legal dispute comes before the courts. Judges act as a neutral umpire—they ensure hearings and trials run smoothly, interpret the law, and decide whether civil claims or criminal charges have been proven.”\*

(\*audio feedback to each student from the judge after the successful completion of the online task at [www.tryjudging.ca](http://www.tryjudging.ca))

*NB: all lettered Sections identified in the overview are referenced within the body of each of the 5 modules, with each module being located directly after each suggested lesson plan(s), and will be found at [www.tryjudging.ca](http://www.tryjudging.ca).*

### Module Learning Outcomes: Module 3, Section (A)

Students will:

- Learn how Canada’s courts are structured;
- Demonstrate an understanding of the adversarial system of justice and the role of the judge and other players;
- Understand the judge’s role in enforcing the rules of procedure and deciding whether evidence is admissible;
- Explore the various stages of criminal and civil trials.

### Provided Resources for Module 3

#### I. Resource Materials: Module 3, Section (B)

(Note: information on the first five sections below is in Module 3 (B) of the teacher’s guide and can also be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). Click on “Teacher Resources”. )

1. The Structure of Canada’s Courts
  - a) Supreme Court of Canada
  - b) Superior Courts
  - c) Provincially Appointed Courts
  - d) Other Courts and Tribunals

2. The Adversarial System of Justice
  - a) The Role of the Judge
  - b) Judges and Juries
  - c) Lawyers and Prosecutors
3. Procedural Rules
4. Rules of Evidence and Admissibility
5. How a Trial Unfolds
  - a) Civil Cases
  - b) Criminal Cases
6. Posed Questions Handout Sheet (refer to Appendix A—teacher's copy and Appendix B—students' copy)
7. Handout Sheets (refer to Appendices C, D, E, and F)
8. Video: Case Study #3  
—Teacher Sued for Assaulting Student (<3 minutes) available at [www.tryjudging.ca](http://www.tryjudging.ca)
9. Video: Background and Script available at [www.tryjudging.ca](http://www.tryjudging.ca)
10. Try Judging  
online interactive program for students is available at [www.tryjudging.ca](http://www.tryjudging.ca)
11. Quiz  
(embedded within the online interactive student program)
12. Additional Exercises for Classroom Use and Assignments  
(these are found in Module 3 (D) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))
13. Internet Links to More Resources  
(these are found in Module 3 (E) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

## 2. Case Study: Module 3, Section (C)

*To be used in conjunction with the video and the online interactive site*

### Case Study: Teacher Sued for Assaulting Student

*The case study can be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). It is designed as an interactive exercise that can be adapted for an in-class activity and/or a written assignment. The website, furthermore, provides all resource materials for teachers in PDF format.*

### 3. Additional Exercises for Classroom Use and Assignments: Module 3, Section (D)

*(all the following are elaborated upon at [www.tryjudging.ca](http://www.tryjudging.ca))*

- 1) Classroom Visit by a Trial Participant
- 2) Courthouse Visit
- 3) Role-Playing Exercise
- 4) Role of the Judge: Class Discussion
- 5) Rules of Evidence: An Exercise
- 6) Analysis of a Media Report of a Court Case
- 7) Understanding Appeal Court Decision-Making: An Exercise
- 8) Suggested questions for class discussion and/or written assignments:

### 4. Internet Links to More Resources: Module 3, Section (E)

*These links, found at [www.tryjudging.ca](http://www.tryjudging.ca), provide information on the following: role of judiciary, overviews of the court and justice systems, role of the prosecutor, parallels with the American justice system, primer on criminal law, policing, and corrections, etc.*



## Module 3: What is the Judge's Role in the Justice System?

### Suggested Lesson Plans

#### Teaching Objectives and Learning Outcomes

Students will:

- Learn how Canada's courts are structured;
- Demonstrate an understanding of the adversarial system of justice and the role of the judge and other players;
- Understand the judge's role in enforcing the rules of procedure and deciding
- whether evidence is admissible;
- Explore the various stages of criminal and civil trials.

# Teacher and Student Learning Materials and Resources

(Note: information on the first five sections below is in Module 3 (B) of the teacher's guide and can also be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). Click on "Teacher Resources".)

## 1. The Structure of Canada's Courts

- a) Supreme Court of Canada
- b) Superior Courts
- c) Provincially Appointed Courts
- d) Other Courts and Tribunals

## 2. The Adversarial System of Justice

- a) The Role of the Judge
- b) Judges and Juries
- c) Lawyers and Prosecutors

## 3. Procedural Rules

## 4. Rules of Evidence and Admissibility

## 5. How a Trial Unfolds

- a) Civil Cases
- b) Criminal Cases

## 6. Posed Questions Handout Sheet

(refer to Appendix A—teacher's copy and Appendix B— students' copy)

## 7. Handout Sheets

(refer to Appendices C, D, E, and F)

## 8. Video: Case Study #3-Teacher Sued for Assaulting Student

(<3 minutes) available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 9. Video:

Background and Script available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 10. Try Judging

online interactive program for students is available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 11. Quiz

(embedded within the online interactive student program)

## 12. Additional Exercises for Classroom Use and Assignments

(these are found in Module 3 (D) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

## 13. Internet Links to More Resources

(these are found in Module 3 (E) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

# Teaching Plan and Strategy

## I. Use Appendix A

[all appendices are below] to introduce this module's topic. Appendix B can be used as a handout for students to complete or for an oral class discussion. Either way, it acts as a diagnostic assessment of the class' understanding of the role of judges.

## 2.

In this major part of the lesson, all of the 5 sub-topics that are presented in the Module 3 guide, Section (B) should be taught. Pertinent information is provided in Section (B) of the guide and acts as the foundation of knowledge for completion of Appendices C, D, and E. Note that if Appendices C and D are to be used, as distinct from Appendix E, then do not provide information about the Role of Judges—an attempt at inductive group brainstorming learning is applied here; if Appendix E is to be used, then students can have direct access to the information about judges found in Module 3 of the teaching guide, Section (B).

Information pertaining to the 5 sub-topics could be presented through a lecture approach, a power point presentation, or even as the result of a student research assignment.

The 5 sub-topics are:

- The Structure of Canada's Courts
- The Adversarial System of Justice
- Procedural Rules
- Rules of Evidence and Admissibility
- How a Trial Unfolds

## 3. Critical learning materials and resources 8, 9, 10, and 11

Will enable students to fully analyse Module 3's Section (C) Case Study: Teacher Sued for Assaulting Student.

*The online video (approximately 3 minutes in length), subsequent online interactive programme, and associated online quiz (all found at [www.tryjudging.ca](http://www.tryjudging.ca)), provide an excellent student-centred learning activity for teachers to use.*

## 4. Using the Supreme Court of Canada website, [www.scc-csc.gc.ca](http://www.scc-csc.gc.ca)

Students can complete the assignment found in Appendix F. Students are to identify the nine supreme court justices, and then choose one judge in order to write a biography. As a concluding task, the student is to list and describe three necessary attributes of a supreme court justice.

## 5. Follow up activities

Such as those outlined in Module 3 of the teacher guide's Section (D), using the Internet links listed in Section (E) of the Module guide, can be considered for further study.

# Evaluation/ Assessment

1. Any of the following appendices (see Materials and Resources #7 above): Appendix C (any of the columns 1-5), Appendix D (just Column 3), Appendix E, Appendix F.
2. Quiz for online interactive exercise (see Materials and Resources #11 above)
3. Exercises or assignments associated with Module 3, Section (D) and Section (E) (see Materials and Resources #12 and #13 above)

# Appendix A For teachers

## The Role of the Judge: An Introduction

### Teacher sued for assaulting student

A teacher who coaches a minor hockey team argues with one of his players. The coach grabs the player and holds him against a wall. The player and his parents sue, claiming he has been assaulted and seeking an award of money as damages. (See the video at [www.tryjudging.ca](http://www.tryjudging.ca).)

During the trial, which decisions will the judge be expected to make?

- 1) Is the player's testimony about the scuffle admissible? [Yes]
- 2) Should the coach's lawyer call witnesses? [No]
- 3) Have all procedural rules for filing documents with the court been met? [Yes]
- 4) Should the player's parents accept a last-minute compensation offer from the coach that would settle the case? [No]
- 5) Has the player's claim for damages been proven? [Yes]
- 6) Should a witness be required to answer questions? [Yes]

(Each of these questions is designed to help students understand the role of the judge when a legal dispute comes before a court. Under our adversarial system of justice, the parties involved in a case are responsible for determining how their case will be presented and which witnesses will be called. Judges decide whether evidence is admissible, whether procedural rules have been followed, if a witness should answer a particular question, and whether the Crown (in criminal cases) or the plaintiff (in a civil case) has proven its case. If the case has been established, the judge then imposes sentence in a criminal case and, in a civil case, orders the defendant to pay damages or take other action to make amends. Judges *do not* decide whether the parties will settle the case out of court or which persons a party will call as witnesses.)



## Appendix B For students

### Teacher sued for assaulting student

A teacher who coaches a minor hockey team argues with one of his players. The coach grabs the player and holds him against a wall. The player and his parents sue, claiming he has been assaulted and seeking an award of money as damages. During the trial, which decisions will the judge be expected to make?

- 1) Is the player's testimony about the scuffle admissible?
- 2) Should the coach's lawyer call witnesses?
- 3) Have all procedural rules for filing documents with the court been met?
- 4) Should the player's parents accept a last-minute compensation offer from the coach that would settle the case?
- 5) Has the player's claim for damages been proven?
- 6) Should a witness be required to answer questions?

### Try Judging

The online interactive program that gets you thinking like a judge

If you have access to the internet, view this scene at [www.tryjudging.ca](http://www.tryjudging.ca). Do you want a real challenge? Go through the whole program on understanding the judge's role in the justice system. You'll get to deal with the evidence of this case. In order to deal with the evidence and ultimately balance the scales of justice, you'll need to apply appropriate judicial principles and research.

The **meter of justice** will tell you if you have made the correct choices.

Like a judge, once you have applied the correct **judicial principles, evidence, and research** to the case, you will **balance the scales of justice**.

What does the judge say to you when you complete the program?

### A final challenge—do the quiz.

The quiz has some trick questions... You can print out your score and show your teacher.

## Appendix C For students

## Part I: The Role of Courts in our Justice System

As you gather information about the first five roles below, fill in the following columns:

*(Note: For information on the courts and the role of judges, go to **www.tryjudging.ca**. After you have completed the first five roles, brainstorm in groups of 3-4 what you believe to be four or five roles associated with judges. Place your answers in column 6.)*

1.	2.	3.	4.	5.	6.
<i>Role of The Supreme Court of Canada</i>	<i>Role of Superior Courts</i>	<i>Role of Provincially Appointed Courts</i>	<i>Role of Federal Courts</i>	<i>Role of Military Courts</i>	<i>Role of Judges</i>

# Appendix D For students

## Part II: Role of Judges

As you gather information about the role of Judges, identify under Column 1 those that your group brainstormed correctly in the previous handout. Identify those that your group identified incorrectly under Column 2 (again from the previous handout). Write down those that you now know as being correct, under Column 3. How well did your group's brainstorming do?

Column 1	Column 2	Column 3

# Appendix E

## For students

### The Structure of Canada's Courts

1. What is the role of the Supreme Court of Canada?
2. What is the composition of the Supreme Court of Canada?
3. What cases are heard by the Supreme Court?
4. What is the highest court of appeal in your province called?
5. What is the role of the provincially appointed courts?
6. What Is the federal court?
7. What are military courts?
8. What are administrative tribunals?

### The Adversarial System of Justice

1. What is it necessary to have an adversarial system.
2. What is the role of the judge?
3. What is the role of the appeal court judge?
4. What is the role of the jury?
5. What is the role of the crown attorney?
6. What is the role of the defence attorney?

### Procedural Rules: Evidence and Admissibility

1. Why is it necessary to have procedural rules?
2. What does probative evidence refer to?
3. What is circumstantial evidence and can it ever be used?
4. What is hearsay, and can it ever be used?
5. What is the name of the Law that identifies what information can or cannot be used in a court of law called?

### How a Trial Unfolds

1. In a civil trial—describe the steps that are taken during a trial.
2. In a civil trial, how are damages determined?
3. In a criminal trial, describe the steps that are taken during the trial?
4. When is a mistrial declared?

# Appendix F For students

## Biography Assignment

Using the Supreme Court of Canada's website, [www.scc-csc.gc.ca](http://www.scc-csc.gc.ca):

### 1. Identify the nine supreme court justices,

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

9. \_\_\_\_\_

### 2. Choose one of the judges

Name: \_\_\_\_\_

and then write a 1 to 2 page biography of that person, and,

### 3. As a conclusion, list and describe 3 necessary attributes of a supreme court justice. The 3 necessary attributes are:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_



## Module 3: What is the Judge's Role in the Justice System?



### ➤ Case Study: Teacher sued for assaulting student

#### Contents

#### A. Learning Outcomes

#### B. Resource Materials

##### 1. The Structure of Canada's Courts

- a) Supreme Court of Canada
- b) Superior Courts
- c) Provincially Appointed Courts
- d) Other Courts and Tribunals

##### 2. The Adversarial System of Justice

- a) The Role of the Judge
- b) Judges and Juries
- c) Lawyers and Prosecutors

##### 3. Procedural Rules

##### 4. Rules of Evidence and Admissibility

##### 5. How a Trial Unfolds

- a) Civil Cases
- b) Criminal Cases

#### C. Case study: Teacher Sued for Assaulting Student

#### D. Additional Exercises for Classroom Use and Assignments

#### E. Internet Links to More Resources



## A. Learning Outcomes

*Students will:*

- ⊙ Learn how Canada's courts are structured;
- ⊙ Demonstrate an understanding of the adversarial system of justice and the role of the judge and other players;
- ⊙ Understand the judge's role in enforcing the rules of procedure and deciding whether evidence is admissible;
- ⊙ Explore the various stages of criminal and civil trials.





## B. Resource Materials

### I. The Structure of Canada's Courts

**C**anada's constitution creates two interrelated court systems, each with distinct powers and jurisdiction over specific types of cases. The federal government is responsible for courts of superior jurisdiction, the highest echelons of our courts. These consist of the nation's highest court, the Supreme Court of Canada, provincial courts of appeal and the superior court—the top level of trial court—in each province. The federal government appoints and pays the judges who serve on these courts. The provinces and territories are responsible for inferior courts, which have limited powers and jurisdiction and form the lower tiers of the court system. Inferior courts deal, for the most part, with minor crimes, offences under provincial statutes and civil claims involving small amounts of money. Judges of these courts are appointed and paid by the provincial or territorial government.

Provinces and territories are responsible for the day-to-day operation of all courts, superior and inferior, within their borders, and provide court facilities and support staff. As a result, superior and inferior courts are often housed within the same courthouse and may share courtrooms. [A chart showing the structure of Canada's courts is available on the Justice Canada website, at <http://canada.justice.gc.ca/en/dept/pub/trib/page3.html>]

#### a) Supreme Court of Canada

The Supreme Court of Canada is the last stop in Canada's justice system. It can hear cases involving any area of the law and is the final court of appeal for cases originating in other courts. This

The Supreme Court of Canada is the last stop in Canada's justice system. It can hear cases involving any area of the law and is the final court of appeal for cases originating in other courts.

Ottawa-based court consists of a chief justice and eight judges. At least three of its judges must come from Quebec and, by tradition, three come from Ontario, two from western Canada and one from the

Atlantic Provinces. Its members are usually judges promoted from a provincial court of appeal. The Supreme Court hears between 75 and 100 cases a year—only those of national significance or where the law is evolving or unclear. Most parties must apply to the court for leave, or permission, to have an appeal heard. Through a procedure known as a reference, the federal government may ask the Supreme Court to interpret whether a law is consistent with the constitution.

#### b) Superior Courts

Each province and territory has two levels of superior court—one to hear trials, the other to handle appeals. The court of appeal, sometimes known as the appeal division, is the highest court within the province or territory. One tier below is the trial court of superior jurisdiction, which has various names—in Quebec, it is referred to as the Superior Court and, in Ontario, as the Superior Court of Justice; in Nova Scotia, Prince Edward Island, Newfoundland, British Columbia, the Northwest Territories and The Yukon, it is known as the Supreme Court; it is called the Court of Queen's Bench in New Brunswick, Manitoba, Alberta and Saskatchewan; in Nunavut, it is the Court of Justice. Superior trial

courts have inherent jurisdiction, which means they can deal with any case not specifically assigned to a lower court. They conduct trials in most serious criminal offences and civil cases, and hear constitutional challenges to laws or government policies. In most provinces, a specialized division known as a unified family court deals with divorces and other family law matters. Judges of the superior trial court also hear appeals from some decisions of lower courts and administrative tribunals.

