



Introduction to the
JUSTICE SYSTEM
~ IN ~
CANADA



Introduction

Scope

A healthy democratic society functions best when its population is educated and engaged as active and informed citizens. A civics education equips ordinary citizens with knowledge of how the Canadian judicial system works and empowers them to make a difference in their communities and beyond.

Since time immemorial, there have been numerous and varied Indigenous systems of justice on this land. This guide will focus on the more recent systems that have contributed to, and now exist as, the Canadian judicial system. This system includes many elements, such as the rules and regulations that we, as a society, have agreed to live by, and the governments and courts that have had a hand in creating and maintaining them. This education guide focuses specifically on certain key moments, documents, and institutions that are fundamental to the origin and development of the current system in Canada.

By learning about the history of how this system was developed, applied, and received in Canada, we can better understand our society today, and our place in it. How did we get here? What impact do our laws have on our daily lives? How do we in turn have an impact on this system? What does it mean to be a Canadian citizen or resident, and to live under the “rule of law?” It is also necessary to examine the legacy and consequences of policies to which Indigenous peoples and others have been subjected. Though Canada is now recognized as an international leader in human rights, much work remains to be done to ensure human rights and equality are legally protected and enjoyed by everyone in Canada.

A fundamental principle of Canadian democracy is the commitment to the “rule of law” which means that Canada’s laws apply to all citizens and permanent residents - no exceptions.

Message to Teachers

This guide was produced with the support of the Government of Canada. Historica Canada offers programs that you can use to explore, learn and reflect on our history, and what it means to be Canadian.

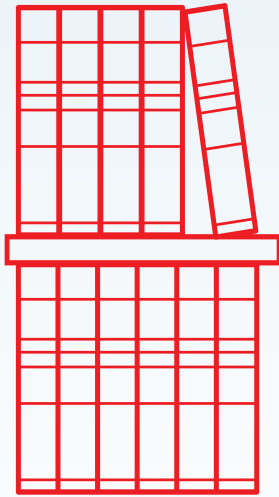
This guide is aligned with current Canadian curricula and has been produced for use in middle and high school classrooms. It is meant to give teachers and students the tools to engage with Canada’s judicial processes. Through curriculum-based activities, students are encouraged to think thoughtfully and critically about the communities they inhabit — and would like to inhabit — and the country of which they are already active members.

We encourage teachers to be sensitive to both individual and group dynamics to ensure the classroom remains a safe environment for all learners. The classroom climate should encourage students to relate to one another in positive and respectful ways. With your students, co-create ground rules for considerate and inclusive discussions, and address harmful language and ideas immediately. Please consult your school support systems for additional support, if needed.

The activities included here may be used in sequence or can stand alone. Additional free, bilingual resources on the Canadian judicial system are available on *The Canadian Encyclopedia*. Historica Canada’s education guides are part of a collaborative process that engages history educators, academic historians, and community stakeholders in content creation and lesson planning. This guide was developed in collaboration and consultation with Nathan Tidridge and Holly Richard.



▲ Coat of arms of the Canadian Bar Association (Wikimedia Commons)



Petrolia, Ontario once banned whistling or singing in public at all times.

Terminology

Some of the activities in this guide require advanced reading skills. Consider pairing language learners with stronger readers. Teachers may want to consider pre-teaching important words or concepts to help students understand the big ideas involved in these activities. Students may find it helpful to keep a personal dictionary. See some more definitions in our accompanying poster sheets [here](#).

Geography

The term Canada is used in this guide to indicate the traditional Indigenous lands and former French and British colonies we now refer to as Canada. This guide uses primarily contemporary language to refer to geographical areas, such as Britain, Canada, and provinces and cities. Teachers may want to use the terminology of the time for their students.

Colonialism

A system or policy of dominance and control by one power over an area or people that often includes the exploitation of resources for the explicit purpose of benefitting the colonizing country.

Indigenous Peoples

Indigenous peoples in Canada were initially called “Indians” by colonial Europeans, who at first believed they had landed in India. While “Indian” is no longer considered an appropriate term to describe Indigenous peoples, it is still a legal definition, primarily in reference to the *Indian Act*. “Aboriginal,” meanwhile, is a political and legal umbrella term that is used in the Constitution and includes status and non-status First Nations, as well as Métis and Inuit. “Aboriginal” and “Indigenous” are often used interchangeably, but as the current preferred term is Indigenous, this latter term is used throughout this guide.

Online Resources

- **The Canadian Encyclopedia (TCE)**
<https://www.thecanadianencyclopedia.ca>
- **Civics in the Classroom Guide** <https://www.thecanadianencyclopedia.ca/en/studyguide/citizenship-challenge-civics-education-learning-tool>
- **Multiculturalism Guide**
<https://www.thecanadianencyclopedia.ca/en/studyguide/history-of-multiculturalism-in-canada>
- **Indigenous Perspectives Guide**
<https://www.thecanadianencyclopedia.ca/en/studyguide/indigenous-perspectives-education-guide>
- **Official Languages Guide**
<https://www.thecanadianencyclopedia.ca/en/studyguide/official-languages-act-education-guide>

