

Foundations of the Canadian Legal System



Learning Objectives

At the end of this talk, you should have a basic understanding of:

- the structure of Government and the Canadian Judicial system
- how laws are made in Canada
- Charter rights and freedoms.



- Introduction
- Common Law vs. Civil Law
- Constitution Act, 1867
- The Structure of Government in Canada
- The Canadian Court System
- Constitution Act, 1982
- The Charter of Rights and Freedoms



True or False?

Canada started as part of the United States before breaking away in 1867?



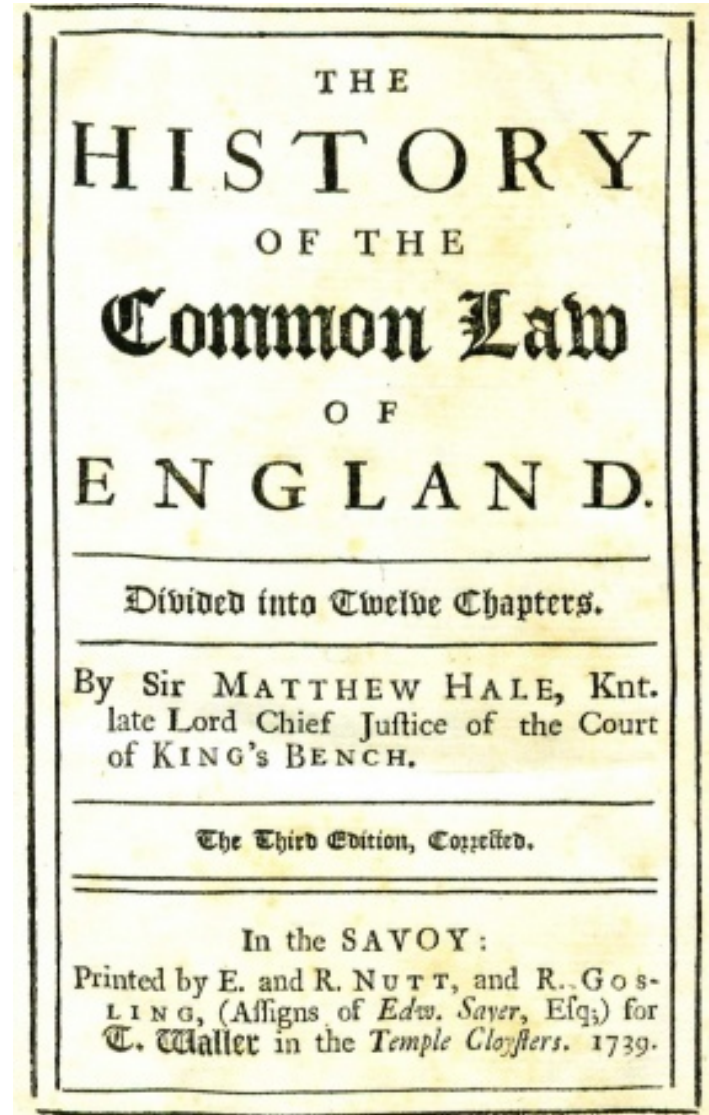
Common Law vs. Civil Law

Explores the differences between
Canada's two legal traditions inherited
from England & France



Common Law Tradition

- A legal system inherited from England
- Judge-made Law
- Based on the principle of *Stare Decisis*
 - “To stand on decided cases” - courts are bound by prior decisions, the decisions of higher courts have binding authority over lower courts
- System of rules based on precedent



Civil Law Tradition

- Legal system originating in *Continental Europe*
- Core legal principles are codified in *Civil codes*
 - A comprehensive statement of rules framed as broad, general principles to deal with any dispute that may arise.
- Judges in a civil-law system primarily apply the legal principles set out in the Code and body of statutes
 - Case-law precedents are a secondary source
- *Quebec* is the only province with a civil code, based on the French Napoleonic Code



Common Law vs. Civil Law

	Common Law	Civil Law
Jurisdiction	Nova Scotia and the rest of Canada	Quebec
Source of Law	Case law and Statues	Statutes (The QC Civil Code)
Criminal Law	Criminal Code of Canada (Statute)	Criminal Code of Canada (Statute)
Final Authority	Supreme Court of Canada	Supreme Court of Canada



Sources of Law

1. Constitutional law
2. Case Law - “Judge-made” law
3. Statutory Law - “Government-made” law
4. **Aboriginal Law and Indigenous Law**



What is Aboriginal law?

- The body of Canadian law that concerns a variety of issues related to Aboriginal peoples in Canada.
- In other words, situations where the Aboriginal status of an individual or group may impact the legal outcome or the process leading to a legal outcome.



Definition of an Aboriginal person

Defined in s. 35(2) of the *Constitution Act*, 1982, as including “Indian, Inuit and Métis peoples of Canada.”



We are all treaty people

We are located in Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq. We are all Treaty people.

- The land we are on is part of Mi'kma'ki, the territory of the Mi'kmaq.
- The territory is both ancestral and unceded. The [Peace and Friendship treaties](#) signed between the British Crown and the Mi'kmaq (unlike many other historic treaties in Canada) did not involve surrender of land.
- “We are all Treaty people” reflects that the Peace and Friendship treaties apply to all parties involved, Indigenous and settler alike.



- Treaty rights are protected by Canada's Constitution.
- Section 35 of the Canadian Constitution recognizes and affirms existing Aboriginal and treaty rights of the Aboriginal people of Canada, including the Peace and Friendship Treaties.



