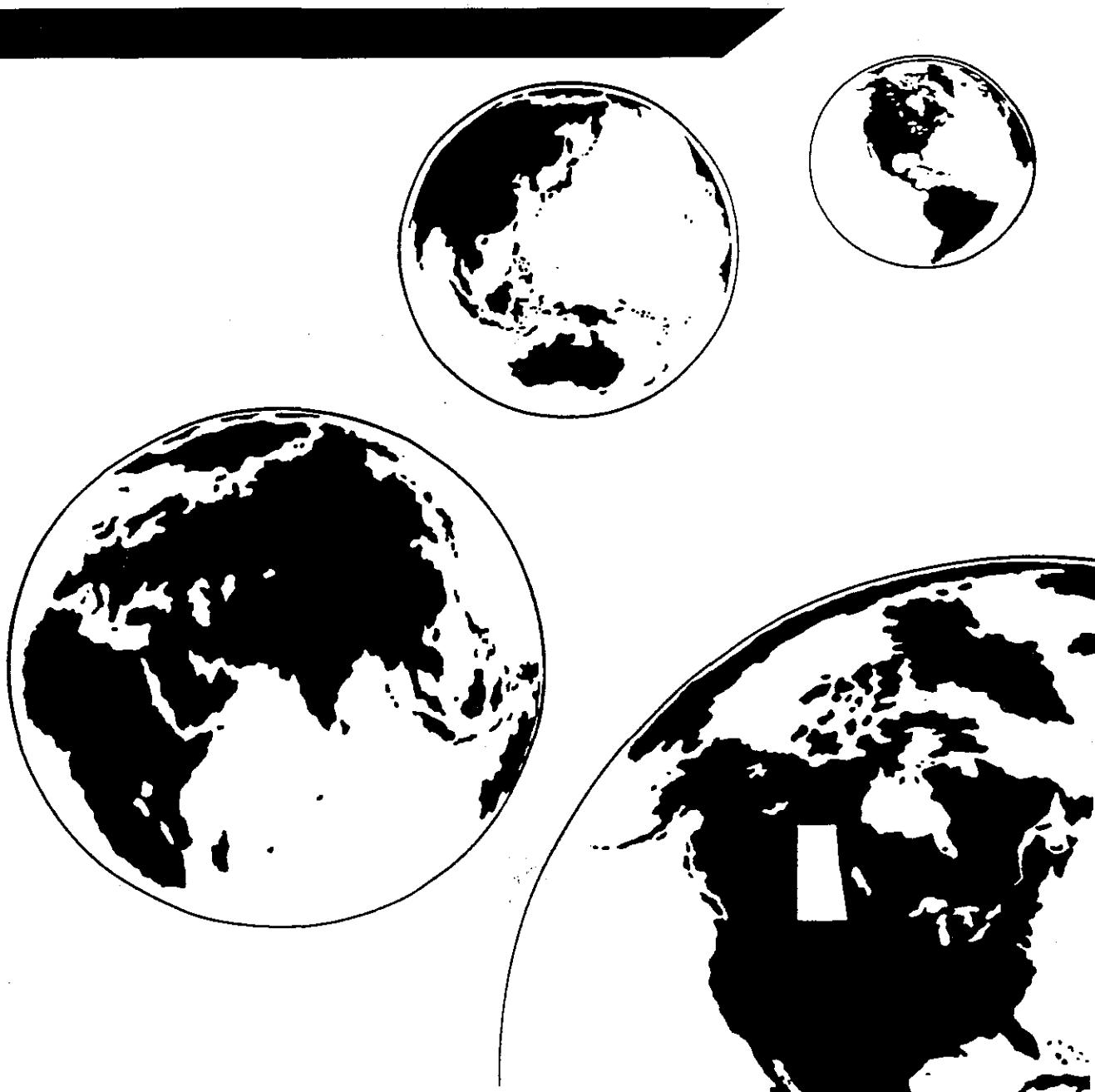




Saskatchewan
Learning

Law 30: The Law and You

A Curriculum Guide for the
Secondary Level



September 2002



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Introduction



Law 30 Education - Program Aim

Law is considered to be part of social science education, which refers to the disciplines that deal with the characteristic elements of human society. The Law 30 course is designed to assist students to become active, informed and productive citizens who know and understand their legal rights and responsibilities. Through the course, students develop an understanding of the concept of rule of law, and learn that the law reflects, and is shaped by, society's values and attitudes regarding social and human relationships. The course begins by developing students' understanding of the abstract nature of law, its sources and purposes. The abstract nature of law is made relevant through study of the concrete application of law to current legal issues in Canada and the global community. Topics addressed include foundations of Canada's legal system, criminal and civil law, family law, employment and labour law, contract and consumer law, environmental law and international law.

Goals

The general goals of the Law 30 program are to help students to:

- understand that law is part of everyday life
- understand fundamental legal principles, practices and consequences
- recognize, accept and act upon their legal rights and responsibilities
- develop knowledge, skills and positive attitudes about the law
- develop problem-solving and decision-making skills with regard to legal issues and problems
- develop critical analysis and dialectical thinking skills, including the ability to evaluate and resolve law-related issues
- communicate effectively to share their understanding and ideas, and to share and defend their opinions
- develop an appreciation of the individual's ability to influence the law
- explore law-related career opportunities and options
- develop skills in working independently, as well as collaboratively and cooperatively.

Principles

Curriculum principles are fundamental beliefs intended to guide and support decisions related to teaching and learning—decisions about curriculum, classroom environment, resource selection, instruction, and assessment and evaluation. The following principles, based upon current research and knowledge about teaching and learning, are designed to guide instruction and learning in Law 30.

Curriculum Principles

Learning	Teaching
Students learn most effectively in environments that promote active learning through purposeful and challenging experiences.	Instructional strategies that provide for maximum student participation such as debate, role play, simulation and field experiences encourage problem solving, dialectical thinking, decision making, discussion and reflection.
Students learn and develop in different ways and at varying rates.	Instructional strategies that appeal to a variety of learning styles provide opportunities for interaction and collaboration, as well as for independent learning. Adaptations to the learning environment, the resource materials, or in the areas of instruction and assessment accommodate individual needs and abilities.
Students learn most effectively when they know, and actively select and apply, strategies to develop understanding and make meaning.	Instruction should provide opportunities for students to learn a variety of strategies for understanding, generating and applying new knowledge, skills and attitudes.
Students learn most effectively when they find personal relevance in the concepts, knowledge, skills and values being taught.	Instruction should clearly establish connections between what is taught and students' current lives and situations, encouraging them to make meaningful connections between their prior knowledge and experiences and newly acquired knowledge and experiences.
Students develop a sound understanding of their abilities and needs when assessment and evaluation are integral components of the learning process, and when they are aware of the criteria by which they will be assessed, prior to the assessment.	Assessment and evaluation should be continuous, and consist of a variety of methods of collecting, sharing and using data. Teachers should provide frequent opportunities for students to assess and evaluate their own learning and performance, and to set goals for further learning. Assessment and evaluation must include skills and processes, as well as content and products.
Students develop and clarify their own views and values, and come to understand and respect the views and values of others, through opportunities to reflect on information and ideas from a variety of perspectives.	Instruction should use a variety of strategies to encourage students to examine, clarify and reflect upon their values and viewpoints, as well as to consider and discuss several perspectives regarding a variety of concepts, issues and topics.
Students' language skills and abilities are integral tools for learning, both independently and collaboratively.	Instruction should engage students in the language processes of listening, speaking, reading and writing , and should provide support for them as they use these processes to develop concepts and clarify and extend their understanding of subject-specific material and vocabulary.

Teachers' Roles

The teacher's role in understanding students' needs, and engaging them in their learning experiences includes:

- learning about the students and their interests, abilities and learning styles
- planning classroom environment and routines
- organizing classroom facilities and resources
- planning and organizing for instruction
- planning and organizing for assessment and evaluation
- planning for communication with students' families
- reflecting upon the effectiveness of their planning, instruction and assessment as a means of gathering information about their students' progress and instructional needs, and the success of their practice.

Learning About the Students

One important aspect of planning and organizing for instruction is acquiring an understanding of the students. While talking directly with each student provides information about how each student perceives himself or herself as a learner, it is also useful to:

- administer oral or written diagnostic questionnaires or surveys to assess students' current skills, abilities, attitudes and interests
- consult available personnel, student portfolios and records from previous years
- consider the potential for using previously successful adaptations with each student, and plan other adaptations that address specific students' learning requirements.

Instruction and learning are both improved when teachers take every opportunity to learn about their students' strengths and needs. The diagnostic information gathered allows teachers to individualize instruction and assessment to meet the needs of each student.

Planning Classroom Environment and Routines

Another aspect of planning and organizing for instruction involves establishing the classroom environment and routines conducive to learning.

Teachers are encouraged to include students in setting some of the routines and expectations for use of classroom spaces, and for participating appropriately as a community of learners. When establishing positive environments and clearly defined routines, it is important to:

- emphasize the value of a classroom community where students feel safe enough to take risks when expressing their ideas or attempting new learning experiences
- establish roles and expectations for group members during collaborative and cooperative discussions and activities
- establish expectations for independent learning experiences
- involve students in determining some expectations and routines so that they take ownership and responsibility for adhering to them
- explain and discuss the regular use of learning and assessment tools (e.g., learning logs/notebooks, computers and computer programs, portfolios, checklists).

Organizing Classroom Facilities and Resources

Some suggestions for organizing classroom facilities and resources to support the philosophy of learning advocated in this curriculum guide include:

- Arrange the classroom furniture to accommodate both group and individual student activity. Clusters of desks or large round tables facilitate large and small group interaction, while single desks and secluded nooks provide places for individuals to work and learn independently.
- Collaborate with the teacher-librarian or other personnel to develop a classroom resource collection that supports the current unit of study.
- Reserve at least one wall or bulletin board area for displays related to the current unit of study. Encourage students to contribute to the display.
- Designate display areas for students' projects and multimedia products.

Planning and Organizing for Instruction and Assessment

Saskatchewan Learning has identified the amount of instructional time that must be allocated to each Specified Area of Study. Teachers are expected to provide 100 hours of instruction in one semester of Law 30.

Information about a variety of instructional and assessment strategies, as well as sample assessment templates are available online on the Evergreen Curriculum at www.sasked.gov.sk.ca. Teachers are encouraged to adapt these as necessary to meet the needs of individual students.

Communicating with Students' Families

It is important to establish regular, positive communication with students' families. The following suggestions may be helpful:

- involve students in establishing procedures for regular communication with their families
- provide opportunities for significant, relevant involvement of parents in classroom activities and learning experiences
- acknowledge and be sensitive to the diversity of family structures, and to the economic, ethnic and cultural backgrounds of family members
- encourage the exchange of informal notes and telephone calls between family members and the teacher
- arrange in-home visits to get to know parents and caregivers, and encourage them to ask questions and to discuss students' progress reports
- use available technology (e.g., post, e-mail, Internet) whenever possible to enhance communication with family members
- invite students' parents/caregivers or other family members to volunteer in the classroom or school, in capacities that make them feel comfortable and feel that their contribution is worthwhile, but be aware of and sensitive to such matters as family schedules and availability.

Reflecting Upon Practice

Whether beginning the second year or second decade of their careers, teachers benefit from the accumulated understanding that is the result of reflection on past practice and experience. In the contexts of their classrooms, teachers are asking questions and gathering information that continues to shape their practices as they apply what they discover to subsequent classroom teaching and learning situations.

Teachers who approach each day as reflective practitioners consider what they know and believe about aspects of their daily practice such as:

- students: their interests, strengths, needs, personal learning goals and abilities

- curriculum: philosophy and expectations, aim, goals and instruction/assessment suggestions
- their own philosophy: about instruction/assessment, and how theirs is similar or different to that of the curriculum
- their own reflective practices: what they reflect upon, why they choose those areas and what requires reflection next.

Note: Sample reflective checklists for many subject areas can be located on the Saskatchewan Learning website at <http://www.sasked.gov.sk.ca>. These checklists may be used to construct ones that are applicable to individual teacher needs and goals.

Core Curriculum Components and Initiatives

Saskatchewan's Core Curriculum includes seven Required Areas of Study, several Specified Areas of Study (of which Law 30 is one), Locally Determined Options, the Adaptive Dimension and the Common Essential Learnings. In addition, Saskatchewan Learning has implemented a number of related initiatives in the areas such as gender equity, resource-based learning, Aboriginal education and multicultural education. This section describes these components and initiatives, and their particular application to Law 30.

Adaptive Dimension

The Adaptive Dimension refers to the teaching practice of making adjustments in approved educational programs to accommodate diversity in student learning needs and abilities. Teachers have flexibility in selecting resource materials, instructional methods, assessment strategies and learning environments that are appropriate for each student.

The essence of the Adaptive Dimension lies in the phrase "seeking other ways," providing students with alternative means of accessing and expressing their ideas and knowledge that facilitates their abilities to learn. Just as physical environments can be made more accessible through modifications such as ramps or wider doorways, learning environments can be made more accessible through adjustments in settings, instructional and assessment strategies or resource materials.

The Adaptive Dimension serves to:

- maximize student learning and independence
- reduce discrepancies between ability and achievement
- promote positive self-concept and a sense of belonging
- foster a willingness to become involved in learning.

Teachers are encouraged to engage in collaborative planning for instruction, which may involve consultation with students, parents/caregivers and various professionals, in order to determine the adaptations necessary to maximize students' potential and enhance their abilities as an independent learners.

Effective implementation of the Adaptive Dimension means tailoring instruction, assessment, resources and the learning environment to meet individual needs; therefore, the extent of the adaptation and the duration of the adaptation will vary for each student. This is why groupings of students should be set for a short duration, in response to needs, rather than as permanent arrangements.

Some guidelines for incorporating the Adaptive Dimension include:

- Create a classroom environment in which students' backgrounds, cultures, interests, language, thinking abilities and learning styles are accepted and respected.
- Vary instructional strategies and methods to meet the needs of all students.
- Use a variety of assessment techniques to ensure the continuous observation, recording and reporting of students' growth, strengths and needs.
- Alter the pace of lessons to ensure that students understand the concept being presented or that students are being challenged by the presentation. Give students sufficient time to explore, create, question and experience as they learn.
- Encourage a variety of responses and culminating activities, including oral, written, visual, dramatic and multimedia.
- Incorporate flexible grouping, cooperative learning strategies, peer response and collaborative groups to promote development of concepts, language and skills.
- Involve students, as often as is possible, and when appropriate, in planning for their own learning, instruction and assessment.

The Adaptive Dimension includes all practices teachers employ to make concepts and activities

more appropriate and relevant for students.

Reflective practice allows teachers to make informed decisions about individual student needs and abilities. It is important to be flexible; the less rigid the setting and approach, the more easily it can be adapted. For more information about adapting for student learning, refer to *The Adaptive Dimension in Core Curriculum* (Saskatchewan Education, 1992).

Common Essential Learnings

The Common Essential Learnings refer to those learnings that are common to all subject areas and can be incorporated in relevant contexts throughout the year. Law 30 offers many opportunities for developing the Common Essential Learnings (C.E.L.s) in authentic ways. Some guidelines for incorporating each of the C.E.L.s follow.

Communication

The teacher should:

- encourage students to represent their thoughts and understandings in written, spoken and visual formats
- instruct students about reading and writing strategies that are useful in the content area of Law 30 (e.g., selecting appropriate formats for expository text, summarizing, locating the main idea or viewpoint expressed) and model these strategies to scaffold student learning
- develop students' law-related vocabulary so that they acquire the terms and the language with which to discuss the subject-specific information, issues and concepts
- value students' existing language competencies and extend their language abilities by building on the language skills they bring to the classroom
- follow student responses with requests for elaboration, clarification, evidence, reasons and judgement.

Creative and Critical Thinking

The teacher should:

- facilitate students' reflective and dialectical thinking, and encourage their critical and creative responses to issues and ideas
- encourage students to articulate interpretations, opinions and conclusions, then to support and/or defend their assertions and responses to ideas, actions and information
- have students analyze the content, presentation and biases of popular media for accurate and realistic portrayal of society and human behaviour

- encourage students to use analogies and metaphors in descriptions and comparisons, and in attempts to understand unfamiliar concepts, ideas and information
- encourage students to look for and create patterns and identify relationships among ideas, as well as among historical and contemporary issues, people and events
- extend students' abilities to infer, generalize, classify, categorize, organize and summarize ideas and information, orally, visually and in written form.

Personal and Social Values and Skills

The teacher should:

- model and encourage sensitive, respectful responses to the beliefs, views and abilities of others
- help students' connect their understanding and life experiences with historical and contemporary events and issues, so that they begin to acquire rational processes for examining value claims and moral dilemmas
- incorporate multicultural content and perspectives into units of study to extend students' understanding and appreciation of cultural diversity and richness
- extend students' awareness of cultural, racial and gender bias in print and non-print resources and in real life experiences
- provide frequent opportunities for students to work collaboratively and cooperatively in a variety of group structures (e.g., interest groups, friendship groups, homogenous groups, ability groups, gender mixed groups)
- provide instruction and practice for students to develop their collaborative and cooperative skills, abilities and attitudes.

Independent Learning

The teacher should:

- encourage students to gather information and ideas from a variety of sources and materials
- provide frequent opportunities for student choice in selecting law-related research topics, issues and events
- involve students in reflecting upon and assessing their learning experiences and identifying their strengths and needs
- extend students' abilities to reflect on experiences through the use of oral, written and visual means (e.g., learning logs, surveys, reports, discussion, graphic organizers)

- involve students in a variety of ways of learning (e.g., observing, interviewing, discussing, reading, viewing).

Numeracy

The teacher should:

- provide opportunities for students to interpret and produce relevant graphs and charts to enhance their own understanding of information, and to convey their ideas and information to others
- provide opportunities for students to discuss the meaning of commonly used quantitative terms in the context of their learning experiences (e.g., in understanding statistics, making comparisons, making inferences)
- develop students' understanding of quantitative information as it contributes to their learning in a lesson or unit of study.

Technological Literacy

The teacher should:

- extend students' technological vocabulary and their awareness of how technological developments affect and change individuals and cultures
- develop students' understanding of ways that technology impacts their lives, the environment and society at large
- help students determine and understand their role in using, and therefore in shaping, technological developments.

The development of the Common Essential Learnings throughout the Law 30 program will assist students with various personal, social and academic challenges. For more information, refer to *Understanding the Common Essential Learnings: A Handbook for Teachers* (Saskatchewan Education, 1988).

Within the units of study in this curriculum guide, the C.E.L.s objectives are identified using the following abbreviations:

Communication	COM
Critical and Creative Thinking	CCT
Personal and Social Skills and Values	PSSV
Independent Learning	IL
Numeracy	NUM
Technological Literacy	TL

Gender Equity

Expectations based primarily on gender limit students' ability to develop to their fullest potential. While some stereotypical views and practices have disappeared, others remain, and endeavors to provide equal opportunity for male and female students continue. It is the responsibility of schools to create an educational environment free of gender bias. This can be facilitated by increased understanding and use of gender-balanced resources and language, and by employing non-sexist language and instructional and assessment approaches.

The suggestions in *Gender Equity: Policy and Guidelines for Implementation* (Saskatchewan Education, 1991) will help educators to promote gender equity and understanding. The following guidelines reflect the equitable approach incorporated in this curriculum guide.

The teachers should:

- select and use resources that reflect the current and evolving roles of women and men in society
- have equally high expectations for both male and female students
- incorporate flexible and diverse groupings for projects and activities
- model and encourage gender-fair language in all classroom interactions
- instruct students on how to recognize gender inequities in what they read, view, hear, say and write
- examine classroom resources for gender equitable content and perspectives and discuss gender-biased materials with students
- seek a balance of female and male representatives of historical and contemporary concepts, issues and events
- ensure that students of both genders have comparable time and access to equipment and resources, including the teacher's time and attention.

Resource-Based Learning

In a resource-based program, teachers can assist the development of attitudes and abilities needed for independent, lifelong learning by using a variety of resources and instructional approaches. Teachers, in collaboration with teacher-librarians or other personnel, can plan to use resources in diverse ways for different purposes. This approach teaches students the processes required to locate, select, organize, analyze and apply information.

Resource-based learning offers students and teachers increased opportunities to share the responsibility for determining the skills, processes and resources for individual learning requirements. Students in resource-based classrooms learn to select and use resources produced in a variety of media and best suited to their learning needs, abilities and interests. Resource-based education accommodates all learning styles and provides opportunities for students at all levels of ability.

The following guidelines will help teachers to implement resource-based learning in their Law 30 classrooms.

The teachers should:

- involve students in the planning process whenever appropriate by discussing unit topics, objectives, resources, activities, concepts, interests and needs
- allow flexibility and choice over the course of the school year by negotiating such things as research topics, activities and projects with students
- select a wide range of visual, auditory and human resources
- encourage students to explore a wide range of print and non-print material for information and enjoyment, and to investigate a variety of sources such as those found in school and public libraries, electronic databases and at home or in the immediate community
- model resource use by performing as a co-learner with the students and by choosing diverse resources for instruction and student use
- include learning experiences that incorporate the need to locate, analyze, organize and apply information gathered
- instruct students about how to determine the skills and identify the resources that they will need to accomplish a learning task or address personal needs and interests
- design learning activities that incorporate resource-based assignments and unit projects
- collaborate with teacher-librarians and other personnel in planning and teaching units of study.

Aboriginal Content, Perspectives and Resources

The inclusion of Aboriginal content, perspectives and resources in the Law 30 curriculum fulfills a central recommendation of the *Indian and Métis Education Policy from Kindergarten to Grade Twelve* (Saskatchewan Education, 1995), which states:

Saskatchewan Learning recognizes that the Aboriginal peoples of the province are historically unique peoples and occupy a unique and rightful place in society today. Saskatchewan Learning recognizes that education programs must meet the needs of Aboriginal peoples, and that changes to existing programs are also necessary for the benefit of all students (p. 6).

Knowledge of Aboriginal peoples promotes understanding and positive attitudes in all students, including those who are from Aboriginal backgrounds. An effective way of teaching the content is to use quality resources written and produced by and about Aboriginal peoples. Carefully selected materials and resources can provide a vehicle whereby harmful effects of inaccurate thinking can be identified and addressed in a positive manner. Awareness of one's own culture and the cultures of others develops self-esteem and promotes appreciation of Canada's cultural diversity.

As is the case for all students, Aboriginal youth grapple with the complex factors at work in identity formation (such as gender, family, socio-economic class, culture, religion and regional background), and the nature of their own membership in society and the global community. Unfortunately, the issues around identity for Aboriginal students can be further complicated by the negative attitudes and perceptions that they sometimes encounter. This can result in a serious loss of self-esteem, confidence and/or motivation to succeed in school. Informed teachers can counter these negative effects on identity and self-concept through effective teaching.

Aboriginal students in Saskatchewan possess a wide range of physical characteristics and come from extremely diverse cultural backgrounds and social environments including northern, rural and urban areas. Levels of ethnicity or the degrees to which individuals choose to identify with the cultures of their families of origin also vary and change over time. Teachers who recognize and affirm this diversity, and the complex factors surrounding identity formation, enhance the educational experience of all students. It is important that curriculum, resources, and instruction and assessment strategies foster personally meaningful and culturally identifiable experiences for Aboriginal students.

The language abilities of Aboriginal students in Saskatchewan range from fluency in an Indian language, to degrees of bilingualism in an Indian language and in English, to fluency in English. Some students may speak a variety of dialects of English. (Dialects feature variations in

pronunciation, grammar and syntax that are the result of influences from the mother tongue.) Such variations in oral language are normal and should not be perceived as evidence of language deficiency. Teachers who understand and respect linguistic diversity use a variety of teaching strategies that build upon their students' existing knowledge of language to further extend their English language abilities. Cross-cultural education, language acquisition theory and second language teaching strategies will assist teachers in meeting the needs of individual students. As well, it is crucial to use a variety of instructional, motivational and assessment approaches that are sensitive to the range of Aboriginal cultural values and ways of communicating.

Law 30 instruction must include accurate and appropriate Aboriginal content, resources and perspectives. Teachers have a responsibility to evaluate all resources based upon criteria such as literary and structural excellence, informational accuracy and freedom from bias and stereotyping. As students develop their ability to think critically, they will be able to recognize bias and stereotyping in what they read, view, hear, say and write.

Guidelines in Diverse Voices: Selecting Equitable Resources for Indian and Métis Education (Saskatchewan Education, 1995) can assist teachers and students in understanding examples of bias and stereotyping in resources that inaccurately portray Aboriginal peoples, and assist teachers and students in choosing materials that present Aboriginal peoples in a fair and equitable manner.

The following points, taken from *Indian and Métis Education Policy from Kindergarten to Grade Twelve* (Saskatchewan Education, 1995), summarize the expectations for inclusion of Aboriginal content, perspectives and resources in curriculum and instruction.

- Curricula and resource materials will concentrate on positive images of and accurate information about Aboriginal peoples.
- Curricula and resource materials will reinforce and complement the beliefs and values of Aboriginal peoples.
- Resources and materials by Aboriginal authors and creators will be used whenever possible and appropriate.
- Curricula and materials will reflect the legal, political, social, economic and regional diversity of Aboriginal peoples.

Multicultural Content, Perspectives and Resources

Multicultural education fosters understanding, acceptance, empathy and constructive and harmonious relations among people of diverse cultures. It encourages learners of all ages to view cultures different from their own as sources of learning and enrichment. "All students benefit from an opportunity to experience a wide variety of world views to help learn compassion, acceptance, and understanding. The classroom should be a place that celebrates and honors diversity to the benefit of ALL its members." (Saskatchewan, Professional Development Unit, 1996, p. 3.)

While the first and most lasting influence on a child is that of the home environment, educators and educational institutions have a responsibility to prepare children to function in our culturally diverse society. The educational system must address a variety of issues with cultural diversity in mind: second language programming, teaching and learning styles, curriculum and resource materials, teacher attitudes and expectations, student groupings, and assessment and evaluation. Sound teaching practices such as being aware of a child's social and psychological background, encouraging the development of self-esteem and responding to individual needs are consistent with the philosophy underlying multicultural education.

Multicultural Education and Heritage Language Education Policies (Saskatchewan Education, 1994) identifies goals that provide a foundation for multicultural education in the classroom. These goals include self-concept development, understanding and relating to others, spiritual development and membership in society.

To demonstrate and promote cultural respect and understanding, teachers should:

- affirm each student's language use as unique and important
- accept and respect the language that each student brings to the classroom
- become educated about the cultural backgrounds of their students
- determine if unexpected behaviours and actions reflect a student's culture
- respect students' knowledge about their own cultures
- build a classroom environment that discourages racial put-downs of others' language usage and abilities, and their cultural and ethnic backgrounds

- deal with racist incidents in a positive manner, if they occur
- view students of all cultures as having equal potential
- become informed about a variety of cultures and inform their students
- help students to understand that individual identities are shaped by many factors, one of which is cultural background
- give students opportunities to select and respond to the resources that they listen to, read and view
- encourage students to read, view and listen to a variety of resources and media representative of cultural groups with which they do and do not identify
- encourage students to take risks when expressing themselves in spoken and written forms
- use interpreters for second language speakers (e.g., parents, community members)
- use a variety of instructional and assessment strategies to accommodate students' cultural learning preferences and backgrounds
- develop students' collaborative and cooperative skills and attitudes through group work, problem solving discussions and consensus activities
- encourage students to talk and write about their experiences and places they have lived or travelled
- provide opportunities for students to tell their stories orally and in writing
- choose resources and media selections that represent a diversity of cultures and cultural perspectives
- discuss stereotypical beliefs and cultural biases in resources and media.

The inclusion of multicultural content, perspectives and resources helps students to develop multicultural perspectives that prepare them to live more enriched and compassionate lives while contributing harmoniously to a pluralistic society.

Portrayal of Persons with Disabilities

Persons with disabilities have often been depicted inaccurately in print, media and other classroom resources. Stereotypical depictions have served to give readers, listeners and viewers inappropriate information and have engendered attitudes ranging from feelings of pity or revulsion to expectations of superhuman powers of intellect or insight. It is critical that teachers use resources and materials that portray persons with disabilities realistically and fairly.

Wherever possible, ability rather than disability should be emphasized. Materials implying that persons with disabilities must be cared for or pitied should not be used. Materials should convey respect for the individuality of all persons, including those with disabilities. For example, terminology such as "people with disabilities" or "has a disability" should be used rather than terms like "the less fortunate," "afflicted" or "suffers from a disability" that tend to have negative connotations.

Heim (1994) suggests that it is important to be aware that literature, the media and other resources frequently portray people with disabilities in a stereotypical way. When evaluating material for use in the Law 30 classroom, the teacher should consider the following:

Accuracy of Information

Accurate and up-to-date information should be used in the resource to describe the disability. The best approach is one where aspects of the disability are revealed, not as the main focus of the text, but through the unfolding of the documentary or story.

Stereotypes

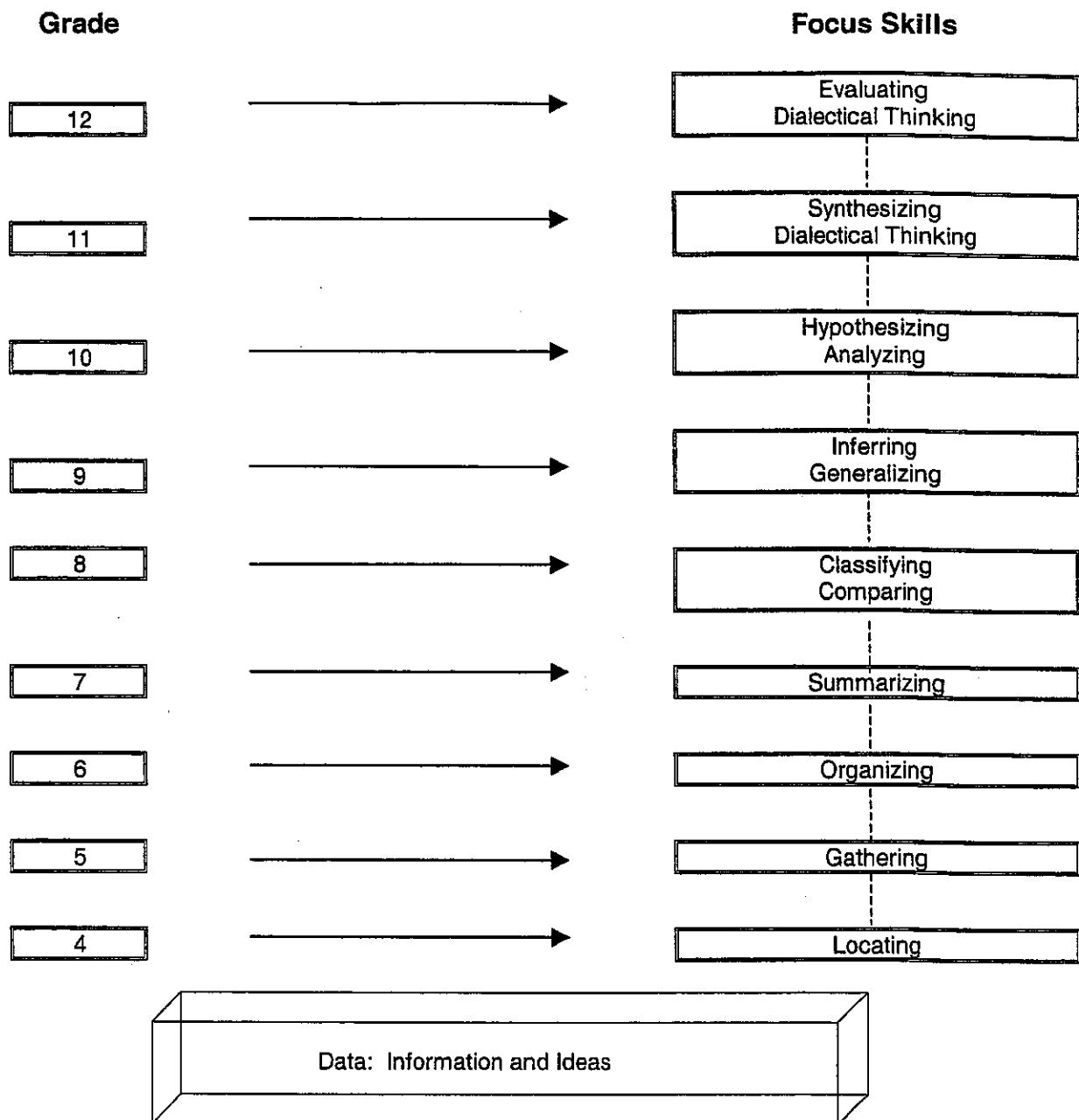
Stereotypes frequently found in media portrayals of people with disabilities include: pitiable and pathetic, objects of violence or burdens who are incapable of fully participating in everyday life. Material that include characters or people with disabilities should provide an insight into the feelings and thoughts of the individuals with disabilities. The characters should not be used to provoke certain feelings and thoughts in the reader, listener or viewer (e.g., pity).

Learning Skills Development

Skill development requires systematic instruction within meaningful contexts, immediately followed by opportunities to practise and apply new skills. Social Sciences tasks require both technical and cognitive skills, skills that assist students to locate and process information, attain concepts, learn new skills and develop understanding of values and attitudes. While students use all of the skills, to some degree, in each grade, skill attainment requires sequential learning within a development context. Therefore, the skill or skills that provide the focus in one grade serve as the basis for the skills to be learned in subsequent grades. However, teachers should not assume that all students have achieved independence in a skill identified at a lower grade

level. Teachers need to make diagnostic assessments on a continuous basis, and help students to develop skills as necessary.

Sequence of Skills



Units of Study

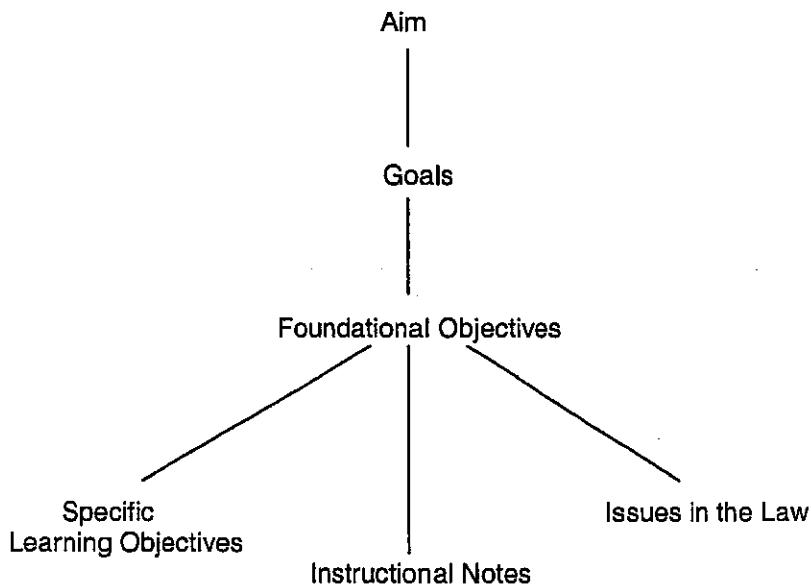


Using This Curriculum Guide

Law 30: The Law and You, is based upon Foundational Objectives identified at the beginning of each unit of study. Each of these Foundational Objectives incorporates one or more of the Common Essential Learnings. Foundational Objectives are designed to guide instruction and student learning throughout each unit of study, and indicate the broad learning outcomes in terms of content, skills and abilities, and values. Specific Learning Objectives, identified within each unit, are designed to help students achieve the Foundational Objectives.

The four-column format within units of study identifies content, knowledge and concept objectives, skill and ability objectives, and values objectives. As well, "Instructional Notes" are included to provide guidance in facilitating the learning objectives. Teachers are invited to select items from the "Instructional Notes" in planning for instruction, recognizing that more suggestions are provided than time allows to be undertaken. "Issues in the Law" have also been identified to provide guidance in facilitating inquiry, discussion, and dialectical reasoning.

Structure of the Law 30 Curriculum



Resources and Resource-Based Learning in Law 30

Resource-based learning is an integral part of all units. The bibliography, developed to support *Law 30: The Law and You*, will assist you in incorporating a variety of resources from different media into each unit. This annotated bibliography should be available from your teacher-librarian or the Learning Resource Distribution Centre. The bibliography contains annotations of current, useful resources including print, video, Internet sites and other media selections. Teachers are encouraged to assess their current resource collection, identifying those that continue to be useful, and to acquire small quantities of each new title, rather than class sets, in order to provide students with a broad range of perspectives and information.

The following list of evaluated resource titles provides a **starting point** for developing a resource collection that is current and relevant, and that addresses students' various learning styles and abilities. Please refer to *Law 30: The Law and You, A Bibliography*, for a complete list of resources giving the full citation, annotation and ordering information. Please note that many of these resources can be ordered through the Learning Resource Distribution Centre (<http://lrdc.sasked.gov.sk.ca/>). Videos may be available from Media Group

(<http://www.sasked.gov.sk.ca/video>). At the time of publication all of the resources listed here and in the bibliography were in print and available.

Please note that LRDC will be closing effective March 31, 2003. If you need assistance acquiring Saskatchewan Learning materials after that date, please contact 787-5987.

Print Resources

- *Aboriginal Law Handbook*
- *All About Law: Exploring the Canadian Legal System*
- *Canada Year Book (Annual)*
- *Canadian by Conviction: Asserting Our Citizenship*
- *Canadian Law Dictionary*
- *Canadian Law: An Introduction*
- *Contemporary Canadian Business Law: Principles and Cases*
- *Decisis: The Journal For Teachers of Canadian Law (Journal)*
- *Ethical Process: An Approach to Controversial Issues*
- *Introduction to Psychology and Law: Canadian Perspectives*
- *Introduction to Law in Canada (Olivo)*
- *Introduction to Law in Canada (Yates)*
- *Just in Time: A Law Journal for Canadians (Journal)*
- *Language of Canadian Politics: A Guide to Important Terms & Concepts*
- *Law 30 Kit*
- *Law for the People*
- *Law Now (Journal)*
- *Learning About Law*
- *Pocket Dictionary of Canadian Law*
- *Reading Rights: A Women's Guide to the Law in Canada*
- *Rule of Law: Canadian Business Law*
- *The Plea (Journal)*
- *Thinking about Law: An Issues Approach*
- *Understanding the Law*
- *Youth and the Law: For Students*
- *Youth and the Law: Teacher's Manual*

Internet Sites

The following sites provide a brief overview of available websites. These sites were checked for availability in March 2002. To access formally evaluated sites that have been linked to the curriculum, visit the Evergreen Curriculum at the Saskatchewan Learning website <http://www.sasked.gov.sk.ca/>.

- Access to Justice Network - <http://www.acjnet.org/home.cfm>
- Canada's System of Justice - <http://www.canada.justice.gc.ca/en/dept/pub/just/index.html>
- Canadian Legal Frequently Asked Questions - <http://www.law-faqs.org>
- Canadian Legal Network - <http://www.canlaw.net/index.htm>
- Canadian Legal Research - <http://www.legalresearch.org>
- Canadian Legal Resources - <http://www.gahtan.com/cdnlaw>
- Department of Justice-Canada - <http://www.canada.justice.gc.ca/en/index.html>
- Electronic Law Library - <http://www.bcppl.gov.bc.ca:443/ell/>
- Law Connection - <http://www.educ.sfu.ca/cels>
- Law Society of Saskatchewan - <http://www.lawsociety.sk.ca>
- Overview of the Justice System - <http://www.gov.ab.ca/ust/lawu/overmain.html>
- Public Legal Education - <http://www.plea.org>
- Saskatchewan Justice - <http://www.saskjustice.gov.sk.ca/>
- Saskatchewan Justice – Learning Centre - http://www.saskjustice.gov.sk.ca/learning_centre/toc.htm
- Supreme Court of Canada - <http://www.lexum.umontreal.ca/csc-scc/en/index.html>

Organizing Instruction in Law 30

Law 30: The Law and You is designed to engage students in an exploration of the Canadian legal system. Eight units of study are included for consideration within the Law 30 course of study, with three units intended as core units of study, necessary for the development of basic understandings of the Canadian legal system. Five additional units of study are presented, from which it is intended that teachers will choose a **minimum of two** units for intensive study. The choice of additional units should be based upon instructional time available, student interest, current affairs, local community milieu, and teacher interest and expertise.

Core Units	Suggested Time Allotment
Foundations of the Canadian Legal System	15 – 20 hours
Criminal Law	20 – 25 hours
Civil Law	10 – 15 hours

Additional Units (Choose a minimum of two)	Suggested Time Allotment
Family Law	10 – 20 hours
Labour and Employment Law	10 – 20 hours
Contract and Consumer Law	10 – 20 hours
Environmental Law	10 – 20 hours
International Law	10 – 20 hours

Units may be organized in a variety of configurations, depending upon the preference of the teacher. However, all students should begin their explorations in Law 30 with the unit of study entitled *Foundations of the Canadian Legal System*. Teachers may then choose to have students address the unit entitled *Criminal Law*, or may choose the unit entitled *Civil Law*. It is recommended that the unit, *Civil Law*, be addressed prior to addressing any of the additional units of study. Some classes may address *Criminal Law* as the culminating unit of study, while others may address *Criminal Law* immediately following study of the *Foundations of the Canadian Legal System*. Below are sample model configurations for organizing units of study:

Sample Configuration # 1

1. Foundations of the Canadian Legal System
2. Criminal Law
3. Civil Law
4. Minimum of two of remaining units, such as Family Law and Labour and Employment Law

Sample Configuration # 2

1. Foundations of the Canadian Legal System
2. Civil Law
3. Minimum of two of remaining units, such as Contract and Consumer Law and Environmental Law
4. Criminal Law

Sample Configuration # 3

1. Foundations of the Canadian Legal System
2. Civil Law
3. Criminal Law
4. Minimum of two remaining units such as International Law and Contract and Consumer Law

Dialectical Reasoning in Law 30

Many times there is more than one possible solution to a problem or an issue. People may not even agree on what is the problem. Life is complicated, and different people see things in different ways, but they still have to live together, and often they have to figure out how they can come to one conclusion or solution even though they disagree. Some issues in society require resolution, and dialectical reasoning is one approach to finding resolution based not upon emotion or convenience, but upon defined criteria.

In the area of criminal law, the criteria for acceptability of evidence, and for establishing guilt or innocence, are defined within the law. The criteria for evidence and decision making in civil law is also defined within the law itself. However, the directions Canadians should take toward establishing public policy (and subsequently statute law), implementing civil and criminal justice systems and operating correctional systems, are all matters requiring discussion and decisions. It is in the public policy areas of law, requiring reasoned and thoughtful solutions, that dialectical reasoning provides a criterion-based mechanism to assist decision making.

Dialectical reasoning refers to critical thinking about problems and evaluating conflicting viewpoints. Dialectical reasoning is best applied in resolving controversial issues and assessing opposing positions. Often times, there are several possible ways of resolving questions and understanding issues, rather than one single right answer. Situations may occur where information is incomplete, where many approaches and views may compete, and a decision must be made based on what is known, even though there is no clear-cut solution.

Dialectical reasoning consists of moving back and forth between contrary lines of reasoning, using each to examine the other. It is a process in which opposing facts and ideas are weighed and compared for the purposes of determining the best solution, resolving differences, and coming to the most reasonable conclusion based on the evidence and logic. Some people have difficulty with dialectical reasoning because their self-esteem depends on their being right and having their beliefs accepted by others. We all have our convictions, but the inability to consider alternative views and evidence with an open mind is a major obstacle to critical thinking. Other obstacles include:

- the tendency to form quick, impulsive opinions instead of fully developed arguments
- reaching decisions based on what "feels right" at the moment, and not distinguishing between knowledge and belief, or between belief and evidence, and not seeing any reason for justifying a belief
- thinking that because some things cannot be known with absolute certainty, any judgement about the evidence is purely subjective, and defending a position with the explanation that "we all have a right to our own opinions," as if all opinions are created equal.

When we become capable of critical thinking, we understand that although some things can never be known with certainty, some judgements are more valid than others because of their coherence, their fit with the evidence and their usefulness. When reasoning dialectically, we are willing to consider evidence from a variety of sources, to justify conclusions as representing the most complete, plausible or compelling understanding of an issue, based on currently available evidence; this means abandoning "ignorant certainty" in favour of "intelligent confusion."

Dialectical reasoning can also be described as reflective judgement, the ability to evaluate and integrate evidence, relate that evidence to a theory or opinion, and reach a conclusion that can be defended as reasonable and valid. To think dialectically, we must evaluate evidence and question assumptions, consider alternative interpretations and stand ready to reassess our conclusions in the face of new evidence. This process works in a cycle that involves three basic steps:

- a thesis, which is a statement of an idea, viewpoint or position
- an antithesis, which is the statement of an alternative and possibly contrary (conflicting) idea
- a synthesis, which is the reconciliation of the two prior ideas in a way that integrates the best aspects of those ideas.

The synthesis typically shows that ideas that seem to conflict or to be contradictory are not always necessarily so; there is unity in the diverse aspects of the issue. The reconciliation of the ideas; however, may require discarding weaker or flawed aspects of the ideas. Thus, other aspects of the ideas can be integrated in a way that builds on their strengths and more reasonable qualities.

Teaching Controversial Issues

The teaching of value-laden issues has generated much controversy. Some argue that in a pluralistic society, there can be no broad consensus on values. People who adopt this assumption argue that social studies education has to be objective and value free in order to avoid offending certain points of view. A second position is to provide students with opportunities to clarify their personal values, work out the consequences of those values and decide for themselves what they will or will not accept. A third position is to argue that there is some basic consensus on fundamental moral and ethical values in our society and that these values can be taught in a meaningful way.

It is assumed in Law 30 that there are fundamental values on which there is agreement. Examples include such precepts as the presumption of innocence unless proven guilty beyond a reasonable doubt, the right of every person to fair treatment before the law, the belief that theft is wrong, or the acknowledgement of the provisions of the *Charter of Rights and Freedoms*. It is also assumed that there are many disagreements and that students need to learn to deal with controversy. The curriculum provides students with learning experiences that will help them identify some of the fundamental value positions of society and how these arose. This curriculum deals with controversy, even invites it. However, it does not suggest that any belief is as good as any other belief. Canadian society does not accept that, and that impression should not be given to students. Therefore, this curriculum makes no attempt to be objective in the sense of being value free.

There is a fine line between education and propaganda. Law 30 treads this line by giving students opportunities to examine controversial issues. Debating these issues will provide students with the opportunity to apply concepts and higher order thinking skills in organizing interpreting and communicating information meaningfully. In this process, students can begin to understand the role of values as the basis for making inferences. It is, then, a short step to understanding that values provide evaluative criteria, and that people depend upon the traditions of Canadian society to provide guidelines. A short list of these criteria would include human dignity, basic rights and responsibilities as defined in the Canadian *Charter of Rights and Freedoms*, and respect of and tolerance for individual differences.

In determining what is appropriate for students in the area of values objectives, teachers should be aware of family and community standards. Educational decisions related to value objectives in the classroom should reflect these standards, as well as those in the Canadian *Charter of Rights and Freedoms*. Educational decisions related to values objectives in the classroom should reflect family and community standards, as well as those of the Canadian Charter of Rights and Freedoms. In resolving conflict between positions taken by family and community, and that of the *Charter*, students should be encouraged to engage in dialectical thinking about the various positions before arriving at their personal value position, and consider the consequences resulting from each position evaluated against socially constructive values.

Case Studies

The study of legal cases in Law 30 provides an opportunity for students to investigate an important aspect of the Canadian legal system. Cases are recorded decisions made by judges that may be applied to other cases with similar facts. However, each case is unique, and therefore requires consideration of the particular circumstances of the case. Many cases are lengthy and complex, necessitating the use of case summaries rather than the entire case. Complete cases are available online through the Supreme Court of Canada, the Library of Parliament, or the Native Law Centre at the University of Saskatchewan. Cases addressing issues of associated with Aboriginal peoples are available online through the Native Law Centre at the University of Saskatchewan. Other sites also include databases of legal cases, although teachers are encouraged to be discerning in selecting Canadian cases for study. Recognition that particular case judgements may have been subject to appeal is also important, in order to avoid formation of inaccurate generalizations by students. When analyzing cases, students should consider the legal issue at hand, the facts of the case, the applicable rule of law and the judge's opinion (including reasons for the judgement). Students should consider what they consider to be the key questions to be considered in the case, and make a decision based on the facts and the law. Comparison to the decision of the judge provides opportunity for students to analyze their personal reasoning, and to assess the appropriateness of the application of the law. Consideration regarding the amount of instructional time dedicated to case study is necessary in planning for Law 30.

Court Visits

An excursion to a courtroom provides opportunities for students to observe the legal system in action. In preparing for a Court visit, investigate the available courts in the area, determine the desired learning outcomes and prepare students prior to the excursion. Review the jurisdiction of the Court, the basic layout of a courtroom, the roles of the various participants and the decorum for attending. Court visits are facilitated by the Provincial Court Clerk or Registrar for Court of Queen's Bench. These individuals may also be able to facilitate arrangements for a judge to speak to students. Sensitivity regarding the subject matter of a trial is important in considering when to visit. For example, teachers may want to avoid a trial involving a family member of a student, a sexual assault trial or a trial involving other students from the school.

Guest Speakers

Members of the legal community are often willing to address Law 30 classes on a broad range of issues. Judges, lawyers, police officers, corrections workers and rehabilitation counselors all have a wealth of knowledge regarding the legal system, and may offer students an opportunity to gain useful content knowledge and career information. Scheduling guest speakers should be arranged well in advance of visitations, and be directly tied to course objectives.

Incorporating Current Events

Incorporating current events enhances students' understanding of the concepts under study, and extends their learning experiences, by relating the events to real life and making them more relevant. Sources for current event stories include newspapers, newsmagazines, daily and weekly television and radio newscasts, documentaries and the Internet. Many Canadian daily newspapers are available online and are a useful source of current events. Select articles and news items to support the objectives and concepts as often as possible, and encourage students to contribute also. Compilation of current issues in the law will be useful throughout the course of studies. Student development of portfolios, scrap books or current events files provide a practical approach to processing new and current developments in the law.

The law is constantly changing, resulting in a significant challenge for teachers and students to remain well informed. It is important to recognize and explore the processes of making and changing laws, as well as being aware of the nature of new or amended laws. Various media formats identified within this guide provide sources of current information for teachers, and community agencies and resource people are often willing to assist in legal education. Teachers are cautioned to avoid providing information that may be interpreted as legal advice.

Unit One - Foundations of the Canadian Legal System

We who live in fortunate lands where we have inherited good things, are prone to accept good things, are prone to accept freedom, the most important of these good things, with an indifference which is the greatest threat to its continuance.

Lester B. Pearson

Overview - Unit One: Foundations of the Canadian Legal System

Students are introduced to the origins, sources and institutions of Canada's legal system, and explore how these factors interconnect and interact in the development and implementation of the rule of law as a fundamental value within our society. An exploration of the need for laws in the governing and protecting of societies and individuals is set within the framework of the introduction to our legal system. The nature of the relationships between individuals and the legal system is also explored, within the context of considering the question, "What is justice"? The unit concludes with students examining their personal relationships with the law in Canada, and becoming familiar with individual rights as protected by the *Charter of Rights and Freedoms* and the *Saskatchewan Human Rights Code*.

Resources and Resource-Based Learning

Resource-based learning is an integral part of all units. The bibliography developed to support this curriculum will assist you in incorporating a variety of resources from different media into each unit. This annotated bibliography should be available from your teacher-librarian or the Learning Resource Distribution Centre. The bibliography contains annotations of current, useful resources including print, video, Internet sites, and other media selections. Teachers are encouraged to assess their current resource collection, identifying those that continue to be useful, and to acquire small quantities of each new title, rather than class sets, in order to provide students with a broad range of perspectives and information.

The following list of evaluated resource titles provides a starting point for developing a resource collection that is current and relevant, and that addresses students' various learning styles and abilities. Please refer to *Law 30 The Law and You: A Bibliography*, for a complete list of resources giving the full citation, annotation, and ordering information. Please note that many of these resources can be ordered through the Learning Resource Distribution Centre (<http://lrdc.sasked.gov.sk.ca/>). Videos may be available from Media Group (<http://www.sasked.gov.sk.ca/video>). At the time of publication all of the resources listed here and in the bibliography were in print and available.

Please note that LRDC will be closing effective March 31, 2003. If you need assistance acquiring Saskatchewan Learning materials after that date, please contact 787-5987.

Print Resources

- *Aboriginal Law: Cases, Materials, and Commentary*
- *Aboriginal Youth: Dealing With the Youth Justice System in Canada: A Resource Manual for Teachers and Students*
- *Charter of Rights and Freedoms*
- *Counterpoints: Exploring Canadian Issues*
- *Court Chart*
- *Cowboys and Indians: The Shooting of J. J. Harper*
- *Critical Concepts of Canadian Business Law*
- *Diversity Issues in Policing*
- *Essentials of Canadian Politics and Government*
- *Global Politics: Origins, Currents, Directions*
- *Overview of Aboriginal and Treaty Rights and Compensation for Their Breach*
- *Pleasure of the Crown: Anthropology, Law & First Nations*
- *Returning to the Teachings: Exploring Aboriginal Justice*
- *Rosenberg Espionage Case (Famous Trials)*
- *Salem Witch Trials (Famous Trials)*
- *Statement of Treaty Issues: Treaties as a Bridge to the Future*
- *Teaching Human Rights*
- *Trial of Joan of Arc (Famous Trials)*

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- Trial of Socrates (*Famous Trials*)
 - You Can't Do That in Canada!: *Crazy Laws from Coast to Coast*

Internet Sites

The following list provides a brief overview of available websites. These sites were checked for availability in March 2002. To access formally evaluated sites that have been linked to the curriculum, visit the Evergreen Curriculum at the Saskatchewan Learning website <http://www.sasked.gov.sk.ca/>.

- Canadian Charter of Rights and Freedoms - http://www.pch.gc.ca/ddp-hrd/canada/guide/index_e.shtml
- Canadian Human Rights Commission - <http://www.chrc-ccdp.ca>
- Canadian Legal Information Institute - <http://www.canlii.org>
- Elizabeth Fry Society - <http://www.elizabethfry.ca>
- FSIN - Department of Justice - <http://www.fsin.com/justice/index.htm>
- John Howard Society - <http://www.johnhoward.ca/start.htm>
- National Aboriginal Document Database - <http://aboriginalcollections.ic.gc.ca/database/index.html>
- Saskatchewan Court of Appeal - <http://www.sasklawcourts.ca/IE5default.htm>
- Saskatchewan Human Rights Code - <http://www.gov.sk.ca/shrc/hrguide.htm>
- Saskatchewan Human Rights Commission - <http://www.gov.sk.ca/shrc>

Incorporating Current Events

Incorporating current events enhances students' understanding of the concepts under study and extends their learning experiences by relating the events to real life, making them more relevant. Sources for current event stories include newspapers, newsmagazines, daily and weekly television and radio newscasts, documentaries, and the Internet. Many Canadian daily newspapers are available online and are a useful source of current events. Select articles and news items to support the objectives and concepts as often as possible, and encourage students to contribute also.

Learning Objectives

Learning Objectives of two types are identified for Law 30: Foundational Objectives and Specific Learning Objectives. Foundational Objectives are designed to guide instruction and student learning throughout each unit of study, and indicate the broad learning outcomes in terms of content, skills and abilities, and values. Specific Learning Objectives, identified within each unit, are designed to help students achieve the Foundational Objectives. The core Specific Learning Objectives are identified in bold font. This makes timelines for each unit flexible. Teachers can choose to focus on the core objectives only, or to have students strive to achieve all of the stated Learning Objectives.

Objectives to achieve the Common Essential Learnings (C.E.L.s) are identified using the following abbreviations:

Communication	COM
Critical and Creative Thinking	CCT
Personal and Social Values and Skills	PSVS
Independent Learning	IL
Numeracy	NUM
Technological Literacy	TL

Foundational Objectives

Knowledge/Content	Skills	Values
<ul style="list-style-type: none"> Know that law is a social construct of the society in which it is implemented. (CCT, COM) Know that the Canadian legal system has evolved over time and has been influenced by several traditions. (CCT, PSVS) Know that the Charter of Rights and Freedoms and the Saskatchewan and Canadian Human Rights Codes provide criteria to assess legal rights. (CCT, COM) Know that sources of law include <i>The Constitution</i>, <i>The Charter of Rights and Freedoms</i>, Treaties, statutes and common law. (COM, CCT) 	<ul style="list-style-type: none"> Differentiate between traditional and current worldviews of law. (CCT) Investigate rights and freedoms to which all Canadians are entitled. (IL) Practise making decisions by analyzing data and applying criteria. (CCT) Identify functions of law in society. (COM) Use electronic databases to assist research activities. (IL, TL) Categorize the various legal jurisdictions of levels of government in Canada. (CCT) 	<ul style="list-style-type: none"> Understand that statutes evolve as the societal standard of norms and mores changes. (CCT) Appreciate the benefits of living by the rule of law. (PSVS) Appreciate the need to protect individuals and groups from arbitrary actions. (PSVS) Appreciate the need of the minority in society for protection from tyranny of the majority. (PSVS) Respect the value of customary law and common law as sources of law in Canadian society. (PSVS)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>The Need for Law</p> <p>As humans developed the institutions of community, the need for norms of organized and predictable behaviour to guide the relationships between individuals became increasingly important. Behavioural norms of early social groups were based upon local customs and spiritual beliefs, enforced through the power of individuals or groups. These were usually founded upon common sense, and transmitted to new members of societies by word of mouth. As these customary norms were adopted over long periods of time, they became accepted as laws, and became part of the social contract of the society.</p> <p>The increasing complexity of societies resulted in the need for more formal and complex behavioural norms, or laws. Inconsistent application and interpretation of law was common. Decisions about the laws made in one particular community would often contradict decisions in another community, even when circumstances were similar. Despite this injustice, the need remained to limit the behaviour of individuals where such behaviour infringed upon the freedom of others, or was offensive to the community at large.</p> <p>In England, this led to the development of the common law. This system of recording cases and examining precedent significantly improved the application of law and administration of justice, and continues to be an important facet of the Canadian justice system today. The quest for consistency and fairness in application of the law continues as a significant issue for individuals, institutions and societies.</p>	<p>Change</p> <p>Know that a culture responds to change in the natural or social environment by creating new cultural adaptations. As circumstances and surroundings evolve, the need for change in our institutions is reflected.</p> <p>Freedom</p> <p>Know that one theory of law in the modern era is to ensure the freedom and liberty of each individual in Canadian society. Fundamental freedoms are identified and protected in the <i>Canadian Charter of Rights and Freedoms</i>.</p> <p>Order</p> <p>Know that along with the pursuit of individual freedom, collective order is necessary for interdependence. Know that order is the function of the state, while freedom is the goal of the individual.</p> <p>Justice</p> <p>Know that the goal of the legal system is to provide justice to all. Justice includes fairness, equity, and equality under the law.</p> <p>Common Law</p> <p>Know that the common law originated in the court system of England in the 13th century. It is law that is common to all people, and has developed out of recorded court decisions.</p> <p>Know that common law is formed by court decisions that become judicial precedent. Common law continues to grow over time as new legal issues arise, and as the courts define new interpretations.</p> <p>Precedent</p> <p>Know that the principle in law by which court cases with similar facts result in similar decisions is known as <i>stare decisis</i>, or precedent. Precedent fosters consistency, and subsequently fairness, in the application of law. Judges are bound by the system of legal precedent in arriving at legal decisions when the precedent comes from a court of higher jurisdiction. In cases of parallel or lower court jurisdiction, judges are guided or persuaded by precedent, but not bound by it.</p>

Skills/Abilities Objectives	Values Objectives
<p>Identify and apply criteria to make decisions about what is a good law and what is not a good law.</p> <p>Create laws that are based on criteria that make them just. Some criteria include laws that are:</p> <ul style="list-style-type: none"> • reasonable, fair and useful • clearly worded, with explanation of terms that may cause confusion • made known to those who are expected to follow the laws • based on the values and beliefs of society • enforceable • not in conflict with other laws. 	<p>Appreciate the historical development of our legal system in Canada, and the benefits to Canadian society.</p> <p>Appreciate the tension between using laws as protection of freedom of the individual and laws as a mechanism of control for the orderly functioning of the state.</p> <p>Contemplate the degree to which personal freedom should be relinquished to achieve public security and safety.</p>

Instructional Notes

1. Design a matrix to categorize types of rules in the classroom, school, home, community centre, arena or other centres of informal or formal youth gatherings. Identify reasons for the rules of these gatherings, and the nature of particular rules specific to the venues. Evaluate the rules according to criteria presented in the Skills/Abilities Objectives. Create alternative rules to those deemed less than ideal by students.
2. Engage students in a discussion of classroom rules, from the perspective of the characteristics of a good or just rule and a bad or unjust rule. Identify the critical attributes of a so-called good rule. Have students create a set of rules for the classroom or school, then evaluate them against the criteria they have developed and the criteria presented in the Skills/Abilities Objectives. What generalizations can be made from the comparison of the criteria identified by students and those in the Skills/Abilities Objectives?
3. Engage students in an examination of municipal bylaws as a source of both positive and negative examples of rules. For example, an examination of a traffic bylaw provides relevant content for young adult learners.
4. Engage students in the Island Simulation activity. See Teacher Information Sheet 1.1 - Island Simulation: Do We Need Laws? and Student Handout 1.1 - Island Simulation. Assess laws constructed according to criteria of just laws.
5. Research a list of out-dated laws and use them as a way of examining modern criteria for just laws.
6. Research some laws in various cultures and/or other time periods. Identify the connections between laws and social policy of the government of the day.

Issues In the Law

1. What are the attributes of just laws? How should societies and legal systems determine the criteria for legal decisions?
2. Should the primary function of the law be to promote personal freedom, or to limit the individual to provide order within the state?
3. Is the law fair? Is everyone treated equally under the law?

Teacher Information Sheet 1.1 - Island Simulation: Do We Need Laws?

Purpose

This simulation will help students to explore the meaning of the principle of the **Rule of Law**.

Procedure

- Divide the class into small groups of approximately six students. Give each student a copy of the top half of Student Handout 1.1-Island Simulation. Tell the groups that one person, chosen by the group, must record the decisions they make about the problem situation. Allow the group leaders to emerge.
- After 10 minutes have passed, give one or more copies of the Questions to Consider section of Student Handout 1.1 to each group.
- Allow 20-30 minutes for discussion, then ask a spokesperson from each group to share the group's decisions.
- Bring the class together as a whole. Discuss the following:
 - Why are rules needed?
 - What kinds of rules are needed?
 - How are rules made?
 - How was compromise reached between competing ideas?
 - How did group leaders emerge?
 - What would happen if rules could not be enforced?
- Emphasize that laws reflect what a society thinks is important (its values).
- Compare what was done on the island to contemporary Canadian society.
 - Are the laws or rules made by the students' similar to those in effect in our society?
 - Would it be wise to have a constitution to set out the rules for how their island government would make decisions? Refer to the Canadian Constitution, what it states, and how it can be changed.
- Explain the **Rule of Law** using the information in Student Handout 1.2 – The Rule of Law.
- Discuss how the rule of law affected the way the students acted on the island. What kind of process did they use to make rules? Did the rules apply to everyone? How could they be changed? What kinds of rules did they make and why?
- Continue by introducing the *Canadian Charter of Rights and Freedoms*. Explain how it protects individuals from government interference with a person's rights. Discuss why the students might want this kind of protection while on the island.
- Discuss the differences between the *Charter* and human rights legislation. Ask the students if they thought about the kinds of concerns usually addressed in human rights codes. What are some human rights issues today? Which of these might be issues on the island?

(Source: Public Legal Education Association of Saskatchewan. Reprinted with permission.)