SECTION 1 Background

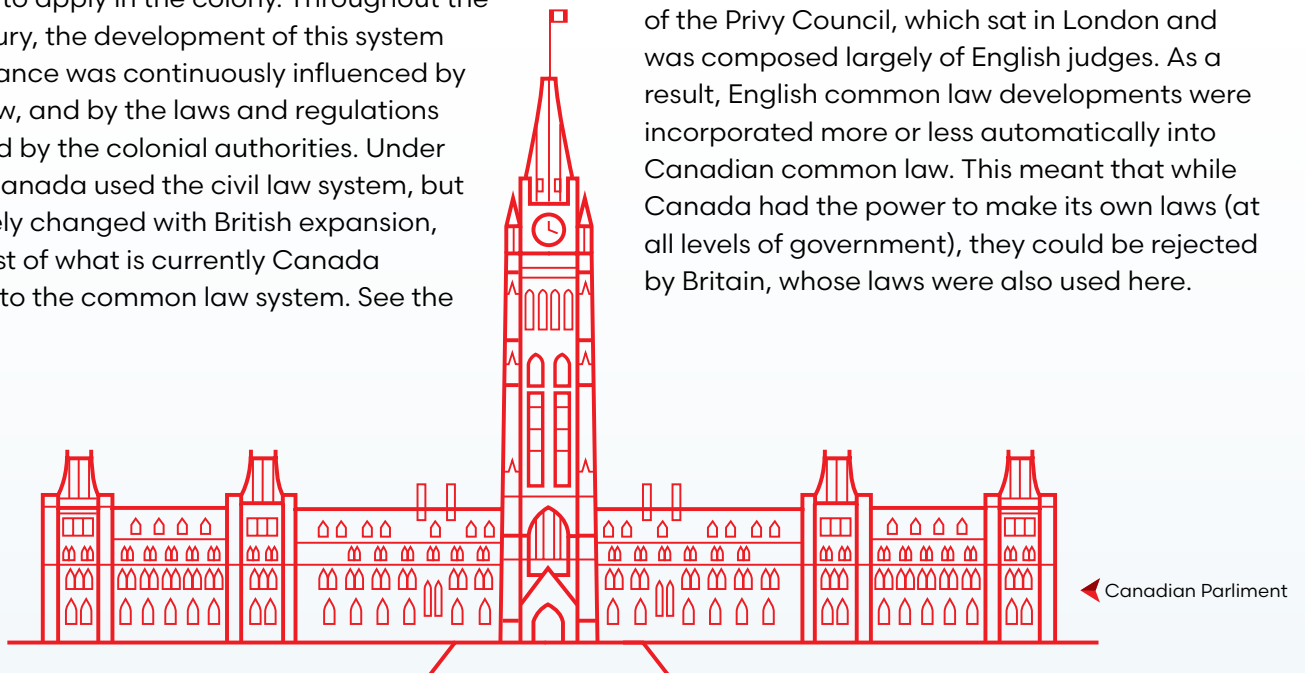
New France and British North America

In the early years of the Canadian colonies, settlers followed the laws and regulations of the colonizing powers – France and Britain – and relied on their parliamentary decisions. Some laws were automatically extended to the colonies, while others were created in the colony and enforced through codes and acts such as the 1793 Rules and Regulations of the House of Assembly, Lower Canada.

New France was the first region of Canada to adopt a system based on European law - the civil law system. In 1664, Louis XIV of France ordered that the French law that applied around Paris was to apply in the colony. Throughout the 18th century, the development of this system in New France was continuously influenced by French law, and by the laws and regulations developed by the colonial authorities. Under France, Canada used the civil law system, but that largely changed with British expansion, when most of what is currently Canada changed to the common law system. See the

differences between these two systems [here](#).

As a British colony, the highest court available to Canadian colonists resided in Britain. From 1844 until 1949, this was the Judicial Committee of the Privy Council, which sat in London and was composed largely of English judges. As a result, English common law developments were incorporated more or less automatically into Canadian common law. This meant that while Canada had the power to make its own laws (at all levels of government), they could be rejected by Britain, whose laws were also used here.



▲ Conference at Quebec in 1864, to settle the basics of a union of the British North American Provinces. Copy of a painting by Robert Harris, 1885 (Library and Archives Canada/C-001855)



The Royal Proclamation of 1763, and the 1764 Great Council of Niagara

Following France's defeat in the Seven Years' War, King George III declared British control in North America, and established a colonial government where France had surrendered sovereignty. The Proclamation established a framework for Indigenous rights and title to the land, and for negotiating treaties. It sought to earn loyalty by recognizing that lands legally belonged to Indigenous peoples unless a treaty formally gave control to the British.

In 1764, 2,000 Indigenous dignitaries, representing at least 24 Nations from the Great Lakes, accepted the Royal Proclamation within the 1764 Treaty of Niagara. The relationship established here was intended to become the foundation of all Treaty relationships between Indigenous peoples and the Crown. Nevertheless, British and Canadian governments did not live up to their terms, and do not currently recognize the Treaty of Niagara.

ACTIVITY

Marie-Joseph Angélique and the Law in Early Colonial Canada

Marie-Joseph Angélique (also spelled Marie-Josèphe) was an enslaved Black woman accused of one of the most infamous crimes in Quebec's history. In 1734, she was charged with arson after a fire leveled Montreal's merchants' quarter. It was alleged that Angélique committed the act while attempting to escape her bondage. She was convicted, tortured, and hanged. While it remains unknown whether she set the fire, Angélique's story has come to symbolize Black resistance and freedom.

1. As a class, listen to the Marie-Joseph Angélique [podcast episode](#) from the Strong and Free series. For more information about her life, and the history of Black enslavement in Canada, read the following TCE articles: [Marie-Joseph Angélique](#), and [Black Enslavement in Canada](#) (also available as a [plain-language summary](#)).
2. Have a class discussion about what you learned:
 - a. What does the history of enslavement in Canada reveal about society in colonial New France? What does it reveal about Canadian society today?
 - b. Why do you think Marie-Joseph Angélique was blamed for the fire, rather than another enslaved person or a white colonizer? What does the public's decision to blame her tell us about how enslaved people were treated and expected to behave in New France?
 - c. Dr. Afua Cooper says in the podcast, "She [Marie-Joseph] was enslaved. It's not like anyone had sympathy for her. No one had
3. Conducting some individual research (hint: start with [The Law timeline](#) on TCE), choose another figure in early Canadian history whose interaction with the law might not look like justice today. Write a page explaining who they are, what happened, and how they may have interacted with the justice system differently today.
 - a. Consider whether their actions would be illegal today (to your knowledge), whether their position in society would be different now and whether this could impact those involved in the case, even how modern technology could change the available evidence. If you think the process and verdict would be the same, be sure to explain why!
 - d. What does the statement "innocent until proven guilty" mean? What are some barriers today that may affect someone's perceived innocence?

sympathy for her." Her status as an enslaved person worked against her in the trial. Can you think of other instances where someone's circumstances may work against them? In a court of law? In the classroom?