Nova Scotia Mi'kmaq Communities



Constitution Act, 1867

British North American Act 1867
&
The Dominion of Canada



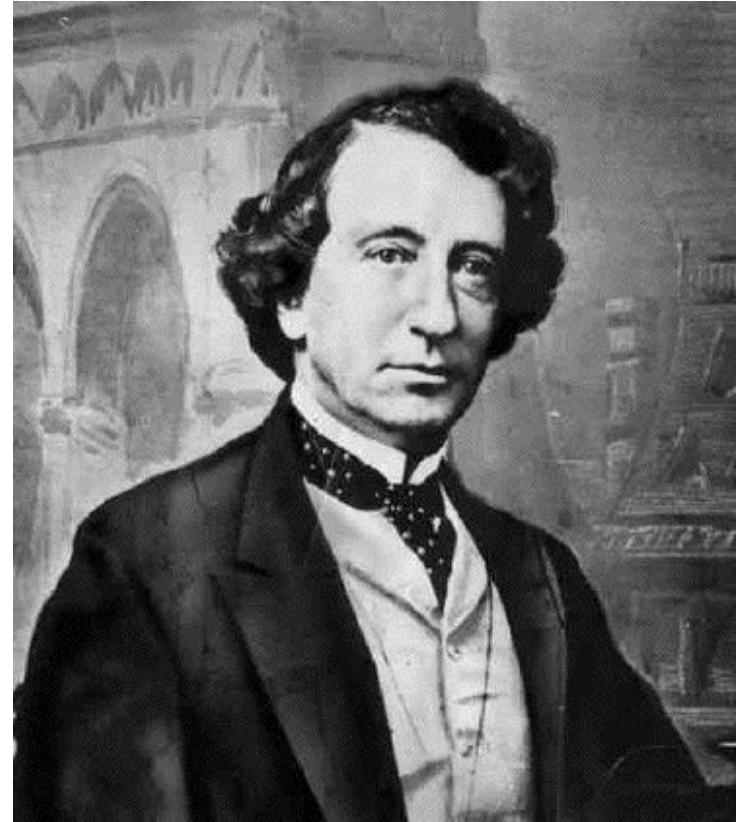
What is a Constitution?

- A constitution provides the fundamental rules and principles that govern a country
- Creates the institutions and branches of government, and defines their powers.
- The Constitution of Canada includes:
 - The *Constitution Act*, 1867, and
 - The *Constitution Act*, 1982



Constitution Act 1867

- Enacted as the *British North America Act 1867*
- Created a federal dominion with a constitution similar in principle to the U.K.
 - Written and Unwritten
- Established ON, QB, NS and NB as the first provinces of the *Dominion of Canada*



http://www.liceoberchet.it/ricerche/geo5d_04/America_Nord/Canada/immagini/trudeau.jpg

Sir John A. MacDonal, Canada's 1st Prime Minister



Constitution Act (1867)

- Sets out the basic principles and structure of government in Canada
 - House of Commons, the Senate, and the judiciary
- Defines the powers of each of the three branches of government:
 - Legislative Powers – *Who makes the laws?*
 - Executive Powers – *Who enforces the law?*
 - Judicial Powers – *Who interprets the law?*

Problem - No provision for changing the Constitution



Division of Powers

- Rule-making powers are divided between the provinces and federal government
- **Section 91 – Federal Powers**
 - National issues that extend across Canada, *i.e. Criminal Law, First Nations, National Defence*
- **Section 92 – Provincial Powers**
 - Regulate matters of local importance, *i.e. Health, Education, Marriage, Property and Civil Rights*



True or False

The Federal Government and the Provincial Government *sometimes* share power over certain matters (for example...health!)



TRUE!!!!

- The Constitution gives certain power to the Federal government under s.91 and certain powers to the Provincial government under s. 92
- HOWEVER, there are some areas where both levels of government make laws regarding specific matters.



Constitutional Conventions

- **Constitution** – Written legal provisions that establish political rules and practices
 - Create wide powers, discretions and rights
- **Conventions** – Unwritten political rules and practices
 - They are not laws and cannot be enforced by courts
 - Often limit the way powers, created by written rules, can be used



Constitutional Conventions

- Serve two major functions:
 - a) Provide guidance on where the written constitution is silent or ambiguous
 - b) Specify how the legal powers set out in the Constitution are to be exercised



Example of Conventions

1. Conventions that *limit the Governor General's powers* with respect to the executive government and Parliament.
2. Conventions that support responsible government



An Example

By Constitution



<http://www.librarising.com/astrology/celebs/images2/QR/queenelizabethii.jpg>



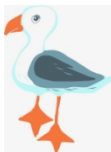
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By Convention



<http://www.reedwrites.ca/wp-content/uploads/2009/08/f-cabinet-full-cp-584.jpg>



Government in Canada

The Structure and Role of
Government: Exploring Canada's
Political & Judicial systems



Canada's Political System

CANADA is a Parliamentary Democracy, a Federation, and a Constitutional Monarchy



Parliamentary Democracy



<http://www.lop.parl.gc.ca/Visitors/followbill/images/house.JPG>



Federalism

What is a Federal System?