### c) Provincially Appointed Courts

Courts made up of judges appointed by provincial or territorial governments form the entry level of the justice system. The Provincial Court handles pre-trial proceedings and hearings in all criminal cases and can conduct trials in any case except murder. This court can also deal with narcotics offences and charges laid under federal and provincial laws. Judges of this court hear trials without juries. The Small Claims Court hears civil claims involving modest amounts of money. Youth Courts deal with minors between the ages of 12 and 18 who charged with crimes, applying special procedures set out in the *Youth Criminal Justice Act*. In provinces that have not established a unified court to deal with family law cases, a Family Court deals with issues such as child custody and access and applications to have children at risk put into foster care.

### d) Other Courts and Tribunals

The **Federal Court** is an Ottawa-based superior court that deals with issues that arise under federal laws. It has a trial and an appeal division and hears disputes between Ottawa and the provinces, immigration and tax cases, allegations that copyright or patent laws have been violated, and cases involving federal Crown corporations or departments. It also deals with disputes over ships and salvage claims and reviews the decisions of federal boards, commissions and tribunals. **Military courts** preside over the trials of anyone charged under the military's *Code of Service Discipline*, the law that governs the conduct of Armed Forces members as well as civilians who accompany the forces on missions.

While the *Code of Service Discipline* includes criminal offences, armed forces members accused of serious offences like murder, manslaughter or sexual assault are dealt with in the civilian courts if the crime has been committed in Canada. The federal and provincial governments have created **administrative tribunals** to settle disputes outside the court system. Tribunals are known as quasi-judicial bodies and, like courts, they convene hearings, review evidence and make rulings. Disputes over employment insurance benefits, claims of refugee status and allegations of human rights violations are among the issues dealt with by federal tribunals. Tribunals at the provincial level specialize in matters such as workplace standards, claims for workers' compensation, power rate increases and police misconduct.

An independent examination of evidence presented by each party involved in a dispute is seen as the best method of uncovering the truth. The Supreme Court of Canada has said this "adversarial" approach "helps guarantee that issues are well and fully argued by parties who have a stake in the outcome."

## 2. The Adversarial System of Justice

**U**nder our system of justice, criminal and civil cases are resolved through a contest between opposing sides. An independent examination of evidence presented by each party involved in a dispute is seen as the best method of uncovering the truth. The Supreme Court of Canada has said this "adversarial" approach "helps guarantee that issues are well and fully argued by parties who have a stake in the outcome." Each party and its lawyers decide how their case will be pursued, what evidence and legal arguments they will seek to present to the court, and how witnesses will be questioned.

### a) The Role of the Judge

In this contest between adversaries, the judge acts as a neutral umpire. The judge is the central figure in the courtroom and decides how the law applies,

whether *Charter* rights have been breached, how a case or trial should proceed and whether evidence is admissible in court. In cases heard without a jury, the judge must assess whether there is enough evidence to prove defendants guilty of a crime or, in civil cases, whether plaintiffs have established their claims. The judge decides which witnesses are believable and how much credence should be given to documents and other pieces of evidence put before the court. This role is known as the “trier of fact.” When a person is convicted of a crime, it is the judge’s duty to impose punishment. When a civil action is successful at trial, the judge decides the amount of damages or other measures required to compensate the plaintiff.

The judge also oversees the proceedings. He or she maintains order in the courtroom and ensures hearings and trials run smoothly and efficiently. Judges rarely question witnesses and avoid commenting on testimony or the strength of a litigant’s case until all the evidence has been heard, so no one questions their impartiality. Section 11(d) of the *Charter* enshrines the right of persons accused of crimes to have their cases heard “by an independent and impartial tribunal.”

For centuries, juries have given citizens an opportunity to play a role in the administration of justice.

Judges, like anyone else, can make mistakes. In the course of a hearing or trial, the judge is called upon to make any number of decisions. Is certain evidence admissible? Have procedural rules been followed? How does a law or precedent apply to the issues before the court? Were someone’s *Charter* rights breached? Was the jury properly instructed about how the law applied to the allegations before the court? The losing party has the right to file an appeal in an effort to have the decisions reversed or a new trial ordered.

The role of appeal court judges is to review such decisions and to decide whether they are sound in law. An appeal is not a second trial—appeal courts

review the trial judge’s rulings, transcripts of the trial or hearing, and the legal arguments of the lawyers for each side. Appeal courts hear additional evidence only if the information could affect the outcome of the case and was not discovered until after the trial was held. It is the job of the trial judge (or the jury, in jury cases) to decide what happened and whether witnesses have told the truth. Appeal courts rarely disturb such findings.

In this contest between adversaries, the judge acts as a neutral umpire. The judge is the central figure in the courtroom and decides how the law applies, whether *Charter* rights have been breached, how a case or trial should proceed and whether evidence is admissible in court

If a serious error has been made, an appeal court has the power to overturn a criminal conviction or verdict in a civil case and to order a new trial. The court also may conclude that the error is not serious enough to affect the outcome, and allow the verdict or decision to stand. In criminal cases, if the court finds there is not enough evidence to support a conviction, it has the power to acquit the defendant. But if the Crown appeals a verdict of not guilty, the appeal court must either uphold the acquittal or order a new trial; an appeal court does not have the power to convict a person who has been acquitted at trial.

## b) Judges and Juries

For centuries, juries have given citizens an opportunity to play a role in the administration of justice. Serving on a jury is a civic duty and helps members of the public to better understand the justice system and the trial process. Jurors are not expected to know the law and, in fact, lawyers and law students are disqualified from serving. The jury system developed in Britain as a way to balance the power of governments to prosecute individuals and the injustices that may occur from a strict interpretation of the law. Jurors bring a commonsense approach to the search for justice, and have the right to acquit someone of a crime if the person’s conduct, while in breach of the letter of the law, does not appear to

Jurors bring a common-sense approach to the search for justice, and have the right to acquit someone of a crime if the person's conduct, while in breach of the letter of the law, does not appear to be sufficiently serious or blameworthy to justify a conviction.

be sufficiently serious or blameworthy to justify a conviction.

The *Charter* guarantees the right to a jury trial to every person charged with a serious crime that can be punished by

five years or more in prison. (Many defendants do not exercise this right and judges hear most trials.) The jury in a criminal case consists of 12 people chosen by the Crown attorney and defence lawyer at the outset of the trial. Juries also hear a limited number of civil actions, including lawsuits alleging defamation and malicious prosecution. Jurors must be Canadian citizens and at least 18 years of age. Besides lawyers and law students, others exempt from jury duty are police officers, court officials, politicians, members of the armed forces and anyone who has served more than two years in prison for a crime. Friends and relatives of anyone involved in a case will be asked to declare such conflicts and will not be allowed to serve on the jury.

Jurors assume the role of triers of fact. They assess all of the evidence to determine what happened and, when there are two versions of events, they decide who is telling the truth. They swear an oath to be impartial and to return a verdict based solely on the evidence presented in the courtroom. Once all evidence has been heard, the judge instructs jurors on the law to be applied to the facts in order to reach a verdict. In criminal cases, the verdict must be unanimous or the case will end in a hung jury and the defendant will stand trial a second time. In civil cases, juries decide if a case has been proven and how much money should be awarded as damages if the plaintiff is successful.

### c) Lawyers and Prosecutors

Crown attorneys or Crown prosecutors are lawyers who prosecute crimes and federal and provincial

offences on behalf of the government. They decide whether it is in the public interest to pursue charges, and must withdraw the allegations if it does not appear there is enough evidence to convict the accused. In British Columbia, Quebec and New Brunswick, prosecutors decide whether criminal charges will be laid. Federal prosecutors and those in the remaining provinces and territories assume control of a case only after the police have filed charges. Prosecutors do not act on behalf of the police or victims of crime and have a duty to conduct cases with fairness and integrity. Despite the competitive nature of the adversarial system of justice, the Supreme Court of Canada has said that the role of prosecutor “excludes any notion of winning or losing.”

Lawyers acting for the plaintiff or defendant in a civil action, or for a person accused of a crime, have a duty to ensure the court hears all evidence and legal arguments that could advance their client's case. The conduct of lawyers is governed by the ethical rules of the legal profession and they cannot mislead a judge, present evidence they know is false, or break the law. People who cannot afford to hire a lawyer may qualify for assistance from a legal aid program, which will provide a lawyer at public expense. Money for legal aid is limited and assistance is usually provided only in criminal cases and for parents whose children have been taken into protective custody. Since many people earn too much money to qualify for legal aid but not enough to cover a lawyer's fee, the number of persons representing themselves in court in civil and criminal cases is increasing.

## 3. Procedural Rules

Civil and criminal cases are conducted according to well-established rules of procedure. These rules govern what documents the parties must file with the court, the form they should take, and when they must be filed. Other rules set out the order in which hearings will take place, when evidence or legal arguments will be heard and how a case will unfold in the courtroom.

For instance, for the most part the documents that formally launch an appeal must be filed with the court no more than 30 days after the date of the ruling that is being challenged, ensuring the appeal is dealt with promptly. In certain civil actions, rules may require a plaintiff to give a defendant advance notice that a lawsuit will be filed. Lawyers must adhere to these rules in pursuing cases on their clients' behalf. If there is a dispute over how the rules apply, or if one party accuses the other of breaking or ignoring the rules, it is up to the judge to interpret and enforce them.

#### 4. Rules of Evidence and Admissibility

**T**he information used as evidence in court must be relevant. A fact, statement or event must have a logical connection to the specific allegations or claims involved in a case. In legal terms, the evidence must be “probative”—it must provide proof of matters that are important to establishing the position of a party involved in the case. This generally means that a defendant’s background or a plaintiff’s reputation is not put before the judge or jury, since the issue to be decided at trial is not *who* is before the court but *what* happened and how it should be dealt with under the law. Judges and juries receive most of their information in the form of direct evidence, which is what each witness saw, heard or experienced. Circumstantial evidence—something that links the accused to the offence—may also be admissible. For instance, a person accused of being involved in a hit-and-run accident may have been seen driving in the area shortly before the accident, and then seen by other witnesses driving away from the area at high speed. This testimony alone may not be sufficient to prove the defendant was involved in the hit and run, but it is circumstantial evidence that a judge or jury may be entitled to consider.

Documents, photographs, weapons, clothing worn by a victim or suspect and other physical items may be used as evidence if they are relevant to the case. A witness will have to identify each item, explain its origins and assure the court it is gen-

uine. Witnesses are not permitted to offer opinions on what may have happened, with the exception of specialists in fields such as medicine, science or forensic techniques. Once a judge reviews their credentials and accepts them as experts, these witnesses can explain the results of scientific tests or offer opinions that are based on the evidence before the court.

Second-hand information, known as hearsay—what a witness overheard other people saying about an incident or someone’s conduct—is generally not usable in court. Parties are required to present witnesses who have first-hand knowledge of events or who actually saw or heard what happened.

Second-hand information, known as hearsay—what a witness overheard other people saying about an incident or someone’s conduct—is generally not usable in court. Parties are required to present witnesses who have first-hand knowledge of events or who actually saw or heard what happened.

The *Canada Evidence Act*, the law that sets out what kind of information can be used in court, prevents a person from being forced to incriminate themselves or from being forced to testify against their spouse. Judges also undertake a careful review of any statement that a person accused of a crime has made to a police officer or other person in a position of authority. Judges must ensure an interrogation was conducted properly and confessions or other statements were made voluntarily. If a statement is found to have been made as a result of promises or threats, or as a result of prolonged or aggressive questioning, a judge may refuse to allow it to be used as evidence.

#### 5. How a Trial Unfolds

**T**rials unfold in essentially the same fashion at all levels of court, with the exception of the special procedures required if a jury is hearing the case. (In the description that follows, the proce-



dures for a jury case has been added in brackets.)

### a) Civil Cases

Courts in some provinces require the parties involved in civil disputes to take part in pre-trial conferences, chaired by a judge, to explore the possibility of an out-of-court settlement. If no agreement is reached, the case proceeds to trial.

The plaintiff presents his or her case first. (The plaintiff's lawyer may make an opening statement to the jury). Each witness is called to the stand, takes an oath swearing to tell the truth, and is asked what they know about the allegations before the court. The defence lawyer then has an opportunity to question each witness—a process known as cross-examination—to challenge the evidence presented or to draw out information favourable to the defendant. The questioning procedure is reversed once it is the defence's turn to call evidence.

Once all the evidence has been heard, each side makes a closing address summarizing its case. The final stage of the trial is the verdict. The judge may adjourn the case for days or weeks before returning to court to outline the findings of fact and whether the plaintiff's case has been proven on a balance of probabilities. If the plaintiff succeeds, the judge decides the amount of damages or other remedy awarded against the defendant. (In jury trials, after closing arguments, the judge delivers the instructions or "charge" to the jury, reviewing the evidence and explaining how the law applies to the allegations before the court. At the conclusion of these instructions, jurors leave the courtroom to discuss the evidence in secret as they decide whether the plaintiff's case has been proven. If jurors find for the plaintiff, they are asked to decide on the amount of damages to be awarded.)

### b) Criminal Cases

A criminal trial begins with the reading of the charge or indictment. If the defendant has yet to enter a plea, he or she will plead not guilty at this point. (In jury trials, the prosecutor and defence

lawyer select the jury and then the indictment is read and the defendant pleads not guilty in the jury's presence.)

The prosecution presents its case first. (Before calling witnesses, the prosecutor usually makes an opening statement to the jury outlining the evidence against the defendant.) Each prosecution witness testifies and is cross-examined by the defence lawyer.

Once the Crown rests its case, it is the defence's turn. If the prosecution's case appears to be weak, the defence can ask the judge to find the accused person not guilty, but such motions are rarely made and rarely succeed. While defendants have the right to silence and are under no obligation to present evidence, the defence usually calls witnesses and it is common for the accused person to testify. If the Crown has established a *prima facie* case—evidence that is sufficient, on its face, to prove the allegations beyond a reasonable doubt—a defendant who offers no evidence to contradict those facts is almost certain to be convicted. (Defence lawyers can make an opening statement to the jury outlining their position and introducing the witnesses to be called.) The prosecutor has the right to cross-examine all defence witnesses, including the defendant.

The judge may find it necessary to declare a mistrial if it appears the accused person's right to a fair trial has been compromised. (In jury trials, mistrials are usually declared if jurors have been exposed to inadmissible evidence or prejudicial information about the accused person, either through media reports or improper statements made in the courtroom.) If a mistrial is declared, the accused person will be required to stand trial before a new jury unless the prosecution withdraws the charges. Once all evidence has been presented, law-

The judge may find it necessary to declare a mistrial if it appears the accused person's right to a fair trial has been compromised.

yers for each side give their closing addresses—speeches analysing the evidence and suggesting how it supports the accused person's guilt or innocence. If the defence decides not to call evidence, the prosecutor is the first to present a closing argument. When defence evidence has been called, however, the order is reversed—the defence lawyer goes first and the prosecutor makes the final submission.

The final stage of the trial is the verdict. The judge may adjourn the case for days or weeks before returning to court to outline the findings of fact and whether the defendant has been found guilty or not guilty. (In jury trials, after closing arguments the judge delivers the instructions or “charge” to the jury, reviewing the evidence and explaining how the law applies to the allegations before the court. At the conclusion of these instructions, jurors leave the courtroom to discuss the evidence in secret as they try to reach a verdict. While jurors are allowed to return home each night during the trial, once deliberations begin they are sequestered—kept away from outsiders—and billeted overnight in a hotel, if necessary, until a verdict is reached. Jurors must return a unanimous verdict; a deadlock—known as a hung jury—means that a new trial will be held unless the Crown decides to withdraw the charges.)

A person found not guilty is free to go and can only be tried again on the same charges if an appeal court overturns the verdict and orders a new trial. If the defendant is convicted, the final step in the trial process is for the judge to impose a sentence.





## C. Case study: Teacher Sued for Assaulting Student

*The following case study will be created at [www.tryjudging.ca](http://www.tryjudging.ca) as an interactive exercise that can be adapted for an in-class activity or a written assignment. The website will provide teachers with all resource materials in PDF format as well as worksheets that can be downloaded and distributed to students. These worksheets will list the questions posed below and ask students to supply the answers based on their exploration of the website.*

### Scenario

A teacher who coaches a minor hockey team argues with one of his players. The coach grabs the player and holds him against a wall. The player and his parents sue, claiming he has been assaulted and seeking an award of money as damages.