▲ Marie-Joseph Angélique (Historica Canada)

Constitution and Confederation (1867-1982)

In 1867, under the [British North America Act](#) (BNA Act) – now known as the *Constitution Act, 1867* – the colonies of New Brunswick, Nova Scotia, and the Province of Canada (Ontario and Quebec) formed the [Dominion of Canada](#). This Act became the founding written structure of Canada's current constitution. In addition to including all the [acts](#) and [orders](#) that brought new provinces and territories into [Confederation](#), the Act outlines how our government is structured, which powers are given to which levels of government, as well as certain legal definitions (e.g. how bills can become laws). It is important to note that much of our constitution remains unwritten, and is based on a series of conventions that Canada inherited from the British unwritten constitution.

In 1931, the [Statute of Westminster](#) in Britain gave all Commonwealth countries independence and equality with Britain. This gave Canada full legal freedom, with some limitations. At the time, Canada's federal and provincial leaders could not agree on how they would make future changes to the *BNA Act*, so the power to amend the Constitution remained with Britain until the [Constitution Act, 1982](#) was passed.

Learn more about the differences between common and civil law, and what falls under municipal, provincial, or federal jurisdiction with our poster/sheets [here](#).



Until 2018, Canada's Criminal Code made it a criminal offense to challenge or accept a duel

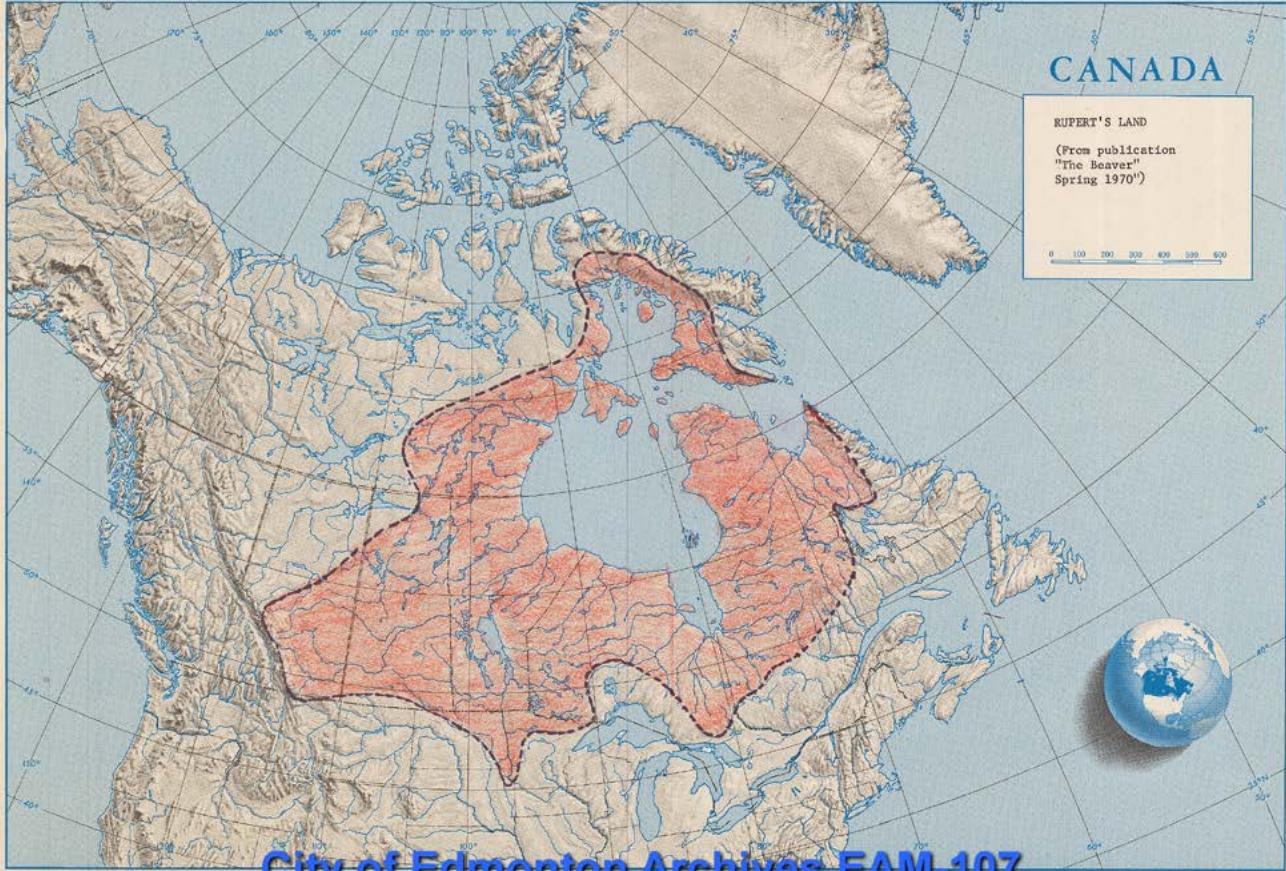
▼ The Hudson's Bay Company Ships (Library and Archives Canada, Acc. No. 1970-188-1271 W.H. Coverdale Collection of Canadiana)



With the Constitution came new laws, codes, and a restructuring of the court system.