<http://www.map-of-canada.org/about.htm>

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<http://www.timeanddate.com/holidays/canada/civic-provincial-day>



Constitutional Monarchy



https://upload.wikimedia.org/wikipedia/en/0/01/Queen_of_canada_wob.jpg



https://upload.wikimedia.org/wikipedia/en/thumb/4/4f/Coat_of_arms_of_Canada.svg/245px-Coat_of_arms_of_Canada.svg.png

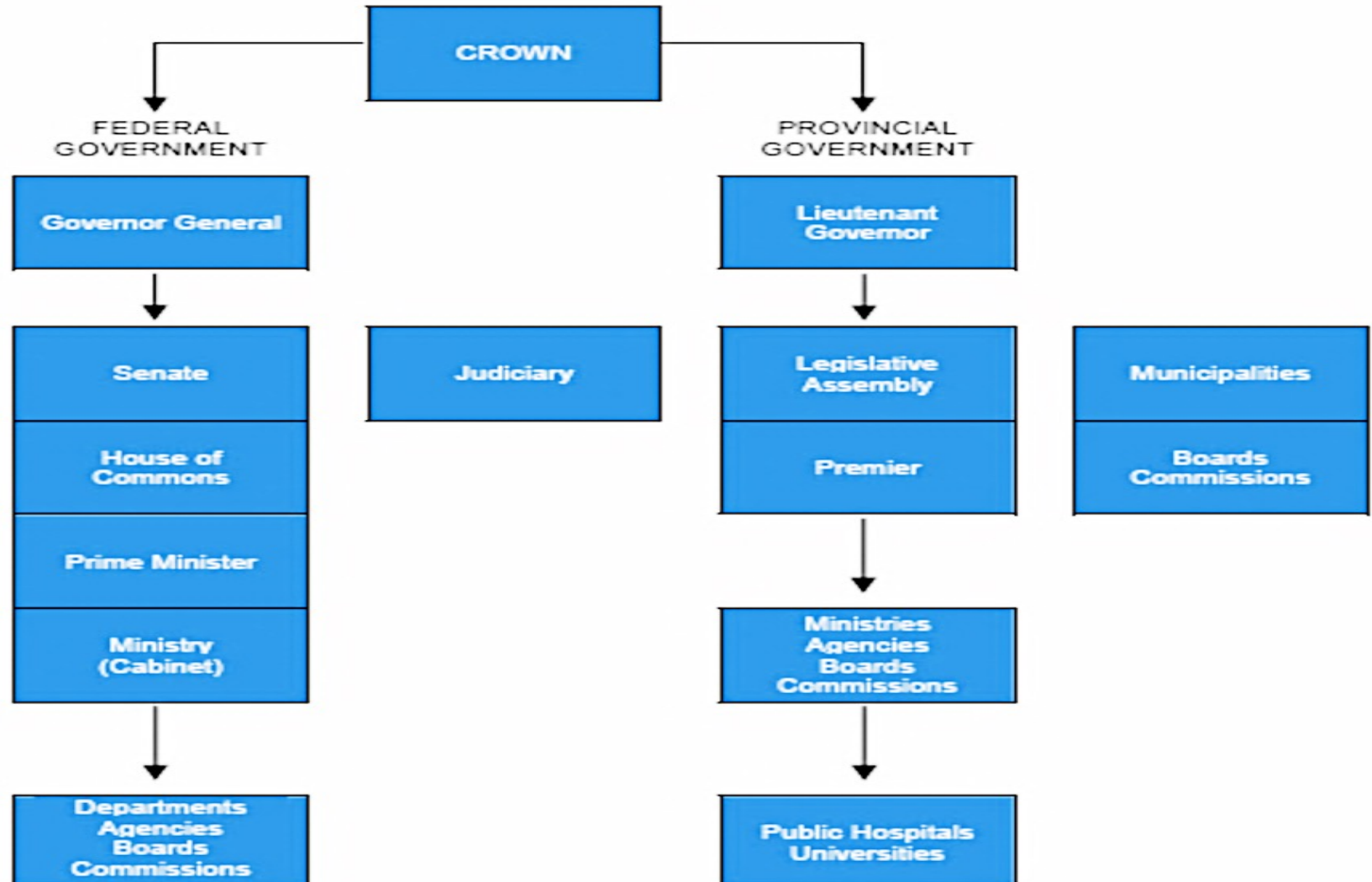


Levels of Government

- Canada has three levels of government:
 1. Federal
 2. Provincial
 3. Municipal



The Canadian Government



Federal Government



https://upload.wikimedia.org/wikipedia/commons/b/b2/Centre_Block_-_Parliament_Hill.jpg



Canadian Parliamentary System

Canada has **three** branches of government:

1. Legislative Branch
2. Executive Branch
3. Judicial Branch

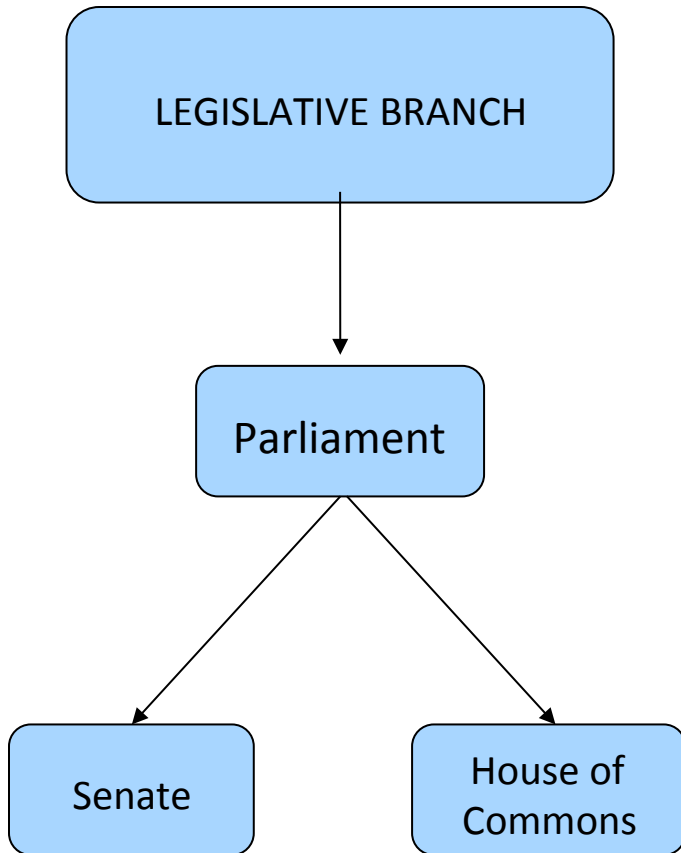


The Legislative Branch

- Parliament of Canada is the *legislative branch* of the federal government
 - Westminster System - *Bicameral Parliament*
- Parliament itself is made up of three parts:
 1. the Monarch,
 2. the Senate (Upper House) and
 3. the House of Commons (Lower House).



The Legislative Branch



- House of Commons is the major law making body
 - 333 members called MPs
 - Directly elected by voters
- Laws require the approval of both the Senate and House
 - Governor General must give a bill *Royal Assent* for it to become law

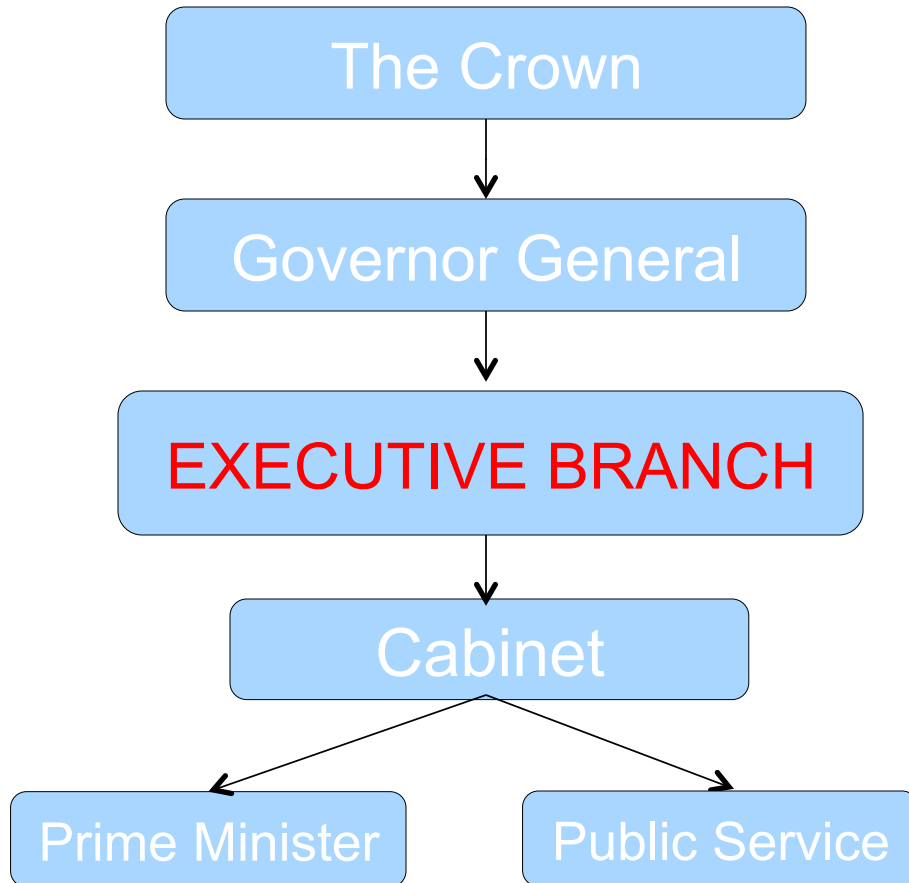


Executive Branch

- *The Government* is the Executive branch of the federal government
- Consists of the Executive
 - the Monarch and Governor General,
 - the Prime Minister and
 - the Cabinet
- ... and Federal departments
 - *i.e.* National Defence, Public Safety, Citizenship and Immigration