During the trial, which decisions will the judge be expected to make?

- 1) Is the player's testimony about the scuffle admissible? [Yes]
- 2) Should the coach's lawyer call witnesses? [No]
- 3) Have all procedural rules for filing documents with the court been met? [Yes]
- 4) Should the player's parents accept a last-minute compensation offer from the coach that would settle the case? [No]
- 5) Has the player's claim for damages been proven? [Yes]

- 6) Should a witness be required to answer questions? [Yes]

*Each of these questions is designed to help students understand the role of the judge when a legal dispute comes before a court. Under our adversarial system of justice, the parties involved in a case are responsible for determining how their case will be presented and which witnesses will be called. Judges decide whether evidence is admissible, whether procedural rules have been followed, if a witness should answer a particular question, and whether the Crown (in criminal cases) or the plaintiff (in a civil case) has proven its case. If the case has been established, the judge then imposes sentence in a criminal case and, in a civil case, orders the defendant to pay damages or take other action to make amends. Judges do not decide whether the parties will settle the case out of court or which persons a party will call as witnesses.*

*To explore the role of the jury, students can be asked to consider which issue or issues jurors would deal with #5, (whether the student's claim for damages has been proven).*



## D. Additional Exercises for Classroom Use and Assignments

### I. Classroom Visit by a Trial Participant

Invite a judge, Crown prosecutor, criminal defence attorney or a civil litigator to visit the classroom to speak to students. Prior to the visit, provide students with information on the person's role in the trial process, drawn from the materials in the teacher's guide. Ask students to write down their question in advance (teachers may want to provide them to the visitor, to help the guest prepare.) A pre-visit classroom discussion of the roles of each player in the trial process may assist students as they decide on their question.

Suggested questions:

How does a judge remain neutral?

How do judges make decisions?

Should judges question witnesses?

Do judges conduct their own investigations to uncover evidence about a case?

Should the judge decide how each side presents its case?

How does a judge decide whether someone is telling the truth?

How does a person become a lawyer/prosecutor/judge?

How does a lawyer represent someone accused of hurting another person or committing a crime?

Why do judges and lawyers use legal jargon?

What does a lawyer look for when choosing persons to serve on a jury?

### 2. Courthouse Visit

Many courts offer class tours of courthouses, including opportunities to observe a trial or other hearing or to meet with a judge. Arrangements can be made through the court registrar's office or the court's communications officer.

### 3. Role-Playing Exercise

Divide the class into four groups. Designate one group as one of the main players in a civil trial—judge, plaintiff's lawyer, defence lawyer, jurors. Ask each group to prepare a list of the duties and responsibilities that accompany their role, then have one student from each group report the results to the class. As each presentation is completed, invite students in the other groups to ask questions or add comments.

### 4. Role of the Judge: Class Discussion

Hold a class discussion to explore the role of the judge. Points for discussion:

Should judges take a more hands-on role in the conduct of a trial? Should the judge, for instance, question witnesses and decide which witnesses will appear in court or which documents will be presented as evidence? What would be the benefits and drawbacks of having the judge assume these

roles? What would be the impact on the fairness of the process and the appearance that the judge is impartial? Would the parties involved in a case believe they are receiving a fair hearing? Would the public have confidence that justice is being done?

## 5. Rules of Evidence: An Exercise

**U**se the following scenarios as an in-class exercise to help students understand the rules for the admissibility of evidence.

In a criminal trial, is the following evidence relevant to the charges before the court?

- A defendant is charged with armed robbery. The prosecution wants to present evidence that the defendant was expelled from high school a decade ago for fighting on school property. [No]
- Someone is charged with robbing a corner store while wearing a ski mask. The prosecutor proposes to call a witness who will say the person is the outdoors type and likes winter sports. [No]
- The defendant was seen running away from a home at about the time a burglary occurred. [Yes]
- The defendant had, in the past, threatened to kill someone he is now accused of assaulting. [Yes]
- A former teacher says a defendant charged with theft always acted up in class and her classmates once voted her most likely to end up in jail. [No]
- A defendant is charged with forging another person's name on a cheque, and the prosecution wants to present evidence that two of the defendant's neighbours have been convicted of similar crimes. [No]
- A witness testifies that she saw the defendant driving the car that collided with the plaintiff's vehicle. [Direct]
- A witness says one of her friends told her that she saw the defendant commit the crime. [Hearsay]
- A school surveillance video shows the defendant using a screwdriver to break into a locker. [Direct]
- Police searched the apartment of a man charged with break, enter and theft and found a rare coin taken from a home that was burglarized. [Circumstantial]
- A teacher testifies that he heard three students discussing the defendant's role in a crime. [Hearsay]
- The suspect was seen hanging around with friends outside a corner store shortly before it was robbed. [Circumstantial]
- The suspect's watch was found at the scene of a crime. [Circumstantial]
- Rumours are circulating at school that a student being sued for damages after a car crash was drinking and driving at the time of the accident. [Hearsay]

Ask students to identify which of the following is hearsay (second-hand) evidence and inadmissible in court, and which is direct evidence or circumstantial evidence that would be admissible:

## 6. Analysis of a Media Report of a Court Case

Distribute copies of the following newspaper story (or any news story about a recent court case) and ask students to answer the following questions: Is this a civil or a criminal case? What level of court is involved? Is this a trial before a judge or a judge and jury? At what stage is the trial? Which side is presenting evidence? Which side is cross-examining? What types of evidence are being presented—witnesses, documents, or physical items? Ask students to identify which evidence is direct and which is circumstantial. Finally, ask them to outline what is likely to happen next in this trial.

## Witness saw blood on defendant's clothes, court told

CENTREVILLE—A youth being sued for assault was wearing jeans caked with blood on the night a Centreville businessman was swarmed while walking his dog, a witness testified Tuesday in Superior Court.

James McAdam, 18, is accused of assaulting Roger Smith, who was punched in the face and left with a broken and bloody nose after a group of teenagers attacked him on residential street last summer.

The witness, Jane Jones, said she noticed blood spots on McAdam's pants while they were at a friend's house on the night of the swarming. "I could see blood and mud on one leg of his pants," she testified. "He told me he got into a fight with some guy."

The plaintiff's lawyer asked Jones what happened to the jeans. She replied that she saw McAdam wash them several times the following day, but the stains could still be seen. McAdam then threw the jeans in the garbage, she said.

McAdam's lawyer asked how Jones could be certain that the stains were bloodstains. Jones agreed the stains could have been mud or some other dark material. She admitted she did not take a close look at the stains and the room was dark when she noticed them.

Other witnesses have said that McAdam's ballcap was found the following day about a block away from where the swarming occurred. Jones was the last witness for the plaintiff. The judge instructed jurors to return to court today, to hear more evidence when the trial resumes.

## 7. Understanding Appeal Court Decision-Making: An Exercise

*In-Class Discussion: Cast the class in the role of a court of appeal, and ask them to discuss how they would rule on the following cases:*

- A trial judge made an important ruling that does not follow a precedent set down by the Supreme Court of Canada. The defendant, who was found responsible for causing a car accident and ordered to pay damages, appeals in an effort to overturn the verdict and get a new trial. What is an appeal court likely to do? [Overturn the verdict based on the error of law and order a new trial]
- A man being questioned about a string of suspicious fires confessed, but the police ignored his requests to speak to a lawyer before he made the confession. The man was charged with arson but the Crown has no other evidence linking the man to the fires. At trial, the judge ruled the confession could not be used as evidence because the defendant's *Charter* right to consult a lawyer was violated. The man was acquitted and the Crown appealed the ruling, seeking a new trial. What is an appeal court likely to do? [Uphold the acquittal as correct in law]
- The plaintiff and defendant gave contradictory versions of events that were at the heart of a civil dispute. The plaintiff testified he had a verbal agreement with the woman to landscape her property. The woman took the witness stand and denied such a deal was struck, but on cross-examination she admitted to hiring a rival landscaper, at a lower price, a day after speaking to the plaintiff. The judge found in favour of the plaintiff and awarded damages, saying she found the man's version of events to be more believable and supported by other evidence. The defendant appeals. What is an appeal court likely to do? [Uphold the verdict and award of damages, which are based on the judge's finding of fact]

- A man convicted of a crime appeals, complaining that after his trial ended, he discovered the identity of a person who witnessed the crime and saw who was responsible. What is an appeal court likely to do? [Hear the witness's fresh evidence and, if it could affect the verdict, order a new trial]

*Written Assignment: Assign students to write a brief report on one or more of the scenarios set out above, in each case explaining how they think an appeal court would rule and why.*

## **8. Suggested questions for class discussion and/or written assignments:**

- a) Describe the role that a judge plays during a trial.
- b) Prepare a chart showing the structure of Canada's courts.
- c) Outline, step-by-step, how a trial unfolds in a criminal or civil case.
- d) Explain what is meant by direct, circumstantial and hearsay evidence.
- e) Discuss the role of the following players in the justice system: judges, jurors, prosecutors, lawyers.
- f) What is the adversarial system of justice and how does it work?



## E. Internet Links to More Resources

**A Compendium of Law and Judges:** A primer on Canadian law, the *Charter* and the role of the judiciary, with a focus on the British Columbia courts.  
[http://www.courts.gov.bc.ca/legal\\_compendium/](http://www.courts.gov.bc.ca/legal_compendium/)

Justice Canada's overview of **Canada's Court System:**  
<http://canada.justice.gc.ca/en/dept/pub/trib/index.html>

Justice Canada's overview of the **Canadian Justice System:**  
<http://canada.justice.gc.ca/en/dept/pub/just/index.html>

**Nova Scotia Public Prosecution Service website: The Role of the Prosecutor**  
<http://www.gov.ns.ca/pps/role.htm>

**Overview of the Criminal Justice System of Canada:** A primer on criminal law, policing, and corrections, with useful parallels to the American justice system.  
<http://www.cjprimer.com/canada.htm>

**Duhaime's Canadian Legal Information Centre:** Background on family, contracts, criminal and other areas of law and links to legal websites in all provinces. Includes an on-line legal dictionary.  
<http://www.wwlia.org/ca-home.htm>

### Links to Canadian legal resources:

#### Canadian Legal Resources on the Web:

<http://www.legalcanada.ca/>

#### Access to Justice Network:

<http://www.acjnet.org/splash/default.aspx>

**Canadian Forum on Civil Justice** site includes links to court, government and other law-related websites.

<http://www.cfcj-fcjc.org/links.htm>



## Module 4: How do Judges Make Decisions?



### ➤ Case Study: Bail Hearing in Armed Robbery Case

## Contents

### Module Overview

#### Module Learning Outcomes

#### Provided Resources

1. Resource Materials
2. Case Study
3. Additional Exercises for Classroom Use and Assignments
4. Internet Links to More Resources

### Suggested Lesson Plans

#### Teaching Objectives and Learning Outcomes:

#### Teacher and Student Learning Materials and Resources

#### Teaching Plan and Strategy

#### Evaluation/Assessment





## Module 4: How do Judges Make Decisions?

**T**he desired outcome for Module 4 is encapsulated in the following paragraph:

“Well done. Every day, judges are called upon to make tough decisions that affect people’s lives and their futures. Now you have a better idea how judges review evidence, consider the law, and apply principles of fairness and justice as they make these important decisions.”\*

(\*audio feedback to each student from the online judge after the successful completion of the online task at [www.tryjudging.ca](http://www.tryjudging.ca) )

*NB: all lettered Sections identified in the overview are referenced within the body of each of the 5 modules, with each module being located directly after each suggested lesson plan(s), and will be found at [www.tryjudging.ca](http://www.tryjudging.ca).*

### Module Learning Outcomes: Module 4, Section (A)

Students will:

- Explore how judges weigh evidence in making a decision;
- Explore how judges interpret laws and use precedents;
- Learn the basics of criminal law and the steps in a criminal prosecution.

### Provided Resources for Module 4

#### I. Resource Materials: Module 4, Section (B)

(Note: information on the first five sections below is in Module 4 (B) of the teacher’s guide and can also be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). Click on “Teacher Resources”.)

#### I. The Judge’s Decision-Making Process

- a) Weighing Evidence and Making Findings of Fact
- b) Interpreting the Law and Statutes, Following Precedent
- c) Verdicts, Sentencing and Remedies

**2. Understanding Criminal Law**

- a) What Is a Crime?
- b) Who Can Be Charged with a Crime?
- c) Defences to Criminal Offences
- d) Categories of Offences
- e) Arrests
- f) Young Persons and the Criminal Law

**3. Pre-Trial Procedure in Criminal Cases**

- a) Arraignment and Disclosure of Crown Evidence
- b) Election and Plea
- c) Bail and Release Before Trial
- d) Preliminary Hearings
- e) Preferred Indictments
- f) Plea Negotiation
- g) Withdrawing or Staying Charges
- h) Pre-trial Motions

**4. Appendix A**

*Release on Bail: A Case for Class Discussion*

**5. Appendices B**

(Teacher's page) and C (Students' page): Case Study on armed robbery (a precursor to 6, 7, 8, and 9 below)

**6. Video: Case Study #4**

*Bail Hearing in Armed Robbery Case*  
(<3minutes) available at [www.tryjudging.ca](http://www.tryjudging.ca)

**7. Video**

Background and Script available at [www.tryjudging.ca](http://www.tryjudging.ca)

**8. Try Judging**

online interactive program for students is available at [www.tryjudging.ca](http://www.tryjudging.ca).

**9. Quiz**

(embedded within the online interactive student programme)

**IO. Additional Exercises for Classroom Use and Assignments**

(these are found in Module 4 (D) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

**II. Internet Links to More Resources**

(these are found in Module 4 (E) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

**2. Case Study: Module 4, Section(C)**

*(to be used in conjunction with the video and the online interactive site)*

**Case Study: Bail Hearing in Armed Robbery Case**

*(The case study can be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). It is designed as an interactive exercise that can be adapted for an in-class activity and/or a written assignment. The website, furthermore, provides all resource materials for teachers in PDF format.)*

### 3. Additional Exercises for Classroom Use and Assignments: Module 4, Section (D)

(all the following are elaborated upon at [www.tryjudging.ca](http://www.tryjudging.ca) )

- 1) In-Class Discussion of Decisions to Grant or Deny Bail
- 2) Release on Bail: A Case for Class Discussion
- 3) In-Class Discussion: Understanding Proof Beyond a Reasonable Doubt
- 4) In-Class Discussion Based on the O.J. Simpson case
- 5) Applying Reasonable Doubt to the Evidence: An Exercise
- 6) Exercise in Understanding Sentencing Decisions
- 7) Sentencing: An In-Class Discussion
- 8) Suggested questions for class discussion and/or written assignments

### 4. Internet Links to More Resources: Module 4, Section (E)

These links, found at [www.tryjudging.ca](http://www.tryjudging.ca), provide information on the following: criminal law proceedings in superior courts, The Criminal Code, The Charter of Rights and Freedoms, overview of criminal justice, legal information centre, etc.



## Module 4: How Do Judges Make Decisions?

### Suggested Lesson Plans

#### Teaching Objectives and Learning Outcomes

Students will:

- Explore how judges weigh evidence in making a decision;
- Explore how judges interpret laws and use precedents;
- Learn the basics of criminal law and the steps in a criminal prosecution.

# Teacher and Student Learning Materials and Resources

(Note: information on the first three sections below is in Module 4 (B) of the teacher's guide and can also be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). Click on "Teacher Resources". )

## 1. The Judge's Decision-Making Process

- a) Weighing Evidence and Making Findings of Fact
- b) Interpreting the Law and Statutes, Following Precedent
- c) Verdicts, Sentencing and Remedies

## 2. Understanding Criminal Law

- a) What Is a Crime?
- b) Who Can Be Charged with a Crime?
- c) Defences to Criminal Offences
- d) Categories of Offences
- e) Arrests
- f) Young Persons and the Criminal Law

## 3. Pre-Trial Procedure in Criminal Cases

- a) Arraignment and Disclosure of Crown Evidence
- b) Election and Plea
- c) Bail and Release Before Trial
- d) Preliminary Hearings
- e) Preferred Indictments
- f) Plea Negotiation
- g) Withdrawing or Staying Charges
- h) Pre-trial Motions

## 4. Appendix A

*Release on Bail: A Case for Class Discussion*

## 5. Appendices B

(Teacher's page) and C (Students' page): Case Study on armed robbery (a precursor to 6, 7, 8, and 9 below)

## 6. Video: Case Study #4

*Bail Hearing in Armed Robbery Case*

(<3minutes) available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 7. Video Background and Script

available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 8. Try Judging

online interactive program for students is available at [www.tryjudging.ca](http://www.tryjudging.ca).

