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# IN BRIEF

STUDENT HANDOUT

# RULE OF LAW

## INTRODUCTION

Do laws improve our lives, or make them harder?

Why do people usually obey the law, even when no one is watching?

Why is it acceptable for the government to punish lawbreakers, but not for the average person to do so?

Why doesn't the Prime Minister automatically turn into a dictator when in power?

How do "the people" govern in Canada?

These are questions that come up when learning about law, politics, and society in general. The rule of law is also a fundamental concept upon which many of the social, legal and governmental systems of our communities are built.

## Definition

**The rule of law is the idea that in order to function smoothly and fairly, all members of a given society agree to abide by a common set of rules, called 'the law'. There are three main aspects of the rule of law:**

### 1) Law is necessary to keep peaceful order

If people had no interaction with one another, laws would not be necessary. However, we live in a society full of differences, and often people's interests and activities conflict. With a clear system of rules, everyone knows what is expected of them, how they will be treated and what to expect from others. Laws also allow people to coexist peacefully in an environment where wrongdoers are held accountable for their actions. The rule of law ensures that there will be a legal response to any unjust actions, preserving peace and civility.

### 2) Law applies to everyone equally

The rule of law means that everyone is subject to the law. No one, no matter how important, how rich, how educated, or how powerful, is above the law. Laws apply to everyone equally, including those in positions of power. In Canada, that includes all levels and branches of the government, legislature, Parliament, the Senate, the Prime Minister, the police, lawyers, judges, the Lieutenant Governors, the Governor General, and even the Queen.

### 3) No one can have unrestricted power to limit rights unless authorized by law

The only real powers that individuals or institutions – including government— have are those that are given to them by law. As laws are written and enacted by the elected politicians, citizens ("the people") control which laws will be passed when they decide who to vote for.

# THE RULE OF LAW AND THE *CANADIAN CONSTITUTION*

The primary law which grants the power to govern is the *Constitution Act, 1867*. This is the supreme, or highest, law in Canada. The rule of law is recognized in the preamble of the *Canadian Charter of Rights and Freedoms*, which is found in the *Constitution Act, 1982*.

***The Canadian Charter of Rights and Freedoms Preamble:***
Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law.

All laws must comply with the *Constitution*. If a law violates or contradicts an aspect of the *Constitution*, then that law can be declared invalid and will be struck down or read down by the courts upon review.

The rule of law helps to protect us from abuses of power. Without it, powerful individuals or groups could take advantage of others by intimidating them with violence or other kinds of suffering in order to impose demands and restrictions upon them. In this way, the rule of law helps to secure our rights, liberties and equality.

## HISTORICAL ORIGINS

A number of important historical events led to the development of the rule of law in Canada. These include: the *Magna Carta*, the Glorious Revolution and the enacting and repatriation of the *Canadian Constitution*.

### The *Magna Carta*

The *Magna Carta* is an English legal charter established in 1215 which forced King John of England to accept that his actions would be bound by the law. This severely limited his power, but he was pressured to sign by a group of powerful nobles, called barons, who wanted to protect their own interests and property from being arbitrarily seized by the King. This document provided the origin to the rule of law. It set the precedent for all other nations in the British Commonwealth by establishing that no one, not even the monarch, was above the law.

### The Glorious Revolution

The progress represented by the *Magna Carta* was advanced in 1688 during the Glorious Revolution. This event marked the overthrow of the absolute ruler, King James II, by a group of English parliamentarians who were aided by a portion of the Dutch army under William of Orange. This marked the beginning of a period when the English people refused to be led by an absolute ruler. From this point on, the rule of law has been the basis of our systems of government and law.

### The *Canadian Constitution*

The *Canadian Constitution* sets out how Canada will be governed and how law will be made. A new law has to comply with the values, principles, and powers found in the *Constitution*. Our *Constitution* was first enacted in 1867 by the British

Parliament and was known as the *British North America Act*. Canada repatriated the *Constitution* in *1982* and named it the *Constitution Act*, *1982*. This new *Constitution* included the *British North America Act*, amending formulas, and the *Canadian Charter of Rights and Freedoms*. The *Constitution Act*, *1982* is now the supreme law in Canada. All laws that are subsequently enacted must conform to the principles and powers found within the *Constitution*.

# MECHANISMS TO UPHOLD THE RULE OF LAW

There are a number of ways in which the rule of law is enforced. Below are some examples of these mechanisms in Canada.