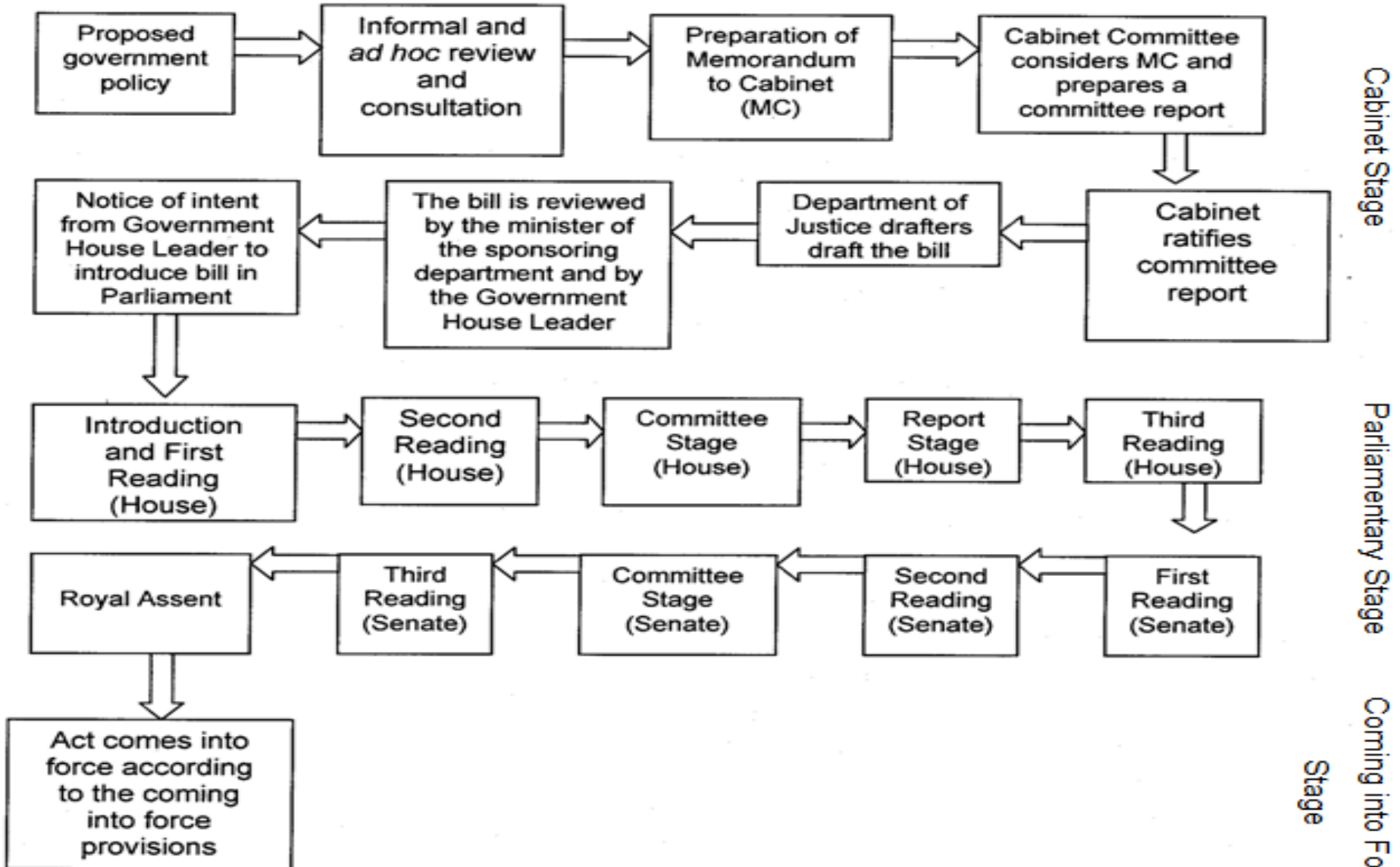
How does the Executive branch work?



- Responsible for the day-to-day functioning of government
- *Prime Minister and Cabinet* propose policies and bills
- *Public Service* executes and administers the law



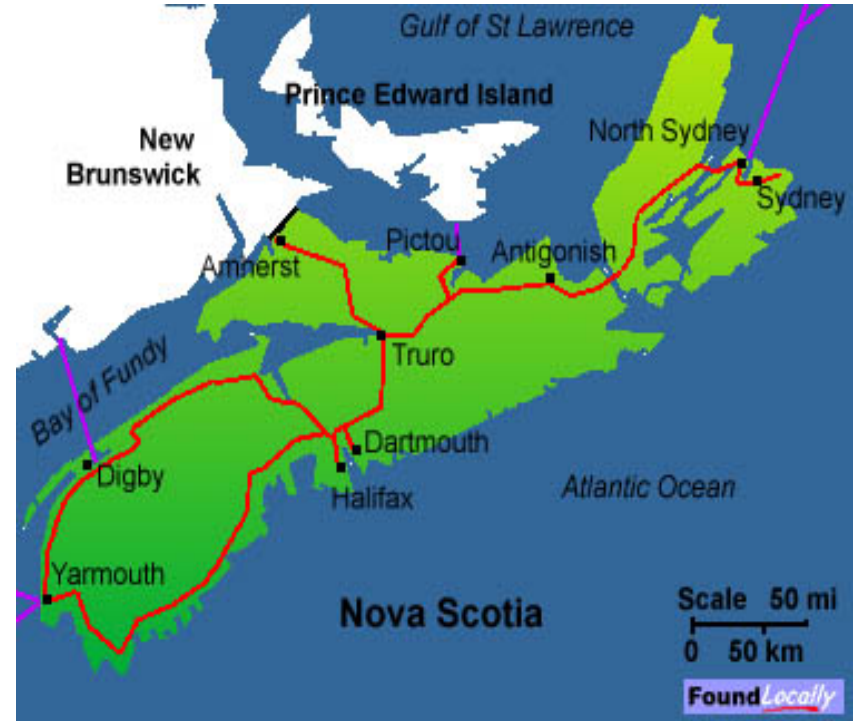
How are laws passed in Canada?