## 9. Quiz

(embedded within the online interactive student programme)

## 10. Additional Exercises for Classroom Use and Assignments

(these are found in Module 4 (D) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

## 11. Internet Links to More Resources

(these are found in Module 4 (E) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

## Teaching Plan and Strategy

### 1.

The teacher will conduct a class discussion centering around a case study dealing with release on bail. Appendix A, for the teacher, provides not only the case study but also a number of questions that specifically focus upon that case study.

### 2.

As a precursor to the following strategy (3), the teacher will use Appendices B and C to provide an opportunity for students to improve their abilities to assess a crime within the context of whether or not release on bail should be warranted.

### 3. Critical learning materials and resources 6, 7, 8, and 9

will enable students to fully analyse Module 4's Section (C) Case Study: Bail Hearing in Armed Robbery Case. The online video (approximately 3 minutes in length), subsequent online interactive programme, and associated online quiz (all found at [www.tryjudging.ca](http://www.tryjudging.ca)), provide an excellent student-centred learning activity for teachers to use.

### 4. Follow up activities

such as those outlined in Module 4 guide's Section (D), using the Internet links listed in Section (E) of the guide, can be considered for further study.

## Evaluation/Assessment

1. Appendix C (see Materials and Resources #5 above): Bail—To Grant or Not to Grant (this can be perceived as more of a diagnostic assessment)
2. Quiz for online interactive program (see Materials and Resources #9 above)
3. Exercises or assignments associated with Module 4, Section (D) and Section (E) (see Materials and Resources #10 and #11 above)

# Appendix A For teachers

## Release on Bail: A Classroom Discussion

(source: Module 4, Section (D) )

### Case Study:

A man is arrested and charged with aggravated assault causing bodily harm after beating a teenager into a coma. The man has no criminal record and works full-time. At his bail hearing, the judge rules he can be released if he post \$10,000 bail. The parents of the victim, who attend the hearing, are shocked. As they leave the courtroom, the victim's father tells reporters that judges are "soft on criminals" and the justice system has let them down. "The man deserves to be in jail for what he did", the father says as he breaks down in tears, and the whole legal process is a "joke".

### Series of Discussion Questions

1. Do students feel the man should have been granted bail?
  - What grounds are there for denying release?
  - What factors would justify keeping the man in custody while he awaits trial?
  - If they were the judge, what would they decide and why?
2. Should the victim's parents be surprised that the suspect was released?
  - What does the Charter say about the presumption of innocence and the right to release on bail?
3. Discuss whether the father's criticism is fair.
  - Does it properly reflect why bail is granted?
  - Does it take into account the presumption of innocence or the Charter right to reasonable bail?
4. Should judges consider what crime victims think before deciding to grant bail? Why or why not?
5. Would a media report that focused on the father's comments be fair? How should the media report the hearing's outcome and the parent's reaction?



## Appendix B For teachers

*Students are to read the following scenario (the same that is referred to in resource materials 6, 7, 8, and 9, but dealt with differently), and answer the accompanying questions.*

### Scenario:

A teenager, with one hand in her pocket as if she has a gun, demands cash from a gas station attendant. The attendant hands over some money and the woman flees but is cut off by a police cruiser and surrenders without incident.

The woman is arraigned and pleads not guilty to a charge of armed robbery. A judge is asked to decide whether she should be released while awaiting trial.

Which factors should favour the defendant's release? Which do you think would justify detaining her and denying bail?

1. No violence was used and it turns out she did not have a gun in her pocket. (favours release)
2. The woman has a long criminal record, including previous convictions for assault, theft, and attempted robbery. (favours detention)
3. The woman was kicked out of her home at age 14 for using drugs, has no family support, no job, and lives on the street. (favours detention)
4. While the woman is a suspect in another crime, she has not been charged and police admit it is unlikely she will be. (favours release)
5. Robbery is a serious offence and there has been a rash of gas station robberies in the city. (favours detention)
6. The investigating officer says the woman phoned the attendant, the key Crown witness, and left a threatening message on the attendant's answering machine. (favours detention)

(This exercise is designed to make students think about the factors that a judge must take into consideration when making a decision—in this case, a decision whether to release a suspect who is awaiting trial on a charge of armed robbery.

Many people may believe that someone charged with a serious offence like armed robbery should remain in custody until trial. But a blanket rule of pre-trial detention would undermine the Charter's guarantees of presumption of innocence and the right not to be denied release on bail 'without just cause'. The Criminal Code allows a person awaiting trial to be deprived of their liberty only if a judge decides the person poses a danger to others, may try to intimidate witnesses, is likely to flee to avoid trial, or is accused of a serious crime and it would undermine public confidence in the justice system if the person were released. The Crown must present evidence to show that one or more of these factors is present and justifies keeping the person in custody.

In this exercise, students are challenged to consider details about the suspect and the crime, as revealed at a bail hearing, and to decide whether this additional information favours releasing the suspect on bail or favours keeping the suspect in custody.)

# Appendix C For students

## Assignment: Bail—To Grant or Not to Grant

*You are to read the following scenario, and then answer the accompanying questions:*

### Scenario:

A teenager, with one hand in her pocket as if she has a gun, demands cash from a gas station attendant. The attendant hands over some money and the woman flees but is cut off by a police cruiser and surrenders without incident. The woman is arraigned and pleads not guilty to a charge of armed robbery. A judge is asked to decide whether she should be released while awaiting trial.

Indicate which factors should:

- a. favour the defendant's release (R), or
  - b. would justify detaining her and denying bail (D)
1. No violence was used and it turns out she did not have a gun in her pocket.
  2. The woman has a long criminal record, including previous convictions for assault, theft, and attempted robbery.
  3. The woman was kicked out of her home at age 14 for using drugs, has no family support, no job, and lives on the street.
  4. While the woman is a suspect in another crime, she has not been charged and police admit it is unlikely she will be.
  5. Robbery is a serious offence and there has been a rash of gas station robberies in the city.
  6. The investigating officer says the woman phoned the attendant, the key Crown witness, and left a threatening message on the attendant's answering machine.



## Module 4: How Do Judges Make Decisions?



### ➤ Case Study: Bail Hearing in Armed Robbery

## Contents

### A. Learning Outcomes

### B. Resource Materials

#### 1. The Judge's Decision-Making Process

- a) Weighing Evidence and Making Findings of Fact
- b) Interpreting the Law and Statutes, Following Precedent
- c) Verdicts, Sentencing and Remedies

#### 2. Understanding Criminal Law

- a) What Is a Crime?
- b) Who Can Be Charged with a Crime?
- c) Defences to Criminal Offences
- d) Categories of Offences
- e) Arrests
- f) Young Persons and the Criminal Law

#### 3. Pre-Trial Procedure in Criminal Cases

- a) Arraignment and Disclosure of Crown Evidence
- b) Election and Plea
- c) Bail and Release Before Trial
- d) Preliminary Hearings
- e) Preferred Indictments
- f) Plea Negotiation
- g) Withdrawing or Staying Charges
- h) Pre-trial Motions

### C. Case Study: Bail Hearing in Armed Robbery Case

### D. Additional Exercises for Classroom Use and Assignments

### E. Internet Links to More Resources



## A. Learning Outcomes

*Students will:*

- ⊕ Explore how judges weigh evidence in making a decision;
- ⊕ Explore how judges interpret laws and use precedents;
- ⊕ Learn the basics of criminal law and the steps in a criminal prosecution.



## B. Resource Materials

### I. The Judge's Decision-Making Process

#### a) Weighing Evidence and Making Findings of Fact

**T**he judge (or jurors, in jury trials) plays the role of the “trier of fact” in a trial, examining each piece of evidence presented and deciding how much weight, or importance, it carries. Judges must assess the credibility of each witness and decide whether to accept all, some or none of what the person says happened. Judges compare what each witness says to other believable evidence before the court, and assess how this person’s version of events supports or contradicts the body of facts that is emerging. Once all the evidence has been heard the judge makes findings of fact, then applies the relevant law to those facts to determine whether someone is guilty of a crime or whether a civil claim has been proven.

#### b) Interpreting the Law and Statutes, Following Precedent

Judges are constantly called upon to interpret what the law means and to apply legal principles to the cases that come before them. The lessons of these countless decisions, made and refined over centuries, have created a vast body of law known as the common law that provides guidance and insights as judges grapple with cases and legal issues. To determine how the law should deal with a particular problem or situation, judges and lawyers refer to reports of previously decided cases known as precedents—collected in law books and, increasingly, in databases and on the Internet—for answers. Once it becomes clear how courts have approached a

particular legal issue in the past, judges are required to follow these precedents and make a similar ruling under the principle of *stare decisis*, or “standing by former decisions.” Judges are not slaves to precedent, however, and there is enough flexibility to allow the common law to evolve to meet modern realities, new legal challenges, and to prevent unfair or unjust rulings. If there are no precedents that deal with an issue, judges must strike out on their

own and create new law. And since the details of two cases can never be precisely the same, judges can cite these differences—a process known as “distinguishing” the precedent—and reach a different conclusion about how the law applies.

If there are no precedents that deal with an issue, judges must strike out on their own and create new law. And since the details of two cases can never be precisely the same, judges can cite these differences—a process known as “distinguishing” the precedent—and reach a different conclusion about how the law applies.

The level of court that issues a judgment is a key factor in determining whether it must be followed as a precedent. Judges at every level of court must follow rulings of the Supreme Court of Canada, the country’s highest court. If the Supreme Court has not ruled on a particular issue, judges must follow the precedents of the court of appeal or any higher court within their province or territory. This means, for instance, that a judge of the provincial court must follow any precedent set at the trial level of the superior court or the court of appeal. Within a level of court, the ruling of one judge does not tie the hands of his or her colleagues—judges are free

to issue contrary rulings, but an appeal court will likely be asked to review the issue and set a precedent that clarifies the law for future cases.

Judges often look to rulings from other provinces or territories for guidance, but they are not required to follow precedents set outside their borders, even rulings made at the court of appeal level. If there is no Canadian precedent dealing with a particular issue, judges will consider the rulings of courts in Britain, the United States and other common-law countries as they make their decisions.

### c) Verdicts, Sentencing and Remedies

In a criminal case, the judge (or jury) must find that there is enough evidence to prove beyond a reasonable doubt that the defendant is guilty. The Crown's evidence may support a conviction on some charges but not others, or the defendant may be convicted of a less-serious offence that is supported by the facts. A person found not guilty is free to go and can only be tried again on the same charges if an appeal court overturns the verdict and orders a new trial.

If the defendant is convicted, the judge imposes punishment. The *Criminal Code* sets out the maximum prison term for each offence—up to life in prison for murder and other serious crimes—and, for some offences, a minimum sentence that must be served behind bars.

Judges have an array of sentencing options other than prison. Offenders may be ordered to pay a fine, or to pay restitution to compensate the victim of the crime for injuries or lost money or property. Offenders may be placed on supervised probation for up to three years, and may be required to complete community service work or seek treatment or counselling. If a judge combines probation with a suspended prison sentence, an offender who breaches the conditions of probation can be jailed for the period of the suspended sentence.

First-time offenders responsible for minor crimes may receive a discharge, leaving them without a

The fundamental purpose of sentencing is to promote public safety and to foster respect for the law, and this is done by imposing a penalty severe enough to deter the offender, and others, from breaking the law.

criminal record. In 1995 Parliament amended the *Criminal Code* to require judges to consider imposing conditional sentences if a jail term of less than two years would have been appropriate and the offender is not considered a danger to others.

Commonly known as house arrest, these sentences require offenders to remain in their homes except to go to work, medical appointments or church.

A judge must consider a host of principles and factors when deciding on the proper sentence, including the circumstances of the offender and the seriousness of the offence. The fundamental purpose of sentencing is to promote public safety and to foster respect for the law, and this is done by imposing a penalty severe enough to deter the offender, and others, from breaking the law. The penalty must make it clear that such conduct is unacceptable to other citizens and reflect the severity of the crime and its prevalence in the community. Finally, the sentence must take into account the need to rehabilitate offenders, so they do not commit crimes in the future.

As they consider these completing goals, judges review reports of the sentences other judges have imposed for similar offences as a means to ensure punishment is consistent and fits the crime. They also take into account aggravating factors—such as whether the offender held a position of trust or used a weapon to commit the offence—which may require a harsher sentence. If an offender is young or has no criminal record, these are mitigating factors that will justify a lighter sentence. The *Criminal Code* requires judges to impose stiffer penalties for domestic abuse and offences motivated by racial hatred or intolerance. On the other hand, special efforts are to be made to keep aboriginal offenders out of prison because they have traditionally accounted for a disproportionate number of inmates.



In civil cases, the judge (or jury) must find that the plaintiff has proven his or her claim on a balance of probabilities—that it is more likely than not that the plaintiff has suffered a loss or injustice and that the defendant is at fault. In most cases, the plaintiff receives an award of damages (money to compensate for the injury). In actions for breach of contract, the defendant may be required to fulfil the terms of the contract. A judge can also impose an injunction (a

To be classified as a crime, a person's actions or conduct must have two elements. First, there must be a guilty act, known by the Latin term *actus reus*. In other words, the act itself must be a crime...A second element, known as *mens rea* or guilty mind, also must be present.

court order that forbids the defendant from doing something that is likely to harm a plaintiff's interests) and issue orders to overturn or alter the decisions of lower courts, administrative tribunals and government officials.

## 2. Understanding Criminal Law

### a) What Is a Crime?

To be classified as a crime, a person's actions or conduct must have two elements. First, there must be a guilty act, known by the Latin term *actus reus*. In other words, the act itself must be a crime—another person must be struck or harmed or property must be taken or damaged. A second element, known as *mens rea* or guilty mind, also must be present. The person committing the guilty act must *intend* to cause the harm inflicted, or act recklessly despite being aware of the harm that could result. For instance, an airline passenger who leaves the airport with someone else's suitcase after a flight has committed the act of theft. But the passenger will not be found guilty of stealing the bag if it resembled theirs and it was taken by mistake. There was no intent to commit theft, so the second element of a crime was not present.

### b) Who Can Be Charged with a Crime?

Anyone over the age of 12 can be charged with a crime (offenders under 18 are prosecuted under special procedures set out in the *Youth Criminal Justice Act*, as discussed below). It is also an offence to attempt to break the law. Persons not directly involved in the crime can also face charges. The driver of the getaway car used to rob a store, for instance, can be charged as a party to the offence of robbery, even if the driver did not enter the store and took nothing. It is also an offence to abet, or encourage, someone to break the law or to advise another person on how to commit a crime. Anyone who helps an offender make arrangements to commit a crime—for instance, obtains a weapon for the person—can be charged with being an accessory to the crime, as can someone who helps an offender escape or destroys evidence linking someone to an offence.

Anyone who joins others in a plan to commit one crime can be charged with any other crime committed by an accomplice. For example, if three persons agreed to rob a bank at gunpoint and one of them shot and killed the bank manager, all three could be charged with murder because each one knew, or should have known, there was a risk of someone inside the bank being shot. Someone can also be charged with conspiring to break the law even if the crime is never carried out, because the offence is established as soon as the person agrees to take part in the plan to commit an offence.

### c) Defences to Criminal Offences

The *Criminal Code* and the common law provide defences that may absolve an offender of a crime or reduce the severity of the offence. Someone who establishes that they killed an attacker in self-defence would be found not guilty of murder. A person accused of murder may be able to put forward two defences to show that, while the person killed another, the act was not intentional. One is drunkenness: if a judge or jury accepts evidence that the killer was too drunk or intoxicated to have intended to kill, the person must be acquitted of murder but convicted of the less-serious offence of man-



slaughter. Someone who was provoked into lashing out at another person in a sudden, thoughtless rage can claim the defence of provocation to a charge of murdering that person and this defence, if accepted, will also lead to a conviction for manslaughter. Manslaughter is defined as an unintentional killing that results from an illegal act, such as an assault or misuse of a gun.