Student Handout 1.1- Island Simulation

Assume that you are a member of a group of eight people on an island that is six kilometres long and two kilometres wide. The island is located in a large ocean, is not on any map and no plane or ship passes it. A warm water current flows past the island. The highest elevation is a three hundred metre hill at the north end of the island. A cave is in the hill. In the cave is a box. The box is in a puddle of water. Inside the box are 300 kilograms of wheat. The box is waterproof and the wheat is not wet. There is a fresh spring on the island. One-third of the island is covered with plants. The rest of the island supports no vegetation.

The boat that brought the group to the island is wrecked and sunk in deep water at least five kilometres away. Nobody knows your whereabouts. The last time you touched land was 500 kilometres away. Nobody there knew where you were going. Your radio went out when you were 300 kilometres away from your departure point. You have not been on anyone's radar for 300 kilometres. In either case, no message for help was sent.

Through a miracle, no one was hurt. You are as well as you are right now.



Questions to Consider

- Do we know there is no one else here?
- For what reasons do we need to know if anyone else is on the island?
- Do we know if we need protection here?
- What do we need and in what order?
- Who will be our leaders?
- What should we do to get started?
- What decisions must be made?
- How will these decisions be made?
- What will be done to those who do not obey?
- How will disagreements be settled?
- What will happen if all disregard the rules?
- What things do we have?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Functions of Law</p> <p>Formalized law serves various functions within a society. It is:</p> <p>a set of established rules of conduct, which serves to minimize or reduce possible conflicts, and as a means to settle conflict when it does arise:</p> <ul style="list-style-type: none"> • a set of pre-existing, impartial rules, based upon criteria, that can be used to judge and settle conflicts • a protection for individual rights and freedoms • a protection for society by serving as a framework defining orderly conduct • a mechanism of legitimacy for actions of the state • a mechanism for defining and protecting private property • a mechanism for allocating power within society. <p>Law is the primary avenue to remedy injustice in a peaceful, orderly manner. In Canada, the Constitution empowers the federal government “to make Laws for the Peace, Order, and good Government of Canada.”</p> <p>Evolution of Codified Law</p> <p>Among the earliest recorded attempts to achieve greater consistency and fairness in applying the rules of societies was that of Babylonian King Hammurabi, who recorded nearly 300 laws for his subjects over 3800 years ago. This Code of Hammurabi is the earliest written record of a complex set of laws governing human behaviour, and was based in the concept of retribution, mandating “an eye for an eye” as the philosophy of punishment for breaking a law.</p> <p>Later systems of codified law included the Mosaic Law, based on the Old Testament, and the Justinian Code of the Roman Empire. This Justinian Code, also called the Laws of the Twelve Tables, influenced law in continental Europe until the formalization of the Napoleonic French Civil Code of the early 1800s. In England, the feudal system of rule featured the lord of each manor as the sole judge in any matter of legal nature. This continued until the 12th and 13th centuries, when the desire for equity served as the basis for judges to begin recording their decisions, and the reasons for these decisions. This was the beginning of a common law, based on the recorded case law of judges in each district. It was at this time that the concept of precedent began to guide judges’ decisions, leading to greater consistency in the application of law.</p>	<p>Rule of Law</p> <p>Know that among the main principles of early common law that exist in the legal system today is that of rule of law, a tenet that laws apply to everyone, and each person is protected by the law. As well, law must be known (or knowable) by all citizens.</p> <p>Know that considerable discourse exists within societies regarding the nature and scope of the content of the rule of law in a society.</p> <p>Codification</p> <p>Know that codification is the process of compiling, arranging, and systematizing laws, allowing clear understanding and consistent application of laws.</p> <p>Case Law</p> <p>Know that case law is the recording of judicial decisions that enabled the establishment of common law. It is case law that defines precedent, and subsequently consistency in application of the law.</p>

Skills/Abilities Objectives	Values Objectives
<p>Conduct research to gather specific data.</p> <p>Construct a timeline to organize data.</p> <p>Assess the structure and administration of justice in the pre-enlightenment period of human history, and hypothesize about the purpose of laws at that time.</p> <p>Examine the functions of law in Canadian society, and predict what various functions law may serve at the beginning of the next century (circa 2100 A.D.).</p>	<p>Understand that laws are used as a method of providing legitimacy for a particular approach to social policy of a government.</p> <p>Appreciate that laws reflect the values of those members of society possessing power.</p> <p>Appreciate that it is difficult to make sense of actions that were deemed acceptable in previous generations, but by today's standards are unacceptable, criminal or even atrocious.</p>

Instructional Notes

1. Use Student Handout 1.2 - The Rule of Law and Student Handout 1.3 - The Rule of Law Concept Map to assist with concept attainment.
2. Create a timeline to illustrate milestones in the evolution of jurisprudence; this may be an ongoing project throughout the semester.
3. Examine the administration of justice during the time period of Trial by Ordeal and Trial by Duel. What were the advantages of these systems? What were the shortcomings of these systems of administering justice? Why were these systems of justice considered appropriate in their contexts?
4. Examine this precept:

Fairness and consistency are not necessarily complimentary terms, as precedent is a valuable way of ensuring consistency, whether it be consistently fair or otherwise.

Analyze the meaning of this quotation, by having students select or create examples from current affairs, history or their daily lives.

Issues in the Law

1. What should be the functions of law?
2. What does the Rule of Law mean? How does the Rule of Law affect high school students?
3. Does everyone have equality under the law, as guaranteed under the *Charter of Rights and Freedoms*?
4. Identify instances from history where the law has promoted inequity. Examine whether such a situation may exist in contemporary Canadian society.
5. What are some potential consequences of enacting a law that citizens do not support? Examples may be taken from students' social lives, current affairs or history to assess the potential consequences.

Student Handout 1.2 - The Rule of Law

The basis for the Rule of Law is the belief that it is better to be ruled by laws than to be ruled by leaders who act the way they like. For example, if a king, queen or dictator rules us, it is simply a person exercising power without guidelines. If the law rules, leaders cannot use their power any way they like; they must apply the laws or guidelines to everyone, including themselves.

The law should apply to everyone. No one should be exempt from the law because he or she holds a position of power. Each individual is equal before the law.

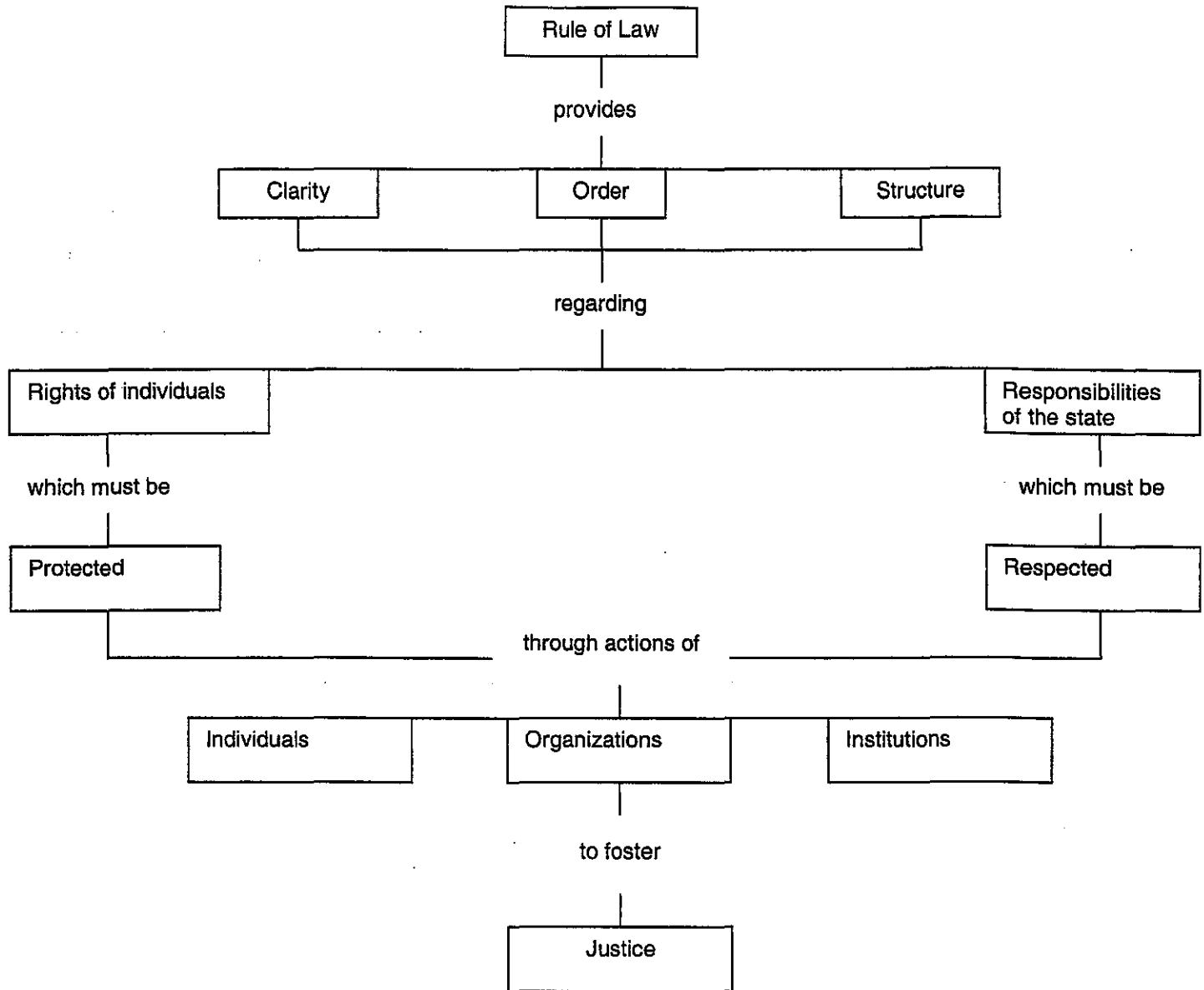
If we have a system of law, everyone must respect and obey the law. We also need to have peaceful and orderly ways to change the law. There must be guidelines about how to change the law that can be understood and used by everyone.

The idea of the Rule of Law is demonstrated in our political and legal system. Our political system allows us to control how our laws are made through a democratic, parliamentary process. This process gives us an organized way to change the law. At the same time, our leaders are representatives of the public who are elected and responsible to us. They cannot act arbitrarily, in any way they like, just because they have power. If they do, they can be defeated in the next election. If they break the law, they can be charged.

In our legal system, police, lawyers, and judges are also accountable. They cannot charge or convict people of crimes just because it is their wish. In all of their work, they must follow the law. If they do not, their decisions or actions could be invalid. They could be disciplined, charged with a crime or lose their jobs.

(Source: Public Legal Education Association of Saskatchewan. Reprinted with permission.)

Student Handout 1.3 - The Rule of Law Concept Map



Content (Teacher Information)	Concepts and Knowledge Objectives
<h3>Foundations of Canada's Legal System</h3> <p>While Canada's legal system is patterned after the legal systems of England and France (in Quebec), other influences have also helped to shape the processes of law in Canada. Foundational sources of law are based in the values and beliefs of a society and reflect its worldview. Additional sources of law are the vehicles by which societal values become written statutes, such as citizen input to legislators in the law making process.</p>	<p>Statute Law</p> <p>Know that statute law is formal, written law established by governments.</p>
<h3>Sources of Law</h3> <p>Among the factors serving as traditional sources of law in Canadian society are:</p> <ul style="list-style-type: none"> • religion • customs and conventions • social and political philosophy • history. <p>Additional sources of law in the twenty – first century include:</p> <ul style="list-style-type: none"> • <i>The Constitution</i>, including <i>The Charter of Rights and Freedoms</i> • treaties • written statutes • court decisions. 	<p>Public Law</p> <p>Know that those laws designed to safeguard the public interest, and those governing and regulating the interaction of government and the people, are public laws. This includes criminal law, administrative law, constitutional law and public international law.</p> <p>Private Law</p> <p>Know that private law involves people's private relationships and individual concerns. This includes family law, personal injury claims and contract law.</p>
<h3>Categorization of Law</h3> <p>Law can be categorized and compared in a number of ways for the purpose of inquiry or study. These include:</p> <ul style="list-style-type: none"> • substantive law and procedural law • public law and private law • civil law and criminal law • common law and statute law. <p>Categorization of law is a useful as a means of understanding the various types of laws, and the relationships of individuals to each other and the state.</p>	<p>Civil Law</p> <p>Know that law governing the relationship between individuals, and law concerned with individual, private concerns is known as civil law. Civil law is categorized as private law, and is focused upon seeking remedies from the court.</p> <p>Criminal Law</p> <p>Know that criminal law includes those laws that are made as deterrents to actions which would be harmful not only to individuals, but also to the community as a whole. Criminal law is public law, and focuses upon societal protection, rehabilitation and punishment.</p> <p>Substantive Law</p> <p>Know that substantive law defines the rights and obligations of the citizens and the state. It clearly identifies the substance of a law by describing an offence, and identifying the facts that must be proven in establishing that an offence has been committed.</p> <p>Procedural Law</p> <p>Know that procedural law is a category of law that defines the methods of enforcing rights and obligations of citizens and the state. It is designed to ensure fairness of process in the legal system by defining the steps in a legal action.</p>

Skills/Abilities Objectives	Values Objectives
<p>Use diagrams, flow charts and other graphic organizers to organize and interpret information.</p> <p>Explore why Canada has different types of court jurisdictions.</p>	<p>Appreciate that fairness in the legal system is safeguarded through:</p> <ul style="list-style-type: none"> • substantive fairness, whereby the substance of statutes are public, are available to citizens and are equally applied to all citizens. • procedural fairness, whereby the processes of applying the law must adhere to clearly identified procedures and to the legal and constitutional rights of citizens.

Instructional Notes

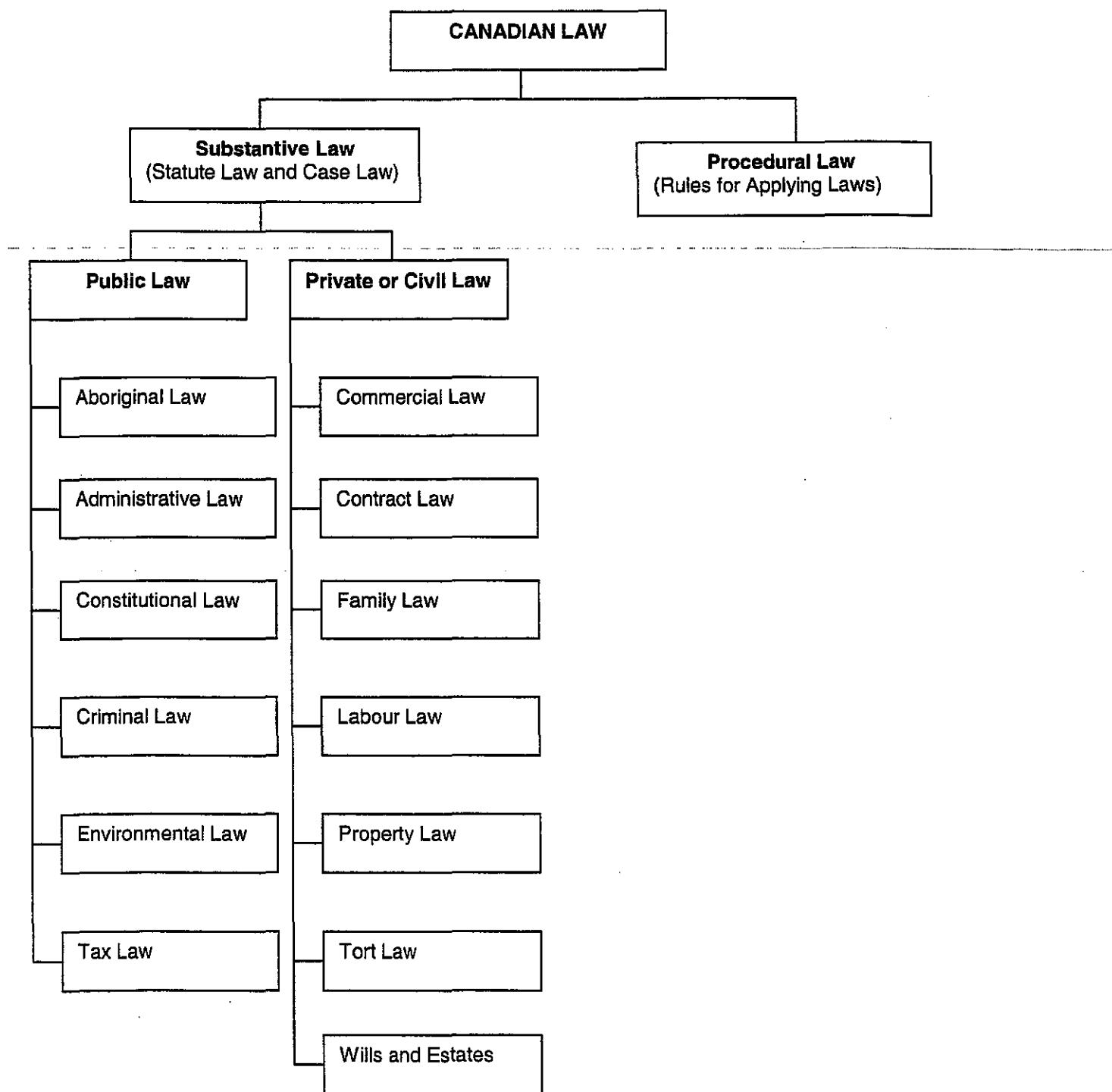
1. Have students brainstorm to create a listing of ways in which law is a part of their lives. The list of examples may then be categorized according to:
 - public law and private law
 - substantive law and procedural law
 - civil law and criminal law
 - federal law, provincial law and municipal bylaw.
2. Create a chart comparing the various methods of categorizing classification systems within the legal system.
3. Create a chart comparing the various methods of categorizing classification systems within the judicial system. See Teacher Information Sheet 1.2A - Categorization of Canadian Law and Teacher Information Sheet 1.2B - Categorization of Canadian Law for examples.
4. Examine one of the five Saskatchewan Numbered Treaties as a source of law. What provisions does it make for legal matters concerning Aboriginal peoples?

Issues in the Law

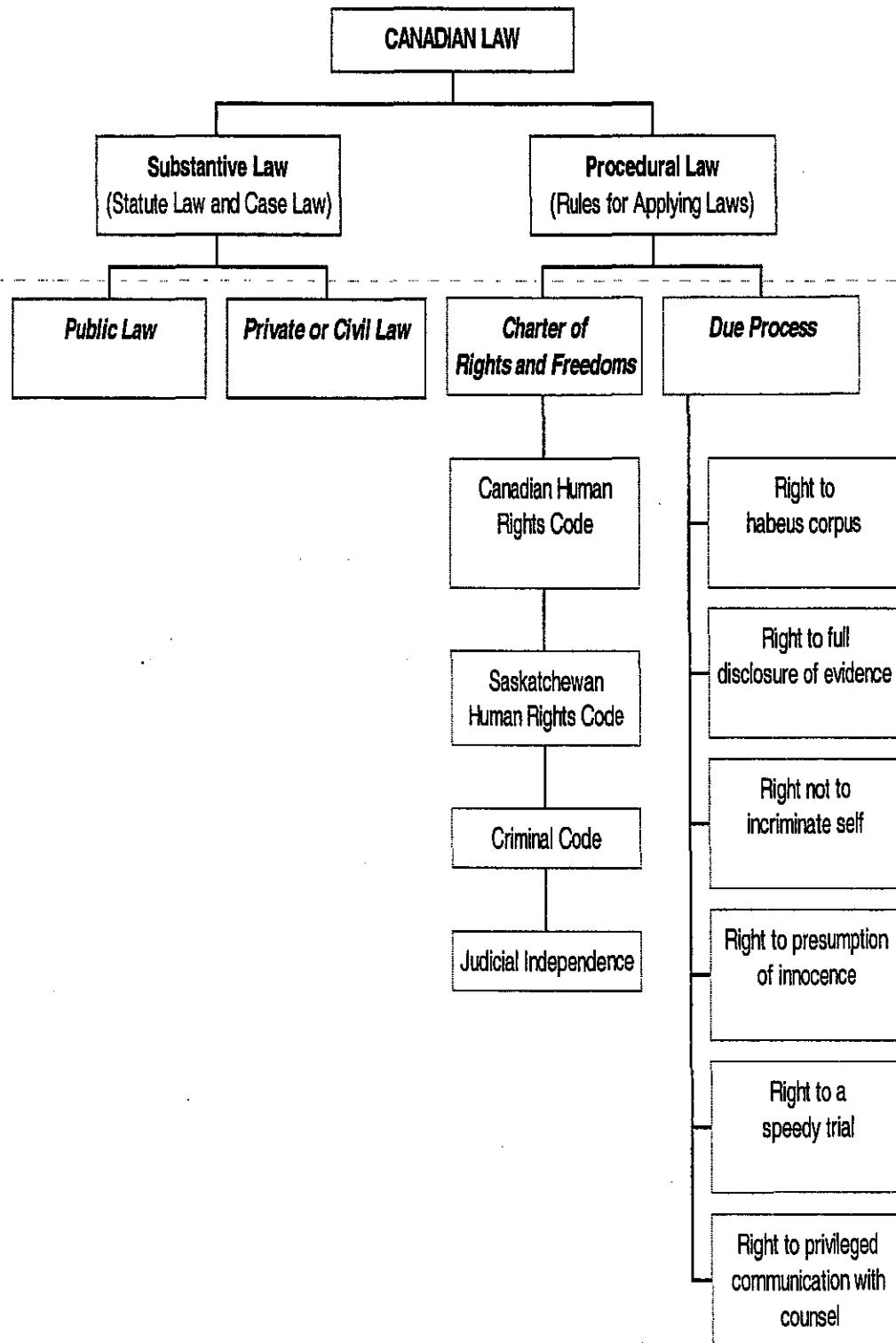
1. Substantive law addresses the judgement of factual evidence as measured against the substance of the rule of law, while procedural law addresses issues of fairness in application of the rule of law. The procedural areas of the rule of law sometimes result in charges against an accused person in a criminal matter being dropped because of procedural errors violating individual procedural rights.

Why does Canadian law place such value on procedural rights, even though some citizens sometimes perceive it as an avenue for those guilty of a criminal offence to escape our concept of justice?

Teacher Information Sheet 1.2A - Categorization of Canadian Laws



Teacher Information Sheet 1.2B - Categorization of Canadian Laws



Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Making Laws</p> <p>Law making in Canada, at the most formal stages, is undertaken by any of four levels of government:</p> <ul style="list-style-type: none"> • federal parliament • provincial and territorial legislatures • Aboriginal councils • municipal councils. <p>The constitution of Canada divides the responsibility for governance (law making) and administration (implementing laws) between federal and provincial levels of government. Section 91 of the <i>Constitution Act, 1867</i>, outlines the jurisdiction of the federal government, section 92 outlines the jurisdiction of the provincial governments, and section 93 outlines the areas of shared or joint jurisdiction. The two senior levels of government have designated the powers of the two other levels of government (Aboriginal and municipal councils) through statutes. Enactment of new laws or bylaws must be consistent with the <i>Charter of Rights and Freedoms</i> in order to be legitimate. Laws may also be changed or amended as circumstances warrant, or they may be repealed where laws no longer meet the needs of society.</p> <p>Law As A Cultural Construct</p> <p>Each society develops and implements a system of justice based upon, and reflective of, the perceived values and needs at a given time. Law is a reflection of the cultural beliefs of dominant groups within society, with the administration of justice and the application of law as a function of the worldview of a community in time and place. Subsequently, the approach of one cultural group toward legal and justice issues may be very different from that of another. In any society, something is an offence under law only because the society has deemed it to be so.</p>	<p>Rule of Law and Legitimacy</p> <p>Know that in Canada, as well as in other democratic nations of the world, neither individual nor institution is above the law, and that all are legitimately governed by the rule of law. This legitimacy stems from the support of the people for the institutions of the land, and a desire to live by the rule of law.</p> <p>Treaty</p> <p>Know that a treaty is a written agreement voluntarily entered into between two or more sovereign states, that creates mutually binding obligations.</p> <p>Governance</p> <p>Know that governance is the action of determining the laws, rights and privileges of the nation.</p> <p>Jurisprudence</p> <p>Know that jurisprudence is the science or philosophy of law, which considers:</p> <ul style="list-style-type: none"> • how to apply legal doctrine • concepts and principles of legal thought. <p>Context</p> <p>Know that in analyzing the administration of justice and implementation of law, consideration of the social, political, economic, natural and religious environments must occur.</p>

Skills/Abilities Objectives	Values Objectives
<p>Compare and contrast the process of making laws at the federal, provincial and local levels.</p> <p>Engage in research to gather information.</p> <p>Analyze and interpret data from a variety of sources.</p> <p>Develop criteria for gathering information through oral interviews and presentations.</p> <p>Use graphic organizers to process and interpret data.</p>	<p>Appreciate that all offences under the Canadian legal system are offences only because we, as a society, have deemed they should be offences against law.</p> <p>Appreciate that safeguards in law protect citizens from abuse of power by the state.</p> <p>Appreciate that numbered treaties serve as a source of law in Canada.</p>

Instructional Notes

1. Invite a Member of the Local Council, Legislative Assembly or Member of Parliament to address students regarding the process of making and implementing a statute. Have students prepare questions in advance of the visit to facilitate discussion and inquiry.
2. Invite an Aboriginal political leader to address students regarding issues in the law from the perspective of Aboriginal peoples.
3. Examine how different groups of people have been treated under law, such as the rights of Aboriginal peoples and women, the rights of people with disabilities or the rights of Japanese Canadians during World War II.
4. Construct a chart that compares the process of making laws at the federal level and provincial level of government.
5. See *Municipal Law (The PLEA, September 2000)*, for an articulation of powers and duties of a municipal government in Saskatchewan.
6. Have students interview elderly relatives or members of the community regarding ways in which laws have changed during their lifetimes. Have students construct an assessment of why they think the law was changed.
7. Have students research the provisions of one of the five treaties in Saskatchewan. See Student Handout 1.4 - Expectations and Benefits from Treaty.
8. See Student Handout 1.5 - Office of the Treaty Commissioner: Frequently Asked Questions for background information regarding the treaties between First Nations and the Government of Canada. Use maps or atlases to review treaty areas in Saskatchewan.

Issues in the Law

1. In what ways are Treaty arrangements in Saskatchewan being refined as a result of court interpretation of the Treaties?
2. What is the impact of an absence of Treaty relationships for groups who have not entered Treaty arrangements, such as the Métis of Saskatchewan or some First Nations groups in British Columbia?

Student Handout 1.4 - Expectations and Benefits from Treaty

Research the provisions in one of the five numbered treaties in Saskatchewan, and the intentions of the First Nations and the Crown in negotiating the Treaties. Complete the chart below as a comparison of the two views of treaty at the time of signing and the outcomes of the treaties.

First Nations' Expectations from Treaty	What First Nations Received from Treaty	Canadian Government Expectation from Treaty	What Canadian Government and Canadian People Received from Treaty
Peace and friendship		Peace and friendship	
Education		Land for settlement	
Health care		Access to resources	
Protection of way of life		Agricultural settlement of the prairie region	
Help in times of famine		Populate and settle the country	
Sharing of land		Railway expansion to unite the nation and increase economic prosperity	
Military exemption		Stop American expansion	
Tax exemption			
Transportation			
Border crossing rights (Canada – U.S.)			

(Source: Office of the Treaty Commissioner. Adapted with permission.)

Student Handout 1.5 - Office of the Treaty Commissioner: Frequently Asked Questions

What are the Numbered Treaties?

Many of the treaties between First Nations and the Government of Canada (and the British Crown) are known as the Numbered Treaties. The Numbered Treaties cover the largest landmass in Canada.

Treaty 1, the Stone Fort Treaty, was concluded in Manitoba in 1871, with Treaty 2, the Manitoba Post Treaty, and Treaty 3, the North-West Angle Treaty, following in 1871 and 1973 respectively.

Treaty 4, the Qu'Appelle Treaty, was the first to be negotiated in what was later to be known as Saskatchewan. Treaty 5, the Winnipeg Treaty, and Treaty 6, the Treaty of Fort Carlton and Fort Pitt, were negotiated in 1875 and 1876. These treaties include the central portion of Saskatchewan. The Northern Treaties numbered 8 and 10 were negotiated in 1899 and 1906, and play a vital role in providing Canadians with access to northern Saskatchewan. Although Treaty 2 territory falls within the present boundaries of Saskatchewan, there are currently no Treaty 2 First Nations in the province.

The Numbered Treaties contain explicit and implicit expectations and obligations that were created between First Nations and the Crown. The treaties created a relationship between the Crown and First Nations and provided a means of enabling livelihood for both parties. The treaties also provided to First Nations provisions for land, annuities, the protection of their traditional economies, relief in times of famine, immunity from taxation, as well as education and health benefits. In exchange, the Crown acquired the means to open up the territories comprising of Treaties 4, 5, 6, 8 and 10 for settlement, and subsequently established a policy for immigration into western Canada.

Why did the Crown and First Nations enter into treaty agreements?

When Europeans came to the shores of North America, they developed approaches for establishing relationships with First Nations people. The British developed an approach of making treaties with First Nations for the purposes of securing military and trade alliances, acquiring lands and ensuring peace and friendship. In the initial years of contact, the British had a policy of making "Peace and Friendship Treaties." This approach changed after the issuing of the King of England's *Royal Proclamation of 1763*. The Proclamation established guidelines for treaty making—only the Crown could enter into treaties with First Nations. It also stipulated that the treaty making process had to be held with First Nations representatives in public forums.

The Crown began entering into Treaties with First Nations in Eastern Canada as early as 1790. In the early 1870s, the Government of Canada was interested in acquiring the lands further west for settlement. As a result, it continued its long-standing treaty making traditions with First Nations. First Nations also sought treaties with the Crown, with a view of providing a means for a future livelihood in a new and changing environment. First Nations viewed treaties as providing a bridge to a future, alongside European newcomers.

Who is a treaty person?	A treaty person is someone who benefits from treaty agreements. In Saskatchewan, beneficiaries of the Five Numbered Treaties live, make a living, and enjoy a way of life on the land shared through treaty making. The treaties were intended to provide benefits for succeeding generations. Today all residents in Saskatchewan continue to benefit from treaties. For example, any person living in Regina could be considered a beneficiary of Treaty 4, and any person living in LaLoche could be considered a beneficiary of Treaty 10.
If the British Crown engaged in treaty making with First Nations, why is the Federal Government involved?	Canada became a country in 1867 through The British North American Act (BNA Act), which established the jurisdiction and responsibilities of the federal and provincial governments. Under Section 91 (24) of the BNA Act, the British Crown delegated its responsibilities for "Indians and Lands Reserved for Indians" to the Federal Government of Canada. As a result, Canada has jurisdiction over and responsibility for First Nations people in Canada. The relationship between the Government of Canada and First Nations is recognized and protected in the Constitution.
If treaties were concluded in the past, why do we have to deal with them today?	There is no expiration date on the treaties between First Nations and the Crown. The treaties were not "land sale" transactions. Rather, through treaty making, the parties established a relationship that included the principles of peaceful co-existence and mutual benefit.
	Treaties were intended to be enduring. At treaty time, the leaders who negotiated the treaties spoke about the "children yet unborn." They wanted the agreement to reflect the changing realities for the generations to come.
	As Canadian law is interpreted differently through time, so must the treaty agreements reflect the changing realities of Canadian and First Nations peoples. Treaty rights of First Nations people are recognized and protected in Section 35 of the Constitution of Canada.
Why do treaty issues continue to be unresolved in Saskatchewan?	During and after treaty making, the Federal Government relied upon the written articles of treaty for its interpretation of treaty obligations. First Nations people, on the other hand, did not use a literate means to record information. They practised a complex system of oral tradition in their acquisition and transmission of knowledge and information.
	When Crown representatives presented the written treaty to First Nation leaders, a number of First Nation leaders approached the treaty signing in a unique way. Instead of signing the treaty, many leaders touched the tip of the pen to an "x" marked by Crown representatives, as a symbolic gesture out of respect for the Crown's tradition. As well, Crown representatives participated in ceremonies with First Nations which, according to First Nation's protocols for treaty making, signified an act of solidifying the agreement and the relationship.
	While the parties respected each other's unique protocols at the time, in later years their interpretation of treaty obligations differed substantively. These different interpretations result from different methods of recording and transmitting history; the First Nations through oral traditions and the Crown through written/documentary traditions.
	As well, after the conclusion of the treaties in Saskatchewan, the Federal Government did not enact laws pertaining to the implementation of those agreements. It did approach its treaty obligations in a number of different ways, however, such as establishing reserves, and continuing to provide annuities and assistance with agriculture.

In the years following treaty making, the Federal Government also introduced *Indian Act* provisions in First Nation communities. *The Indian Act* was created separately from treaties and was not intended to provide for specific treaty implementation.

What is the connection between *The Indian Act* and treaties?

There is no direct link between the establishment of *The Indian Act* and treaties. Despite this, *The Indian Act* played a dominant role in the lives of First Nations people and has had an impact upon the present relationship between First Nations and the Government of Canada.

Before Confederation in 1867, the colonial government developed policies that guided its relations with First Nations people in what is now eastern Canada. While Indian policies had developed in eastern Canada before the numbered treaties were concluded, these policies later evolved and extended west to First Nations in the Treaty 4, 5, 6, 8 and 10 territories. In 1876, all laws pertaining to "Indians and lands reserved for Indians" were considered under *The Indian Act*. Although it has changed over the years, *The Indian Act* continues to exist today.

What is the treaty relationship?

The treaty relationship was established between First Nations and the Government of Canada, in right of the British Crown, through the process of treaty making. The treaty relationship is a living relationship, one that can change to reflect the current realities of both Canadian and First Nation people..

The treaty relationship is a fundamental political relationship that continues to exist between the Government of Canada and First Nations. Central within this relationship are the principles of peaceful co-existence, mutual stability and mutual benefit.

Can treaties be extinguished by the Canadian courts?

Under Canadian law, prior to 1982, the cases *Simon v. R.* and *Sioudri v. R.* established that the Federal Government would have to demonstrate strong intent to extinguish a treaty right under the power derived from section 981 (24) of *The Canadian Constitution Act, 1867*.

Today, both Saskatchewan First Nations and the Federal Government view treaties as a living relationship that needs constant nurturing. The Office of the Treaty Commissioner shares this view, and is currently facilitating treaty table discussions between the Federation of Saskatchewan Indian Nations and the Government of Canada, with the Province of Saskatchewan sitting as an observer.

All three parties hope to use the Numbered Treaties as a bridge to a harmonious future where partnerships between First Nations and all peoples of Saskatchewan can build a healthy economy and prosperous society.

(Source: Office of the Treaty Commissioner. Reprinted with permission.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Traditional Aboriginal View of Justice and Law</p> <p>While no single worldview existed within traditional Aboriginal cultures regarding the concepts of law or justice, common attributes were present within many traditional Aboriginal societies. These include:</p> <ul style="list-style-type: none"> • a view toward community-based justice • a belief in laws developed in harmony with the natural environment • learning the norms of society is through modelling, with all members of the community serving as teachers • offenders were dealt with as a community, with a view to preserving the community in a healthy state • self worth, dignity, hope and healing of offenders and community were paramount in the administration of justice. <p>The emphasis in traditional Aboriginal cultures was on restorative justice, rather than retributive justice, which has been the basis for western European models of justice.</p>	<p>Worldview</p> <p>Know that worldview is influenced by an individual's:</p> <ul style="list-style-type: none"> • spiritual beliefs defining the meaning and purpose of existence • economic beliefs about creating and distributing wealth • moral beliefs about people's rights and obligations • social beliefs about the organization of individuals into a society • intellectual beliefs about determining truth and beauty • political beliefs about making and enforcing decisions within society. <p>Criteria</p> <p>Know that criteria are rules or standards that are accepted and used to provide a consistent basis for making judgements.</p>
<p>Traditional Western European View of Justice and Law</p> <p>Western European models of law and justice have placed emphasis upon:</p> <ul style="list-style-type: none"> • an adversarial system of courts • a punishment system for non-compliance with law • codified law and/or common law • deterrence as a goal of sentencing 	<p>Restorative Justice</p> <p>Know that restorative justice centres on the need to regain balance that was lost by the commission of a crime, to heal both victims and communities, while encouraging offenders to confront the consequences of their actions.</p> <p>Retributive Justice</p> <p>Know that retribution is the act of taking revenge on a criminal offender, which serves as a deterrent.</p> <p>Specific Deterrence</p> <p>Know that specific deterrence is a goal of criminal sentencing that seeks to prevent a particular offender from engaging in repeat criminal activity.</p> <p>General Deterrence</p> <p>Know that general deterrence is a goal of criminal sentencing that seeks to prevent others from committing crimes similar to the one for which a particular offender is being sentenced by making an example of the person sentenced.</p>

Skills/Abilities Objectives	Values Objectives
<p>Identify the similarities and differences between traditional Aboriginal approaches to law and justice, and the traditional western European approach to these concepts.</p> <p>Research, describe and evaluate the effectiveness of models of justice.</p>	<p>Appreciate that laws are made in a particular context, and reflect the worldview of the dominant forces in society at the time of enactment.</p> <p>Appreciate that restorative justice is part of the traditional Aboriginal worldview.</p>

Instructional Notes

1. See Teacher Information Sheet 1.3 - Customary Law and Student Handout 1.6 - Customary Law.
2. Engage an Aboriginal Elder to speak to students about traditional customary law. Have students examine their views about the purposes and functions of laws today in comparison with the purposes and functions of traditional customary law.

Issues in the Law

1. In what ways is the justice system attempting to become more sensitive, relevant and effective in dealing with our multicultural population?
2. In what ways are restorative justice programs effective instruments in administration of justice?
3. Why do some critics argue that the judiciary is “treading on parliament’s toes”?

Teacher Information Sheet 1.3 - Customary Law

Any discussion about Aboriginal customary law requires that the following are understood and applied to interpretation:

- The Aboriginal oral tradition of passing on information, teaching by example and modeling, is the means of transmission from one generation to another. Accuracy is achieved through telling and re-telling in the presence of others who share common knowledge and experiences.
- Although there are some common beliefs and practices, exceptions and variations exist from one community to another.
- Because the language of society is culturally based, the study and accuracy of interpretation of the culture are dependent to a great extent on linguistic knowledge.
- The Euro-Canadian influences discouraged or curtailed the expression of Aboriginal values and lifestyles, and limited customary law practices.

Basic elements of culture and environmental influences must be considered when studying customary law. It is difficult to define customary law. The validity of the existence of customary or traditional law is supported by the following characteristics:

- has existed since time immemorial (as long as can be remembered)
- is reasonable
- is certain in its nature, and certain about who it is supposed to affect or apply to
- has been the same or continuous since its immemorial origin.

The development, implementation and preservation of customary law has its roots in the survival of the society for which it exists and serves. Quality of life, predictability of events and some expression of fairness are usually important as well. Traditional Aboriginal laws are closely associated with harmonious relationships that allow each citizen to contribute to the welfare of the entire community in an effective and sustainable manner. Guilt, punishment of a punitive nature, and isolation by imprisonment or banishment served a less emphasized purpose, but were present for more serious offences such as murder and adultery. At times administration of customary law could be fairly harsh. Therefore, notions of honesty and harmony brought about by forgiveness, restitution, and rehabilitation were important. Canadian Aboriginal peoples are not "legalistic" by nature when it comes to settling disputes for wrongdoing. Traditionally, conflict resolution, personal and interpersonal, is guided by spiritual means nurtured by customs and habits such as sweats, isolation, and the teachings and influences of Elders, parents and grandparents. These were the factors contributing to the restoration of smoothly operating families and communities. Only through these means was survival possible in the face of difficulties posed by harsh climates and scarcity of food supplies.

Much of what is written about customary law is substantiated by examples of events that occurred following European settlement in Canada. These incidents along with some explanations by those of Aboriginal ancestry provide insights into the specifics of customary law. It becomes clear that direct generalizations from one tribal community to another may be misleading. However, beliefs and practices verified by Elders substantially increase the validity, at least for the local community.

In some communities shaming and teasing, especially by peers, was a means of disciplining children. Much of the teaching by adults was done by modeling rather than by direct instruction. Adults (male, female, grandparents and parents) had defined community roles and expectations. In this way all members of the community were "teachers" through their actions which may have been casual, informal and incidental. In many instances, direct adult interference in the social growth and development of children was considered just that; interference. Children learned to assume their positions and roles in the community of warmth and understanding. They learned by example to value self-sufficiency, community interdependency or helping others, and respect for all living things. Learning was a daily ongoing process and the benchmarks of success were acted out in daily lives for all to observe. In many tribal communities an Elder was the spiritual mentor to the young person. They might go to a secluded place and spend much quiet time in prayer and reflection. Lessons about life and spirituality were learned and fasting was important. Some groups practised "coming of age" ceremonies for males. At that time a boy chose four mentors to represent the four directions on the life circle. These mentors provided guidance in the personal development of physical, emotional, mental and spiritual well-being.

The administration and enforcement of customary law, although not unduly complicated, was deliberate and often time consuming. The process invited participation from many community members. The ethic of waiting for the right time to speak or act was practised. Time for restitution was given so that the offender might provide food for the victim and his or her family. Offenders were able to indicate how they would make amends, and the community could decide on the sincerity of such actions.

Tribal communities often established policing authorities. Sometimes they were appointed for a specific purpose such as regulating a hunt. In some communities they carried out their duties on an ongoing basis. They were often experienced persons respected for their maturity and ability to provide service to the community. For example, those who regulated the procedures of the buffalo hunt on the prairies had proven abilities in hunting and the organization of people. The process of dealing with offenders of customary law usually involved many people of the community, especially the Elders. Conflict resolution was the concern of everyone because those who chose to live outside tribal law were considered a threat to community life. Harmony and good will were necessary for the victim, the offender and their families, so that all could contribute to the preservation of the community. This was also true when differences arose within the family, especially when there was the possibility of food shortage in winter when an individual was away from the larger community.

Keeping offenders in the community was usually of prime importance. Communal property rights, where all possessions belonged to everyone in the group, simplified issues such as ownership, trespassing and theft. Because of this, theft was seldom considered theft, but when it was, the stolen property was restored to the owner. The thief may have been ridiculed by the community, forgiveness and healing took place and life then went on as before. In some communities the ridiculing, teasing or "shaming" was an important step in the rehabilitation process. Following the shaming, a re-integration ceremony took place so that healing for everyone could be addressed in a more formal way. This, too, was part of the process of keeping the social affairs of the community in order so that everyone could help to provide the necessities of life.

What relevance does customary law have for Aboriginal middle years youth of today? Understanding one's heritage sheds new light on understanding self and present circumstances. It is anticipated that advances of Aboriginal peoples will be tied to the cultures of the past. For example, Tribal Council justice committees are closely examining the past to make a better system for their people. Today's youth will be able to relate to justice issues and to better understand the "meeting of cultures" that will influence the directions taken by the justice committees. Hopefully, the reinstatement of selected customary laws and procedures will provide an equitable system of justice in First Nations' communities. Community members who are "legally informed" will also provide support through wisdom and commitment. Much will depend on law-related education for Aboriginal youth and their families. Youth are the decision-makers of the future.

In summary, future justice practices for Aboriginal youth may be quite different from current practices. If the goal is to help youth regain self-worth, dignity and hope, then different approaches that establish a link and continuity with the history of Aboriginal cultures are necessary. As there are changes to approaches for adults who are offenders, there will be changes for youth. Many of these changes will stem from Aboriginal customary law that emphasizes real personal development and healing that comes from within. Traditional convention of some tribes is that excellence is an expectation and no praise or rewards are necessary. These, along with the practice of giving only necessary direction, may help to bring harmony to First Nations' communities. Rehabilitation will be based upon new relationships with Mother Earth, teaching of oral traditions to preserve cultural beliefs and ceremonies, and rebuilding families and communities. The spiritual awakening that comes through learning Sacred Laws and practising spiritual ceremonies will become the foundation for moving forward.

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Student Handout 1.6 - Customary Law

Customary law is a fascinating part of North American Aboriginal cultures. Sometimes referred to as traditional law, it encompasses the most profound beliefs and values of the people. It provided guidelines for everyday happenings and personal interactions, regardless of how common or simple these may have been. Customary laws has its origin, transmission and longevity embedded in the various cultures. Some understanding of the cultures and languages of Aboriginal people is crucial to understanding customary law. We rely on the Elders for relating and interpreting customary law as it existed originally, and in the present. Elders help us understand and appreciate customary law. However, both subtle and marked differences exist from one family or community to another. The laws were not codified or written. Some may prefer to call them rules.

The exploration and study of customary law gives youth an opportunity to reach back into their cultural heritage, to learn about traditional values, and to appreciate the greatness of their ancestors and their Elders of today. This knowledge and appreciation will contribute to a sense of self-worth and affirmation. It may also provide guidelines for daily living in today's society. Just as there is a tremendous affinity of Aboriginal people to natural and spiritual elements, the ethics of customary law are also deeply entrenched. Youth need to learn about and acquire these ethics with increased understanding and appreciation.

The study of customary law provides opportunities for youth to look back while keeping an eye on the present. The process is enhanced by finding answers to questions such as the following:

- How do laws and societies evolve?
- What life styles were supported by customary law?
- What has happened to traditional laws?
- Do traditional laws have application in life today, and should they have a place in our current system of law?
- How can we learn more about customary law?

Aboriginal governments at all levels are working on the development of "community-based law or justice." This stems from the desire to maintain the values inherent in customary law. Justice committees are incorporating some customary law practices with elements of the Euro-Canadian system of justice while acknowledging the values of the community. Reasons for doing so are explored by the students in this section.

Learning about customary law adds another dimension to the study of Aboriginal life and history. It helps us to see the past as it was, richer and more vibrant than we might expect. The nobility and strengths of Aboriginal ancestors became anchors for youth of today. As First Nations approach self-determination they look to customary law and present day law for guidance and content. The exploration of so many facets of our First Nations is an exciting and necessary journey. A look at customary law in the context of law-related education is a major step along the way.

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Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Upholding and Enforcing Laws</p> <p>The systems of legislation and the courts are important institutions of the Canadian legal system. There are also other components to the implementation of justice in Canada. These include the correctional system, jails, and penitentiaries, and the parole system designed for public protection, deterrent and rehabilitation, as well as policing, including R.C.M.P., provincial and municipal police forces.</p> <p>Other organizations and institutions also have an interest in the administration of justice, such as the office of the Ombudsman, the John Howard Society, the Elizabeth Fry Society, and the Saskatchewan Human Rights Commission.</p>	<p>Justice System</p> <p>Know that the justice system involves both public and private law, the court systems, the policing systems, the correctional systems and the rehabilitation supports.</p>
<p>Consensus and the Rule of Law</p> <p>While the formal governmental and non-government organizations and institutions are significant in the administration of justice, it is the members of Canadian society who must come to consensus about the nature our legal and justice systems. Formally, consensus is reached through the legislative process, where laws are enacted through representative government. However, the benefits to living under the rule of law cannot be achieved through formalized means only. If the rule of law is to work effectively, the citizenry must demonstrate consensus in daily living. The rule of law is successful in Canada, to varying degrees, because of the personal responsibility assumed by each individual to live by the rule of law.</p>	<p>Tensions</p> <p>Know that tensions exist within societies about what actions should be deemed as offences under law.</p> <p>Know that law is sometimes perceived as the instrument of the empowered to ensure their continued positions of power within society.</p>

Skills/Abilities Objectives	Values Objectives
<p>Assess the effectiveness of law making and law enforcement in:</p> <ul style="list-style-type: none"> • guiding the actions of the citizens of a country • providing fairness and equity to citizens <p>Develop and apply criteria in making decisions.</p>	<p>Appreciate that laws are often made by the dominant powers within society, and may not represent minorities.</p> <p>Appreciate that in a pluralistic society there may be profound disagreement about the need for, and application of a law.</p> <p>Appreciate the value of living by the rule of law.</p>

Instructional Notes

1. See Teacher Information Sheet 1.4 - No Vehicles in the Park regarding interpreting laws. Discuss criteria of a good law. Have students provide a written summary of the attributes of a good law, using examples from the activity.
2. Revisit earlier discussions regarding issues associated with fairness in law. Are all persons treated equally under law?
3. Review the 1985 amendments to the *Indian Act*, specifically with reference to Bill C-31, which changed the status of Indian women and children where the women had married non-Indian men. Why was this change made?

Issue in the Law

1. In what ways does the *Charter of Rights and Freedoms* affect the nature of the relationship between the legislative branch of government and the judicial branch?
2. Examine the difference between equality and equity as it relates to application of laws. Do these concepts relate differently when applied to the concept of justice?

Teacher Information Sheet 1.4 - No Vehicles in the Park: Interpreting Laws

Purpose

This activity on interpreting laws follows the Island Simulation activity which deals with making laws. Here, students will see that it is impossible to write a perfectly understandable law, applicable in all situations. They will be asked to assume the role of a judge involved in legal interpretation. The exercise may be used to explain the relationship between case law and statute law.

Procedure

- Distribute copies of Student Handout 1.7 - No Vehicles in the Park. Divide the class into groups of approximately six students.
- Before starting, explain the key terms:

Interpretation To interpret a law is to apply it to a new fact situation. The interpreter looks at the written words of the law and decides how they apply to a particular fact situation.

Intent The intent of a law is the purpose and effect of the law that the law makers had in mind when they made it.

Letter of the Law This phrase refers to a strict interpretation of the law; exactly what the law says, not what was meant by the words.

- Each group is to look at each of the seven situations described and decide if the law has been broken. Have students record their answers. The groups should be ready to discuss their reasoning in each case.
- After the groups have had enough time to go through the list, have them report their decisions on each case. By the time you have gone through all the cases, the class should be asking questions about the meaning of the law and how a vehicle is defined. If not, you can add your own cases, including roller skates, wagons, wheelchairs, and other such things.
- Further discussions may include:
 - Why would a community want a law about vehicles in the park?
 - What is the purpose of a park and how does the law protect that purpose? The park is meant to preserve an element of nature and is a place for recreation. The law removes the danger of traffic so that no one has to worry about traffic while playing or relaxing.
- Students will become aware that it is not always easy to make a judgement. Point out that it is important to look carefully at the purpose or intent of the law, as well as the letter or exact wording of the law. As a judge in each case, students need to be fair to both sides.

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Student Handout 1.7 - No Vehicles in the Park

The town of Beautifica has established a lovely park because the Town Council wanted to preserve some elements of nature, undisturbed by city noise, traffic, pollution, and crowding. It is a place where citizens can go to find grass, trees, flowers, and quiet. At all the entrances to the park the following sign has been posted: **No Vehicles in the Park.**

The law seems clear, but some disputes have arisen over the interpretation of the law. Pretend you are the local judge, and interpret the law in each of the following cases. As you make a decision, remember the intent of the law while following the letter or exact wording. Your decision should be fair to the Town Council who represent the people of Beautifica, as well as to the individuals mentioned in each situation below:

- Joan Smith lives on one side of the town and works on the other side. She can save ten minutes if she drives through the park.
- There are many garbage cans in the park so that people may deposit all litter there and keep the park clean. The sanitation department wants to drive into the park to collect the garbage.
- An ambulance carrying a dying accident victim is racing to the hospital. The shortest route is through the park.
- Some adults who visit the park want to ride their bicycles there.
- Some children who visit the park want to ride their bicycles there.
- A senior citizen likes to skateboard in the park.
- A monument to the town's citizens who died in World War II is being constructed. A tank, donated by the government, is to be placed beside the monument.

(Source: Public Legal Education Association of Saskatchewan. Reprinted with permission.)

Content (Teacher Information)	Concepts and Knowledge Objectives
The Living Law	Constitution
<p>Law is constantly changing, as legislators enact, amend and repeal legislation, change regulations governing the implementation of legislation, and as courts interpret legislation. The law also changes because of public pressure, or in reaction to new circumstances in society.</p>	<p>Know that a constitution is a fundamental guide for the daily operation of an organization.</p> <p>Know that in Canada, <i>The Constitution Act (1982)</i> serves as the fundamental guide for institutions, including the legislative branch, executive branch and judicial branch of government.</p>
<p>In the twentieth century, issues associated with what was then new technology, such as wireless transmission of communication signals (television and radio), automobile transportation and air transportation, required development of new laws and regulations to guide usage. In the 21st century, evolution of the biotechnology and information technology industries, dilemmas in health care (such as issues associated with infectious diseases, euthanasia and access to services) and issues associated with personal privacy in the electronic age, all demonstrate the changing circumstances forcing institutions to evolve to meet and reflect the needs and desires of society.</p>	
You and the Law	
<p>The interaction between the vast majority of Canadians and our legal and justice system occurs largely unnoticed, yet plays a vital part in the lives of each Canadian citizen. The regulations set by governing bodies, designed to enhance implementation of laws, provide order and predictability in our lives. It is only when a claim to individual rights conflicts with those of the state that issues of the regulatory nature gain significance for those involved.</p>	Entrenchment
The Charter of Rights and Freedoms	
<p>The 1982 constitutional repatriation resulted in the entrenchment of the <i>Charter of Rights and Freedoms</i>, which serves as a fundamental guide in implementing the rule of law in Canada. Among the fundamental freedoms enjoyed by Canadians are those that collectively we have deemed as important to both the liberty of the individual and the well being of the collective societal interest.</p>	<p>Know that, when an item is entrenched in the constitution, it is a fundamental belief of a society and is designed to be not easily or whimsically changed.</p>
<p>However, the <i>Charter</i> is occasionally criticized as being an instrument of tyranny, whereby the courts have more power than the legislative bodies within Canada. Proponents of the <i>Charter</i> argue, however, that it is necessary that all live by the rule of law, and that an entrenchment of rights and freedoms is the only method of guaranteeing the liberties of all citizens living under the rule of law.</p>	Charter Rights
	<p>Know that the protections offered by the <i>Charter of Rights and Freedoms</i> provide limitations and guidelines on the relationship between governments and the citizens.</p>
	Human Rights
	<p>Know that human rights are claims for recognition by an individual that take precedence over other claims.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply criteria to make decisions.</p> <p>Use effective group interaction skills.</p> <p>Research to gather specific data.</p>	<p>Appreciate the protections provided to citizens through the <i>Charter of Rights and Freedoms</i>.</p>

Instructional Notes

1. Examine the *Charter of Rights and Freedoms*, section 15 (Equality Rights), and sections 7 - 14 (Legal Rights) in order to become familiar with those guaranteed rights enjoyed by all Canadians.
2. Engage students in a scenario activity in which they are provided with the text of sections 7 - 15 of the *Charter of Rights and Freedoms*. Suggest to them that in the hypothetical situation that the *Charter* was to be changed, they are able to keep only 15 of the existing 20 items in the sections and subsections presented. Have the students record a written reflection of their discussions, and return to the exercise again later in the course. Compare the reasoning in the first exercise to that in the second or subsequent exercises.
3. Examine reference materials regarding *The Indian Act*, and identify instances in which Aboriginal people have been treated differently than other Canadians under the law. Follow up with study of controversies surrounding *The Indian Act* in the 21st century.

Issues in the Law

1. Why has *The Indian Act* been such a controversial piece of legislation?
2. In what ways are the treaties signed in Saskatchewan having impact on modern-day Saskatchewan and federal laws?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Human Rights Protection</p> <p>Issues associated with perceived violation of rights of individuals by other individuals are not resolved through the <i>Charter of Rights and Freedoms</i>, but rather by the <i>Saskatchewan Human Rights Code</i>. The <i>Code</i> is statutory in nature, and is binding on all residents of Saskatchewan. It is the <i>Saskatchewan Human Rights Code</i> that offers protections to individuals against discrimination.</p> <p>The <i>Canadian Human Rights Code</i> offers protection to individuals against discrimination in federally regulated areas, such as the shipping industry, the postal service, or in any associations with federal agencies or federally regulated sectors of society.</p>	<p>Protection From Discrimination</p> <p>Know that, in Saskatchewan, it is against the law for someone to discriminate against people because of their race, religion, color, creed, place of origin, family status, marital status, nationality, disability, ancestry, sex, age (18-64), sexual orientation or receipt of public assistance.</p> <p>Know that sex means gender. Sex discrimination includes discrimination based on pregnancy and pregnancy-related illness, as well as sexual harassment.</p> <p>Know that age means discrimination against people between ages 18 and 64.</p> <p>Know that marital status means being married, engaged, single, separated, divorced, widowed or living common-law.</p> <p>Know that disability includes mental and physical disability. Physical disability is any degree of physical disability, infirmity, malformation or disfigurement caused by bodily injury, birth defect or illness. Mental disability means a condition of mental retardation, a learning disability or a mental disorder.</p> <p>Know that family status means being in a parent-child relationship.</p> <p>Know that receipt of public assistance means receiving assistance or benefits as defined in <i>The Saskatchewan Assistance Act</i> or <i>The Saskatchewan Income Plan Act</i>.</p> <p>Know that it is against the law for someone to discriminate against anyone in Saskatchewan on the basis of a prohibited ground in employment, education, publications, public services (e.g., restaurants, stores, hotels, government services), contracts or housing.</p>

Skills/Abilities Objectives	Values Objectives
Research the provisions of the <i>Saskatchewan Human Rights</i>	Appreciate the importance of codification of human rights.
Research the provisions of the <i>Canadian Human Rights Code</i> .	Appreciate the importance of statutes to legitimize codified human rights.
Investigate the processes of application of the <i>Saskatchewan Human Rights Code</i> .	
Investigate the processes of application of the <i>Canadian Human Rights Code</i>	
Identify and apply criteria to assess the effectiveness of the <i>Saskatchewan Human Rights Code</i> .	

Instructional Notes

1. The Saskatchewan Human Rights Commission information is available on-line at www.gov.sk.ca/shrc. Have students research both the Saskatchewan and Canadian human rights statutes, and evaluate their effectiveness.
2. Assemble a newspaper file of stories about provincial, national, and international human rights issues. Assess the outcomes of the events using the *Saskatchewan Human Rights Code* as the criteria.
3. Administer Student Handout 1.8 - The Rights Awareness Test. This may be used as a pretest of student prior knowledge, or as an assessment of application of data gathered in research. Refer to Teacher Information Sheet 1.5 - The Rights Awareness Test Answer Key, for answers to The Rights Awareness Test.
4. Assess whether the current *Saskatchewan Human Rights Code* is adequate in protecting the residents of the province.

Issues in the Law

1. What purpose is served by the *Canadian Human Rights Code*?
2. What should be changed in either of the two human rights codes?

Student Handout 1.8 - The Rights Awareness Test

	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Do not Know <input type="checkbox"/>
1. A security and protection company needs new recruits and advertises in the newspaper for help. The job involves patrolling a shopping centre. The advertisement reads, in part: "Recruits wanted. Applicants must be eighteen years or older. Minimum height 5'8". Weight 175 lbs.". Is there a law that prohibits the above advertisement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. The Public School Board asks prospective teachers to list on their job applications all of the organizations to which they belong. This is done to ensure they are not members of an organization that would have an undesirable influence on the young. Is there a law that prohibits the asking of such questions on application forms?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Two women applied for a job at a department store. The first woman had no experience. The other woman had two years experience, but because of her East Indian accent the manager hired the first woman. He thought his customers might be put off by her accent, even though they understood her. Is there a law that prohibits the selection of candidates on this basis?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. A group of teenagers aged fourteen, fifteen and sixteen, wanted to learn to play golf. They went to a public golf course and were told by the manager that teenagers could play on Wednesdays, but at no other time during the week because they would slow up the other golfers. Is there a law that prohibits the manager from limiting the teenagers' play time to Wednesdays only?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Mr. Singh is a member of the Sikh Faith. He is refused a job as a security guard because he wears the turban and beard required by his faith. The employer's policy requires security guards to be clean shaven and to wear caps. Is there a law that prohibits the employer from refusing to hire on this basis?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Tom Lightfoot has worked for the Benefit Construction Company for twenty-seven years as a crane operator. He has just turned sixty-five and has been told that he must retire, even though his doctor says he is in excellent condition. Is there a law that prohibits the actions of management?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. A middle-aged couple has a spare bedroom in their house that they would like to rent. The renter would be sharing the bathroom and kitchen facilities. They refuse to rent to a male student, and tell him that they will only rent to females. Is there a law that prohibits the action of the landlord?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. A woman is hired as a research assistant. Shortly after she begins work her supervisor informs her that he expects sexual favours. Initially she ignores him, but eventually is fired for insubordination. Is there a law that protects the employee?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. A local company advertises for an administrative support professional. A woman applies for the position and is granted an interview; however, she cannot go to the interview because the office is up a flight of stairs and she uses a wheelchair. The company refuses to consider her application further. Is there a law that prohibits the action of the company?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Frank Flynn, a Caucasian man, is in the process of registering at a hotel when his wife, who is an Aboriginal person, arrives at the desk. The desk clerk informs the couple that no rooms are available and tells the couple to leave. In fact, however, rooms are available. Is there a law that prohibits the action of the desk clerk?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11. A business firm periodically sends its employees on courses to improve their knowledge and competence. The company pays an expense allowance for its employees while on the course. The scale is \$300 for married men and \$225 for single men and all women. Is there a law that prohibits such an expense scale?
12. A heavy equipment operator is a member of the World Wide Church of God. In August, he tells his supervisor that he will need two weeks off (without pay) for religious holidays in October. This will not hamper the work of the company, but the supervisor refuses to give him time off. Is there a law to prohibit the action of the supervisor?
13. A company has recently hired two women to work in his maintenance department. The supervisor of that department does not like women working for him. It is the supervisor's responsibility to show all new employees aspects of the job. All are shown what to do except the two women. The supervisor then claims they were incompetent and fires them. Is there a law to prohibit the action of the supervisor?
14. A liquor lounge has a policy denying admittance to unescorted female customers. Male customers without escorts are welcome. Is there a law that prohibits his policy?
15. A woman applies for a position of fire fighter and is accepted into a pre-employment training program. Part of the training program includes (a) the candidate must be able to do 30 pushups in 90 seconds; and (b) the candidate must be able to lift a 55 kg. weight over the head. The woman candidate cannot pass either of these two tests and is dropped from the training program. Is there a law that prohibits this kind of training program?
16. A school board has a comprehensive illness plan for its employees. The plan is part of the teachers' contract. Several women teachers, however, notice that pregnancy-related illnesses are not covered by the plan. When one of the teachers has a miscarriage and misses five teaching days, she is docked for the time she missed. Is there a law that prohibits the school board from docking the teacher's pay?
17. Hardnose, the owner of a hotel, subscribes to extreme political views. Behind the hotel lobby desk he has a sign that shows a Swastika kicking a Star of David down a flight of stairs. Is there a law that prohibits the placing of such a sign in the hotel?
18. A woman applies for a clerical position that has been advertised. When she presents herself for the interview the employer says, "I'm sorry, you're not good-looking enough for this job." Is there a law that prohibits the employer from hiring in this manner?
19. A school board has a policy that husbands and wives may not be employed in the same school unit. Two teachers on the same school staff decide to marry. Shortly after they are married, the school board fires the woman. Is there a law that prohibits the school board from firing the woman?
20. A nurse makes an application to rent an apartment. The manager of the apartment block says to her, "Sorry, I don't want any nurses in this block." Is there a law to prohibit the action of the manager?
21. A manufacturing company that has previously only employed men interviews a qualified woman. The personnel manager, however, explains that they cannot hire her as there is only one washroom in the plant. He explains that it would be too expensive to provide another washroom for women. Is there a law that prohibits the action of the personnel manager?

(Adapted from *The Rights Awareness Test*, Saskatchewan Human Rights Commission.)