## Legal Independence – The Separation of Powers

The basic principle of the rule of law is that the law must apply equally to all, no matter how powerful they are or what their position is in society. To support this principle, Canadian law operates according to a doctrine of "separation of state powers". To ensure fairness and to guarantee that all are equally accountable to our common laws, those who create laws (legislators) are not the same as those who interpret laws and decide cases (judges), or those who represent individuals in legal matters (lawyers). The rule of law requires that lawyers and judges operate free of interference by powerful groups and without personal bias. In turn, this requires judicial independence, impartiality and accountability. These work together to increase public confidence in the legal system.

### Judicial Independence

When judges hear legal cases, they must be able to do so without being influenced by any other source, including politicians, interest groups, police or personal acquaintances. This is particularly true with respect to politicians; otherwise the rights of private individuals could be seriously compromised by the interests of the state. If judges were subject to the will of the state, individuals charged with crimes would essentially be tried by the very body that they are alleged to have wronged. The state cannot direct the actions of the courts, nor can it discipline judges for making decisions it disagrees with.

### Judicial Impartiality

The *Canadian Constitution* provides that Canadians have the right to have their legal matters heard and resolved by a fair and unbiased decision maker. Judges and others who decide the outcome of legal matters therefore have a professional duty to hear all sides of a dispute and to apply the law based on the evidence before them, rather than on personal feelings, interests or attitudes. Thus, they may be expected to exclude themselves from hearing particular cases if, for example, they had a personal connection to one of the parties involved, or stood to benefit or suffer personally from the outcome of a case.

### Judicial Accountability

Judges are accountable for the decisions they

make because parties have the right to appeal these decisions to a higher court. Only the Supreme Court of Canada has the power to make a legal decision that cannot be reviewed.

### Lawyer Independence

It is essential to the rule of law that lawyers can represent the interests of their clients without interference or bias. The law is complicated and one role of the lawyer is to ensure that their client's case is brought forward and heard. This, too, helps to ensure public confidence in the rule of law because it works to ensure that the law is applied fairly. Lawyers, therefore, have a professional obligation to be loyal to the interests of their clients. However, as officers of the court, they are bound to do so while operating within the bounds of the law itself. They cannot, for example, knowingly hide evidence that would confirm their clients' guilt.

## Laws

Laws do a number of things. Some, like the *Criminal Code of Canada*, tell people what they must, can and cannot do. Others, like the *Canadian Constitution*, set out basic procedures for government and the rights and freedoms of people within Canada's boundaries.

However, the law is not static. It is often said that law is like a "living tree" – that is, like a living thing, it needs to change and adapt as society changes. In Canada, there are two main ways in which the law changes. First, when judges interpret the law in deciding cases, they sometimes do so in new ways. This is how case law – or *common law*—can change over time.

Each new decision or interpretation sets a precedent that must be considered in similar cases by other judges in the future.

Second, the laws that are available for judges to apply and interpret can also change. Laws that are enacted this way are called *statute law*. Statute law is created and changed when politicians introduce, debate, and finally approve new legislation. Ordinary Canadians can participate in this process by trying to elect politicians whose ideas about government represent, or correspond to, their own or by trying to influence the outcome through political action such as educating others, joining lobby groups or simply making their views known to their elected representatives.

## Police

Police enforce the *Criminal Code of Canada* and some other laws relating to crime and safety. Police investigate crime and charge those who break the law. In Canada, there are police agencies operating at the national, provincial and municipal levels. Our national police service is the Royal Canadian Mounted Police (R.C.M.P). Three provinces (Ontario, Quebec and Newfoundland) have provincial police forces, and there are over 150 municipal and over 50 First Nations policing agencies as well. Their powers are set out in laws that limit the methods of police investigation and try to balance the public need to enforce the law with the need to protect the privacy of individuals, who are assumed to be innocent of any wrongdoing until proven otherwise in court. Finally, it is important to note that numerous mechanisms and agencies exist to keep police powers in check by allowing

individuals to make public complaints about police actions. This helps to ensure that effective policing is provided to the community in a fair and accountable manner.

## Courts

These institutions hold people accountable for their actions, hear cases where the law has allegedly been broken, assign remedies/punishments to those involved, and create new common law through the precedents set in their rulings. Courts also interpret the law and determine which laws are constitutionally sound and when people of authority are –or are not—acting within the law. In Canada, courts can be distinguished according to the kinds of cases that are heard in each. There are different courts for criminal, civil, military, youth and family matters, to name a few. Courts of appeal exist so that individuals can have the opportunity to have legal decisions reviewed, and perhaps changed, when they believe these decisions to be unfair or legally incorrect.