An alibi is perhaps one of the best-known defences. Defendants will be acquitted if they can establish they were in another location and could not have committed the crime. The defence of necessity absolves some persons who claim they had no choice but to intentionally break the law—an example is a driver who speeds down a residential street to rush a critically ill person to hospital. A person found to have suffered from a mental disorder when an offence was committed will be declared not criminally responsible and detained in a psychiatric facility rather than in a jail.

#### d) Categories of Offences

There are three categories of crime in Canada. Summary conviction offences are minor acts like shoplifting, assaults that do not cause injury, impaired driving, damage to property, and theft of money or goods when the amount involved is less than \$5,000. Charges must be filed within six months of the date the offence occurred and the maximum penalty is typically a \$2,000 fine and six months in jail. Offences under provincial laws that resemble crimes—underage drinking, illegal fishing or hunting, workplace safety infractions, traffic violations—are dealt with as summary conviction matters but may be punishable by larger fines and longer jail terms.

The most serious crimes and crimes of violence are known as indictable offences. These include first- and second-degree murder, manslaughter, robbery, armed robbery, violent physical and sexual assaults, and thefts and frauds involving large sums of money, as well as serious narcotics offences such as the trafficking or smuggling drugs. These offences can be punished with lengthy prison terms—up to life

in prison, in the case of homicide—or large fines. There is no deadline for charging someone with an indictable offence.

The third category is hybrid or dual-procedure offences, which can be dealt with as either summary conviction or indictable matters. Hybrid offences prosecuted “by indictment” can be punished more severely than those pursued “summarily.” The Crown attorney decides which route to take after assessing the severity of the crime and whether the offender has a significant criminal record and should face a greater punishment if convicted. For example, while shoplifting is usually prosecuted as a summary conviction offence, a Crown attorney may choose to proceed by indictment against an accused shoplifter who has a long history of such thefts.

#### e) Arrest

To make an arrest, a police officer must have “reasonable and probable grounds” to believe a person committed an offence or is trying to break the law. This does not mean the police need absolute proof of guilt to make an arrest, but they must have more than mere suspicions. Suspects may be apprehended at the scene of a crime or picked up on a court order known as an arrest warrant. If an arrest is justified, a suspect who struggles or refuses to co-operate could be charged with resisting arrest. In many cases, an arrest is not necessary—the suspect is notified and ordered to appear in court at a later date to answer to the charges. In most Canadian jurisdictions the police decide which charges a suspect will face, usually after seeking legal advice from a Crown attorney. Citizens have the right to detain offenders and make a “citizen’s arrest” in some cases.

#### f) Young Persons and the Criminal Law

The *Youth Criminal Justice Act* sets out the procedures for dealing with young persons older than 12 and but younger than 18 who are accused of breaking the law. The act’s objective is to punish youthful offenders for their crimes while recognizing that they may lack the maturity and insight needed

to fully appreciate the impact of their actions. The act also recognizes that most youths commit minor, non-violent crimes.

Young persons are dealt with in a separate court system and, if sentenced to a term of custody, they are held in special facilities where there are no adult inmates. Publication bans and strict controls over court records are used to shield the identities of those charged and aid in their rehabilitation. Measures are taken to keep youths who commit minor offences out of the court system—the police must consider issuing warnings and a restorative justice approach, which brings offenders face to face with their victims and community representatives, is also encouraged. The act emphasizes reprimands and other alternative punishments for property offences such as theft and break and enter. Detention in youth jails is reserved for violent offences and youths who are repeat offenders.

### 3. Pre-Trial Procedure in Criminal Cases

#### a) Arraignment and Disclosure of Crown Evidence

**T**he arraignment is an accused person's first appearance in provincial court to answer to a charge. Before the person enters a plea or selects the court where the trial will be held, the Crown attorney must give the person details of the evidence the police have gathered. Reports, witness statements and any information relevant to the offence must be disclosed, including information that suggests the person is innocent and evidence the Crown does not plan to use in court. The disclosure process protects a person's right to defend themselves and ensures no one will be "ambushed" with a surprise witness at trial. Defendants disclose evidence to the Crown only if they plan to try to establish an alibi, enabling the authorities to investigate and determine whether the alibi is true.

#### b) Election and Plea

The election is the defendant's choice of which court will hear the trial.

Young persons are dealt with in a separate court system and, if sentenced to a term of custody, they are held in special facilities where there are no adult inmates.

Summary conviction offences must be tried in provincial court, so defendants have no right to choose a trial in a higher court. Defendants either plead not guilty, and have a date set for trial, or plead guilty and face

a sentencing hearing before the provincial court judge.

For most indictable offences, defendants can choose to stand trial in provincial court, before a superior court judge or before a judge and jury in superior court. (The exceptions are trials involving the most serious criminal offences—such as murder, piracy and treason—which must be held in superior court.) If the defendant chooses trial in provincial court and pleads not guilty, a trial date is set. If the defendant opts for trial in superior court, however, no plea is taken and the judge will set a date for a preliminary hearing in provincial court. A plea is entered only if the defendant is ordered to stand trial after the Crown's evidence has been reviewed at the preliminary hearing.

For hybrid or dual procedure offences, the Crown attorney's decision on how to proceed will determine how the election and plea unfolds. While hybrid offences prosecuted as summary conviction matters remain in provincial court, defendants have the right to elect trial in superior court for hybrid charges if they are pursued by indictment.

#### c) Bail and Release Before Trial

Once someone has been arrested and charged, a decision must be made whether the person should be released until a trial is held. The police release many suspects who have signed a document promising to show up in court as directed to answer to the charge. If the authorities believe a defendant should remain in custody, the person must appear before a judge or justice of the peace within 24 hours for an arraignment and a bail hearing. Bail hearings are known as "show cause" hearings be-

cause the Crown attorney must show there is cause, or reason, to prevent the person's release. Suspects are presumed innocent and have the right to their liberty until they are proven guilty at a trial, so they do not have to prove they deserve to be released. The *Charter of Rights and Freedoms* guarantees access to release on bail on "reasonable" terms to everyone accused of a crime, even those awaiting trial for serious or violent crimes.

At the hearing, the judge hears a summary of the Crown's evidence and information about the suspect's background and criminal record, if any. Since this information could influence the jury at trial, the defendant has the right to ask the judge to ban publication of most of the information revealed at the hearing. To deny release on bail, a judge must be convinced the accused person would flee, commit more crimes or try to intimidate witnesses if released. If the allegations are serious, a judge can order a defendant to remain in custody to maintain public confidence in the administration of justice.

Release on bail usually comes with conditions. A suspect may have to observe a curfew, promise not to drink or use illegal drugs, or agree to stay away from potential witnesses. Suspects are often required to deposit their own money with the court or have a relative or friend act as a "surety," pledging money or property to satisfy bail requirements. Defendants granted bail may remain in custody if they do not have enough money to satisfy a bail order or no one to act as a surety.

#### d) Preliminary Hearings

When a defendant chooses trial in superior court, this proceeding—also known as a preliminary inquiry—is conducted to ensure the Crown's case is strong enough to justify a trial. (Some defendants decline their right to this hearing and proceed directly to trial.) At the hearing, the Crown presents its witnesses and the defence gets a chance to cross-examine each one. The defendant has the right to ask the judge to order a ban on publication of the evidence revealed at the hearing, to ensure jurors

empanelled at trial have not heard details of the allegations and made up their minds in advance. The ban remains in place until the trial is over. To order a trial, the judge must be satisfied there is "some" evidence that, if believed, would be enough to convince a jury to convict. Since the Crown is usually able to meet this requirement, most preliminary hearings end with the defendant being ordered to stand trial. If the judge finds the Crown's case is too weak, the defendant will be discharged and the prosecution ends.

Bail hearings are known as "show cause" hearings because the Crown attorney must show there is cause, or reason, to prevent the person's release. Suspects are presumed innocent and have the right to their liberty until they are proven guilty at a trial, so they do not have to prove they deserve to be released.

#### e) Preferred Indictments

The Crown has the right to issue a preferred indictment (also known as a direct indictment) to send a defendant directly to trial. While an indictment can be preferred at any point before a trial, the procedure is usually used to reactivate the prosecution of a person discharged at a preliminary hearing.

#### f) Plea Negotiation

A defendant can plead guilty at any point as a criminal case proceeds. The Crown attorney may agree to withdraw some charges in exchange for a guilty plea to others, or allow the defendant to plead guilty to less-serious charges. Such agreements spare taxpayers the cost of conducting a trial and spare victims of crime from having to testify. The Crown attorney and the defence lawyer may agree, as well, to recommend a lighter sentence than normal for the offence. The judge who passes sentence is free to impose a harsher penalty, but must have good reasons for ignoring such recommendations.

#### g) Withdrawing or Staying Charges

A Crown attorney has the right to appear in court to formally withdraw charges and end a prosecution. Charges must be dropped if the Crown attorney no

longer believes it is likely the defendant will be convicted. There can be a number of reasons for this decision—a key witness may refuse to testify or a review of the evidence may raise doubts about the strength of the prosecution’s case. Crown attorneys also have the power to stay (shelve) charges for up to a year, giving the police more time to search for evidence. A prosecution stayed by the Crown must be revived within a year or the charges lapse and can no longer be pursued.

### **h) Pre-trial Motions**

Legal arguments over the admissibility of evidence and other legal issues are usually dealt with during the trial. However, superior courts often hold separate hearings weeks or months before trial to deal with lengthy and complicated matters such as Charter motions and applications to stay charges.

*Note: Procedures at the trial stage of a criminal case are outlined in the Teachers Guide for Unit 3.*



## C. Case study: Bail Hearing in Armed Robbery Case

*The following case study will be created at [www.tryjudging.ca](http://www.tryjudging.ca) as an interactive exercise that can be adapted for an in-class activity or a written assignment. The website will provide teachers with all resource materials in PDF format as well as worksheets that can be downloaded and distributed to students. These worksheets will list the questions posed below and ask students to supply the answers based on their exploration of the website.*

### Scenario

A teenager, with one hand in her pocket as if she has a gun, demands cash from a store clerk. The clerk hands over some money and the woman flees but is cut off by a police cruiser and surrenders without incident. The woman is arraigned and pleads not guilty to a charge of armed robbery. A judge is asked to decide whether she should be released while awaiting trial.

Which factors should favour the defendant's release? Which do you think would justify detaining her and denying bail?

- 1) No violence was used and it turns out she did not have a gun in her pocket [Favours release]
- 2) The woman has a long criminal record, including previous convictions for assault, theft, and attempted robbery [Favours detention]
- 3) The woman was kicked out of her home at age 14 for using drugs, has no family support, no job, and lives on the street [Favours detention]
- 4) While the woman is a suspect in another crime, she has not been charged and police admit it is unlikely she will be [Favours release]
- 5) Robbery is a serious offence and there has been a rash of store robberies in the city [Favours detention]
- 6) The investigating officer says the woman phoned the clerk, the key Crown witness, and left a threatening message on the clerk's answering machine [Favours detention]

*This exercise is designed to make students think about the factors that a judge must take into consideration when making a decision—in this case, a decision whether to release a suspect who is awaiting trial on a charge of armed robbery.*

*Many people may believe that someone charged with a serious offence like armed robbery should remain in custody until trial. But a blanket rule of pre-trial detention would undermine the Charter's guarantees of presumption of innocence and the right not to be denied release on bail "without just cause."*

*The Criminal Code allows a person awaiting trial to be deprived of their liberty only if a judge decides the person poses a danger to others, may try to intimidate witnesses, is likely to flee to avoid trial, or is accused of a serious crime and it would undermine public confidence in the justice system if the person were released. The Crown must present evidence to show that one or more of these factors is present and justifies keeping the person in custody. In this exercise, students are challenged to consider details about the suspect and the crime, as revealed at a bail hearing, and to decide whether this additional information favours releasing the suspect on bail or favours keeping the suspect in custody.*





## D. Additional Exercises for Classroom Use and Assignments

### I. In-Class Discussion of Decisions to Grant or Deny Bail

**T**he *Criminal Code* sets out three grounds that can be the basis for a judge's decision to deny bail to a suspect who is awaiting trial:

- To protect the public and witnesses and to ensure the suspect does not commit more crimes
- To prevent the suspect from fleeing to evade justice
- To maintain public confidence in the administration of justice if the crime is serious, the Crown has a strong case, and the suspect faces a lengthy prison term if convicted

Provide a handout to the class listing these grounds, then ask students to pretend they are a judge presiding at a bail hearing for the following suspects. Would they grant or deny release on bail? Ask them to explain why or why not, basing their answers on the grounds for denying release:

- A man whose brother belongs to a biker gang is charged with shoplifting. He has no criminal record but the prosecutor urges the judge to consider him dangerous and deny bail because of his "close ties" to the motorcycle gang.
- A woman is charged with shoplifting. She has a long criminal record for theft and fraud and has spent many months in jail in the past, but has never committed a violent offence.
- A bookkeeper has been charged with impaired driving causing bodily harm. The offence is serious but he has no criminal record, has three young children, and will lose his job if he is not released.
- A woman is charged with second-degree murder in the death of her ex-boyfriend. At the bail hearing, the investigating officer reveals that the victim had abused and harassed the woman in the past. The woman has a good job and no criminal record. The penalty for second-degree murder is life in prison without release on parole for at least 10 years.
- A man accused of taking part in a violent home invasion is seeking release on bail. Two men barged into the home of an elderly couple, tied them up and ransacked the home. The couple were threatened but not harmed. Home invasions are on the rise and the province's court of appeal recently called on judges to impose stiffer prison terms for such offences.
- A man being sought on an arrest warrant for a string of thefts is discovered hiding in a vacant cabin in the woods. The prosecutor wants bail to be denied because the man has been at large for many months and is likely to try to evade the charges once again. The man tells the judge his fugitive days are over and, if he is released, he insists he will show up for his trial.
- A man is charged with living off the avails of prostitution—in other words, of being a pimp. Two women, both ex-prostitutes, will testify against



the man at his trial. A police officer testifies at the bail hearing that the man has beaten both women in the past and they fear he will attack them if he is released.

- A truck driver is arraigned on a charge of sexually assaulting a female hitchhiker. The assault is considered minor but the Crown is concerned that the defendant will flee the jurisdiction if released, because he hauls loads of freight to a neighbouring province every week.
- Invite students to suggest other cases, either fictional or ones they have heard about in the media, and to discuss whether the suspect in each case should be released on bail.

Relevant sections of the *Criminal Code*:

Justification for detention in custody:

515 (10) ... the detention of an accused in custody is justified only on one or more of the following grounds:

- a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;
- b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and
- c) on any other just cause being shown and, without limiting the generality of the foregoing, where the detention is necessary in order to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the prosecution's case, the gravity of the nature of the offence, the circumstances surrounding its commission and the potential for a lengthy term of imprisonment.

Relevant *Charter* provisions:

**II.** Any person charged with an offence has the right ...

- d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- e) not to be denied reasonable bail without just cause;

*Use one or more of the scenarios set out in this exercise as the basis for a written assignment. Ask students to take on the role of the judge and to decide whether each suspect should be freed on bail or held in custody. In each case, ask them to explain their reasons, drawing on the Criminal Code's grounds for denying bail.*

## 2. Release on Bail: A Case for Class Discussion

**C**ase Study: A man is arrested and charged with aggravated assault causing bodily harm after beating a teenager into a coma. The man has no criminal record and works full-time. At his bail hearing, the judge rules he can be released if he posts \$10,000 bail. The parents of the victim, who attend the hearing, are shocked. As they leave the courtroom, the victim's father tells reporters that judges are "soft on criminals" and the justice system has let them down. The man deserves to be in jail for what he did, the father says as he breaks down in tears, and the whole legal process is a "joke."

- Do students feel the man should have been granted bail? What grounds are there for denying release? What factors justify releasing the man while he awaits trial? If they were the judge, what would they decide and why?

- Should the victim's parents be surprised that the suspect was released? What does the Charter say about the presumption of innocence and the right to release on bail?
- Discuss whether the father's criticism is fair. Does it properly reflect why bail is granted? Does it take into account the presumption of innocence? The Charter right to "reasonable" bail?
- Should judges consider what crime victims think before deciding to grant bail? Why or why not?
- Would a media report that focused on the father's comments be fair? How should the media report the hearing's outcome and the parents' reaction?

### 3. In-Class Discussion: Understanding Proof Beyond a Reasonable Doubt

Lead students in a discussion based on the following quotation from William Blackstone, an influential 18th century British judge: "It is better that ten guilty persons escape than one innocent suffer." Blackstone was explaining the rationale for the high standard of proof required for a criminal conviction. In our justice system, it is understood that the Crown will not be able to present sufficient proof to convict some suspects who are guilty. This is the price we are willing to pay to avoid wrongfully convicting innocent persons.