Teacher Information Sheet 1.5 - The Rights Awareness Test Answer Key

1. Yes. The employer may ask that an applicant be of legal age to work; however, minimum height and weight requirements will, intentionally or unintentionally, screen out classes of persons from this employment opportunity, namely women and some minorities. The employer must show that these qualifications are a business necessity, and that only those persons of a specific height and weight are able to perform the job. If this can be proven the advertisement would be allowed; however, this is very unlikely. There have been cases dealing with this issue, and height and weight requirements are usually proven to be discriminatory job qualifications. Section 1(b) of the *Regulations* defines "a reasonable occupational qualification."
2. Yes. A general request to list all organizations would be contrary to Section 19 of the *Code*. Such inquiries may result in identification of membership in an organization that would identify someone's race, creed, religion, colour, sex, marital status, age, physical disability, nationality, ancestry, or place of origin. An employer may inquire into organization membership with the provision that an applicant may decline to list organizations which would indicate religion, race, etc. (sic)
3. Yes. This would be race discrimination. An employer cannot hire on the basis of customer preference as cited in Section 1(b)(6) of the *Regulations*.
4. No. Even though it is a public golf course, the manager can restrict access on the basis of age in this case, as age is defined as between 18 and 64 inclusive. It is important to note that in this instance it is age discrimination.
5. Yes. Mr. Singh is being discriminated against because of his religion. This problem is based on an actual case that went to a board of inquiry in Ontario. The employer argued that he had not discriminated against Mr. Singh because he treated all of the security guards in the same way—he required them to wear a uniform that included a cap, and he required them to be clean shaven. If Mr. Singh did not want to shave off his beard and take off his turban to wear the uniform cap, he could not have the job. Mr. Singh argued that his religion required him to wear a turban and to have a beard. For the Sikh, the turban is more than a head covering—it is an important religious obligation. Requiring him to wear the uniform's cap would be a violation of that obligation. The matter went to a board of inquiry which decided that Mr. Singh had been discriminated against and that the employer would have to accommodate Mr. Singh unless it resulted in "undue hardship" for the business. It was suggested to the employer that he could accommodate Mr. Singh by requiring him to wear the uniform, but not the cap. Allowing Mr. Singh to wear a turban would not be undue hardship on the agency, as he could still be identifiable as a security officer without his cap.
6. No. Age is defined in Section 2(a) as 18 to 64 years and, therefore, Mr. Lightfoot has no protection under the *Saskatchewan Human Rights Code*.
7. No. If the owner or his family resides in the place of dwelling, and the tenant is required to share bathroom or kitchen facilities with the owner or his family, the owner may discriminate on any basis (see section 2(l)). There are some further exceptions to the legislation with respect to housing accommodation that are important to note, and are found in section 11(2) and (3) of the *Code*.
8. Yes. As defined in Section 16(1), discrimination in employment includes "any term or condition of employment." Sexual harassment is deemed to be such a term or condition which women are subjected merely because of their sex. Therefore, sexual harassment is a violation of *The Saskatchewan Human Rights Code*.
9. Yes. They are refusing the woman employment on the basis of a physical disability by the fact that the place of employment is inaccessible. The employer could arrange to have the interview at a place that is accessible and, providing the applicant is qualified for the position, may be required to make the place of employment accessible to her. The employer could argue that it is an undue financial hardship to make the building accessible, as provided for in Section 9(d) of the *Regulations*, but the onus is on the employer to prove that this is the case.

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10. Yes. Discrimination on the basis of race, colour, nationality, and ancestry is prohibited under Section 12 of the *Code* with respect to public accommodation. It appears, in this instance, that the hotel was prepared to accommodate the Caucasian man who was in the process of registering. However, when his wife, who is an Aboriginal person, appears, the couple is immediately informed that there are no rooms available. This reaction may indicate that the hotel will not provide rooms for Aboriginal people.
 11. Yes. The expense scale is discriminatory on two counts. It discriminates between men and women in the provision of payment (sex discrimination) and it discriminates between the amount paid to married men and single men (marital status). Marital status is defined in Section 1(a) of the *Regulations*.
 12. Yes. It is stated in this example that the absence of the employee for two weeks without pay will not hamper the work of the company. Therefore, refusing the employee time off without pay is discriminatory on the basis of religion.
 13. Yes. The two new women are treated in a different manner than the men, who are also new employees. By not training the women in the same way as the men, the supervisor is discriminating against them because of their gender.
 14. Yes. The policy discriminates against female customers who must enter the lounge under different conditions than male customers.
 15. Do not know. Again, this type of training program may screen out classes of people and, in particular, women and some minorities. The onus is on the employer to show that these qualities are necessary, but the important point is that job qualifications should include only those qualifications that are essential in performing the functions of the job. If job qualifications are set in a discriminatory or arbitrary manner, the employer may be subject to a complaint under *The Saskatchewan Human Rights Code*.
 16. Yes. As provided in section 2(o) of the *Code*, sex is defined as "gender, and ... pregnancy or pregnancy-related illness is deemed to be discrimination on the basis of sex." Therefore, denying employment or employment benefits because of pregnancy or pregnancy-related illness is a violation of the legislation. If an employer's disability plan is administered through an insurance company, and the insurance company's plan does not cover pregnancy-related illness, the employer is still held responsible for seeing that benefits are paid to the employee requesting coverage for pregnancy-related illness.
 17. Yes. Section 14 of the *Code* prohibits discrimination in the display or publication of material that ridicules, exposes to hatred, belittles or affronts the dignity of any person or class of persons. The hotel owner is in contravention of the legislation because the sign is on public display.
 18. Do not know. This could be sex discrimination, if the employer imposes such requirements only on female employees. It could also be discrimination on the basis of physical disability, if the employer refuses to hire the applicant because of deformity caused by illness, birth or accident.
 19. Do not know. If the policy is applied so that it is always the female teacher who must resign, then the policy discriminates on the basis of sex. It could be argued that this policy also discriminates on the basis of marital status. However, *The Saskatchewan Human Rights Code* contains an exception stating that "discrimination on the basis of a relationship with a particular person is not discrimination on the basis of marital status." This section of the *Code* is designed to protect anti-nepotism policies. Such policies are created to prevent people from benefiting in the workplace from family relationships.
 20. No. Discrimination on the basis of one's occupation or source of income is not prohibited by law.
 21. Yes. The employer must accommodate female employees by providing separate washroom facilities.

(Adapted from *The Rights Awareness Test*, Saskatchewan Human Rights Commission.)

Unit Two - Criminal Law



It is difficult to moralize about any matter,
as ideas of conventional morality differ
from age to age and country to country.

Jawaharlal Nehru

Overview – Unit Two: Criminal Law

The roles and purposes of the criminal justice system are matters of public debate, and public policy in the criminal justice area is constantly undergoing scrutiny and reform in attempts to make the Canadian criminal justice system more effective. Unit two introduces students to concepts associated with the criminal justice system in Canada. Students are challenged to view law as a social construct, and to recognize that laws change according to the social context in time and place. The unit introduces the skills associated with dialectical reasoning and moral testing as an avenue to effective decision making. Investigation of the causes of crime, the response of Canadian society to crime and the alternatives available in the criminal justice system are presented. Students also develop interpretation and analytical skills in dealing with crime statistics, and assess the meaning of criminal justice data. An examination of the elements of crime, the nature of criminal offences and the approaches to defence in court are included in this unit. Finally, students are challenged to assess the effectiveness of the criminal justice system, and inquire about alternatives to the traditional Canadian approach to criminal justice.

Resources and Resource-Based Learning

Resource-based learning is an integral part of all units. The bibliography developed to support this curriculum will assist you in incorporating a variety of resources from different media into each unit. This annotated bibliography should be available from your teacher-librarian or the Learning Resource Distribution Centre. The bibliography contains annotations of current, useful resources including print, video, Internet sites and other media selections. Teachers are encouraged to assess their current resource collection, identifying those that continue to be useful, and to acquire small quantities of each new title, rather than class sets, in order to provide students with a broad range of perspectives and information.

The following list of evaluated resource titles provides a **starting point** for developing a resource collection that is current and relevant, and that addresses students' various learning styles and abilities. Please refer **Law 30: The Law and You – A Bibliography**, for a complete list of resources giving the full citation, annotation, and ordering information. Please note that many of these resources can be ordered through the Learning Resource Distribution Centre (<http://lrdc.sasked.gov.sk.ca/>). Videos may be available from Media Group (<http://www.sasked.gov.sk.ca/video>). At the time of publication all of the resources listed here and in the bibliography were in print and available.

Please note that LRDC will be closing effective March 31, 2003. If you need assistance acquiring Saskatchewan Learning materials after that date, please contact 787-5987.

Print Resources

- *Aboriginal Youth: Dealing With the Youth Justice System in Canada: A Resource Manual for Teachers and Students*
- *AIDS and Canadian Law*
- *Blaming Children: Youth Crime, Moral Panics & the Politics of Hate*
- *Canadian Crimes*
- *Canadian Criminal Justice Today: An Introductory Text for the 21st Century*
- *Canadian Criminal Justice: A Primer*
- *Canadian Criminal Procedure & Evidence for the Social Sciences*
- *Corrections in Canada: Social Reactions to Crime*
- *Court Folder*
- *Cowboys and Indians: The Shooting of J. J. Harper*
- *Crime in Canadian Society*
- *Criminal Justice in Canada*
- *Criminal Law & the Canadian Criminal Code*
- *Criminal Law in Canada: Cases, Questions, and the Code*
- *Cyberlaw Canada*

- *Diversity Issues in Policing*
- *Doing Things the Right Way: Traditional Dene Justice in Lac La Martre, N.W.T*
- *Foundations of Criminal and Civil Law in Canada*
- *Juristat Reader: An Overview of the Canadian Justice System*
- *Just Another Indian: A Serial Killer and Canada's Indifference*
- *Justice in Aboriginal Communities: Sentencing Alternatives*
- *Juvenile Delinquency in Canada: A History*
- *Kids in the Jail: Why Our Young Offenders Do the Things They Do*
- *Let's Talk (Journal)*
- *Outrage!: Canada's Justice System on Trial*
- *Pocket Criminal Code (Annual)*
- *Punishment Report*
- *R. v. Wyler: A Mock Trial Kit*
- *Shadow Line: Deviance and Crime in Canada*
- *Teenage Troubles: Youth & Deviance in Canada*
- *To Hurt or to Heal*
- *Understanding Parole: A Simulated Parole Hearing Kit*
- *Way of the Pipe: Aboriginal Spirituality & Symbolic Healing In Canadian Prisons*
- *Web of Hate: Inside Canada's Far Right Network*
- *You Can't Do That in Canada!: Crazy Laws from Coast to Coast*
- *Youth in Conflict with the Law*

Non-Print Resources

- *Circles*
- *For Angela*
- *Hollow Water*
- *Inside Out: A Teacher's Guide to Corrections and Conditional Release*
- *Out of the Woods*
- *Scared Straight! 20 Years Later*
- *Test of Justice (part of Inside Out kit)*
- *Through a Blue Lens*
- *W5: Community Service*
- *When Women Kill*

Internet Sites

The following list provides a brief overview of available websites. These sites were checked for availability in March 2002. To access formally evaluated sites that have been linked to the curriculum, visit the Evergreen Curriculum at the Saskatchewan Learning website <http://www.sasked.gov.sk.ca/>.

- Canadian Criminal Justice Association - <http://www.home.istar.ca/~ccja/angl>
- Correctional Services of Canada - <http://www.csc-scc.gc.ca>
- Hate Crime in Cyberspace - <http://www.uottawa.ca/hrrec/lawroom/hatehome.html>
- Restorative Justice - <http://www.restorativejustice.org>
- Royal Canadian Mounted Police - http://www.rcmp-grc.gc.ca/index_e.htm
- Solicitor General Canada - <http://www.sgc.gc.ca/>
- Youth Crime - <http://www.gov.sk.ca/topic-picklists/questions.html?08/youth-crime>

Incorporating Current Events

Incorporating current events enhances students' understanding of the concepts under study and extends their learning experiences by relating the events to real life, making them more relevant. Sources for current event stories include newspapers, newsmagazines, daily and weekly television or radio newscasts, documentaries and

the Internet. Many Canadian daily newspapers are available online and are a useful source of current events. Select articles and news items to support the objectives and concepts as often as possible, and encourage students to contribute also.

Learning Objectives

Learning Objectives of two types are identified for Law 30: Foundational Objectives and Specific Learning Objectives. Foundational Objectives are designed to guide instruction and student learning throughout each unit of study, and indicate the broad learning outcomes in terms of content, skills and abilities, and values. Specific Learning Objectives, identified in each lesson of each unit, are designed to help students achieve the foundational objectives. The core Specific Learning Objectives are identified in bold font. This makes timelines for each lesson and unit flexible. Teachers can choose to focus on the core objectives only, or to have students strive to achieve all of the stated Learning Objectives.

Objectives to achieve the Common Essential Learnings (C.E.L.s) are identified using the following abbreviations:

Communication	COM
Critical and Creative Thinking	CCT
Personal and Social Values and Skills	PSVS
Independent Learning	IL
Numeracy	NUM
Technological Literacy	TL

Foundational Objectives

Knowledge/Content	Skills/Abilities	Values
<ul style="list-style-type: none">Know that the criminal law is based in written statutes. (COM)Know the rights and responsibilities of citizens in relation to the criminal justice system. (COM, CCT)Investigate the structure, functions and purpose of the current criminal justice model in Canada. (COM, CCT, IL)	<ul style="list-style-type: none">Apply criteria as a basis for testing models. (CCT)Apply dialectical reasoning skills in making decisions. (CCT, COM)Research to gather specific data regarding crime statistics. (COM, NUM, IL)Apply inquiry skills to issues. (IL, CCT, COM)	<ul style="list-style-type: none">Appreciate the nature of the adversarial system. (PSVS, CCT)Appreciate the role of procedural safeguards in the criminal justice system. (PSVS, CCT)Contemplate models for addressing criminal behaviours. (PSVS, CCT)Appreciate the history and philosophy of alternate dispute resolution mechanisms. (COM, PSVS)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Crime as a Social Construct</p> <p>Decisions about which activities will be offences against the law, and how society will collectively respond, are made through legislative processes in Canada, and are reflections of a worldview of society. Laws are constantly debated, defended, and redefined as political and social changes occur. Something that was not against the law at one time may, at another time, be unlawful, or vice versa. The sale of liquor was, during the period of prohibition, illegal, whereas it is now legal, regulated and controlled through law.</p>	<p>Non-Criminality</p> <p>Know that the concept of non-criminality states that nothing is a crime unless the law specifically so provides. This means that an accused must be charged under a specific statute and the burden is upon the prosecution to present facts to prove the offence charged.</p>
<p>The Nature of Crime and Criminal Law in Canada</p>	<p>Society</p>
<p>Crime is considered to be any action that threatens the peace and security of society as a whole. A crime may be committed against an individual, but is still considered to be a wrong against the well being of the entire society, which is represented by the state. Legislators in each jurisdiction determine what actions are offensive to the society and the state, and therefore, criminal offences. In turn, these same legislators are responsible for identifying and implementing society's reaction to crime, through sanctions and punishments set out in the statutes of written law.</p>	<p>Know that society is a system in which individuals and social organizations performing a variety of roles interrelate with each other according to a set of mutual expectations and in ways controlled by the social and natural environments.</p> <p>Change</p> <p>Know that as the values, norms and mores of society change, laws are changed to reflect the current worldview of dominant groups in society.</p>
<p>In order for an action or omission to be considered a crime, certain conditions must exist:</p> <ul style="list-style-type: none"> • the action must cause harm to other people, or to society • the harm must be serious, both in nature and degree • the harm must be best dealt with through the mechanism of criminal law. 	<p>Jurisdiction</p> <p>Know that under sections 91 and 92 of the <i>Constitution Act, 1867</i>, the federal government has sole power and responsibility to create criminal law, while the provinces have the power and the responsibility for the administration and enforcement of criminal law.</p> <p>Crime</p> <p>Know that crime is an act or omission, prohibited by law, which is considered a wrong against society and society's values and morals.</p>
<p>The Criminal Code</p> <p>The best known of the offence creating statutes enacted by governments is the <i>Criminal Code</i>. The <i>Criminal Code</i> is a set of statutes enacted by the federal government, and applied uniformly throughout the entire nation. The <i>Criminal Code</i> was first adopted in 1892, and is regularly revised to reflect changes in social, political and economic environments. Some revisions are administrative, whereby regulations attached to the statutes are updated or modernized. Other changes have been substantive. Substantive changes include creating, changing and discarding offences by changing legislation.</p>	<p>Harm</p> <p>Know that some actions are deemed criminally offensive because they cause harm to the individual, in a physical or social-emotional manner. Other actions are deemed criminally offensive because they may harm or damage public institutions or practices.</p> <p>Morality</p> <p>Know that some actions are deemed criminally offensive because they offend the morality of the predominant worldview in society.</p> <p>Criteria</p> <p>Know that criteria are rules or standards that are accepted and used to provide a consistent basis for making judgments.</p>

Skills/Abilities Objectives	Values Objectives
<p>Develop an hypothesis from data.</p> <p>Develop and apply criteria as a basis for making value judgments.</p> <p>Practice recording ideas in individual setting.</p> <p>Share information verbally.</p> <p>Summarize oral data in written format.</p>	<p>Understand that morality provides guidance for making moral choices. It is based on a number of principles or criteria:</p> <ul style="list-style-type: none"> • an action may not be taken unless it is right for everyone to take that action • actions which may be hurtful to others in some way must not be carried out • before any action is taken: <ul style="list-style-type: none"> ◦ all information about the consequences of the proposed action(s) on others must be sought ◦ the effect of an action on another person must be considered ◦ advice from others should be considered ◦ the moral reasoning should be tested and rejected if it is faulty ◦ others involved in the action should test their moral reasoning and reject it if it is faulty. <p>Appreciate that criminal offences are actions that are against the law because society has deemed they should be, based on the moral reasoning at the time the legislation was enacted.</p> <p>Appreciate that those actions considered offensive change in the context of time and place.</p>

Instructional Notes

1. Examine issues associated with morality and criminality. Identify instances in which criminal laws reflect the moral code of Canadians. See Student Handout 2.1 - The Concept of Moral Testing.
2. Speculate on new criminal laws that may be needed in the 21st century. Have students write a scenario describing the need for a new law, or summarizing a debate that might occur with regard to a proposed new law.
3. Using a think-pair-share strategy, have students select a particular criminal law, and examine the purpose for the law. Consider questions such as:
 - Why is the particular action deemed criminally offensive?
 - What is the basis in morality for the law?
 - What is the social policy objective the law attempts to achieve?
4. Have students consider issues within their social network. Are there situations or actions that are not criminally offensive, but that students think should be? Are there current criminal laws they disagree with? What are their reasons?

Issues in the Law

1. Are any of our current criminal laws out of date, thus not reflecting the worldview of the majority of Canadians?
2. If you were the minister of justice for a day, what laws would you enact, discard or amend? What would be the implications for society? Would your initiatives pass the moral tests?

Student Handout 2.1 - The Concept of Moral Testing

The Need to Make Moral Choices

In our daily lives, we must make choices that involve questions of honesty, the treatment of other people, acting responsibly, and personal ethics. These are moral choices because they are about right and wrong. Moral choices are choices between what might be good for us personally and what would be good for others. We may want to do one thing, but we have doubts about whether we are doing the right thing. When a situation is morally doubtful, we have to have some basis for deciding what to do. Should an individualistic, personal point of view be taken? Should one always be "nice" and make sure that everyone else is satisfied? When should individuals look out for themselves and when should they be concerned about others?

Moral Reasoning as the Basis for Making Moral Choices

The concept of moral testing provides guidance for making moral choices. It is based on a number of principles or criteria:

- I may not do something unless it is right for everyone to do that thing.
- I must be aware that my actions may be hurtful to others in some way.
- I must be willing and able before taking action to:
 - seek out all the information about the effect of my proposed actions on others
 - imagine the consequences of my action(s) on others
 - imagine myself in the place of another person in order to better understand the effect of my actions on that person
 - seek advice from others
 - test the moral reasoning I am using and reject it if it is faulty
 - demand from others that they test their moral reasoning and reject it if it is faulty.
- After applying the above criteria I must be resolved to carry out that which is morally correct and reject that which is morally wrong.

The Process of Moral Testing

All of the above principles can be summarized into four tests that can be used to determine whether a morally doubtful choice or an action should be taken.

In using the four tests there are three things that must be done before any of the tests are applied.

The moral decision-maker must:

- clearly understand the critical parts of the situation where a moral choice is being made

- make a preliminary moral choice
- clearly lay out the reasons for the moral choice.

When this has been done, then the moral tests may be applied, in any order.

The New Cases Test

This test holds that:

- you should be able to apply the same moral conclusion to other similar situations
- if you find in another case it is not morally acceptable to make that moral conclusion, then it is not acceptable to make the claim in the first situation
- if you find in another case it is morally acceptable, then your moral conclusion has passed this test and you can look at other moral tests for further conclusion.

The Role Exchange Test

This test holds that:

- before carrying out your moral conclusion, you should imagine how another person who might be affected by your choice would react to your actions
- you must also imagine how you would react if some other person treated you the way you are thinking of treating them (remembering that another person might not accept everything you accept)
- the issue is not whether you "like" the treatment but whether the treatment is right for everyone
- there may be circumstances where another individual may not like the treatment but it is clearly good for them, then the choice may be made for the other person (a child not wanting to take the bad tasting medicine they need)
- the critical issue is to clearly understand the consequences of the moral conclusion for others and that the consequences are morally acceptable for everyone
 - if they are not, then the moral conclusion has failed the role exchange test
 - if they are, then you are ready to move to the next test

The Universal Consequences Test

This test holds that:

- you must imagine what the consequences would be if everyone carried out the actions involved in your moral choice
- a moral choice cannot be acceptable if the consequences of acting upon it are unacceptable

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- if it is wrong for everyone to act on a moral choice, then it is wrong for anyone to act on that choice
 - if it is right for everyone to act on a moral choice, then it has passed this test and may be morally acceptable.

The Process of Evaluation

When you have finished the moral testing, you then have to decide what you have learned. There are some things to consider when evaluating the results of moral testing.

- No test takes precedence over another test so if a moral choice fails any of the four tests, then the moral choice needs to be reconsidered.
- In selecting which of the four tests to apply, it must be remembered that:
 - the most difficult test for any given situation should be applied
 - not all cases apply to every situation
 - the New Cases and Role Exchange tests fit well for situations where an action will have negative consequences for one or more persons
 - the Universal Consequences test suits situations where the effect of many people performing the action will have negative consequences for others
- Tests should continue to be applied until you are satisfied that the toughest test has been applied.

(Source: *Canadian Studies 30*. Saskatchewan Education.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Other Offence Creating-Legislation in Canada</p> <p>Along with the Criminal Code, there are other legislative statutes that contain criminal provisions. Examples include the federal <i>Food and Drugs Act</i>, the <i>Official Secrets Act</i>, the <i>Emergencies Act</i>, and the <i>Controlled Drugs and Substances Act</i> at the federal level, and the <i>Highway Traffic Act</i> at the provincial level. These provisions in legislation are necessitated by new circumstances as they arise in society. These non-criminal code offences may be federal, provincial or local in jurisdiction, and all contain provisions for penalties when contravened.</p>	<p>Social Change</p> <p>Know that societies adjust to a pattern of realities (natural, social, technological) in ways that seem reasonable at the time.</p> <p>Know that over time realities change, making it necessary for society to respond.</p>
<p>Quasi-Criminal Law</p> <p>While the constitution designates the power to make criminal law exclusively to the federal government, provinces are empowered to enact laws on all matters falling within their jurisdiction. This has further empowered local governments to make laws. Indian bands have authority to pass laws for the benefit of the reserve under provisions of the federal <i>Indian Act</i>, while municipalities have authority to pass laws for the benefit of local communities under provisions of provincial statutes.</p>	<p>Quasi-Criminal Law</p> <p>Know that law made by provinces, municipalities and band councils is known as quasi-criminal law, because criminal law can be enacted only at the federal level.</p> <p>Know that quasi-criminal law creates offences for which sanctions may be imposed according to the statutes of the jurisdiction. Examples include traffic laws, wildlife protection laws and local by-laws.</p>
<p>Regulatory Offences</p> <p>Regulatory offences include those non-criminal code offences that contravene regulations of federal, provincial or local government statutes. The regulations define the details supporting the implementation of a statute (which is written to describe the general intent of lawmakers), and are not subject to the legislative process of statutes. These regulatory offences include such items as improper disposal of herbicides and pesticides, exceeding the posted speed limit and operating an unlicensed motor vehicle. Consequences of contravening a regulation, or any quasi-criminal law, are not as serious as is contravention of a criminal code statute. No criminal record results from contravention of quasi-criminal or regulatory law, and the sanction is usually less serious than in cases contravening criminal law.</p>	<p>Regulations</p> <p>Know that the regulations are the implementation details of quasi-criminal statutes and other non-criminal statutes.</p> <p>Know that regulatory limits on individual actions are designed to enhance quality of life for all citizens.</p>

Skills/Abilities Objectives	Values Objectives
<p>Develop and apply criteria as a basis for coming to conclusions.</p> <p>Apply skills of dialectical evaluation:</p> <ul style="list-style-type: none"> • defining relevant viewpoints within the information • testing the view points for factual accuracy • testing the viewpoints for their morality • evaluating the factual and moral testing • forming a conclusion about the issues. <p>Apply the moral tests of:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. 	<p>Appreciate that the outcome of any evaluation is dependent upon the criteria selected as the basis for making judgments.</p> <p>Understand that criminal law reflects moral values and social policy objectives in the context of the society in which it operates.</p> <p>Appreciate the differences between criminal law, quasi-criminal law and regulatory offences.</p>

Instructional Notes

1. Ensure students understand that regulatory and quasi-criminal offences are in fact contrary to law, and carry penalties for unlawful conduct. Create a listing of quasi-criminal and regulatory offences from student experiences.
2. Have students create a chart comparing regulatory offences, quasi-criminal offences, and *Criminal Code* offences.
3. Have students reflect on impaired driving laws. Engage in dialectical reasoning exercise to answer the question, "Are the Canadian impaired driving laws effective?"

Issues in the Law

1. Examine a criminal law such as impaired driving. What are the moral reasons for its criminalization? What social policy objectives are reflected in the impaired driving laws in Canada?
2. Reflect upon ways in which laws restrict our freedom. Then explore ways in which laws improve our freedom. Write a brief reflection paper discussing whether Canadian law is more than a set of rules telling individuals can not do.

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Purposes of Criminal Law</p> <p>Criminal laws force compliance with the norms of behaviour deemed important to individual and collective well being of society. Laws are designed primarily to protect the safety and well being of our communities. Behaviour that falls outside the accepted standard of the <i>Criminal Code</i> or other laws may result in criminal charges and sanctions. This occurs through both procedural and substantive law. Clear definition of laws in both procedure and substance ensures a greater degree of fairness in the justice system.</p> <p>Criminal laws may also be instruments of social policy, whereby social attitudes toward a particular action result in the criminalization or decriminalization of the action. For example, gaming had been illegal in most jurisdictions in Canada until the decade of the 1990s, when governments became involved in the gaming industry. Laws were reformed in order to legalize the establishment of institutions that were previously criminal.</p> <p>Some observers suggest that criminal law is an instrument of power whereby the empowered classes of society use criminal law as a response to challenges presented as a result of poverty, alienation, marginalization and exclusion from empowered society. Other observers suggest that the effect of procedural safeguards is to prevent law enforcement agencies from effectively controlling crime in our communities.</p> <p>Procedural law protects the well being of the suspected and accused, in order to ensure that individual rights are respected through due process in the procedures of implementing criminal law.</p> <p>Substantive law protects the well being of society by ensuring that laws are applied consistently and transparently, and are readily available for scrutiny by members of the citizenry. The statutes of the <i>Criminal Code</i> identify those behaviours that are criminally offensive to society, and identify the sanctions to be imposed for commission of a criminal offence.</p> <p>Consideration of the purpose of criminal law necessitates examination of the purpose of the criminal justice system in our national, provincial and local communities. Elements within the criminal justice system include:</p> <ul style="list-style-type: none"> • the police • the courts • the correctional system • the victim • the offender 	<p>Norms</p> <p>Know that norms are the expected standards of behaviour within a group.</p> <p>Sanctions</p> <p>Know that sanctions are penalties or consequences for actions outside the accepted norms of behaviour. Sanctions may be formal or informal.</p> <p>Criminal Procedure</p> <p>Know that procedural safeguards in the <i>Charter of Rights and Freedoms</i> and the <i>Criminal Code of Canada</i> are designed to ensure the equality of all individuals before the law.</p> <p>Social Policy</p> <p>Know that social policy includes the decisions of governments regarding the challenges facing a population, and the solutions to such problems.</p> <p>Due Process</p> <p>Know that due process is the procedure in the Canadian judicial system whereby an individual is provided all procedural safeguards of the law.</p> <p>Legal Rights</p> <p>Know that the legal rights of Canadians are protected as components of fundamental justice under the <i>Charter of Rights and Freedoms</i>.</p> <p>Adversarial System</p> <p>Know that the Canadian judicial system operates on an adversarial model.</p>

Skills/Abilities Objectives	Values Objectives
Analyze the processes that create and maintain law within Canadian society.	Appreciate that variance of opinion exists regarding the purposes of the criminal justice system.
Use effective group discussion skills.	Appreciate that the criminal justice system is a tool of social policy.
Select and apply criteria in order to avoid biased judgments.	Contemplate the impact of crime upon the victims of crime.
Compare and contrast the adversarial system to other systems.	
Use effective reading skills to analyze expository data.	

Instructional Notes

1. Lead students through a discussion regarding the purpose of laws in:
 - local communities
 - provincial communities
 - the national community.
2. See Student Handout 2.2 - The Adversarial System for background information regarding the nature of the Canadian criminal court.
3. Investigate alternatives to the adversarial system of justice, such as the inquisitorial system used in many European jurisdictions.
4. See Student Handout 2.3 - Victims of Crime, for data regarding support for victims of crime.
5. Investigate alternate dispute resolution mechanisms as alternatives to the adversarial system.

Issues in the Law

1. What do we believe to be the purpose and responsibility of the following institutions within the criminal justice system:
 - the police
 - the courts
 - the correctional system
 - the legal profession?
2. What are the strengths and weaknesses of the adversarial system of justice? What are the strengths and weaknesses of the alternatives?
3. Examine the purposes of the criminal justice system. Should the emphasis be on rehabilitation or punishment, or some other alternative type of restoration?
4. Should we expect the criminal justice system to protect us from harm?
5. Should the satisfaction of the victim or the state be the most important goal of the criminal justice system?

Student Handout 2.2 - The Adversarial System

Trials in Canada are quite a bit like team games. The prosecutor and his aides face off against the defence lawyer and hers. The two sides are adversaries in a serious game with serious goals. The prosecutor, called the Crown, actually represents the people of Canada. The defence lawyer represents the accused. Their game skills are not stick handling or slam dunking but evidence and argument. The judge is the referee. He calls the off-sides and penalties, and sees that the adversaries stick to the rules of law and fair play.

Such, basically, is the adversarial system. The inquisitorial system, used in France and some other European countries, goes at the question of guilt or innocence quite differently. Here, instead of two adversaries going at each other hammer and tong, we have a judge/prosecutor/inquisitor (the names may differ) who assemble the evidence, interrogate the witnesses and make a judgement. More important cases in France are tried by a tribunal of several judges, and in major criminal trials there, a nine member jury is added to the tribunal. By being a referee, the judge in this system has become into an inquisitor, one who has much more responsibility for actually conducting the case.

Our system makes the adversaries responsible for digging out the facts on which a decision will be based. Canadian law works on the theory that the two opponents in a case, or their lawyers, will work harder than anyone else to produce evidence favourable to his/her side; no one else has as strong a motive. At the very core of the adversarial system, in fact, is the belief that the individual is responsible for preserving individual rights.

That is not to say that our method of trying cases by vigorous pro and con argument is perfect. In earlier days verdicts, both civil and criminal, usually favoured the client with the fattest wallet. The evidence might have suggested otherwise, but this client could afford the very best in lawyers, someone who could make mincemeat of anyone the other poor litigant could hire. With the arrival of legal aid, the situation improved, but was still skewed in favour of the wealthy. Now, legal aid itself seems at risk in some parts of Canada.

Another way in which our system of adversaries may fall short lies in the law itself. Writing laws is not as exact a science as we would like to think, and laws are sometimes vague and ambivalent. This gives the judge a good deal of discretion in interpreting the law, which may or may not result in a biased verdict.

On most counts, though, we think the system of adversaries beats the system of inquisitors. We feel that the inquisitor has less incentive to probe for every shred of evidence, and that argument for and against leads to better justice than inquisition. On this brief summation, the defence rests.

(Adapted from *The Court Folder*, R/L Taylor Publishing Consultants Ltd., 1995.)

Student Handout 2.3 - Victims of Crime

The federal and the provincial governments fund programs for victims of crime. Some of these programs offer crisis intervention. Some help the victim learn about, and take part in, the trial process. Other programs offer financial compensation to victims.

Provincial Victims Services is part of the Saskatchewan Department of Justice. The office coordinates services available to victims and administers a victim's fund. If you are the victim of a crime, you should be aware that assistance may be available under the Victim Services Program. *The Victims of Crime Act* and its regulations govern the program. This article outlines the purpose of the *Act* and answers questions about eligibility, types of crimes that are covered and how to apply for compensation.

The *Act* sets up a fund to promote certain principles. For example, it reflects the belief that victims should be treated with courtesy, compassion and respect. They should suffer as little inconvenience as possible from their experience with the criminal justice system. Victims' views and concerns should be considered and they should receive proper help and information throughout the criminal process. Wherever reasonably possible, victims should receive prompt and fair compensation for the harm that they suffer. One source of funding for victims programs is the victims' fine surcharge. Whenever a person is found guilty of a criminal offence, a judge may add a victim surcharge to the penalty the offender receives for that offence. Surcharges go into a special fund that provides compensation to victims of crime.

To be eligible to apply for compensation under this program, a person must be a victim or a dependent of a deceased victim. A victim is one who suffers injury or death as a result of another person committing a crime set out in the Regulations to *The Victims of Crime Act*. These are mainly crimes of involving violence, negligence and sexual offences. They include assault, sexual assault, impaired driving, criminal negligence causing bodily harm and murder. The events must have occurred in Saskatchewan.

Compensation may be awarded to cover expenses a victim encounters related to such matters as health care, eyeglasses, dental work, loss of personal property, lost earnings, counselling, treatment and funerals. If a victim receives money from other sources, such as an insurance plan or civil lawsuit, that amount may be deducted from any award under the *Act*. Crimes should be promptly reported to the police. Applications to the Victim Services Program should be made as soon as possible. Normally applications will not be accepted after one year has passed. A victim does not have to wait for the result of a police investigation or trial before applying.

In addition to providing financial compensation to the victim, the fund helps to provide other programs. These include victim-offender mediation, crisis intervention services, training and education for justice workers and the general public on victims' issues, and facilities for victims and witnesses such as private waiting rooms in court houses. Applications to Provincial Victims Services should be made on the proper form. Copies are available from local police.

(Public Legal Education Association of Saskatchewan. October 22, 1999. Reprinted with permission.)

Content (Teacher Information)	Concepts and Knowledge Objectives
The Role of the Criminal Justice System in Canada	Model
<p>In order for the criminal justice system to function as an effective institution, Canadians must decide what it is they wish that system to achieve. A variety of philosophies regarding the criminal justice system and its roles and goals are held within Canadian society.</p>	<p>Know that a model is an organized set of factors that attempt to explain reality.</p>
Models of Criminal Justice	Deterrence Philosophy
<p>Public policy decisions regarding the mandate and operation of the criminal justice system are the responsibility of legislators and the public service. Approaches to criminal justice and corrections varies across jurisdictions in Canada, and public opinion regarding effective approaches to criminal justice are as varied as the political spectrum. Two opposing viewpoints regarding approaches to criminal justice are reflected in two theoretical models.</p>	<p>Know that one model of criminal justice policy is based on deterrence. Its proponents advocate:</p> <ul style="list-style-type: none"> • specific deterrence to prevent future crimes by individuals who have been caught and punished for crimes • general deterrence to prevent crime by members of society.
The Crime Control Model	Justice Philosophy
<p>The crime control model of criminal justice emphasizes the protection of society through control and suppression of criminal activity. The most important goal is to prosecute wrongdoers in order to deter others from committing offences. The crime control model is characterized by the presumption of guilt, asserting that most individuals who are arrested are, in fact, guilty.</p>	<p>Know that proponents of the justice model of the criminal justice system advocate:</p> <ul style="list-style-type: none"> • sentencing to fit the offence, not the circumstances of the offender (An end to discretionary options of the court would end discrimination against certain groups, because all crimes would be treated in the same fashion regardless of group characteristics such as race or gender.) • more severe crimes should receive more severe sentences.
<p>This model purports that it is possible for the justice system to reduce crime by implementing harsh, mandatory sentencing for crime and incarcerating individuals who are guilty of criminal offences. The model asserts crime control is effective when the criminal justice system focuses upon speed and efficiency, with high degrees of discretion exercised by individuals within the system in order to expedite the implementation of justice. A further assumption of this model is that individuals employed within the criminal justice system make few mistakes, with those few being a minimal cost in comparison to the efficiency provided in protecting communities. Detractors from this model argue the result of its implementation would be a police state, in which individual rights are sacrificed in return for the law and order agenda.</p>	Selective Incapacitation Philosophy
	<p>Know that proponents of the selective incapacitation model of the criminal justice system advocate:</p>
	<ul style="list-style-type: none"> • individuals who are repeat offenders should be selectively jailed in order to reduce overall crime • those who are most likely to re-offend should be identified and monitored, and detained if necessary for the good of the public safety.
	Rehabilitation Philosophy
	<p>Know that proponents of the rehabilitation model of the criminal justice system advocate:</p>
	<ul style="list-style-type: none"> • individualizing treatment of offenders in order to eliminate the causes of the criminal behaviour • sentencing of offenders directed toward the treatment and rehabilitation of the offender in order to prevent recurrence of criminal behaviour.

Skills/Abilities Objectives	Values Objectives
<p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance—the ability of the model to perform constructively, efficiently and consistently in a variety of situations • consequences—the acceptability of the consequences of applying the model to various situations • accuracy—the ability of the model to predict future events accurately and consistently. 	<p>Demonstrate the application of unbiased judgement when selecting and applying criteria.</p> <p>Appreciate that models are simplified representations of reality (e.g., pictures, small figures, diagrams, concept maps, recipes, blueprints) that attempt to show:</p> <ul style="list-style-type: none"> • the structure of a whole • the pattern of the parts of a whole • the relationships between the parts of a whole.
<p>Develop and apply criteria as a basis for coming to conclusions.</p>	<p>Appreciate that the assumptions and premises we accept as truth and reality, and use in the models we create, tend to come from the accepted paradigms of society.</p>
<p>Apply the skills of dialectical evaluation:</p> <ul style="list-style-type: none"> • define relevant viewpoints within the information • test the viewpoints for factual accuracy • test the viewpoints for their morality • evaluate the factual and moral testing • form a conclusion about the issues. 	<p>Appreciate that the outcome of any evaluation is dependent upon the criteria selected as the basis for making judgments.</p>
<p>Apply the moral tests of:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. 	<p>Understand that criminal law reflects moral values and social policy objectives in the context of the society in which it operates.</p>

Instructional Notes

1. Model a dialectical reasoning exercise with students regarding the most effective model for the Canadian criminal justice system.
2. Use the two models as the extremes in a continuum, and place the five philosophies of criminal justice policy within the continuum in relation to the extremes. Arrange a debate regarding the most effective model for criminal justice.
3. Have students research the history of restorative justice, and compare the system to the models now in place in Canada.
4. Have students research crime rates in Canada and Saskatchewan, and determine any trends that may be present.

Issues in the Law

1. What approach should Canada take to criminal justice? Is the get tough, law and order approach most effective, or is the rehabilitative/restorative approach a more effective approach?
2. Is rehabilitation of persons previously engaged in criminal activity effective?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>The Due Process Model</p> <p>In the due process model of criminal justice, the most important premise is the presumption of innocence, and the protection of liberty. The most important goal is to see that justice is done, through protection of the legal rights of a suspect or an accused person, ensuring only the guilty are punished. According to the due process model, this is accomplished through an accurate, fair and reliable system of substantive laws and legal procedures, limiting the power of the state and its criminal justice officials.</p> <p>This model further suggests that it is impossible for the criminal justice system to reduce crime, because it is not the criminal sanction that is influential in decisions to commit or not commit criminal acts. In the due process model, the causes of criminal behaviour are complex and varied, and it is not the threat of sanction that prevents law-abiding citizens from committing crime. It also assumes that individuals employed within the criminal justice system may abuse their power, or make errors in the process of dealing with an accused person. Therefore, it is essential that the criminal justice system protect the rights of the accused to ensure that no wrongful convictions occur, and that no unwarranted loss of personal liberty results. Detractors suggest that under this model, police become powerless to protect society from lawbreakers because of the encumbering emphasis on processes of protecting the rights of the accused.</p>	<p>Restorative Justice Philosophy</p> <p>Know that the restorative model of the criminal justice system advocates:</p> <ul style="list-style-type: none"> • addressing the harm done to the victim and the community, instead of punishment • restoring harmony to the life of the victim, the offender and the community through restitution and reconciliation. • acceptance by the offender of the holistic context of the offence—morally, socially and spiritually.
<p>The Canadian Model</p> <p>The question of the nature, purpose and philosophy of the Canadian criminal justice system is one often wrought with emotion and rhetoric, often predicated by incidents particularly horrific and highly publicized in nature. The development of appropriate public policy regarding the Canadian criminal justice system has continued to be a matter of intense debate and scrutiny.</p>	

Skills/Abilities Objectives	Values Objectives
<p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance—the ability of the model to perform constructively, efficiently and consistently in a variety of situations • consequences—the acceptability of the consequences of applying the model to various situations • accuracy—the ability of the model to predict future events accurately and consistently. <p>Select and apply criteria as a basis for coming to conclusions.</p> <p>Apply the skills of dialectical evaluation:</p> <ul style="list-style-type: none"> • define relevant viewpoints within the information • test the view points for factual accuracy • test the viewpoints for their morality • evaluate the factual and moral testing • form a conclusion about the issues. <p>Apply the moral tests of:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. 	<p>Appreciate that models are simplified representations of reality (e.g., pictures, small figures, diagrams, concept maps, recipes, blueprints) that attempt to show:</p> <ul style="list-style-type: none"> • the structure of a whole • the pattern of the parts of a whole • the relationships between the parts of a whole. <p>Appreciate that the assumptions and premises we accept as truth and reality and use in the models we create tend to come from the accepted paradigms of society.</p>

Instructional Notes

1. See Student Handout 2.4 - The Process of Dialectical Evaluation, and Student Handout 2.5 - Comparison of Dialogue and Debate for more information about dialectical reasoning strategies.
2. Examine the federal and provincial Justice Department websites. Have students make inferences about which model of criminal justice is being implemented.

Issues in the Law

1. Is the restorative justice philosophy a model for the future in Canada?
2. What approach should Canada take to criminal justice? Is the get tough, law and order approach most effective, or is the rehabilitative/restorative approach a more effective approach?
3. Is rehabilitation of persons previously engaged in criminal activity effective?

Student Handout 2.4 - The Process of Dialectical Evaluation

- Step 1 – Define the issues within a dilemma or topic you wish to address.
- Step 2 – Refine a question from within the issue to be investigated.
- Step 3 – Identify two opposing views or positions to the issue chosen.
- Step 4 – Identify the positions of each of the proponent sides of an issue, and define reasons why they hold the particular point of view.
- Step 5 – Gather information regarding the issue from as many different sources as possible, including supportive, contrary and other related data.
- Step 6 – Test the data for factual accuracy; test the moral choices for consistency.
- Step 7 – Identify the solutions (judgements) advocated by each proponent position, and test the moral choices involved.
- Step 8 – Form a judgement about the issues by identifying your personal conclusion, and testing the moral reasoning and factual accuracy of the judgement.

(Source: *Social Studies 30: Canadian Studies*. Saskatchewan Education.)

Student Handout 2.5 - Comparison of Dialogue and Debate

Dialogue	Debate
Dialogue is collaborative. Two or more sides work together toward common understanding.	Debate is oppositional. Two sides oppose each other and attempt to prove each other wrong.
In dialogue, finding common ground is the goal.	In debate, winning is the goal.
In dialogue, one listens to the other side(s) in order to understand, find meaning, and find agreement.	In debate, one listens to the other side in order to find flaws and to counter its arguments.
Dialogue enlarges and possibly changes a participant's point of view.	Debate affirms a person's own point of view.
Dialogue complicates positions and issues.	Debate simplifies positions and issues.
Dialogue reveals assumptions for re-evaluation.	Debate defends assumptions as truth.
Dialogue causes introspection on one's own position.	Debate causes critique of the other position.
It is acceptable to change one's position.	It is a sign of weakness and defeat to change one's position.
Dialogue is flexible in nature.	Debate is rigid in nature.
Dialogue stresses the skill of synthesis.	Debate stresses the skill of analysis.
Dialogue opens the possibility of reaching a better solution than either of the original solutions.	Debate defends one's own position as the best solution and excludes other solutions.
Dialogue strives for multiplicity in perspective.	Debate strives for singularity in perspective.
Dialogue affirms the relationship between the participants through collaboration.	Debate affirms one's own strength in opposition to other points of view.
Dialogue creates an open-minded attitude, an openness to change.	Debate creates a close-minded attitude, a determination to be right.
In dialogue, one submits one's best thinking, knowing that other peoples' reflections will help improve it rather than destroy it.	In debate, one submits one's best thinking and defends it against challenges to show that it is right.
Dialogue calls for temporarily suspending one's beliefs.	Debate calls for investing wholeheartedly in one's beliefs.
In dialogue, one searches for basic agreements.	In debate, one searches for glaring differences.
In dialogue, one searches for strengths in the other position.	In debate one searches for flaws and weaknesses in the other position.
Dialogue involves a real concern for the other person and seeks to not alienate or offend.	Debate involves a countering of the other position without focusing on feelings or relationship, and often belittles or deprecates the other position.
Dialogue assumes that many people have pieces of the answer, and that together they can put them into a workable answer.	Debate assumes there is a right answer and that someone has it.
Dialogue encourages de-polarization of an issue.	Debate encourages polarization of an issue.
In dialogue, everyone is part of the solution to the problem.	In debate, one person or viewpoint wins over the other.
Dialogue affirms the idea of people learning from each other.	Debate affirms the idea of people learning individually in competition with others.
Dialogue remains open-ended.	Debate implies a conclusion.

(Source: *Social Studies 30: Canadian Studies*. Saskatchewan Education.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Reasons for Crime</p> <p>Psychologists, criminologists and sociologists interested in the study of deviant behaviour have developed theories as to why people commit criminal acts. Among the theories of pre-eighteenth century society was the belief that crime was the product of the devil or other supernatural forces. As well, theories of lunar cycles as influences on criminal behaviour were also accepted in the pre-Enlightenment era. However, these theories were abandoned in the 18th century, as various schools of thought began to emerge about criminal behaviour during the Enlightenment. This theorizing about the causes of crime has continued to present day, with six predominant hypothesis prevailing:</p> <ul style="list-style-type: none"> • Classical Theory of Criminology • Biological Theory of Criminology • Psychobiological Theory of Criminology • Psychological theory of Criminology • Sociological Theory of Criminology • Interactionist Theory of Criminology <p>There is no agreement among theorists as to the definitive motivation for criminal behaviour, but continued study in this area serves to provide a basis for societal reactions to criminality. Research indicates, however, that some basic factors are highly correlated to criminal activity in Canada, including:</p> <p>Age—The peak period of criminal engagement appears to be between ages 15 and 18, with engagement starting earlier and continuing past that age in repeat and serious offenders.</p> <p>Gender—Males have been more likely to commit crime than females, although the male-to-female ratio has been steadily declining.</p> <p>Poverty—Being born into poverty has been associated with financial, marital and family stress, and has implications for parenting that may play a role in propensity to criminality.</p> <p>Association with delinquents—Peers provide a sense of approval in commission of crime.</p> <p>Also often associated with criminal behaviour are factors such as drug and alcohol abuse, television viewing, trouble in school, unstable work record and hyperactive disorders. While there is no conclusive proof that particular social, physical or mental factors cause crime, the influence is certain enough that social programs, and consideration of individual circumstances in determining punishments are useful aspects of societal responses to crime.</p>	<p>Theory</p> <p>Know that a theory is an hypothesis that has been tested, but that has not produced similar outcomes often enough to be considered fact or truth.</p> <p>Demographics</p> <p>Know that in Canada, identifiable patterns indicate a strong relationship between levels of convictions for criminal offences and socio-economic factors, including poverty and lack of education.</p> <p>Recidivism</p> <p>Know that recidivism is the relapse into crime after the sentence of a convicted offender has been completed, and the subsequent return to the criminal justice system.</p> <p>Values</p> <p>Know that values are the beliefs people will act upon because they believe them to be correct and acceptable behaviour.</p> <p>Know that people use values as criteria on which to base their judgments about issues significant to them and society.</p>

Skills/Abilities Objectives	Values Objectives
<p>Evaluate theories, and define reasons for acceptance or rejection of theories.</p> <p>Gather information from statistical data.</p> <p>Interpret statistical data.</p> <p>Apply inquiry skills including:</p> <ul style="list-style-type: none"> • acting upon their curiosity and interests • developing questions • thinking through controversies or dilemmas • looking at problems analytically • inquiring into preconceptions about what is already known • developing, clarifying and testing hypotheses • drawing inferences and generate possible solutions. <p>Use effective reading skills to analyze expository data.</p> <p>Apply writing skills to develop a position paper.</p>	<p>Appreciate that models are simplified representations of reality (e.g., pictures, small figures, diagrams, concept maps, recipes, blueprints) that attempt to show:</p> <ul style="list-style-type: none"> • the structure of a whole • the pattern of the parts of a whole • the relationships between the parts of a whole. <p>Appreciate that the assumptions and premises we accept as truth and reality, and use in the models we create, tend to come from the accepted paradigms of society.</p> <p>Appreciate that the outcome of any evaluation is dependent upon the criteria selected as the basis for making judgments.</p> <p>Contemplate various theories regarding causes of crime.</p> <p>Clarify personal viewpoints regarding causes of crime.</p> <p>Clarify motivation for use of crime statistics by various interest groups.</p>

Instructional Notes

1. See Student Handout 2.6 - Why Do People Commit Crime? for an exercise clarifying viewpoints about the causes of crime. Have students complete the chart and prepare to defend their decisions in a group discussion.
2. Conduct independent research regarding theories of the causes of crime.
3. Have students prepare position papers regarding causes of crime, and have them propose public policy solutions to reduce criminal activity based upon their perception of causes for crime. Assess the practicality of the ideas contained in the position papers.
4. Research crime statistics and demographic profiles of offenders. Draw conclusions about the causes for crime. See Student Handout 2.7 - Counting Crime.
5. See Student Handout 2.8 - Media and the Law for an opinion regarding the role of the media in the justice system.

Issues in the Law

1. The incidence of repeat offenders in the criminal justice system is a factor that leads to the question, "Is our current criminal justice model working?"
2. What use are crime statistics? What groups use them, and for what purposes?
3. What should be the role of the media in the Canadian justice system?

Student Handout 2.6 - Why Do People Commit Crime?

The study of why people commit crime is important, not only as a field of behavioural research, but as a source of data for constructing public policy models in response to criminal behaviour. Greater understanding of why people commit criminal offences enables policy makers and the general public to make better decisions about the criminal justice system.

Theory of Crime	Characteristics or Beliefs of Theory	Solutions to Crime	Accept/Reject Theory and Reasons for Decision
Classical Theory	<ul style="list-style-type: none"> • Crime is caused by the individual free will. • Human beings are rational, and make decisions freely and with understanding of consequences. • Crime is an immoral form of behaviour. • Immoral behaviour will weaken the society. 	<ul style="list-style-type: none"> • Punishment is a necessary evil sometimes needed to deter criminals and to serve as an example for those who would violate the law. • Crime prevention is possible through swift and certain punishment that counters any possible gains from criminal behaviour. • More prisons and stiffer criminal laws with greater penalties for offenders are the best solutions to crime. 	
Biological Theory	<ul style="list-style-type: none"> • The basic determinants of human behaviour are, to a considerable degree, determined by genetics. • These basic determinants of human behaviour may be passed from one generation to the next; criminal behaviour is genetically inherited. 	<ul style="list-style-type: none"> • The Eugenics movement appeared, including state - mandated sterilization of "feeble minded persons" in British Columbia and Alberta in the 1950s. • Prevention of additional offspring would end the genetically criminal cycle. 	
Psychobiological Theory	<ul style="list-style-type: none"> • Human DNA, environmental contaminants, nutrition, hormones, physical trauma (especially to the brain) and body chemistry all combine to contribute to criminal behaviour. 	<ul style="list-style-type: none"> • Research to find the gene responsible for crime will allow medical science to turn off the gene in question once located. 	

Theory of Crime	Characteristics or Beliefs of Theory	Solutions to Crime	Accept/Reject Theory and Reasons for Decision
Psychobiological Theory (continued)	<ul style="list-style-type: none"> Chromosomal anomalies, reactions to foods, vitamin deficiencies, or environmental allergies, combined with a particular genetic makeup, will predispose some individuals to criminal behaviour. 	<ul style="list-style-type: none"> Since no such gene has been discovered, medicinal approaches are employed using tranquilizers, antipsychotic drugs, and other mood-altering drugs to control behaviour. 	
Sociological Theory	<ul style="list-style-type: none"> The social environment is the cause of criminal behaviour, with weak or broken bonds to family, school, and religion being the catalyst to criminal behaviour. People engage in criminal behaviour because they do not see the benefits of adhering to conventional social values, and believe crime is a way to improve personal social conditions. 	<ul style="list-style-type: none"> Positive alternatives divert peoples' actions away from criminal activity and create a sense of belonging, competence, and empowerment. Social programmes that change the cultural and social conditions thought to lead people into crime are the best solution. 	
Interactionist Theory	<ul style="list-style-type: none"> Association with other criminals is the factor most contributing to criminal behaviour among individuals. Failure of self-direction, and inadequate social roles are the root causes of criminal behaviour. 	<ul style="list-style-type: none"> Offenders have the responsibility and ability to change their own behaviours. Opportunities for positive interaction with society will enable the criminal, or would be criminal, to choose productive and lawful behaviours to meet needs. 	

Consider each of the above theories regarding causes of crime, and the hypothetical solutions each theory offers. In the right hand column, identify whether you accept or reject the theory, and indicate why you have made the decisions as you have. Be prepared to share your information first with a partner, and then with members of a group of six.

Student Handout 2.7 - Counting Crime

Crime rates. We hear about them all the time. What do they mean and how are the numbers gathered? In order to understand crime statistics, you should know how the information was gathered. There are several methods used to collect information about the incidence of crime. You should also be aware of some things that can affect the numbers.

Police reports can provide an ideal starting point for collecting data about crime. Throughout Canada police departments provide Statistics Canada with information on the number of reported crimes each year. This is called the Uniform Crime Reporting (UCR) Survey. This survey measures the number of crimes reported to the police. It is important to note that this type of survey has its limitations. On one hand, not all crimes are reported. On the other hand, some incidents reported to the police turn out not to be crimes. Additionally, not every crime reported to the police results in an arrest and not every arrest results in a conviction.

There are other types of surveys as well. Some surveys ask people if they have been the victim of certain crimes over a certain period of time. This is called a victim survey. Again, this type of survey also has its limitations. Some crimes have no immediate or obvious victim, while other crimes may leave victims reluctant to report or disclose the incident for a variety of reasons.

There are also surveys asking people whether they have committed a crime. These surveys are often called self-reporting surveys. These types of surveys can provide useful information about the attitudes of the criminal and are ideal for revealing crimes not reported to the police, but may not be accurate if the accounts are either exaggerated or down-played.

Let us look at an example. It is a crime to drive a vehicle while impaired. This particular crime may not be disclosed by a victimization survey, as there may be no clear or obvious victim to report the crime. It could show up on a self-reporting survey, but that would depend on whether the driver believed his/her ability to drive was impaired. The number of drivers actually charged with impaired driving would be available through the Uniform Crime Reporting Survey, but we must be cautious about the conclusions we draw.

Suppose Province "A" has an arrest rate for impaired driving which is double that of Province "B". Can we conclude that more people drive while impaired in Province "A"? Not really. It may be that the police in Province "A" are more active in searching out

impaired drivers. The difference in arrest rates could be explained by more effective enforcement techniques in Province "A".

It is also important to look at specific statistics in relation to other related statistics. For instance, the latest crime statistics released from Statistics Canada indicate that Saskatchewan had the highest reported crime rate of all of Canada. However, the same statistic reveals an overall decline of 2.5% when compared to the previous reporting period. Then again, this provincial decline is only half of what the national decline rate was for the same period.

The way we count crime is also affected by what we define as crime. Some things that we consider criminal today were not always classified as such. For example, domestic violence is much more likely to be categorized as criminal behaviour today than it was in bygone years. Similarly, fighting in schoolyards and hockey rinks was once seen as a private matter between the individuals involved. Teachers, coaches, referees and parents handled these situations. Today this conduct can result in criminal charges. As our definition of crime expands to include these behaviours, we are likely to see an increase in reported crime in this area. But that does not necessarily mean that domestic violence or playground fighting is on the rise. It may simply mean that, increasingly it is recognized as criminal and reported.

So, as you can see, crime is difficult to count. When people talk to you about crime statistics, make sure you know who counted what. Without the whole picture, crime statistics can be misleading and prove very little.

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Student Handout 2.8 - Media and the Law

The role of the News Media in the law takes two distinct forms. The Media acts as the eyes and ears of the public in the courts. It also plays a leading role in the public discussion of the law and its role in our society. Let us begin with a look at the role of the media in the Courts.

Media in the Courts

Our system of law has its roots in the Village Courts or Assizes of medieval England. In the past most criminal or civil matters arose from disputes among neighbours. Those disputes would be referred to a Village Council made up of the community's most respected citizens (aldermen), and would be presided over by the local Lord or landowner. When the Council held hearings into allegations of criminal acts or disputes over property, the entire Village could attend. Anyone interested would hear all of the evidence and the testimony. These public hearings allowed the community to see that justice was done. The presence of the community also served as a check on the powers of the authorities, as an unjust decision would be seen and often protested by the community. The system of local courts evolved as time went by with more serious charges heard by Royal Courts, sometimes presided over by the King. These proceedings were not as public as the Village Courts, but were still often widely witnessed and talked about.

The system of Courts changed very little until the Industrial Revolution. As more and more people left their traditional villages and moved to cities, most were no longer free to attend Court. The rise of cities also led to the first newspapers and the beginnings of modern media. Those early newspapers would often feature stories of crime and justice, just as their modern successors do now. By the early nineteenth century the right of the public to see proceedings, and of the news media to report on legal proceedings, became entrenched in law as well as custom.

In Canada the news media has reported on the Courts since early colonial times. That role was supported in the 1982 *Charter of Rights and Freedoms*, the second clause of which guarantees the right of the media to report on issues of public interest, including the Courts. So the media now fulfills the role of the eyes and ears of the public, allowing everyone in society the opportunity to know what happens in Court and to express opinions about those actions, helping to ensure the courts remain fair and unbiased.

The right of the public and the media to know what goes on in Court is not absolute. In some cases the media may not publish the names of the people involved. The Court will often order a "Ban on Publication" in cases involving sexual crimes or children, or in cases where some of the evidence could be considered obscene.

However, before a Judge will order a ban on publication, or even remove the public from the court, he or she must be convinced beyond a doubt that the right to privacy or the protection of public morals is more important than the right of the public to know.

The Role of the Media in the Law

The second role of the media in the law is to serve as a vehicle for the public discussion of the law and its administration. When government proposes a new law, that proposal is widely published in the media. As the public learns of the government's plans, the media also serves as a catalyst for public discussion.

This can be seen almost every day in the opinion or editorial section of your local newspaper and heard on radio "Call In" programs. In this instance the modern media serves the role of the Village Square of old.

Canada's Supreme Court recognized the importance of this public discussion and the role of the media in 1938. In a landmark case involving government censorship, the Court wrote " Democracy cannot be maintained without its foundation; free public discussion throughout the nation of all matters affecting the state within the limits set by the criminal code and the common law."

Media coverage of trials can also lead to changes in the law. If the public is outraged by a decision of the Court, pressure can be put on politicians to change the law. An example is the banning of Capital Punishment in Canada in the 1970s.

Sometimes Media reports can uncover wrongdoing by authorities. By investigating and publishing news about abuse of authority, or other wrong doing by people in positions of power, the media can help to protect the public from those abuses.

Be an Informed Consumer

While the media plays a crucial role in ensuring our legal system remains fair and balanced, the "consumer of news" (the Public) has an even more

important role to play. Most media companies are in business to make money. They do so by selling advertising. The number of people that read a newspaper, listen to a radio station or watch a television channel determines the cost of advertising. That means the court cases editors and publishers choose to cover will have to be unusual enough to catch and hold the public's attention. In the criminal courts, that can result in only the most sensational cases being reported. That tendency to cover only the most sensational or unusual cases can lead to misconceptions in the public mind. The intense media attention to the *Young Offenders Act* has led to a belief that there is a huge increase in violent crime committed by young people even though statistics indicate young people, today are no more violent than their parents' generation.

Accurate reporting of Court proceedings is a challenge for even the very best Journalist. Hours of detailed and often complicated evidence must be distilled into a short report for radio or television or a few column inches in a newspaper. Since no two people will see an event the same way it is important to get your information from as many sources as possible. It is always a good idea to compare what you read in the newspaper with what you see on television or hear on the radio. And remember the media acts as your eyes and ears. Reporters have no special rights in the law that are not guaranteed to every citizen.

Remember you have a right to attend Court. You have a right to discuss, criticize and try to change laws you think are unjust. A free press and democracy go hand in hand with an informed public it's up to you to become informed and engaged.

(This article was written specifically for *Law 30* by Garth Materi, journalist, CBC Radio.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Elements of Crime</p> <p>Substantive Aspects of a Criminal Offence</p> <p>In the case of true criminal law (as compared to quasi-criminal law), two elements must be present in each case in order to determine that a criminal offence has been committed. These include the physical act of an accused person, known as <i>actus reus</i> (a guilty act or deed) and the intention of an accused person to commit a criminal act, known as <i>mens rea</i> (a guilty mind).</p> <p>Actus reus</p> <p>The <i>Criminal Code</i> identifies the <i>actus reus</i> very clearly within the offence creating statutes. <i>Actus reus</i> may include the physical action of a person, such as, the striking of an individual, constituting assault. It may also include an omission, or failure to act when dutifully expected to do so, such as the failure to provide the necessities of life to an infant child.</p> <p><i>Actus reus</i> may also occur through state-of-being, such as being in possession of a controlled substance or item. The individual in possession of stolen property, for example, is potentially guilty of an offence even though they may not have been involved in the actual theft of the property.</p> <p>As well, <i>actus reus</i> must also occur voluntarily in order to contribute to the criminality of an action. If a person has a mental disability, or an individual is coerced into participation in a robbery, or if a person acting during a sleep walking episode, the individual may be found to have not undertaken the <i>mens rea</i> aspect of criminality and; therefore, found to have not committed a criminal offence.</p> <p>Mens rea</p> <p>Determining the presence of guilty mind is more difficult in criminal law than determining the occurrence of a physical action. The <i>mens rea</i> element of determining criminality may be divided into two categories:</p> <ul style="list-style-type: none"> • intent or knowledge • recklessness or willful blindness. 	<p><i>Actus reus</i></p> <p>Know that in proving that a criminal offence has been committed, the state, represented by the crown prosecutor, must prove that an individual has indeed undertaken an action, or failed to undertake an action for which he is legally obligated, breaching the statute of the criminal code. This is also referred to as the objective element of an offence, as it is relatively easy to be certain if an action did or did not occur.</p> <p>Know that the <i>actus reus</i> component of a crime also may occur through a state-of-being, such as possession of a prohibited item. In order for <i>actus reus</i> to occur in this instance, the individual must have knowledge of what he possesses, or consent to possessing the item in question. This is also referred to as the subjective element of an offence, as the determination of an individual's state of mind is assessed upon less physical certainty and greater mental subjectivity.</p> <p><i>Mens rea</i></p> <p>Know that <i>mens rea</i> is Latin for guilty mind. It is the subjective element of an offence that describes the state of mind or required intention of accused in a criminal charge.</p> <p>General Intent</p> <p>Know that general intent is a level of <i>mens rea</i> where the accused needs not have intended to commit the offence or cause the results, but must have intended to act in a way that resulted in the offence occurring.</p> <p>Specific Intent</p> <p>Know that specific intent is a level of <i>mens rea</i> that requires the prosecution to prove that the accused meant to commit the offence or to cause certain results. An example of this type of intent would be a charge of murder where it is necessary to prove that an accused intended the results from the action.</p> <p>Recklessness and Willful Blindness</p> <p>Know that recklessness is a level of <i>mens rea</i> where the accused knows the potential consequences of an action, and takes an unjustifiable risk despite the knowledge. Willful blindness describes circumstances where an accused knew the potential for criminal consequences, but closed his or her mind to them. For example, an individual who buys an expensive car stereo from a stranger for significantly less than market value can be said to be willfully blind and charged with an offence.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply inquiry skills including:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify and test hypotheses • draw inferences and generate possible solutions. <p>Practice analytical skills.</p> <p>Differentiate between levels of criminal intent.</p>	<p>Appreciate that three fundamental principles of the criminal justice system include:</p> <ul style="list-style-type: none"> • presumption of innocence • fair and open trial • burden of proof beyond reasonable doubt. <p>Appreciate that criteria serves as the basis for prosecuting criminal charges.</p>

Instructional Notes

1. Investigate criminal cases of interest to students. Identify the elements of *mens rea* and *actus reus* of the cases. Several websites provide case law in detail.
2. Examine the varied levels of intent associated with criminal *actus reus*. Speculate on reasons for these varied levels.
3. Study a famous trial from history, and determine the *mens rea* and *actus reus*.

