

The PLEA

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Canada is very fortunate to be a country with a fair legal system. This is because Canada adheres to the Rule of Law. The Rule of Law is the belief that the law applies to everyone. This includes people in a position of power.

Because of the Rule of Law, Canada:

- places high value on fundamental rights,
- has very low levels of corruption,
- has an open system of government, and
- overall has a fair justice system.

This issue of *The PLEA* introduces these ideas. It explains many components of Canada's legal system and introduces some of the people who work in these areas. This makes this issue ideal for studying Power and Authority in Social Studies 8. As well, it can help introduce new Canadians to Canada's justice system.



Who Rules Us?

Canada is a Monarchy. This means we have a Queen as the head of state. Queen Elizabeth II, who lives in Britain, is the Queen of Canada.

However, the Queen does not make the laws in Canada. Instead, we elect governments to make our laws. These laws tell us how we should behave towards each other. Governments must also obey the laws.

Each level of government is responsible for different areas of law. This includes the federal government of Canada, the provincial government of Saskatchewan, and the municipal government of the community where you live.

For example, the Government of Canada makes laws to control crime across the country. The Government of Saskatchewan makes laws

about driving on provincial highways. The City of Regina makes laws about the size of the house you can build in the city.

Canada’s laws involve us every day. People in Canada must:

- obey the laws even if they do not agree with them
- respect the rights of other people, even if they believe different things

CONSIDER: Changing Laws

All Canadians must obey the law. However, people in Canada are free to work towards changing laws they do not agree with. A good example of this is the story of Mike Nemeth, a citizen of Saskatoon.

Nemeth was a longboarder (longboards are a type of skateboard.) He did not agree with a city law that fined people \$15 for skateboarding and longboarding in the city’s downtown.

Nemeth believed that skateboarding and long-

boarding were legitimate forms of transportation. So he began an online petition that asked the city to recognize these forms of transportation. His petition was well-thought-out: It outlined four specific reasons why longboards should be allowed downtown.

Nemeth presented his petition to City Council. They considered it, and then changed the law. Skateboarders and longboarders are now allowed to use downtown trails and cycling lanes for transportation-related purposes.

DISCUSS

1. Canada has been described as a country of “peace, order, and good government.”
 - a) What is peace? Why is peace necessary to create fair laws?
 - b) What is order? Why is order necessary to create fair laws?
 - c) What is good government? Why is good government necessary to create fair laws?
2. How does the process that led to Saskatoon changing its skateboarding laws reflect peace, order, and good government?
3. Why is it vital that people have a voice in the law-making process?

The Charter of Rights and Freedoms

Canadians have certain rights that are protected by a law called the *Canadian Charter of Rights and Freedoms* (the Charter). The Charter sets out the limits of what governments can and cannot do. Some of the rights and freedoms that the Charter protects are:

- following a chosen religion
- speaking freely
- joining social or political groups
- talking to a lawyer if arrested
- the right to a fair trial and being presumed innocent unless proven guilty in court, if charged with a crime
- no cruel or unusual punishments
- being treated equally under the law, without discrimination, which means people cannot be discriminated against because of their age, their sex, the place they were born, their religion, their sexual orientation (like gay,

bisexual, or straight), their marital status (single, married, divorced, or living together), or if they have a mental or physical disability

CONSIDER: Religious Headwear

The Royal Canadian Mounted Police (RCMP) are not just Canada's national police force. They are considered a national symbol.

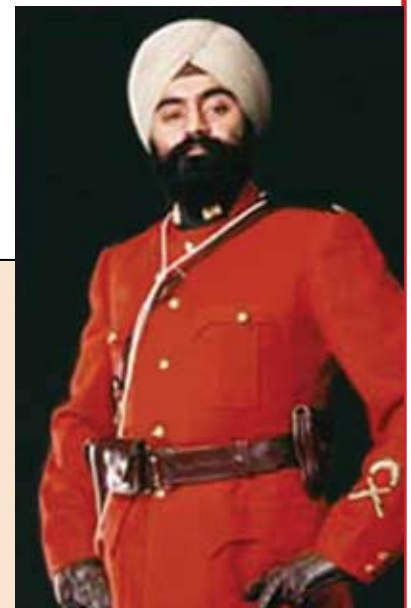
Up until 1990, members of the force were required to wear the entire RCMP uniform. This posed a problem for Sikh members. They could not wear a traditional turban with the uniform.