Provincial Government



[http://upload.wikimedia.org/wikipedia/commons/f/f/Province_House_\(Nova_Scotia\).jpg](http://upload.wikimedia.org/wikipedia/commons/f/f/Province_House_(Nova_Scotia).jpg)



<http://transcanadahighway.com/novascotia/map.htm>

Laws Apply only in Nova Scotia



First Nations Governance

- First Nations communities are governed by elected *Band Councils*
 - Similar to municipal governments
- Councils make decisions that affect their local communities



Canadian Court System

The Judicial Branch & the Structure of
the Canadian Court System



The Judicial Branch

- The Third Branch of Government
- The Judiciary is independent of the Executive
 - Protects the principle of *Judicial Independence*
- Responsible for upholding the Rule of Law
 - Courts provide an impartial forum for resolving disputes and enforcing laws



<http://www.cic.gc.ca/english/resources/publications/discover/images/section-10-a-Large.jpg>

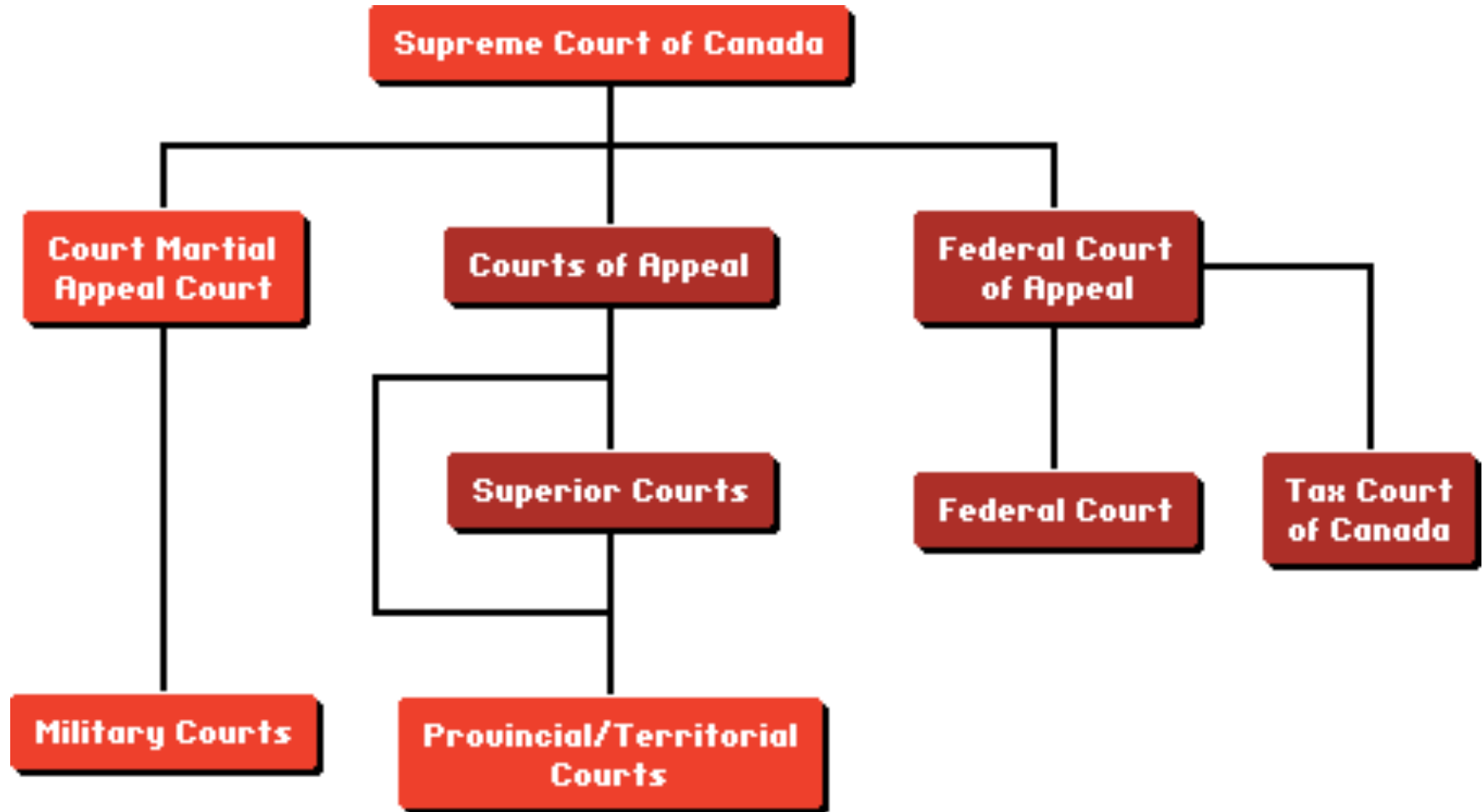


The Judicial Branch

- Courts are created and maintained by the Provinces
 - S. 92 gives the Provinces power over the “Administration of Justice”
- Judges are federally appointed, by the Executive
 - The federal government appoints and pays the superior court judges.
 - The provinces appoint and pay judges who serve in the lower courts that deal with violations of provincial laws and less serious criminal matters.