Issues in the Law

1. To what extent is the criminal justice system effective in achieving fairness and equality under the law?
2. Why is willful blindness not acceptable in Canadian law?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Non-Intent Offences</p> <p>There are two sets of circumstances whereby only <i>actus reus</i>, but no <i>mens rea</i> need exist in order for a crime to have occurred. This means that no moral fault exists. The first are strict liability offences, and the second are absolute liability offences. These are not true criminal offences, but rather contravention of regulatory statutes.</p>	<p>Strict Liability</p> <p>Know that a strict liability offence depends for conviction only on proof of the physical element of the offence (<i>actus reus</i>), although there is no negligence on the part of the accused.</p>
<p>Strict Liability Offences</p> <p>For offences of this nature, the general protection of the public is the intent, rather than punishment of offenders. These include primarily quasi-criminal offences of regulatory nature, to protect the health, safety, environment and general welfare of the public. Examples include wildlife laws at the provincial level, and laws regarding taxation and environmental protection at the federal level. Due diligence may be offered as a defence to a strict liability offence.</p>	<p>Due Diligence</p> <p>Know that as a defence to a strict liability offence, an accused person must prove the exercise of due diligence in order to avoid committing the offence. Due diligence involves demonstrating that one has undertaken to do everything possible to avoid committing an offence. In this way, because of reasonable belief in a mistaken set of facts, which would, if true, have made the action nonoffensive, the accused person may be deemed free from fault.</p>
<p>Absolute Liability Offences</p> <p>Absolute liability includes commitment of a regulatory offence, but offers no defence as is available in the strict liability offence. Examples of an absolute liability offence would include failing to stop for a stop sign, or speeding.</p>	<p>Absolute Liability</p> <p>Know that absolute liability offences are regulatory offences based on proof that the accused committed the prohibited act (<i>actus reus</i>), but need not involve proof of criminal intent (<i>mens rea</i>).</p> <p>Know that absolute liability is similar to strict liability, but there is no potential for due diligence or mistake of fact as a defence in the case absolute liability. The Canadian criminal justice system accepts offences as absolute liability offences only when the written statute explicitly identifies the intention of absolute liability.</p>

Skills/Abilities Objectives	Values Objectives
<p>Differentiate between levels of intent.</p> <p>Differentiate between strict and absolute liability offences.</p> <p>Apply inquiry skills including:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify, and test hypotheses • draw inferences and generate possible solutions. <p>Use research to gather specific data.</p> <p>Practice skills of analysis.</p>	<p>Assess the degree to which society should endorse the principles of strict and absolute liability, as related to the necessary element of <i>mens rea</i> in determination of a crime.</p>

Instructional Notes

1. Investigate current or recent criminal cases of interest to students. Identify the elements of *mens rea* and *actus reus* of the cases.
2. Examine the varied levels of intent associated with criminal *actus reus*.
3. Explore the concept of nonintent offences. Investigate how one may be charged with a nonintent offence in light of the requirement of *mens rea*.

Issues in the Law

1. In what ways is the criminal justice system effective, or ineffective, in achieving fairness and equality under the law?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Types of Criminal Code Offences</p> <p>The <i>Criminal Code of Canada</i> outlines the provisions of conduct deemed offensive to society. These may be categorized according to the following criteria:</p> <ul style="list-style-type: none"> • Offences Against People • Offences Against Property • Offences Against Morality • Offences Involving Automobiles • Being Party to an Offence 	<p>Offences Against People</p> <p>Know that under the provisions of the <i>Criminal Code of Canada (2000)</i>, offences against people include homicide, manslaughter, counselling or aiding suicide, assault and sexual assault.</p> <p>Offences Against Property</p> <p>Know that under the provisions of the <i>Criminal Code of Canada (2000)</i>, offences against property include theft, break and enter, mischief and fraud.</p> <p>Offences Against Morality</p> <p>Know that under the provisions of the <i>Criminal Code of Canada (2000)</i>, offences against morality include gambling in contradiction to regulations, prostitution and obscenity.</p> <p>Offences Involving Automobiles</p> <p>Know that under the provisions of the <i>Criminal Code of Canada (2000)</i>, offences involving automobiles include impaired driving, driving with excess alcohol in the bloodstream, failure to provide a breath sample, criminal negligence and dangerous driving.</p>
<p>Controlled Drugs and Substances Act</p> <p>The establishment of contraband substance offences has changed from the <i>Criminal Code</i> to the <i>Controlled Drugs and Substances Act</i>, in order to encompass a larger number of offence-creating statutes into one piece of legislation, and to better reflect societal understanding of this area of law. The <i>Controlled Drugs and Substances Act</i> includes schedules for classification of certain categories of drugs. These include:</p> <ul style="list-style-type: none"> • Schedule One – includes heroin and cocaine. This schedule provides for the most serious penalties because the substances included within it are deemed to present the greatest health and social difficulties. • Schedule Two – includes marijuana and other forms of cannabis. • Schedule Three – includes drugs such as amphetamines and LSD. • Schedule Four – includes drugs such as barbiturates and anabolic steroids. This category includes substances that are legal to possess with a prescription, but are illegal to possess without a legally obtained prescription, and are also illegal to import, export or traffic. 	<p>Drug Offences</p> <p>Know that there are six types of drug offences created under the <i>Controlled Drugs and Substances Act</i>. They include:</p> <ul style="list-style-type: none"> • possession • trafficking • possession for the purpose of trafficking • importing and exporting • production • possession of the proceeds of drug offences <p>Another drug-related offence created under the <i>Criminal Code of Canada</i> is that of impaired driving. While most commonly associated with the use of alcohol, impaired driving also is an offence that occurs in the event that an individual operates a motor vehicle while under the influence of other drugs.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply inquiry skills including:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify, and test hypotheses • draw inferences and generate possible solutions. <p>Practise skills of analysis.</p> <p>Practise independent research skills to gather specific data.</p> <p>Practise group presentation skills.</p>	<p>Appreciate the rationale for the inclusion of actions against morality as offences in the criminal code.</p> <p>Identify the moral values portrayed through criminal laws.</p> <p>Determine the public policy intents of criminal laws.</p>

Instructional Notes

1. Investigate criminal cases of interest to students. Identify the elements of criminality within the cases.
2. Have students investigate various *Criminal Code* offences, and speculate about why items are included as offences.
3. Divide the class into groups to investigate the various types of offences. Have groups report to the class, sharing data in a cooperative process.
4. See *Drugs, Alcohol and the Law*, a publication of the Public Legal Education Association of Saskatchewan, for background data regarding this area of criminal law in Canada.

Issues in the Law

1. Are any Canadian criminal laws unjust? What is unjust about them, and how could they be made just?
2. Are Canadian drug laws effective? Explain.

Content (Teacher Information)	Concepts and Knowledge Objectives
Criminal Attempts	Attempt
<p>While completed <i>actus reus</i> (physical action) is a necessary element of proof in most serious criminal matters, the actions of attempting to commit a criminal offence may also be deemed as offensive in the legal sense. For example, if an individual thinks or talks about committing a criminal offence, no law has been broken. However, if the same person attempts to take action toward actually achieving the intended offence, then a criminal offence has been committed, even if the action has not been successfully completed.</p>	<p>Know that under the Section 24 of the <i>Criminal Code of Canada</i>, when an individual attempts to undertake an offence, an action or omission directly connected with the intended crime is, in itself, a criminal offence.</p> <p>Know that three essential elements of the criminal offence of attempt are intent to carry out an unlawful act, some act or omission toward committing the offence, and noncompletion of the criminal act. (Completion of the action would eliminate the offence of attempt.)</p>
Parties to an Offence	Aiding or Abetting
<p>One need not be the principle character carrying out a criminally offensive action in order to be guilty of the offence. In Canada, it is a criminal offence to be party to a criminal offence under the following circumstances:</p> <ul style="list-style-type: none"> • aiding and/or abetting • counselling 	<p>Know that an aid to a criminal offence is a person who knowingly assists in the commission of a crime in any way.</p> <p>Know that an abettor to an offence is one who knowingly encourages another to commit a criminal act.</p>
Accessory After the Fact	Counselling
<p>Another of the criminal offences that may be committed without being the principle offender is that of accessory after the fact. This may include providing food, clothing and shelter to one who has committed an offence, if it is determined that such assistance was provided for the purpose of enabling that person to escape. However, a married person may not, under current law, be convicted of the charge of accessory after the fact when they are an accessory to the offence of a spouse in this manner.</p>	<p>Know that counselling may be charged when one advises, recommends, solicits or incites another person to be party to an offence. Under section 464 of the <i>Criminal Code of Canada</i>, an offence of this nature occurs when the counselling occurs regarding a crime never committed. Under section 22 of the <i>Criminal Code of Canada</i>, a counselling offence occurs when an actual crime is committed, and this is deemed much more serious an offence.</p> <p>Accessory After the Fact</p> <p>Know that it is a criminal offence according to Section 23 of the <i>Criminal Code of Canada</i>, when a person who, knowing that another person has committed a criminal offence, helps that person to escape.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply inquiry skills including:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify, and test hypotheses • draw inferences and generate possible solutions. <p>Practise analysis skills.</p> <p>Practise independent research skills.</p> <p>Practise group presentation skills.</p>	<p>Appreciate the rationale for the inclusion of actions against morality as offences in the criminal code.</p> <p>Appreciate that criminal laws reflect the moral values of the society in context of time and place.</p> <p>Assess the public policy intents of criminal laws.</p>

Instructional Notes

1. Investigate criminal cases of interest to students. Identify the elements of criminality within the cases.
2. Have students investigate various *Criminal Code* offences, and speculate about why items are included as offences.
3. Divide the class into groupings to investigate the various types of offences. Have groups report to the class, sharing data in a cooperative process.
4. Have students create a scenario involving criminal attempts, aiding or abetting or counselling an offence, from their own experiences with peers. Have them speculate as to the criminality or noncriminality of the scenario as a demonstration of the concepts.

Issues in the Law

1. Are any of our criminal laws unjust?
2. Should an individual be protected from being forced to give testimony regarding criminal activity by a spouse?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>The Canadian Criminal Justice Process</p> <p>Within the Canadian criminal justice process there are many different interests represented through a variety of agencies and structures. The process of criminal trial in Canada is based upon an adversarial system of judging disputes. This adversarial system includes five categories of participants in a criminal trial process. Not all cases proceed in the same manner within the criminal justice system, but rather proceed according to the circumstances of each set of circumstances.</p>	<p>Adversarial System</p> <p>Know that in Canada, criminal trials are built around an adversarial system. This system holds that the greatest number of just resolutions in criminal trials will occur when both the accused defendant and the prosecuting state are allowed to argue their cases effectively and vociferously before a fair and impartial arbiter (judge).</p>
<p>The Police</p>	<p>Suspect</p>
<p>The provincial governments in Canada are constitutionally responsible for policing within their boundaries. In some provinces there are provincial police forces, such as Ontario and Quebec. In other provinces including Saskatchewan and the three Territories, the Royal Canadian Mounted Police are contracted to provide policing services. Another policing option that exists in Saskatchewan, as elsewhere in Canada, has individual cities, towns and municipalities employing their own municipal police forces. The creation of local community policing in Aboriginal communities is underway as part of the movement to self-government for Aboriginal peoples in Saskatchewan. An example of this is the File Hills Policing Agreement.</p>	<p>Know that a suspect is an individual whom is being actively investigated with regard to an offence, but has not yet been charged.</p>
<p>The criminal justice system places responsibility upon police agencies to investigate crime, to apprehend and arrest persons suspected of committing offences, to gather evidence necessary for conviction of offenders and to charge persons with criminal offences. The actions of police officers in the investigation of a crime are governed and limited by the <i>Criminal Code of Canada</i> (part XV), the <i>Charter of Rights and Freedoms</i> and the common law. These provisions are intended to ensure procedural fairness in protecting the rights of the citizens from abuse of power by the state, represented at this stage of the criminal justice system by the police.</p>	<p>Accused</p>
<p>Questioning By Police</p> <p>In their daily activities, police are entitled to gather information to further investigations, enabling them to carry out their duties and functions in the community. While the process of gathering information through questioning individuals is routine procedure for police, individual citizens have clearly defined rights in this regard. These rights are intended to prevent unwarranted loss of liberty through detention.</p>	<p>Functions of Police</p> <p>Know that the three primary functions of police in Canada are:</p> <ul style="list-style-type: none"> • to prevent crime • to detect and apprehend offenders • to maintain order in the community in accordance with the law. <p>Detention</p> <p>Know that, according to the Supreme Court of Canada, detention occurs when a person is stopped by a peace officer and "submits or acquiesces in the deprivation of liberty and reasonably believes that the choice to do otherwise does not exist."</p>

Skills/Abilities Objectives	Values Objectives
<p>Practice analysis skills.</p> <p>Apply inquiry skills including:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify, and test hypotheses • draw inferences and generate possible solutions. 	<p>Appreciate that the cost of police protection is an issue in communities in Saskatchewan.</p> <p>Appreciate that many Aboriginal peoples consider policing and criminal justice as aspects of the inherent right to self-government.</p> <p>Appreciate the procedural safeguards in place to protect the rights of an accused person.</p>

Instructional Notes

1. See Student Handout 2.9 - Law Enforcement Services and Student Handout 2.10 - Aboriginal Policing Initiatives in Saskatchewan, for background data regarding policing in Saskatchewan.
2. Investigate the adversarial system of justice. Assess the controls and limits put on the power of police.
3. Study the rights of an individual in various interactions with police, including:
 - being confronted while walking down a street
 - being approached as a driver of an automobile
 - police arriving at your residence door.

Issues in the Law

1. Who should pay for policing in Saskatchewan?
2. What factors may influence the future for Aboriginal policing in Saskatchewan? Why is Aboriginal policing an important issue in Saskatchewan?
3. Are the limits to police power in Saskatchewan appropriate? Explain.
4. How might we assure that those accused, who are not convicted of an offence, will be presumed innocent by the community?

Student Handout 2.9 - Law Enforcement Services

Law Enforcement Services, a branch of Saskatchewan Justice, maintains public order and safety in Saskatchewan by ensuring that effective policing, coroners and private security programs uphold the rule of law and protect the basic rights of individuals. The Law Enforcement Services Branch of Saskatchewan Justice:

- administers the Royal Canadian Mounted Police (R.C.M.P.) contracts to provide provincial, Aboriginal and municipal policing services
- carries out the day-to-day operations of the Saskatchewan Police Commission. The Commission regulates, hears appeals in discipline cases and provides training for the municipal police services
- provides centralized training to municipal police services through the Saskatchewan Police College at the University of Regina
- regulates the private security industry
- provides a province-wide coroners system to investigate all unnatural deaths occurring in the province. Public inquests are held when the public interest requires an open hearing about the circumstances of a death. Public inquests are also held for the death of a person in custody in a correctional centre or jail.

The Law Enforcement Services Branch also administers *The Private Investigators and Security Guards Act*. There are penalties under this Act for unlicensed security guards and private investigators working in Saskatchewan.

Policing

How many police officers are there in Saskatchewan?

There are 800 municipal police officers and 1,200 R.C.M.P. officers. This does not include those at the R.C.M.P. training academy in Regina.

Why do some communities have municipal police officers while others have R.C.M.P. officers?

Policing is a local responsibility. Municipalities can choose how they wish to provide services.

How can I become a municipal police officer or a member of the R.C.M.P.?

Contact any police department or R.C.M.P. detachment.

How much does policing in Saskatchewan cost?

Police services in Saskatchewan cost \$200 million a year.

Source: Saskatchewan Justice.

Student Handout 2.10 - Aboriginal Policing Initiatives in Saskatchewan

The goal of self-administered policing in Aboriginal communities has grown from larger initiatives toward self-government, and a desire to reform the criminal justice system in Canada into a system more effective in its interactions with Aboriginal peoples. The goal of Aboriginal Policing Initiatives in Saskatchewan is to implement self-administered policing in Aboriginal communities, thereby creating a more culturally responsive system. Presently, police services are the constitutional responsibility of the provinces. In Saskatchewan, communities arrange policing under the jurisdiction of Saskatchewan Justice, opting for either locally constituted police services (such as the police services found in many Saskatchewan cities), or contractual arrangements with the R.C.M.P., who then assign policing duties to individual detachments. Recognition of the right to establish locally controlled police services in Aboriginal communities is based in two factors, including the establishment of a Mohawk police service in 1970, legitimized by the Supreme Court of Canada. As well, the *Indian Act* provides for establishment of First Nations Police Services Agreements. As most local communities have options regarding the nature of police services they receive, Aboriginal Policing Initiatives serve to provide options to Aboriginal communities as well.

Local control of policing in Aboriginal communities begins with a Band Council resolution, indicating a desire to enter a policing agreement with the federal government. This resolution is then forwarded to the Federal Solicitor General and Provincial Department of Justice for approval to establish a local policing initiative. If the resolution is approved, the R.C.M.P. provide data to the community, in order to determine the number of officers and clerical support staff required in the provision of police services. As well, funding for an Aboriginal Elder is included in policing agreements, in order to enhance culturally sensitive policing, and to assist new officers in their adjustment to their roles in the community. Funding in policing agreements is also made available to provide office space and personal lodging for officers.

In support of such initiatives, the federal government committed financial resources in 1991, and in 1993. A framework agreement was established between the federal and provincial governments and the Federation of Saskatchewan Indian Nations. As of the year 2000, a total of 30 Community Tripartite Agreements were in place in Saskatchewan, including 45 of a total of 72 individual Indian bands. In many of these 45 Aboriginal communities, Police Management Boards have been established, in order that members of a particular community have an avenue to provide direction regarding the nature of policing services, and to identify areas they believe should be emphasized in the process of community policing. As well, in May of 1999, an arrangement referred to as the New North Agreement was adopted through a Memorandum of Understanding between the federal and provincial governments and the 35 northernmost municipalities in Saskatchewan. Under this arrangement, Community Police Boards have been developed, with roles similar to that of the Police Management Boards. Among the most fully developed of the Aboriginal Policing Initiatives in Saskatchewan is that of the File Hills Tribal Council; it is the first of the tripartite agreements to result in the establishment of a full-fledged self-policing mechanism for member bands. Over a period of five years, the R.C.M.P. will move out of policing in these communities, while the File Hills Police Service takes responsibility for policing in the region. The transition is being implemented over time in order to enhance the effectiveness of the initiative. It is hoped that this agreement, and others that will follow, will improve both the reality and perception of police services for Saskatchewan's Aboriginal communities.

For Consideration

1. How might the establishment of locally controlled police services enhance the administration of justice for people living in Aboriginal communities?
2. What jurisdictional issues may arise from such initiatives?
3. Why are initiatives such as the File Hills Agreement important to Saskatchewan people?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Charge</p> <p>When police charge an individual, they are formally accusing that individual of committing the offence named in the charge. This charge is called an information, and is served upon the person accused. At this point, police usually do not arrest an individual, but serve the individual with an appearance notice or a summons, both of which obligate the individual to appear in court to answer the charge identified in the information. Arrests are made when an accused is considered to be at high risk of not appearing in court to answer a charge.</p>	<p>Charge</p> <p>Know that when an individual is formally charged with an offence, the police will serve an information upon the accused person that informs the accused of the details of the alleged offence.</p>
<p>Arrest</p> <p>The issue of arrest is important in the criminal justice process, in that arrest is state imposed, lawful restriction of personal liberty. Because arrest involves the loss of liberty, the <i>Criminal Code of Canada</i> (part XVI) and the <i>Charter of Rights and Freedoms</i> ensure procedural fairness and protection of the rights of the accused in case of arrest. Arrest is designed to:</p> <ul style="list-style-type: none"> • ensure that an accused person appears at trial for crimes for which they have been accused • prevent a person from beginning to commit a crime • stop a person in the process of committing a crime. 	<p>Arrest or Detention</p> <p>Know that arrest is the act of taking an alleged or suspected offender into police custody. It is the lawful restriction of liberty by legal authority, by expressing words of arrest and actual physical detention.</p> <p>Know that stopping someone to ask for identification is not an arrest.</p> <p>Know that under section nine of the <i>Charter of Rights and Freedoms</i>, everyone has the right not to be arbitrarily detained or imprisoned.</p> <p>Know that the <i>Criminal Code of Canada</i> outlines the procedural safeguards that protect the rights of an accused person upon arrest or detention.</p>
<p>Arrest may occur without a warrant when an indictable offence has been or is about to be committed, while arrest warrants may be obtained to arrest someone whom a judge or justice of the peace determines should be arrested to ensure the public interest. An officer may use reasonable force to make an arrest, although definition of reasonable force depends upon each particular set of circumstances. Upon arrest, an accused individual must be provided an explanation of the reason for the arrest, and be informed of the right to counsel and the right to remain silent. Any person who is arrested must be taken before a judge or justice of the peace within 24 hours or as soon as possible, to ensure that no unwarranted loss of personal liberty occurs at the hand of the state. Any arrest or detention must occur within the parameters of the <i>Criminal Code</i> and the <i>Charter of Rights and Freedoms</i>.</p>	<p>Summons</p> <p>Know that a summons is a document that may be served upon a person accused of a crime, requiring the accused individual to appear in court at a certain time and date to answer the charges.</p> <p>Habeas Corpus</p> <p>Know that the right to <i>habeas corpus</i> involves the right to a hearing to determine if an accused is being legally detained before trial.</p>
<p>In circumstances other than those stated, an officer believing someone has committed a criminal offence will charge the individual and later serve the individual with a summons to appear in court, rather than arresting the individual.</p>	

Skills/Abilities Objectives	Values Objectives
<p>Select and apply criteria in assessing documentation.</p> <p>Apply inquiry skills including:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify, and test hypotheses • draw inferences and generate possible solutions. 	<p>Appreciate reasons for procedural protections guaranteed under the <i>Charter of Rights and Freedoms</i> and the <i>Criminal Code of Canada</i>.</p> <p>Contemplate the consequences of human error in determining the guilt or innocence of an individual charged with an offence.</p>

Instructional Notes

1. Investigate the concept of *habeas corpus*. Why is it important in Canadian law?
2. Investigate the circumstances of Guy Paul Moran, David Milgaard or Donald Marshall. How did these miscarriages of justice occur despite the procedural safeguards in place in the criminal justice system?
3. Analyze a charging document, which may be obtained from a local police detachment. Identify the components of procedural and substantive law included in the document. Assess the adequacy of the document in protecting the rights of the accused.

Issues in the Law

1. Are the rights of accused persons excessive?
2. How should society compensate victims of wrongful imprisonment?
3. How might the Canadian criminal justice system prevent further cases of wrongful imprisonment?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Anyone placed under arrest must be informed of the reason for the arrest, and must be advised of their rights under the law. This is one of the procedural safeguards designed to prevent the abuse of power by authorities of the state in their interaction with the citizens.</p>	<p>Presumption of Innocence</p> <p>Know that in Canada an individual is presumed innocent unless proven guilty beyond a reasonable doubt.</p> <p>Know that an individual placed under arrest has procedural rights, including:</p> <ul style="list-style-type: none"> • the right to remain silent • the right to consult with a lawyer • the right to a hearing regarding their liberty • the presumption of innocence unless proven guilty beyond a reasonable doubt.
<p>Search or Seizure</p> <p>A police officer may search a person, place or thing for evidence. Because a search is an intrusion on a person's body or property, the police must have a good reason for the search. In certain circumstances the police may make a search without a warrant, while in other cases they must have a warrant. After making a search, the police may take things they believe could be used as evidence.</p>	<p>Search or Seizure</p> <p>Know that under section eight of the <i>Charter of Rights and Freedoms</i>, everyone has the right to be secure against unreasonable search or seizure.</p> <p>Know that in 1987, the Supreme Court of Canada determined that a search is reasonable if:</p> <ul style="list-style-type: none"> • it is authorized by law • the law itself is reasonable • the manner in which the search is carried out is reasonable. <p>Know that under part XV of the <i>Criminal Code of Canada</i>, the powers of police are defined and limited in terms of search or seizure.</p>
<p>The Prosecution</p> <p>Crown prosecutors are government lawyers who handle criminal cases on behalf of the people of the land. The Crown prosecutor prepares the case by researching the law, reviewing exhibits obtained by police as evidence, reviewing paperwork such as search warrants and interviewing witnesses. The Crown prosecutor decides if there is enough evidence to justify taking the case to trial, and also decides whether to prosecute a dual (hybrid) offence as a summary conviction or an indictable offence. If there is a trial, the Crown prosecutor must have evidence to present in court to prove the elements of the alleged offence, which is either verbal testimony or a physical object.</p>	<p>Prosecution</p> <p>Know that the Crown prosecutor represents the state in criminal prosecutions, and is given the task of proving the case that an accused is guilty beyond a reasonable doubt.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply inquiry skills, including:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify and test hypotheses • draw inferences and generate possible solutions. <p>Apply research skills to gather specific data.</p>	<p>Appreciate reasons for procedural protections guaranteed under the <i>Charter of Rights and Freedoms</i> and the <i>Criminal Code of Canada</i>.</p> <p>Contemplate the consequences of human error in determining the guilt or innocence of an individual charged with an offence.</p>

Instructional Notes

1. See Student Handout 2.11 - Search and Student Handout 2.12 - Student Searches for information about search and seizure.
2. Interview a police officer regarding issues of arrest from the law enforcement viewpoint.
3. Examine the procedural protection for accused persons as identified in the *Charter of Rights and Freedoms*. Identify reasons for such protection.

Issues in the Law

1. Is the procedural safeguard of the right to remain silent justified in Canadian law? Why?
2. How might we assure that those accused, who are not convicted of an offence, will be presumed innocent by the community?

Student Handout 2.11 - Search

A police officer may search a person, place or thing for evidence. Because a search is an intrusion on a person's body or property, the police must have a good reason for the search. In certain circumstances the police may make a search without a warrant. In other cases, they must have a warrant.

Search With a Warrant

Often the police must have a search warrant to search a place or thing. For example, in most cases the police may not search a private residence without a warrant. A warrant is a judge's order permitting the search. The warrant allows the police to search a place or a thing named in the warrant. The police officer who asks the judge for a search warrant must have reason to believe that he or she can find evidence there.

There is a special provision for the police to get a warrant to force a person to give a cell sample for DNA typing. The police must show that a serious offence has been committed, that there were cell samples at the crime scene and that there are reasonable and probable grounds to believe that the person committed the offence. The cell sample will be a few hairs, a saliva swab or drops of blood from a prick in the person's fingertip.

Search Without a Warrant

In certain situations the police may conduct a search without a warrant. For example, the police may search a person when they make an arrest. The police also may search a person they believe is carrying a dangerous weapon. Some laws give police power to search a place or a thing without a search warrant under some circumstances.

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Student Handout 2.12 - Student Searches: A Case in Point

A vice-principal of a high school received information from several students that a 16-year-old student was selling drugs at school and would be carrying drugs later that evening during a school dance. The vice-principal had good reason to believe that this information was reliable.

That evening the vice-principal saw the 16-year-old arrive at the dance and telephoned the R.C.M.P. to ask that an officer attend at the school. He then asked the student to come to his office. Once in his office the vice-principal asked the student if he had any drugs and told the student that he was going to search him. The R.C.M.P. officer then arrived, introduced himself and took a seat. The R.C.M.P. officer did not question the student and sat by as the vice-principal asked the student to empty his pockets and roll up his pants legs. Noticing a bulge in the student's sock, the vice-principal investigated further and discovered a small amount of marijuana rolled up in a cellophane bag. The R.C.M.P. officer then arrested the student and charged him with possession of a narcotic. The student was read his rights and given an opportunity to contact a lawyer or his parents. The R.C.M.P. officer proceeded to search the student's locker, but nothing else was found.

Under the Canadian *Charter of Rights and Freedoms* "everyone has the right to be secure against unreasonable search and seizure." If a court believes that a search was contrary to this *Charter* protection, the court can exclude any evidence that the search turned up.

In this case, the court was asked to determine whether the search of the 16-year-old student was justified and lawful or in violation of the student's *Charter* right to be safe from unreasonable search and seizure. As a matter of law, the student would have had the right to contact a lawyer or parent if the detention and search had been conducted by a police officer. Also, a police officer may have been required to obtain a search warrant before the search. A vice-principal, acting within his administrative powers, would not have to follow the same procedure. As is the case in every legal dispute, the courts needed to balance competing interests. Here the right of the student to be free from unjustified intrusions upon his privacy needed to be balanced against the school's legitimate obligations to deal with discipline problems quickly and effectively. A judge of the Supreme Court of Canada put it this way:

Teachers and those in charge of our schools are entrusted with the care and education of our children. It is difficult to imagine a more important trust or duty. To ensure the safety of the students and provide them with the orderly environment so necessary to encourage learning, reasonable rules of conduct must be in place and enforced at school.

The judge went on to ask: Does the nature of the obligations and duties entrusted to schools justify searches of students? To what extent are students entitled to an expectation of privacy while they are on school premises?

This case went all the way to the Supreme Court of Canada. The court found, among other things, that the vice-principal was not acting as an agent of the police. That is, the court believed that the vice-principal would have conducted himself in the same manner even without the police presence. The court further held that there was no reasonable expectation of privacy in the circumstances. The court said that students know that teachers are responsible for maintaining order and discipline, and that this may sometimes require students to be searched. In today's world, teachers must be allowed to deal with discipline problems quickly and effectively.

The court also discussed the need for a warrant. The court held that although a warrant is generally required to conduct a search, to demand this in a school setting is unworkable. The need to protect students, combined with a lessened expectation of privacy while at school, means that searches conducted by teachers will not be held to the same standards as searches conducted by police. Teachers still need to have a reasonable belief that school rules have been broken. Searches must be carried out in a reasonable and sensitive manner and must be minimally intrusive. In determining whether a search is reasonable, all the surrounding circumstances need to be considered.

Finally, this modified standard for reasonable searches only applies when teachers are acting within the scope of their responsibility and authority to maintain order, discipline and safety within the school. It does not apply where the school authorities act as agents of the police, where they will be held to the same standard as police in terms of providing the right to legal council and obtaining a search warrant.

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Classification of Offences</p> <p>Offences under the <i>Criminal Code</i> are classified into three categories according to their seriousness and the procedure used to deal with the accused. They include:</p> <ul style="list-style-type: none"> • summary conviction offences • hybrid or dual offences • indictable offences. <p>The nature of the alleged offence usually will dictate the category of law under which an accused person is tried, although certain hybrid or dual offences may proceed according to the choice of the crown, in terms of summary conviction or indictable procedures.</p>	<p>Summary Conviction Offences</p> <p>Know that summary conviction offences include less serious crime that carries a light penalty. The accused may be tried in provincial court without a jury or a preliminary hearing.</p> <p>Hybrid or Dual Offences</p> <p>Know that hybrid or dual offences allow the prosecution to elect to proceed by way of summary conviction or by way of indictment.</p> <p>Indictable Offences</p> <p>Know that indictable offences include serious crime that is subject to stiff penalties, and that is prosecuted using the more formal set of criminal procedures including a preliminary inquiry and jury (if the accused so chooses).</p>
<p>The Accused or Defendant</p> <p>A person becomes a defendant, or accused of an offence, only after formally receiving the charge in the form of an information. The rights of all accused persons in Canada are protected by procedural statutes and the <i>Charter of Rights and Freedoms</i>, intended as safeguards against wrongfully convicting an individual, and subsequently violating their fundamental rights and freedoms.</p> <p>An accused person is under no obligation to present a defence to a charge, as it is the Crown that must prove guilt beyond a reasonable doubt. The accused is not obligated to even raise a doubt about guilt or innocence, as they have the right to be considered innocent until and unless the Crown meets this burden of proof. However, in most criminal trials, the accused will choose to attempt to create a reasonable doubt about the case of the prosecution. As well, the accused may mount a defence by attempting to prove that circumstances existed that negate the guilt of the accused as it is presented by the prosecution.</p>	<p>Fundamental Rights</p> <p>Know that sections seven through fifteen of the <i>Charter of Rights and Freedoms</i> outline the fundamental legal rights in effect in Canada.</p> <p>Fundamental Justice</p> <p>Know that under section seven of the <i>Charter of Rights and Freedoms</i>, the right to life, liberty and the security of the person can be deprived only in accordance with the principles of fundamental justice.</p> <p>Know that the principles of fundamental justice require that all persons investigated for and accused of a crime receive procedural protections to ensure that they are treated fairly throughout the process.</p> <p>Burden of Proof</p> <p>Know that in a criminal trial, the accused is presumed innocent the crown must prove guilt beyond reasonable doubt.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply critical viewing skills to make judgements.</p> <p>Select and apply criteria to make judgements.</p> <p>Classify information by applying identified criteria.</p>	<p>Examine why it is important to have an independent judiciary in the Canadian justice system.</p> <p>Appreciate the importance of an independent judiciary in the Canadian justice system.</p>

Instructional Notes

1. Investigate the concept of an independent judiciary, using a video kit such as *Judicial Independence: What It Means to You*, available from the Canadian Bar Association, Saskatchewan Branch. (See Law 30 - The Law and You a Bibliography for Law 30 for information regarding engaging the assistance of the Canadian Bar Association, Saskatchewan Branch).
2. Research the process of determining how an offence should be categorized (summary conviction or indictable) by the crown when charging an individual with a *Criminal Code* offence.

Issues in the Law

1. Should accused persons be forced to submit to being photographed and finger printed upon being charged with an indictable or dual offence? Does this violate the fundamental right to be considered innocent until proven guilty beyond a reasonable doubt?
2. Considering the fundamental principles of justice, what measures might be available to overcome the stigma of charge and the doubt cast on those found not guilty of criminal charges?
3. Is it important that judges be independent of outside influence, or is there an obligation to reflect the opinion of society in the judicial process?

Content	Concepts and Knowledge Objectives
<p>Defences to Criminal Charges</p> <p>Under Canadian law, every accused person is entitled to present a defence at a trial, regardless of the circumstances of the alleged criminal activity. The defences that may be used at trial include:</p> <ul style="list-style-type: none"> • no criminal state of mind • automatism • alibi • self-defence • defence of property • duress • provocation • mistake of fact • mistake of law • mental disorders • necessity • intoxication • special pleas • entrapment and abuse of process. <p>The right to mount a defence and to answer charges with the assistance of legal counsel is fundamental to the procedural fairness of the Canadian system of criminal law. This procedural fairness is based in the presumption of innocence of all accused persons, until such time as a trier of fact (judge or jury) establishes guilt beyond reasonable doubt in a court of law. If an individual accused is unable to afford to provide his or her own legal counsel, assistance is provided in the form of legal aid counsel.</p> <p>Accused persons also have obligations along with the rights afforded under Canadian law. These obligations include any court ordered undertaking while an accused person is awaiting trial, as well as obligation to appear to answer charges as specified under law. Persons accused of indictable and dual <i>Criminal Code</i> offences must also submit to photograph and finger print identification by police at the time of charge.</p>	<p>Defence</p> <p>Know that a defence is any denial or answer to the charge against an accused person.</p> <p>Know that a defence is also a legally recognized excuse or justification for criminal conduct.</p> <p>No Criminal State of Mind</p> <p>Know that where an accused person did not have a guilty state of mind when committing a crime, the accused may be found not guilty. This may include mistake of fact as well as absence of <i>mens rea</i>.</p> <p>Automatism</p> <p>The accused person must have acted consciously, and the alleged criminal behaviour must be voluntary. An accused person who does something while sleep walking, or during an epileptic seizure, may be deemed to have not acted consciously, and therefore the actions may be deemed not voluntary. Crimes committed in an unconscious state are rare, and the defence of automatism may be used because the person moves about automatically.</p> <p>Alibi</p> <p>Know that an alibi is when an accused person claims not to have been present at the time of an alleged offence.</p> <p>Self-Defence</p> <p>Know that a person who is attacked may use the amount of force necessary to resist the attack, known as reasonable force.</p> <p>Defence of Property</p> <p>Know that a person may use reasonable force to prevent someone from entering his or her property, but may not use excessive force.</p> <p>Mental Disorders</p> <p>Know that a mental disorder may result in an individual being found to be not criminally responsible for an offence. The person must not have known that the action was an offence. The defence of intoxication can only be used if alcohol or drug abuse has led to a condition of mental disorder.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply inquiry skills including:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify and test hypotheses • draw inferences and generate possible solutions. <p>Apply skills in studying case law.</p>	<p>Appreciate reasons for procedural protections guaranteed under the <i>Charter of Rights and Freedoms</i> and the <i>Criminal Code of Canada</i>.</p> <p>Appreciate that the cost of operating the criminal justice system is significant.</p>

Instructional Notes

1. Examine some criminal trials. Identify defence strategies employed, and assess the reasons for their success or failure.
2. Inquire about the processes of criminal trials.
3. Investigate the defence of mental disorder, and identify the criteria by which such a defence is applied to cases.

Issues in the Law

1. Is the criminal justice system too expensive? What are the alternatives?
2. Inquire into the process of arrest. Are the procedural safeguards sufficient to protect the rights of the accused?
3. Why does the law allow accused persons to be found not guilty in the event of certain procedural errors by the state?

Content (Teacher Information)	Concepts and Knowledge Objectives
Levels of Criminal Court in Saskatchewan	Duress
<p>Criminal cases are handled by one of three levels of court in Saskatchewan, including:</p> <ul style="list-style-type: none"> • the Provincial Court • the Court of Queen's Bench • the Court of Appeal. 	<p>Know that a person who commits an offence because of threat of immediate death or serious injury may use the defence of duress.</p>
<p>The first court appearance of an accused person, on all criminal matters in Saskatchewan, occurs in provincial court. The criminal trial process then proceeds through the level of court chosen by the accused. The Saskatchewan Provincial Court is divided into four divisions, including criminal, youth, family and small claims. The Court of Queen's Bench hears the more serious criminal cases and most civil law cases (with the exception of small claims). The highest court in Saskatchewan is the Court of Appeal. The Supreme Court of Canada serves as the highest level of court for all of the provinces and territories.</p>	Provocation
The Criminal Trial Process	<p>Know that provocation, which causes another person to lose his or her self-control, can be used as a reason to reduce a charge of murder to manslaughter.</p>
<p>Once charged with a criminal offence under the <i>Criminal Code</i>, an accused must appear in provincial court in order to answer the charge. The accused person has four options with respect to a plea. They include:</p> <ul style="list-style-type: none"> • plead guilty • plead not guilty • plead not guilty as charged but guilty to a lesser included offence or other offence • enter a special plea. 	Mistake of Law
<p>It is also at this time that an accused, by pleading not guilty, makes the decision about the level of court through which to proceed. An election to proceed through Provincial Court generally results in cases going to trial more quickly than Queen's Bench Court. However, at the Queen's Bench Court level, the accused is entitled to a hearing called a preliminary inquiry, to determine if there is enough evidence to justify sending the case to trial. If there is enough evidence to justify a trial, the judge then sets a date for trial, and a plea is entered.</p>	Independence of the Judiciary
<p>The case then proceeds with the prosecution attempting to prove the guilt of the accused beyond a reasonable doubt. The accused person has the right to remain silent, and continues under the presumption of innocence unless the charges are proven. If the charges are proven, the judge or jury finds the accused guilty. If the charges are not proven, the accused is found not guilty of the charges.</p>	<p>Know that in order for the rule of law to prevail, judges must be independent, including:</p> <ul style="list-style-type: none"> • security of tenure—absence of the threat of arbitrary firing • financial security • institutional independence—absence of influence upon judges by elected government officials or employees of the government.
Election	<p>Know that an accused person may choose to have his or her case tried by a judge or a jury, and may choose to have the case heard in either Provincial or Queen's Bench Court.</p>
Preliminary Inquiry	<p>Know that at the Queen's Bench Court level, the accused has the right to a preliminary inquiry, during which the prosecution must prove to a judge that there is enough evidence to warrant holding a trial.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply inquiry skills including:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify and test hypotheses • draw inferences and generate possible solutions. <p>Summarize information from a flow chart.</p>	<p>Appreciate that the system of criminal trial proceedings is designed to provide procedural safeguards for accused persons.</p>

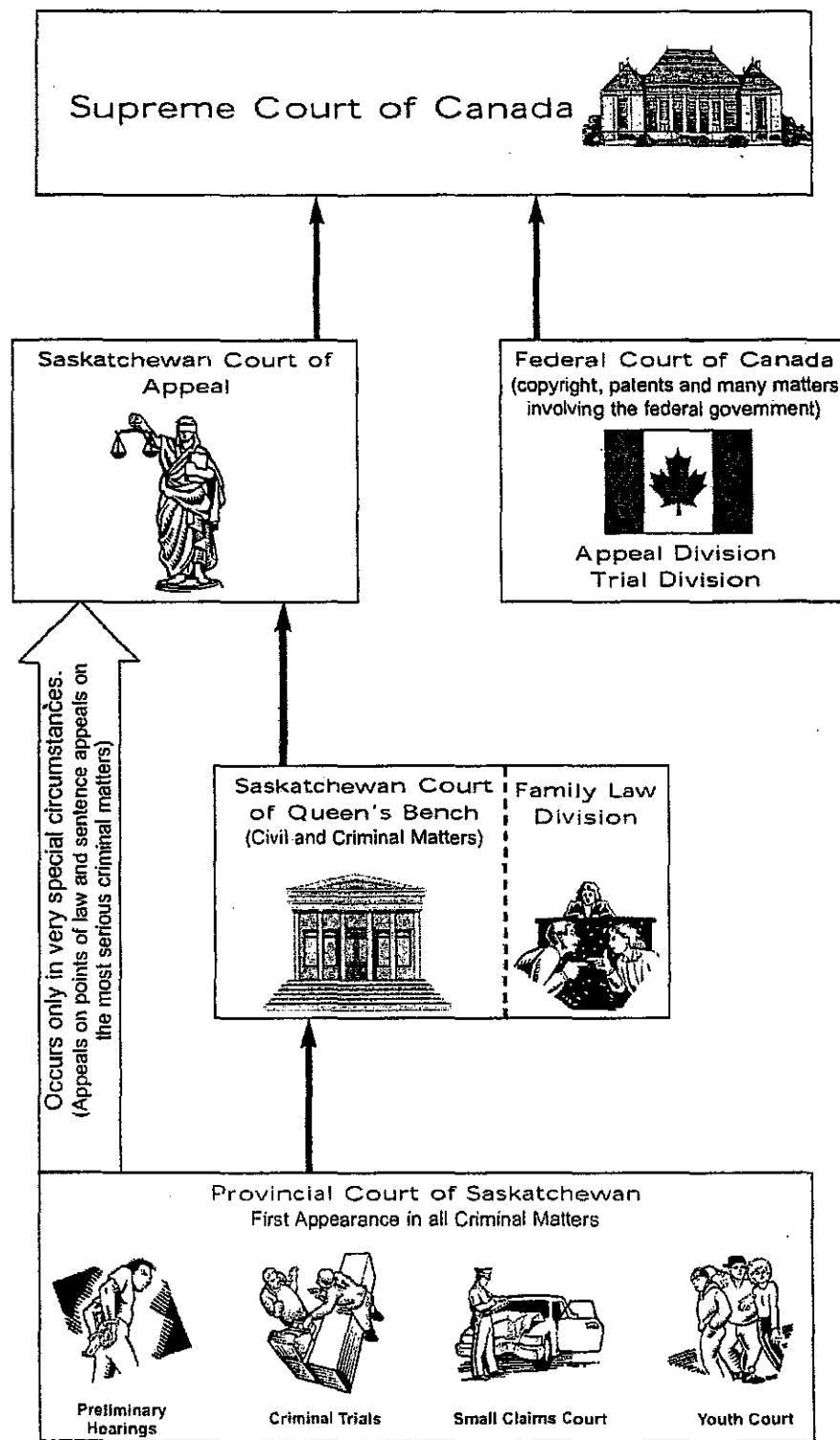
Instructional Notes

1. See Student Handout 2.13 - The Court System in Canada and Student Handout 2.14 - Criminal Trials: A Road Map as background information for students.
2. Undertake a mock trial as a simulation activity.
3. Visit a Court of Queens' Bench trial or a Provincial Court trial to observe the procedures in action. Prepare students for the visit by reviewing the procedures of the criminal court.
4. Invite a lawyer or a judge to make a presentation regarding judicial independence.

Issues in the Law

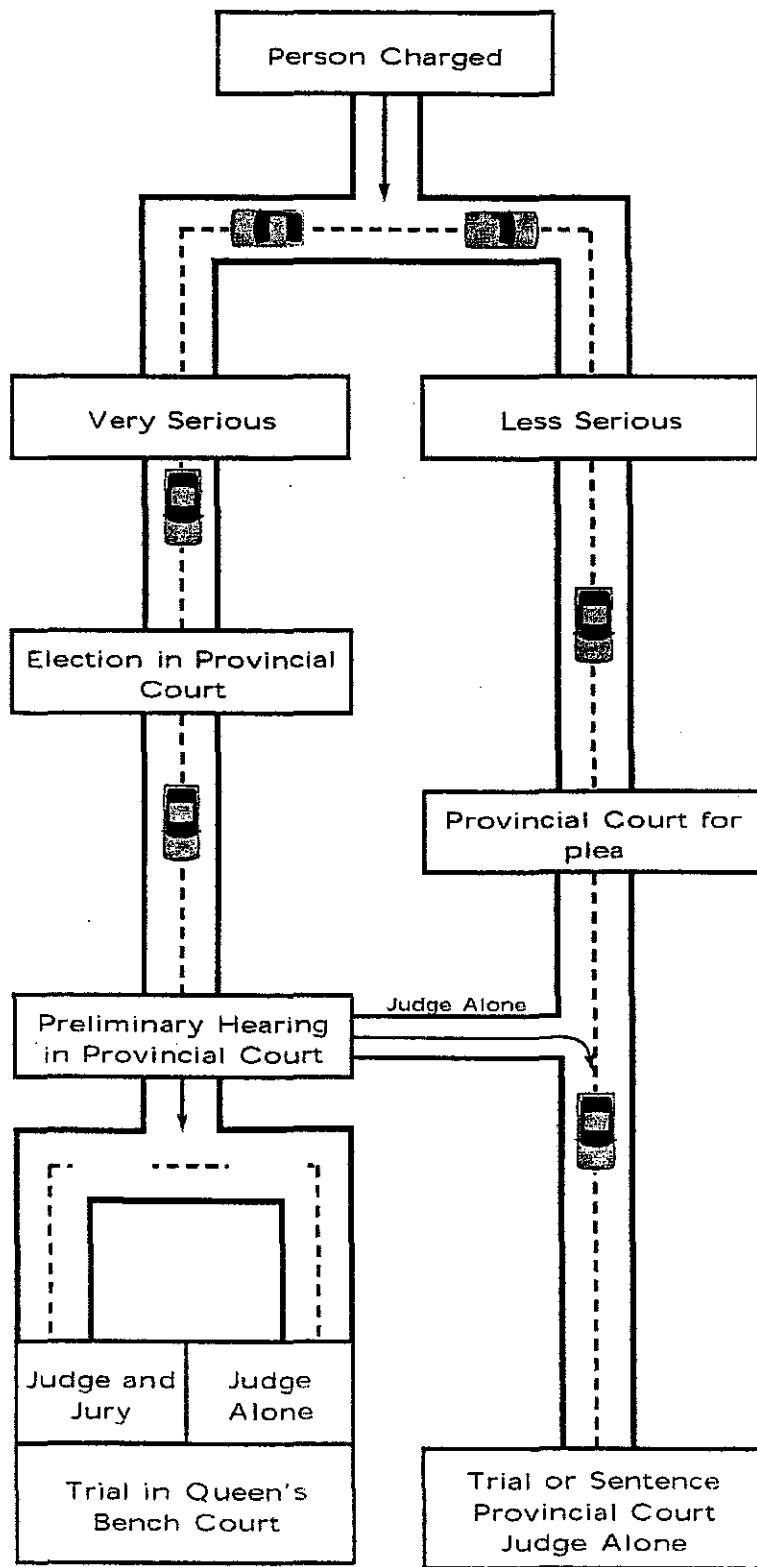
1. Why is an independent judiciary important to Canada's justice system?
2. In the United States, judges are elected to office, whereas in Canada judges are appointed. Which system is better? Why?
3. Why is there a preliminary hearing in a Queen's Bench trial?

Student Handout 2.13 - The Court System in Canada



(Public Legal Education Association of Saskatchewan. Reprinted with permission.)

Student Handout 2.14 - Criminal Trials: A Road Map



(Public Legal Education Association of Saskatchewan. Reprinted with permission.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>The Young Offenders Act</p> <p>The <i>Young Offenders Act</i> (Y.O.A.) applied to people from age 12 until their 18th birthday, who contravened the <i>Criminal Code</i> or other federal statute. The Act attempted to balance the goal of protecting society, along with the recognition that young people have special needs. The Act recognized that young people make mistakes and that such mistakes should not be held against young persons for their entire lives. The Y.O.A. also recognized the need for parental involvement in youth crime, as well as the desirability of anonymity of the youth accused of a criminal offence. Subsequently, a Youth Court division of Provincial Court was established to meet the requirements of the <i>Young Offenders Act</i>. However, the <i>Young Offenders Act</i>, implemented in 1984, has been criticized as not adequate to meet the goal of protecting society. Changes in the 1990s resulted in the option for the crown to move a case to adult court from youth court, where the prosecution believed the alleged offence was serious enough to warrant the provisions of adult court. As well, maximum sentencing provisions of the Y.O.A. were revised in 1994. Discontent with the Y.O.A. continued throughout the 1990s, resulting in the introduction of the <i>Youth Criminal Justice Act</i> by the federal government in 2001, in order to address concerns with youth justice in Canada. The <i>Youth Criminal Justice Act</i> is designed to replace the <i>Young Offenders Act</i>, following the usual process of legislation in the Canadian parliament.</p>	<p>Not Criminally Responsible</p> <p>Know that under Canadian law, persons under the age of twelve are deemed not criminally responsible for actions that may contravene criminal or quasi-criminal statutes.</p>
<p>The Burden of Proof in Criminal Law</p> <p>Because the Canadian criminal legal system has adopted, as a principle of fundamental justice, the presumption of innocence as the basis for procedure and rules of evidence, the burden of proof in criminal matters is solely on the state. The prosecution must prove that the accused committed the alleged offence in a criminal matter. Levels of proof in the legal sense may be categorized according to three classification standards:</p> <ul style="list-style-type: none"> • the evidentiary standard, whereby a party must supply some evidence of the truth of fact • the civil standard, whereby a party must prove that it is more likely than not that the fact is true • the criminal standard, whereby proof of guilt must be to such a high degree that no reasonable person would have a real doubt as to its truth. 	<p>Alternative Sentencing</p> <p>Know that youth offenders are sentenced under provisions of legislation specifically designed to address unique circumstances associated with youth crime.</p> <p>Burden of Proof</p> <p>Know that in the legal system, burden of proof is the requirement that a certain party prove a particular fact at trial.</p> <p>Standard of Proof</p> <p>Know that standard of proof is the level to which a party must convince the trier of fact (judge or jury) of a given allegation.</p> <p>Know that the evidentiary standard is the standard of proof required at preliminary hearings.</p> <p>Know that the civil standard, also known as the balance of probabilities, is the standard of proof required in civil trials.</p> <p>Know that the criminal standard of proof beyond a reasonable doubt is the highest level of proof required in the legal system.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance – the ability of the model to perform constructively, efficiently and consistently in a variety of situations • consequences – the acceptability of the consequences of applying the model to various situations • accuracy – the ability of the model to predict future events accurately and consistently. <p>Develop and apply criteria as a basis for coming to conclusions.</p> <p>Evaluate conclusions applying moral tests:</p> <ul style="list-style-type: none"> • roles exchange test • new cases test • universal consequences test. 	<p>Appreciate that the assumptions and premises we accept as truth and reality and use in the models we create tend to come from the accepted paradigms of society.</p> <p>Examine and clarify beliefs regarding age of responsibility in terms of:</p> <ul style="list-style-type: none"> • sentencing • publication of identity • publication of trial details. <p>Clarify values regarding causes of youth crime.</p>

Instructional Notes

1. Examine the *Youth Criminal Justice Act*, which is to replace the *Young Offenders Act*.
 - Identify the values expressed through the legislation.
 - Compare and contrast the proposed *Criminal Youth Justice Act* and the *Young Offenders Act*.
 - Construct a dialectical reasoning activity regarding age and circumstances of protection of identity in criminal convictions.
2. Undertake a case study of the Cornwall, Ontario high school student who was sent to jail in December of 2000, and who is awaiting trial for allegedly uttering threats expressed in a dramatic reading in a school class. Engage in a dialectic reasoning activity to draw a morally defensible conclusion about the case.

Issues in the Law

1. Should the identities of persons convicted of a criminal offence be revealed to the public? At what point in the criminal justice process should identities be revealed, if ever?
2. Should law allow individuals to be charged with a criminal offence in the process of engaging in artistic expression?

Student Handout 2.15 - News Story: Attendance to Trials

Justice for youths can begin with a hug

No court house protests, no cries for the death penalty, no petitions to throw 'em in jail.

Imagine parents embracing the teenage driver who ran down their child. Or brothers and sisters of a victim asking a young killer to do community work and pay for a gravestone instead of going to prison.

Disgustingly warm and fuzzy? Too idealistic to be true?

As Ontario marches toward prison boot camps, a key player in New Zealand's youth justice system believes his country has a better way of dealing with young offenders—one that has helped reduce the New Zealand crime rate for 18 and 19 year olds by 29 percent in the past six years. "It's not a perfect system," says Matt Hakiaha, a New Zealand youth justice coordinator. "But it's a lot better than what we had."

Hakiaha is touring Ontario this week to explain the innovative program to community leaders. The tour is sponsored by Canada's federal justice department, native organizations and Written House, a Toronto agency dedicated to alternative justice programs. And it could not be more different from the strict discipline facilities envisioned by Premier Mike Harris for violent youth.

In New Zealand, most young people accused of crimes are required to attend what is known as a "family group conference" rather than going to court. The conference is the place where the accused teenager, the victim and their respective relatives gather with police and government officials to work out a suitable punishment, which could range from time in jail to community service.

Although a related concept known as a "sentencing circle" has been used in punishing native offenders in Canada—and other programs uniting victims and offenders have been set up in Kitchener and British Columbia—they usually occur after an accused person has already been to court.

In New Zealand, family group conferences take place instead of a trial and have been required by law in the majority of cases—even violent offenders—since the country's young offender legislation was rewritten in 1989.

Changes were made in response to concerns from the country's Maori population that the criminal justice system wasn't working. Like natives in Canada and blacks in the U.S., the Maori have been over-represented in New Zealand's prison population—and represent 43 percent of young offenders.

Though borrowed from a Maori concept, the group conferences are required for native and non-native alike, says Hakiaha, a 40-year-old former probation officer who is of Maori descent.

Only youths accused of murder or manslaughter go directly to a court under the New Zealand system.

In other cases, police contact youth justice coordinators, such as Hakiaha, and ask to arrange a conference at a site agreeable to all parties. If the youth maintains his innocence and insists on a trial, the law still requires a judge to order a family group conference beforehand to try to resolve the issue.

Why does it seem to work?

"One of the things about the family group conference is that it brings more accountability," says Hakiaha. "It makes the young people accountable, it makes them responsible...they grow up with an awareness you don't just go through the court system, which is impersonal and purely clinical."

Before the system changed in 1989, some 90 percent of young offender cases went to court. Now it is 20 percent. "Youth court used to sit every day. Now we have one court every fort-night, from 10:00 a.m. to 1:00 p.m.," he says.

(Source: *Native Studies 30*. Saskatchewan Education.)

Student Handout 2.16 - Davis Inlet and Southern Justice News Story

Southern Justice is poorly suited to the needs of Davis Inlet

People in southern Canada smooth over the awkward wrinkles of daily life—the missed appointment, the late assignment, the unrequited love affair—with a convention known as the social fiction. The face-saving purpose of these innocent lies allows society to continue unbruised, despite the lapses of its members. For more serious violations of the social contract, southerners turn to the adversarial combat of open court.

The Inuit of the North have traditionally held to another system of resolving disputes, which extends the charming tact of the social fiction to matters of crime and punishment. As Crown prosecutor Rupert Ross writes in *Dancing With A Ghost—Exploring Indian Reality*, whole Inuit villages assemble, including the two arguing parties, and a discussion is held to see what might be done about a problem that could happen in the future.

No mention is ever made of the actual dispute at hand. No facts are found, no guilt assessed, no consequences imposed. These would get in the way of justice.

Instead, the "accused" is free to talk about how such a dispute might have occurred in the first place. The "victim" can talk about how such an experience might affect someone. The entire community can suggest ways to restore things after such an incident, were one to ever occur.

Then everyone departs, as though nothing contentious had ever happened. And in a real sense nothing ever did, which is entirely the point. The ingenious use of the social fiction allows the Inuit to achieve several of the goals of justice—security, restitution, correction,

prevention—without resorting to individual blame or punishment.

It is a good system for a society that cannot tolerate friction among its people or the loss of its members; and it has the confidence of those who submit to it.

Set against this is the southern justice system imposed—to the Inuit and Innu way of reckoning—by strangers of unfamiliar race and strange customs, representing a foreign government and its far-off Queen. This other system has a different view of human nature. It believes human nature is fallen, and therefore it is not responsible for the offender beyond his offence, or the community beyond the court house walls. It is concerned with what people do, rather than what they are.

The system as a whole strikes natives as rather vengeful and useless. "We know you have a legal system," a native Elder once remarked to Mr. Ross. "We're just not sure you have a justice system."

Native justice is most concerned with repairing the community and it uses banishment as a last resort. Southern justice ignores the consequences of crime and disposes of offenders like spent tissue. It banishes with such callous indifference that it cannot build prisons fast enough, jailing people for behaviours that, in native eyes, are not crimes but social problems that the community should address. It is a system poorly suited to them, incompatible with their beliefs, discriminatory in its application. They shouldn't accept it, and increasingly they do not.

The Innu of Davis Inlet have had quite enough of a circuit court that removed their people without discernible gain to the community. The state wants to prosecute dozens of cases on the Labrador island, in particular a couple whose five children died in a house fire while they were out drinking. But the Innu say a prison term would serve no purpose. They regard the incident as a social problem for them to address.

Newfoundland Justice Minister Ed Roberts has responded to this initiative as though he had another Riel Rebellion on his hands. He prepared to invade the tiny community with an R.C.M.P. attack force, on the rather one-sided principle that it would be wrong for him (if not for the Innu) to negotiate under the threat of violence.

Meanwhile, a tribal court in the Tlingit community of Klawok, Alaska, dealt with justice this week in the traditional manner. A pair of 17-year old Tlingit youths were charged with robbery and beating of a pizza delivery man. The attack left him deaf in one ear. The youths were sentenced to banishment on separate islands for 18 months. Once an Elder has seen to their basic shelter and survival skills, they will spend their time entirely alone.

The youths were sentenced to a primitive punishment, without the protection of the *Charter of Rights and Freedoms* or the *Young Offenders Act*, but it is hard to summon outrage. Chances are, they will be the better off for it. In which community, Mr. Roberts, is justice being served?

(Source: *Native Studies 30*. Saskatchewan Education.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>The prosecution does not have to eliminate all doubt to obtain a conviction against an accused, but must provide proof beyond a reasonable doubt that is based on evidence. Rules for gathering and presenting evidence are in place in Canada as a protector of procedural fairness. Evidence gathered through confession by the accused is also subject to the procedural protections offered under law, in attempts to ensure the absence of coercion by the police.</p>	<p>Verdicts in Criminal Trials</p> <p>Know that a court may find an accused person guilty as a result of the crown proving the facts of the charge beyond a reasonable doubt. A court may also find an accused person not guilty, as a result of the crown failing to prove the facts of a charge beyond reasonable doubt.</p>
<p>Outcomes of the Legal Process</p> <p>Upon completion of the criminal trial, an accused may be found guilty, or not guilty. The crown, prior to the beginning of an actual trial, may also stay charges. A guilty verdict necessitates sentencing by the judge in the criminal case.</p>	<p>Stay of Proceedings</p> <p>Know that a stay of proceedings is an order by the court that no further action on a charge will occur until some event occurs to reactivate a case.</p>
<p>The Purposes of Sentencing</p> <p>In determining appropriate sentencing of offenders, Canadian courts are guided by the <i>Criminal Code</i>, which identifies the legal definition of the purpose of sentencing.</p> <ul style="list-style-type: none"> • punishment • deterrence • protection of the public • rehabilitation. <p>The Criminal code also outlines minimum and maximum ranges for sentencing in many cases.</p>	<p>Sentencing</p> <p>Know that sentencing is the process by which society, through the courts, imposes sanctions or punishments on a person found guilty of criminal conduct.</p> <p>Know that section 718 of the <i>Criminal Code of Canada</i> identifies the purpose and principles of sentencing.</p> <p>Truth in Sentencing Philosophy</p> <p>Know that proponents of the truth in sentencing philosophy advocate full term sentences, with no early release provisions for incarcerated offenders.</p>
<p>Varieties of Sentences</p> <p>The courts may impose a variety of types of sentences, including:</p> <ul style="list-style-type: none"> • incarceration • fines • probation • suspended sentences • absolute discharges • conditional discharges. <p>Courts have also begun to impose alternatives to the process of sentencing and the categories of sentences noted above, in response to the need to make the sentencing of offenders more effective in achieving the goals of the criminal justice system.</p>	<p>Alternative Sentencing</p> <p>Know that alternatives to the process of sentencing offenders may include accepting recommendations of sentencing circles or family conferences, electronic monitoring, Elders' or community sentencing panels, sentencing advisory committees and community service.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance – the ability of the model to perform constructively, efficiently and consistently in a variety of situations • consequences – the acceptability of the consequences of applying the model to various situations • accuracy – the ability of the model to predict future events accurately and consistently. <p>Develop and apply criteria as a basis for coming to conclusions.</p> <p>Apply the skills of dialectical evaluation:</p> <ul style="list-style-type: none"> • define relevant viewpoints within the information • test the view points for factual accuracy • test the viewpoints for their morality • evaluate the factual and moral testing • form a conclusion about the issues. <p>Apply the moral tests of:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. 	<p>Examine the concept of truth in sentencing, in terms of:</p> <ul style="list-style-type: none"> • the value claim for the position • the value claim of the opposing position • the factual accuracy of the arguments presented for both sides of the idea • The conclusions of the two positions regarding sentencing <p>Appreciate the values exemplified in the philosophy of restorative justice.</p>

Instructional Notes

1. Research the issues surrounding sentencing of adult criminal offenders in Canada. Undertake a dialectical reasoning activity to clarify students' positions regarding sentencing.
2. Investigate principles of sentencing. What model should Saskatchewan follow to improve sentencing as an instrument of criminal justice?
3. Investigate alternative models of sentencing, including:
 - sentencing circles
 - community service
 - banishment
 - electronic monitoring
 - fine-option programs
 - restitution models
4. Investigate the issue of minimum sentencing as it relates to the case of Wilke area farmer Robert Latimer.
5. Should there be minimum sentences for some offences, such as murder?
6. See Student Handouts 2.17 - Sentencing Circles, 2.18 - Getting Out: Absence, Parole and Release, 2.19 - News Story: A Native Justice System, and 2.20 - Law and Order for Canada's Aboriginal Peoples, for information on sentencing.