This led the RCMP to change their regulations

about uniforms. Members could be exempted from wearing parts of it. This exemption would be allowed on the basis of members' religious beliefs. This change meant that Sikh members could wear a turban instead of the RCMP hat.

A group of citizens challenged this decision. They argued that allowing religious symbols as part of the RCMP uniform was unconstitutional.

A Federal Court ruled against these citizens' complaint. The Court said that members of the public did not have to participate in, adopt, or share any religious beliefs simply because an RCMP member was wearing a turban. The court also said that members of other religions were not discriminated against simply because Sikhs were allowed to wear their religious headdress.



This case was appealed. The Supreme Court of Canada reviewed the case, and upheld the Federal Court's decision.

1. Does wearing religious clothing such as a turban impact an RCMP officer's ability to do their job? Why or why not?
2. Does the freedom to display one's religious belief through clothing discriminate against other religions? Why or why not?

3. Since the *Charter of Rights and Freedoms* came into effect, many rights and freedoms are now protected. For example:
 - same-sex marriage has become legal
 - abortion is no longer banned

- the police need court permission to wire-tap telephones
- certain historic Aboriginal rights, such as fishing, have special protections

Why is the recognition of rights and freedoms good for Canadian society?

The Role of Judges

One of the most important things about Canada's justice system is that the judges are independent, impartial, and objective. Judges cannot be pressured into making particular decisions by the government, the police, or private citizens.

Nobody can pressure a judge into making a particular decision. To safeguard against corruption:

- judges' jobs are secure - they keep their jobs until they retire
- judges cannot be threatened or fired if they make an unpopular decision
- judges are paid well so they do not accept money from anyone to make a particular decision

- courts are managed by judges - the government does not tell courts how to do their work.

Further, to ensure court cases are impartial and objective, sometimes a judge may be required to excuse her or himself from a case. This can happen for many reasons, including when:

- the judge is related to one of the parties in the case
- the judge is related to a lawyer in the case
- the judge is a witness in the case
- the judge has a personal or financial interest in the case

If judges have other reasons that may make it difficult for them to be objective or impartial, they will excuse themselves from a case. If a judge is excused, another judge will hear the case.

These rules ensure that judges are free to make good decisions based on the facts of the case and what the law says.

A judge's decision must be accepted. However, in some cases the decision can be appealed to a higher court. Allowing a higher court to review cases is another way courts apply law fairly.

CONSIDER: Objectivity

Judges take objectivity very seriously. Objectivity is the concept that decisions are based strictly on facts. Sometimes, things happen that put into question the judge's ability to objectively decide a case.

For example, in 2010 a Quebec man was on trial for robbery. Lawyers at the trial noticed that the

judge appeared to be struggling to stay awake. When asked, the judge admitted that she "lost attention." The judge said she would review the court proceedings to ensure she did not miss anything.

The prosecutors were concerned that the judge could not objectively look at the facts because she may have slept through

testimony important to the prosecution's case. The defence lawyers did not share this concern. The judge agreed with the prosecutors, and she excused herself from the case.



1. Everything said in a trial is written down in the court proceedings. The Quebec judge had the option to reread what was said. Even so, she chose to excuse herself from the case. What does this tell us about judges and objectivity?

2. In Canada, judges are appointed. They keep their jobs until the age of 75. In some other countries judges are elected. Some people believe that elected judges will be more concerned about making

“popular” decisions than correct decisions. Do you agree or disagree?