Points for discussion: What do students think Blackstone meant by this comment? Ask students to explain why they agree or disagree that it should be acceptable for guilty persons will go unpunished. Is this standard of proof too onerous, setting up the justice system to fail and criminals to go free? Should the prosecution be required to prove defendants guilty with absolute certainty, to prevent injustices and wrongful convictions?

After the discussion, ask students to vote on whether the standard of proof is too stringent or not stringent enough. Break the class into two groups based on their answers, and ask each group to write out their

suggestions for where they would draw the line—how much evidence do they feel should be needed to convict? Would be it enough, for instance, if a judge felt it was more likely than not that a person is guilty? Should the standard be without a shadow of a doubt, or 99.9 per cent sure? Is it enough to say the defendant is likely guilty or appears to be guilty? Ask each group to consider the impact of their choice—would more persons be convicted or acquitted? Would there be more wrongful convictions, or fewer? Would more guilty persons be convicted, or fewer? Finally, ask students to put themselves in the position of an innocent person wrongly accused of a crime—do they still feel their standard of proof is fair? Assuming they are innocent, do they feel the standard of proof beyond a reasonable doubt is fair?

### 4. In-Class Discussion Based on the O.J. Simpson case

In 1995 a California jury acquitted former football star O.J. Simpson of murdering his estranged wife and her friend. In a later civil trial, another jury ruled that Simpson caused the deaths and must pay damages to the families of both victims. This well-known case highlights the difference between the standards of proof in criminal and civil cases. In criminal cases, a judge or jury must find there is proof beyond a reasonable doubt that the defendant is guilty. In a civil action or lawsuit, the person suing only has to prove on the balance of probabilities that it is more likely than not the defendant is responsible.

Describe the outcome of Simpson trials to the class. Ask if anyone can explain these contrary results. What does the outcome of the Simpson case say about how difficult it is to prove someone is guilty of a crime? Why is the hurdle set so high? Do students think it is set too high, enabling guilty persons to "get off" without being punished? Should the criminal courts adopt a standard of proof closer to the one used in civil cases? What could be the consequences of making it easier to convict someone of a crime?

Ask students to suggest why the standard of proof is not as strict in civil cases. Is it too low, making people responsible for paying damages when they should not be? What would happen if people launching lawsuits were required to prove their case beyond a reasonable doubt?

## 5. Applying Reasonable Doubt to the Evidence: An Exercise

A man flees a bank after a robbery. A woman walking by on the other side of the street sees the man and gives the police a description—average height and weight, brown hair and moustache, dark jacket and pants. Two days later, police arrest John Smith, who is on parole after serving time for armed robbery. The witness picks him out of a police lineup but is not completely certain he is the man she saw—he is wearing different clothes and has no moustache. Police find two \$20 bills taken from the bank in the man’s wallet, but the rest of the stolen money—about \$19,000—is never recovered.

- Is the eyewitness testimony sufficient to convict Smith? Why or why not?
- Is the fact he was found in possession of the two marked \$20 bills sufficient evidence to convict? Why or why not?
- If the eyewitness testimony and the discovery of the marked \$20 bills are put together, is there enough evidence to convict? Why or why not?
- What if the eyewitness testifies she is absolutely sure Smith is the man she saw running from the bank?
- What if the crime happened in the morning while the sun was low in the sky and shining into the witness’s eyes?

- What if the police asked the witness to pick out the assailant from a lineup of only three people, instead of the usual ten?
- What if the defence shows that the woman’s line of sight was obscured by buses parked at a stop across the street, making it difficult if not impossible for her to see anyone leave the bank?
- What if the witness has a history of mental illness?
- What if it is established at trial that the marked bills taken in the robbery have been used to pay for goods and make change at stores all over town?
- What if Smith takes the witness stand, denies robbing the bank, and says he was with a friend on the other side of town at the time the bank was robbed?
- What if the friend cannot be found and does not testify to corroborate Smith’s alibi?
- What if the friend testifies, but turns out to have a criminal record for theft and fraud?

Use the examples of the strengths and weaknesses of evidence as set out in the bank robbery exercise as the basis for a written assignment. Pick several of the scenarios, ask students to play the role of a judge, and ask them to explain which ones raise sufficient doubts in their mind about the defendant’s guilt to support a verdict of not guilty.

## 6. Exercise in Understanding Sentencing Decisions

Review the principles of sentencing with the class. Ask students to come to class with a newspaper account of a recent sentencing hearing. Assign them to write a list of the facts of the case, as reported in the media. Does the report outline the judge’s reasons for the sentence and, if so, what are they?

Which principles of sentencing apply to the case? Ask the students whether they feel the sentence is appropriate and to explain why, citing the principles of sentencing. What sentence do they feel would have been appropriate for this offender, and why?

To modify this exercise for a class discussion, choose a newspaper report of a sentencing hearing, make a copy for each student, and pose the above questions to the class.

## 7. Sentencing: An In-Class Discussion

A school has been firebombed, causing extensive damage to the library and the adjacent principal's office. A 23-year-old man has been convicted of the offence and comes before a judge to be sentenced.

Ask students to discuss whether each of the following factors would cause the judge to impose a more severe sentence or a less severe one, and to explain why:

- The man has no criminal record
- The man pleaded guilty and has expressed sincere remorse for committing the crime, and apologized to students and their parents
- The man is aboriginal
- The man is aboriginal and has a criminal record for theft, break and enter and assault
- The man has sought treatment to deal with drug addiction, which led to his involvement in the crime, and is considered an excellent candidate for rehabilitation
- The man pleaded guilty and has agreed to testify against two other men who were involved in the firebombing
- The offender has a long history of violence and was on parole at the time of the firebombing
- The offender is a member of a motorcycle gang
- The school was firebombed because it teaches Jewish students

Use these scenarios as the basis for a written assignment, asking students to explain how each factor could affect the severity of the sentence imposed.

8) Suggested questions for class discussion and/or written assignments:

- a) List the grounds for refusing bail to an accused person who is awaiting trial.
- b) Why must the Crown establish that a suspect awaiting trial should not be released, instead of the suspect having to show he or she deserves to be released?
- c) Why is the principle of following precedent so important in our justice system?
- d) An opposition party proposes a law that would require judges to commission polls to gauge public opinion before deciding on the proper punishment for criminals. Should popular opinion be one of the principles for judges to follow in passing sentence? Explain your answer.
- e) Assign students to find a recent newspaper account of a sentencing hearing and to identify the principles of sentencing that apply to the case.
- f) When a judge is passing sentence, what alternatives does she have to imposing a prison term?
- g) Why are appeal courts reluctant to overturn a lower court's decision on whether a witness is telling the truth?



## E. Internet Links to More Resources

### **A Compendium of Law and Judges:**

Chapter 9: Criminal Law Proceedings in Superior Courts;

Chapter 10: Criminal Law Evidence;

Chapter 12: Common Criminal Law Defences;

Chapter 21: The Youth Criminal Justice Act;

Chapter 23: Sentencing.

[http://www.courts.gov.bc.ca/legal\\_compendium/](http://www.courts.gov.bc.ca/legal_compendium/)

### **Nova Scotia Public Prosecution Service website:**

“The Criminal Case: Step by Step”:

[http://www.gov.ns.ca/pps/criminal\\_case.htm](http://www.gov.ns.ca/pps/criminal_case.htm)

***Criminal Code.*** An electronic version is available online:

<http://laws.justice.gc.ca/en/C-46/index.html>)

### ***Charter of Rights and Freedoms.***

Available on-line at:

<http://laws.justice.gc.ca/en/charter/index.html>

**Overview of the Criminal Justice System of Canada:** A primer on criminal law, policing, and corrections, with useful parallels to the American justice system.

<http://www.cjprimer.com/canada.htm>

### **Duhaime’s Canadian Legal Information Centre:**

Background on family, contracts, criminal and other areas of law and links to legal websites in all provinces. Includes an on-line legal dictionary.

<http://www.wwlia.org/ca-home.htm>



## Module 5: Why are Judicial Independence and Judicial Impartiality so Important?



### ➤ Case Study: The Protest

## Contents

### Module overview

#### Module Learning Outcomes

#### Provided Resources

1. Resource Materials
2. Case Study
3. Additional Exercises for Classroom Use and Assignments
4. Internet Links to More Resources

### Suggested lesson plans

#### Teaching Objectives and Learning Outcomes

#### Teacher and Student Learning Materials and Resources

#### Teaching Plan and Strategy

#### Evaluation/Assessment





## Module 5: Why are Judicial Independence and Judicial Impartiality so Important?

**T**he desired outcome for Module 5 is encapsulated in the following paragraph:

“Well done. Judicial independence has been described as a cornerstone of our system of justice. Now you understand how independent status allows judges to make decisions on the basis of fairness and the rule of law—even decisions that do not please politicians, the media, voters or other judges.”\*

(\*audio feedback to each student from the judge after the successful completion of the online task at [www.tryjudging.ca](http://www.tryjudging.ca) )

*NB: all lettered Sections identified in the overview are referenced within the body of each of the 5 modules, with each module being located directly after each suggested lesson plan(s), and will be found at [www.tryjudging.ca](http://www.tryjudging.ca).*

### Module Learning Outcomes: Module 5, Section (A)

Students will:

- Understand why it is important that judges have independent status in our society;
- Explore how judges are chosen and how they are protected from outside influences;
- Examine the institutional structures that enable judges to maintain their independence from government.

### Provided Resources for Module 5

#### I. Resource Materials: Module 5, Section (B)

(Note: information on the first five sections below is in Module 5 (B) of the teacher’s guide and can also be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). Click on “Teacher Resources”.)

- I. The Origins and Importance of Judicial Independence
2. How Judges are Selected
3. Security of Tenure
4. Financial Security



**5. Protection from Outside Influences****6. Judicial Accountability****7. Posed Questions Handout Sheet**

(refer to Appendix A: Teacher's copy and Appendix B: students' copy)

**8. Handout Sheets**

(refer to Appendices C and D)

**9. Video: Case Study #5*****The Protest***

(<3 minutes) available at [www.tryjudging.ca](http://www.tryjudging.ca)

**I0. Video**

Background and Script available at [www.tryjudging.ca](http://www.tryjudging.ca)

**II. Try Judging**

online interactive program for students is available at [www.tryjudging.ca](http://www.tryjudging.ca)

**I2. Quiz**

(embedded within the online interactive student program)

**I3. Additional Exercises for Classroom Use and Assignments**

(these are found in Module 5 (D) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

**I4. Internet Links to More Resources**

(these are found in Module 5 (E) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

**2. Case Study: Module 5, Section (C)**

*(to be used in conjunction with the video and the online interactive site)*

**Case Study: *The Protest***

*[The case study can be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). It is designed as an interactive exercise that can be adapted for an in-class activity and/or written assignment. The website, furthermore, provides all resource materials for teachers in PDF format.]*

**3. Additional Exercises for Classroom Use and Assignments: Module 5, Section (D)**

*(all the following are elaborated upon at [www.tryjudging.ca](http://www.tryjudging.ca))*

- 1) Selecting Judges: An Exercise
- 2) Elected Judges Versus Appointed Judges: A Class Debate
- 3) Reviewing Judicial Appointees: A Class Exercise
- 4) Public Opinion and the Courts: An In-Class Discussion
- 5) Political Pressure and the Courts: An In-Class Discussion
- 6) Suggested questions for class discussion and/or written assignments

**4. Internet Links To More Resources: Module 5, Section (E)**

These links, found at [www.tryjudging.ca](http://www.tryjudging.ca), provide information on the following: how judges are appointed, qualities expected of judges, independence and limitation on judicial power, main features of judicial independence, The Judges Act, etc.



## Module 5: Why are Judicial Independence and Judicial Impartiality so Important?

### Suggested Lesson Plans

#### Teaching Objectives and Learning Outcomes

Students will:

- Understand why it is important that judges have independent status in our society;
- Explore how judges are chosen and how they are protected from outside influences;
- Examine the institutional structures that enable judges to maintain their independence from government.

# Teacher and Student Learning Materials and Resources

(Note: information on the first six sections below is in Module 5 (B) of the teacher's guide and can also be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). Click on "Teacher Resources".)

## 1. The Origins and Importance of Judicial Independence

## 2. How Judges are Selected

## 3. Security of Tenure

## 4. Financial Security

## 5. Protection from Outside Influences

## 6. Judicial Accountability

## 7. Posed Questions Handout Sheet

(refer to Appendix A: Teacher's copy and Appendix B: students' copy)

## 8. Handout Sheets

(refer to Appendices C and D)

## 9. Video: Case Study #5: *The Protest*

(<3 minutes) available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 10. Video Background and Script

available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 11. *Try Judging*

online interactive program for students is available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 12. Quiz

(embedded within the online interactive student program)

## 13. Additional Exercises for Classroom Use and Assignments

(these are found in Module 5 (D) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

## 14. Internet Links to More Resources

(these are found in Module 5 (E) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

# Teaching Plan and Strategy

## I.

Use Appendices A and B to introduce this Module's topic. It can be used as a handout for students to complete or for an oral class discussion. Either way, it acts as a diagnostic assessment of the class' understanding of judicial independence and judicial impartiality.

## 2.

In this major part of the lesson, all of the 6 sub-topics that are presented in Module 5 of the guide, Section (B) should be taught. Pertinent information is provided in Section (B) of the guide and acts as the foundation of knowledge for completion of Appendix C.

Information pertaining to the 6 sub-topics could be presented through a lecture approach, a power point presentation, or even as the result of a student research assignment.

The 6 sub-topics are:

- The Origins and Importance of Judicial Independence
- How Judges are Selected
- Security of Tenure
- Financial Security
- Protection from Outside Influences
- Judicial Accountability

## 3.

Critical learning materials and resources 9, 10, 11, and 12 will enable students to fully analyse Module 5's Section (C) Case Study: The Protest. The online video (approximately 3 minutes in length), subsequent online interactive exercise, and associated online quiz (all found at [www.tryjudging.ca](http://www.tryjudging.ca)), provide an excellent student-centred learning activity for teachers to use.

## 4.

Follow-up activities such as those outlined in Module 5 guide's Section (D), referencing the Internet links listed in Section (E) of the Module guide, and using Appendix D, can be considered for further study.

## Evaluation/ Assessment

1. Appendix C (see Materials and Resources #8 above), either in part or in totality.
2. Quiz for online interactive program (see Materials and Resources #12 above)
3. Exercises or assignments associated with Module 5, Section (D) and Section (E) (see Materials and Resources #13 and #14 above)

# Appendix A For teachers

## Judicial Independence and Judicial Impartiality: An Introduction

A judge is asked to rule that the law making it a criminal offence to possess child pornography violates the Charter's guarantee of freedom of expression and must be struck down. The judge upholds the law making it illegal to possess child pornography, but makes an exception for written or visual material created only for personal use, such as diaries. Protestors take to the streets to voice their outrage with the ruling, and some politicians demand that the courts get tough with pedophiles.

Which of the following should a judge take into account when making his or her decision in this case?

- 1) A public opinion poll suggesting that 83 per cent of Canadians favour mandatory jail terms for pedophiles [No]
- 2) Court rulings in other cases of possession of child pornography [Yes]
- 3) The rights set out in the Charter of Rights and Freedoms [Yes]
- 4) A newspaper editorial demanding that judges take immediate action to combat the "scourge" of child pornography [No]
- 5) A politician's demand that the courts do more to protect children [No]
- 6) Whether the child pornography law is a reasonable limit on a person's democratic rights [Yes]

[This exercise is designed to make students think about why judges must make decisions based on the law rather than popular opinion or political considerations.]

Judicial independence ensures that the judge can decide whether the child pornography law is constitutional based on the rule of law, without regard to who will agree or disagree. The judge can make a ruling that does not please the government or politicians knowing it can have no effect on the judge's salary or pension, or how long he or she will serve on the bench. Judges also have the independence needed to make decisions that may be unpopular with members of the public or with the media. Since they do not face election or public review, judges are free to make decisions that are correct in law and based on principles of fairness and justice without regard to public opinion.]