Issues in the Law

1. What is the truth in sentencing philosophy? Assess the feasibility of this approach to criminal corrections.
2. What is the purpose of plea-bargaining? Is it an effective instrument of the criminal justice system?

Student Handout 2.17 - Sentencing Circles

What is a sentencing circle?

A sentencing circle is an attempt to rediscover the traditional Aboriginal method of dealing with members of the community who have broken the law. The circle is made up of the accused, the victim, the families of the accused and the victim, elders and other interested members of the community. A judge and a defence lawyer or prosecutor and/or policeman also sit in the circle.

Once someone sits in the circle, there are no special powers or privileges. Everyone in the circle has the same power, as the circle operates on the basis of consensus. Everyone in the circle must agree as to what to do about the person who has broken the law.

After the circle has reached consensus on sentencing the offender, the judge then steps back into his/her judicial role and may impose the sentence that the circle has recommended.

Who can have a sentencing circle?

Anyone who has broken the law can ask to have a sentencing circle. If the person has pleaded guilty or has been found guilty of a charge by a court, that person may ask the judge to refer him/her to a sentencing circle. The judge will then consider several factors:

- the accused must agree to be referred to the sentencing circle
- the accused must have deep roots in the community in which the circle is held and from which the participants are drawn
- are there Elders or respected non-political community leaders willing to participate
- the victim is willing to participate and has not been subjected to coercion or pressure
- disputed facts have been resolved in advance
- the court is willing to depart from the usual range of sentencing.

What happens at a sentencing circle?

A sentencing circle is usually held in a Band hall, school gym or outdoors. Chairs are arranged in a circle, sometimes an inner and outer circle. A tape recorder is placed in the centre. People take their places in the circle. The judge usually asks one of the elders to say a prayer or perform a sacred Sweet Grass Ceremony. Everyone in the circle has a chance to talk or remain silent. The members of the circle discuss the offender, the crime and the various sentences that may be suitable. The discussion continues until all members agree on a sentence. The judge decides whether the proposed sentence is within the boundaries of the law. If it is, the judge then formally imposes the sentence.

The host community usually tries to make participants feel welcome by providing coffee, milk, lunch and tissues. Transportation is provided for Elders or whoever may need it.

Translation services are also provided if there are any members of the circle who do not understand the language.

The people who form the circle are encouraged to feel free to speak and/or ask questions. Everyone's view is valued and respected.

Who can organize a sentencing circle?

There are no hard and fast rules. It can be organized by a probation officer, social worker, Band workers or councillors, or an Elder.

Who should sit in a sentencing circle?

- the victim and members of the victim's family
- the accused and members of his/her family
- Elders or appropriate community professionals
- a chief or councillor from the areas where the victim and accused have resided or where the offence occurred.

What type of sentence can the circle recommend?

The circle may recommend that the offender be sent to jail, be banished to a specific location, be given a period of probation, and/or be asked to do a certain number of hours of community work.

Who will work with the offender?

The circle may ask a volunteer to assume some responsibility for keeping track of the offender. This volunteer may also assist the offender to participate more fully and responsibly in the community.

The contact person may also report to other relevant agencies and, possibly subsequent sentencing circles, on the progress the offender is making.

What is the community's involvement?

It is absolutely necessary that the community that forms the sentencing circle be willing to assume not only the responsibility for sentencing the offender, but also for follow-up and for support. The community needs to regard this as a strong and long-term commitment.

Will there be growing pains?

It will take time and the experiences of many sentencing circles before the participants and the public at large will have full confidence in this process.

(Source: *Native Studies 30*. Saskatchewan Education.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>The Canadian Correctional System</p> <p>As Canadians contemplate the desired goals and roles of the criminal justice system, clarification of the role of the correctional system as an arm of the criminal justice system also occurs. Responsibility for the correctional system is shared between the provincial and federal governments, with the systems operating under the terms of legislative statutes in each jurisdiction. Incarceration for a period of longer than two years occurs in the federal system, while incarceration of less than two years occurs in the provincial system.</p> <p>As well as incarceration, the correctional system addresses issues of release of offenders and their reintegration into society, through the system of parole. Both sentencing and parole issues are sources of intense public discourse in Canada. Debates about sentencing have focused on the topic of early release, or parole. Issues associated with parole focus on appropriateness of parole as an instrument of public policy, and the operation of the parole system. The vast majority of Canadians who find themselves incarcerated will, at some point, rejoin society upon fulfillment of their sentence.</p>	<p>Legitimacy of Correctional Institutions</p> <p>Know that the operations of the Correctional Service of Canada and the National Parole Board are governed under the federal <i>Corrections and Conditional Release Act</i>. The stated mission of the Correctional Services of Canada is the protection of society by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control.</p> <p>Know that provincial corrections programs are mandated by legislation of the provinces.</p> <p>Parole</p> <p>Know that parole is the conditional release from imprisonment or other confinement after serving part of the sentence.</p> <p>Know that the National Parole Board administers parole.</p>

Skills/Abilities Objectives	Values Objectives
<p>Practise role-playing skills.</p> <p>Practise speaking and listening skills.</p> <p>Apply critical thinking skills.</p> <p>Apply analytical skills.</p> <p>Practice decision-making skills.</p> <p>Identify relevant information from data.</p> <p>Design and implement survey instruments.</p> <p>Apply dialectical reasoning skills.</p>	<p>Critically assess the underlying principles of the parole system, which include:</p> <ul style="list-style-type: none"> • protection of the public as the most important concern • long term protection of the community is enhanced when offenders return to the community as law-abiding citizens • all relevant information must be considered when making decisions about conditional release. <p>Appreciate that individual differences in offenders' backgrounds and experiences affect parole decisions.</p>

Instructional Notes

1. Undertake a simulation of a parole hearing. A model is available from the PLEA Saskatchewan office.
2. Examine the mandate of Corrections Canada, and assess its effectiveness.
3. Survey members of the public or families regarding the correctional system. Use data to determine the accuracy of perceptions about the correctional system in Canada.
4. Undertake a dialectical reasoning activity to evaluate the effectiveness of Canada's parole system.

Issues in the Law

1. Should correctional systems in Canada employ a boot camp style of operations as some jurisdictions do? Why?
2. How might a society evaluate the effectiveness of its correctional system?

Student Handout 2.18 - Getting Out: Absences, Parole and Release

Most of the public is unaware that parole is only one of the many forms of "conditional release" such as day parole, work release and statutory release. In essence, "parole" by definition only includes day and full parole. All forms of conditional release allow the offender to leave the institution. However, he may only be "out" for a matter of hours, if carefully supervised, and if he breaches any one of the restrictions placed on him, he is returned to the institution to face the consequences of his behaviour. The conditional release system is a set of graduated steps to increase offenders' responsibility levels at a rate both they, and society, can handle with minimal risk.

Before an offender is eligible for parole, he may be allowed to briefly leave the institution on a temporary absence, either escorted or unescorted. Temporary absences may be granted to offenders for medical, administrative, community service, family contact and personal development reasons (relating to rehabilitation) where it is considered that the inmate will not present an undue risk to society. An escorted temporary absence (ETA) may be granted at any time during the sentence, while an unescorted temporary absence (UTA) may be granted after an offender has served one-sixth of the sentence or six months, whichever is greater. Temporary absences are authorized by either the Warden of the penitentiary or by the National Parole Board (NPB), depending on factors such as the type of release, and the offender's sentence and security classification. Offenders classified as maximum security do not qualify for UTAs. The success rate for ETAs and UTAs is over 99 percent. This means that offenders do not commit a new offence, nor do they break any of the conditions attached to their release.

Another form of release, which helps offenders for their return to society, is work release. This program allows an offender, classified as minimum or medium security and who is judged not to pose an undue risk, to engage in paid or voluntary work in the community under supervision. Outside of working hours, the offender is returned to the institution. Besides offering practical experience to the offender and assistance to the community, work releases contribute to public safety because they assist an offender's reintegration into society and reduce the chances of re-offending.

There are two forms of parole—day parole and full parole. Day parole allows an offender to participate in the community-based activities in preparation for

release on full parole or statutory release. The offender works under minimal supervision, which is the major difference between day parole and work release. However, they are similar in that the offender returns to his institution or half-way house every night. Generally, offenders become eligible to be considered for day parole six months before their full parole eligibility date.

A new day parole program was introduced in Bill C-55 and came into force on July 3, 1997. This "accelerated parole review" applies only to first time, non-violent, federal offenders. These offenders are reviewed for day parole after having served one-sixth of their sentence. Those imprisoned for either first or second-degree murder become eligible for day parole three years before they are eligible for full parole. About 95 percent of offenders on day parole did not commit a new crime.

Inmates are normally eligible to be considered for full parole by the NPB after serving one-third of their sentence, or seven years, whichever is less. Full parole allows the inmate to return to the community to live and work, under the supervision of a parole officer. The frequency and degree of supervision is carefully calculated according to the offender's history and his risk of re-offending.

Even when parole is granted, it does not mean that offenders are completely free. They are serving the balance of their sentence outside of the institution under supervision. This gives them the chance, with the right programs and opportunities, to become contributing members of society, providing they abide by the conditions of their release. If the conditions of parole are not met, the Board has the power to revoke the parole and return the offender to the penitentiary.

Under the *Corrections and Conditional Release Act*, judges have, at the time of sentencing, the option of lengthening the time that violent and serious drug offenders spend in prison by delaying eligibility for full parole until they have completed one-half of their sentence.

Offenders sentenced to life for first degree murder or high treason are not eligible to be considered for parole until they have served 25 years. Those sentenced to life or second degree murder may apply for parole after serving between 10 and 25 years, as determined by the Court. However, anyone convicted of murder who must serve more than 15 years before full parole eligibility, may apply

after serving 15 years for a judicial review by a Superior Court judge and a jury who may reduce parole eligibility dates. Offenders who are serving life sentences and who are granted parole remain on parole for the rest of their lives.

The decision to grant parole is far from automatic. Only about half of the applications for day parole and a third of the full parole applications were granted in 1997-98. On average, 89 percent of offenders on full parole did not commit a new crime.

The last form of release is statutory release. By law, most offenders who are serving sentences of fixed length, and who have not been granted parole or had their parole revoked, must be released on statutory release after serving two-thirds of their sentence. Although statutory release decisions are not made by the NPB, the Board may add conditions to the release to protect society and assist the offender to adjust to the outside world in a law-abiding fashion. Failure to comply with these conditions can result in a suspension by the Correction Service of Canada (CSC) and revocation of the release by the NPB, with the offender then returned to a correctional facility.

If the NPB believes that the offender is likely to cause serious harm or commit a serious drug offence before the expiration of the sentence, the Board may, upon referral from CSC, grant the offender "one chance" statutory release, order the offender to live under strict residential conditions or order the offender to be detained in penitentiary until the end of the sentence. Statutory release does not apply to offenders serving life or indeterminate sentences. Even the offenders who are not granted parole and are released on statutory release have a success rate of 88 percent, which bodes well for correctional programs and supervision on release.

Detention: The NPB, following a referral from the CSC, may detain any offender who is likely to commit before the end of the sentence:

- an offence causing death or serious harm to another person
- a sexual offence involving a child
- a serious drug offence.

The law further requires the Board to review detention orders annually, and the files of offenders it considers likely to cause death or serious harm to another person.

Pardon: *The Criminal Records Act* permits the NPB to pardon those people who, although convicted of a criminal offence, have served their sentence and have proven to be responsible and law-abiding citizens. Any federal agency or department that has

records of convictions must keep those records separate, and not disclose their information without permission from the Solicitor General of Canada. About one-fifth of the 21,012 applications for pardons in 1998 were granted, and a further third were accepted and are under consideration. On average, applicants requesting a pardon have been crime-free for eight years and have made the request for work or travel purposes. Over 97 percent of pardon recipients remain crime-free.

(Adapted from *Inside Out: A Teachers Guide to Corrections and Conditional Release*. Solicitor General of Canada.)

<http://www.sgc.gc.ca>

Student Handout 2.19 - News Story: A Native Justice System

Natives need own justice systems: report

Canada's Aboriginal communities should each develop their own justice system to conform with their traditions and cultures, says a partial draft of the final report by the Royal Commission on Aboriginal Peoples, released in Ottawa.

Such an approach would potentially create hundreds of separate justice systems on small pockets of land across Canada.

The commission's initial statement on justice has 16 recommendations, including one that would set up a mechanism to publicly monitor progress. There are no estimates of how much the new justice system would cost the federal and provincial governments.

A special appeal board is recommended, made up of judges from the non-native justice system and people appointed by Aboriginal communities, to deal with those cases that are appealed from "the Aboriginal justice system to the dominant system.

As well, the report recommends the creation of an Aboriginal Justice Institute to administer funds on an arms-length basis to the separate justice systems.

It also points out that urban Aboriginal people have as much a right to their own justice systems as those people living on reserves or in remote communities.

Other draft recommendations include:

- The starting point for Aboriginal justice systems in the criminal law area should be that of shared jurisdiction. It would allow accused persons to choose the forum in which they wish to have their case heard, and allow justice systems to determine if they wish to hear particular types of cases or deal with particular individuals.
- In family violence cases, victims should be able to choose the forum where such cases should be heard. Outside consultation with Aboriginal women's organizations should take place.

- Justice projects must reflect community needs, not those of the provincial or federal officials. Restrictions on types of cases taken by communities should be removed.

As well, the report recommends that the federal and provincial governments be required to publish information on a yearly basis about cross-cultural programs offered and the number of Aboriginal judges.

The report makes it clear that sexism must be avoided in the new justice systems. A special section of the report is devoted to the issue, saying it is a concern that has been raised on many occasions with the commission.

"One thing is clear. Aboriginal society is not free from the sexism that permeated the rest of Canada society. While the root causes of this development are different in Aboriginal society than in the dominant society, the reality nevertheless exists." said the report.

(Source: *Native Studies 30*. Saskatchewan Education.)

Student Handout 2.20 - Law and Order for Canada's Aboriginal Peoples

Prairie Justice Research, School of Human Justice, U of R, prepared a report (March 1985) which surveyed, synthesized and commented upon existing data and literature pertaining to Aboriginal involvement in the criminal justice system. Much of the literature was found to assume that the over-representation of Aboriginal peoples throughout the justice system is the inevitable consequence of colonization and underdevelopment.

From the viewpoint of Aboriginal peoples, most laws in Canada are those of the colonizer.

It is clear that the literature supports the view that law enforcement personnel hold negative attitudes towards Aboriginal peoples and this is reflected in arrest, charge rates and sentencing.

Change of attitude has three major thrusts:

- cross-cultural education
- legal education for Aboriginal peoples
- affirmative action hiring of Aboriginal peoples to work as police, or through the transfer of law enforcement to Indian bands (autonomous tribal policing on reserves).

The rhetoric usually presented is a long way from the reality of Aboriginal peoples' experience and from the policy of the Canadian state, which has been designed to assimilate Aboriginal peoples and not to encourage ethnic pluralism.

Courts

The literature identifies common problems as:

- the inability of Aboriginal peoples to understand legal proceedings
- issues of judicial bias
- the wide discretion permitted to judges, which often leads to a choice of custodial (institutional) rather than community-based sentencing options.

Solutions proposed include:

- an improvement in legal services for Aboriginal peoples by increasing the number of Aboriginal lawyers and judges
- providing Aboriginal court workers and interpreters
- public legal education programs
- Aboriginal court bodies.

According to most of the literature surveyed, problems of inaccessibility, under-utilization, lack of outreach and preventative programs, lack of legal expertise and language and cultural barriers could be alleviated by adequately funded, autonomous Aboriginal control of legal services. An appropriate plan to provide legal representation to Aboriginal

peoples has yet to be designed and successfully implemented. A more important point is that these programs may be overly optimistic about the impact that law can have on the lives of Aboriginal peoples. Changing or improving only legal services will have a limited effect on the economic and political relationships between the colonized and the colonizer. Many of the problems inherent in the criminal justice system must inevitably be dealt with in the development of Aboriginal self-government created by constitutional change.

Tribal courts and the appointment of Aboriginal judges and justices of the peace appear to hold considerable potential for giving Aboriginal peoples some discretion in the ways they are handled in the criminal process. In Canada, there are no tribal courts of the sort found in some American states, and there is little data which looks specifically at Aboriginal justices of the peace. Where Aboriginal justices have been appointed, with few exceptions, they tend to be both disproportional in comparison to total appointments and gravely under-utilized. In all jurisdictions, Aboriginal Justice of the Peace Programs are negatively affected by inadequate training, and limited authority and status. Similar weaknesses appear in the United States.

Sentencing

Correctional statistics show that a disproportionate number of Aboriginal peoples, especially women, have always been imprisoned. Explanations for this over-representation have ranged from those based upon the underlying socio-economic conditions of Aboriginal peoples, to urban migration and dislocation, to demographic factors such as age, and to alcohol and substance abuse. Another explanation is the inappropriateness of fine defaulters that presents a bias against those peoples near the bottom of the economic ladder.

Other factors in sentencing include the possibility of racial discrimination, and differential sentencing (either excessive leniency or severity). The solutions to these problems appear to be:

- cross-cultural education, particularly for judges and prison personnel
- the familiarization of prison, probation and parole staff to Aboriginal culture

- Aboriginal control of decision-making forums and services.

Despite the long-standing concern about the over-representation of Aboriginal offenders in Canadian prisons, little research is reported on programs designed for Aboriginal prisoners in correctional institutions or alternative community programs. The participation of Aboriginal offenders and communities has never been a priority of research in the criminal justice system.

In addition to problems with alternative and support programs, discretionary power of correctional officials is an issue. It is suggested that Aboriginal prisoners have unequal access to some prison programs, to early release on parole and temporary absence and to the standard option to prison—supervised probation. There is evidence of inappropriate assessments and disproportionate use of probation, parole and alternative dispositions such as fine options for Aboriginal offenders.

Much of the literature is unsatisfactory because it examines the relationship between the Aboriginal offender and the criminal justice system in terms of individual and/or group characteristics of the offenders, and not in terms of the criminal justice processes. Relationships of dependency and powerlessness are ignored in favour of focusing on areas where it is presumed Aboriginal peoples have poorly adapted to the dominant culture. Even when some attention is given to those dominant, the emphasis remains on the characteristics of the Aboriginal individual or group—a version of "blaming the victim."

Police appear to be coercive substitutes for the adequate provision of other services such as housing, health care, educational and recreational facilities. A question to be explored is whether less policing and equivalent or more expenditures on these other services would lead to less crime and incarceration for all peoples. It is also important to assess the types of intervention services which reserve and rural Aboriginal communities require and, overall, to examine whether assumptions about policing in urban areas or in off-reserve rural areas are applicable to on-reserve policing.

There is virtually no research on the Canadian experience with respect to local, community-controlled methods of law enforcement (including preventative services and support systems) other than policing, such as ombudspeople travelling with police patrols or independent police-citizen complaint procedures. Insofar as Native court worker programs are concerned, further research is required on the educational needs, roles and perceptions of users and managers of these programs. One study recommended the expansion

of court workers into family courts. (The Native Court Workers Program in Saskatchewan has been cut for several years as a budget measure.)

A proposal for a model court or pilot project would seem the next logical step in the development of Canadian tribal courts. Issues such as jurisdiction, authority and status of court personnel, funding, and political independence differential sentencing patterns north/south and rural/urban been researched.

Prairie Justice Research recommended support for a Native Studies strategic research fund. Research priorities should:

- be determined with the full participation of Aboriginal peoples
- focus on the user's needs
- enhance the research competence and capability of Aboriginal peoples
- be initiated, designed and implemented by Aboriginal peoples for Aboriginal peoples.

(Source: *Native Studies 30*. Saskatchewan Education.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Issues In Criminal Justice</p> <p>The Canadian criminal justice system faces many issues and challenges in the 21st century. As an instrument of social justice, the criminal justice system faces competing claims from those supporting the law and order, get tough on crime approach to criminal justice and those supporting the rehabilitative, restorative approach to criminal justice.</p> <p>Manifest in this dilemma is the vast over representation of Canada's Aboriginal peoples in the provincial and federal correctional systems. Questions of fairness and access to justice arise from this over representation reality. Strained relations between police forces and Aboriginal peoples in Saskatchewan are also a challenge that requires much attention. Initiatives aimed at addressing these issues are underway, with the potential benefits of importance to all residents.</p> <p>Youth crime is also an issue that continues to be contentious within Canadian society, because of the immense social costs and lost potential among repeat youth offenders.</p> <p>The future of laws designed to address organized crime and computer-related crime continue to be clarified, with tensions between the rights of the individual and the protection of society at the centre of debate. As the development of new laws becomes necessary to reflect technological and societal change in the 21st century, new issues will arise. These new issues, as well as challenges remaining from the 20th century, will continue to be the subject of scrutiny, debate and public policy reform.</p>	<p>Reality</p> <p>Know that in reality, the world in which people live their daily lives is a messy, confused mixture of categories, values and points of view about which people are emotional, reasonable, unreasonable and confused.</p> <p>Know that within this confusion, there will be, at minimum, two points of view, and usually more, that have to be defined and examined from different points of view before it is possible to determine truth, morality and ethical behaviour.</p> <p>Morality</p> <p>Know that morality provides guidance for making moral choices.</p> <p>Know that morality is based on a number of principles or criteria:</p> <ul style="list-style-type: none"> • an action may not be taken unless it is right for everyone to take that action • actions that may be hurtful to others must not be carried out • before any action is taken: <ul style="list-style-type: none"> ◦ all information about the consequences of the proposed action(s) on others must be sought ◦ the effect of an action on another person must be considered ◦ advice from others should be considered ◦ the moral reasoning should be tested and rejected if it is faulty ◦ others involved in the action should test their oral reasoning and reject it if it is faulty.

Skills/Abilities Objectives	Values Objectives
<p>Research current issues in the area of criminal law.</p> <p>Examine sources of data for bias.</p> <p>Review processes for criminal trials in Saskatchewan.</p>	<p>Appreciate that the outcome of any evaluation is dependent upon the criteria selected as the basis for making judgments.</p> <p>Learn to determine whether decisions made and enforced by moral criteria are better for society than decisions made and enforced by political criteria, by:</p> <ul style="list-style-type: none"> • selecting moral tests to apply to each criterion • applying those tests impartially and fully • constructing a rigorous logic to come to a considered judgment about the issue. <p>Select and apply criteria in order to avoid biased judgments.</p>

Instructional Notes

1. Visit a court where a trial is in place. Contact the office of the Court Clerk to discuss learning objectives, as well as to review scheduling and visitor decorum protocol.
2. Refer to Student Handout 2.14 - Criminal Trials: A Road Map for details regarding the avenues of proceedings of the Canadian criminal justice system.

Issues in the Law

1. Should youth offenders be treated any differently than adult offenders in terms of rehabilitation?
2. To what degree should the background and life experiences of an offender be considered when determining sentencing within the criminal justice system?

Unit Three - Civil Law



The rule that you are to love your neighbour becomes in law you must not injure your neighbour, and the lawyers question, Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law, is my neighbour? The answer seems to be—persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

Lord Atkin in
Donoghue v. Stevenson
[1932] A.C. 562,580

Overview – Unit Three: Civil Law

The law serves as a mechanism for peaceful resolution of disputes between individuals, through the area of civil law. This unit focuses students upon the concept of torts within civil law. A tort is a wrongful action committed by one individual or party upon another individual or party, through which harm or damage is inflicted upon the victim of the wrongful action. The goal of tort law is to restore the conditions of the victim to the same state as prior to the tort. However, as this is not always possible, the system of tort law attempts to provide remedies to those suffering injury from unjust actions by another party, through the application of remedies. The unit introduces the differences between civil and criminal law, and the processes for trials in each. Students explore the various types of torts that may occur, and are challenged to consider their own actions in their relationships with others. Students consider whether they have ever committed, or been victim, of a tort, and assess the conditions under which torts may result in action in civil court.

Resources and Resource-Based Learning

Resource-based learning is an integral part of all units. The bibliography developed to support this curriculum will assist you in incorporating a variety of resources from different media into each unit. This annotated bibliography should be available from your teacher-librarian or the Learning Resource Distribution Centre. The bibliography contains annotations of current, useful resources including print, video, Internet sites, and other media selections. Teachers are encouraged to assess their current resource collection, identifying those that continue to be useful, and to acquire small quantities of each new title, rather than class sets, in order to provide students with a broad range of perspectives and information.

The following list of evaluated resource titles provides a starting point for developing a resource collection that is current and relevant, and that addresses students' various learning styles and abilities. Please refer to *Law 30 The Law and You: A Bibliography*, for a complete list of resources giving the full citation, annotation, and ordering information. Please note that many of these resources can be ordered through the Learning Resource Distribution Centre (<http://lrdc.sasked.gov.sk.ca/>). Videos may be available from Media Group (<http://www.sasked.gov.sk.ca/video>). At the time of publication all of the resources listed here and in the bibliography were in print and available.

Please note that LRDC will be closing effective March 31, 2003. If you need assistance acquiring Saskatchewan Learning materials after that date, please contact 787-5987.

Print Resources

- *Canadian Legal Guide for Small Business*
- *Foundations of Criminal and Civil Law in Canada*
- *Make It Legal: What Every Canadian Entrepreneur Needs to Know about the Law*

Non-Print Resources

- Paisley Snail: *Donoghue vs. Stevenson*

Internet Sites

The following sites provide a brief overview of available websites. These sites were checked for availability in March 2002. To access sites that have been formally evaluated and linked to the curriculum visit the Evergreen Curriculum at the Saskatchewan Learning website <http://www.sasked.gov.sk.ca/>.

- Canadian Legal Information Institute - <http://www.canlii.org>
- Law in Action - http://canada.justice.gc.ca/en/dept/pub/just/CSJ_page19.html
- Law Society of Saskatchewan - <http://www.lawsociety.sk.ca>

- Public Legal Education - <http://www.plea.org>
- SGI - <http://www.sgicanada.ca/>

Incorporating Current Events

Incorporating current events enhances students' understanding of the concepts under study and extends their learning experiences by relating the events to real life, making them more relevant. Sources for current event stories include newspapers, newsmagazines, daily and weekly television or radio newscasts, documentaries and the Internet. Many Canadian daily newspapers are available online and are a useful source of current events. Select articles and news items to support the objectives and concepts as often as possible, and encourage students to contribute also.

Learning Objectives

Learning objectives of two types are identified for Law 30, including Foundational Objectives and Specific Learning Objectives. Foundational Objectives are designed to guide instruction and student learning throughout each unit of study, and indicate the broad learning outcomes in terms of content, skills and abilities, and values. Specific Learning Objectives, identified in each lesson of the unit, are designed to help students achieve the foundational objectives. The core Specific Learning Objectives are identified in bold font. This makes timelines for each lesson and unit flexible. Teachers can choose to focus on the core objectives only, or to have students strive to achieve all of the stated Specific Learning Objectives.

Objectives to achieve the Common Essential Learnings (C.E.L.s) are identified using the following abbreviations:

Communication	COM
Critical and Creative Thinking	CCT
Personal and Social Values and Skills	PSVS
Independent Learning	IL
Numeracy	NUM
Technological Literacy	TL

Foundational Objectives

Knowledge/Content	Skills	Values
<ul style="list-style-type: none"> • Know the similarities and differences between criminal and civil law. (CCT, COM) • Know the three types of torts, including negligence, intentional torts, and strict liability. (CCT, COM) • Know that civil law is concerned with compensation for harm done rather than punishment. (CCT, PSVS) 	<ul style="list-style-type: none"> • Identify relevant facts from information. (COM) • Develop and select criteria as a method of assessing data. (CCT, COM) • Analyze facts to draw conclusions using criteria. (CCT, NUM, IL) • Apply law of torts to everyday experiences and relationships. (CCT, IL) 	<ul style="list-style-type: none"> • Appreciate that personal freedom in relationships includes responsibilities associated with standards of care. (PSVS, CCT) • Appreciate that our legal system and the rule of law are mechanisms for settling wrongs and repairing damage in a non-violent manner. (PSVS) • Appreciate the role of tort law in deterring harmful behaviours. (PSVS, CCT)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>The Nature of Civil Law in Canada</p> <p>Civil law governs the legal relationships between individuals, that do not directly involve the crown. Civil law is designed to provide an avenue for settling disputes between individuals according to the rule of law. As compared to criminal law, civil law addresses remedies for wrongs against individuals, rather than punishment or retribution for wrongs against society.</p> <p>Civil law is the constitutional purview of the provincial governments. In most of Canada, it is based primarily upon the system of common law (except in the province of Quebec, where the Civil Code is the basis for civil law), although civil statutes have been developed by provincial jurisdictions as governments deem them necessary for the public good. In Saskatchewan, examples include areas such as consumer protection and warranties, and no-fault insurance regulation.</p> <p>Most civil law principles originate from two categories of civil law:</p> <ul style="list-style-type: none"> • torts – the area of civil law that deals with wrongs or injuries inflicted upon one party by another, outside of the context of a formal relationship or contract • contracts – the area of civil law that deals with people in formal relationships. <p>Torts</p> <p>In the case of a tort, there is no underlying agreement that establishes the rights between parties, as there is in a contract. In theory, the parties involved are strangers according to the law, brought together only by misfortune which results in the tort action. Therefore, the liability flows not from an agreed upon set of rights and responsibilities as defined in a contract, but rather from the law itself.</p> <p>Torts fall within three categories of subdivision. They include:</p> <ul style="list-style-type: none"> • negligence • intentional torts • strict liability 	<p>Civil Law</p> <p>Know that civil law is law that regulates private legal affairs.</p> <p>Know that civil law includes categories of law including:</p> <ul style="list-style-type: none"> • tort law • contract law • family law • property law • wills and estates • employment law. <p>Supremacy of Parliament</p> <p>Know that civil law in Saskatchewan is based primarily in the system of common law but, because of our belief in the supremacy of parliament, governments have developed statutes, and have the right to develop statutes, to address specific areas of civil law.</p> <p>Tort</p> <p>Know that a tort is an injury, physical, emotional, economic or otherwise, suffered by a person for which another may be held legally responsible.</p> <p>Liability</p> <p>Know that liability is the legal responsibility for a wrongful action. When liability is assessed to an individual, damages may be awarded to the injured party as remedy for the injury.</p> <p>Plaintiff</p> <p>Know that in a civil action, the party initiating the action is called the plaintiff.</p> <p>Defendant</p> <p>Know that in a civil action, the person alleged to have undertaken the tortious act is called the defendant.</p>

Skills/Abilities Objectives	Values Objectives
<p>Differentiate between civil and criminal law in terms of:</p> <ul style="list-style-type: none"> • roles of the parties • purpose of the law • role of the court • intention of the resolution. <p>Apply reading for detail skills.</p>	<p>Appreciate the importance of the rule of law in resolving disputes between individual parties.</p> <p>Appreciate that tort law provides remedies to individuals who have suffered wrong or injury as a result of the act or omission of another party.</p>
<p>Conduct research to gather specific data</p>	<p>Appreciate that the source of tort law is the common law and case law.</p>

Instructional Notes

1. Have students complete a comparison grid in which the differences between civil and criminal law are delineated. See Student Handout 3.1 - The Difference Between Civil Law and Criminal Law, Student Handout 3.3 - Comparison of Civil and Criminal Law for a template identifying possible criteria for comparison.
2. For information on defining torts see Student Handout 3.2 - What is a Tort?

Issues in the Law

1. Why do we not sue someone each time we feel we have been wronged?
2. Under what circumstances might we consider instigating litigation?

Student Handout 3.1 - The Difference Between Civil Law and Criminal Law

When is a legal problem criminal and when is it civil? What difference does it make whether it is criminal or civil?

One way of looking at criminal law is that it is dealing with something of public interest. For example, the public has an interest in seeing that people are protected from being robbed or assaulted. These are legal problems that fall into the criminal law.

Criminal law involves punishing and rehabilitating offenders, and protecting society. Since the public has an interest in having criminal law, we give the government the power to put it in place and enforce it. The police and Crown Prosecutors are hired by the government to put the criminal law into effect. Public funds are used to pay for these services.

If you are the victim of a crime, you report it to the police and they have the responsibility to investigate. They arrest and charge the suspect. In most cases, if a charge has been properly laid and if there is evidence supporting it, the Crown Prosecutor, not the person who complains of the incident, prosecutes it in the courts. This is called a system of public prosecutions. Long ago the person who had been wronged prosecuted the case. The power to prosecute privately remains, but is used rarely now. Even if a person starts a prosecution privately, the Attorney General has the power to take over the prosecution of the case. As a victim, you do not have to be responsible for enforcing the law. The police and Crown Prosecutor do their jobs for the public at large, not for you personally.

In a criminal case, the Crown prosecutor must prove the defendant's guilt "beyond a reasonable doubt." This means that at the end of a trial the judge or jury can only find the defendant guilty if they are left without a reasonable doubt about the defendant's guilt. In other words, there is no logical or rational reason to doubt the defendant's guilt.

This is not the case in civil law. Civil law is about private disputes between individuals or between individuals and organizations. Civil matters include areas such as contract law, family law, tort law, property law and labour law. The person suing for a wrong has the burden of proving their case on a "balance of probabilities." This means that a judge or jury must believe their story and evidence more than the defendant's version. They do not need to be convinced beyond a reasonable doubt.

Civil disputes usually involve some harm, loss or injury to one party or their property. Unlike criminal law; however, civil law is primarily involved with compensating victims. If a civil action is successful, the defendant will be responsible for the wrongful action. While a defendant in a criminal case may be found "guilty" or "not guilty," a defendant in a civil case is said to be "liable" or "not liable" for damages.

If you have a civil law problem, you have to take action yourself if you want to get a legal remedy. You can hire a private lawyer, and you will have to pay the expenses of pursuing the matter. For example, if you hire someone to paint your house and they do a poor job, it is a dispute between you and the painter. The police do not get involved. If you want to sue the painter for breach of contract, it is your responsibility to do so.

Sometimes criminal law is referred to as part of our public law because it applies to all Canadians and regulates relationships within our society. Similarly, civil law is sometimes referred to as private law because it regulates private relationships between individuals in our society.

(Source: Public Legal Education Association of Saskatchewan. October 20, 2000. Reprinted with Permission.)

Student Handout 3.2 - What is a Tort?

The word tort simply means a "wrong." A tort occurs when someone deliberately or through carelessness causes harm or loss to another person or their property. A tort is a civil law matter; only the interests of the particular individuals are involved. The main purpose of tort law is for the wrongdoer to compensate (pay back) the person who suffered a loss or injury, not to punish the person who is responsible. Much of the process of tort law involves determining who is at fault and the extent of the damage. The wrongdoer must repay the injured person. This usually means paying a sum of money.

In the examples above, more information would be needed to determine who is at fault and what injuries were sustained. Was freezing rain falling when Martina fell? Was Stewart teasing Reuben's dog? If Main Street Pharmacy and Reuben were found to be at fault, they would have to pay for any loss or injury. This payment is called "damages." This would include out-of-pocket expenses such as dental or medical bills, lost wages or the cost of a new jacket. There are other types of damages for which a dollar value is hard to attach. Martina and Stewart suffered pain which cannot be reversed. An amount of money may be given to compensate for things such as pain and suffering.

There are many situations where people are harmed by someone else's action, but no crime has taken place. Suppose Deana tripped on a loose rug in a restaurant and sprained her ankle. Deana may have suffered a wrong, but the restaurant owner is not a criminal. The restaurant owner, however, may have to compensate Deana for a civil wrong—the tort of negligence.

Although a tort and a crime are two different things, sometimes one action can be both. Where someone has deliberately injured another person, as in cases of assault, the person committing the assault may be charged with a crime in a criminal court. That person may also be responsible for compensating the injured person for things such as medical expenses, and pain and suffering. The law treats crimes and torts as two separate issues. In general, criminal courts are not intended to determine compensation for victims, nor are civil courts set up to punish wrongdoers.

Tort law comes mainly from the common law (judge-made law). While this law has developed to protect citizens from loss or injury, they are not paid back automatically. They must first show that another person's action caused their loss. As with other areas of civil law (e.g., contracts, divorce, rental disputes, paying debts), the courts should be used only after other attempts to settle a matter have failed.

(Source: Public Legal Education Association of Saskatchewan. Reprinted with permission.)

Student Handout 3.3 - Comparison of Civil and Criminal Law

Complete the following chart as a means of comparing criminal and civil law.

Category of Comparison	Criminal Law	Civil Law
Purpose or goal of this branch of law		
Role of the court in this area of the justice system		
Court procedures		
Possible outcomes and resolutions		
Enforcement of sanctions		

Onus of proof		
Availability of Legal Aid		

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Negligence</p> <p>Negligence occurs when someone acts carelessly, or fails to act at all, resulting in injury or loss to another person. Depending on their relationship, people have a legal duty of care to others to act in a certain way or to not act carelessly.</p> <p>Examples of a legal duty of care include the duty that motorists owe to other motorists and pedestrians, the care that doctors must give to their patients, the supervision that teachers must give to their students and the care that home owners must give to their visitors. This general duty to be careful, and to behave in a way that society considers appropriate, is a responsibility under the law.</p> <p>However, the law does not expect that people will always behave perfectly. It is expected that people will use the skills and abilities that a reasonable person in their particular situation would use. To prove negligence, the injured person must show that the wrongdoer caused the injury, and that the loss or injury is real. To be compensated with damages, the court must find that the harm done through negligence was foreseeable.</p>	<p>Negligence</p> <p>Know that negligence is careless conduct that causes injury to another person.</p> <p>Know that in order to prove a negligence claim, the plaintiff must prove:</p> <ul style="list-style-type: none"> • duty of care - the defendant should have been looking out for someone like the plaintiff • standard of care - the defendant did not take all reasonable steps to prevent the plaintiff's injury • causation - the defendant's actions, and not some other factor, truly caused the plaintiff's injury • damages - the plaintiff actually suffered some injury that must be compensated with money. <p>Duty of Care</p> <p>Know that duty of care is the obligation that is required to ensure that others are not harmed by one's actions.</p> <p>Foreseeability</p> <p>Know that as a precondition to imposing duty of care, a court will determine whether a reasonable person could expect that a certain result might follow from an action. If the result is foreseeable for a reasonable person, then liability may be imposed for the action. If foreseeability is not reasonable, courts may not award damages.</p> <p>Standard of Care</p> <p>Know that the expected standard of care is that which a reasonable person would meet.</p> <p>Know that the expected standard of care differs according to the relationship of the parties to a tort. For example, someone with the duty of care for a child, such as a teacher, parent or sports team coach has a higher standard of care than an individual in relationship with an adult.</p> <p>Causation</p> <p>Know that causation involves whether an act or omission of the defendant resulted directly in the injury to the plaintiff.</p> <p>Damages</p> <p>Know that damages are the award by a court to a plaintiff who successfully proves that injury suffered is the direct responsibility of the defendant.</p>

Skills/Abilities Objectives	Values Objectives
Differentiate between classes of torts.	Appreciate the reasons for negligence torts.
Analyze data according to established criteria.	Appreciate the varied standards of care and duty of care within negligence law.

Instructional Notes

1. Analyze some negligence cases, and identify the torts according to the criteria of:
 - duty of care
 - foreseeability
 - standard of care
 - causation.
2. See Student Handout 3.4 - McErlean v. Sarel Case Study for an exercise regarding negligence.
3. See Student Handout 3.5 - Robertson v. Butler Case Study for an exercise regarding standard of care.

Issues in the Law

1. Wrongful conduct can be both a tort and a crime. Should a person who is convicted of a crime face civil liability as well?
2. Should a participant in a sporting event be able to sue another participant in the case that one player inflicts injury on another?
3. When a person lends equipment to another as a favour, why does the law provide for a tort action as a result?

Student Handout 3.4 - McErlean v. Sarel Case Study

The Facts

McErlean, age 14, was riding a trail bike in an abandoned gravel pit owned by the City of Brampton. The gravel pit was a place that was popular among local trail bike riders. As McErlean raced down a smooth gravel road, he and another boy, Sarel, collided at a sharp, blind curve in the road. McErlean had been riding at speeds from 55 to 80 kilometres an hour. Sarel had difficulty controlling his bike and was driving on the wrong side of the road. McErlean suffered brain damage that left him paralyzed and unable to speak.

McErlean sued Sarel for negligence, and the City of Brampton for negligence as owners of the property.

Questions on Consider

1. What standard of care applied to the boys while riding their trail bikes?
2. Was McErlean negligent in racing his trail bike on the road at the gravel pit? Was Sarel negligent?
3. Was the City of Brampton, the owner of the land, responsible because it allowed an unusual danger (the gravel road with the curve in it) to exist?
4. How would you decide this case and why?

The Judge's Decision

The trial judge found Sarel negligent and held that the City of Brampton was also responsible. The City had allowed an unusual danger, the blind curve, to harm McErlean. McErlean was also responsible too; his fault was set at 10%, Sarel's at 15% and the City's at 75%.

The City of Brampton appealed. On the appeal the City argued that the blind curve was not an unusual danger.

The Court of Appeal overturned the trial judge's finding that the City was not liable. It held that the road was not an usual danger for its users. The boys were not young enough to make it an unusual danger for them. Also, the boys had been engaged in an adult activity, so their conduct would be measured against adult standards.

The Court of Appeal found the boys were each 50% at fault.

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Student Handout 3.5 - Robertson v. Butler Case Study

The Facts

Derrick Robertson, Matthew Butler and several other friends were riding motorized trail bikes. The back brake of Matthew's trail bike was not working. During the afternoon the front brake lever dislodged. One of the boys wedged it back in place, but the rider still had to hold it in place. All the boys were aware of this.

Derrick borrowed Matthew's bike and began riding it down a hill. The brakes failed; he hit a rock and broke his arm and leg. He and his parents sued Matthew's parents for damages.

Questions on Consider

1. What standard of care would you expect a 14-year-old to use when operating a motorized trail bike? On rocky terrain?
2. Would that standard of care change if the trail bike drivers were only ten years old?
3. Would that standard of care change if the young people involved were riding go-carts? Skateboards? Bicycles?
4. Were Matthew's parents liable for not ensuring that the bike was used safely?
5. How would you decide this case and why?

The Judge's Decision

The judge held that Derrick and Matthew were both liable for Derrick's injuries. Matthew was partly responsible for Derrick's injuries, and Matthew's parents failed to supervise and control Matthew's actions. It was their responsibility to train Matthew to operate a trail bike properly and to ensure that he would obey their instructions. They did not do this; they were found liable for 25% of Derrick's injuries.

Ordinarily the standard of care expected of a child depends on the age, intelligence and experience of the particular child. The court also considers the kind of activity in which they are engaged. The judge held Derrick to an adult standard because driving a trail bike is an adult activity. Derrick's conduct in driving the trail bike did not meet this standard. The judge said Derrick should have checked the brakes before starting down the hill. He was held 75% at fault for his own injuries.

More Questions to Consider

1. In this case Derrick recovered only 25% of his damages from Matthew's parents. Damages were assessed at about \$16,000; therefore, Derrick recovered only \$4,000. Was it a good idea to sue in this case?
2. What other options could Derrick and his family have considered?

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Content (Teacher Information)	Concepts and Knowledge Objectives
Intentional Torts	Battery
<p>As people interact during day-to-day life, they are likely to come into physical contact with other people. For instance, if an individual is standing in a crowded elevator while others are getting on, he/she may be bumped, or a foot may be stepped on. No real harm is done. No one is behaving in a negligent manner or intending to cause harm.</p>	<p>Know that under tort law, an individual victim may sue for damages if subjected to intentional physical touching by another person without consent, called battery.</p>
<p>When harm is deliberately caused, for example, when one person punches another in the face, an intentional tort has been committed. The person doing the punching is responsible for any injury caused by the action.</p>	Assault
<p>Intentional torts take place when someone deliberately comes into contact with another person or his or her property to the point where damage is done. Intentional torts that involve harm to people include:</p> <ul style="list-style-type: none"> • battery • assault • false imprisonment • invasion of privacy • malicious prosecution • defamation. 	<p>Know that under tort law, an individual victim may sue for damages for assault if subjected to the threat of force where there is reasonable fear of immediate physical contact.</p>
<p>Intentional torts which involve property include:</p> <ul style="list-style-type: none"> • harm to goods or land through trespass • nuisance. 	False Imprisonment
Occupier's Liability	<p>Know that under tort law, an individual victim may sue for damages if illegally confined against his/her will.</p>
<p>The tort law requires that each occupier of land (owner, renter, or lesor) maintain the duty of care with respect to others invited or trespassing onto the property. The standard of care varies according to the circumstances of the entry. For example, the standard of care owed to an invited visitor is higher than that owed to a trespasser.</p>	Privacy
Invitees and Licensees	<p>Know that the tort of invasion of privacy is evolving in light of the advancing technologies in the communications industry.</p>
<p>The highest standard of care is owed to a person on premises by invitation, either expressed or implied, for the purpose of business or material interest. This includes students in a school, service personnel coming to make repairs, theatregoers and customers in a store. A lower standard of care is required regarding the licensee (a social guest, or one from whom the owner will gain no economic benefit), while the lowest standard of care is owed to the trespasser.</p>	Malicious Prosecution
	<p>Know that a tort of malicious prosecution is an action for damages for wrongfully initiating criminal proceedings against an individual.</p>
Defamation	<p>Know that defamation is damage to a person's reputation or good name, either in oral form, called libel, or written form, called slander.</p>
Trespass	<p>Know that trespass occurs when goods are damaged, when land is infringed upon through presence of another person or if another person places debris on the land of an owner.</p>
Nuisance	<p>Know that under tort law, an individual victim may sue for damages when something interferes with that person's use and enjoyment of personal property.</p>
Occupier's Liability	<p>Know that under tort law, occupiers (both owners and renters) have responsibility toward persons who their come onto property and might be injured.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply inferencing skills to analysis of data.</p> <p>Use criteria for evaluation to make judgements.</p>	<p>Appreciate that individuals in Canadian society have a duty to conduct themselves to a standard of behaviour that does not infringe on the enjoyment of life by another individual.</p>

Instructional Notes

1. Select a fairy tale such as "The Three Little Pigs," "Little Red Riding Hood," "Hansel and Gretel" or "Jack and the Beanstalk." Have students analyze the civil relationships portrayed in these fables identifying:
 - the facts as they allegedly occurred
 - the parties involved
 - the setting
 - the cause of the situation.

Have students suggest what, if any, tort has been committed in the fable. As well, have students identify the defence to a tort that may be useful

2. Using the strategy identified above, have students prepare the written claim and written defence on behalf of characters in a fable.

Issues in the Law

1. Wrongful conduct can be both a tort and a crime. Under what circumstances should a person who is convicted of a crime face civil liability as well?
2. Why is the tort of malicious prosecution important to the liberty of individuals in Canada?
3. Under what conditions should an individual be able to instigate tort action for invasion of privacy related to use of electronic communications devices such as cellular telephones and computers?

Content (Teacher Information)	Concepts and Knowledge Objectives
Vicarious Liability	Vicarious Liability
<p>In some circumstances, responsibility lies not only with the person undertaking (or failing to undertake) an action, but also with an individual responsible for the actions of another. Examples include, responsibility of a vehicle owner for the vehicle even when the owner is not the operator, a parent who is responsible for the actions of a child or an employer responsible for an employee. In such cases, liability insurance is available to offset damages that may be associated with vicarious liability.</p>	<p>Know that vicarious liability is the responsibility of one person for the acts of another. Examples include, the responsibility of an employer for the actions of an employee, and responsibility of a vehicle owner for the actions of another person operating the vehicle.</p>
Strict Liability	Fault
<p>In certain situations people will be held responsible for damage even though they did not act negligently or intend to cause any loss or harm. This is called strict liability.</p>	<p>Know that fault is the responsibility for an action.</p>
<p>Strict liability may apply to people who keep wild animals, such as tigers or snakes. Even though safety precautions such as cages or fencing may be in place, the keeper of the wild animals would be held legally responsible in the event of harm caused by their escape. Another example in the storage of dangerous chemicals on private property. If damages occur, the property owner could be held strictly liable and would have to pay for the harm done, even if not directly negligent.</p>	<p>Strict Liability</p> <p>Know that strict liability means liability without fault.</p> <p>Know that in cases of strict liability, damage is sufficient grounds for assessing liability, except in those instances involving an act of God.</p>
Remedies	Damages
<p>The civil law focuses upon remedies to situations involving harm to persons or property. These remedies are the purpose of a tort action by a plaintiff. Courts will award damages when a tort action is successful. The person who is at fault will have to monetarily compensate the person who has suffered loss or injury. The money may be compensation for such things as repairs to property, medical expenses, lost wages or necessary travel expenses. Compensation for pain and suffering and mental and emotional distress may also be awarded. This type of loss is difficult to measure in money. A judge will give an amount he or she thinks is reasonable. In certain cases a judge can award punitive damages. Television dramas often show juries awarding enormous amounts of money as compensation to injured people. In Canada, having a jury in a civil case is rare, and windfall compensation is rarer still.</p>	<p>Know that damages are compensation (usually in monetary form) awarded for tort losses. There are three types of damages the court may order, including:</p> <ul style="list-style-type: none"> • nominal damages – small monetary amounts awarded in situations where a plaintiff was wronged, but did not suffer any real hardship from the wrong • compensatory damages – monetary amounts awarded to reimburse a plaintiff for all financial loss suffered. (These include general damages awarded for unspecified injury, and specific damages awarded for all specific losses.) • punitive damages – monetary amounts reserved for situations in which the court feels that the plaintiff has acted in a callous fashion, and that a deterrent message needs to be sent to the defendant and public at large. <p>Injunction</p> <p>Know that an injunction is an order from a court that someone either do something, or stop doing something.</p>
<p>In cases where goods are involved, a court may order the return of the goods to the rightful owner. An injunction is also a possibility in a tort action, if harm is ongoing.</p>	

Skills/Abilities Objectives	Values Objectives
Identify criteria in differentiating between types of liability.	Appreciate the purpose of tort law as a means of providing remedy to wrongs committed.
Apply criteria to analyze cases.	Appreciate reasons for the variation in types of damages available under tort law.

Instructional Notes

1. Select cases of tort action for analysis. Identify the nature of the tort (negligence, intentional tort or strict liability), the nature of the circumstances, the defence to the tort action, and the outcome through application of rule of law. Cases may be selected from text references, from websites or from current affairs found media.

Issues in the Law

1. To what extent should a parent be held legally responsible (liable) for the actions of a child?
2. What are some reasons that Canadian court awards for negligence, and other torts are significantly lower in dollar amounts than in the U.S.A.?
3. In what circumstances should an employer be liable for the actions of an employee?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Defences to Torts</p> <p>The courts recognize several defences to torts. In the area of negligence, defences include:</p> <ul style="list-style-type: none"> • voluntary assumption of risk • participation in illegal activities • inevitable accident • contributory negligence. <p>In the area of intentional torts, defences include:</p> <ul style="list-style-type: none"> • informed consent • self-defence • legal authority • discipline • necessity • recapture of goods. 	<p>Voluntary Assumption of Risk</p> <p>Know that a person who participates in an activity known to be risky can not sue for damages if the injury is of the type known to occur in that activity.</p> <p>Participation in Illegal Activities</p> <p>Know that injuries related to participation in illegal activities are not eligible for compensation, even if the wrongdoer was negligent.</p> <p>Inevitable Accident</p> <p>Know that the defence of inevitable accident requires the defendant to prove that conditions beyond personal control occurred, and that an accident could not have been avoided, even with great skill and care.</p> <p>Contributory Negligence</p> <p>Know that contributory negligence is a defence in which the defendant tries to prove that the plaintiff contributed to injuries suffered.</p> <p>Informed Consent</p> <p>Know that informed consent is a defence whereby the defendant tries to prove that the plaintiff agreed to interference with their person, property or goods.</p> <p>Self-Defence</p> <p>Know that self-defence may be used as defence to the tort of battery, if the defendant is able to prove the fear of physical injury, and only if the force used is not excessive or beyond what is reasonably necessary under the circumstances.</p> <p>Legal Authority</p> <p>Know that tort law allows for arrest under legal authority similar to criminal law, using reasonable force. An individual sued for assault and battery during an arrest may use the defence of legal authority, because the individual has a legal right to arrest another using reasonable force, if the person being arrested has had an opportunity to submit peacefully and chooses not to do so.</p> <p>Discipline</p> <p>Know that both criminal and tort law allow parents and teachers to use reasonable force in disciplining children, provided there is no intention to harm a child.</p>

Skills/Abilities Objectives	Values Objectives
<p>Identify criteria in differentiating between types of liability.</p> <p>Apply criteria to case study analysis.</p> <p>Apply inquiry skills:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify and test hypotheses • draw inferences and generate possible solutions. <p>Apply moral testing to conclusions:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. 	<p>Appreciate the purpose of tort law as a means of providing remedy to wrongs committed.</p> <p>Appreciate reasons for the variation in types of damages available under tort law.</p>

Instructional Notes

1. See Student Handout 3.6 - Poirier v Murphy Case Study, and Student Handout 3.7 - Wilkins v. Allaby Case Study for analysis of voluntary assumption of risk, and contributory negligence.
2. Investigate the concept of contributory negligence, and assess case study information regarding the application of the concept of contributory negligence in tort law.

Issues in the Law

1. At what age should an individual be legally able to provide informed consent for medical procedures? Should it make any difference if the medical procedures involve a degree of moral choice on behalf of the minor patient?
2. What are/should be parental rights/responsibilities regarding informed consent for medical issues of their minor (under age eighteen) children?
3. How should the definition of reasonable force be determined in matters of parents disciplining children?

Student Handout 3.6 - Poirier v. Murphy Case Study

The Facts

Peter Poirier and John Murphy, both 18 years of age, agreed to carry out a "stunt." The stunt was performed in an underground parking garage. Peter stood underneath a water sprinkler pipe. After Peter nodded, John began driving his car from about 100 feet away and, at the last moment, Peter would jump up, grab the pipe, do a chin-up, swerve his hips and legs to one side and clear the car. Drinking was not involved. The stunt was performed as a form of amusement for Peter and John, and a group of their friends who were in the car with them.

The stunt was performed safely a first time, but the second time Peter was not prepared for it. Peter was hit by the car and injured. He became unconscious, suffered a brain injury, and underwent lasting personality and emotional changes.

Questions to Consider

1. Did Peter knowingly assume the risk of harm when he agreed to carry out the stunt?
2. Was John negligent? Did he fail to take proper care to avoid harm to Peter?
3. Did Peter contribute to his own injuries by not taking reasonable care of himself?
4. How would you decide the case and why?

The Judge's Decision

The judge held that Peter had given up his right to sue for negligence the first time the stunt was performed, because he willingly assumed the risk of harm. The second performance of the stunt was different because Peter was not ready to perform the stunt. Peter did not assume a risk until he nodded his approval, and he did not do so for the second run.

Both Peter and John were negligent. John was negligent because he owed a duty as the driver of the car to take care. He should have realized that Peter was not ready for the second stunt. John was 2/3 at fault.

Peter was also partly responsible for his own injuries. He was negligent in agreeing to do the stunt and in not removing himself from the risk of harm before the second stunt. Peter was 1/3 at fault.

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Student Handout 3.7 - Wilkins v. Allaby Case Study

The Facts

Five-year old Donald Wilkins ran into the street from the sidewalk near a crosswalk, and was struck by a car driven by Hellen Allaby. Donald, accompanied by a day-care teacher and three other children, was returning to the day-care centre after an outing to a toy store.

At the time of the accident Donald was five years and ten months old. He walked to the day-care centre with his mother and crossed busy streets to get there. He often went on supervised walks from the day-care centre and crossed busy city streets, including the street where the accident occurred. Donald was bright, intelligent and experienced.

Hellen Allaby saw the children beside the road, but she did not reduce her speed.

Questions to Consider

1. Can a five-year old child be held responsible for contributing to his own harm?
2. What things should be considered in deciding whether a young child is responsible or not?
3. How would you decide this case and why?

The Judge's Decision

The driver of the car, Hellen Allaby, was liable for damages caused by her negligent driving. She had seen the children on the sidewalk, but had not reduced her speed. There is a heavy responsibility on the driver of a car when she or he is aware that children are waiting to cross a busy street. Because the driver had not reduced her speed, she was at fault.

A young child should be judged by standards appropriate for a child of similar age, intelligence and experience. Donald was a child of average intelligence, and was experienced in crossing city streets. Children are not held to adult standards of care. But a child such as Donald might be expected to take care not to cross the street when cars are coming. A child who had no experience crossing city streets, or a younger child, would not be held to the same standard.

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Content (Teacher Information)	Concepts and Knowledge Objectives
<p>The Civil Court Procedure</p> <p>In civil law, the process of bringing an action to court, is called litigation, and the parties are called litigants. In many instances, the parties in a civil dispute are able to resolve differences without the actual occurrence of a trial. However, in those instances where a resolution is not achieved through alternate means, the process for trial is specific to the system of civil law, and includes:</p> <ul style="list-style-type: none"> • pleadings, including statement of claim, notice of motion and statement of defence. • examination for discovery • pre-trial conference • trial. <p>The pleadings involve a notice of motion and statement of claim filed with the court by the plaintiff, who contends to be the victim of a tort (wrong), that has been committed by another party. The plaintiff's statement of claim identifies the details of the tort claim, and identifies a deadline for filing of a statement of defence. The defendant, alleged to have committed the tort, must file a statement of defence with the court within the specified time period in order to defend against the suit in court. In Saskatchewan, all civil trials are held in the Court of Queen's Bench, with the exception of small claims court, which addresses civil matters claiming damages of up to \$5,000.</p> <p>Following the pleadings, the process of examination for discovery begins with the exchange of all relevant documentation between the two parties. This is followed by questioning under oath of each party, by the opposing party's lawyer, in order to learn the strengths and weaknesses of each case. At this stage, as in any other stage, before the beginning of the actual trial proceedings, the parties may choose to negotiate an agreement to settle the claim.</p>	<p>Necessity</p> <p>Know that the defence of necessity may be presented by a defendant in cases where action has been undertaken out of necessity for public or private good, such as to save a life.</p> <p>Recapture of Goods</p> <p>Know that an individual being sued for trespass may offer a defence of recapture of goods, as law allows for the reclaiming of goods provided no force or violence are used.</p> <p>Fair Comment</p> <p>Know that a defence against libel action can be made by showing words are fair comment based on fact about a matter of public interest.</p> <p>Litigation</p> <p>Know that litigation is the process of bringing a lawsuit against a party for an alleged wrong or tort.</p> <p>Notice of Motion</p> <p>Know that notice of motion is the originating document that a plaintiff files with the court, serving notice of the claim and identifying a deadline for filing of a defence.</p> <p>Statement of Claim</p> <p>Know that the statement of claim made by the plaintiff is a document filed with the court, as part of the notice of motion in which the details of the plaintiff's claim are presented to the court and the defendant.</p> <p>Statement of Defence</p> <p>Know that the statement of defence is a document filed with the court by the defendant, explaining why the plaintiff's claim is unwarranted.</p> <p>Examination for Discovery</p> <p>Know that examination for discovery is the process occurring prior to trial in civil matters, where all relevant documents are exchanged between parties, and where each party must answer questions under oath posed by the other party's lawyer.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply criteria to case study analysis.</p> <p>Apply inquiry skills:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify and test hypotheses • draw inferences and generate possible solutions. <p>Apply moral testing to conclusions:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. 	<p>Appreciate the procedures of civil trials as a method of protecting the rights of the plaintiff and the defendant.</p> <p>Assess the merit of class-action procedures for Saskatchewan civil law.</p> <p>Appreciate the reasons for standard of proof required in civil law.</p> <p>Appreciate the importance of the placement of burden of proof in civil law.</p>

Instructional Notes

1. Examine letters to the editor of a newspaper, in which the writer of the letter is criticizing the actions of another party. Assess the letters according to the criteria of defamation law, and determine why a letter that attacks an individual may not become the source of civil litigation.
2. Engage in inquiry regarding small claims court in Saskatchewan. Investigate the purposes, the procedures and the possible outcomes of small claims court action.
3. Have students create a scenario, based on personal experience, where they might have taken a matter to small claims court. Have them assess the case, the law and the potential outcome as they imagine it to have occurred.
4. Investigate the simplified procedure for civil court actions seeking remedies under \$50 000 in Saskatchewan.

Issues in the Law

1. In what ways might the process of taking action through civil law appear/seem so cumbersome that it is a deterrent for some individuals who might otherwise seek legal remedies for wrongs suffered?
2. Is civil law an area in which the financial position of an individual may impact upon access to justice? Explain.

Content (Teacher Information)	Concepts and Knowledge Objectives
The Civil Trial	Oath of Truth
<p>In Saskatchewan, the Court of Queen's Bench is the jurisdiction that addresses civil matters other than small claims. Trials are presided over by a judge alone in Saskatchewan civil matters, although some provinces are assessing the merits of instituting jury trials in civil matters. The plaintiff and defendant are entitled to representation by counsel (a lawyer), with the losing party often being assessed the costs of the court and the successful litigant's legal costs.</p>	<p>Know that an oath is an affirmation of truth that if breached, may result in criminal charges for perjury.</p>
<p>The plaintiff presents a case using evidence provided by witnesses who are then cross-examined by the defendant, usually through counsel. Upon completion of the plaintiff's attempt to prove the case, the defendant then presents evidence in attempts to disprove the claim being faced, with cross-examination of the evidence by the plaintiff through counsel.</p>	<p>Frivolous or Malicious Actions</p> <p>Know that, as a safeguard against frivolous or malicious civil actions, courts may rule the losing litigant pay the costs of the court and those of the winning litigant.</p>
<p>The decision in a civil matter, made by a judge using the law as the criteria for judgement, is not based on proof beyond reasonable doubt, as in criminal trials. The burden of proof lies with the plaintiff, who must show that events transpired in the manner stated in the claim. This proof in civil trials is based upon the standard of the balance of probabilities.</p>	<p>Balance of Probabilities</p> <p>Know that In civil trials, the standard of proof is based upon the balance of probabilities, meaning that a judge will decide cases based on which party has presented the case with the greater likelihood of fact.</p>
Civil Judgements	
<p>Civil orders upon judgement are based on remedies to compensate for wrongs. There is always a time frame within which compensation must be made, and if the order for compensation is not adhered to within that specified time, the successful litigant may apply to the court for assistance in enforcement of the court order.</p>	
Appeals	Court of Appeal
<p>In civil trials, the losing party may appeal the decision of the trial judge on the basis of law, or on any order of the court. Such orders resulting in appeals may include appeal of an ordered monetary compensation for damages, and appeals of order to action or prohibiting action.</p>	<p>Know that the Saskatchewan Court of Appeal hears civil appeals only when an argument has been successfully made that an error in law has occurred at the original trial, or where a judgement award is seen to deviate from other judgement awards in similar circumstances.</p>
<p>Appeals to civil matters in Saskatchewan are made to the Court of Appeal, and may eventually end up in the highest court of the land, the Supreme Court of Canada.</p>	

Skills/Abilities Objectives	Values Objectives
Compare the standards of proof in criminal and civil law.	Appreciate the reasons for differing standards of proof between criminal and civil law.
Describe the differences between a criminal process and a civil process.	