The Supreme Court was created almost a decade after Confederation. The *British North America Act, 1867*, included an option for [Parliament](#) to establish a "General Court of Appeal for Canada." However, the idea caused much debate among Canadian politicians. On 8 April 1875, Prime Minister [Alexander Mackenzie](#)'s government persuaded Parliament to pass a bill establishing the Supreme Court. He argued that it would help to establish a standard Canadian law and provide a clear review of issues that would affect the evolution of the new country. Until 1949, decisions of the Supreme Court could be appealed for a final decision from the [Judicial Committee of the Privy Council](#) in Britain. Even after 1949, when the Supreme Court was made the final court of appeal, English court decisions have been treated with great respect. Canadian decisions are also quite often cited in English cases and have influenced English law. Learn more about the Supreme Court today in Section 4 of this guide.

The *Constitution Act, 1867* also gave the federal government exclusive jurisdiction to legislate criminal offenses in Canada. As a result, in 1892, Parliament enacted The Criminal Code of Canada. The Code defines what makes something a criminal offence, and establishes the kind and degree of punishment that may be given, as well as the [procedures](#) to be followed for prosecution. This code contains most criminal offenses, while the others are part of other federal statutes. The Criminal Code has been edited several times since its inception. Read more about the criminal code [here](#).



City of Edmonton Archives EAM-107

Rupert's Land

The heart of the fur trade, [Rupert's Land](#) was a vast territory of northern wilderness that covered a third of modern-day Canada. From 1670 to 1870, it was the exclusive commercial domain of the [Hudson's Bay Company](#) (HBC), who administered laws, dealt out justice, and operated under a royal charter. That land was eventually acquired by the Canadian government, and they divided it between what is now Quebec, Ontario, Manitoba, Saskatchewan, Alberta, Northwest Territories, and Nunavut.



▲ Map of Rupert's Land (City of Edmonton Archives, Richard Edes Harrison, 1970 CA EDM RG-200-8-EAM-107)

◀ Councillors of the Provisional Government of the Metis Nation (Library and Archives Canada/PA-012854)



The acquisition of Rupert's Land was the largest transfer of land in Canadian history, and was done without the consultation of any Indigenous peoples.

Quebec/French Canada

Quebec Civil Law

The *Quebec Act* of 1774 allowed the province to continue using French civil law, rather than changing to common law, the system used in Britain (as well as the rest of Canada today). Quebec was, however, required to retain English criminal law. Later, in 1857, a [Civil Code](#) and a Code of [Civil Procedure](#) were drafted, as well as major sections of Quebec private law on property and civil rights and the form and style of proceedings in Quebec courts. These were enacted in 1866. Today, relationships between and dealings among persons subject to Quebec law are regulated by both the Civil Code and the Code of Civil Procedure. Over time, portions of English law have also found their way into Quebec private law.

Bilingualism in Canada

Linguistic plurality is a cornerstone of modern Canadian identity, and historically has been used by Indigenous peoples and French-Canadian communities (and other diverse language communities) to resist an English-speaking Canadian society determined to create a homogeneous British-Canadian national state. A linguistic balance was created when the *Constitution Act, 1867* formed the Canada we know today, but it soon fell apart, leaving francophones living outside of Quebec (and other minority-language populations elsewhere in Canada) at risk. Nevertheless, francophone communities were determined not to give in. Finally, in 1963, Prime Minister Lester B. Pearson launched the Royal Commission on Bilingualism and Biculturalism to explore ways to put English and French on equal footing. The Commission's findings eventually led to the [Official Languages Act](#) in 1969 which, in part, made French and English the official languages of Canada. For more information on the history behind the *Official Languages Act*, read our [article on TCE](#), and check out our [Official Languages Act Education Guide](#).



▲ The Burning of the Parliament Building in Montreal, 1849 (McCord Museum/M11588)

▼ Lord Guy Carleton, largely responsible for the Quebec Act (Library and Archives Canada/ Acc. no. 1997-8-1/e011165560)



Margarine was illegal in Canada until 1948 in order to protect dairy farmers.



▲ The Blackburns (Historica Canada)



Until 2018, there was a law in Canada against pretending to practice witchcraft.

ACTIVITY

Laws Then and Now

Laws are a reflection of one's culture, society, and the time period. This means that they are constantly evolving, and frequently subject to change. Some laws in Canada are new, while others have existed for hundreds of years and perhaps have a different meaning or relevance now. How much do you know about the laws where you live? Have you heard of any local laws that seem silly or outdated? Can you think of any laws that were probably created a long time ago? Why might they have stayed relevant for so long? Do any of them affect you?

1. Have a class discussion about what rules are important in a classroom/home/country. Is there some overlap? Have your house rules changed at all over time? What might happen if someone at school did not follow the rules?
2. Starting with *The Canadian Encyclopedia*, as well as your own independent research, find five laws that existed in your municipality/region/province pre-Confederation, and five that existed post-Confederation, but before 1982. OR find one or two laws from each of the last four centuries.
 - a. For each law, write a sentence or two on when the law came into place and why [you think] it was made. If it still exists, does it still serve the same purpose? To the same extent? If it no longer exists, why do you think that's the case? If it's currently illegal, do you know what law it now contradicts? How might these laws have affected you?
3. As a class, make a master list of the laws that you have all found. Are there any similarities or common threads between these laws? In what ways do these laws reflect (or not) society at the time? How do they compare with the rules and values discussed in step 1?