## Sanctions

Sanctions are the penalties that are received as a result of breaking various laws, regulations or legal agreements with other parties, or causing undue harm to others. In general, sanctions provide a reason for individuals and groups to comply with rules and to be fair and conscientious when dealing with one another. In this way, they help to enforce the rule of law. They do this in one or more of the following ways:

- *Retribution:* taking revenge against the wrongdoer for breaking the law and causing suffering;
- *Removal:* separating potentially harmful people from the rest of society
- *Restitution:* returning things, especially finances, to the way they were before the offence;
- *Restoration:* making the victim emotionally whole and reintegrating the offender into society;
- *Rehabilitation:* teaching offenders new skills and attitudes and strategies to help them avoid negative behaviour in the future; and
- *Reinforcement:* setting an example so that the public knows that harmful actions will be met with just consequences.

Sanctions range tremendously in both type and seriousness. They include relatively minor penalties, such as a public record of an offence, fines, and demerit points taken against a driver's license or court orders to perform a given number of hours of community service. At the opposite end of the spectrum are sanctions like incarceration (imprisonment) for various periods of time and capital punishment (the death penalty).

## Administrative Review

Not all legal disputes are settled in courts, or by judges or justices of the peace. In many cases, the government can delegate authority to other bodies that can hear evidence and make decisions about government actions. Some examples are the Landlord-Tenant Board, which makes rulings on disputes between property owners and people who rent from them; the Immigration and Refugee Board

of Canada, which applies the law in evaluating claims of refugee status and in deciding whether individuals who wish to immigrate to Canada will be admitted; and provincial human rights commissions, which hear cases pertaining to human rights complaints between private individuals.

## DISCUSSION QUESTIONS

1. In your own words, summarize the three aspects of the rule of law.

2. How does the rule of law protect our liberty?

3. Discuss the significance of the *Magna Carta* and the Glorious Revolution to the development of the rule of law in Canada.

4. Select three mechanisms that support the rule of law and discuss their significance. Give a unique example of each.

5. Describe an everyday occurrence that would be chaotic if not for the rule of law. Identify what laws or mechanisms are in place to keep that situation orderly.

# CASE STUDY: *RONCARELLI v DUPLESSIS*

*Roncarelli v Duplessis* is a Canadian case which illustrates the significance and function of the rule of law. This case took place in Québec during a time where there was immense tension between the dominant Roman Catholic Church and other religious groups.

The complainant, Mr. Roncarelli, was a successful restaurant owner in Quebec and a very active member of the Jehovah's Witness community. Mr. Roncarelli often helped Jehovah's Witnesses who were arrested by posting their bail so that they could continue their lives outside of prison while awaiting trial. In fact, he did so more than 350 times in a three-year period.

Many Catholic politicians and public officials were not happy with his involvement. As a result, the chief prosecutor contacted the Premier, Mr. Duplessis, to inform him about Mr. Roncarelli's actions. Mr. Duplessis took it upon himself to contact the Québec Liquor Commission and had Mr. Roncarelli's liquor license revoked.

Mr. Roncarelli lost money and eventually had to sell his business. When he discovered why he had lost his liquor licence, Mr. Roncarelli brought court action against Mr. Duplessis suing him for damages.

The Québec Court of Queen's Bench decided in Mr. Roncarelli's favour and ordered Mr. Duplessis to compensate Mr. Roncarelli. Mr. Duplessis appealed the decision to the Québec Court of Appeal, which overturned the lower court's decision. Mr. Roncarelli then appealed that decision to the Supreme Court of Canada (SCC), which reinstated the original trial decision.

In a majority decision, the SCC ruled that Mr. Duplessis wrongfully caused the revocation of Mr. Roncarelli's liquor license and that it was outside of his jurisdiction as Premier to do so. The SCC also ruled that Mr. Duplessis, in his role as a Premier, was not entitled to diplomatic immunity and is not above the law.

## Questions

1) Did Mr. Roncarelli have the right to post bail for members of his religious community? Why might this have been a nuisance for public officials?

2) Was Mr. Duplessis' response appropriate? Why or why not?

3) Who do you think had more power in society Mr. Duplessis or Mr. Roncarelli? Why?

4) Which of the three aspects of the rule of law did Mr. Duplessis violate?

5) How is it important to society as a whole that the SCC found in favour of Mr. Roncarelli?

6) What do you think would have happened to society had the SCC found in favour of Mr. Duplessis?