Instructional Notes

1. Have students research the case of Donald Marshall, Guy Paul Morin or David Milgaard, and write an expository essay regarding malicious prosecution, including a description of the facts and resolution of the case.
2. Undertake a civil mock trial in an area of tort law.
3. Research current civil trials pertaining to tort law in Saskatchewan or Canada. Identify the issue, the case presented, the applicable law and the outcome of the proceedings.

Issues in the Law

1. What are the potential problems with the standard of proof being the balance of probabilities in civil court, rather than the standard of beyond reasonable doubt as in criminal trials? What are the benefits?

Content (Teacher Information)	Concepts and Knowledge Objectives
Issues in Civil Law	Class Action
<p>While civil law is based upon the common law and the case law of the nation, there have been statutes enacted by governments to address civil matters deemed to be of importance to the public good. An example of such a statute is environmental protection legislation.</p>	<p>Know that class action is a lawsuit, initiated by representative members of a group of persons, on behalf of all members of the group. Criteria for a class action include:</p> <ul style="list-style-type: none"> • numbers of persons included is so large that it is not practical to proceed individually • the class of persons must be identifiable as allegedly having suffered the same wrong or harm • the issues of law and facts of the claim must be shared in common by all members of the class.
<p>Class action suits, where an individual or group of individuals begins civil action on behalf of a class of people affected by an alleged tort, are not common in Canada. Some observers of the civil litigation system in Saskatchewan suggest that easing of class action provisions may enhance justice for individuals in their relationships with large, wealthy corporations. However, the introduction of class action mechanisms may result in provincial, municipal and other local governance bodies being the subject of class action suits. Such a possibility/an option may reduce the willingness of allegedly injured parties to participate in alternative dispute resolution methods such as negotiation or mediation, and arbitration.</p>	No-fault Insurance <p>Know that in Saskatchewan, the no-fault insurance system is called the Personal Injury Protection Plan.</p> <p>Know that no-fault insurance eliminates the opportunity for an individual to be compensated for pain and suffering due to an automobile accident.</p>
Insurance <p>Individuals may purchase insurance coverage to provide financial protection in the case of liability for an injury for which they may be found at fault. However, insurance costs continue to be an issue for both individual consumers and insurers. The implementation of a no-fault automobile accident insurance system in Saskatchewan, as an attempt to modernize the approach to automobile insurance, remains a controversial topic for some critics of the no-fault approach.</p>	Alternative Dispute Resolution <p>Know that alternative dispute resolution is the process of resolving disputes through means other than litigation and civil trial.</p>
Privacy <p>Continuing advances in electronic communications technology will result in new issues in civil law regarding privacy of communication, as well as many other consumer and contract law related issues. Canadians will require new public policy and new law to address issues as they arise.</p>	Negotiation <p>Know that negotiation involves two parties who voluntarily and informally attempt to resolve a civil matter without involving a third party.</p>
Alternate Dispute Resolution Mechanisms <p>The system of civil law allows for remedies for harm done by one party to another. However, the process of litigation is costly in terms of dollars and time. Subsequently, individuals may attempt to resolve disputes of a tortious nature through negotiation or mediation. Proponents of this approach to civil justice identify increased access, efficiency of resolution and cost effectiveness as rationale supporting alternative dispute settlement mechanisms in civil law.</p>	Mediation <p>Know that mediation is a voluntary process by which parties to a civil dispute attempt to resolve the matter with the assistance of a neutral third party.</p>

Skills/Abilities Objectives	Values Objectives
<p>Define criteria and apply in making judgements.</p> <p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance – the ability of the model to perform constructively, efficiently and consistently in a variety of situations • consequences – the acceptability of the consequences of applying the model to various situations • accuracy – the ability of the model to predict future events accurately and consistently. <p>Apply research skills in gathering data useful in making judgements about an issue.</p> <p>Apply the skills of dialectical evaluation:</p> <ul style="list-style-type: none"> • define relevant viewpoints within the information • test the view points for factual accuracy • test the viewpoints for their morality • evaluate the factual and moral testing • form a conclusion about the issues. <p>Apply the moral tests of:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. 	<p>Appreciate reasons behind governments enacting no-fault insurance schemes.</p> <p>Appreciate reasons why some individuals find no-fault insurance to be inadequate.</p> <p>Appreciate the value of alternative dispute resolution mechanisms.</p>

Instructional Notes

1. Examine the no-fault insurance system, and identify positive and negative aspects of the system. Information may be found at http://www.sgcicanda.ca/sgi_pub/autofund/pipp/pippoguide/pippoguide.html.
2. Engage students in a dialectical reasoning exercise in which they answer the question: Is the no-fault insurance system good for residents of Saskatchewan?
3. Research means to seek remedies for harm in torts other than litigation and civil trial.
4. Select a case studied in this unit, and have students create a role playing scenario using mediation as an alternative process for solving the dispute.

Issues in the Law

1. Is no-fault insurance a good idea? Explain.
2. Saskatchewan residents have the choice of no-fault or tort based automobile insurance. Which should drivers choose? Why?
3. Saskatchewan Law was changed in 2001 to accommodate class-action litigation. Why?

Unit Four - Family Law

The State has the right to demand adherence to those values it considers necessary for its survival and the family has the right to insist on implementing those values it considers necessary for survival. Who is to say which rights within a family are most deserving of protection?

Justice Rosalie Abella
Supreme Court of Ontario

Overview – Unit Four: Family Law

The application of the rule of law to the institution of family evolved significantly in the last quarter of the twentieth century. Many situations that had previously been held within the domain of private family matters are now matters of public interest, as illustrated by both statute and case law. This unit will challenge students to investigate the sources of family law in Saskatchewan and Canada, and to examine the effectiveness of current legal processes in meeting the needs of all members of families in the 21st century. Finally, students will explore the necessity and attributes of legal wills, and contemplate issues associate with living wills.

Resources and Resource-Based Learning

Resource-based learning is an integral part of all units. The bibliography developed to support this curriculum will assist you in incorporating a variety of resources from different media into each unit. This annotated bibliography should be available from your teacher-librarian or the Learning Resource Distribution Centre. The bibliography contains annotations of current, useful resources including print, video, Internet sites, and other media selections. Teachers are encouraged to assess their current resource collection, identifying those that continue to be useful, and to acquire small quantities of each new title, rather than class sets, in order to provide students with a broad range of perspectives and information.

The following list of evaluated resource titles provides a **starting point** for developing a resource collection that is current and relevant, and that addresses students' various learning styles and abilities. Please refer to *Law 30 The Law and You: A Bibliography*, for a complete list of resources giving the full citation, annotation, and ordering information. Please note that many of these resources can be ordered through the Learning Resource Distribution Centre (<http://lrdc.sasked.gov.sk.ca/>). Videos may be available from Media Group (<http://www.sasked.gov.sk.ca/video>). At the time of publication all of the resources listed here and in the bibliography were in print and available.

Please note that LRDC will be closing effective March 31, 2003. If you need assistance acquiring Saskatchewan Learning materials after that date, please contact 787-5987.

Print Resources

- AIDS and Canadian Law
- Canadian Family Law (Kronby)
- Canadian Family Law (Payne)
- For Better or for Worse: The Canadian Guide to Marriage Contracts & Cohabitation Agreements
- Surviving Your Divorce: A Guide to Canadian Family Law
- Surviving Your Parents' Divorce: A Guide for Young Canadians

Non-Print Resources

- Parents Are Forever: Supporting Children
- Unbalanced Scales: Bias in the Justice System
- W5: Divorce Industry

Internet Sites

The following sites provide a brief overview of available websites. These sites were checked for availability in March 2002. To access formally evaluated sites that have been linked to the curriculum visit the Evergreen Curriculum at the Saskatchewan Learning website <http://www.sasked.gov.sk.ca/>.

- Canadian HIV/AIDS Legal Network - <http://www.aidslaw.ca/home.htm>

- Family Law Division - Saskatchewan Justice - http://www.saskjustice.gov.sk.ca/Family_Law/default.htm
- Maintenance Enforcement Office - Saskatchewan Justice - <http://www.saskjustice.gov.sk.ca/Maintenance/default.htm>
- Wills and Estates - Saskatchewan Justice - http://www.saskjustice.gov.sk.ca/learning_centre/wills_estates.htm

Incorporating Current Events

Incorporating current events enhances students' understanding of the concepts under study and extends their learning experiences by relating the events to real life and making them more relevant. Sources for current event stories include newspapers, newsmagazines, daily and weekly television and radio newscasts, documentaries and the Internet. Many Canadian daily newspapers are available online and are a useful source of current events. Select articles and news items to support the objectives and concepts as often as possible, and encourage students to contribute also.

Learning Objectives

Learning objectives of two types are identified for Law 30, including Foundational Objectives and Specific Learning Objectives. Foundational Objectives are designed to guide instruction and student learning throughout each unit of study, and indicate the broad learning outcomes in terms of content, skills and abilities, and values. Specific Learning Objectives, identified in each lesson of the unit, are designed to help students achieve the Foundational Objectives. The core Specific Learning Objectives are identified in bold font. This makes timelines for each lesson and unit flexible. Teachers can choose to focus on the core Learning Objectives only, or to have students strive to achieve all of the stated Learning Objectives.

Objectives to achieve the Common Essential Learnings (C.E.L.s) are identified using the following abbreviations:

Communication	COM
Critical and Creative Thinking	CCT
Personal and Social Values and Skills	PSVS
Independent Learning	IL
Numeracy	NUM
Technological Literacy	TL

Foundational Objectives

Knowledge/Content	Skills	Values
<ul style="list-style-type: none"> • Know the social and legal aspects of the rights and obligations created by membership in a family unit. (PSVS, CCT, COM, IL) • Know the legal and social issues associated with separation, divorce, property rights, and custody of children. (PSVS, CCT, COM, IL) • Know the reasons for, and components of, legal wills. (COM, CCT) 	<ul style="list-style-type: none"> • Identify and apply criteria to make decisions. (CCT, COM) • Apply criteria as a means of evaluating models. (CCT, IL, NUM) • Create models to reflect current societal needs and values. (CCT, IL) 	<ul style="list-style-type: none"> • Appreciate the complexity of family relationships. (PSVS, CCT, COM) • Recognize the value that society places upon the family as a socialization unit for its members. (PSVS) • Appreciate the changing nature of family structures. (CCT, PSVS)

Content (Teacher Information)	Concepts and Knowledge Objectives
<h3>The Changing Family</h3>	Nuclear Family
<p>Family law is an area of jurisprudence that underwent significant change in the last quarter of the 20th century. The changing nature of the family, and evolving societal attitudes toward non-traditional family structures, has necessitated changes in law in Canada. As well, the nature of parent-child relationships has been redefined and clarified in the area of family law. Matters considered private family issues in previous generations are now commonly addressed in civil and criminal courts.</p>	<p>Know that a nuclear family includes the birth parents and offspring of their union.</p>
<h3>Sources of Family Law</h3>	Blended Family
<p><i>The Constitution Act, 1867</i>, section 91(26) provides that the federal government has exclusive jurisdiction over matters of marriage and divorce. This includes divorce action itself, the division of property, the custody of children and the support and maintenance of the spouse and children. As well, section 92(12) gives provinces power to create laws including the solemnization of marriage, formalization of separation on marriage breakdown, support and maintenance of the spouse and children, division of property and custody of children. Statutes have been developed at the federal and provincial levels to reflect public policy in the areas of family law.</p>	<p>Know that a blended family includes adults, and their children from previous relationships, together entering a family unit.</p>
<p>Case law also serves as a source of family law, in that interpretations of statutes and applications of common law are set out in the case law that influences the position of the court in family law matters.</p>	Extended Family
<h3>Marriage</h3>	<p>Know that extended family includes uncles, aunts, cousins and grand parents, as well as members of the nuclear family.</p>
<p>Marriage affects the legal status of individuals, committing each party to fulfill certain obligations. As is the case in contracts, one must have the legal capacity to enter the status of marriage. The elements of legal capacity include:</p> <ul style="list-style-type: none"> • adequate mental capacity • minimum age • not previously and still married • free and voluntary consent • consummation • consanguinity. 	Solemnization
<p>Canadian law recognizes either civil or religious marriage ceremonies, although marriages between partners of the same gender are not recognized in law. Some rights and responsibilities of marriage relationships are attributed to same-sex couples in the same way as other common law relationships.</p>	<p>Know that solemnization is the process of completing steps required under provincial law leading to marriage.</p>
	Mental Capacity
	<p>Know that mental capacity for marriage is the ability to understand the legal duties and responsibilities of a marriage commitment.</p>
	Minimum Age
	<p>Know that according to law, the minimum age to freely marry in Saskatchewan is 18 years. However, individuals may enter marriage at age 16 years with parental consent.</p>
	Polygamy
	<p>Know that in Canada, under section 293 of the <i>Criminal Code</i>, it is illegal to enter marriage to an individual while still married to another spouse.</p>
	Consent
	<p>Know that if either party is forced or coerced into marriage, the marriage may be deemed void.</p>
	<p>Know that a marriage may be deemed void if one party did not truly understand the nature of the ceremony, or if there is a mistake as to the true identity of either party to a marriage.</p>
	Consummation
	<p>Know that if either party to a marriage lacks sexual capacity to consummate a marriage it may be deemed void.</p>

Skills/Abilities Objectives	Values Objectives
Differentiate between the elements of a civil marriage and a religious marriage.	Appreciate the reasons that society has taken an interest in the institution of marriage.
Identify and explain the concept of legal capacity to form a marriage.	Appreciate the rationale for setting a minimum age criteria for marriage.
Explore the criteria associated with legal name changes.	Appreciate the reasoning for the traditional approach for name changes upon marriage. Appreciate the reasoning for persons not changing their name upon marriage.

Instructional Notes

1. Engage students in discussion of legal capacity to form a marriage. Examine the criteria to determine the appropriateness of the current criteria.
2. Research the criteria for marriage in the 19th century in Canada. Compare that criterion to the current criterion. (A member of local clergy may be an historical resource for teachers for such comparison.)
3. Using Student Handout 4.1 - Names and Changes of Names, have students speculate about whether they would change their names upon entering a legal marriage, and their reasons for their positions.
4. Engage students in discussion regarding their legal expectations of marriage. Compare expectations to legal provisions in marriage, to determine:
 - the reality of expectations
 - the adequacy of current statutes regarding marriage.

Issues in the Law

1. Should the state, and through the state the collective societal interest, be part of marriage considerations?
2. Should parents have any say in the marriage of their child? Under what circumstances might their involvement be justified?
3. Why is it that females traditionally change their name upon marriage rather than males? Might this say anything about the traditional power relationships between men and women?

Student Handout 4.1 - Names and Changes of Names

Can I change my name?

The *Change of Name Act* provides the framework for changing your name in Saskatchewan. If you meet the requirements of the Act you can elect to change your name for a fee. Application forms can be obtained from:

Vital Statistics
Department of Health
1942 Hamilton Street
Regina, SK S4P 3V7
(306) 787-3092
1-800-458-1179

You must be:

- a resident of Saskatchewan
- 18 years of age or older
- have lived in Saskatchewan at least three consecutive months in the past year
- legally entitled to remain in Canada.

If you are under 18 years of age you can choose to change your name if you are married, widowed or divorced. If you have a spouse, you must either prove your spouse was given notice of your intention to change your name or attach an affidavit indicating you are living separate and apart from each other. You can also choose to change the name of your spouse and child when you change your name.

Can I change my name for any reason?

Generally, changes may be made to your first, middle or last name as long as you are not doing so for fraudulent purposes such as hiding from people to whom you owe money. For example, you can decide that your name does not suit you and you want a different one. However, your new name must be written in the Roman alphabet. It is an offence to obtain a change of name by fraud or misrepresentation. The punishment can be a fine of up to \$500, or three months imprisonment.

Do I need to apply for a name change if I marry?

No application is necessary if you choose to use:

- the surname (last name) you were using when you got married
- your surname at birth
- the surname of your spouse
- a double or hyphenated name using your surname and the surname of your spouse.

The consent of your spouse is not necessary. You may start using one of the names listed above and have your identification and other documents changed, if necessary, by providing proof of birth and/or marriage to agencies such as banks, SGI or health services. You can change your mind about which name to use at any time during your marriage. If you want to change your name to some other name, you must indicate such and pay a fee.

What if I divorce?

When you divorce, you do not need to apply to change your name if you choose:

- the name you were using at the time of your divorce
- the name you were using immediately before your marriage
- your birth name.

What if my spouse dies?

If your spouse dies you may use:

- the surname that you were using at the time of the death
- the surname you were using immediately before your marriage
- your birth name.

What names can I give to my children when they are born?

You may give your children any first, middle or last name you choose. The names must be written in the Roman alphabet and the surname cannot contain more than two names hyphenated or combined. Either parent may register the child's name. If only one parent registers the child's surname, the surname will be the one chosen by that parent. In a situation where the parents cannot agree on the child's surname, the surname must be their surname if they have the same surname, or their surnames hyphenated in alphabetical order if they have different surnames.

Can I change my child's name later?

You can apply to change your child's first, middle or last name to any other name if:

- you are the legal custodian of the child
- you have the written consent of every other legal custodian of the child
- you have the written consent of the child if the child is 14 years of age or older.

Names must be in the Roman alphabet. A surname cannot have more than two components.

How do I apply?

An application form may be obtained from Vital Statistics. You apply by completing the form and mailing it together with the required documents, consents and fees to the Director of Vital Statistics. The form is a Statutory Declaration. It must be signed before a Notary Public, Justice of the Peace or Commissioner for Oaths for Saskatchewan. You must also complete an affidavit of bona fides to accompany the application. This means that you must swear and sign a statement saying you are not changing your name for fraudulent or unlawful purposes. The Director of Vital Statistics may require you to provide other information or documents to determine whether to register the application. A Notary Public or a Commissioner for Oaths can be located through the yellow pages of a telephone book. Most banks and law offices have someone who acts as a Commissioner for Oaths. Once your change of name has been registered, you will receive a Certificate of Change of Name. If you have made a change of name in another province, you must register this change in Saskatchewan.

Do I have to do anything else?

If you were born in Saskatchewan, you can obtain a new birth certificate for a fee. However, if born in another province, you must apply to that province for a new birth certificate. Arrangements should be made to change your name on all business documents, such as bank accounts, your hospitalization card and driver's licence. A copy of the Certificate of Change of Name should be sent with each of these notices of name change. A notice of every change of name is published in the *Saskatchewan Gazette*.

(Source: Public Legal Education Association of Saskatchewan. Reprinted with permission.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Marriage Contracts</p> <p>Prior to marriage, some couples will enter a marriage contract, or a prenuptial agreement, in order to define the circumstances in the event of marriage breakdown. Such agreements are also known as domestic contracts, and may be enacted by married, separated or common-law spouses. These agreements usually address matters such as the division of assets, but may not include agreement not to have children, not to have sex or to end the marriage at a certain time.</p>	<p>Consanguinity</p> <p>Know that marriage between two people who are closely related by blood (consanguinity) is invalid.</p>
<p>Marriage Ceremony</p> <p>A marriage ceremony may be legally conducted by an individual whom is sanctioned by a religious organization such as a church, or by an individual such as a judge, a marriage commissioner or justice of the peace, either of whom gains legal authority to conduct marriage ceremonies under the <i>Marriage Act</i>. A wedding ceremony is not required under law, but a declaration that no known legal barriers to marriage exist, and a declaration of each partner to take the other as a lawfully wedded spouse, is required in the presence of an individual with legal authority to conduct a marriage, as well as two witnesses.</p>	<p>Marriage and Prenuptial Agreements</p> <p>Know that a marriage or prenuptial agreement may be agreed upon in order to determine the conditions of separation and divorce in the event of marriage breakdown, particularly with respect to division of assets.</p> <p>Know that among things which can not be included in a marriage contract or prenuptial agreement are:</p> <ul style="list-style-type: none"> • agreement not to have children • agreement not to have sex • agreement to end the marriage at a certain time.
<p>Obligations of Marriage</p> <p>By participating in a legal marriage, individuals agree to take on certain legal responsibilities. Among these responsibilities is that of support of the spouse, and to provide the necessities of life. As well, the legal obligation of marriage includes the support and care of any children of the marriage. During a marriage, each partner has the right to be free from physical and sexual abuse by the other partner, and children have the right to be free from abuse or neglect.</p>	<p>Child Support</p> <p>Know that parents, whether in a legal marriage or cohabitation situation, have responsibility to provide for the welfare of their children.</p>
<p>Cohabitation Relationships</p> <p>Individuals who decide to live together in a relationship but choose not to participate in a formal, legal marriage, are often referred to as living in a common-law relationship. This label is misleading; however, as the legal rights and obligations in this type of arrangement are derived not from the common law, but from the statute and case law of a jurisdiction. Some laws treat cohabitation spouses in the same manner as married spouses, including responsibilities of parents to children. Other laws apply to cohabititational partners depending upon the amount of time the cohabitation as spouses has occurred. These include the application of the <i>Income Tax Act</i>, and the <i>Old Age Security Act</i>.</p>	<p>Common-Law Relationship</p> <p>Know that the arrangement often referred to as common-law marriage is, in reality, a cohabitation arrangement not governed under the common law.</p> <p>Know that in Saskatchewan, statutory recognition of cohabitation relationships addresses spousal and child support, and the division of assets upon relationship breakdown.</p> <p>Cohabitation Agreements</p> <p>Know that cohabitation agreements may be enacted as a means of addressing division of assets and child and spousal support in the event of relationship breakdown.</p>

Skills/Abilities Objectives	Values Objectives
Identify the criteria for a legal marriage or prenuptial agreement.	Appreciate that marriage and cohabitation includes obligations by each party to the other.
Construct a model based upon selected criteria.	Appreciate the purpose of a model.
Evaluate criteria based on observations of reality.	Appreciate the limitations of a model.

Instructional Notes

1. Present students with the following scenario: You are going to be married in three weeks time. What must you do, according to law, in order to prepare for the event? What factors must be part of the process? What factors may be included, but are not legal requirements?
2. Have students construct a fictitious marriage or prenuptial agreement, using the criteria of legal elements of such an agreement. Note that this issue may not be deemed appropriate for study in some families or communities, so teachers are urged to use discretion in employing this strategy.
3. Have students interview someone who has a marriage contract or prenuptial agreement, to determine the utility of such a document.
4. Investigate the status of common law partners regarding division of assets in the event of relationship breakdown, according to Saskatchewan statutes.
5. Interview a lawyer regarding the issue of marriage contracts and/or prenuptial agreements. Have students construct a set of interview questions prior to such an interview.

Issues in the Law

1. Should cohabititational arrangements be treated in the same way as legal marriages under law? Explain.
2. Under what circumstances do people choose a civil ceremony rather than religious ceremony?
3. Does the recognition of common law and same sex marriages by the state contribute to the breakdown or enhancement of the moral fabric of the nation?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Parenting</p> <p>During marriage, both parents have a legal right and obligation to joint custody of children of the marriage, and to joint decision making regarding major issues, such as education and religion. Parents in marriage are also jointly responsible for the debts and other financial affairs of the children of the marriage.</p> <p>Among the other legal responsibilities of the parents are the provision of the necessities of life, including food, clothing and shelter. As well, the parents are responsible to make moral and medical decisions for the child until the child is old enough to make such decisions independently, and are responsible at all times to make decisions in the best interests of the child.</p> <p>It is usually in the context of family breakdown that parenting legal issues arise. These issues may include domestic violence or abuse within the context of marriage, or may result from marriage breakdown. In any case, the context of application of family law often makes this area of law very emotionally charged and, at times, confrontational. It has been the public policy direction of the federal government at the end of the 20th century, to predicate all matters of family law on the principle of what is in the best interests of the child(ren) involved.</p> <p>Marriage Breakdown</p> <p>In the event that a marriage breaks apart, the legal nature of the initial marriage necessitates the legal aspects and terms of a separation or divorce. In certain cultural groupings, an annulment is also required for religious reasons, but has no bearing in legal matters.</p> <p>Separation</p> <p>Couples may separate from living together as spouses without any formal legal intervention. However, it is when children are involved that the necessity for formal agreement is greatest. There are three options available to couples upon separation:</p> <ul style="list-style-type: none"> • immediate application for divorce • application for judicial separation • formulation of a separation agreement between parties. 	<p>Children</p> <p>Know that, in Saskatchewan, according to <i>The Children's Law Act (1997)</i>, a person is considered a child until age of majority (18 years of age).</p> <p>Necessaries</p> <p>Know that Section 215 (1) of the <i>Criminal Code</i> obligates the parents to provide the necessities of life to a child under the age of sixteen years.</p> <p>Family Violence</p> <p>Know that criminal law applies to situations involving family violence.</p> <p>Know that children in Saskatchewan are further protected from violence under the <i>Victims of Domestic Violence Act (1994)</i> and the child and <i>Family Services Act (1997)</i>.</p> <p>Divorce</p> <p>Know that divorce is the legal and formal ending of a marriage.</p> <p>Know that divorce is granted upon filing with the court a petition for divorce.</p> <p>Separation</p> <p>Know that couples residing separate and apart from each other for a period of one year or more may be granted a divorce, as separation is deemed evidence of spousal relationship breakdown.</p> <p>Annulment</p> <p>Know that an annulment is a declaration of a religious nature voiding a marriage.</p> <p>Separation Agreement</p> <p>Know that a separation agreement is a contract that identifies the decisions of the spouses who are separating, including issues such as custody, access and support regarding children, and the division of assets.</p> <p>Know that a separation agreement may be formulated voluntarily by the parties, or may be imposed as judicial separation through the Family Law Division of Court of Queen's Bench.</p>

Skills/Abilities Objectives	Values Objectives
Identify and explain the rationale for the commitment parents have to children under the law.	Appreciate the difference between annulment and divorce. Appreciate that family law attempts to provide the best possible parental support for children.

Instructional Notes

1. Use the video kit *Parents Are Forever... Supporting Children* as an introductory resource for addressing issues associated with spousal relationship breakdown and its impact upon children.
2. Explore the concept of annulment as it compares to divorce. What are the differences? Why is there a difference?

Issues in the Law

1. Explore the concept that it is easier to become married than it is to later become not married. Is this true? If yes, why? If not, why does this perception exist?
2. Is the adversarial system of law appropriate to the process of getting a divorce, or does it simply add to the trauma and emotion associated with family breakdown? What might be alternatives?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Divorce</p> <p>The legal requirements for divorces are governed under the federal Divorce Act, while provincial statutes govern support and property matters associated with divorce. A divorce may be granted if there is a breakdown of a spousal relationship, which is established through evidence of:</p> <ul style="list-style-type: none"> • adultery • cruelty • separation for a period of one year or more. 	<p>Adultery</p> <p>Know that adultery is voluntary sexual intercourse of a married person with a person of the opposite sex other than a person's spouse.</p>
<p>Prior to 1968 in Canada, divorce law was designed upon a fault-based system, whereby divorce was granted only upon legal finding of fault by one spouse. With major justice reforms implemented in 1968, the <i>Divorce Act</i> allowed for divorce without assignment of fault, but simply upon the grounds of irreconcilable differences.</p>	<p>Cruelty</p> <p>Know that cruelty occurs when one spouse treats the other in a way that would make it unreasonable for the spouse to continue to live with the other person.</p> <p>Know that cruelty may involve either physical or emotional harm.</p>
<p>Procedures of Divorce</p> <p>In the event that both parties to a spousal relationship agree to end that spousal relationship through divorce, they are known as co-petitioners to the court. A lawyer will prepare documentation to be presented to the Court of Queen's Bench Family Law Division, initiating a petition for divorce. If spousal relationship breakdown is evident, the divorce will be granted.</p>	<p>Petitioner</p> <p>Know that the petitioner is the individual initiating divorce proceedings in the Court of Queen's Bench Family Law Division.</p>
<p>One spouse may initiate divorce proceedings by petitioning the court independently of the other. When this occurs, the spouse being sued for divorce will respond to the court in one of the following ways:</p> <ul style="list-style-type: none"> • they may decide to agree to the divorce and terms and conditions set out in the petition • contest the divorce action itself as groundless • contest the divorce on the basis of the terms and conditions regarding proposed custody, access and maintenance support. 	<p>Co-Petitioners</p> <p>Know that in cases of mutual agreement regarding termination of a spousal relationship, the two individuals may jointly petition the court for divorce.</p> <p>Respondent</p> <p>Know that the respondent is the spouse who is being sued for divorce.</p>
<p>In the event that a respondent wishes to contest the divorce action, they must file a counter-petition with the court, in which there is a counter proposal to address custody, access and maintenance issues. The courts in Saskatchewan encourage the mediation of disputes between divorcing persons in order to enhance a sense of ownership of the agreement that must inevitably be determined, as well as to reduce the burden of cases in the courts.</p>	
<p>In the event that the court is satisfied that all criteria for divorce have been met, a judgement for divorce will be issued. The judgement may or may not include provisions regarding custody, access, maintenance or division of property.</p>	

Skills/Abilities Objectives	Values Objectives
<p>Investigate the application of the concept of "separate and apart" as they apply to divorce law.</p> <p>Hypothesize alternative approaches to the adversarial system for separation and divorce.</p>	<p>Appreciate reasons for interests of the state in matters associated with spousal relationship breakdown.</p>

Instructional Notes

1. Investigate the reasons for changes in Canada's laws associated with marriage, divorce and separation in the late 1960s. Examine the reasons why such significant changes occurred at that time.
2. Use Student Handout 4.2 - Marriage Breakdown: The Separate and Apart Rule to facilitate discussion regarding the criteria for divorce.

Issues in the Law

1. Do we, as a society, have any right to interest in divorce of individuals? (The existence of public policy, illustrated through statutes, indicates that society currently does take interest in the conduct of individuals in this regard.)
2. The grounds for divorce changed significantly in the later half of the 20th century. Has this been a positive or negative evolution of the law?

Student Handout 4.2 - Marriage Breakdown: The Separate and Apart Rule

The federal *Divorce Act* provides the legal framework for divorce across Canada. A divorce can only be granted by court order. This court order for divorce ends the spousal relationship and leaves the spouses free to remarry. At the time a divorce is granted, the court may also deal with other issues such as custody, access, maintenance and property division.

There is only one ground on which to base a claim for divorce: marriage breakdown. One way to establish that a marriage has broken down is to show that the spouses have lived separate and apart for at least one year. So, just what does separate and apart mean?

Generally speaking, the courts have held that "separate and apart" means a physical separation, combined with an intent to end the marriage. This intent does not need to be shared by both parties. In some situations, spouses may even be considered to have been living separate and apart while continuing to live under the same roof. The courts, however, have held that where the spouses are living under one roof, the evidence that they are actually living separate and apart must be clear and convincing. For example, economic circumstances sometimes prevent spouses from taking up two residences, but they nonetheless lead separate and individual lives. There may be virtually no contact between them, and marital relations may stop. They may eat all their meals apart from the other spouse and lead separate social lives. When a spouse claims that he or she has lived separate and apart from his/her spouse while continuing to live under the same roof the individual, facts will determine whether the legal requirement for living separate and apart has been met.

Either spouse can begin the divorce process, regardless of who left the marriage or why. A spouse who applies for a divorce does not need to prove that the other spouse was at fault. It is possible to simply plead that the marriage has broken down, as established by the fact that the parties are living separate and apart. While a divorce will not be finalized before the parties have lived separate and apart for a period of at least one year, the process can begin as soon as the spouses begin to live separate and apart. A brief attempt at reconciliation during the year will not affect the required separation period if the reconciliation is unsuccessful. Spouses will still be considered to have been separated for one year if they did not live together for more than ninety days following their initial separation.

The spouse who is seeking the divorce must have a "petition" for divorce issued by the local registrar at the court house. A lawyer generally prepares the petition and has it issued for the spouse. A petition is a legal document that outlines the grounds for divorce. The petition must be served on the other spouse. If the other spouse does not contest or fight the divorce, the court can simply grant the divorce if the grounds for divorce are established.

If the other spouse wants to contest or fight the divorce they must file a reply to the petition at the court house. This is usually done through a lawyer. A spouse may agree to the divorce, but may disagree about other issues raised in the petition, such as custody, access and maintenance.

Divorce proceedings can be very complicated if the divorce is contested, or if there are custody or maintenance issues to be settled. Spouses may wish to attempt to mediate these matters or consult with a lawyer.

If the court is satisfied that there are grounds for divorce, it will issue a judgement for divorce. A divorce may be granted together with an order dealing with custody, access, maintenance and family property. The divorce is finalized 31 days after the judgement is issued. The purpose of the waiting period is to allow for an appeal. After the 31 days have passed and appeal has not been started, the divorce is final and the spouses are free to remarry.

Marriage breakdown may also be established by proving adultery or cruelty. When either adultery or cruelty is established the law does not require a one-year separation before finalizing the divorce when the non-offending spouse who applies for the divorce. The spouse who has committed the adultery, or treated the other spouse with cruelty, cannot use his or her own adultery or cruelty to get around the one-year waiting period. Unless there is a good reason for the non-offending spouse to plead adultery or cruelty, it is usually faster and simpler to simply rely on a separation of one year.

(Source: Public Legal Education Association of Saskatchewan. February 11, 2000. Reprinted with permission.)

Content (Teacher Information)	Concepts and Knowledge Objectives
Children and Separation or Divorce	Custody
<p>Of primary importance in the event of spousal relationship breakdown is the welfare of any children in the family unit. Among the issues to be addressed in these circumstances are:</p> <ul style="list-style-type: none"> • custody of children • access for children to both parents • financial maintenance support for children. 	<p>Know that custody means the legal care and control of the children. In cases of spousal relationship breakdown, custody may be categorized according to the following options:</p> <ul style="list-style-type: none"> • sole custody, where one parent has custody of the child (children), and the child lives with the custodial parent who makes decisions regarding the child's life • joint custody, where both parents continue to have responsibility for the care of the child • split custody, where more than one child is involved, and each parent has custody for one or more of the children. (In the case of split custody involving two children, one child would live with each parent.)
<p>The custodial parent has the legal responsibilities and obligations for the child that had been the purview of both parents prior to spousal relationship breakdown. In situations where the parents are unable to agree upon the custody arrangements for children of the relationship, the courts will render decisions in the best interests of the child. Courts encourage mediation for separating and divorcing couples as a means to formulating agreements about children and property, as the process is cost effective and time-efficient, as compared to using the formal court setting, to resolve all matters of mutual interest.</p>	Mediation
Access <p>Access is about children having the opportunity and the right to spend time with both parents, as compared to a popular misconception that it is an arrangement for the adults to have access to the children. The paramount consideration is for the children to benefit from the love and guidance of both parents, in the best interest of the child. Access may also be granted for persons other than biological parents, such as grandparents, if it is in the child's best interest.</p>	<p>Know that mediation is a method for settling a disagreement with the help of a neutral third party, whereby an agreement is reached that is satisfactory to both parties, and meets the needs of both parties.</p>
<p>Access arrangements may be agreed upon in a separation agreement, a divorce petition or an order from the Family Law Division of the Court of Queen's Bench. It may be specific in identifying the exact terms and conditions of the child's access to the non-custodial parent, or may be general and non-specific, allowing reasonable access. On occasions in which access becomes a contentious point, the court may be called upon to assist by ordering specific terms of access.</p>	Access <p>Know that access refers to the right of a child to spend time with a non-custodial parent, or other individual with whom the child has a close relationship.</p>
Maintenance and Support <p>Child support is an obligation of parents, regardless of the nature of the relationship they have with each other. In the case of spousal relationship or relationship breakdown, the <i>Family Maintenance Act</i> sets out the obligations of parents who are unable to agree upon maintenance support issues for their children.</p>	Maintenance <p>Know that maintenance involves the payments made by one spouse to another for the support of the spouse and/or children.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply inquiry skills:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify and test hypotheses • draw inferences and generate possible solutions. 	<p>Assess the effectiveness of child maintenance law in Canada.</p> <p>Appreciate the significance of children's access to parents.</p> <p>Understand that family breakdown may be accompanied with significant emotional upheaval.</p>
<p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance – the ability of the model to perform constructively, efficiently, and consistently in a variety of situations • consequences – the acceptability of the consequences of applying the model to various situations • accuracy – the ability of the model to predict future events accurately and consistently. 	<p>Acknowledge that family violence may be associated with family breakdown.</p> <p>Identify the societal values reflected by child apprehension laws.</p> <p>Appreciate that child protection is a collective interest of the family, the community and the state.</p>
<p>Develop and apply criteria as a basis for coming to conclusions.</p>	

Instructional Notes

1. Engage students in an inquiry exercise regarding children and separation and divorce. Investigate custody, access and maintenance. Assess the current provisions under Saskatchewan and federal law regarding each of these situations. Speculate upon the social policy values reflected within the laws.
2. Use Student Handout 4.3 - Custody and Access as data for investigation of adequacy of current legal provisions.
3. Define responsibilities of members of the community to assess current provisions for child protection in Saskatchewan.
4. Investigate the child protection mandate of governmental agencies providing family services in Saskatchewan, including Saskatchewan Social Services and Indian Child and Family Services Agencies. Use Student Handout 4.4 – Wintersgill Case Study as a motivational set for this discussion.
5. See Student Handout 4.5 - Gladstone v. Gladstone Case Study and/or Student Handout 4.6 - Harden v. Harden Case Study as a starting point for discussions of child custody.

Issues in the Law

1. To what extent should children have rights when parents divorce? What are the current rights of children? Are these rules appropriate? Does the age of a child have any bearing on this? Explain your position on this.
2. What are the social policy objectives of laws regarding access and maintenance?
3. Are the current access and maintenance provisions of family law effective? Explain.

Student Handout 4.3 - Custody and Access

In the absence of a custody order or agreement, parents are the joint guardians of their minor children. Custody and access arrangements should be dealt with when parents separate. Access and child support are not dependent upon each other; they are two different legal concepts.

Custody is a parent's right and responsibility to care for a child. Custody includes the legal right to make decisions regarding a child's schooling, religious upbringing, health care treatment and participation in extracurricular activities. Sole Custody is where only one parent has the right and responsibility to care for the child. Usually the child lives with the parent who has sole custody. Joint Custody is where both parents share in the right and responsibility to care for the child. The child can live with each parent part of the time, or with only one parent while both parents share in the child's upbringing.

Access refers to the right of the child to spend time with the non-custodial parent. The purpose of access is to allow the child to continue to have a relationship with the other parent. Access cannot be refused because of problems related to child support. The parent with access can spend time with the child, and has the right to receive information about the child's education, health and general well-being. Access may be left open, so that the parents can decide together when visiting will happen, or if it is to be allowed only at certain times on certain days. Also, visiting may be supervised or refused if the parent who wants access is violent, will neglect the child or will put the child in danger. Child support or maintenance is a duty from one parent to the other parent, and must be paid even if the paying parent cannot get access or chooses not to visit the child.

Custody and Access Arrangements

Anyone who has a sufficient interest in a child may be able to get custody or access. In this fact sheet we use the term "parents," to include parents, grandparents or others. There are several ways that an arrangement may be reached:

- **Agreements** – Parents may be able to work out an agreement about who will get custody, how access will be organized and how their agreement can be changed. After parents work out their agreement, they may want to put it in writing.

- **Mediation** – Sometimes parents use a mediator to help them reach an agreement. A mediator does not take sides or tell parents what they should do. Instead, a mediator is an objective third party who discusses possible solutions to their problems. Also, once an agreement is reached, a mediator can help parents put their agreement in writing. Usually both parents will share the cost of a mediator. Parties to a family law matter may attend a mediation screening and orientation session to help decide if the mediation process is right for their situation. To find a mediator you can: look through the yellow pages or ask a friend; ask your counselor, social worker or lawyer to recommend a mediator; or ask the court to appoint a mediator.
- **Lawyers** – If parents cannot agree themselves or a mediator does not work, each parent may decide to go to a private lawyer or a Legal Aid lawyer. A lawyer can give a parent legal advice on his or her situation. He/she can talk with the other parent's lawyer to work out an agreement, record any agreement reached and explain how it will work. If an agreement cannot be reached, a lawyer can represent the parent through court proceedings.
- **Courts** – If parents cannot reach an agreement by themselves, or through a mediator or lawyer, they can go to court. Before a court will determine family law matters, parents and their lawyers must meet with a judge. The judge will try to help them work out a settlement. If parents end up going to court, each parent should have his or her own lawyer. Each lawyer can put evidence before the court, and a judge will decide the matters of custody and access.

To decide these matters, the judge considers only what is in the best interests of the child. This involves looking at the child's needs, the relationship the child has with his or her parents and, depending on the child's age and maturity level, the child's own wishes. The court does not consider the needs or wants of the parents. The judge may also order that a custody and access assessment be conducted to help reach a decision. The assessment is conducted by a social worker or psychologist who works with the Family Law Division of the Court of Queen's Bench. Once the judge makes a decision regarding custody and access, a court order that outlines the judge's decision must be prepared.

Emergencies

If there is no custody order, and either parent is afraid the other parent may take the child away or hurt the child, he or she should get a lawyer and go to court for a temporary, or "interim," custody order. If one parent has custody but is afraid that the other parent will harm the child during visits, the parent with custody can ask the court to deny access or put conditions on access, such as having another person present during visits.

Changing an Agreement

Both parents can agree to change a written custody and access agreement. They can work out what changes to make, make the changes in writing and both sign the changed agreement. Each parent may want to see a lawyer to get advice about the changes. If parents cannot agree on the changes, they can go to a mediator, a lawyer or to the court.

Changing a Court Order

A parent can go back to court and ask for the custody order to be varied. The judge will consider changing the custody order if the child's needs have changed, or if either parent's ability to care for the child has changed. For example: the child becomes ill and needs special care and medical treatment; the child starts to act differently and needs different discipline; or the parent overcomes an addiction problem and can now care for the child. If both parents agree to the change, they can go to the court and together ask the judge to make the changes to the order.

Dealing with Problems

Sometimes one parent may try to ignore the custody and access agreement or order. For instance, the parent with access may not return the child on time after visits, take the child without telling the other parent or not visit the child at designated times. Other problems may include the custodial parent not allowing access or placing unreasonable restrictions on access.

If parents are unable to resolve these problems themselves, or with the help of a mediator or lawyer, either parent may ask the court to deal with the situation. For example, the court can make an order allowing the police to find and return the child, order that access be limited or supervised or order that the parent with access give his or her address and telephone number to the parent with custody.

The court can also help a parent who is being refused access. The court can order that the parent with custody give access to the other parent at

specific times give extra access to make up for lost time, or pay the other parent's costs, such as travel expenses, that resulted from not being able to see the child.

Other Jurisdictions

A custody order made in one province is not always effective in another province. If a parent wants to use a custody order in another province, he or she can ask a court in the other province to give effect to the order.

Parental Abduction

One parent may try to take a child away, maybe to another province, so that the other parent cannot have custody. This is a crime. If this happens, the other parent should call the police. The police can get the child back, even if the child is in another province, and the police can arrest the parent who took the child away. The parent who takes the child away can be charged with a criminal offence, unless the other parent consents to the child being taken away, or the child is removed to protect him or her from harm or abuse.

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Student Handout 4.4 - Wintersgill Case Study

The Facts

On October 7, 1981 baby Jeffrey Wintersgill was born three months premature. He required medical care, and Jeffrey's doctor felt that it would be necessary to give him blood. His parents opposed a blood transfusion on religious grounds. The doctor notified the Department of Social Services that the parents might refuse medical attention for Jeffrey. *The Child and Family Services Act* says that a child whose parents are not providing medical care, or treatment recommended by a doctor as essential, may be taken into the care of Social Services. The child was taken into custody by a social worker that day.

The next day a court hearing began to decide whether the child should be taken into care so that the doctor could provide medical care and treatment to the child. The parents gave evidence at the hearing about an alternative mode of treatment for the premature baby that would not involve blood transfusions. But the doctors who cared for Jeffrey refused to try it, and there was no doctor available at the time who would try it.

Questions to Consider

1. Who is responsible for a baby's health care?
2. How far does a parent's responsibility go to provide health care to a child? Does a parent have to provide the "best" care possible? Define "best" care.
3. Were the parents refusing medical care or treatment for baby Jeffrey?
4. Is it neglect to advocate an alternative medical treatment?
5. What role should Social Services play in cases such as this?
6. How would you decide this case and why?

The Judge's Decision

The judge said that a parent does not have to provide a child with the best and most modern care. But the care a parent wants to provide must exist, and it also must be available. The treatment the parents desired for Jeffrey was not available at the time of the court proceedings. So in effect the parents were refusing medical treatment for the child. Social Services was allowed to have custody of the child for about two months. This would allow the parents to find a doctor who would provide the alternative treatment for Jeffrey. Then, the parents could care for Jeffrey again themselves, and Social Services' authority under the law would end.

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Student Handout 4.5 - Gladstone v. Gladstone Case Study

The Facts

The stepfather of a five-year-old girl, Renée, applied to adopt her. The mother and stepfather had been married for about a year. The law requires that both natural parents consent to an adoption. When one parent does not consent, the judge may allow the adoption without that parent's consent (called "dispensing with consent"). In this case the natural father and Renée had a very good relationship. He drove long distance to see Renée, after he and Renée's mother divorced. The natural father argued that the adoption should not be allowed without his consent (that is, should not be allowed at all).

Questions to Consider

1. Should a father have a say in whether his daughter is adopted by her mother's new spouse?
2. Should the daughter have a say in the matter? If so, at what age?
3. What things should be considered in deciding whether the natural father's consent is necessary?
4. How would you decide this case and why?

The Judge's Decision

The judge acknowledged the stepfather's love and affection for Renée but refused to allow the adoption to go ahead. The relationship of the mother and stepfather with Renée would not change without the adoption order. They would continue to love and care for her as they presently did. Continuing Renée's relationship with her natural father was in her best interests. Under the law at the time, the adoption would cause her to lose a continuing relationship with her father. (The law has changed since this case was decided. *The Adoption Act* now says an order for a stepparent adoption does not affect an order for access by the natural parent, unless the court orders otherwise.) It was in her best interests for her natural father to continue to be able to visit her, and carry on his relationship with her. If circumstances changed in the future, the adoption might then be allowed.

Note: *The Adoption Act* says a child who is 12 or older must consent to her or his own adoption.

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Student Handout 4.6 - Harden v. Harden Case Study

The Facts

The husband and wife were married in 1978. They separated in 1985, at which time Mr. Harden forced his wife to leave the family farm. He kept the children, ages 3 and 6, with him. Following the separation, Mr. Harden and the children moved to his parents' home. Mr. Harden farmed with his father, and had a busy schedule playing in a band, driving a school bus and running a trapline. Mr. Harden's mother cared for the children when he was working. Mrs. Harden, who previously had cared for the children full time, was living a short distance away and received social assistance. She applied for custody.

For your Information

Custody cases involving very young children used to be resolved in favour of the mother because of the "tender years doctrine." This rule applied so that mothers were entitled to custody of very young children. The roles of men and women in our society have changed, and the tender years doctrine is no longer a rule.

Questions to Consider

1. Should mothers be preferred automatically over fathers when the issue of custody involves young children?
2. Does the fact that the mother in this case had previously cared for the children full time affect the decision you would make if you were the judge? Should courts look at who actually cares for the children and spends time with the children?
3. Should the fact that the mother was on social assistance affect the decision about who gets custody?
4. How would you decide this case and why?

The Judge's Decision

The trial judge placed the children with the mother, stating that both the husband and wife were good and loving parents. The husband appealed the custody order on the grounds that the trial judge improperly relied on the tender years doctrine. The judge on appeal agreed that the tender years doctrine should not be a rule. He held; however, that the trial judge had not based his decision on the doctrine; rather the trial judge had based his decision on the fact that the mother was in closer contact with her children, and in a closer relationship with them than the father. The mother got custody of the children.

(Source: Public Legal Education Association of Saskatchewan. Reprinted with permission.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>The level of financial support for children by non-custodial parents may be negotiated by the parents, or may be imposed based upon the 1997 federal <i>Child Support Guidelines</i>. The purpose of the guidelines is to help parents, lawyers and judges set fair and consistent child support awards. Each province has its own table of calculations addressing levels of child support.</p> <p>Adults and Separation or Divorce</p> <p>There are legal issues associated with the divorce or end of cohabitation of adults that are not directly related to children. Issues that require resolution involving adults in the relationship include:</p> <ul style="list-style-type: none"> • spousal maintenance support • division of property. <p>Maintenance</p> <p>Spousal maintenance support is intended to be a temporary measure, in place until such time as the spouse (or cohabitant) is able to adjust to living separate and apart.</p> <p>Property</p> <p>Division of property is another significant issue that must be addressed upon breakdown of a spousal relationship or cohabitation arrangement. The <i>Family Property Act</i> defines the terms and conditions of division of property upon spousal relationship or cohabitation breakdown. Family property may be divided by mutual agreement or by order of the court, although a request to have the court divide the property cannot be made after a divorce or cohabitation separation, but must be commenced prior to the completion of a divorce judgement. The <i>Family Property Act</i> generally provides for the equal division of assets, unless it would be unfair to do so. The value of property acquired before the spousal relationship is exempt, unless the court orders otherwise. The court does not consider the improper or immoral conduct of the parties in dividing family property.</p> <p>Possession of the family home is addressed separately from other family property within the <i>Family Property Act</i>. Court decisions in this regard are always based in the best interests of any children involved, as well as other criteria.</p>	<p>Child Support Guidelines</p> <p>Know that the federal government has established specific child support guidelines for each province and territory.</p> <p>Spousal Maintenance</p> <p>Know that the primary objectives of a spousal maintenance order are:</p> <ul style="list-style-type: none"> • to recognize any economic advantages or disadvantages arising from the spousal relationship, cohabitation or breakdown of same • to share any financial consequences arising from the care of any child of the spousal relationship over and above any obligation for support of any child of the relationship • to promote economic self-sufficiency of each spouse within a reasonable period of time. <p>Family Property</p> <p>Know that family property is any real property (land or anything attached to it) or personal property (things such as household goods or automobiles) owned by one or both married or unmarried spouses.</p> <p>Family Home</p> <p>Know that the family home is the place where one or both spouses live or intend to live, and consider their family home. It includes the lot on which a house sits, or the home quarter section of land.</p> <p>Know that under the <i>Family Property Act</i>, possession means who lives in a house, not who owns or pays for the house.</p>

Skills/Abilities Objectives	Values Objectives
<p>Investigate the criteria upon which family home possession decisions are based.</p> <p>Apply inquiry skills:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify and test hypotheses • draw inferences and generate possible solutions. <p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance – the ability of the model to perform constructively, efficiently, and consistently in a variety of situations • consequences – the acceptability of the consequences of applying the model to various situations • accuracy – the ability of the model to predict future events accurately and consistently. <p>Develop and apply criteria as a basis for coming to conclusions.</p>	<p>Appreciate the significance of property as an instrument of power and autonomy.</p> <p>Assess the criteria for division of family property in terms of:</p> <ul style="list-style-type: none"> • fairness to family members • protection of interests of all parties • evolving social attitudes toward gender.

Instructional Notes

1. See Student Handout 4.7 - Spousal Maintenance and/or Student Handout 4.8 - Child and Spousal Maintenance for data regarding maintenance and support provisions.
2. See Student Handout 4.10 - Possession of Family Home and Student Handout 4.9 - Division of Family Property for data regarding criteria for family property law.
3. Engage students in assessment of property division provisions under current law. In what ways do the current provisions protect interests of:
 - spouses
 - children?

Issues in the Law

1. In what ways is the current model of family property law fair or unfair?

Student Handout 4.7 - Spousal Maintenance

When a Spouse Can Apply

A spouse can apply to court for maintenance if the couple is divorcing, or if the spouses are separated. Spousal maintenance is also available for some common-law spouses. When a spouse applies for a divorce, he or she can apply for maintenance at the same time. A spouse who is being sued for divorce can also apply for maintenance in his or her counter-petition. It is possible to get a court order for maintenance, even if there is an agreement concerning maintenance. The court may also reconsider maintenance when it grants a divorce. Usually, the terms of a maintenance agreement is put in the court order at the time of the divorce.

Factors the Court Considers

Spousal maintenance is intended to help a spouse overcome the financial problems created by the spousal relationship, separation, or divorce. Both spouses are expected to become self-supporting as soon as possible.

When deciding whether to give maintenance, and how much to give, the court will consider:

- the means, needs and other circumstances of the spouse(s)
- how long the spouses have lived together
- what role each spouse had in running the household
- any court order or agreement regarding maintenance of the spouse or children
- the effect the spousal relationship or its breakdown has had on each spouse's financial position
- the financial problems of the spouses that were caused by the spousal relationship breakdown
- the ability of each spouse to be able to support himself or herself within a reasonable period of time.

In awarding spousal maintenance, the court does not consider any misconduct, such as adultery, of the spouses in relation to the spousal relationship.

Spousal maintenance is taxable income to the spouse receiving it, and is a taxable deduction to the spouse paying it.

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Student Handout 4.8 - Child and Spousal Maintenance

Maintenance is money that one person pays to another person for support. Spousal maintenance is a payment one spouse pays to the other spouse for support of that spouse. Child maintenance is a payment one parent pays to the other parent for the support of their children. Maintenance can either be paid in accordance with an agreement made between parties themselves, or by court order if no agreement can be reached. Maintenance agreements should be in writing. Everyone should get legal advice about their rights and obligations before they sign an agreement.

Mediation is often used by separating and divorcing couples to work out practical solutions to their problems. A mediator's role is to help the parties to make their own choices. A mediator may help spouses find solutions they had not considered. Spouses can discuss problems, and make joint decisions about how to settle them.

Separating couples who cannot reach an agreement on their own, or with the help of a mediator, may be able to negotiate an agreement with the help of a lawyer. A lawyer can give legal advice, negotiate an agreement, write the agreement and explain how it will work. If no agreement can be reached, a lawyer can take the matter to court.

Courts can make orders about maintenance, review maintenance agreements and change existing orders or agreements. Social Services considers maintenance payments as income. Social Services will only consider the amount actually received. If there is no maintenance order or agreement, Social Services may ask a person who receives social assistance to try to get maintenance.

Spousal Maintenance

When a couple separates or divorces, either spouse can ask for maintenance. Spousal maintenance is intended to help a spouse overcome financial inequalities created by the spousal relationship, separation or divorce.

A common law spouse may be entitled to spousal support if he or she:

- lived with the other partner for at least three years
- had a relationship of some permanence and have a child.

Spouses can agree on any amount they like. If a court is asked to decide, the court will consider a number of factors. There is no set amount.

Determining the Amount

If the parties are unable to reach an agreement about spousal support, the court will consider:

- the respective needs and means of the parties
- the length of the relationship
- what role each spouse had in the relationship
- the effect the relationship or its breakdown has had on each spouse
- the ability of the spouse seeking support to become financially independent
- the legal duty of the supporting spouse to support another person.

The court does not consider the conduct of the spouses or the reason for the separation. The amount of spousal maintenance can be changed by agreement or court order. A court will consider changing the amount if a spouse's needs, means or other circumstances change.

Duration

Maintenance for a spouse is payable for as long the spouses agree, or for any length of time that a court considers reasonable and so orders. Sometimes a court will expect a spouse to be responsible for his or her own maintenance after a set amount of time. Other times the court will not set any limit on the length of time that payments are to continue, for example, in the case of an older dependent spouse or a disabled spouse.

Taxation

Spousal maintenance is taxable income to the spouse receiving it, and is a tax deduction for the spouse paying it.

Child Maintenance

Both parents have an obligation to support their children. A custodial parent can apply for maintenance for children who are under their charge and under the age of 18. A custodial parent may be able to get maintenance for a child who is over 18 but still dependent because of illness, disability or other reason, such as attending school. The non-custodial parent is responsible for child maintenance, even if they do not have visiting rights. Child maintenance is still payable, even if the custodial parent remarries or lives with someone else.

Determining the Amount

There are guidelines in place that set out a fixed amount of support for each child depending on the paying parent's income, and the average cost of raising children. The fixed amount can be raised if there are special expenses for the child, such as expenses related to health care or extracurricular activities. In some cases, the fixed amount can be lowered if paying that amount would cause undue hardship for the payor. The amount of child maintenance can be varied if these factors change.

Parents can reach their own agreement about child maintenance. The agreement does not have to be based on the guidelines, but a court could refuse to approve an agreement that was totally inadequate to meet the child's needs.

Taxation

A person paying maintenance payments under a written agreement or court order dated before May 1, 1997 can deduct the amount on his or her income tax return, and the person receiving the payments must include the amount in his or her income. For written agreements or court orders dated after May 1, 1997, the person paying child maintenance must pay the tax. The person receiving it will not include the amount as income.

Enforcement

The Maintenance Enforcement Office (MEO) is set up to collect maintenance payments. The order or agreement must be registered with the MEO if it is to be enforced by them. The MEO can:

- garnish paycheques, Employment Insurance payments, income tax refunds, pension cheques or bank accounts
- ask the sheriff to seize property and sell it
- make the non-paying spouse attend court to explain the non-payment
- ask the court to send the non-paying spouse to jail for up to 90 days
- ask to have the non-paying parent's driver's licence suspended.

A person receiving maintenance can sign a form stating that they do not want the payments to be enforced through the MEO. If a person collects his/her own maintenance, he/she must pay any enforcement costs. He/she can also register an order with the MEO at a later date if there is difficulty collecting maintenance payments.

An individual or the MEO can send a court order or registered agreement to another province to be enforced if the person paying maintenance moves to another province. If there is no order or agreement,

a court application can be made, either in Saskatchewan or the province where the other person lives.

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Student Handout 4.9 - Division of Family Property

Spouses can agree how to divide their family property. If they cannot agree they can apply to the court to have the property divided according to the laws in Saskatchewan.

Property Agreements

Spouses can make an agreement to divide their property in whatever way they think is best. If the agreement is made in the manner specified in *The Family Property Act*, a court will not change the way the property is divided, unless the agreement was unconscionable or grossly unfair at the time it was made. The Act specifies that an agreement must be in writing, and must be signed by each spouse in front of a witness. Each spouse must also get advice from his or her own lawyer before signing the agreement. Each spouse then has to acknowledge in writing, apart from the other spouse, that he or she understands the agreement and its effect on his or her rights. If the agreement is not made in the manner specified in the Act, the court can change the way the property is divided. However, the court would consider the agreement when dividing the property.

Court Orders Dividing Property

If the spouses do not make an agreement in the manner specified in *The Family Property Act*, either spouse can ask the court to divide the property. A person cannot make an application to the court after a divorce. The action must be started before the divorce. *The Family Property Act* determines how the court will divide family property in Saskatchewan. This law recognizes that both spouses contribute to child care, household management and financial support. It states that each spouse is generally entitled to one-half of the couple's family property.

Either spouse can ask the court to divide the property at any time during the spousal relationship, including when he or she is separated or immediately after the death of a spouse. The Act does not apply to a divorced person or a person living common law.

As a general rule, family property is any real or personal property owned by one or both spouses, or by one or both spouses and a third person, at the time an application is made under the Act. Real property includes land and anything attached to the land, such as buildings. Personal property includes movable objects such as household goods, jewelry and cars. Family property also includes such things as businesses, pensions and bank accounts. Family property includes the family home. A family home is the place where one or both spouses have lived, or intended to live, and consider their family home. It can be a house, a part of a house, a mobile home or a condominium. The home can be owned or leased by one or both spouses. In the city, the family home

includes the lot on which the house is built. In the case of farmland, it includes the home quarter.

The family home will be divided equally, unless it would be unfair and unjust to do so. The court will only consider it unfair if there are extraordinary circumstances, or if it would be unfair to the spouse who has custody of the children.

The court also will divide equally the rest of the family property, other than the family home, unless it would be unfair to do so. In deciding if it would be unfair to divide this property equally, the court considers different factors than when dividing the family home. These factors include:

- how long the separating couple lived together and how long they lived apart
- any contribution one spouse made to the career of the other spouse
- the effect that spousal relationship responsibilities have had on the earning capacity of each spouse
- when the property was acquired
- any contributions made by someone else to help buy the property
- tax liabilities, if the property has to be sold
- the amount of child support payments
- the value of any family property outside of Saskatchewan
- debts of the spouses
- any interest that another person has in the property
- any other relevant circumstances.

The value of property acquired before the spousal relationship, except the family home, is exempt unless the court orders otherwise. This means that the value of that property at the time of the spousal relationship would not be divided according to the Act. The spouse who owned the property would receive the amount that it was worth when the couple married. Any increase in the value of the property since the spousal relationship could be divided according to the Act.

In dividing the property, the court will not consider improper or immoral conduct of the parties unless the conduct has financial consequences. For example, the court will always consider whether a spouse has been wasting family property, giving it away or selling it to avoid having it divided.

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Student Handout 4.10 - Possession of the Family Home

Under *The Family Property Act*, the court can also make an order deciding which spouse will get possession of the family home. Possession means who will live in the home, not who owns or rents it. It is possible for the court to award one spouse sole or partial ownership of the house, and the other spouse the right to possession.

The court will decide the terms of the possession. The court can order the spouse to be given possession for his or her lifetime, or any shorter period; for example, while any children are still living at home. The court can also order that a spouse be given exclusive use of any or all of the household goods. The court can decide who will be responsible for repairs and mortgage payments. The court may require the spouse who has possession to make a payment to the other spouse.

Where one spouse has possession and the other spouse owns part of the house, the court can make orders preventing the sale of the house, or put conditions on the sale of the property.

In deciding whether to give one spouse possession of the home, and what conditions to include in the order, the court must consider:

- the needs of the children
- the conduct of the spouses towards each other and towards the children
- the availability of other accommodation within the financial means of either spouse
- each spouse's financial condition
- any binding agreement that was made between the spouses or, if the court sees fit, any other written agreement
- any orders that have been made regarding maintenance, custody of children or division of the property
- other relevant circumstances.

Either spouse can apply to the court to change an order, or to end the order for possession, if circumstances have changed since the original order was made. A possession order continues even after the spouses have divorced.

Under *The Homesteads Act, 1989*, a spouse also has some protection. A homestead is much the same thing as a family home. It cannot be sold or mortgaged without the consent of both spouses, even if one spouse owns it alone. Homestead rights end when the divorce becomes final.