SECTION 2 Indigenous Peoples

Introduction

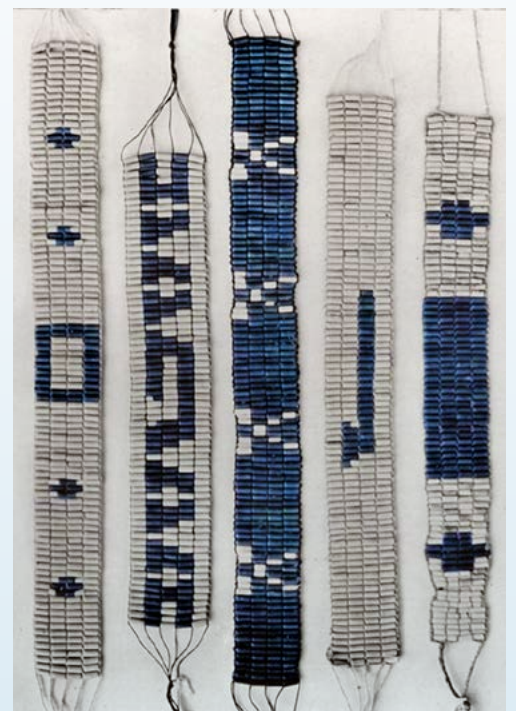
Hundreds of Indigenous nations representing vastly diverse cultures had long since been interacting and flourishing on the continent by the time European explorers first set foot in what we now call Canada. From sea to sea to sea, Indigenous peoples in Canada have followed deep, complex, and evolving systems of law and governance. Since early colonization, and continuing today, these methods and systems have been undermined, threatened, and suppressed. The value and significance of Indigenous ways of governance is paramount to Indigenous survivance, and they continue to be resolutely protected and utilized by these communities.

Survivance is a forward-looking worldview that envisions and actively works toward a better future for Indigenous communities.

Treaties

Indigenous nations have made treaties since time immemorial, and those treaties often included relationships that humans shared with the land, and non-human animals. Today, Indigenous treaties in Canada are constitutionally recognized agreements between the Crown and Indigenous nations. Officially, they form the constitutional and moral basis of alliances between Indigenous nations and settler governments, both British and Canadian. However, the terms of treaties have been understood differently by the parties involved. This difference in interpretation is rooted in differing worldviews, approaches to treaty-making, and relationships with the land. See the sidebar on the Royal Proclamation for more, as well as the article on [A Dish with One Spoon](#) for an example of an Indigenous approach to this process.

Indigenous self-government is the formal structure through which Indigenous communities may control the administration (including laws and policies) of their people, land, resources, and related programs and policies, through agreements with federal and provincial governments. For many Indigenous peoples, the right to self-government is essential for the process of reconciliation, healing, nation-building, and protection of land and resources. Under self-governance, Indigenous laws function alongside federal and provincial laws, though Indigenous laws protecting culture and language will take precedence in most cases. The Charter, *Canadian Human Rights Act*, and the Criminal Code maintain their authority. This right is protected in *section 35 of the Constitution Act, 1982*, and, to date, the Canadian government has concluded 25 self-government agreements with 43 Indigenous communities, and there are about 50 negotiations ongoing across the country.



▲ Five unique Wabanaki Wampum Belts from the Penobscot (Wikimedia Commons)



▲ A monumental pole in the village of Nang Sdins
Lnagaay on the island of SGang Gwaay, Gwaii Haanas,
8 July 2007 (Neil Banas/Flickr CC)

ACTIVITY

Treaties

Treaties are a meaningful element of Indigenous history in Canada, and we can learn much from studying them, including an ability to better understand and address the complexities and ethics of ongoing negotiations today. Indigenous peoples from coast to coast to coast have been deeply committed to both land claims and the conservation of natural resources. The process of (re)claiming self-government is complex, and the goals of different groups have varied widely.

1. Split the class into two – half of the class will investigate a historical treaty, while the other half will investigate a modern treaty or Comprehensive Land Claim agreement. Get started by visiting the “Treaties” category on TCE’s [Indigenous Peoples Collection](#). You may also try searching for treaties local to your home or school at <https://native-land.ca/>, or researching the relevant Indigenous nations official websites.
2. In small groups, answer the following questions:
 - a. Who were the parties involved in this treaty? For example, was it between Indigenous nations or between one or more Indigenous nation and settlers (e.g. the Two Row Wampum)?
 - b. Was the treaty signed? If so, when and where, and what expressions of commitment were included (signatures, a wampum belt, etc.)?
 - c. What is the historical context of the treaty? What was happening at the time for each party? What were the motivating factors and goals for the various groups involved? To what degree were the parties involved on equal footing? If unequal, who had more power, and how do we know? In what way could that balance of power have affected negotiations or the outcomes?
 - d. What were the key ideas of the treaty?
 - e. What were the direct consequences for the different parties involved in the treaty signing?
 - f. Make an ethical judgment on the fairness of your selected treaty: Do you think it was just? Was it signed under fair circumstances? To what degree does/did it protect Indigenous rights to land, resources and self-government? To what degree has the duty to consult been fulfilled in this case? What, if anything, do you think should have been done differently?
3. Create new groups, mixing classmates who studied historic and modern treaties. Share your research, and discuss any similarities or differences you have found.

Extension: Investigate the differences between treaties and land claims. Read *The Canadian Encyclopedia* articles on [Indigenous Land Claims](#) and [Comprehensive Land Claims: Modern Treaties](#).