Structure of the Courts



The Supreme Court of Canada



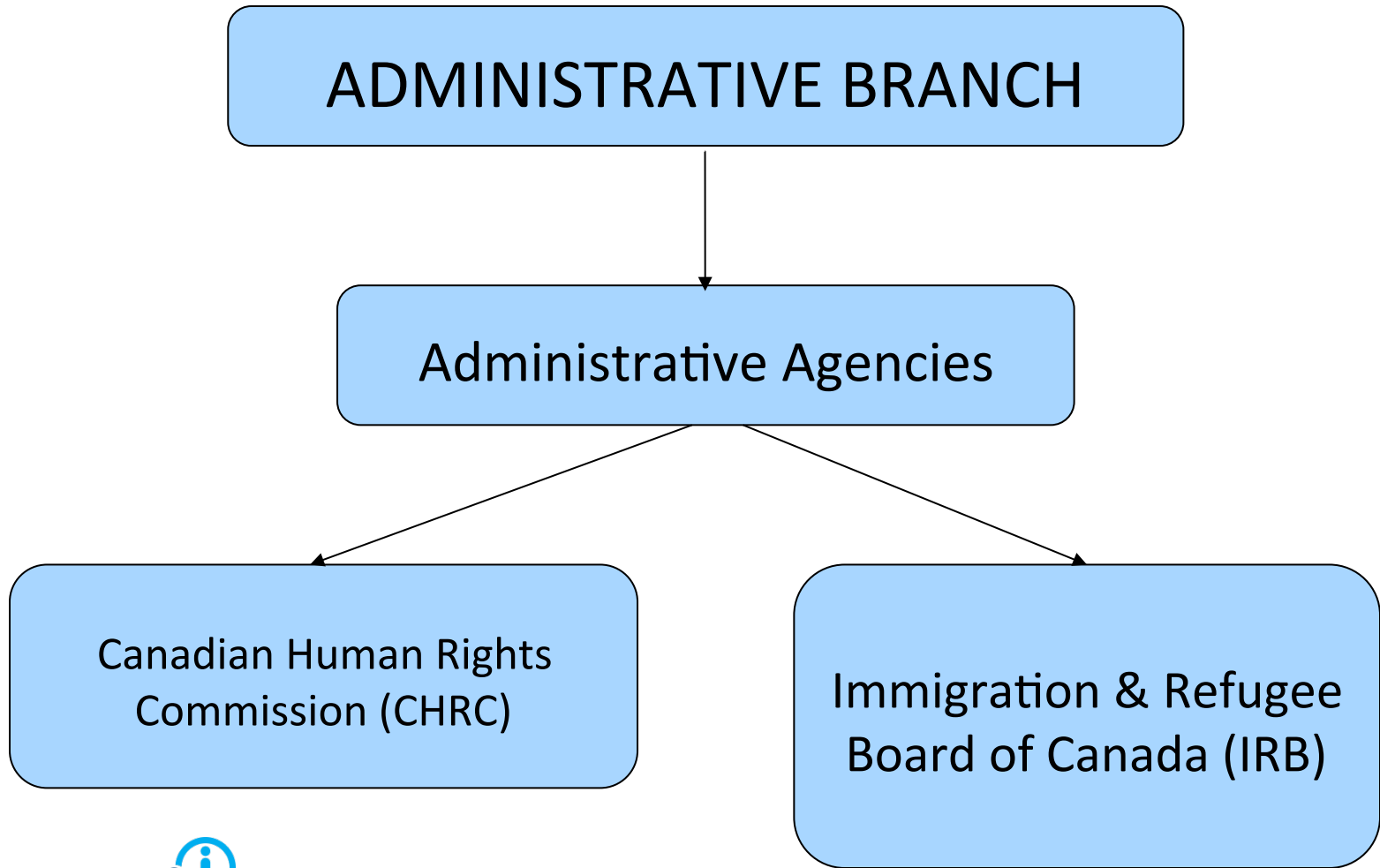
<http://jamesbredin.tripod.com/sitebuildercontent/sitebuilderpictures/supremecourtofcanada.jpg>



https://upload.wikimedia.org/wikipedia/commons/e/e9/Supreme_Court_of_Canada.jpg



The Administrative Branch



Administrative Boards and Tribunals

- Federal Administrative Branch
 - *Immigration and Refugee Protection Act*
 - Immigration and Refugee Board of Canada
 - Tribunals
 - Refugee Protection Division (RPD)
 - Immigration Division (ID)
 - Immigration Appeal Division (IAD)

Non-Court Processes

- Provincial Administrative Branch
 - Administrative Tribunals
 - *The Human Rights Act*
 - Nova Scotia Human Rights Commission
 - *Workers' Compensation Act*
 - Nova Scotia Worker's Compensation Board