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Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Wills</p> <p>A will is a legal directive regarding what is to be done with a person's estate upon his/her death. While not a particularly pleasant circumstance about which to make decisions, the formulation of a will is essential to the disbursement of personal assets upon death. In the absence of a will, the death of an individual may become a legal burden upon the survivors of the deceased, and may result in distribution of personal assets in a fashion different than the manner intended during life. There are two types of wills that are considered valid under Saskatchewan law:</p> <ul style="list-style-type: none"> • formal wills • holograph wills. <p>Requirements for A Valid Will</p> <p>The requirements for a valid will are identified in <i>The Wills Act, 1996</i>, and includes the following provisions for validity of formal wills:</p> <ul style="list-style-type: none"> • it must be in written format • it must be signed at the end and initialed on each page by the testator in the presence of two witnesses • each witness must sign the will and initial each page. <p>Holograph wills, which are legal in Saskatchewan, are those which:</p> <ul style="list-style-type: none"> • are written entirely in the testator's own handwriting • are signed by the testator • need not be witnessed in order to be valid. <p>Conditions required for any will to be considered valid include:</p> <ul style="list-style-type: none"> • the testator must be of sound mind at the time the will is made (the testator is not of sound mind if impaired by drugs or alcohol, is senile or unconscious) • the testator must be 18 years of age or older • the will must be made freely and voluntarily. <p>Making A Will</p> <p>The administration of an estate occurs more easily and quickly, and may be less expensive, with a will in place. Without a will, property may not be left to the desired beneficiary. It may take a long time to trace all relatives who may be entitled to inherit. Sometimes it is difficult to locate all property if there is not a will. Not having a will often creates considerable hardship for family, friends and business partners of the deceased.</p>	<p>Estate</p> <p>Know that an estate includes the assets of a deceased person at the time of death.</p> <p>Testator</p> <p>Know that the person who makes a will is known as the testator.</p> <p>Beneficiary</p> <p>Know that a beneficiary is an individual entitled to a part of the testator's assets as defined in the terms of a will.</p> <p>Witness</p> <p>Know that a witness to a formal will may not be a beneficiary of the will nor a spouse of a beneficiary of the will.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply inquiry skills:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify and test hypotheses • draw inferences and generate possible solutions. <p>Identify and apply criteria to assess validity of wills.</p>	<p>Value the legal benefits of having a valid will.</p> <p>Appreciate the reasons for criteria defining the validity of a will.</p> <p>Understand that, because a will addresses issues associated with the end of human life, emotional discomfort may be associated with matters pertaining to wills and estates.</p>

Instructional Notes

1. Invite an estate planner to address students regarding the nature of wills and estates.
2. Investigate the nature of wills using current information, which may include data available at <http://www.plea.org/pubs/wae.html>.
3. Engage students in an assessment of *The Wills Act* as an exercise in assessing adequacy of public policy.
4. Have students construct a personal will, using criteria of valid wills as the criteria for development and assessment.

Issues in the Law

1. Why does the state have an interest in the processing of an individual person's will?
2. Do laws associated with wills and estates protect the interests of children adequately? Explain.

Content (Teacher Information)	Concepts and Knowledge Objectives
Changing A Will	Codicil
<p>A will may be changed at any time. Minor changes may be made as codicils, whereas significant changes necessitate the rewriting of the will. A will may also be cancelled. The last will made before death is the only legal will.</p>	<p>Know that a codicil is a document that explains, changes, or adds to an existing will.</p>
Settling an Estate	Executor
<p>The executor must settle all legal matters of the estate, and fulfill the bequest of the testator's will. Duties typically include:</p>	<p>Know that an executor is a person appointed by a testator to carry out the directions and requests in the will.</p>
<ul style="list-style-type: none"> • locating the will • probating the will • paying taxes and fees on behalf of the estate • identifying assets of the estate and their value • obtaining a copy of the death certificate and notifying various agencies such as banks, life insurance carriers and pension plan administrators • making claims owed to the estate • settling unpaid debts of the estate, including funeral expenses • implementing the directions set out in the will. 	<p>Know that the executor of the estate is accountable to the court for the administration of a will.</p>
<p>If a will exists, the executor can do things that cannot be done without a will. For example, an executor may:</p>	Probate
<ul style="list-style-type: none"> • deal with funds in trust • borrow money • trade in estate assets • make choices to increase tax benefits • make choices about investments. 	<p>Know that to probate a will means to get an order from the Court of Queen's Bench that the will is valid, and that the person named in the will is entitled to act as executor.</p>
Legal Custodianship	Trust
<p>A will should include direction regarding the care of children in the event of death of a parent. The legal custodian becomes responsible for the care and upbringing of a child in the event of the death of parents. In a situation in which one parent dies, custody normally goes to the other parent. However, when no surviving parent remains, the identification of a legal custodian in a will enhances the likelihood of placement of children in care intended by the testator/parent.</p>	<p>Know that a trust is an arrangement in law that permits assets to be held by one person, so that money will go to another person.</p>
<p>In the event that a will does not provide for proper support for dependants, application may be made under the provincial <i>Dependants' Relief Act, 1996</i>, to obtain a greater share of the estate. The Public Trustee takes interest in situations in which a child under the age of eighteen years has an interest or claim in the estate, to ensure that the child's interests are protected.</p>	Legal Custodian
	<p>Know that the legal custodian is the person appointed in a will to look after the children when a testator dies.</p>
	Public Trustee
	<p>Know that under the <i>Public Trustee Act</i>, the Public Trustee will:</p> <ul style="list-style-type: none"> • monitor the actions of executors and trustees • managing property for children • manage children's interest in estates, lotteries and insurance policies • approve settlements for personal injuries and claims for loss upon the death of a parent, and manage the proceeds • approve legal fees for these settlements • consent to dealing with real estate owned by a child.

Skills/Abilities Objectives	Values Objectives
<p>Identify criteria for changing a will.</p> <p>Outline steps and responsibilities associated with the administration of an estate.</p>	<p>Appreciate the role of the Public Trustee.</p> <p>Appreciate rationale for the probate process.</p> <p>Understand that the purpose of the Dependant's Relief Act is to provide support for individual dependants of an estate in situations in which a will does not adequately represent the interests of the dependant.</p>

Instructional Notes

1. Engage students in discussion of the question, "Who would you name as your executor?" Have students define criteria for an executor, as they perceive it, before they study the duties of an executor.
2. Use Student Handout 4.11 - Duties of an Executor as data regarding the tasks imposed upon an executor of an estate. Re-examine the appointment students would make for executor of their estate based upon revised criteria.
3. Investigate the mandate and functioning of the *Public Trustee Act*, and hypothesize about scenarios in which the Public trustee would become involved in an estate.

Issues in the Law

1. Who would be your legal guardian in the event of such a need? What criteria would you set for a legal guardian of your own children?
2. Is the legal requirement of probate justifiable in the 21st century?

Student Handout 4.11 - Duties of an Executor

You may have been asked to act as the executor for someone else's estate. Perhaps you are considering making a will and need to name someone to act as executor for your own estate. Whether you are considering acting as an executor under a will, or naming someone to act as executor under your will, there are some factors to consider.

An executor is a person named in a will who is entrusted with the duty of carrying out the provisions under a will. An executor's duties may include determining the assets and debts of the estate, paying outstanding debts, ensuring tax returns are properly filed, selling property if necessary and distributing the remaining property according to the deceased person's will.

If you are making a will you should ensure that the person you plan to name as executor is willing to act. A person cannot be forced to act as an executor if they do not wish to do so. If a named executor chooses not to act, they must sign a document indicating that they are giving up the right to act as executor. Then another person must apply to the court for the right to administer the estate.

In most cases an executor must "probate" a will before dealing with the estate. Probate means to prove that a will is valid. The executor must file a *Petition for Probate* with the Court of Queen's Bench. If everything is in order, the court will make an order granting *Letters Probate* to the executor. *Letters Probate* show that the court accepts the validity of the will, and the executor's authority to deal with the estate.

If an estate has no real property, it may be possible to deal with the estate without probating the will. An executor can determine whether this is possible by contacting the places that hold the deceased's assets. Will they release the assets to the executor without *Letters Probate*?

An executor may be reluctant to act because of a fear that they might become responsible for the deceased's debts. An executor is not responsible for debts that exceed the value of the estate. However, if an executor distributes the estate improperly, he/she may become responsible for losses that occur as a result. An executor cannot distribute the estate to the beneficiaries before the debts of the estate are paid. Executors can protect themselves from liability by putting notices in local newspapers to find out if there are any outstanding debts.

Executors must also make sure that all necessary income tax returns are filed, and that income taxes are paid. Executors should get a clearance certificate from Revenue Canada before distributing the estate. After an executor receives a clearance certificate Revenue Canada cannot come back to the executor personally to pay any unpaid tax.

When distributing the estate to beneficiaries, an executor prepares a report for the beneficiaries showing how their shares were calculated. Beneficiaries must sign a release indicating that they accept the executors accounting. If beneficiaries do not accept the accounting, an executor can apply to the court to approve the accounting.

A person chooses an executor because he/she has confidence in that person's ability to carry out his/her wishes honestly, and in the best interests of the beneficiaries. Some estates are more complicated than others. Many people choose to see a lawyer to assist them in their role as an executor. Sometimes other professionals, such as accountants, are involved. Executors are entitled to compensation for their efforts in administering the estate. Executor fees vary according to the difficulty of the estate and the amount of work they handle. Executor's fees may be determined by agreement with all beneficiaries, or a court may determine them if no agreement can be reached. Executors may waive their fees, or may agree to just be paid for actual out-of-pocket expenses.

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Skills/Abilities Objectives	Values Objectives
<p>Identify criteria necessary for legal validity of health-care directives.</p> <p>Create a health-care directive based on legal criteria.</p>	<p>Understand that health-care directives may be contrary to the values of some individuals, while being acceptable to the value systems of others.</p>

Instructional Notes

1. Have students review the *Intestate Succession Act* to understand procedures followed in the absence of a will.
2. Have students review *The Health Care Directives and Substitute Health Care Decision Makers Act* to define the criteria for a health care directive.
3. Interview a lawyer, health care provider or cleric to gather data regarding opinions about health care directives. Compare responses from various interviews to determine the variety of perspectives about health care directives.
4. See Student Handout 4.12 - Living Wills for data regarding the criteria for legal health care directives.

Issues in the Law

1. Would you choose to have a living will? What factors should be considered in answering this question?
2. Why are health care directives referred to commonly as Living Wills?
3. Should euthanasia be legal in Canada?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Dying Without A Will</p> <p>If a person dies without a will, the distribution of property occurs under <i>The Intestate Succession Act, 1996</i>, which does not take into account the wishes of the deceased or family members. The court appoints an administrator (as it would if the named executor of a will is unable or unwilling to act in cases where a will does exist) to administer the affairs of the estate. In the absence of a will, the <i>Intestate Succession Act</i> applies to settlement of an estate, the distribution of assets and the closing of an estate.</p>	<p>Intestate</p> <p>Know that intestate means to have died without a will.</p>
<p>Closing the Estate</p> <p>Upon completion of the execution of the will, the executor or administrator will have the beneficiaries sign a release indicating no further claim to the estate. At this point, the estate is closed, and the task of the executor or administrator is complete. For intestate situations, the court will review the estate prior to closure of the estate.</p>	<p>Release</p> <p>Know that a release is a document signed by a beneficiary to a will indicating receipt of payment/asset and that the person no longer has a claim against the estate.</p>
<p>Living Wills</p> <p>Living will is another name for health care directive. In 1997, Saskatchewan enacted <i>The Health Care Directives and Substitute Health Care Decisions Makers Act</i>. Health care directives give directions about medical treatment to treatment providers. It comes into effect when an individual is no longer able to make, and/or communicate, his/her own health care decisions. There are two kinds of health care directives:</p> <ul style="list-style-type: none"> • the first gives specific directions to treatment providers as to the treatments consented to, or refused, should an individual be unable to make a health care decision independently • the second names another person (called a "proxy") to make health care decisions if and when a person cannot make a health care decision independently. <p>A directive can also be a combination of both these types, including specific treatment directions for certain situations, as well as a proxy named for other health care decisions.</p>	<p>Health Care Directive</p> <p>Know that a health care directive give directions about medical treatment to treatment providers when an individual is no longer able to make and communicate health care decisions independently.</p>

Student Handout 4.12 - Living Wills

Living Wills

A living will is not really a will at all. It is a health care directive that tells others how you would like to be treated if you lose your capacity to make decisions about health care. It contains instructions about your choices of medical treatment. You prepare it in advance, looking ahead to a time when you may no longer be able to make health care decisions for yourself. It can be a useful tool to help you plan for the future, and it will take effect when you can no longer consent to or refuse treatment directly.

The term living will is often used when a person is planning for his/her last illness, but a health care directive can be made in any circumstances. A living will and a health care directive are the same thing. In the rest of the fact sheet we use the term "directive".

Health Care Directives

A directive gives your doctor, or other health care provider, directions about what kind of measures are acceptable to you when you can no longer say what choices you want. When your doctor or other health care provider follows your directions, he or she has protection from subsequent legal action. A directive cannot permit active euthanasia or assisted suicide. To make a directive you must be at least 16 years of age and capable of making health-care decisions.

You may want to make a directive in a situation where you know you are ill. For example, if you are facing a terminal illness, or if you have an illness where you may have periods when you are incapable of making health-care decisions, you may want to make a directive while you are in good health, planning ahead to a time when you may no longer be able to make decisions for yourself. In any event, a directive must be made when you are capable of making a health care decision; it is too late once you become incapable. A person is capable of making health-care decisions when he or she is able to understand information about potential treatments, and the consequences of making or not making a decision, and is able to communicate the decision.

The decision whether to make a directive is up to you. The law now clearly recognizes your right to direct the types of treatment acceptable to you, but you can simply choose not to prepare a directive. Your directive should either give specific directions regarding certain treatments and situations, or name another person, a proxy, to make decisions when

you cannot make or communicate those decisions yourself. You can also have a directive that deals with some situations, and that names a proxy to make decisions in situations not dealt with in your directive.

Making a Directive

The law requires that a directive must be in writing. It must be dated, and signed by you or by someone else, other than your proxy or your proxy's spouse, in your presence and at your direction, and then witnessed by another person. If you sign the directive yourself it does not need to be witnessed. If someone else signs for you, he/she must sign it while you are present and another person must witness his/her signature. A directive will take effect when you become incapable of making or communicating your health-care decisions.

A living will, or directive, will be effective if it was made in a form acceptable under Saskatchewan law, even if it was made before the new law was passed. It must meet the requirements set out in the new Act. A directive made in another place will be effective in Saskatchewan if it is made in an acceptable form, and meets all the requirements set out in Saskatchewan legislation.

A lawyer can prepare a health-care directive for you, for a fee. However, you can make a health-care directive without the assistance of a lawyer.

Ending a Directive

If you no longer want your directive to be binding, you may revoke it orally or in writing. You may also destroy it or make a new directive, which will revoke your old directive. A directive ends automatically when you become capable of making health-care decisions again or die.

Proxies

In your health-care directive you can name another person to make health-care decisions for you. The other person will make decisions for you when you are not able to make or communicate those decisions yourself, or your directive does not address the issue. This person is called a proxy. A proxy does not need to be a family member. You can choose any person who is at least 18 years old, and who has the capacity to make health-care decisions. A married person who is not yet 18 may be a proxy for his or her spouse. You may name two or more proxies if you wish. These may be

named as alternate or joint proxies. You should choose someone you trust as your proxy.

Treatment wishes should be discussed clearly and completely with your proxy. If your proxy knows your wishes he or she must act according to your wishes. If your proxy does not know your wishes, your proxy must act according to what he or she believes is in your best interests. A proxy is responsible for making health-care decisions for you. Your proxy cannot choose another person to make decisions about your health care.

Disputes

Your directive gives instructions to your doctor and other health care providers. If your health care crisis involves a situation you have foreseen, and dealt with in your directive, your doctor or other health care provider must follow your directions. If your health-care crisis involves a situation you have not foreseen, your directive will be used as a guide. Before making a directive, you may want to discuss treatment options and other issues with your doctor or other health care providers. You will also want to have discussions with family members, and your proxy, if you name one. If a dispute arises, an interested person may apply to the Court of Queen's Bench to challenge the appointment of a proxy or a decision made by a proxy or nearest relative.

If You Do Not Have A Directive

If you become ill and incapable of making health-care decisions, another person may still make decisions for you. That person will be your nearest family member. Your nearest relative is determined in the following order:

- your spouse or person you live with as a spouse
- your adult son or daughter
- your parent or legal custodian
- your adult brother or sister
- your grandparent
- your adult grandchild
- your adult uncle or aunt
- your adult nephew or niece.

These include relatives by adoption. If there are no family members, or the family members cannot be found, then your doctor or other health care provider will make decisions for you by consulting another doctor or health-care provider. The second doctor must agree, in writing, that the proposed treatment is needed.

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Student Handout 4.13 - Abuse of Older Adults

Q: My elderly neighbour, a surviving spouse who lives alone, has not seemed herself lately. She seems distant and troubled when we talk, whereas before she was always bubbly and happy. She also seems to be in a bit of physical pain, which seems to have come on suddenly. I have noticed a couple of her younger relatives coming and going a little more frequently than before. She appears most troubled just after they leave or are about to arrive. I fear these factors might be connected, and worry that she might be being abused. What can I do?

A: Abuse of older adults is often defined as an act or behaviour by a caregiver that results in harm to an older person's well-being or safety, including neglect. Caregivers are often family members, but can be anyone who provides care to the older person. Abuse can be physical, sexual, emotional or financial.

In addition to striking a person, physical abuse can include other actions such as over-medicating, or forcing someone to remain in a room or bed for long periods of time. Emotional abuse can include humiliating, insulting, frightening, threatening or ignoring the older person. Threats to place an older person in a nursing home, or socially isolate them, can also be forms of emotional abuse. Financial abuse can involve someone forcing an older person to sell personal belongings or property; stealing money, pension cheques or possessions; or withholding money that the older person needs for daily living. It may also include fraud, forgery, extortion and wrongful use of a power of attorney. Neglect may include abandoning an older person or withholding food, personal care or medical services.

Signs of financial abuse are many. Money or valuable personal belongings may go missing without explanation. The older person may be going without food, clothing or other necessities that they should be able to afford. There may be an unexplained lack of cash on hand or an empty savings account. Rent or bills may be going unpaid. Property may have been sold or transferred. The person may suddenly change his/her will, or sign documents without knowing what they mean.

You may notice signs of other abuse or neglect. Older victims may show signs of depression, fear, withdrawal, anxiety or passivity. They may fear family members, friends or caregivers. They may have unexplained injuries. Eyeglasses, hearing aids or dentures may go missing. The older person may suffer from malnourishment, dehydration, fatigue, poor hygiene or bed sores. Victims may also be sedated or over-medicated. These signs and symptoms should be taken seriously. What, at first, may seem to be self-neglect or apathy could turn out to be abuse or neglect at the hands of a caregiver. Abuse of older adults often goes unreported. Victims may fear further abuse or isolation. They may be ashamed. They may feel helpless. The victim may be dependent on the abuser and have no one to turn to for help.

Suspected criminal abuse or neglect should be reported to the police. If health-care professionals are suspected of abuse, contact Saskatchewan Health, the College of Physicians and Surgeons, or other professional governing bodies.

Abusers and victims need information and support. Information about abuse, power of attorney and guardianship is available. Reducing the isolation of an older person, or referring them to a crisis line, support group or mental health organization may lessen the potential for abuse.

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Student Handout 4.14 - A Legal Separation: What Does it Really Mean?

Q. My spouse and I have decided that our marriage is not working and that we should separate for now, with divorce likely to follow. We keep hearing from friends and associates that we should seek a "legal separation." What exactly does this mean, and is it a necessary step? Can we not go our separate ways and petition for divorce later?

A. The term "legal separation" is somewhat misleading and overused. A court order or legal document is not required for spouses to separate and live apart. In a legal sense, we generally consider spouses to be separated when a spouse has left the marriage with the intention of ending the union. Separations may last indefinitely or they may end in divorce or reconciliation. While no formal process is required for couples to separate, a divorce can only be granted by a court order.

As soon as a couple decides to separate many issues arise, such as child custody, child maintenance, spousal maintenance and division of family property. When people talk about a "legal separation" they may be referring to a separation agreement that deals with issues such as those listed above. Separation agreements may also include other issues. For example, an agreement may deal with a spouse's right to make a claim against his/her spouses' estate, or whether insurance policies will be maintained.

Although some matters can be covered in an oral agreement, agreements concerning division of family property must be in writing to be legally enforceable. Moreover, *The Family Property Act* requires each spouse to get independent legal advice with regard to agreements dealing with family property. Agreements dealing with payment of maintenance must also be in writing for income taxes purposes.

If spouses agree on the conditions of their separation, they can write these conditions into a separation agreement. Once an agreement is made, it is legally binding and cannot be changed unless both parties agree or a court orders a change. Each spouse should consult a lawyer before signing a separation agreement. A lawyer can advise a spouse of his/her legal rights, make sure that the agreement accurately reflects the agreement reached and that it will be enforceable.

Settling by agreement allows the spouses to decide for themselves how to resolve issues, instead of having a court impose a decision. An agreement can include solutions that meet the needs of each spouse. Generally, entering into an agreement will be less expensive and time-consuming than going to court. But, settling by agreement may not be the best route to take if the spouses simply cannot agree on matters, or if one spouse has an unfair advantage, perhaps because he/she is more financially secure than the other spouse.

If spouses cannot agree on their own about the terms of their separation, they can attempt to reach an agreement through mediation or negotiation through their lawyers. If these fail, a spouse may make an application to court. A judge will then hear the case and decide the issues.

A divorce can be obtained once the spouses have lived separate and apart for a period of one year, or sooner if adultery or cruelty is established. At the time a divorce is granted, the court may deal with any issues that have not already been dealt with in a separation agreement, or the divorce order can incorporate some or all of the terms of a separation agreement.

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Student Handout 4.15 – Marriage Revokes Will

Mary's spouse died five years ago. She lived by herself after her spouse's death. Her three children were married and had families of their own. They lived in the city, but she saw them as often as she could.

During their marriage, Mary and her spouse had built up a small estate. They owned their own home. They had paid off the mortgage years ago. Even in Mary's small town, the house was worth \$20,000. There was another \$75,000 in various bonds and bank accounts. Mary lived on her pension. Her savings continued to grow.

After her spouse died, Mary wrote a new will. She wanted to divide her estate equally among her three children. Her lawyer wrote up the will for her according to her wishes. She felt confident that her estate was in order.

Mary met a man with whom she felt quite comfortable. They shared many interests in common. Both of them were financially secure. They enjoyed doing things together. After a lengthy courtship, they were married. A few days after they were married, they drove to Vancouver for a holiday. While in Vancouver, Mary suffered a heart attack and died.

In her will, Mary named her oldest son as the executor of her estate. He took the will to his lawyer to begin the process of winding up her estate. He was shocked to find out that the will was no longer valid. In Saskatchewan a will is automatically cancelled (revoked) when a person marries. When Mary married her second spouse, she revoked the will that she had made after her first spouse died. Mary's marriage automatically cancelled her will, even though Mary had no intention of doing so.

There is a way to make a will, which is valid after marriage. The will must say that it is being made in contemplation of a planned marriage to a specific person. This allows a person to make a will in preparation for a marriage. The person may be concerned that something might happen between the marriage and the making of a new will. This may be of particular concern before a second marriage. If you are getting married, see your lawyer about your will.

In Mary's case, her will did not specify that it was made "in contemplation of marriage." In fact, Mary made her will long before she thought of getting married again. As a result, Mary died without having a valid will.

Her grown children must now depend on the good will of Mary's new spouse to divide Mary's estate according to her wishes. In Saskatchewan, when a person dies without a will, the surviving spouse is entitled to the first \$100,000 of the estate. Since Mary's estate is less than \$100,000 her new spouse inherits the entire estate. He may carry out her wishes, but he does not have to do so.

Even though Mary's situation may appear unfair, similar cases have occurred on more than one occasion. If Mary had been aware of the problem, she could easily have avoided it. She could have made a new will before her marriage that stated that it was made in contemplation of her upcoming marriage.

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Unit Five - Labour and Employment Law



One Penny Reward!

Ran away from the Subscriber on 16 April last, an
indentured apprentice to the Carpenter Trade, named
Charles Golden, who is about 8 years of age.
Whoever brings back the said run-away apprentice
shall receive the above reward—and no more.

Emanual Gaukel
Woolwich, Ontario (near
Guelph)

Advertisement which appeared in *Canadian
Museum*, April 19, 1836

Overview - Unit Five: Labour and Employment Law

The workplace of the 21st century is significantly different from the workplace of previous generations. The nature of the employment relationship has also experienced significant transformation as statute and common law has evolved in relation to the workplace. Students will examine the statutory provisions of the workplace regarding occupational health and safety, labour standards, trade unions and human rights provisions. Emphasizing student experiences as the frame of reference for examining the nature of the workplace, this unit will offer opportunities to consider the law as it applies to employers and employees, and to apply criteria of law in assessment of the modern workplace.

Resources and Resource-Based Learning

Resource-based learning is an integral part of all units. The bibliography that was developed to support this curriculum will assist you in incorporating a variety of resources from different media into each unit. This annotated bibliography should be available from your teacher-librarian or the Learning Resource Distribution Centre. The bibliography contains annotations of current, useful resources including print, video, Internet sites, and other media selections. Teachers are encouraged to assess their current resource collection, identifying those that continue to be useful, and to acquire small quantities of each new title, rather than class sets, in order to provide students with a broad range of perspectives and information.

The following list of evaluated resource titles provides a **starting point** for developing a resource collection that is current and relevant, and that addresses students' various learning styles and abilities. Please refer to **Law 30 The Law and You: A Bibliography**, for a complete list of resources giving the full citation, annotation, and ordering information. Please note that many of these resources can be ordered through the Learning Resource Distribution Centre (<http://lrdc.sasked.gov.sk.ca/>). Videos may be available from Media Group (<http://www.sasked.gov.sk.ca/video>). At the time of publication all of the resources listed here and in the bibliography were in print and available.

Please note that LRDC will be closing effective March 31, 2003. If you need assistance acquiring Saskatchewan Learning materials after that date, please contact 787-5987.

Print Resources

*Canadian Legal Guide for Small Business
Critical Concepts of Canadian Business Law
Equal Pay
Guide for New Workers
Make It Legal: What Every Canadian Entrepreneur Needs to Know about the Law*

Internet Sites

The following sites provide a brief overview of available websites. These sites were checked for availability in March 2002. To access formally evaluated sites that have been linked to the curriculum visit the Evergreen Curriculum at the Saskatchewan Learning website <http://www.sasked.gov.sk.ca/>.

Ready For Work - <http://www.readyforwork.sk.ca>
Saskatchewan Federation of Labour - <http://www.sfl.sk.ca>
Saskatchewan Labour - <http://www.labour.gov.sk.ca/sitemap.htm>
Saskatchewan Labour – Labour Standards - <http://www.labour.gov.sk.ca/standards/index.htm>
Saskatchewan Labour - Teachers' Activity Guide - <http://www.labour.gov.sk.ca/teach/activity-guide>

Incorporating Current Events

Incorporating current events enhances students' understanding of the concepts under study and extends their learning experiences by relating the events to real life and making them relevant. Sources for current event

stories include newspapers, newsmagazines, daily and weekly television and radio newscasts, documentaries, and the Internet. Many Canadian daily newspapers are available online and are a useful source of current events. Select articles and news items to support the objectives and concepts as often as possible, and encourage students to contribute also.

Learning Objectives

Learning objectives of two types are identified for Law 30, including Foundational Objectives and Specific Learning Objectives. Foundational Objectives are designed to guide instruction and student learning throughout each unit of study, and indicate the broad learning outcomes in terms of content, skills and abilities, and values. Specific Learning Objectives, identified in each lesson of the unit, are designed to help students achieve the Foundational Objectives. The core Learning Objectives are identified in bold font. This makes timelines for each lesson and unit flexible. Teachers can choose to focus on the key objectives only, or to have students strive to achieve all of the stated Specific Learning Objectives.

Objectives to achieve the Common Essential Learnings (C.E.L.s) are identified using the following abbreviations:

Communication	COM
Critical and Creative Thinking	CCT
Personal and Social Values and Skills	PSVS
Independent Learning	IL
Numeracy	NUM
Technological Literacy	TL

Foundational Objectives

Knowledge/Content	Skills	Values
Know the terms and conditions associated with fair workplace practices. (COM)	Develop skills that will enable students to act on fair workplace practices knowledge. (CCT, IL)	Develop an awareness of the responsibility and need for fair workplace procedures that must be followed in the workplace. (PSVS, CCT)
Become familiar with statutes that promote fair workplace practices and fair treatment in the workplace. (CCT, COM)	Apply criteria as the basis for making judgements. (CCT, COM)	Appreciate the benefits to employers and employees of fair workplace practices. (PSVS, CCT)
Know the responsibilities of employers and employees in the workplace. (PSVS, COM, CCT)		

Content (Teacher Information)	Concepts and Knowledge Objectives
<h3>The Legal Nature of the Workplace</h3> <p>Individuals in the workplace may be categorized as belonging to one of the following groups, in terms of their legal relationships to the workplace:</p> <ul style="list-style-type: none"> • employee • employer • independent contractor. <p>The law affects individuals within each of the categories, according to specifically different standards, and sets out differing rights and obligations for each group.</p>	<p>Employer</p> <p>Know that an employer is an individual or a company that employs one or more people.</p>
<h3>Sources of Labour Law</h3> <p>The prospect of being an employer and/or an employee is one that is a reality for most Canadians. The rules governing the workplace, and the relationship between employer and employee, are addressed in law. The <i>Constitution Act (1867)</i> attributes matters of employment law to the provincial governments, with the exception of federally regulated industries such as banking, postal service and national defence. Sources of provincial law regarding employment include the statutes of each province, the human rights legislation of each province and the common law in circumstances where neither the statute law nor the human rights law of the jurisdiction address matters of contention. Federally regulated industries are regulated under <i>The Canada Labour Code</i>. In Saskatchewan, pertinent statute law associated with employment relationships is included within:</p> <ul style="list-style-type: none"> • <i>The Labour Standards Act</i> • <i>The Occupational Health and Safety Act</i> • <i>The Trade Union Act</i> • <i>The Saskatchewan Human Rights Code</i>. <p>Other significant statutes also related to the workplace include <i>The Income Tax Act</i>, <i>The Employment Insurance Act</i>, <i>The Old Age Security Act</i> and <i>The Workers Compensation Act</i>. Contract law governs the relationships between independent contractors and employers.</p>	<p>Employee</p> <p>Know that an employee is a person who works for another person or company for pay.</p>
<h3>The Purpose of Labour Law</h3> <p>Labour law is designed to protect the rights of individual workers and employers, and to promote productive, safe workplaces. Prior to the advent of labour legislation, workplaces were regulated only by the ethics of the ownership and the bargaining power of the employee. Situations for employees varied in terms of safety and other working conditions. Employers were in the stronger position, leading the provinces to set minimum standards of employment. Any term of the employment contract not regulated by statute is still subject to the common law.</p>	<p>Independent Contractor</p> <p>Know that an independent contractor is one who is self-employed, and therefore not impacted by law of employment.</p>
	<p>Jurisdiction</p> <p>Know that jurisdiction is an area or district within which statutes apply and judgements, orders of a court, can be enforced or executed.</p>
	<p>Canada Labour Code</p> <p>Know that the <i>Canada Labour Code</i> provides statutory regulation in federally regulated workplaces, including the banking industry, postal service, national defence, airports, railways, radio and television, and interprovincial trucking.</p>
	<p>Labour Standards Act</p> <p>Know that the <i>Labour Standards Act</i> sets a basic standard for working conditions in Saskatchewan.</p>
	<p>Trade Union Act</p> <p>Know that the <i>Trade Union Act</i> sets the rights and responsibilities for workers and employers in organizing unions and collective bargaining in Saskatchewan.</p>
	<p>Occupational Health and Safety Act</p> <p>Know that the <i>Occupational Health and Safety Act</i> sets the standards for workplace health and safety in Saskatchewan.</p>
	<p>Saskatchewan Human Rights Code</p> <p>Know that the <i>Saskatchewan Human Rights Code</i> identifies employment as a protected ground, whereby discrimination in the area of employment is prohibited according to the terms and conditions of the <i>Code</i>.</p>

Skills/Abilities Objectives	Values Objectives
Differentiate between statutes that directly affect the employment relationship, and those that incidentally affect the employment relationship.	Understand the purposes for labour laws as a means of protection of the health and safety of employees.
Differentiate between those industries regulated by provincial labour statutes and those regulated by federal labour statutes.	Understand that labour laws ensure the same conditions exist for all employers. Appreciate that many categories of law permeate the employment relationship.

Instructional Notes:

1. Use Student Handout 5.1 - Employment Rights Awareness Quiz and Teacher Information Sheet 5.1 - Employment Rights Awareness Quiz Answer Key as a motivational set for the unit of study. Engage students in discussion regarding their personal experiences in the workplace. Identify instances illustrating the need for agencies and legislation governing the workplace.
2. Have students research newspapers and magazines to gain awareness of current labour and employment law issues in Saskatchewan and Canada.
3. Ensure students differentiate between an employee and an independent contractor.
4. Access statutes affecting labour and employment law, including *The Labour Standards Act*, *The Trade Union Act* and *The Occupational Health and Safety Act*. Examine the purposes of each. See Teacher Information Sheet 5.2 - Provincial Legislation Governing Workplace Practices and Teacher Information Sheet 5.3 - Federal Legislation Regarding Workplace Practices for template.
5. See Student Handout 5.2 - Labour Standards, Student Handout 5.3 - Occupational Health and Safety and Student Handout 5.4 - Trade Unions for summary data regarding legislation.
6. See Teacher Information Sheet 5.4 - Labour Standards Act Background Notes for detailed teacher information regarding *The Labour Standards Act*.
7. See Student Handout 5.5 - Employment of Young People, and Student Handout 5.6 - Training for New and Experienced Workers to examine law applicable to students in the workplace. Examine the data. Is the law adequate? Explain.
8. Administer Student Handout 5.7 - Does Labour Standards Protect your Rights as a Worker? Answers are provided in Teacher Information Sheet 5.5 - Does Labour Standards Protect your Rights as a Worker.

Issues in the Law

1. Why are there several different pieces of legislation and agencies involved with the governance of workplace practices?
2. Are there any areas of employment, in which protection of workers might be improved, based on the current legislation?

Student Handout 5.1 - Employment Rights Awareness Quiz

	Yes	No	Do Not Know
1. A company requires all job applicants to have a full medical examination. It wants all employees to be in good health before it will consider them for employment. Is this discrimination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. A pregnant woman who is sick is told that pregnant employees are excluded from the disability plan. Is this employer's policy discriminatory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. An employer's long-term disability plan provides for persons with physical disabilities, who are unable to work, with benefits up to age 62. However, people with mental disabilities receive benefits for only 24 months, unless they are institutionalized. Is this policy discriminatory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. A woman of South Asian ancestry applies for a position as a receptionist. She is well qualified with a number of years of experience. She speaks English well and clearly, but the employer tells her that customers may object to her accent or have difficulty understanding what she says. Is the employer discriminating?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. A woman applies for a position as a labourer with a company. Before she is hired, she must demonstrate that she can lift 120 pounds. Is this employment test discriminatory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. A man who has just completed a term in prison for armed robbery applies for a job as a maintenance worker. The company refuses to hire him because they do not want to hire people with criminal records. Is this requirement discriminatory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. A believer in a religious group whose holy day is from sundown Friday to sundown Saturday asks his employer if he can arrange his work schedule to take this day off. While such an arrangement is possible, the supervisor says that he cannot arrange shifts according to the whims of individual employees. Is this action by the employer discriminatory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. A regular customer of a restaurant makes comments of a sexual nature to waitresses employed there. He also slaps some of the waitresses on their buttocks. Is this a discriminatory employment situation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(Source: Saskatchewan Human Rights Commission.)

Teacher Information Sheet 5.1 – Employment Rights Awareness Quiz Answer Key

1. **Yes.** Section 19 of the Code states that job applicants cannot be required to answer questions that would directly or indirectly identify whether an employee has a disability. A blanket medical would do this. The Commission has established that employers can ask the following two-part questions:
 - Do you have a disability that will affect your ability to perform any of the functions of the job for which you have applied?
 - If the answer is yes, what functions can you not perform and what accommodations could be made which would allow you to do the work adequately?

In addition, an employee may be asked to take a medical after a job offer has been made. The offer may be conditional upon the successful completion of the medical examination. However, the medical examination must be directly related to the duties of the job that the employee will be expected to perform.

2. **Yes.** Discrimination on the basis of pregnancy is considered to be part of gender discrimination. There have been a number of cases dealing with the responsibility of employers not to discriminate against pregnant women when providing disability benefits.
3. **Yes.** Differential treatment of persons with mental disabilities compared to persons with physical disabilities has been found to be discriminatory by a board of inquiry. The Saskatchewan Court of Appeal upheld this decision.
4. **Yes.** If the employee was not able to clearly communicate in English and such communication was fundamental to the job, which it presumably would be in the case of a receptionist, the employer could argue that the language requirement was a necessary job requirement. However, the preferences of customers who object to hearing an accent are not sufficient justification to allow discrimination. Regulations of the Saskatchewan Human Rights Code specifically state that customer preference is not a “reasonable occupational qualification.”
5. **Yes.** The employer would have to demonstrate that the test was legitimate and related to the job that the woman was being asked to perform. Even if legitimate the test would still have disproportionate adverse impact on women. An employer would could not modify the work requirement without undue hardship would have a valid defence. In addition, the test could not be a reuse to justify the refusal to hire women. If only female applicants were asked to perform the test this would be evidence of discrimination.
6. **No.** While several jurisdictions across Canada do prohibit discrimination against persons who have criminal records or been charged with a criminal offence, Saskatchewan's Human Rights legislation does not.

In provinces where this is a prohibited type of discrimination employers can argue that conviction for particular types of offences cause the individual to be unqualified to perform certain work. For example, conviction for sexual offences against children would disqualify someone from employment as a childcare worker.

7. **Yes.** Employers are required to make accommodations where a general employment policy adversely affects someone because of a prohibited ground of discrimination. The employer can argue that the required accommodation creates an undue hardship but in this case it is stated that there is no hardship created.
8. **Yes.** Employers are responsible for ensuring the working environment is free of discriminatory conditions such as sexual harassment. When employers are made aware of sexual harassment they have an obligation to respond. The employer has the power to control the workplace. Appropriate action in this case could include prohibiting the customer from using the restaurant. The actions of the customer may also constitute an assault and may be subject to the Criminal Code.

(Source: Saskatchewan Human Rights Commission.)

Teacher Information Sheet 5.2 - Provincial Legislation Governing Workplace Practices

The Law	Who is responsible for the law?	Who is affected?	What does it say?
<i>The Occupational Health and Safety Act</i>	Saskatchewan Labour www.labour.gov.sk.ca or call 1-800-567-7233 www.readyforwork.sk.ca	Saskatchewan employers and employees except those covered by the <i>Canada Labour Code</i> (see federal legislation on reverse).	Sets minimum standards for health and safety in the workplace, including protection from violence and harassment. Workers are protected from harassment in the workplace on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size and weight, age, nationality and ancestry or place of origin.
<i>The Labour Standards Act</i>	Saskatchewan Labour www.labour.gov.sk.ca or call 1-800-667-1783	Most Saskatchewan employers and employees except those covered by the <i>Canada Labour Code</i> , farm workers and casual babysitters.	Sets minimum standards for fair working conditions regarding such things as hours of work, wages, termination, equal pay and holidays.
<i>The Trade Union Act</i>	Saskatchewan Labour www.labour.gov.sk.ca or call (306) 787-9106	Saskatchewan employers and workers.	Sets out the rights and responsibilities of workers and employers in organizing unions, bargaining collectively and resolving union-management disputes.
<i>The Human Rights Code</i>	Human Rights Commission www.gov.sk.ca/shrc/ or call 1-800-667-8577	Saskatchewan employers and employees except those covered by the <i>Canadian Human Rights Code</i> .	Addresses and discourages harassment and discrimination in the workplace on the basis of ancestry, nationality, creed, sex, age (18 – 64 years), sexual orientation, religion, disability, place of origin, family status, marital status or receipt of public assistance.
<i>The Workers' Compensation Act</i>	Workers' Compensation Board www.wcbsask.com or call 1-800-667-7590	Most Saskatchewan employers and employees, except groups such as teachers belonging to the Saskatchewan Teachers' Federation, or household servants working for the resident of a private home.	Provides work injury insurance and services to workers and employers.

(Source: Ready for Work, Saskatchewan Labour.)

Teacher Information Sheet 5.3 - Federal Legislation Regarding Workplace Practices

The Law	Who is responsible for the law?	Who is affected?	What does it say?
<i>Canada Labour Code (Occupational Safety and Health)</i>	Human Resources Development Canada http://labour.hrdc-drhc.gc.ca/ or call your nearest HRDC office	Federally regulated industries: air, inter-provincial rail, road and pipeline transportation, banking, broadcasting, uranium mining, shipping and related services, telecommunications, federal public service, Crown Corporations, and some employees involved with oil and gas exploration.	Administers programs and services that work towards preventing workplace accidents and exposure to hazardous substances that could adversely affect employees' health and safety.
<i>Canada Labour Code (Labour Standards)</i>	Human Resources Development Canada (as above)	Federally regulated industries as listed above.	Establishes and protects employers and workers' right to fair and equitable conditions of employment regarding such things as holidays, overtime, lay-offs, wages and sick leave.
<i>Government Employees' Compensation Act</i>	Human Resources Development Canada (as above)	Employees of the federal government.	Provides benefits to injured employees of the federal government.

(Source: *Ready for Work*, Saskatchewan Labour.)

Student Handout 5.2 - Labour Standards

The Labour Standards Act sets basic standards for working conditions in Saskatchewan in areas such as hours of work, wages, termination and holiday pay. This Act is particularly significant for young people as it defines the conditions under which many of them will begin their work lives. Union contracts and professional association agreements often build upon the minimum standards and rights provided to workers in the Act.

The Act applies to all Saskatchewan employers and workers except farm workers, casual babysitters and employees working in federally regulated industries.

Except for the section on Pro-Rated Benefits, the *Act* is applied equally to all workers, including part-time, full-time, temporary, seasonal and permanent workers. There are; however, some partial exemptions. For example, managers are exempt from overtime provisions. Teachers are exempt from the sections on annual and public holidays, and hours of work.

Saskatchewan workers have the right to receive:

- a 30-minute unpaid meal break within every five hours, when working six hours or more
- a "minimum callout" of \$18.00 each time they report for work, even if there is no work for them (Students in regular attendance during the school year, school janitors, noon-hour supervisors employed by a board of education, and school bus drivers are exempt.)
- notice of when their work begins and ends over a period of one week
- overtime pay (1½ times the regular wage) after working 8 hours /day, 40 hours/week or 32 hours/week with a public holiday
- paid public holiday pay for nine public holidays (for most part and full time workers)
- notice, or pay in lieu of notice, when terminated after being employed for three months or more (Minimum notice depends upon the worker's length of service with the employer.)

(Source: Saskatchewan Labour.)

Student Handout 5.3 - Occupational Health and Safety

Workplace Practices

Most young workers will have work-based learning experiences and jobs in businesses and organizations that come under the jurisdiction of provincial laws. In the classroom, teachers can help young people become aware of their rights and responsibilities under these laws. They can also help students by ensuring that work-based training plans include safe and fair workplace practices.

Saskatchewan Labour is one of the provincial agencies that is involved in setting standards for safe, fair and cooperative workplace practices. The Department administers three pieces of legislation that govern workplace practices: *The Occupational Health and Safety Act*, *The Labour Standards Act* and *The Trade Union Act*.

Occupational Health and Safety

The Occupational Health and Safety Act and Regulations set minimum standards for health and safety in the workplace. This includes physical safety, as well as protection from harassment and violence. All workers under provincial jurisdiction are covered by the Act; there are no exceptions. Under the Act, everyone in the workplace has a role in maintaining healthy and safe working conditions.

Employers, contractors, suppliers and owners are required by law to protect the health and safety of workers. This expectation applies to work placement students as well as paid employees. For example, the requirement for employers to provide training and orientation for workers regarding potential hazards in the workplace applies to all workers, including work placement students.

Employers are responsible for knowing and following the regulations related to their business or industry. Employers are also required to:

- develop and implement a harassment policy in their workplaces
- provide adequate training for all new workers and for existing workers who are assigned new tasks, or are moved to a different job
- ensure close and competent supervision is provided until the worker has sufficient experience to work safely
- put first aid, a Workplace Hazardous Materials Information System (WHMIS) and emergency procedures in place
- provide a copy of the *Occupational Health and Safety Act and Regulations* for workers' reference
- establish procedures for reporting accidents and dangerous occurrences specified in the *OHS Regulations*
- hire according to age restrictions
- develop a written health and safety program for a list of workplaces in which a program is required.)
- develop a violence policy (See Appendix 4(b) for a list of workplaces where this policy is required.)
- develop any other policies, plans and procedures required for the specific workplace.

Workers have a responsibility to work and act safely on the job. They are expected to:

- take reasonable care to protect their health and safety, and the health and safety of others who may be affected by their acts or omissions
- follow safe work procedures in the workplace
- participate in and use training provided by the employer
- use equipment in a proper manner
- wear and maintain any required safety gear (personal protective equipment)
- report any unsafe equipment or other safety hazards
- cooperate with the employer, occupational health committee or health and safety representative.

Workers also have three basic rights that are protected by the legislation:

1. The right to know:
 - about workplace hazards and how to deal with them
 - their rights provided under the *Act*
 - the legislation that applies to the workplace.
2. The right to:
 - participate in and be consulted on health and safety matters
 - the right to raise health and safety concerns, and have them addressed
 - participate as a member of an Occupational Health Committee (in workplaces with 10 or more employees), as a safety representative (in higher-risk workplaces with 5 to 9 employees), or directly with the employer (where neither a committee nor a representative is required)
3. The right to refuse work they believe to be unusually dangerous to themselves or others.

(Adapted from *Ready For Work*, Saskatchewan Labour.)

Student Handout 5.4 - Trade Unions

The Trade Union Act sets out the rights and responsibilities of workers and employers in organizing unions, bargaining collectively and resolving union-management disputes.

All workers have the right to join a union. A union, chosen by a majority of workers, becomes the exclusive bargaining agent for the group. When a bargaining unit has been certified, the union may request the employer to deduct dues from wages and submit them to the union.

An employer must not:

- interfere with attempts to organize a union
- refuse to bargain with a certified union
- discriminate on the basis of union activity
- threaten to move or shut down during a dispute
- change rates of pay or conditions of work without negotiating with the union.

An employee or union must not:

- attempt to force a worker into union activity
- refuse to bargain collectively with an employer
- strike without the majority of the bargaining unit supporting the work stoppage
- interfere with a worker seeking support for decertification of a bargaining unit.

(Source: *Ready for Work*, Saskatchewan Labour.)

Teacher Information Sheet 5.4 - The Labour Standards Act

Background Notes

General

The current *Labour Standards Act* was passed in 1977. Major amendments were made to the Act in 1995. The Act applies to all Saskatchewan employers and employees except farm workers, casual babysitters and employees who work in jurisdictions that are governed by federal law (e.g., railways, banks, airports, radio and television.)

Except for the section on pro-rated benefits, the *Act* applies equally to all employees including part-time, full-time, temporary, seasonal or permanent workers. There are some partial exemptions from specific sections of the *Act*. For example, managers are exempt from the overtime provisions. Teachers are exempt from the sections on annual and public holidays and hours of work.

Saskatchewan Labour administers the *Act*. The Department has eight offices across the province that provides information, investigate complaints and work with employers and employees to resolve disputes.

Promoting Fairness in the Workplace

One of the major vehicles for maintaining fair workplace practices in Saskatchewan is *The Labour Standards Act*. This *Act* contributes to, promotes and maintains fair working conditions, in the province of Saskatchewan, in a number of ways. Its primary purpose is to protect workers by setting a minimum or basic standard for working conditions with regard to hours of work, overtime, termination and holiday pay. Employers can give their employees more than what is provided for under the *Act* but not less. In this way, it sets a minimum standard for what is considered to be acceptable and fair workplace practices in Saskatchewan.

The *Act* also protects employers from unfair competition in the marketplace by ensuring all employers operate under the same workplace rules. For example, all employers are required to pay the same basic rate of overtime to all their employees ($1.5 \times$ hourly rate).

The *Act* also ensures that what is important to us, as a society, is reflected in our workplaces. As a society, Saskatchewan people value family and family time. The provisions in the *Act* dealing with family leaves (maternity, adoption, parental, bereavement) reflect this value that we place on family. As a society, we consider it a fair workplace practice to provide workers in Saskatchewan with time off to attend to family matters.

Rights and Responsibilities

The *Act* sets standards in the workplace by setting out rights as well as responsibilities, for both employees and employers. For example, the *Act* provides employees who work six hours or more with the right to have a 30-minute unpaid meal break for every five consecutive hours they work.

- Employers have the responsibility to provide their employees with at least a 30-minute break.
- Employers have the right to determine when employees will take their annual vacation leave.
- Employees have the responsibility to take the holiday time as assigned by the employer.
- Both employers and employees have a responsibility to know what minimum employment standards the *Act* sets for fair working conditions in their particular occupation and to act in accordance with them.

Overtime - For most workers, overtime starts after eight hours in a day, 40 hours in a week or 32 hours in a week in which a public holiday occurs. Overtime pay is $1.5 \times$ hourly wage. Managers and professionals are exempt from the overtime section of the *Act*.

Employers can get a permit from the Director of Labour Standards that will allow them to vary their employees' working time. For example, the permit might allow employees to work more than 8 hours in a day. To get a permit, $50\% + 1\%$ of the employees who will be affected must agree that they want to vary their hours by signing the application.

Meal Breaks - When working six hours or more, employees get a 30-minute, unpaid meal break for every five consecutive hours they work.

Work Schedules - Employers must give employees notice of when their work begins and ends over a period of at least one-week. Notice should be in writing, and should be posted in a place where employees can easily see it. Employers must give one week's notice of change in schedule, unless there is an emergency or unforeseen circumstance.

Minimum Callout - The employee must be paid either the minimum callout or the employee's regular wages for the time worked, whichever is greater. Students in regular attendance at school are exempt from this provision during the school term.

Annual Holiday Pay - Annual holiday pay is 3/52nds of total annual wages during the first nine years of employment with the same employer. All full-time, part-time, seasonal and temporary employees get annual holiday pay. After one year with the same employer, employees are entitled to three weeks of holiday leave.

Shifts - Employees working in a restaurant, hotel, educational institution, hospital or nursing home cannot be scheduled for more than two shifts in any twelve-hour period.

Termination - Employees who are terminated may be entitled to notice or pay in lieu of notice. The minimum notice or pay in lieu of notice for which employees are eligible depends upon their length of service. If an employee has worked less than three months with the same employer, he/she is not entitled to any notice.

Length of Service	Minimum Notice
0-3 months	0 weeks
3 months – 1 year	1 week
1 – 3 years	2 weeks
3 – 5 years	4 weeks
5 – 10 years	6 weeks
10 years and over	8 weeks

If the employee is terminated for "just cause," notice of termination or pay in lieu of notice is not required. The *Labour Standards Act* does not define "just cause."

Age of Employment - The minimum age at which employees may be employed in hotels, restaurants, educational institutions, hospitals and nursing homes is 16 years of age.

Uniforms - Workers in hotels, restaurants, educational institutions, hospitals and nursing homes required to wear uniforms (other than a registered nurse) or any special article of wearing apparel shall have them provided, repaired and laundered free of cost to them. Deductions shall not be made to employees' wages.

Public Holidays - All workers in Saskatchewan get paid for nine public holidays. Public holiday pay for most workers is 1/20th (5%) of total wages earned (excluding overtime) in the preceding four calendar weeks. If employees work on a public holiday, they get 1.5 x the regular hourly wage for all hours worked on the holiday, plus public holiday pay.

Equal Pay - Male and female employees are entitled to the same rate of pay when they perform similar work in the same establishment, under similar working conditions requiring similar skill, effort and responsibility. Different pay rates are allowed when based on seniority, merit, trainee programs or other non-gender-related criteria.

(Source: Saskatchewan Labour.)

Student Handout 5.5 - Employment of Young People

An employer or contractor shall ensure that no person **under the age of 16 years** is employed or permitted to work:

- on a construction site
- in a production process at a pulp mill, sawmill or woodworking establishment
- in a production process at a smelter, foundry, refinery or metal processing or fabricating operation
- in a confined space
- in a production process in a meat, fish or poultry processing plant
- in a forestry or logging operation
- on a drilling or servicing rig
- as an operator of powered mobile equipment, a crane or a hoist
- where exposure to a chemical or biological substance is likely to endanger the health or safety of the person
- in power line construction or maintenance.

An employer or contractor shall ensure that no person **under the age of 18 years** is employed:

- underground or in an open pit at a mine
- as a radiation worker
- in an asbestos process
- in a silica process
- in any activity that requires the use of an atmosphere-supplying respirator.

(The Occupational Health and Safety Regulations, 1996; Sections 14(1) and 14(2))

(Adapted from *Ready for Work*, Saskatchewan Labour.)

Student Handout 5.6 - Training for New and Experienced Workers

All employers have responsibilities for ensuring the health, safety and welfare of the employees in their workplaces. Employers must provide training to new workers about the safety policies, safe work procedures and hazards specific to that workplace. The following topics need to be included in the orientation:

- safety procedures and practices that are specific to the industry or type of work conducted at the workplace (e.g., hospitals, autobody shops, wholesale bakeries, food preparation, retail shops)
- information about any hazards in the workplace, and the procedures developed to address the hazard (may include policies about harassment and violence, as well as protection from physical, chemical or biological hazards)
- use of the *Workplace Hazardous Materials Information System* (WHMIS) to identify hazardous materials in the workplace and the precautions to be taken when working with the materials
- location of First Aid supplies and/or facilities
- procedures in the event of fire or other emergencies
- identification of prohibited or restricted areas
- personal Protective Equipment (training in how to use and maintain the equipment)
- procedures for reporting hazards and accidents
- employers have a duty to make a copy of the legislation (laws) available to workers.

"An employer shall ensure that no worker is permitted to perform work unless the worker has been trained, and has sufficient experience, to perform the work safely or is under close and competent supervision."

(*The Occupational Health and Safety Regulations, 1996; Section 19*).

Training is defined as "the means to give information and explanation to a worker with respect to a particular subject-matter and requires a practical demonstration that the worker has acquired knowledge or skill related to the subject-matter."

(*The Occupational Health and Safety Regulations, 1996; Section 2*)

(Adapted from *Ready For Work*, Saskatchewan Labour.)

Student Handout 5.7 - Does Labour Standards Protect Your Rights as a Worker?

1. You are 17 years old and offered a job as a waiter serving food. Your new boss tells you that, because you will be getting tips, he/she will pay you only \$4.50 an hour cash. Can he/she do that? yes no
2. Two days before your scheduled vacation, your boss tells you that you will have to work that week and take your vacation later. Can he/she do that? yes no
3. While you were working, one of the tables you were serving left without paying the bill. Can your boss deduct the value of the bill from your pay cheque? yes no
4. Your boss tells you that you cannot have a 15-minute coffee break in addition to your half-hour lunch break. Is your boss right? yes no
5. Just as your 8-hour shift is about to end, your boss comes to you and says you have to work overtime to help repair some important machinery. Can you be forced to work overtime? What is the overtime rate? _____
 yes no
6. Your boss told you that he/she does not have to pay you during the training period of your new job. Is your boss right? yes no
7. You have been working at your job for two years and your boss comes to you one day and tells you that your services are no longer needed after the end of the week. Can he/she terminate you like that? yes no
8. Your boss asks you to work on New Year's Day. Must he/she pay you Public Holiday Pay? If so, how much? What are the Public Holidays in Saskatchewan?
 yes no

9. Part-time workers do not have the same rights as full-time workers. true false
10. If you are called in to work for only two hours, that is all for which you are entitled to be paid. true false
11. Your new supervisor at work is constantly putting an arm around you when giving you instructions. The touch seems to be more than friendly and makes you feel uncomfortable. Do you have any rights that will make him/her stop? yes no
12. You and your co-workers decide you want to unionize your workplace. When your boss finds out, he/she threatens to fire anyone he/she sees taking union. Can he/she do that? yes no

(Adapted from Saskatchewan Federation of Labour. Reprinted with permission.)

Teacher Information Sheet 5.5 - Does Labour Standards Protect Your Rights as a Worker?

1. You are 17 years old and offered a job as a waiter serving food. Your new boss tells you that, because you will be getting tips, he/she will pay you less than minimum wage. Can he/she do that?

No – The boss is breaking the law. The minimum wage in Saskatchewan is set in law, and your employer is required to pay at least the minimum wage.
2. Two days before your scheduled vacation, your boss tells you that you will have to work that week and take your vacation later. Can he/she do that?

Yes – It is up to the employer to determine when you can take a vacation. The minimum wage is three paid weeks after you have worked for 12 months. This is approximately 6% of your gross wage. The boss is not required to allow you to take your paid vacation until you have worked for one year. For example, if you started working March 1, 2000, your boss is not required to give you your three week paid vacation until after March 1, 2001. Your boss is supposed to give you your vacation pay when you take your vacation. If you quit work before you take your vacation, then you should get approximately 6% of your gross earnings since your last vacation.
3. While you were working, one of the tables you were serving left without paying the bill. Can your boss deduct the value of the bill from your pay cheque?

No – The employer cannot take money off your pay cheque or require you to pay the bill.
4. Your boss tells you that you cannot have a 15-minute coffee break in addition to your half-hour lunch break. Is your boss right?

Yes – Your boss does not legally have to give you 15-minute breaks at any time of the day. You are entitled to a half hour break after you have worked five hours, paid or unpaid at your boss's discretion.
5. Just as your 8-hour shift is about to end, your boss comes to you and says you have to work overtime to help repair some important machinery. Can you be forced to work overtime? What is the overtime rate?

Yes – The boss can ask you to work more than 8 hours a day up to 44 hours a week. You cannot refuse overtime if there is an emergency. According to Labour Standards an "emergency" is any sudden or unusual occurrence or condition that could not, by the exercise of reasonable judgement, have been foreseen by the employer. The boss cannot make you work more than 44 hours a week unless he has a special permit, or you negotiate a written agreement with your employer as to when overtime comes into effect. Overtime pay is time and a half.
6. Your boss told you that he/she does not have to pay you during the training period of your new job. Is your boss right?

No – Workers must be paid for training on the job, unless they are on an approved training program with a school or university.

7. You have been working at your job for two years and your boss comes to you one day and tells you that your services are no longer needed after the end of the week. Can he/she terminate you like that?
- Yes – Your employer can fire you for almost any reason, or no reason at all whenever he/she decides. Labour Standards say that your boss must give you sufficient notice, or pay in lieu of notice. The actual length of notice required is dependent upon how long you have worked in the workplace. Workers that are not unionized have little to no protection from unjust dismissal. If you are terminated for no good reason, and not given proper notice or pay in lieu of notice, contact the Department of Labour. They can get you proper pay.
8. Your boss asks you to work on New Year's Day. Must he/she pay you Public Holiday Pay? If so, how much? What are the Public Holidays in Saskatchewan?
- Yes – You should get public holiday pay. According to Labour Standards, you are entitled to your regular pay plus 1.5 times the rate of pay. For example, your regular rate of pay is \$10.00 per hour. If you work on a public holiday, you should be paid \$10.00 plus (\$10.00 + \$5.00) = \$15.00 an hour. Public holidays in Saskatchewan are: New Year's Day, Good Friday, Victoria Day, Canada Day, Saskatchewan Day, Labour Day, Thanksgiving Day, Remembrance Day and Christmas Day.
9. Part-time workers do not have the same rights as full-time workers.
- False – Part-time and full-time workers basically have the same rights under Labour Standards, except in some cases, part-time workers would not have access to the same benefits.
10. If you are called in to work for only two hours, that is all for which you are entitled to be paid.
- False – Under Labour Standards, you are entitled to pay for at least three hours if you have been called in and are available to work for three hours, even if your boss sends you home early.
11. Your new supervisor at work is constantly putting an arm around you when giving you instructions. The touch seems to be more than friendly and makes you feel uncomfortable. Do you have any rights that will make him/her stop?
- Yes – It is against the law for your employer or supervisor to make sexual suggestions or requests of any employee. You have the right under the *Saskatchewan Human Rights Act* to be free from harassment in the workplace. If you feel you have been subjected to inappropriate behaviour from a person in authority, there are several steps you should follow:
- tell the person responsible to stop
 - keep a record of what happened, what was said or done, who was involved, where and when it happened and the names of any witnesses
 - if the harassment continues, file a complaint with the Saskatchewan Human Rights Commission within six months of the incident.
12. You and your co-workers decide you want to unionize your workplace. When your boss finds out, he/she threatens to fire anyone he/she sees taking union. Can he/she do that?
- No – An employer cannot penalize workers or influence their decision about organizing a union. If a worker is fired for talking about a union, then the union should make a complaint to the Saskatchewan Labour Relations Board. If the employer violates these rights, he/she can be charged before the Labour Relations Board.

(Adapted from Saskatchewan Federation of Labour. Reprinted with permission.)

Teacher Information Sheet 5.6 - Worker's Rights and Responsibilities: The Right to Refuse

Under Section 23 of *The Occupational Health and Safety Act*, each worker has the right to refuse work that he/she believes is unusually dangerous. The unusual danger may threaten the worker or others.

An unusual danger could include:

- a danger that is not normal for the job
- a danger that would normally stop work
- a situation, for which the worker is not properly trained, equipped or experienced.

Section 23 applies only to health and safety matters. It is an individual worker's decision (not the decision of a group of workers) that has to be based on his/her personal belief that the work is unusually dangerous or has become more dangerous than is acceptable for the job.

Saskatchewan was the first jurisdiction in Canada to enact the right to refuse. We cherish it. The right to refuse should only be used when a worker has a genuine reason to believe work has become more dangerous than is acceptable for the job. The right to refuse work must not be abused. For example, groups cannot use it as an excuse to strike.

If the refusal is used for legitimate health and safety reasons, the worker is legally protected from discipline or other sanction by the employer (Section 27). The worker may continue to refuse the work until the necessary steps are taken to satisfy the worker that the job is not unusually dangerous, or until the occupational health officer has investigated the refusal and found that the job is not unusually dangerous. During the refusal, the worker must remain at the workplace unless the employer advises otherwise.

Most work refusals are resolved without the intervention of an occupational health officer. This is the procedure that should be followed for a work refusal:

1. The refusing worker should inform his/her employer or supervisor that he/she is refusing work because of a health and safety concern.
2. The refusing worker should try to resolve the problem with the employer or supervisor. It is important that the refusing worker not leave the site without the employer's permission. Most refusals are resolved at this stage.
3. The employer/supervisor has the right to assign the refusing worker to other work (at no loss of pay or benefits) until the matter is resolved.

4. Under Section 26 of the Act, an employer cannot assign another worker to the disputed job unless the replacement worker is first advised in writing about:
 - the refusal to work and the reason for it
 - why the employer believes the replacement worker can do the disputed job safely
 - the right of the replacement worker to refuse the work
 - the steps to follow when exercising this right.
5. If the problem cannot be resolved at the initial stage, the occupational health committee co-chairs should be asked to help. The role of the co-chairs is to help work out a solution. They do not have the authority to make a ruling on whether the work is unusually dangerous. (If there is no occupational health committee or safety representative, contact the Occupational Health and Safety Division, Saskatchewan Labour.)
6. If the problem still is not resolved, the occupational health and safety co-chairs should convene an emergency meeting of the committee to investigate the refusal and voting. A unanimous vote by a quorum of the committee is required to rule against a refusal.
7. If there is no occupational health committee or if the committee cannot resolve the problem, or if either the worker or employer is not satisfied with the committee's decision, the issue should be referred to the Occupational Health and Safety Division. An occupational health officer will then investigate the refusal and provide a written decision to the parties.
8. The results of the investigation should be communicated to all the employees. One way of doing this is to summarize the results on a committee minute form and post it in the workplace for everyone to read. If the officer rules against the refusal, the worker should return to work even if the decision is being appealed. Anyone involved can appeal the officer's ruling to the Director of the Occupational Health and Safety Division.
9. The occupational health committee should monitor the effectiveness of any corrective action that is taken to resolve the issue or problem that lead to the refusal.

A worker is legally protected from disciplinary action or other sanction by the employer for fulfilling their responsibilities or exercising their rights under the *Occupational Health and Safety Act*. If an employer does take action against an employee, and the worker believes that it was done because of his/her legitimate health and safety activities, he/she can make a complaint to the Occupational Health and Safety Division.

An officer who finds that discriminatory action has been taken will issue a notice of contravention requiring the employer to:

- cease the discriminatory action
- reinstate the worker to his/her former terms and conditions of employment
- pay back wages to the worker that would have been earned had the discriminatory action not been taken
- remove any reference of the matter from the employee's employment record
- provide the occupational health officer with a progress report on any remedial action for the work that has been refused.