▲ Indigenous peoples receiving treaty money, 1930 (Library and Archives Canada/PA-)

Indian Act

The *Indian Act* is the principal statute through which the federal government controls key aspects of the lives of First Nations peoples in Canada, including their status, governments, land, and community finances. It was introduced in 1876 as a way to consolidate existing measures to eradicate First Nations communities and force them into Euro-Canadian society. The Act has been amended several times. Many of the initial amendments banned First Nations peoples and communities from expressing their cultural identities, and required their children to attend industrial or [Residential Schools](#). Since the 1950s, many changes to the Act, which remains in force today, have focused on the removal of particularly discriminatory sections. Despite this evolution, it remains a paradoxical document that has enabled trauma, human rights violations, and social and cultural disruption for generations, while also outlining governmental obligations to First Nations peoples. The Act also determines “status” — a legal recognition of a person’s First Nations heritage. It is important to note that the *Indian Act* applies only to First Nations peoples, not the Inuit or Métis.



▲ R.C. Residential School Study Time, [Fort] Resolution, N.W.T. (Library and Archives Canada/PA-042133)

ACTIVITY

Analyzing the Indian Act

1. Working in pairs, read the [Indian Act article](#) (or the [plain language summary](#)) on *The Canadian Encyclopedia*, taking notes on key changes and amendments. What can you infer about the changes to the *Indian Act* over time? What patterns, if any, are revealed?
2. Have a class discussion about change and continuity, and address the various ways that the *Indian Act* has affected the lives of First Nations peoples since 1876 (or more broadly, the ways that laws can impact communities/lives/cultures). How does it continue to affect the lives of Status Indians today? What were the goals of the Canadian government in passing and implementing the *Indian Act*? What sort of worldviews does this Act reflect? Where else have you seen this?
3. Extension Activity: As a class, investigate what Indigenous scholars and leaders say about the *Indian Act*. What are their perspectives on its historical and ongoing impact on Indigenous identity, communities, and rights? What are their views on the future of the *Indian Act*? Write a personal reflection or submit an audio recording based on what you have learned about the *Indian Act*, its impact on Indigenous communities, and what Indigenous leaders think about it.

Activity for Older Students:

1. The United Nations definition of genocide includes the act of “forcibly transferring children of the group to another group.” This description is noticeably missing from the Canadian Criminal Code. Given what you know of Canada’s history, why might it have been omitted from the Criminal Code? What might be some real-life implications for Indigenous communities and Canadian society in general? Why might some laws exist (or be omitted) in a democratic society when they do not protect the people living there?
2. Share your thoughts either in a class discussion or in a written assignment.



▲ Chief Joe Capilano (Historica Canada)



▲ Dance Contest at Kahnawake Powwow (Dreamstime.com/Edgar Nicolae Dumea/ID 96008245)



Section 141 of the Indian Act was introduced in 1920 which forbade First Nations people from hiring lawyers or legal counsel, essentially preventing them from fighting for their rights through the Canadian legal system. This section was removed in 1951.

The Constitution is the highest law in Canada.



Under section 49 of the Criminal Code it is illegal to wilfully alarm or scare the King.

▼ Her Majesty Queen Elizabeth II with Prime Minister Pierre Elliott Trudeau signing the Proclamation of the *Constitution Act, 1982* (Robert Cooper/Library and Archives Canada/PA-141503)

Constitution Part 2

The [Constitution Act, 1982](#) was a landmark document that gave Canada the power to change its own constitution without the United Kingdom's consent, and added the *Canadian Charter of Rights and Freedoms* to the Constitution.

After 50 years of negotiations between the federal and provincial governments, tensions peaked in 1981, and resulted in changes finally being made to the *Constitution Act, 1867*. In September of that year, the Supreme Court ruled that it was legal for the federal government to [patriate](#) and amend Canada's Constitution without the consent of the provincial governments, however any changes that would reduce provincial powers would require provincial "consensus." Two months later, in November 1981, the provinces came to an agreement. On 17 April 1982 in Ottawa, Queen Elizabeth II signed the *Constitution Act, 1982*.



The Charter

One of the defining outcomes of the *Constitution Act, 1982* was the creation and implementation of the [Canadian Charter of Rights and Freedoms](#).

Before the Charter came into being, rights and freedoms were protected in Canada by a variety of laws. These included the 1960 [Canadian Bill of Rights](#), however this bill only applied to federal laws. Importantly, none of the laws protecting Canadians' rights and freedoms were part of the Constitution at the time, which meant these laws lacked supremacy and permanence.

As a result, when the government of Pierre Elliott Trudeau began the process of patriating the Canadian Constitution, they also decided to include a new *Charter of Rights and Freedoms*. The majority of the negotiations (mentioned above) were in relation to the Charter. Many provincial leaders feared that a Charter would restrict the right of provincial governments to make laws as they saw fit, and there were also concerns about whether the Charter would give courts and judges too much power to interpret its meaning.

In the end, a majority of provinces agreed to support the Charter on one condition; that it contain a clause allowing Parliament or any provincial legislature to exempt laws from certain sections in the Charter (on fundamental rights, equality rights, and legal rights), for a period of five years. At that point, they would be subject to renewal. This "[notwithstanding clause](#)," as section 33 of the Charter is known, has been used only a handful of times by various provinces to override Charter rights. The federal government has never invoked the clause.

The Charter's impact is broad, and it has revolutionized a number of aspects of Canadian life. The Charter protects Canadians against the [state](#), and protects minorities against parliamentary majorities. It applies to anyone in Canada, citizen or newcomer, though some of its rights apply only to citizens, including the right to vote and the right to enter and leave the country. Section 1 of the Charter also gives governments the power to limit rights and freedoms, as long as those limits can be "demonstrably justified in a free and democratic society."



▲ Postage Stamp, c.1987 (Dreamstime.com/
Alexander Mirt/ID 213665475)

The provinces and Ottawa also settled on an amending formula. Any changes to the Charter require the agreement of Parliament plus the legislatures of seven or more provinces, which combined must represent at least 50 per cent of Canada's population.