# Appendix B

## For students

### Judicial Independence and Judicial Impartiality: An Introduction

A judge is asked to rule that the law making it a criminal offence to possess child pornography violates the *Charter's* guarantee of freedom of expression and must be struck down. The judge upholds the law making it illegal to possess child pornography, but makes an exception for written or visual material created only for personal use, such as diaries. Protestors take to the streets to voice their outrage with the ruling, and some politicians demand that the courts get tough with pedophiles.

**Try Judging:** Which of the following should a judge take into account when making his or her decision in this case?

- 1) A public opinion poll suggesting that 83 per cent of Canadians favour mandatory jail terms for pedophiles
- 2) Court rulings in other cases of possession of child pornography
- 3) The rights set out in the Charter of Rights and Freedoms
- 4) A newspaper editorial demanding that judges take immediate action to combat the “scourge” of child pornography
- 5) A politician’s demand that the courts do more to protect children
- 6) Whether the child pornography law is a reasonable limit on a person’s democratic rights

# Appendix C

## Origins and Importance of Judicial Independence

1. Before 1701, why were judges not considered to be independent in England?
2. How did this change in 1701?
3. How is the independence and impartiality of the judiciary guaranteed?
4. What are three reasons why the independence of the judiciary is important?

## How Judges are Selected

1. How are judges selected?
2. How are judges to the Supreme Court selected?
3. What are the requirements which the selection committee would use to select judges?
4. Why did Canada choose not to use the American model when selecting judges?

## Security of Tenure

1. What is the age of retirement for judges?
2. What is a supernumerary?
3. What are three reasons why a judge may be removed from the bench?
4. Who has the right to remove a judge?

## Financial Security

1. How often are the salaries of judges reviewed?
2. Why is it necessary for the wages of judges to be high?
3. Why is it necessary for the pensions of judges to be high?

## Protection From Outside Influences

1. Who oversees the administrative matters of the courts?
2. Why is it important that judges are free from being sued for what they do?
3. Why is public opinion not important to judges when they make a decision?

## Judicial Accountability

1. How does the court of public opinion maintain its rights when dealing with the decisions of the courts?
2. How are lower courts held accountable?
3. What is the role of the Canadian Judicial Council?
4. What is the composition of the Canadian Judicial Council?



## Appendix D

### Additional Exercises for Classroom Use and Assignments

#### D Selecting Judges: An Exercise

Break the class into small groups and ask each group to devise a method for selecting judges. Each group must explain their choices and what they would do to ensure their selection process protects judicial independence. Will their judges be appointed or elected? If they are appointed, who will decide who is chosen? Will there be a screening committee, and will there be private interviews or public hearings to assess candidates? If judges are elected, will they be permitted to make campaign speeches, advertise and accept donations? What qualifications will a person need to be eligible to become a judge? Will their judges be appointed or elected for life, or for a fixed term?

Modify this exercise as a written assignment, asking students to devise a selection process and to explain what they would do to ensure their process protects judicial independence.

#### 2) Elected Judges Versus Appointed Judges: A Class Debate

By a show of hands, poll the class to find out which students think judges should be appointed and which think they should be elected. Divide students into two groups based on their vote and ask each group to discuss and write down the arguments in favour of its position. What are the advantages of electing judges versus appointing them? What are the drawbacks and how would each group deal with them to ensure judges are independent and impartial?

#### 3) Reviewing Judicial Appointees: A Class Exercise

Select three students to take the role of lawyers nominated to serve as judges. Have them sit at the front of the classroom and cast the remainder of the class in the role of a Parliamentary committee set up to review their suitability. Ask students on the “committee” to devise questions they think Canadians should know about these new judges—their qualifications, their accomplishments, their reputations, the skills they would bring to the job. Students may be interested in discovering other information, such as how these appointees see the role of the judge or their opinions on issues such as gay marriage or youth crime. As students pose questions and the appointees answer (using their imagination to discuss their careers, qualifications and opinions), the teacher acts as a moderator and asks the class to consider whether each question is appropriate or could undermine judicial independence or the judge’s appearance of impartiality. For instance, asking the appointee to outline his or her legal career would pose no threat to judicial independence. If an appointee responded to a question about whether he or she believes abortions should be illegal, on the other hand, it could undermine the appointee’s impartiality if that issue came before the court. At the end of the session, assign students to make a list of appropriate and inappropriate questions based on the discussion.

#### 4) Public Opinion and the Courts: An In-Class Discussion

The day before a man is sentenced for impaired driving causing the death of a pedestrian, members of the victim’s family are interviewed on the local television station. The victim’s parents make an emotional appeal to the judge to impose the maximum sentence – life in prison. Anything less, they say, will mean that there is no justice. The reporter does man-in-the-street interviews about the case with five people, and all agree that the driver should get the maximum sentence.

Use this scenario as the starting point for an in-class discussion. Should the judge take the parents' wishes into consideration? Why or why not? Should judges be concerned about what people might think of their decisions? Should they try to please victims of crime? What would happen if judges were influenced by public opinion—would they still be acting fairly and impartially? Would they be able to uphold the rule of law? Ask students to put themselves in the position of the driver, and ask if they think it would be fair to have their sentence decided by a judge who is concerned about pleasing the victim's family and members of the public.

Adapt this exercise to create a written assignment by asking students to discuss questions selected from those listed above.

#### 5) Political Pressure and the Courts: An In-Class Discussion

A politician reacts with outrage after a judge imposes a sentence of house arrest on a doctor convicted of sexually assaulting two young patients. Calling the sentence “a slap on the wrist,” the politician suggests the judge should be fired or transferred to a remote area of the province for failing to send the doctor to jail. At the very least, she says, the judge should have his salary cut and be barred from hearing sexual assault cases.

Use this scenario as the starting point for an in-class discussion. Is the politician's criticism valid? Is she correct in advocating punishment for the judge? What is the proper process for deciding whether a judge's ruling is correct? Should politicians be able to fire judges, or have control over their salaries, where they work and the cases they hear? What would happen if politicians and government officials had this kind of power? Would

judges be able to make decisions independently and impartially? Would judges and the courts appear to be independent and impartial if government had this kind of control over them? What would be the impact on public perception of the courts and their independence?

Adapt this exercise to create a written assignment by asking students to discuss questions selected from those listed above.

#### Suggested questions for class discussion and/or written assignments

- a) Identify three practices that protect judicial independence and explain why each is important
- b) List some of the qualities and qualifications that make someone a good candidate for becoming a judge.
- c) If judges can ignore public opinion, how are they accountable for their decisions?
- d) Why must judges be free from government control?



## Module 5: Why are Judicial Independence and Judicial Impartiality so Important?



### ➤ Case Study: The Protest

#### Contents

#### A. Learning Outcomes

#### B. Resource Materials

1. The Origins and Importance of Judicial Independence
2. How Judges are Selected
3. Security of Tenure
4. Financial Security
5. Protection from Outside Influences
6. Judicial Accountability

#### C. Case Study: The Protest

#### D. Additional Exercises for Classroom Use and Assignments

#### E. Internet Links to More Resources



## A. Learning Outcomes

*Students will:*

- ⊕ Understand why it is important that judges have independent status in our society;
- ⊕ Explore how judges are chosen and how they are protected from outside influences;
- ⊕ Examine the institutional structures that enable judges to maintain their independence from government.



## B. Resource Materials

### I. The Origins and Importance of Judicial Independence

**T**hree centuries ago, British judges were not independent. In the words of Francis Bacon, an attorney general of the 17th century, judges were “lions under the throne” who served at the pleasure of the ruling monarch and could be dismissed for any reason. It was even common practice to replace all judges when a new king or queen ascended to the throne. *The Act of Settlement* of 1701 established fixed salaries for judges, who could only be removed from office for misbehavior and then only after a vote of both houses of Parliament. By the 1830s these principles of judicial independence had been extended to judges in Britain’s North American colonies, and were later enshrined in the British North America Act – the forerunner of our constitution – in 1867. The *Charter of Rights and Freedoms* guarantees every Canadian charged with a crime the right to receive a fair trial before a court that is “independent and impartial.”

The independence of the judiciary is a cornerstone of Canadian democracy. As an institution the judiciary is independent from all other branches of government, and individual judges are independent not only from government but from each other. The government prosecutes crimes and often appears as a litigant in the civil courts, so any appearance of impartiality would vanish if government could fire a judge on a whim or slash a judge’s salary as punishment for ruling against its position. Independence ensures judges are free to assess the evidence, apply the law and decide the outcome of cases without regard for who will be pleased

or displeased with the result. Judges have a duty to uphold the rule of law, and independence ensures they can fulfil that duty free from outside influences. Judicial independence ensures cases are dealt with fairly and impartially, and citizens can be confident in the integrity of the results.

“Judicial independence is critical to the public’s perception of impartiality,” the Supreme Court of Canada noted in a 1991 ruling. “Independence is the cornerstone, a necessary prerequisite for judicial impartiality.”

### 2. How Judges are Selected

**W**hile judges are appointed by government, they are not government employees. The federal government appoints judges to the superior courts and the Supreme Court of Canada, while provincial and territorial governments choose judges for provincial-level courts. The process is the same at all levels – the minister of justice recommends candidates to the cabinet, which makes the final decision. Appointments to the Supreme Court of Canada are an exception – the prime minister recommends candidates to the federal cabinet for approval.

Superior court judges are selected after wide consultation with the judiciary and the legal community. Lawyers who have at least 10 years’ experience in practicing law can apply to arms’ length screen-

The independence of the judiciary is a cornerstone of Canadian democracy. As an institution the judiciary is independent from all other branches of government, and individual judges are independent not only from government but from each other.

ing committees of judges, lawyers, government officials and members of the public who interview and screen candidates and recommend those who are qualified. The provinces and territories have similar screening processes for their courts, but in some jurisdictions lawyers need only five years' experience before being considered for appointment. The prime minister selects Supreme Court of Canada judges after wide consultation, but there is no screening committee for these appointments. As of 2004 the federal government was considering proposals to allow a Parliamentary committee to hold hearings to review the qualifications of those chosen for the country's highest court.

Candidates for judicial office are assessed on their legal knowledge and accomplishments, their volunteer work for legal organizations and the wider community, the soundness of their judgment, their decision-making abilities, and whether they can deal with issues and people in a fair and impartial manner. It is common for judges who have served with distinction on lower courts to be promoted to a superior court or court of appeal, but judges do not apply for these posts and they are not put through a screening process for a second time.

Another model for selecting judges, followed in some American states, is to allow citizens to elect judges in the same way they vote for politicians. While this process may appear more democratic, it has serious implications for the independence of judges and their appearance of impartiality. To win office or to be re-elected, candidates and incumbent judges must appeal for the support of voters. If that means campaigning on a tough law-and-order platform or ensuring that the public gets the harsh sentences it demands, impartiality and the rule of

Candidates for judicial office are assessed on their legal knowledge and accomplishments, their volunteer work for legal organizations and the wider community, the soundness of their judgment, their decision-making abilities, and whether they can deal with issues and people in a fair and impartial manner.

law may be seriously undermined. As well, judges and candidates would not appear to be impartial if they sought donations from law firms and corporations to finance their election campaigns.

### 3. Security of Tenure

Once a judge has been appointed, governments have no control over how long he or she will serve on the bench. Under the constitution, superior court judges can remain in office until reaching 75, the mandatory retirement age. For provincial-level courts, the age for mandatory retirement varies and is usually 65 or 70. Judges who have reached a threshold age and have a certain number of years of experience on the bench may choose to become supernumeraries. A replacement judge will be appointed but the supernumerary judge will continue to work part-time, at the same salary, providing the courts with experienced judges to deal with long trials or to help clear up backlogs of cases.

Under the federal *Judges Act*, superior court judges can be removed from office for misconduct, due to advanced age or infirmity, or if they fail to properly exercise the powers of judicial office. Only Parliament has the power to remove a superior court judge from office on such grounds. A joint motion of the House of Commons and the Senate is required, but this procedure has never been used. At the provincial and territorial level, the cabinet or legislature has the power to remove a judge for misconduct.

### 4. Financial Security

To ensure government has no influence over the financial security of judges, independent commissions are established at regular intervals to review the salaries of judges. At the federal level a commission is struck every four years to undertake the review and recommend any increase to Parliament. Salaries are set at a high level to attract the best candidates and to ensure judges are unlikely to run into financial trouble or to be tempted if



offered a bribe. To further ensure financial security, the pensions of superior court judges are pegged by law at two-thirds of their salary.

## 5. Protection from Outside Influences

**C**ourts operate in a manner that shields judges from outside influences. While governments cover the cost of running the justice system – providing courthouses and facilities and paying support staff – they have no control over how judges do their jobs or who hears a particular case. The courts establish policies, set dates for hearings and assign judges. The chief justice or chief judge of the court oversees these administrative matters, but cannot tell a judge what ruling to make because judges have complete independence from each other.

Independence enables judges to make rulings that may be unpopular. Justice is not a popularity contest and the courts must be able to uphold the legitimate rights of individuals and minority groups regardless of the views of the majority of citizens.

Judges cannot be sued for anything they do while carrying out their judicial duties. This immunity is crucial if judges are to fulfil their duty to assess the evidence and apply the law – if judges could be sued for defaming someone's character, for instance, it may prevent them from stating whether a witness is telling the truth.

Judges provide reasons for their decisions, often in writing, but do not have to justify or explain their decisions to the public or to anyone in government. Independence enables judges to make rulings that may be unpopular. Justice is not a popularity contest and the courts must be able to uphold the legitimate rights of individuals and minority groups regardless of the views of the majority of citizens. Judges may make rulings that outrage victims of crime, the police, politicians or lobby groups, or force governments to change policies or amend the law. It is the role of the courts to do justice and uphold the rule of law, not to please everyone. Each

case will have a winner and a loser and, no matter what the outcome, judicial independence assures that both sides will receive a fair and impartial hearing.

## 6. Judicial Accountability

**J**udges are independent but remain accountable for their actions. Court proceedings are open to the public – private hearings are rare and only held to protect a person's privacy or other important interest – and journalists and citizens are free to debate and criticize a judge's decision. Judges are accountable to the higher courts for all their decisions – a party who is unsuccessful in court has the right to appeal and, if a higher court finds a legal error has been made, the ruling will be altered or reversed. The Canadian Judicial Council investigates formal complaints about the conduct of federally appointed judges (it does not, however, review judges' rulings). The council – made up of the chief justice of Canada and the chief justice and associate chief justice of each superior court – has the power to counsel or reprimand a judge and, in cases of serious misconduct, can recommend that Parliament be asked to remove a judge from office. The provinces and territories have judicial councils to review complaints about the conduct of judges serving on their courts.





## C. Case Study: The Protest

The following case study will be created at [www.tryjudging.ca](http://www.tryjudging.ca) as an interactive exercise that can be adapted for an in-class activity or a written assignment. The website will provide teachers with all resource materials in PDF format as well as worksheets that can be downloaded and distributed to students. These worksheets will list the questions posed below and ask students to supply the answers based on their exploration of the website.

### Scenario

A judge is asked to rule that the law making it a criminal offence to possess child pornography violates the Charter's guarantee of freedom of expression and must be struck down. The judge upholds the law making it illegal to possess child pornography, but makes an exception for written or visual material created only for personal use, such as diaries. Protestors take to the streets to voice their outrage with the ruling, and some politicians demand that the courts get tough with pedophiles.

**Try Judging:** Which of the following should a judge take into account when making his or her decision in this case?

- 1) A public opinion poll suggesting that 83 per cent of Canadians favour mandatory jail terms for pedophiles [No]
- 2) Court rulings in other cases of possession of child pornography [Yes]
- 3) The rights set out in the *Charter of Rights and Freedoms* [Yes]
- 4) A newspaper editorial demanding that judges take immediate action to combat the “scourge” of child pornography [No]
- 5) A politician's demand that the courts do more to protect children [No]
- 6) Whether the child pornography law is a reasonable limit on a person's democratic rights [Yes]

*This exercise is designed to make students think about why judges must make decisions based on the law rather than popular opinion or political considerations.*

Judicial independence ensures that the judge can decide whether the child pornography law is constitutional based on the rule of law, without regard to who will agree or disagree. The judge can make a ruling that does not please the government or politicians knowing it can have no effect on the judge's salary or pension, or how long he or she will serve on the bench. Judges also have the independence needed to make decisions that may be unpopular with members of the public or with the media. Since they do not face election or public review, judges are free to make decisions that are correct in law and based on principles of fairness and justice without regard to public opinion.]