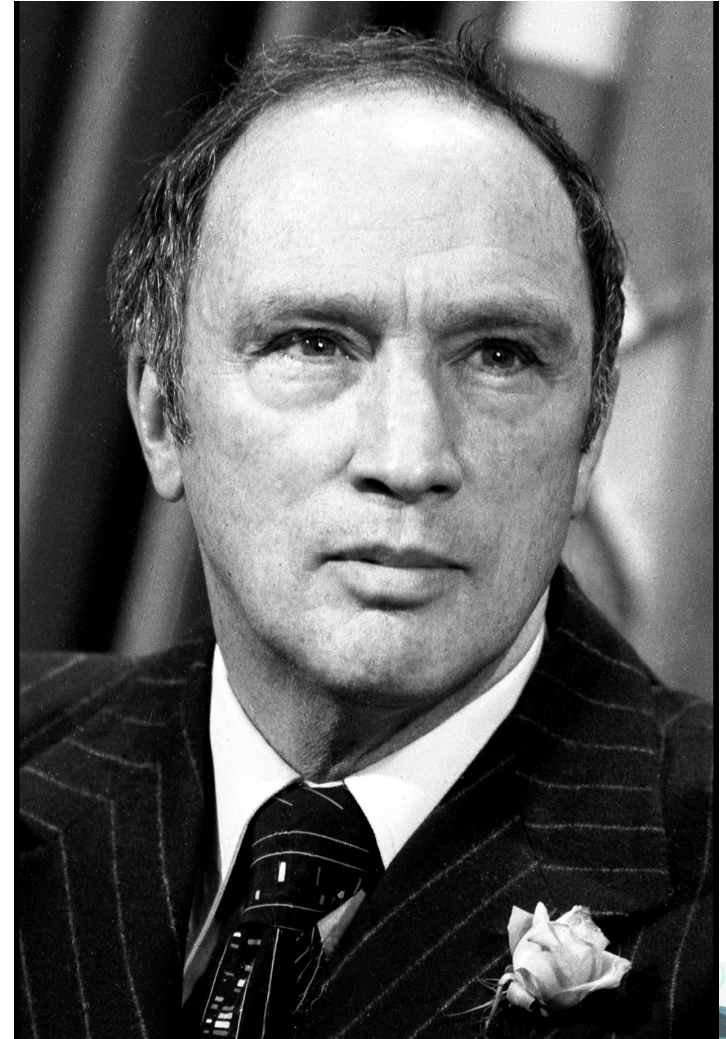
Constitution Act, 1982

Canada Act 1982 (U.K.) & Patriation of
the Canadian Constitution



The Constitution 1982

- In 1982, Prime Minister, Pierre Elliott Trudeau
“Patriates” the Constitution
- The Constitution of Canada becomes the *“Supreme law of Canada”*
- Entrenches the *Canadian Charter of Rights and Freedoms*



Constitution Act (1982)

- **Part I** – The Charter of Rights and Freedoms
 - s. 1 to 34
- **Part II** – Rights of the Aboriginal Peoples
 - s. 35
- **Section 38:** Incorporates an *amending formula*
 - Allows Canada to amend its own Constitution
- **Section 52:** “All other laws must be consistent with the Constitution”
 - *Constitutional Supremacy* increases the power of the Courts by expanding judicial review



The Canadian Charter of Right and Freedoms

What rights are protected by the
Charter and what relationships does it
Govern?



Receours

notion La loi traite personnellement de relations ou de renoncement des droits ou libertés qui la sont garanties par la présente chartre, ainsi qu'ensemble à un référentiel compréhensif pour évaluer la situation que le tribunal entend poursuivre en justice ou régler une controverse en loi. Ce concept, dans une instance de justice ou paragraphé 41, le référentiel a conclu que des dimensions de pouvoir ont été abandonnées dans des conditions qui permettent au droit ou libertés garantis par la présente chartre, des dimensions de pouvoir sont affectés et le résultat, en regard aux conséquences, que leur utilisation est susceptible de compromettre l'existence même de la justice.

Dispositions générales

notion La loi fait que la présente chartre garantit certains droits et libertés en ce point par ailleurs aux droits et libertés - autrement, sous de nombreux points des projets antérieurs du Canada, notamment, à la loi des droits ou libertés.

The Charter...

- Forms Part I of the *Constitution Act 1982*
 - Entrenches a bill of rights in the Constitution
- Protects fundamental Rights and Freedoms of all individuals in Canada
 - Section 1: these rights are not absolute
- Only applies to government laws and actions
 - federal, provincial, and municipal governments



The Charter...

- Canadian Courts play a very important role in upholding Charter rights
 - Judges have the power to strike down laws and order government to amend laws that violate the Charter
- **Section 52:** Parliamentary Supremacy is replaced by Constitutional Supremacy.
 - Limits the power of Parliament and provincial legislatures



What rights does the Charter protect?

- *Fundamental Freedoms*
 - *i.e.* Freedom of Expression, Association, and Religion
- *Democratic Rights*
 - Protect our democratic system of government and the right to vote
- *Mobility Rights*
 - Citizens and Permanent Residents have the right to move freely and live in any province, and pursue a livelihood



What rights does the Charter protect?

- *Legal Rights*

- Protect the right to *life, liberty and safety of the person*, except through proper legal procedures when dealing with law enforcement or the justice system

- *Equality Rights*

- Prevent government from discriminating against people on the basis of *race, ethnic origin, gender, age or disability*.

- *Language Rights*

- The right to use *English or French* when communicating with government

The Charter also recognizes *Aboriginal and treaty rights*



Section 27 – Multicultural Heritage

- **Section 27:** the Charter is to be interpreted in a multicultural context.



http://www.cbc.ca/polopoly_fs/1.3303842.1446664457!/fileImage/httpImage/image.jpg_gen/derivatives/16x9_620/harjit-sajjan-2014.jpg



Section 28 –Equality of the Sexes

- **Section 28:** All Charter rights are guaranteed equally to men and women



Resources

For more information please visit:

1. Parliament of Canada – About Parliament
<http://www.parl.gc.ca/AboutEducation.aspx?Language=E>
2. Government of Canada
<http://www.justice.gc.ca/eng/csj-sjc/just/index.html>
3. The Canadian Superior Courts Judges Association (CSCJA)
http://www.cscja-acjcs.ca/rule_of_law-en.asp?l=4



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Questions?

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