This essay will explain how the judiciary system functions in Canada. First, I will explain the various court levels that exist in Canada, which governments are responsible for them, and the responsibilities of each. Then I will explain in detail the special role of the Supreme Court of Canada and its many responsibilities. Finally, I will explain how the Charter of Rights and Freedoms changed the relationship between the Courts and the governments. I will do this by explaining the content of said Charter, how it affects the relationship between the courts and governments, and what tools of the Charter can be used by governments to advance their legislative agenda in the face of a possible Charter challenge

The various court levels that exist in Canada are the provincial Lower Courts, the provincial Superior Courts, the provincial Appeals Courts, and above all of these is the Supreme Court. Naturally, provincial governments are responsible for all of these except the Supreme Court which is subservient to the federal government. Each of these Court systems has a unique set of responsibilities.

The provincial Lower Courts handle most of the cases seen by courts in Canada. This includes criminal offences, financial disputes, contract law, traffic, and preliminary inquiries. The provincial Superior Courts are responsible for the most serious criminal and civil cases. These are typically divorce cases, financial disputes with large amounts of money, or serious criminal offences such as homicide. The next court system, the provincial Appeals Courts grants each province and territory an arena in which one may contest the final decision of a trial. This applies to rulings made by both Lower or Superior Courts. The final and most powerful of Canada’s Courts is the Supreme Court. The Supreme Court encompasses the entire justice system of Canada and therefore provides a variety of functionality. It is responsible for interpreting the constitution, dealing with difficult law questions, and it serves as the ultimate Appeals Court of Canada.

As the Court that presides over the entire justice system in Canada, the Supreme Court has a special role and many responsibilities within Canada’s government. It was created in 1875 to be the ultimate appellate court in Canada. It then began to interpret jurisdictional lines in 1949, taking over from the Judicial Committee of the Privy Counsel. The Supreme Court fills this role because an arbiter is required to resolve jurisdictional interpretation conflicts for both federal and provincial governments. Though the Supreme Court has an obligation to resolve constitutional heuristic issues, it does not have to for it has the power to choose which cases it considers. The Supreme Court may then refuse a request for a case’s consideration without justification and cementing the ruling from Appeals Court as final. Though the Supreme Court has this arbitrary power, there are in fact visible trends in what cases it does consider. It is more likely to consider cases that are directly relevant to the Constitution and individual rights, criminal cases, or constitutional questions. Cases that are accepted by this Court are considered by at least five justices.

The list of responsibilities continues as the Supreme Court is further responsible for answering reference questions. A reference question refers to the evaluation of a legal question the federal government asks the Supreme Court before submitting a bill. Provinces may perform this same action with their Appeals Court then the Supreme Court. This functionality ensures that unconstitutional laws are not created by governments. Formally under these circumstances, the Supreme Court is merely releasing an opinion, not a judgement. However, in practice, the result of these types of appeals are taken very seriously as they are considered to be jurisprudence.

A reference question for the Supreme Court can be a large target and the Court can be selective with what they hit. When answering reference questions, the Supreme Court can address larger considerations than the specific case that was submitted which presents a seldom experienced opportunity for the Court to go beyond the strict case before it. For it can decide to not even answer the question of it is found to be too political. Likewise, the Court may even ignore a part of the question, or address other aspects or implications of it. Notably, this type of functionality does not exist in Australia and the United States where their Court systems refuse to answer such “reference questions” under the argument that it is too political for the Courts and that their mandate ought to be limited to the specific cases presented to them. It is within the Supreme Court’s power to find laws that are unconstitutional and make them invalid. This typically happens when the federal government creates a law that is an encroachment on provincial jurisdictions or if the provincial government does the same to the federal government. For over a century, this was the only means the Supreme Court had to invalidate a law.

In 1982 the introduction of the Charter of Rights and Freedoms to the Constitution of 1875 forever changed the relationship between Canada’s Judiciary Courts and its governments. The Charter of Rights and Freedoms or more simply the Charter serves supreme above all other provincial and federal laws of Canada. It lists the fundamental rights and freedoms of Canadian citizens that cannot be limited by governments through any legislation. Because it is the supreme law of the land, any laws that are found to be in conflict with the Charter are required to be invalidated of changed. Thus, it has a great effect on the relationship between the courts and governments.

