TRY JUDGING™

B. Resource Materials

I. The Rule of Law

Students 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."

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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

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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.

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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

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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.

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Burden of Proof and the Preponderance of Evidence

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4. Sources of Canadian Law

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

The 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 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 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.

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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 though 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

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

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. 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.

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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.

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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.

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.

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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.