Quebec and the Charter

The Quebec government has never signed the *Constitution Act, 1982* or formally endorsed the Charter. However, the Constitution was determined by the Supreme Court of Canada to be legally binding without any of the provinces' approval. Therefore, all Quebec laws must respect the Canadian Charter to be considered constitutional.

In 1975, Quebec passed the [Quebec Charter of Human Rights and Freedoms](#). The Quebec Charter is a fundamental law that takes precedence over other laws, and according to the Supreme Court, possesses a quasi-constitutional status. It holds that no provision of any law can go against articles 1 to 38 of the Quebec Charter, unless that law expressly states that it applies in spite of the Charter.

ACTIVITY

Canadian Values

People have different ideas about how society should be organized and how a country should work. These diverse views are influenced by distinct values and beliefs. In Canada, vast differences exist in what people value. Priorities can vary among provinces, communities, neighbourhoods, and even within families. The Canadian Government also has values that inform decision-making and policy. These values can change over time and from one government to the next.

1. Read over the Charter sections [here](#) to familiarize yourself with these rights.
2. Form small groups and reflect on what you believe constitute "Canadian Values." As a group, agree on five key Canadian values.
3. Present your chosen values to your classmates in a series of tableaux. For an added challenge, see if your classmates can guess the value you are presenting with your tableau. A tableau is a frozen scene, where

you use your bodies to depict an idea, story, moment in time, or emotion.

4. As a class, vote on the top ten values that you share. Reflect together on this process. Was it easy or difficult to come up with shared values? Why or why not? Do your values line up with the values found in the Charter (if unsure, ask your teacher for examples)? What about values that you hold personally or in your family?

Extension Activity: As a class, name any laws, bills, or practices in Canadian history that contradict the Charter. For each one, consider the following questions: What Charter right(s) would have protected Canadians from it? How does it measure against your list of "Canadian Values"? Can you name any recent laws that were passed despite contradicting the Charter? Why might a government want to pass an unconstitutional law? At the end of the discussion, consider why it is important that our values are reflected in the legal system.



A law is called a bill before it is passed by Parliament.

▼ We Demand (Historica Canada)





CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Fundamental Freedoms

Democratic Rights

Mobility Rights

Legal Rights

Equality Rights

Official Languages of Canada

Minority Language Educational Rights

Enforcement

General

Application of Charter

Citation

"We may not establish the basic principle, the basic value and which shall hold at night in Canada or the light of day and which shall be a part of the life of each individual in each generation."

1982

▲ Canadian Charter of Rights and Freedoms (Library and Archives Canada, R11274-148)

ACTIVITY

Reporting on the Charter

As mentioned above, before the Charter was created Canada had a variety of laws and bills designed to protect the rights of its citizens. However, these laws were not always in place, and they did not always protect everyone living in Canada. As a class, name any laws, bills, or practices that you've learned about from Canadian history which would not be legal today.

Imagine that you are a local journalist in 1982, reporting on the new *Charter of Rights and Freedoms*. Write an article explaining the legal change to your readers, and why it is (or is not) important.

1. Begin by conducting research on the topic. Use the *TCE* articles on the [Canadian Bill of Rights](#), the [Canadian Human Rights Act](#), your own province's human rights act, and any other legal documents that might help you. Further research may be helpful.

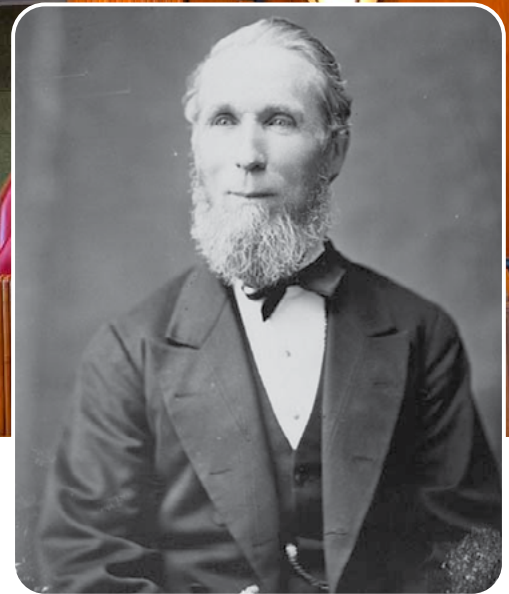
2. Consider the following questions in your article: What does this Charter do? How does it differ from previous (still-existing or otherwise) legal documents? In what way does this impact Canadians? Are you or your community now protected in ways that you previously were not? What issues or problems can you foresee? Are Canadians happy or angry about this change?

Extension Activity: Now imagine you are a regular citizen at this time. Write a letter to the editor of a national or local newspaper of the time about the Charter. Are you for, or against it (remember, you can agree with the principle but disagree with parts!)? What rights and freedoms do you believe should be included but haven't been? (Consider different aspects of life in Canada: the environment, non-human animals, employment, access to necessities, etc.) Make three arguments to support your cause. End with a call to action, outlining what you would hope to see going forward.

SECTION 4 The Current Court System



▲ Court room of the Supreme Court of Canada (Jamie McCaffrey/Wikimedia Commons)



▲ Hon. Alexander Mackenzie, 1878 (William James Topley/Library and Archives Canada/PA-026522)

Stare Decisis: this is the principle by which courts of appeal (like the Supreme Court of Canada) can change or overturn the decisions made by lower courts, in order to make sure that the law is being applied evenly and fairly.

The Supreme Court

The Supreme Court of Canada is the court of last resort for all legal issues in Canada, including those federal and provincial jurisdictions. The court has the final judicial say on a broad range of contentious legal and social issues, ranging from the availability of abortion to the constitutionality of capital punishment, or assisted suicide.