The Role of Lawyers



Not all problems are law-related. Therefore, the law cannot solve every problem. Because lawyers are trained experts in the law, they will know if a problem is related to the law. When a problem is law-related, lawyers can offer help.

Lawyers help people with legal issues ranging from writing a will to settling disputes. Lawyers also play an important role in the justice system when they help clients present their cases in court.

People can choose whether or not to have a lawyer represent them in court. If they do not have a lawyer, they will have to do everything that a lawyer would do.

For example, they will need to learn about:

- the court system
- court procedures, including the forms that must be used to move the case through the court system
- the law that applies to their case
- the evidence they need to prove their case
- what will happen if they win or lose their case

Court trials can be difficult. Some areas of the law are very complex and there are strict rules for evidence and procedures. It is a good idea for people to talk with a lawyer

before deciding whether to represent themselves in court. This is especially true if they have been charged with a crime since one's reputation and even freedom may be at stake.

CONSIDER: Access to Justice

Sometimes, the right information can resolve a law-related problem. Other times, a problem is more complex and requires a lawyer. Unfortunately, people cannot always afford lawyers. This is why free information and assistance is available for people needing access to legal services.

For example, Legal Aid is a government program that offers assistance to people who cannot afford a lawyer. Legal

Aid provides lawyers for most criminal and family law matters.

Sometimes, people do not qualify for Legal Aid but still need a lawyer. When this is the case, Pro Bono Law Saskatchewan facilitates free legal clinics in various communities across the province. Free legal clinics are often staffed by volunteer lawyers.

Sometimes, a problem can be resolved with the right information. That

is why PLEA provides free information on a wide variety of legal topics, from basic information on how courts work to a self-help website for family law issues.

These supports exist so people have access to justice. However, Canada still could work towards improving access to justice.

As the system exists now, Canadians must wait long times before their case is heard in court.

As well, many Canadians cannot afford a lawyer but do not qualify for Legal Aid. And frequently, Pro Bono programs are unable to provide enough help. Often, people facing some of these obstacles go to court without the help of a lawyer. Other times, they give up entirely.

1. Some small legal problems that end up in court do not necessarily require a lawyer.

Where can people learn basic information on legal topics?

2. Why is access to justice important for maintaining a free and fair society?



The Role of Police

The police help keep peace in society. They do this by patrolling public areas, providing public safety, investigating crimes, and participating in community programs.

The police cannot arrest anyone at any time without any evidence of a crime. Nor can the police arrest or punish people just because they dislike something about them or the way they look. The police do not have the power to arrest people on discriminatory grounds such as race, colour, religion, disability, sex, sexual orientation or age.

To arrest someone, the police need reasonable and probable grounds

to believe that a person has committed, or is about to commit a serious crime. Reasonable grounds means that the police officer has a strong suspicion—and some evidence to back up that suspicion—that a crime was or will be committed. The officer can then arrest and search the person for further evidence.

It is important that if a person is placed under arrest, certain procedures are followed and certain rights are preserved. Our legal system includes a number of rights to ensure people under arrest are treated fairly.

Everyone has the right to know why they are being arrested. Everyone also has the right to remain silent when questioned by the police. If a statement is to be used against someone in court, it must be shown that it was made voluntarily. Statements made because a person is afraid or intimidated by threats or because they were promised some advantage are not truly voluntary. Such statements cannot be used as evidence and may be struck down by the court.

CONSIDER: Bribing a Police Officer

The police are able to exercise some discretion when they encounter criminal activity. This means that for minor offences, sometimes the police may simply provide a warning.

However, this does not mean police can be unduly influenced.

This is well-illustrated by the story of a Toronto bar owner. In 2012, several people in the community complained that a bar was illegally selling liquor. The ongoing issue prompted police to set up an undercover operation.

The police found evidence that the bar was

indeed illegally selling liquor. When they began to seize the liquor, the police alleged one of their officers was approached by the bar's owner.

The owner was said to have offered the police \$500 to stay away from the bar. The police turned down the offer,



and instead charged the man with bribery and an attempt to obstruct justice.