The Charter consists of a collection of rights that cannot be stripped from the individual by governments. Some of these negative individual rights are equality, freedom of expression, right to association, and freedom of religion. In addition to individual rights, sections 17 to 20 are examples of collective rights that protect linguistic minority groups by guaranteeing official bilingualism in Parliament, the Court, and any form of published law. Other such group rights can be found in Sections 35 (protection for Indigenous people’s rights), 27 (which asserts that the Charter must be interpreted to promote multiculturalism), and 23 (which guarantees more rights to linguistic minorities). The Charter both awards and restricts rights. Section 1 of the Charter makes it clear that clear that no right is absolute and the government retains the right to limit individual rights and freedoms as long as it is reasonable in a free and democratic society. Obviously the ‘as long as it is reasonable in a free and democratic society’ clause carries some weight to it and the term ‘free and democratic society’ is open to interpretation. This is a tool that could be employed by governments to advance their legislative agenda when faced with a Charter challenge. Hypothetically speaking, if a government wanted to advance an oppressive agenda, they could inhibit any rights defined in the Charter so long as their rhetoric effectively asserts that these inhibitions are perfectly reasonable in a ‘free and democratic society’. Though it would be extremely difficult to make oppressive legislation appear valid, recent political heuristics may suggest otherwise. Furthermore, an agenda of this nature would require a hefty propaganda scheme to garner trust from citizens similar to Germany’s National Socialist movement of the mid 1930’s through 1945. This, however is not the only means by which a government could advance their Charter conflicting agenda.

The notwithstanding clause in Section 33 of the Charter is used by governments who do not want to change their laws. This is the primary tool that is employed by governments to advance their legislative agenda in the face of a possible charter challenge. The clause states that governments can ignore articles 2 and 7 to 15 of the Charter which relate to fundamental freedoms, legal protections, and protection from discrimination. In order to use the notwithstanding clause it must be publicly invoked, pass a majority vote in the relevant Parliament, and may only be used five years at a time before it must be invoked again. Thus, governments willing to deny fundamental rights risk electoral punishment. For the notwithstanding clause can only be used when the public has full knowledge of its invocation.

In practice the notwithstanding clause is used very rarely by governments and has never been used by the federal government. If a government desired to advance their legislature, they can do so with the notwithstanding clause and move forward with any laws that conflict with the aforementioned sections of the charter, however, it comes at the cost of making this procedure publicly known. this presents an issue on behalf of policy makers and citizens because citizens typically do not appreciate having their fundamental freedoms, legal and discrimination protections removed. Thus, public morale and sentiment will likely deprecate for whichever government imposes the notwithstanding clause. Some examples of this are evidenced in Quebec’s usage to maintain its language laws in 1988 only to then modify it in 1993 to make it respect the Charter. Or with Alberta using the clause in 2000 to deny same-sex couples the right to be married and this being overruled due to jurisdictional reasons.

The heuristic matter of the first section of the Charter of Rights and Freedoms and the notwithstanding clause of Section 33 serve as the tools with which a government could advance an agenda that has conflicts with the rights granted otherwise. Though the first section has not been used to do this yet, as we continue into the era of virtual realities and misinformation it is likely that it will be exploited in the future in junction with a massive propaganda campaign. Maybe it has already begun. The latter section, 33, defines the notwithstanding clause which has in fact been used by provincial governments to advance legislature that directly conflicts with fundamental freedoms. The two appear to be compliments in that Section 1 quite possibly requires no knowledge on behalf of the citizen that it is being invoked and it depends on how reasonable the limitation of fundamental rights is and thus requires cooperation on what a free and democratic society is. Whereas section 33 requires no cooperation of this sort and can be invoked at the will of the government, at the sacrifice of loosing public morale and support. The checks and balances appear to check and balance effectively here, at least on paper, but as previously mentioned, we have yet to witness the abuse of Section 1.

The Judiciary System of Canada is clearly a broad system and is quite complex. But when it is broken down and the interrelations of each institution are defined, its functionality becomes much less opaque. The three levels of provincial court work together to provide a filter for issues that do not need to be addressed by the Supreme Court while the Appeals Courts provide a means to advance important issues to the top level. The Supreme Court maintains the highest level of power of all the Courts and thus deals with matters of utmost importance. and finally, the