## D. Additional Exercises for Classroom Use and Assignments

### 1. Selecting Judges: An Exercise

**B**reak the class into small groups and ask each group to devise a method for selecting judges. Each group must explain their choices and what they would do to ensure their selection process protects judicial independence. Will their judges be appointed or elected? If they are appointed, who will decide who is chosen? Will there be a screening committee, and will there be private interviews or public hearings to assess candidates? If judges are elected, will they be permitted to make campaign speeches, advertise and accept donations? What qualifications will a person need to be eligible to become a judge? Will their judges be appointed or elected for life, or for a fixed term?

Modify this exercise as a written assignment, asking students to devise a selection process and to explain what they would do to ensure their process protects judicial independence.

### 2. Elected Judges Versus Appointed Judges: A Class Debate

**B**y a show of hands, poll the class to find out which students think judges should be appointed and which think they should be elected. Divide students into two groups based on their vote and ask each group to discuss and write down the arguments in favour of its position. What are the advantages of electing judges versus appointing them? What are the drawbacks and how would each group deal with them to ensure judges are independent and impartial?

### 3. Reviewing Judicial Appointees: A Class Exercise

**S**elect three students to take the role of lawyers nominated to serve as judges. Have them sit at the front of the classroom and cast the remainder of the class in the role of a Parliamentary committee set up to review their suitability. Ask students on the “committee” to devise questions they think Canadians should know about these new judges – their qualifications, their accomplishments, their reputations, the skills they would bring to the job. Students may be interested in discovering other information, such as how these appointees see the role of the judge or their opinions on issues such as gay marriage or youth crime. As students pose questions and the appointees answer (using their imagination to discuss their careers, qualifications and opinions), the teacher acts as a moderator and asks the class to consider whether each question is appropriate or could undermine judicial independence or the judge’s appearance of impartiality. For instance, asking the appointee to outline his or her legal career would pose no threat to judicial independence. If an appointee responded to a question about whether he or she believes abortions should be illegal, on the other hand, it could undermine the appointee’s impartiality if that issue came before the court. At the end of the session, assign students to make a list of appropriate and inappropriate questions based on the discussion.

#### 4. Public Opinion and the Courts: An In-Class Discussion

The day before a man is sentenced for impaired driving causing the death of a pedestrian, members of the victim's family are interviewed on the local television station. The victim's parents make an emotional appeal to the judge to impose the maximum sentence – life in prison. Anything less, they say, will mean that there is no justice. The reporter does man-in-the-street interviews about the case with five people, and all agree that the driver should get the maximum sentence.

Use this scenario as the starting point for an in-class discussion. Should the judge take the parents' wishes into consideration? Why or why not? Should judges be concerned about what people might think of their decisions? Should they try to please victims of crime? What would happen if judges were influenced by public opinion – would they still be acting fairly and impartially? Would they be able to uphold the rule of law? Ask students to put themselves in the position of the driver, and ask if they think it would be fair to have their sentence decided by a judge who is concerned about pleasing the victim's family and members of the public.

Adapt this exercise to create a written assignment by asking students to discuss questions selected from those listed above.

#### 5. Political Pressure and the Courts: An In-Class Discussion

A politician reacts with outrage after a judge imposes a sentence of house arrest on a doctor convicted of sexually assaulting two young patients. Calling the sentence “a slap on the wrist,” the politician suggests the judge should be fired or transferred to a remote area of the province for failing to send the doctor to jail. At the very least, she says, the judge should have his salary cut and be barred from hearing sexual assault cases.

Use this scenario as the starting point for an in-class discussion. Is the politician's criticism valid? Is she correct in advocating punishment for the judge? What is the proper process for deciding whether a judge's ruling is correct? Should politicians be able to fire judges, or have control over their salaries, where they work and the cases they hear? What would happen if politicians and government officials had this kind of power? Would judges be able to make decisions independently and impartially? Would judges and the courts appear to be independent and impartial if government had this kind of control over them? What would be the impact on public perception of the courts and their independence?

Adapt this exercise to create a written assignment by asking students to discuss questions selected from those listed above.

Suggested questions for class discussion and/or written assignments

- a) Identify three practices that protect judicial independence and explain why each is important
- b) List some of the qualities and qualifications that make someone a good candidate for becoming a judge.
- c) If judges can ignore public opinion, how are they accountable for their decisions?
- d) Why must judges be free from government control?



## E. Internet Links to More Resources

### A Compendium of Law and Judges:

Chapter 3: How are Judges Appointed?;

Chapter 4: The Qualities Expected of a Judge;

Chapter 5: Who Has Been Appointed to the Superior Courts?;

Chapter 6: Judicial Independence and Limitations On the Exercise of Judicial Power.

[http://www.courts.gov.bc.ca/legal\\_compendium/](http://www.courts.gov.bc.ca/legal_compendium/)

### From the Bench: Judicial Independence.

This paper offers an accessible and detailed look at the main features of judicial independence and its importance. Available on the Courts of Nova Scotia website.

<http://www.courts.ns.ca/bench/independence.htm>

### Canada's Court System: Judicial

**Independence.** A brief overview of judicial independence available on the Justice Canada website:

<http://canada.justice.gc.ca/en/dept/pub/trib/page4.html>

**Judicial Independence.** Another overview of the main features of judicial independence, available on the British Columbia Provincial Courts' website:

<http://www.provincialcourt.bc.ca/aboutthecourt/judicialindependence.html>

**The *Judges Act*** sets out the qualifications for appointees to superior courts. An electronic version is available online:

<http://laws.justice.gc.ca/en/C-46/index.html>

**Ethical Principles for Judges.** Available online, in PDF format, through the website of the Canadian Judicial Council:

[http://www.cjc-ccm.gc.ca/english/publications/ethic\\_e.pdf](http://www.cjc-ccm.gc.ca/english/publications/ethic_e.pdf)



## Appendix: Curriculum correlation

**C**urriculum across Canada at the grades 9 through 11 levels focuses on many key concepts and issues relating to Canadian citizenship, rights and responsibilities. The judicial system in this country is an important part of any unit or topic dealing with our Canadian constitutional democracy.

A focus on the role of the judiciary as well as on fundamental concepts of independence, impartiality, fairness, equality, equity and the Rule of law provide a lens through which key concepts in Social Studies, Canadian Studies, Canadian History and Civics curricula can be taught.

Such a focus also allows teachers to explore current issues and controversies related to the Canadian legal system, and to engage students in an examination of case studies and other such matters reported by the media.

The following chart provides an overview of links and outcomes from provincial programs of studies across Canada. These charts are organized by province and territory, and correlate knowledge outcomes and student expectations

The curriculum correlation analysis shows the following:

Provincial and territorial social studies, history or civics courses at the grade 9, 10 or 11 level, touch upon objectives and outcomes (either explicit or implicit) that focus on the judicial system in Canada. The objectives of this project can be met by providing students with background information and

activities within the context of provincial curriculum, but linked to the more specific topic areas identified by the Canadian Superior Courts Judges Association project. The most relevant connections between social studies, history and civics, provincial and territorial curricula occur at the grades 9, 10 and 11 levels.

The curriculum in each province uses resources and contexts that differ. The following chart reveals both similarities and distinctions in methodology, nomenclature and approach.

Provincial or  
Territorial Program*British Columbia  
and Yukon  
Social Studies 11*

## Fundamental principles

*Prescribed Learning  
Outcomes*

## Legal Issues

It is expected that students will:

Identify the major provisions of the *Canadian Constitution*, the *Canadian Charter of Rights and Freedoms*, and human rights legislation

Identify and assess critical legal issues facing Canadians

Describe the fundamental principles of the Canadian federal and provincial legal systems, including the rule of law

The Canadian judicial  
system*Prescribed Learning  
Outcomes*

## Legal Issues

It is expected that students will:

Demonstrate awareness of how to access the various levels of government in Canada

Identify the structure and operation of Canada's federal, provincial, and municipal governments

Upholding Canadian legal  
principles*Prescribed Learning  
Outcomes*

## Legal Issues

It is expected that students will:

Identify the major provisions of the *Canadian Constitution*, the *Canadian Charter of Rights and Freedoms*, and human rights legislation

## Provincial or Territorial program

*Alberta, Northwest Territories  
and Nunavut  
Social Studies  
Grade 10*

*Social Studies 10: Canada in the  
Modern World*

*Topic B: Citizenship in Canada*

## The Canadian judicial system

## THEME I: POLITICS AND GOVERNMENT

*Generalizations and key understandings*

- b. The structure and functions of government in Canada are important

*Concepts*

- Decision making
- Organization
- Constitution

*Related facts*

Identify examples from provincial and national levels (laws, services, etc.)

*Constitution Act, 1867*

- Functions of government—Judicial function
- Role of the Supreme Court
- Identify ways of resolving differences: legal actions

## Upholding Canadian legal principles

## THEME III: RIGHTS AND RESPONSIBILITIES

*Generalizations and key understandings*

- c. There are various means that help to protect and preserve rights in Canada

*Concepts*

- Entrenchment of rights
- Safeguarding rights

*Related facts*

Explain how the following help to protect human rights:

- *Canadian Charter of Rights and Freedoms, 1982*
- Courts

Examine responsibilities in Canadian society:

Legal—Jury duty



Provincial or  
Territorial Program

*Saskatchewan  
Social Studies 10*

Fundamental principles

*Main Concept*  
Making Decisions  
in a Parliamentary  
Democracy

**Content:**

Decision-making can be a difficult process and Canadian society has established mechanisms to accomplish this.

In Canada the central political organization is Parliament which has the power to: Make laws enforced by sanctions to regulate behaviour

The Canadian judicial  
system

*Main Concept*  
Making  
Decisions in a  
Parliamentary  
Democracy

**Content:**

Power in Canada is also seen as being subject to abuse so there are checks and balances placed on the control and use of power:

The Supreme Court of Canada has the power to rule legislation by Parliament unconstitutional if it does not conform to the spirit and letter of the constitution

Upholding Canadian legal  
principles

*Main Concept*  
Making  
Decisions in a  
Parliamentary  
Democracy

**Content:**

Power in Canada is also seen as being subject to abuse so there are checks and balances placed on the control and use of power:

Canada has a constitution which defines what each branch of government can and cannot do;

It has a Charter of rights & freedoms which defines the rights & obligations of its citizens

Provincial or Territorial Program	Fundamental principles	The Canadian judicial system	Upholding Canadian legal principles
<i>Manitoba Senior 3 Grade 11</i>	<i>Senior 1 Major goal:</i> Canada's laws are created through the democratic process and are protected by the judicial system.	<i>Senior 1 Major goal:</i> Canada's laws are created through the democratic process and are protected by the judicial system	<i>Senior 1 Major goal:</i> The rights and responsibilities of all Canadians are guaranteed in the Charter of and Freedoms.
<i>Canada—A Social and Political History</i>	Unit III—Canadian Society: Political and Legal Processes  <i>Topics and Focusing Questions</i> 2. The Legal Process • Why is there a need for laws and a legal system in our society?  <i>Senior 3 Major goals</i> Canadian government developed from a British parliamentary model, was adapted by French-English and federal-provincial pressures, and is maintained by an evolving party system.	Unit III—Canadian Society: Political and Legal Processes  <i>Topics and Focusing Questions</i> 2. The Legal Process • How does Canada's system of laws work? How can individuals or groups influence the making of laws?	Unit III—Canadian Society: Political and Legal Processes  <i>Topics and Focusing Questions</i> 2. The Legal Process • What are the legal rights and responsibilities of individual members of our society? • How are our rights guaranteed? • What is the Charter of Rights and Freedoms?  Senior 3 Theme: Canadian Government and the Roles of Federalism, Political Parties, and the Individual  Unit III—Government, Federalism, and Politics <i>Topics and Focusing Questions</i> 4. Rights and Responsibilities of Citizens How much influence do governments have in the everyday lives of most citizens? • What are the basic rights of a Canadian citizen? • What is the importance of the Charter of Rights and Freedoms? • Individuals have a role to play in government and have both rights and responsibilities

Provincial or  
Territorial  
Program  
*Ontario  
Civics 10*

Fundamental principles

*Strand:*  
Purposeful Citizenship

It is important that students understand the role of the citizen, and the personal values and perspectives that guide citizen thinking and actions. Students need to reflect upon their personal sense of civic identity, moral purpose, and legal responsibility – and to compare their views with those of others.

*Specific Expectations*

Democratic Beliefs and Values: By the end of the course, students will:

- Describe fundamental beliefs and values associated with democratic citizenship (e.g., rule of law, human dignity, freedom of worship, respect for rights of others, work for common good, sense of responsibility for others, freedom of expression)

The Rights and Responsibilities of Canadian Citizenship: By the end of the course, students will:

- Explain why it is essential in a democracy for governments to be open and accountable to their citizens, while protecting the personal information citizens are required to provide to governments (e.g., Municipal Freedom of Information and Protection of Privacy Act)

The Canadian judicial system

*Strand:*  
Purposeful  
Citizenship

*Specific Expectations*

The Rights and Responsibilities of Canadian Citizenship: By the end of the course, students will:

- Demonstrate an understanding of how the judicial system (e.g., law courts, trials, juries) protects the rights of both individuals and society (e.g., the rights of the accused, the rights of the victim, and the role of the judiciary);

Making Decisions, Resolving Conflicts: By the end of the course, students will:

- Examine and analyse the importance and value of different ways of resolving disputes (e.g., mediation, arbitration) that differ from judicial approaches

Upholding Canadian legal principles

- *Strand:*
- Purposeful Citizenship
- *Specific Expectations*
- The Rights and Responsibilities of Canadian Citizenship: By the end of the course, students will:
- Explain the legal rights and responsibilities associated with Canadian citizenship;
- Identify the rights and responsibilities of citizenship expected and practiced in their school or classroom, explain why these rights and responsibilities were developed, and evaluate the extent to which they apply to all students;
- Describe the changing nature of Canadian citizenship rights and responsibilities based on an examination of provincial legislation, the Bill of Rights (1960), and the Canadian Charter of Rights and Freedoms (1982) (e.g., in terms of fundamental freedoms, democratic rights, mobility rights, legal rights, equality rights, language rights, Aboriginal rights);
- Describe a case in which a citizen's rights and responsibilities have been upheld or restricted, outlining the concerns and actions of involved citizens and the reasons for the eventual outcome

Provincial or Territorial Program	Fundamental principles	Upholding Canadian legal principles
<i>Nova Scotia and Prince Edward Island</i>	Justice: How has Canada struggled for a just and fair society?	Justice: How has Canada struggled for a just and fair society?
<i>History 11</i>	<p><i>Outcomes:</i></p> <ul style="list-style-type: none"> <li>• Explore the concept of rule of law, both in theory and reality</li> <li>• Explain the origins of common law and analyze its contributions to Canada's legal system</li> <li>• Explain the origins of the civil code and analyze its contributions to Canada's legal system</li> </ul>	<p><i>Outcomes:</i></p> <ul style="list-style-type: none"> <li>• Recognize and explain the opposing views of collective and individual rights</li> <li>• Demonstrate an understanding of the Charter of Rights and Freedoms (1982)</li> <li>• Outline the struggles for civil rights</li> </ul>
Provincial or Territorial Program	Fundamental principles	The Canadian judicial system
<i>Atlantic Provinces Educational Foundation</i>	8/9.4.3 Demonstrate an understanding of the Canadian federal system and the structure and operation of Canadian government	8/9.4.3 Demonstrate an understanding of the Canadian federal system and the structure and operation of Canadian government
<i>Social Studies Grades 8/9</i>	<p>Students will be expected to:</p> <ul style="list-style-type: none"> <li>• Determine the role and responsibility of the citizen in supporting the rule of law</li> </ul>	<p>Students will be expected to:</p> <ul style="list-style-type: none"> <li>• Examine the roles and responsibilities of the executive, legislative, and judicial branches of government</li> </ul>

*Quebec  
Secondary IV  
  
History of Quebec  
and Canada 414*

*Module 7.3.3*

Evolution of Québec society from 1960 to the present

*Module 5.1.3*

*Major Goal*

To explain the origins of the Canadian federation and main terms of the British North American Act

*Topics and Focusing Questions*

Analyze the key articles of the BNA Act

Define the key words in parliamentary language.

Compare the federal and provincial parliamentary structures.  
Show the division of the main federal provincial jurisdictions.

Relate different jurisdictions to the level of government concerned.

Resolve hypothetical problems that have to do with the relationship between citizens and the level of government concerned.

To describe the main characteristics of the Canadian political system

Constitutional entrenchment of rights: enhanced role of the judiciary