1. Attempting to bribe a police officer is a serious offence. How does such a law preserve the integrity of Canada's justice system?

2. Police officers will be of help in all kinds of situations. For example, if there has been an accident, theft, if someone has hurt you, or if you see a crime taking

place, the police can help. Why is the trust that people put in police officers important to Canadian society?

Canada's Courts

There are different levels and types of courts in Canada. Each court decides different types of cases. Decisions from lower courts can be appealed to higher courts.

Provincial Court

Provincial Court deals with small claims, traffic matters, youth court and first appearances on all criminal matters. Family matters may go to Provincial Court or to the Family Law Division of the Court of Queen's Bench.

Court of Queen's Bench

This court can hear both civil and criminal trials. It is also an appeal court for some criminal cases originally tried in Provincial Court and small claims cases. With some exceptions, family matters generally go to the Family Law Division of the Court of Queen's Bench.

Saskatchewan Court of Appeal

This court hears appeals from the Court of Queen's Bench. It is also the appeal court for some of the

criminal trials which take place in Provincial Court. The reasons for an appeal from a lower court decision are limited to the judge making an error about the law. It is not enough that one or both parties disagree with the outcome of a case. An appeal judge can only overrule a lower court if an error was made in the application of the law.

Federal Courts

The federal court system is separate from the provincial court system. The Federal Court can only deal with some cases that involve the rights of all Canadians, like citizenship, income tax, and cases that involve an organization controlled by the government of Canada, like the RCMP. There is also a Federal Court of Appeal.

Supreme Court of Canada

The Supreme Court is the highest court in Canada. It hears appeals from all other courts in Canada. The decisions are final. All other courts must follow the Supreme Court's decisions. The Supreme Court can overrule a previous decision it made.



CONSIDER: Cree Court

Saskatchewan has a special Provincial Court called the Cree Court. It is the first court of its kind in Canada. It travels to northern parts of the province. Court officials such as the judge, clerks and court workers speak Cree. Indi-

viduals may have access to Cree-speaking Legal Aid lawyers.

Cree Court enables the Court and the accused to communicate in a manner suited to his or her language and cultural needs.

Cree court may incorporate traditional Aboriginal values into sentencing, such as the concept of restorative justice which is meant to heal victims and communities, while encouraging offenders to confront the consequences of their actions.

Because Cree Court recognizes culture and community's role in supporting both the victim and the accused, it can help encourage the participation of community leaders in the justice system.

1. How does Cree Court's incorporation of traditional Aboriginal values help build a justice system more responsive to the needs of particular communities?
2. People of Cree descent lived in much of Saskatchewan long before Europeans arrived. How does having a Cree Court acknowledge the special role of First Nations' culture and language in Canadian society?
3. What other services—such as translators and interpreters—do courts offer to ensure justice is fair?

More Resources

The justice system is complex. This resource only provides a brief introduction. Fortunately, there are many places to go for more information, and for help with specific issues.

Legal Information

Information on the law can be very helpful for understanding legal issues and legal rights. PLEA provides a great deal of information on a wide range of law-related topics. All information is free. Check it out at plea.org.

Family Law Saskatchewan

People facing family law issues such as separation and divorce may need specific information on the law. PLEA's new Family Law website can offer help. Check it out at familylaw.plea.org.

Legal Services in Saskatchewan

Pro Bono Law Saskatchewan keeps a comprehensive list of where to find information and legal assistance in Saskatchewan. This list includes all the free services available. Check it out at www.pblsask.ca/pdf/LegalServicesSK.pdf.

Information For New Immigrants

The Government of Canada has a website to help people new to Canada learn about citizenship and how to live in Canada. Check it out at www.cic.gc.ca/english/residents/new_immigrants.asp.

PLEA thanks the Justice Education Society of British Columbia for permission to adapt some material from www.courtinformation.ca for this resource.



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Legal Information for Everyone

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