As mentioned, the Supreme Court did not come into being until nearly a decade after Confederation. Today, the Supreme Court of Canada is the highest appeals body in Canada's judicial system. It is the final authority of law, as its judgments set a precedent for all levels of law. This principle of upholding prior judgments lies at the heart of our judicial system. The court not only makes decisions, but also advises the federal and provincial governments on important questions of law or how to interpret the Constitution. It also provides judgment and

advice on federal or provincial legislation, or the powers of Parliament and the provincial legislatures.

The court hears about 70-90 appeals each year, from hundreds of applications. It works as a general court of appeal for criminal cases, and accepts civil cases when it believes that the case is of public importance, involves an important issue of law or is of mixed law and facts, or that an appeal decision is in the national interest.

The Supreme Court bench is comprised of a chief justice and eight other judges who are appointed by the Governor General on the advice of Cabinet, otherwise known as the governor-in-council. The *Supreme Court Act* states that at least three of the judges must be appointed from Quebec, largely due to the province's civil code.

For more information on jurisdictions, the court system, and legal definitions, refer to the poster sheets [here](#).

The cornerstone of the current home of the Supreme Court was laid by Elizabeth, the Queen Mother, one day late due to a delay in their crossing from the UK. The inscription still shows the wrong date.

ACTIVITY

Public Nomination

1. Pick a person related to the Supreme Court to nominate to appear on a Canadian stamp or banknote. They could be a judge, lawyer, plaintiff, activist, etc.
2. Develop your argument for nomination with careful research. Consider the following in your pitch:
 - a. Who were/are they? How are they related to the law/justice system?
 - b. What are their key achievements?
 - c. What does their story tell us about our broader history or current society?
 - d. In what way were their actions part of a significant historical event or movement?
 - e. What is the nature of their impact on society today?
 - f. Why did you choose them, and why should Canadians know about them?
3. Pick a photo or design an image yourself to accompany your pitch!

ACTIVITY

Supreme Court Cases

Oftentimes we are unaware of the impact court decisions have had on individual lives and on our society in general. Many rights and protections we have are a result of someone appealing to the Supreme Court of Canada. At the same time, not all appeals to the Supreme Court have positive outcomes, and some of the most famous cases are those where they upheld the lower court's decision.

1. Pick a Supreme Court case from the list to the right, or choose another from your own research.
2. In a presentation to the class, cover the following points:
 - a. Explain why you chose that particular case.
 - b. What kind of precedent did it set?
 - c. What impact has it had on the community, Canada, life, law, etc., and did it have any global significance?

R. v. Sparrow (1990) was the first Supreme Court of Canada case to test section 35 of the *Constitution Act, 1982*. Initially convicted of fishing illegally, Musqueam man Ronald Edward Sparrow was cleared by the Supreme Court and his ancestral right to fishing was upheld.

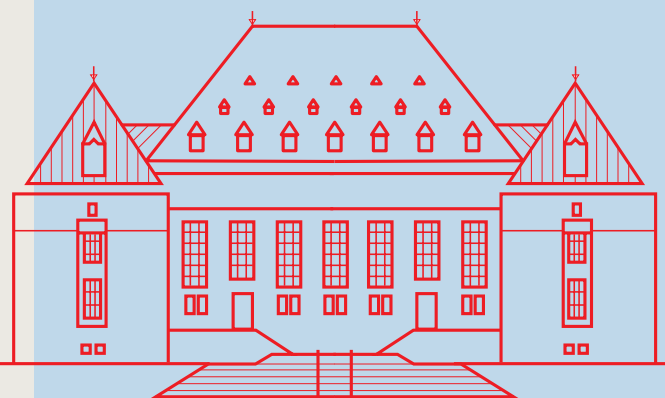
Singh v. Minister of Employment and Immigration (aka **The Singh Case**) (1985) drastically changed the way refugees are received in Canada. Among other things, the Supreme Court ruled that the legal guarantees of the Charter apply to “everyone” physically present in Canada, including foreign asylum seekers.

In **R. v. Morgentaler** (1988), the Supreme Court ruled that the federal abortion law violated section 7 of the Charter, decriminalizing the practice. Nevertheless, abortion services are still very difficult to access in many parts of the country.

Egan v. Canada (1995) determined that “sexual orientation” was included by section 15(1) of the Charter as a ground for discrimination, thus providing protection from discrimination based on sexual orientation.

R. v. Oakes (1986) prompted the Supreme Court to decide how to apply section 1 of the Charter to cases. The “Oakes Test” has since been used whenever a Charter right may have been violated, in order to determine if, and how, section 1 of the Charter applies.

In **AG. v. Lavell** (1973), Lavell challenged section 12 of the Indian Act for being discriminatory and contradicting the *Canadian Bill of Rights*. Lavell lost, but her case led to transformative changes to Canada's legal code and constitution.



SECTION 5 The Society We Create



◀ Komagata Maru
(Historica Canada)

Summative Activity

History does not just happen, people make it happen. While governments and courts ultimately have the power to create and change laws, this is all the work of the people – people who populate those governing bodies, and people who elect those members to their roles.

1. Pick a community or individual case that is meaningful to you, and create a detailed legal timeline of the progression of their case to display on a posterboard.
 - a. Include images, newspaper clippings, and any other artifacts pertaining to your timeline points. Provide a caption and credit for each image.

2. Write a paragraph explaining how this does or does not show Canada's history/judicial growth/moral trajectory, whether you think there is positive change being reflected, what are some gaps/setbacks our judicial system still shows in regard to this case?
3. Take some time to observe your classmates' timelines. Was anything surprising to you? Are there any similarities with your timeline? Does your paragraph about your own timeline apply to these other examples, or what you have seen of our judicial history at large?



The age of criminal responsibility in Canada is 12 years old.

▼ Old Supreme Court Building





Front/Back Cover: 19th century Court House (Toronto Public Library)
The Official Languages Act (Historica Canada)



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