If the officer does not find evidence of discriminatory action, he/she will advise all parties in writing.

(Source: Saskatchewan Labour.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Labour Standards</p> <p>Statute law identifies the minimum terms of employment within a jurisdiction. The statute law is intended to :</p> <ul style="list-style-type: none"> • protect workers • reflect societal values • provide equity for employers. <p>Within these minimum terms, identified in Saskatchewan by <i>The Labour Standards Act</i>, are provisions for minimum wage, hours of work, overtime pay, rest and meal breaks, vacation leave and vacation pay, work schedules, minimum callout, minimum age of employment, maternity and parenting leaves, bereavement leave and termination conditions. The Act must be implemented in workplaces.</p> <p>Occupational Health and Safety</p> <p>Statute law regarding workplace safety, known in Saskatchewan as <i>The Occupational Health and Safety Act</i>, identifies three key worker rights in the area of workplace safety. They include:</p> <ul style="list-style-type: none"> • the right to know about workplace hazards • the right to participate in health and safety activities • the right to refuse unusually dangerous work. <p>As well, the Act provides protection from harassment and violence in the workplace, and identifies minimum age restrictions for certain industries. The Act also identifies responsibilities of employers for training and supervision of employees, and specifies those workplaces required to have an occupational health and safety program and a violence policy. The provisions of this legislation are monitored by Saskatchewan Labour through occupational health officers.</p>	<p>Minimum Standards</p> <p>Know that <i>The Labour Standards Act and Regulations</i> identifies minimum standards for working conditions.</p> <p>Know that <i>The Labour Standards Act</i> is implemented and monitored by provincial government officials within Saskatchewan Labour.</p> <p>Know that labour standards officers provide:</p> <ul style="list-style-type: none"> • answers to inquiries about how <i>The Labour Standards Act</i> might apply to specific workplace situations • advice to employers and employees for resolving workplace issues relating to labour standards • investigation of complaints • assistance in collection of unpaid wages. <p>Know that <i>The Occupational Health and Safety Act</i> sets minimum standards for health and safety in the workplace, including physical safety as well as protection from harassment and violence.</p> <p>Know that occupational health officers of Saskatchewan Labour help individuals in the workplace understand and fulfill their responsibilities by:</p> <ul style="list-style-type: none"> • supporting occupational health and committees and their representatives in the workplace • inspecting workplaces • enforcing health and safety requirements. <p>Know that occupational health officers have the ability to:</p> <ul style="list-style-type: none"> • stop work involving serious risk to workers • specify corrective actions and their completion dates • require progress reports toward fulfillment of safety standards. <p>Harassment</p> <p>Know that according to <i>The Occupational Health and Safety Act</i>, harassment means any objectionable conduct, comment or display by a person that:</p> <ul style="list-style-type: none"> • is directed at a worker • is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin • constitutes a threat to the health or safety of the worker.

Skills/Abilities Objectives	Values Objectives
<p>Define criteria and apply it in making judgements.</p> <p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance – the ability of the model to perform constructively, efficiently and consistently in a variety of situations • consequences – the acceptability of the consequences of applying the model to various situations • accuracy – the ability of the model to predict future events accurately and consistently. <p>Apply research skills in gathering data useful to make judgements about an issue.</p> <p>Apply the skills of dialectical evaluation:</p> <ul style="list-style-type: none"> • define relevant viewpoints within the information • test the viewpoints for their morality • evaluate the factual and moral testing • form a conclusion about the issues. <p>Apply the moral tests of:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. 	<p>Appreciate the value of occupational health and safety regulations in the workplace.</p> <p>Accept that all persons in a workplace are responsible for the safety and well-being of all others in a workplace.</p> <p>Respect the rights of all persons in a workplace to participate in statutory occupational health and safety processes.</p> <p>Refuse to participate in, or to implicitly endorse, harassment.</p>

Instructional Notes

1. Use Student Handout 5.8 - Right to Refuse Case Studies as a means of engaging students in issues of occupational health and safety. Refer to Teacher Information Sheet 5.7 - Right to Refuse Case Studies for case study resolution.
2. See Teacher Information Sheet 5.8 - Safety Works Flashcard Activity and Student Handout 5.9 - Safety Works Flashcards for application activity regarding Occupational Health and Safety.
3. Have students engage in a dialectical reasoning activity to assess the provisions of *The Labour Standards Act* and/or *The Occupational Health and Safety Act*. See Student Handout 5.10 - *The Labour Standards Act*, and/or Student Handout 5.11 - *The Trade Union Act*, as data sources for a dialectical process.

Issues in the Law

1. What are some reasons that the rate of injury to workers remains high in the Saskatchewan workplace? What are possible remedies to reduce this rate?
2. Why are not all workers covered under the provisions of *The Labour Standards Act*? Is this fair and just?
3. Are the provisions of *The Labour Standards Act* and *The Occupational Health and Safety Act* adequate in protection of Saskatchewan workers? Explain.

Teacher Information Sheet 5.7 - The Right to Refuse Case Studies

Case Study 1

You are a waitress working at a restaurant in your community. You are asked to wash the outside of the window of the building in which you work. The window is sealed and cannot be opened from the inside. It can only be reached from the next window. You must sit on the edge of the next window and reach across it to wash the outside face of the sealed window. Another worker will hold your ankles to prevent you from falling. The window is on the 10th floor.

Answer

- This would be a good candidate for refusal because of the falling hazard. The employer is violating the need for scaffolding and personal protective equipment as required under the legislation (Sections 169 and 86).
- The employee should first tell his/her supervisor that he/she is refusing to do this work because of a health and safety concern.
- If the worker is unsure of what to do, he/she should contact the occupational health committee members to discuss the issue. Or, if there is no committee, call the Occupational Health and Safety Division at Saskatchewan Labour.

Case Study 2

You work for a local hardware store. You are asked to shovel the snow off the roof of the storage shed. The roof has a slope of 45 degrees. Heavy ice is under the snow. The roof is not equipped with a life line or scaffold tie-in point. The roof of the nearby building collapsed recently because of heavy snow.

Answer

- This would be a good candidate because of the falling hazard. The employer should provide fall protection, and ensure the roof is equipped to allow the protection to be installed and used properly. Alternatively, hire a professional snow removal company to clean off the roof.

Case Study 3

A worker in a bar refuses to work in customer areas because of secondhand tobacco smoke. The worker does not have asthma and is not allergic to tobacco smoke. Customer areas are well-ventilated and the employer has ensured the ventilation system is maintained properly.

Answer

- This is not a good candidate for refusal to work.
- The employer has taken all reasonably practicable measures to protect the worker. Working in some second hand smoke could reasonably be expected to be part of this job; it is not a danger that would normally stop work, nor is it a situation for which the worker is not properly trained.

Case Study 4

You have recently been hired to operate a plastic food packaging press. The press forms and stamps raw plastic sheets into rectangular cups to hold processed food. The gate of the press opens upward to allow the operator to reach into the mechanism. The gate consists of a heavy aluminum frame around a large transparent plexiglass viewing panel. The gate has a safety shutoff that cuts power to the machine when it is opened. The plexiglass viewing panel shattered some months ago and has not been repaired. Glass from the broken panel has gotten into the press mechanism and the safety shutoff switch. Neither works reliably anymore. The press jams frequently. Sometimes it starts when the gate is open.

Answer

- This would be a good candidate because the worker has reasonable grounds to believe he/she could be seriously hurt if he/she continues to use the press. The press is unreliable and could inflict serious injury.

Case Study 5

You have been hired to make sandwiches in a sandwich shop. This morning, you have been told to slice meat using a high-speed slicing machine. You have not been given any training on the machine.

Answer

- This would be a good candidate because the worker has reasonable grounds to believe he/she might be seriously hurt if he/she operates the meat slicing machine without proper training. Under Occupational Health and Safety legislation, the employer must ensure the worker is properly trained (Section 19).

Case Study 6

Park wardens threaten to work as a group because they are not allowed to carry side arms for protection against poacher.

Answer

- This is not a good candidate for a refusal to work because the wardens are threatening to refuse as a group. Section 23, the right to refuse, only applies to individual workers. Each warden would have to individually use the right to refuse.

Case Study 7

You work for a local construction company. You and a co-worker have been told to drive a flatbed truck into town to get a large amount of lumber and bricks for the job. Neither of you has driven a truck before, and do not have training in driving a heavily loaded vehicle.

Answer

- This would be a good candidate because the worker has reasonable grounds to believe he/she might be hurt if he/she drives the truck without proper training. Under Occupational Health and Safety legislation, the employer must ensure the worker is properly trained (Section 19).
- The worker should inform his/her supervisor that he/she is refusing to do this worker because of a health and safety concern.
- If the worker is unsure of what to do, he/she should contact the occupational health committee members to discuss the issue. Or, if there is no committee, call the Occupational Health and Safety Division at Saskatchewan Labour.

(Source: Saskatchewan Labour.)

Student Handout 5.8 – The Right to Refuse Case Studies

Case Study 1

You are a waitress working at a restaurant in your community. You are asked to wash the outside of the window of the building in which you work. The window is sealed and cannot be opened from the inside. It can only be reached from the next window. You must sit on the edge of the next window and reach across it to wash the outside face of the sealed window. Another worker will hold your ankles to prevent you from falling. The window is on the 10th floor.

Case Study 2

You work for a local hardware store. You are asked to shovel the snow off the roof of the storage shed. The roof has a slope of 45 degrees. Heavy ice is under the snow. The roof is not equipped with a lifeline or scaffold tie-in point. The roof of the nearby building collapsed recently because of heavy snow.

Case Study 3

A worker in a bar refuses to work in customer areas because of secondhand tobacco smoke. The worker does not have asthma and is not allergic to tobacco smoke. Customer areas are well ventilated and the employer has ensured the ventilation system is maintained properly.

Case Study 4

You have recently been hired to operate a plastic food packaging press. The press forms and stamps raw plastic sheets into rectangular cups to hold processed food. The gate of the press opens upward to allow the operator to reach into the mechanism. The gate consists of a heavy aluminum frame around a large transparent plexiglass viewing panel. The gate has a safety shutoff that cuts power to the machine when it is opened. The plexiglass viewing panel shattered some months ago and has not been repaired. Glass from the broken panel has gotten into the press mechanism and the safety shutoff switch. Neither works reliably anymore. The press jams frequently. Sometimes it starts when the gate is open.

Case Study 5

You have been hired to make sandwiches in a sandwich shop. This morning, you have been told to slice meat using a high-speed slicing machine. You have not been given any training on the machine.

Case Study 6

Park wardens threaten to work as a group because they are not allowed to carry side arms for protection against poacher.

Case Study 7

You work for a local construction company. You and a co-worker have been told to drive a flatbed truck into town to get a large amount of lumber and bricks for the job. Neither of you has driven a truck before, and do not have training in driving a heavily loaded vehicle.

Teacher Information Sheet 5.8 - Safety Works Flashcards Activity

1. Discuss the purpose of the activity. Explain that it will involve playing a 'safety trivial pursuit game' and discussing the significance of being safe at work.
2. Create file cards using the questions and answers from the Student Handout 5.9 - Safety Works Flashcards or download the flashcards from the Teachers Activity Centre on the Saskatchewan Labour website www.labour.gov.sk.ca.
3. Ask students to randomly pick a card from those that are available.
4. Ask each student to read his/her question aloud to the group. With the class, discuss possible answers and the reasons for the answers. Ask for the answer on the back of the card to be read aloud. Allow about 15–20 minutes for the questions.
Or
Divide students into teams with two to four members. Pair teams. Provide each group with five to ten question cards. Have each team take turns asking each other the questions on their cards, then providing the answers. For each correct answer, a team scores two points. Provide about 15-20 minutes to play the game.
5. Debrief the activity by asking each group to:
 - Share one question for which the group did not know the answer.
 - Share one question on which the group disagreed about the answer.
 - Share one question whose answer surprised them.
 - Identify at least one thing they learned about safety that they did not know before.

Harassment and Smoking:

Questions on 'harassment': Make sure the students understand the limits of the definition of harassment under *The Occupational Health and Safety Act*. Under the Act 'harassment' means any objectionable conduct, comment or display by a person that:

- is directed at a worker
- is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin
- constitutes a threat to the health or safety of the worker.

This definition does not cover 'personal harassment' where, for example, a supervisor who does not like a worker, and seems to treat that worker less favourably than those he/she seems to like (say by assigning that worker the less pleasant jobs or shifts).

Question on 'smoking': The employer must make a workplace non-smoking or allow smoking only in designated areas. Make sure the students understand that although employers have a responsibility to protect non-smokers from second hand cigarette smoke, there are some workplaces, bars and restaurants for example, where it may not be possible to eliminate secondhand smoke. If the employer has done what he/she can to eliminate and reduce secondhand smoke, say with ventilation and having a separate smoking section, there may not be much more that the worker can expect the employer to do.

The question for the worker then is whether he/she still wants to work in that environment.

6. Form small groups. Ask students to discuss the following questions, record their ideas and appoint a member of their group to report back to the larger group. Allow about five to seven minutes for discussion. Ask each group to share its answers with the large group.
 - Why do you think it is important to work safely and to know your rights and responsibilities regarding safe workplace practices?
 - If you were injured on the job, who might be affected and how would they be affected? Do you know anyone who has had a workplace injury?

-
7. Using information from the Saskatchewan Labour Fact Sheets, discuss with students:
- the financial and humanitarian cost to society and loved ones of injuries and deaths on the job
 - the reasons why young workers experience higher rates of injury than other workers
 - how learning about safety can prevent injuries and fatalities
 - the purpose, content and format of this module.

(Source: Saskatchewan Labour.)

Student Handout 5.9 - Safety Works Flashcards

1.	As a worker, which of these rights for safety do you have in the workplace? a) the right to know the hazards and how to control them b) the right to participate in finding and controlling hazards in the workplace c) the right to refuse work you consider unusually dangerous to yourself and others d) all of the above
2.	As a worker, you have the right to refuse work that you consider to be unusually dangerous. a) true b) false
3.	You are responsible only for your own safety in the workplace. a) true b) false
4.	You are responsible for not starting and/or becoming involved in harassment in the workplace. a) true b) false
5.	You are a glasscutter and your employer has given you a pair of safety gloves to wear. You do not like them because they make it difficult to use your tools. You would prefer not to wear them. Do you have to cooperate with your employer? a) yes b) no
6.	You should be more concerned about your safety rights than your responsibilities for safety in the workplace. a) true b) false
7.	You observe coworkers doing a job in a way that could result in harm or injury. What do you do? a) ignore them b) inform the supervisor c) inform the workers that they are doing is unsafe d) run for cover
8.	The Saskatchewan law that protects the health and safety of workers in the workplace is: a) <i>The Trade Union Act</i> b) <i>The Labour Standards Act</i> c) <i>The Occupational Health and Safety Act</i> d) <i>The Worker's Compensation Act</i>

9.	As a young worker (15-24 years old), you are most likely to be injured at the job: a) during the first three months b) during the first year c) at the same rate as older workers
10.	Young workers under 19 years of age are at greater risk for injury from: a) coming in contact with objects b) overexertion c) exposure to harmful substances d) all of the above
11.	You walk into a room where a group of people is teasing a coworker about his heavy accent. You suddenly remember a really funny joke you know that poked fun at the nationality of the coworker, and you tell the joke. Which one of your responsibilities are you failing to carry out?
12.	As a new worker, you have the right to be informed of: a) the chemicals being used in your workplace b) procedures for safely handling the chemicals c) the personal protective equipment (PPE) you need to protect yourself when using the chemicals d) all of the above
13.	A worker feels he is being harassed because a group of coworkers is teasing him about his weight. He finds it offensive and humiliating. Other workers do not feel there is a problem, as this group of workers is known to tease everyone. Is this harassment? a) yes b) no
14.	A young woman is being constantly harassed at work. She is afraid to say anything about it because she is worried that she will lose her job. Does she need to worry about losing her job if she files a harassment complaint? a) yes b) no
15.	What is the most important reason for dealing with harassment in the workplace?
16.	All new workers must be oriented to the hazards that exist in the workplace and how to control them. a) true b) false

17.	<p>The saying "every worker is his brother's keeper" applies to safety in the workplace.</p> <ul style="list-style-type: none">a) trueb) false
18.	<p>A new worker finds himself to be, by far, the youngest person on the job. Whenever he asks how something needs to be done, he finds his coworkers always say things like, "I guess a little kid like you wouldn't know how to do this." He feels he is only trying to learn his job, and these comments are starting to really bother him. Is this harassment?</p> <ul style="list-style-type: none">a) yesb) no
19.	<p>The employer is ultimately responsible for keeping the workplace free from harassment.</p> <ul style="list-style-type: none">a) trueb) false
20.	<p>Which of these workplaces would be required by law to have a violence policy?</p> <ul style="list-style-type: none">a) hospitalsb) schoolsc) convenience storesd) all of the above
21.	<p>On a regular basis, my boss asks me to lift a box that weights more than 30 kg (66 lbs.). I think there is a law that says I can only be asked to lift boxes under 22 kilograms. Who is right? My boss or me?</p>
22.	<p>My employer has to provide me with drinking water while at work.</p> <ul style="list-style-type: none">a) trueb) false
23.	<p>My boss says there is nothing he can do about my coworker smoking at work even though it gives me a headache.</p> <ul style="list-style-type: none">a) trueb) false
24.	<p>How can you participate in health and safety in the workplace?</p> <ul style="list-style-type: none">a) as a member of the Occupational Health Committeeb) as a safety representativec) by reporting unsafe conditions or equipment to the supervisord) all of the above

25.	Every workplace has to have an Occupational Health Committee. a) true b) false
26.	What are Occupational Health Committees and safety representatives responsible for in the workplace? a) participating in the identification and control of hazards b) helping identify and resolve the safety concerns of workers c) inspecting the workplace regularly d) investigating accidents and dangerous occurrences e) all of the above

(Source: Saskatchewan Labour.)

Teacher Information Sheet 5.9 - Safety Works Flashcards Answer Key

	Question	Answer
1.	As a worker, which of these rights for safety do you have in the workplace? a) the right to know the hazards and how to control them b) the right to participate in finding and controlling hazards in the workplace c) the right to refuse work you consider unusually dangerous to yourself and others d) all of the above	d) all of the above – you have the right to know what hazards exist in the workplace and how to control them, the right to participate in finding and controlling the hazards, and the right to refuse work you consider unusually dangerous.
2.	As a worker, you have the right to refuse work that you consider to be unusually dangerous. a) true b) false	b) true – You have the right to refuse work you consider unusually dangerous to yourself and to others in the workplace.
3.	You are responsible only for your own safety in the workplace. a) true b) false	b) false – You are responsible for ensuring your own safety and the safety of your coworkers.
4.	You are responsible for not starting and/or becoming involved in harassment in the workplace. a) true b) false	a) true – You should not start and/or become involved in harassment in the workplace.
5.	You are a glasscutter and your employer has given you a pair of safety gloves to wear. You do not like them because they make it difficult to use your tools. You would prefer not to wear them. Do you have to cooperate with your employer? a) yes b) no	a) yes – It is your responsibility to cooperate with your employer by wearing the personal protective equipment required on the job.
6.	You should be more concerned about your safety rights than your responsibilities for safety in the workplace. a) true b) false	b) false – You need to be as concerned about your responsibilities for safety in the workplace as you are about your rights.

	Question	Answer
7.	You observe coworkers doing a job in a way that could result in harm or injury. What do you do? a) ignore them b) inform the supervisor c) inform the workers that they are doing is unsafe d) run for cover	c) inform the workers that what they are doing is unsafe – A worker is responsible for ensuring his/her own safety and the safety of his/her coworkers. If you, as a young worker, feel uncertain about what to do, inform the supervisor.
8.	The Saskatchewan law that protects the health and safety of workers in the workplace is: a) <i>The Trade Union Act</i> b) <i>The Labour Standards Act</i> c) <i>The Occupational Health and Safety Act</i> d) <i>The Worker's Compensation Act</i>	c) <i>The Occupational Health and Safety Act</i> protects the health and safety of workers in the workplace.
9.	As a young worker (15-24 years old), you are most likely to be injured at the job: a) during the first three months b) during the first year c) at the same rate as older workers	a) during the first three months - New workers are inexperienced. They have no on-the-job experience, and little training in how to recognize and control hazards in the workplace. They are also eager to please, and less likely to refuse work they consider unusually dangerous or to ask for the appropriate training they might need.
10.	Young workers under 19 years of age are at greater risk for injury from: a) coming in contact with objects b) overexertion c) exposure to harmful substances d) all of the above	d) all of the above – For workers 19-years-old, about 5 in 10 accidents are caused by “coming in contact with objects,” about 2 in 10 accidents are caused by overexertion and about 1 in 10 accidents are caused by exposure to harmful substances.
11.	You walk into a room where a group of people is teasing a coworker about his heavy accent. You suddenly remember a really funny joke you know that poked fun at the nationality of the coworker, and you tell the joke. Which one of your responsibilities are you failing to carry out?	To not start or become involved in harassment. Under the <i>Occupational Health and Safety Act</i> , you have the responsibility to refrain from starting or becoming involved in the harassment of another worker based on a number of factors including nationality.
12.	As a new worker, you have the right to be informed of: a) the chemicals being used in your workplace b) procedures for safely handling the chemicals c) the personal protective equipment (PPE) you need to protect yourself when using the chemicals d) all of the above	d) all of the above

	Question	Answer
13.	A worker feels he is being harassed because a group of coworkers is teasing him about his weight. He finds it offensive and humiliating. Other workers do not feel there is a problem, as this group of workers is known to tease everyone. Is this harassment? a) yes b) no	a) yes – Harassment means any objectionable conduct, comment or display by a person that is directed at a worker, and is made on a number of factors, including weight.
14.	A young woman is being constantly harassed at work. She is afraid to say anything about it because she is worried that she will lose her job. Does she need to worry about losing her job if she files a harassment complaint? a) yes b) no	b) no – <i>The Occupational Health and Safety Act</i> protects the worker from being discriminated against by losing her job.
15.	What is the most important reason for dealing with harassment in the workplace?	Harassment affects the health and safety of everyone in the workplace.
16.	All new workers must be oriented to the hazards that exist in the workplace and how to control them. a) true b) false	a) true – Employers have the responsibility to ensure workers are trained, before they start work, in all matters that are necessary to protect their health and safety, including what hazards exist in the workplace.
17.	The saying “every worker is his brother’s keeper” applies to safety in the workplace. a) true b) false	a) true – A worker is responsible for ensuring his/her own safety and the safety of his/her coworkers.
18.	A new worker finds himself to be, by far, the youngest person on the job. Whenever he asks how something needs to be done, he finds his coworkers always say things like, “I guess a little kid like you wouldn’t know how to do this.” He feels he is only trying to learn his job, and these comments are starting to really bother him. Is this harassment? a) yes b) no	a) yes – Harassment means any objectionable conduct, comment or display by a person that is directed at a worker, and is made on the basis of a number of factors, including age.

	Question	Answer
19.	The employer is ultimately responsible for keeping the workplace free from harassment. a) true b) false	a) true – The employer bears the ultimate responsibility for ensuring the workplace is free from harassment.
20.	Which of these workplaces would be required by law to have a violence policy? a) hospitals b) schools c) convenience stores d) all of the above	d) all of the above – Any workplace, which have a greater than average risk of violence to their workers, must have a policy on how to handle violent situations.
21.	On a regular basis, my boss asks me to lift a box that weights more than 30 kg (66 lbs.). I think there is a law that says I can only be asked to lift boxes under 22 kilograms. Who is right? My boss or me?	The boss – The Occupational Health and Safety regulations do not have a limit on the weight a worker can lift in the workplace. However, the regulations do state that no worker should engage in manual lifting, holding, or transporting that, by reason of weight, size or shape, or by any combination of these is likely to be injurious to the worker.
22.	My employer has to provide me with drinking water while at work. a) true b) false	a) true – An employer must provide clean and safe drinking water that is readily accessible.
23.	My boss says there is nothing he can do about my coworker smoking at work even though it gives me a headache. a) true b) false	b) false – A worker does not have to be exposed to second-hand smoke. The employer must make a workplace non-smoking, allow smoking only in designated areas, or ventilate the smoking area of the workplace. Some workplaces, such as bars, will have significant amounts of second-hand smoke. The employer doesn't have to ban all smoking in the workplace, but he/she must try to meet the health needs of non-smokers.
24.	How can you participate in health and safety in the workplace? a) as a member of the Occupational Health Committee b) as a safety representative c) by reporting unsafe conditions or equipment to the supervisor d) all of the above	d) all of the above – As a worker you have the right to participate in a formal role (as a committee member or a safety representative). However, every worker has the responsibility to participate in health and safety in the workplace by reporting unsafe conditions.

	Question	Answer
25.	Every workplace has to have an Occupational Health Committee. a) true b) false	a) false – Occupational Health Committees are only required in workplaces with 10 or more workers. Safety representatives are required in high-hazard industries with 5-9 workers. Employers must talk directly to workers in workplaces where committees and representatives are not required.
26.	What are Occupational Health Committees and safety representatives responsible for in the workplace? a) participating in the identification and control of hazards b) helping identify and resolve the safety concerns of workers c) inspecting the workplace regularly d) investigating accidents and dangerous occurrences e) all of the above	c) all of the above – OHCs and occupational health representatives help employers improve health and safety in the workplace. It is the employer's responsibility; however, to decide what actions to take to reduce hazards in the workplace. OHCs and safety representatives share most of the same responsibilities. OHCs can investigate accidents and dangerous occurrences independently. Safety representatives; however, do so with the employer. Also, safety representatives do not investigate "refusals to work," but OHCs do carry out this kind of investigation. OHCs have responsibilities in addition to those stated above. For a full description refer to the Saskatchewan Labour publication: <i>Occupational Health and Safety Committee Manual</i> .

(Source: Saskatchewan Labour.)

Student Handout 5.10 - The Labour Standards Act

What's in it:

- The scope of the Act is expanded to cover more workers, including home workers.
- Authority to write regulations requiring part-time employees in larger firms (20 or more employees) will receive, in proportion to the hours they work, the benefits available to full-time employees.
- Authority to write regulations providing for the most senior part-time workers, in companies with more than 50 employees, to get the first opportunity to work more hours when they become available.
- Most employers will be required to give employees one week's notice of changes to work schedules "where practical."
- Dismissal of workers who are injured or ill will become somewhat more difficult.
- Increased notice for workers fired without just cause.
- Where possible workers who become disabled will have to be re-employed.
- The wage recovery process is improved.
- Protects employees from being fired for reporting illegal activity at work (whistle-blower legislation).
- Pro-rated statutory holiday pay for part-time workers.
- Unpaid leaves (to 12 weeks) and adoption (to 18 weeks) reduced (to total of 20 weeks).
- Require a minimum of 8 hours away from work in every 24 hours.
- A half hour unpaid meal break if the employee works six hours.
- Fines are increased on employers who break the law.

What is not in it:

- The Act still will not cover all workers.
- Pay equity.
- Regular inspections of work places.
- The 44 hour work week still is legal (all overtime should be voluntary).
- Permits to depart from the limits set in the Act still can be used by employers (these permits should only be granted after a majority decision of all employees, in a vote administered by a Department of Labour official).
- Two consecutive days off, one of which being Saturday or Sunday for all workers.
- Paid sick leave.
- There is no "wage protection fund" or "bankruptcy bond" to pay workers what is owed them when a company fails.
- Coffee breaks still are not required by law.
- Eight hours rest between shifts is not enough.
- Employers should be able to terminate workers only for just cause.
- All workers should receive paid transportation home from the job when their shift ends between 11:00 p.m. and 7:00 a.m. (rather than 12:30 a.m. to 7:00 a.m.).
- The criteria for part-time workers to receive fringe benefits should be less restrictive – employees working any number of hours in work places of 10 or more should be eligible.
- The time limit for commencing a prosecution should not be reduced.
- Too much is left to regulations. The changes should all be written into the Act. An Act can only be amended by a Bill passed in the Legislature. Regulations can be changed behind the closed doors of a cabinet meeting.

(Source: Saskatchewan Federation of Labour.
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Student Handout 5.11 - The Trade Union Act

What's in it:

- Intimidation of employees in the exercise of their trade union rights clearly will be an unfair labour practice.
- Employers and unions will be required to bargain collectively and apply agreements in good faith.
- The Labour Relations Board will be able to issue certifications and decertifications where unfair labour practices interfere with a vote on unionization.
- First contract finalization.
- The terms and conditions of a collective agreement will remain in force until replaced by a new agreement.
- Employees will have the right to reinstatement following a strike or lockout.
- Employee benefit plans will continue during a work stoppage if the union makes employee contributions.
- Exclusions from bargaining units will be limited by removing the "integral to management" exclusion and restricting the use of contract employees to avoid collective bargaining obligations.
- The Labour Relations Board is given the power to determine what rights and obligations continue after a unionized company is sold.
- Contractors who are awarded servicing contracts must respect existing collective agreements.
- Employers cannot avoid collective bargaining obligations by operating spin-off companies.
- There is clarification of the Labour Relations Board's powers to make interim orders, orders to rectify contraventions of the Act, amend or correct orders and set compensation for monetary loss suffered by employees, employers and trade unions as a result of violations of the Act.
- Only employees and unions can request supervised votes.
- Unions may in future be able to collect fines from their members.
- Arbitration will be faster and less costly.
- Arbitration to settle disputes over application or interpretation of agreements.
- Access to arbitration after certification, but before the first agreement is signed.
- Time limits will be set for arbitration decisions.
- Arbitration procedure established where collective agreements do not have language on arbitration.
-

- Union or management can request the appointment of a special mediator after a strike has lasted 30 days, and the mediator can recommend a final offer vote.

What is not in it:

- Anti-scab law. There is no ban on replacement workers even during lock-outs.
- Sectoral bargaining.
- A complete ban on companies that are in the business offering strike-breaking services to other firms.
- Reasonable access to company premises during organizing drives.
- The right to strike during the term of a collective agreement.
- An end to the use of court injunctions by employers.
- Eligibility for union membership extended to all workers except those who, on their own discretion, regularly exercise on behalf of management in matters respecting labour relations.
- An end to union membership exemptions for reasons of religion or conscience.
- The requirement to grant the union a vote on union representation if it can demonstrate 25 percent support of employees.
- Protection for all workers who refuse to cross picket lines or handle hot cargo.
- Removal of the six month waiting period between applications for certification.
- The requirement that the company provide the union with complete, accurate and current information about employee benefit plans, including eligibility, benefit levels, premiums, conditions and limitations.
- Removal of the Labour Relations Board's discretion to order votes on employer's offer.
- Removing the provision in the Act permitting unions to be sued (Section 29).
- No decertification of the union until one full term of a collective agreement has been completed.
- A requirement for employers to deduct and transmit any fine imposed on a member by a trade union, just as is done with union dues.
- The removal from the Act of all 1983 amendments contained in the Devine Government's Bill 104.

(Source: Saskatchewan Federation of Labour.
Reprinted with permission.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Unions and Employment</p> <p>Where a union exists in a workplace, the nature of the employment contract changes, from a contract between individual employee and individual employer, to that of collective agreement between the employees as an associated grouping and the employer. In Saskatchewan, approximately one in three workers belong to a union. A union represents the employee as the exclusive bargaining agent, negotiating a collective agreement with the employer governing rates of pay, working conditions and benefits of employees belonging to the union. The rules for setting up and operating a union are defined within <i>The Trade Union Act</i>. Union contracts generally provide benefits in employment standards beyond the minimum provisions applicable according to statute law.</p> <p>Human Rights and Employment</p> <p>Along with the provisions of <i>The Labour Standards Act</i>, <i>The Occupational Health and Safety Act</i> and <i>The Trade Union Act</i>, Saskatchewan workplaces are regulated under the terms and conditions of the <i>Saskatchewan Human Rights Code</i>, which identifies employment as one of the protected grounds under which discrimination is unlawful. As well, the <i>Code</i> identifies prohibited actions and protected categories under which discrimination is unlawful, with many of the categories frequently relating to workplace situations. These include freedom from:</p> <ul style="list-style-type: none"> • sexual harassment • racial harassment <p>As well, the <i>Code</i> protects individuals from discrimination on the basis of :</p> <ul style="list-style-type: none"> • ancestry, race or perceived race • religion • sex • marital status • disability • nationality and place of origin • age (18 - 64) • sexual orientation • family status • receipt of public assistance. <p>Employers can not discriminate on these grounds during the hiring process or during employment. This applies to interviews, advertising, application forms, hiring, wages, promotions, dismissals and employee benefits.</p> <p>The <i>Canadian Human Rights Code</i> provides similar protections for people working for, or applying to work for, industries that are federally regulated.</p>	<p>Unions</p> <p>Know that a union is an employees' association that deals with the employer on behalf of the employee regarding working conditions, wages and benefits.</p> <p>Collective Agreement</p> <p>Know that a collective agreement is a contract between an employer and a union representing the employees.</p> <p>Know that a collective agreement is binding on all parties to the agreement.</p> <p>Sexual Harassment</p> <p>Know that sexual harassment is any unwanted sexual conduct, either verbal or physical.</p> <p>Know that employers must protect their employees from sexual harassment in the workplace, and are legally responsible for the actions of employees while they are on the job.</p> <p>Racial Harassment</p> <p>Know that racial harassment is race discrimination, either verbal or physical, and can include negative comments, jokes, teasing, slurs or threats about someone's race or color, ancestry, nationality, place of origin, culture or religion.</p> <p>Know that employers must provide a discrimination-free workplace.</p> <p>Accommodation</p> <p>Know that accommodation is the responsibility of the employer, who must accommodate employees with mental or physical disabilities through modification to the physical or human environment.</p>

Skills/Abilities Objectives	Values Objectives
<p>Differentiate between working conditions in a unionized workplace and a non-unionized workplace.</p> <p>Identify a variety of potential forms of harassment in the workplace.</p> <p>Define the concept of harassment, and identify the elements of harassment in the workplace.</p> <p>Hypothesize solutions using statutory criteria as data.</p> <p>Become familiar with terms and definitions associated with unions and collective bargaining.</p> <p>Apply the vocabulary of the trade union movement to discussion of issues in the workplace.</p>	<p>Understand that existence of a collective bargaining unit influences the nature of the employment relationship.</p> <p>Appreciate the advantages to employees of a collective bargaining unit.</p> <p>Assess the advantages to employers of negotiating through a collective bargaining agreement.</p> <p>Respect the right of individuals to participate in trade union activities.</p>

Instructional Notes

1. See Student Handout 5.12 - Introduction to Unions for student background regarding trade unions.
2. Research section 2 (1) and section 3 of *The Occupational Health and Safety Act* for a statutory definition of workplace harassment and responsibility to prevent harassment in the workplace.
3. Identify the provisions for protection from violence in the workplace under *The Occupational Health and Safety Act*.
4. Examine the provisions related to employment in the *Saskatchewan Human Rights Code* (Does the Code provide adequate protections for human rights?)
5. Use Student Handout 5.13 - Coutroubis and I. Kekatos v. Sklavos Printing Case Study for application scenario regarding harassment in the workplace. Resolution of the case study follows on Teacher Information Sheet 5.10 – Coutroubis and I. Kekatos v. Sklavos Case Study.

Issues in the Law

1. Are some occupations so important to society's well being that strikes or lockouts should not be allowed to occur within such workplaces? What alternatives might exist to a strike or a lockout?
2. Should mandatory retirement be forced upon someone wishing to work beyond age 65 in Saskatchewan? On what basis should this decision be made?
3. Are the provisions adequate to protect the rights of Saskatchewan workers from discrimination within protected grounds? Explain.

Student Handout 5.12 - Introduction to Unions

In Saskatchewan, approximately one in three workers belong to a union. You have the right, as well as the responsibility, to learn more about how the union in your workplace works. This knowledge will enable you to participate more fully in your union's decision-making processes and to affect change in your workplace.

If there is a union at your workplace, and if your job is considered within the "scope" of the union, you must belong as part of the conditions of your employment. In Saskatchewan, the rules for setting up and operating a union are under *The Trade Union Act*.

What is a Union?

A union is an employees' association that deals with the employer on behalf of the employee about working conditions, wages and benefits. Workers in a workplace choose their union by a majority vote. The union then represents them as their exclusive bargaining agent.

What is a Collective Agreement?

The employer and the union negotiate a 'collective agreement' that covers the employees' working conditions in their workplace. This agreement is in writing and usually sets out the terms and conditions of employment around rates of pay, hours of work and other working conditions of employees. The 'collective agreement' usually provides additional protection and benefits over existing minimum standards set by workplace legislation such as *The Labour Standards Act*.

What is certification?

If a workplace does not have a union, workers can talk to their coworkers about organizing a union. Workers who agree to organize usually signify their support by signing a membership card. The union then applies to the Labour Relations Board (LRB) to be 'certified' as the exclusive bargaining agent. If more than 50% of the workers are in favour of the union, the LRB will usually 'certify' the union. If less than 50% of the workers are in favour of a union, a vote will be held. A union will be 'certified' if more than 50% of those voting are in favour of unionizing.

Unions must be 'certified' to represent or bargain on behalf of the workers in their workplace. *The Trade Unions Act* outlines the rules regarding what employers and employees can do during the 'certification' or 'decertification' process. The Labour Relations Board settles any disputes that may occur.

What is Decertification?

Union members can present a request to the LRB for the decertification of their union. This means that they want to disband the union. They must provide reasons for their request. A vote is held. If more than 50% of those voting are in favor, decertification of the union will occur.

What are the rights and responsibilities of the workplace parties in unionized workplace?

Employees

When workers start a job, they should ask their employer if the workplace is unionized and if their job is within the union. If, yes, they have rights and responsibilities about which they need to be aware. Employees have the right to:

- join and to organize a union
- be fairly represented by their union in a manner that is not arbitrary, discriminatory or in bad faith
- seek support from other union members to have a union certified or decertified.

Employees have the responsibility to:

- ask for a copy of the collective agreement
- know who is their union representative or shop steward
- keep current on union matters
- participate at union meetings
- vote on union issues
- support the decision of the majority
- not attempt to force workers into union activity.

Employers

Once a bargaining unit has been certified, employers have rights and responsibilities about which they should be aware. Employers have the right to:

- deduct union dues from employees' wages and submit these dues to the union
- negotiate working conditions, wages and benefits with the union certified in their workplace.

Employers have the responsibility to not:

- interfere with the attempts of his/her employees to organize a union
- interfere with or influence an employee's decision to join a union
- discriminate against an employee on the basis of union activity.

- threaten to move or shut down during a strike
- change workers' rate of pay or conditions of work without negotiating with the union
- not lock out workers while any issues are being dealt with by the Labour Relations Board, a board of conciliation or a special mediator.

Unions:

A union has rights and responsibilities in the workplace. Unions have the right to:

- to bargain collectively with the employer
- strike with a majority support of the workers voting by secret ballot.

Unions have the responsibility to:

- fairly represent all members without discrimination in any way that is arbitrary, or in bad faith, in grievance, rights, arbitration proceedings or wage negotiations
- not attempt to force a worker into union activity
- not interfere with workers seeking decertification of a union

strike while any issues are being dealt with by the LRB, a board of conciliation or a special mediator.

What are union dues?

Union dues are taken off your pay cheque. Union dues are used by the union to cover costs of a union office and services to the membership, such as bargaining on their behalf and representing members at disciplinary hearings. Rates vary with different unions, but are usually about 2-4 % of your gross pay.

What is a Lockout?

A lock-out occurs when the employer engages in an action, which closes his/her place of employment in order to compel employees to agree to terms or conditions of employment. A lockout usually causes the suspension of work, and sometimes can include a refusal by the employer to employ employees.

What is a Strike?

A strike is any concerted activity on the part of employees that is designed to restrict or limit output or the effective delivery of services by the employer. A strike occurs when employees in the bargaining unit, as a group, refuse to work or to continue to work for the purpose of getting the employer to reach an agreement with the union. A strike can occur only when a majority of the workers voting by secret ballot are in favour of the strike.

What is a Shop Steward?

A shop steward is a union member who is elected by a majority of the union membership to represent them in union matters such as disputes with the employer, disciplinary matters or grievances.

(Source: Saskatchewan Labour.)

Student Handout 5.13 - Coutroubis and I. Kekatos v. Sklavos Printing Case Study

The Facts

Coutroubis was a 17-year-old employee of Sklavos Printing. Sklavos, the owner, asked her to work late one Saturday; something that had not happened before. She phoned her mother who expressed concern, but she told her mother that she had to stay. She and Sklavos were the only two who remained at work. Sklavos jokingly said at one point that she was too young to have lost interest in boys. (Coutroubis had recently separated from her spouse.) Sklavos then entered the darkroom where Coutroubis was working, put his arms around her, and tried to kiss her. She resisted, but he succeeded. She screamed, then left for home. He asked her not to tell anyone, and said he would not do it again.

Kekatos had a similar experience. Sklavos made crude jokes, began touching her and, on one occasion grabbed her breasts. The two women related their stories to one another. Shortly afterwards, they left the firm to look for new jobs. They also made a complaint to the Ontario Human Rights Commission. They were able to find some part-time employment, but at a rate substantially lower than the printing job paid.

At hearings before the Commission's Board of Inquiry, Sklavos contended that he did not remember exactly what happened, that he did not believe that anything had happened and that he had done nothing wrong.

Questions to Consider

- What decision do you think the Board of Inquiry should come to? Give reasons.
- What remedy might you suggest if the Board should find in favour of the two women?

(Source: Public Legal Education Association of Saskatchewan. Reprinted with permission.)

Teacher Information Sheet 5.10 - Coutroubis and I. Kekatos v. Sklavos Printing Case Study

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Questions to Consider

- What decision do you think the Board of Inquiry should come to? Give reasons.
- What remedy might you suggest if the Board should find in favour of the two women?

The Judge's Decision

The Board of Inquiry said that Sklavos sexually harassed Coutroubis and Kekatos. The Board awarded them money to compensate for lost wages, and for mental anguish and humiliation. The Board had to be involved as the matter could not simply be resolved by an investigator. The Board had the power to order apologies, payment of damages and reinstatement of jobs. Here, it chose to compensate for the loss of wages from the time the two women left Sklavos's company until the end of the year. It also awarded each woman \$750 for humiliation and mental anguish.

(Source: Public Legal Education Association of Saskatchewan. Reprinted with permission.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Common Law of Employment</p> <p>Employment arrangements are addressed in the common law, in what has been known as the law of master and servant. This body of law refers to the nature of the employment contract, not the personal relationship of the people involved. The contract of employment, or contract of hire, may be permanent, continuing or fixed term, either written or verbal, and is binding both parties upon acceptance by the worker.</p> <p>Common law compels employees to:</p> <ul style="list-style-type: none"> • carry out reasonable instructions of the employer • be honest and courteous • be punctual • act in the best interests of the employer • have the skills and credentials claimed when hired, and exercise them in a competent manner. <p>The employer, under common law, has obligations including:</p> <ul style="list-style-type: none"> • provision of safe working conditions • not require unlawful conduct on the part of the employee • pay the agreed upon wage for the work performed. <p>These common law provisions are applicable to employment relationships, along with the statutory provisions of provincial governments. Most contracts of employment between individual employee and employer tend to be verbal in nature, although they may be formalized in written format as well.</p> <p>Under common law, the employer is liable for the actions of the employee when the employee is directly acting within the scope of assigned duties. Subsequently, if an employee commits a tort while involved in the scope of employment, the employer may be sued for the actions of the employee.</p> <p>Common law provisions also apply to the terms and conditions of termination of employment relationships, including areas of termination with notice, termination without notice and severance pay. Issues of wrongful dismissal, constructive dismissal and dismissal for misconduct are also addressed within the jurisdiction of common law, while also included within the statutory provisions of some provincial jurisdictions.</p>	<p>Master – Servant Relationship</p> <p>Know that under common law, the relationship between employer and employee has historically been known as a master-servant relationship, and currently is most often referred to as the employer-employee relationship.</p> <p>Third Party Liability</p> <p>Know that under the provisions of common law, an employer is liable for a tort committed by an employee during the course of duties.</p> <p>Right to Reason and Notice</p> <p>Know that all employment contracts, as an element of common law, contain tacit understanding that an employee will not be fired without reason or notice.</p> <p>Constructive Dismissal</p> <p>Know that making working conditions intolerable, in order to force an employee to quit, is called constructive dismissal.</p>

Skills/Abilities Objectives	Values Objectives
<p>Practise preparing written communication for a specific audience and purpose.</p> <p>Practise communicating to a specific audience.</p>	<p>Appreciate that, under law, the economic protection of individual interests has become increasingly more significant.</p> <p>Understand that an employer has a fiduciary duty of legal propriety in termination of employment relationships.</p> <p>Appreciate that an employer has liability for the actions of an employee during the course of employment duties.</p>

Instructional Notes

1. Research working conditions from 100 years ago, in order to illustrate the conditions of child labour at that time. The books, *Trouble at Lachine Mill* (pp.56-61) and *Mill Child: The Story of Child Labour in America* (pp.76-81), provide suitable accounts. Enter into discussion to determine if any parallels exist in the student workplace of the 21st century.
2. Have students write letters to personnel departments of companies in industries they are considering for career planning. Have students raise queries as to the expectations the company has for employees, the nature of contractual arrangements under which they engage new personnel and the trends in human resources from a legal perspective of their company. Many corporations operating in the province have industrial relations specialists within their corporate offices, with addresses accessible via the telephone directory.
3. Examine cases regarding constructive dismissal and the resulting court judgements; as illustration of the legal obligations of the employer to the employee. Case summaries are available in a variety of reference texts.

Issues in the Law

1. To what degree should an employer be held liable for the actions of an employee? Explain.
2. Are students in schools ever subject to constructive dismissal? Explain.
3. To what degree should the employee owe loyalty to an employee? An employee to an employer? Explain.

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Termination of Employment</p> <p>Every employment relationship will end at some point in time. Circumstances in which employment relationships end include:</p> <ul style="list-style-type: none"> • death • retirement • layoff • expiration of an employment contract • resignation • dismissal. <p>Resignation is the decision of the employee to end the employment relationship, and is binding upon provision of notice. In some provinces, the law requires that an employee provide notice of intention to resign to the employer, in order to facilitate the replacement of the employee with the least disruption to the workplace as is possible. In other provinces, including Saskatchewan, employees are not required to provide notice of intention to terminate the employment relationship, but common practice includes the provision of notice to the employer in advance of departure.</p> <p>Dismissal is the termination of the employment relationship by the employer. Such termination may occur with notice to the employee, or without notice, providing financial compensation in lieu of notice is paid when the termination occurs without cause.</p> <p>Terminations for cause, in which the employer terminates the employment relationship because of some wrongdoing by the employee, does not require notice be provided. However, in situations of termination for cause, other than theft, the employer must have warned the employee and provided the employee with a chance to change prior to termination. If not, the employee may seek remedy from the court alleging wrongful dismissal.</p> <p>Decisions by the courts regarding wrongful dismissal are specific to the circumstances of each individual action, and are based upon the common law and statute law of the jurisdiction.</p> <p>Employment Insurance</p> <p>Employers and employees pay a percentage of employee earnings to a fund established under the <i>Employment Insurance Act</i>, a federal statute that provides a temporary cushion against financial hardships of job loss. Those who are self employed, or are independent contractors, are not eligible to participate in the plan.</p>	<p>Mandatory Retirement</p> <p>Know that in Saskatchewan, age discrimination is a protected area of human rights only between the ages of 18 and 64.</p> <p>Disability</p> <p>Know that in Saskatchewan, it is unlawful for someone to discriminate against an individual on the basis of disability.</p> <p>Resignation</p> <p>Know that resignation is the act of an employee terminating an employment relationship.</p> <p>Dismissal</p> <p>Know that dismissal is the act of an employer terminating the employment relationship.</p> <p>Know that under the <i>Labour Standards Act</i>, minimum notice required for termination of employment is dependent upon an employee's length of service.</p> <p>Payment in Lieu of Notice</p> <p>Know that an employer may provide payment to an employee in lieu of notice, terminating the employment relationship immediately as a result.</p> <p>Termination for Cause</p> <p>Know that termination for cause occurs when an employer fires an employee for valid reason, such as chronic lateness, unwarranted absenteeism, theft, dishonesty, misconduct, incompetence or insubordination.</p> <p>Wrongful Dismissal</p> <p>Know that wrongful dismissal is a claim by an employee of firing without cause or notice.</p> <p>Know that a person wrongfully dismissed may sue for lost income, loss of future pension benefits, loss of future job prospects, emotional upset and punitive damages.</p> <p>Know that a court may award remedy to an employee wrongfully dismissed.</p>

Skills/Abilities Objectives	Values Objectives
<p>Differentiate between the variety of types of employment termination circumstances, and the applicable statute or common law associated with the termination.</p> <p>Apply the moral tests of:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. 	<p>Understand the duty of an employer to make reasonable accommodation for employees with physical or mental disabilities.</p> <p>Embrace the protections provided to disabled persons under protected grounds of <i>The Saskatchewan Human Rights Code</i>.</p>

Instructional Notes

1. Discuss termination of employment. Identify student experiences with the termination of employment relationships, based on personal experiences, those of family members and acquaintances or examples identified from media sources. Illustrate the need for legal protections for employers and employees in this regard.
2. Explore remedies provided by the courts in cases of wrongful dismissal. Explore reasons why the dollar values of Canadian settlements in this area of civil law are so significantly lower than those in the United States.
3. Identify common examples of accommodations made to address the needs of persons with disabilities in the workplace. Identify examples of areas requiring further accommodation in order to protect the rights of employees with disabilities.

Issues in the Law

1. What are the reasons for mandatory retirement provisions in the workplace? Is this a fair and just restriction of equality rights?
2. How much notice should an employee be required to provide prior to termination of an employment relationship? How much notice should an employer provide in such cases? Support your answer with both legal reasoning and moral reasoning.

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Issues in Employment and Labour Law</p> <p>The legal nature of the workplace of the 21st century promotes the interests of the employer and the employee, while reflecting societal values; however, many issues continue to evolve. From the perspective of the individual worker and organized labour, issues associated with minimum wage, part time work, implementing of technology in the workplace and pay equity and employment equity continue as matters of importance. From the perspective of the employer, issues such as the cost of payroll taxes (employment insurance and workers compensation premiums), the skills and productivity of employees and workplace regulation continue to be important. Individual citizens continue to be affected by issues of family and work, including child care, take home pay, health and medical insurance coverage, and flexibility of work scheduling.</p> <p>As Aboriginal peoples undertake more business ventures, issues of jurisdiction regarding unions, and statutory regulation of the workplace continue to evolve in First Nations enterprises.</p>	<p>Pay Equity</p> <p>Know that pay equity is a concept involving the payment of equal wages for work of equal value within the same workplace.</p> <p>Employment Equity</p> <p>Know that employment equity means equality of opportunity and equality of result in the recruitment, selection and retention of employees.</p> <p>Know that employment equity programs target those groups not getting equal benefit of result in the employment process.</p> <p>Payroll Taxes</p> <p>Know that payroll tax is a name given to the employers' cost of programs such as employment insurance, workers compensation, Canada Pension Plan and income tax.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • Performance – the ability to perform constructively, efficiently, and consistently in a variety of situations • Consequences – the acceptability of the consequences of applying the model to various situations • Accuracy – the ability of the model to predict future events accurately and consistently. <p>Apply research skills in gathering data useful to make judgements about an issue.</p>	<p>Understand that the body of law regarding employment is evolving as employment circumstances and workplaces change.</p> <p>Appreciate that independent contractors are not subject to the same relationship with the employer as is the employee.</p> <p>Recognize that women in the workplace of the 21st century often face disproportionate responsibilities for family care and homemaking matters in comparison with men.</p> <p>Embrace the rationale for, and necessity of, employment equity programs.</p>

Instructional Notes

1. Examine employment equity myths in the community.
2. Identify objectives of employment equity programs.
3. See Student Handout 5.14 - Equal Pay for provisions regarding pay equity, within Labour Standards.
4. Investigate the increased burden often placed upon women who work outside of their homes, in comparison with men. What might be some of the ramifications of these differences?
5. Review Student Handout 5.15 - Leaves of Absences for New Parents and Student Handout 5.16 - Maternity, Adoption and Parenting Provisions for data regarding legal obligations to parents as employees. Are these provisions appropriate? Explain reasons for answers.
6. Conclude the unit with the game show simulation: Knowing Your Rights and Responsibilities Can Pay Off. See Teacher Information Sheet 5.11 - The Rights Game and Student Handout 5.17 - The Rights Game for a game show simulation activity outline.

Issue in the Law

1. Why is pay equity protection an elusive condition for many members of the workplace in the 21st century?
2. Why do many women face additional burden in comparison with men, in terms of responsibilities for family care and homemaking? What alternatives are available in seeking solutions to this situation?

Student Handout 5.14 - Equal Pay

Male and female employees are entitled to equal pay when they perform similar work:

- in the same establishment
- under similar working conditions
- requiring similar skill, effort and responsibility.

"Similar" means "resembling in many respects" or "alike," although not necessarily identical. Exceptions can be made where payment is based on a seniority or merit system.

1. What makes work "similar"?

- a) Skill - the intellectual and physical abilities needed to do the work
- b) Effort - the quality and quantity of mental and/or physical activity needed to do the work (Doing different tasks occasionally should not make a difference in the rates of pay between male and female employees, if they usually do similar jobs.)
- c) Responsibility - the importance of the assigned duties, with emphasis on things like work performed, supervision of employees, accountability for equipment and safety
- d) Working Conditions – the conditions under which the employees do their work (This may include noise and other physical or psychological factors in the work place.)

2. When can pay rates differ? Different pay rates are allowed when based on:

- a) Seniority - a wage system that applies to all employees, and provides pay raises based on the length of service with the employer
- b) Merit - wage increases based on documented performance ratings or quantity produced (All employees should be told there is such a system for determining their wages.)
- c) Trainee programs - if such programs are equally available to males and females, and lead to their career advancement when completed

3. How are equal pay complaints dealt with?

The Labour Standards Branch investigates all equal pay complaints. If the complaint cannot be settled, it may be referred to the Saskatchewan Human Rights Commission.

Permits, Licences and Variances

The Labour Standards Act and Regulations sets out the minimum employment standards in the workplace. Since the rules cannot be made to fit every circumstance, variations from the rules are allowed, provided the appropriate permission is obtained. Employers must apply to the Director of Labour Standards for permission to deviate from the rules, or obtain the written agreement of the trade union representing the affected employees. The following authorizations or permits under *The Labour Standards Act* are available:

- a) averaging of hours permit (sections 7 and 9) (This permit allows an employer to average the hours of work of an employee, or group of employees, over a period of weeks, rather than be limited to eight hours per day or forty hours per week.)
- b) authorization to vary the rule that employees who work more than 20 hours per week get one day off per week or the two consecutive days off rule for retail workers (subsection 13(4))
- c) authorization to vary the requirement to post a work schedule or a change to the work schedule (section 13.1)
- d) authorization to vary the requirement for a meal break (section 13.3)
- e) authorization allowing a holiday shutdown for less than three consecutive weeks (section 31)
- f) authorization to agree to a holiday period without the employer having to give the employee four weeks of notice (section 32)
- g) authorization to move a public holiday to another day (section 40)
- h) authorization to permit the payment of wages during a strike on a day other than the day on which they would usually be paid (section 52)
- i) authorization to waive the requirement to provide notice of group termination (regulation 22)
- j) approval of living accommodation (regulation 33).

Questions for Consideration

1. How can an employer obtain one of the listed permits or authorizations?

An employer can request an application form from the Labour Standards Branch. The form should be completed and returned to the Labour Standards Branch for approval. If approved, the authorization will be returned to the employer. In most cases, the authorization must be posted in a location that is accessible to the employees affected.

- 2 Does the Director of Labour Standards need proof of employee support before authorizing a permit?

Before an authorization is granted, most permits require approval of the majority of employees affected. The employees must show their approval by signing the application form. In certain instances, a secret ballot can be arranged. Once a majority of employees agree to the permit, the permit may be issued for a specific number of employees and will only apply to those employees in the classifications affected.

3. Can a permit be revoked?

Any authorizations or permits that are issued can be cancelled at any time by the Director of Labour Standards. Should this occur, the employer will be notified in writing.

4. Can employees request that a permit be withdrawn?

Employees may request that the permit be withdrawn or cancelled. This request must be in writing and should outline the reason for the request. An investigation will be conducted to determine if the permit should be revoked. If the permit is to be revoked, the employer will be notified in writing.

5. Are there special rules if the employees are covered by a union agreement?

For authorizations A, C, D, F and G listed above, employers and the trade union representing the affected employees can agree to the variation without getting approval from the Director of Labour Standards.

Note: Such agreements still are subject to the specific terms and conditions of the Act.

6. How long is the permit in effect?

Permits authorized by the Director of Labour Standards may be granted for periods up to three years.

(Source: Saskatchewan Labour.)

Student Handout 5.15 - Leaves of Absence for New Parents

Parents of new children can get maternity, adoption or parental leave. Pregnant women can get an unpaid maternity leave of 18 weeks, and the primary caregiver of an adopted child can get an unpaid adoption leave of 18 weeks. Either of the child's parents can take an unpaid parental leave of 12 weeks. If the parent taking maternity leave or adoption leave also takes parental leave, the parental leave must be taken immediately following the maternity or adoption leave. Parents returning from maternity, parental or adoption leave must be re-employed in the same or a comparable job.

1. Who gets maternity, adoption or parental leave?

Full or part-time employees who are currently employed, and who have been working for at least 20 weeks in the 52 weeks before the day the leave is to begin, can get maternity, adoption or parental leave. Only the primary caregiver of an adopted child can get adoption leave. It is up to the parents to identify the primary caregiver.

2. How much notice must an employee give to an employer before taking maternity, adoption or parental leave?

Maternity Leave - An employee must give her employer written notice four weeks before the day her leave begins. The notice must include the day she plans to begin the leave and a medical certificate with the estimated date of birth. The estimated date of return to work should be included in the notice.

Adoption Leave - An employee must give the employer written notice four weeks before the day the child comes into his or her care. If the employee is unable to give proper notice, whatever notice is given by Social Services, the adoption agency or the birth parents, must also be given to the employer. The estimated day of returning to work should also be included in this notice.

Parental Leave - An employee must give the employer written notice four weeks before the leave begins. The notice must include the day he or she plans to begin the leave. If the employee is on maternity or adoption leave and is requesting parental leave, the written application must be submitted at least four weeks before the employee was to return to work. The new estimated date of return to work should be included in this notice.

3. Do employees on maternity, adoption or parental leave get wages?

No, but employees may get employment insurance benefits.

4. Can employees on maternity, adoption and parental leave continue participating in company benefit plans?

Yes. Employees on maternity, adoption and parental leave can continue participating in company benefit plans if arrangements have been made for the continuation. An employer may require the employee to pay the contributions required to maintain the benefits. Benefit plans that an employee can continue participating in while on leave include medical, dental, disability or life insurance, accidental death or dismemberment, registered retirement savings plan and other pension plans.

5. Must the employee give notice to the employer before returning to work at the end of the maternity, adoption or parental leave?

Yes. An employee must notify the employer, in writing, at least 14 days before the day the employee plans to return to work. An employer is not required to allow an employee to return until this notice is received.

6. Can an employee's pay be cut after maternity, adoption or parental leave?

No. An employee gets at least the same rate of pay with no loss of pension or similar benefits. Seniority continues to increase at the normal rate while an employee is on leave.

7. How does maternity, adoption or parental leave affect annual holidays?

Maternity, adoption and parental leave does not affect annual holidays. After returning from the leave, an employee gets the same annual holidays the employee would have received if the leave had not been taken. Annual holiday pay may be lower since it is a percentage of the previous year's earnings.

8. Must a woman be given modified duties if her pregnancy would unreasonably interfere with the performance of her job?

Yes. Where a woman's duties are modified, there can be no cut in wages or benefits. If there is no opportunity to assign modified duties, the woman may be required to commence maternity leave up to 13 weeks before the estimated date of birth.

9. What happens if an employee gets sick because of her pregnancy and has to leave work before her maternity leave is supposed to start?

If a pregnant employee can provide a medical certificate saying she must stop work for medical reasons, she may leave work immediately. She is not required to start her maternity leave at this time and can delay the start of her 18 week maternity leave up to the estimated date of birth.

10. Do pregnant employees get sick leave or disability benefits?

Yes, if the employer provides these benefits to other employees. Employers who provide sick leave benefits and/or disability benefits to employees must make sure that pregnant employees get these benefits when they are unable to work because of illness or injury, including pregnancy and pregnancy related illness. Employees must also get these benefits for the period of time after the birth of the child during which the employee is unable to work for reasons related to the birth of the child. An employer may request an employee to provide a medical certificate as evidence of her inability to work. Sick benefits may also be available through Employment Insurance.

11. When can maternity, adoption or parental leave be taken?

Maternity leave can start at any time during the 12 weeks before the estimated date of birth. If the employee did not give the employer four weeks notice before starting her leave, the 14 week leave can start at any time during the eight weeks before the estimated date of birth.

Adoption leave starts on the day the child becomes available for adoption.

Parental leave starts the day after the maternity or adoption leave ends. If parental leave is not being taken with maternity or adoption leave, the leave can be taken any time during the period from the month before the estimated date of birth to eight months after.

12. Can maternity leave exceed 18 weeks?

Yes. Maternity leave can be extended six weeks (for a total of 24 weeks) if there is a medical reason for not returning to work. A medical certificate is needed for this extension. Employers and employees can agree to a longer leave. To prevent misunderstanding, such agreements should be in writing.

13. What happens if a birth is delayed?

Women get at least six weeks of leave after the date of birth, even if this causes the total maternity leave taken to be more than 18 weeks.

14. Can an employee be fired because she is pregnant?

No. The law says "no employer shall dismiss, lay-off, suspend or otherwise discriminate against" an employee because she:

- is pregnant
- temporarily disabled because of pregnancy
- has applied for maternity leave.

(Source: Saskatchewan Labour.)

Student Handout 5.16 - Maternity/Adoption and Parental Leave Provisions

Type of Leave	Saskatchewan's Current Leave Provisions	Federal Employment Insurance Program Paid Benefits and Eligibility
	Eligibility and Notice Requirements (<i>The Labour Standards Act</i>)	(effective December 31, 2000)
Maternity	Length of leave - 18 weeks	Paid benefits – 15 weeks
Adoption	Eligibility requirement – employed with same employer for at least 20 weeks during the last 52 weeks preceding the leave Notice requirement – four weeks written notice prior to day leave begins; two weeks written notice before the day the employee plans to return to work	Eligibility requirement – eligible after 600 hours of employment Payment of benefits – benefits are payable no earlier than eight weeks prior to the estimated date of birth (maternity); or when the child comes into the care of the family (adoption)
Parental	Length of leave - 12 weeks Eligibility requirement – employed with same employer for at least 20 weeks during the last 52 weeks preceding the leave Notice requirement – four weeks written notice prior to day leave begins; four weeks written notice before the employee was to return to work if the employee is on maternity leave or adoption leave and is requesting parental leave; two weeks written notice before the day the employee plans to return to work	Paid benefits – 35 weeks Eligibility requirement – eligible after 600 hours of employment Payment of benefits – benefits are payable when child comes into the care of the family
Total (per year)	30 weeks leave	50 weeks paid EI benefits *

* Changes related to maternity/adoption and parental leave benefits were passed by the federal government in June 2000. Effective December 31, 2000, Employment Insurance provides 50 weeks of paid benefits, after a two-week waiting period (52 weeks in total).

Effective December 31, 2000, changes to the *Canada Labour Code* also ensures the period for job protection under the parental leave provision is consistent with the 52-week period of Employment Insurance Program benefits. The *Canada Labour Code* applies to federal government employees and private and public sector employees working in Saskatchewan in the following international and inter-provincial industries: air, rail, roads, pipelines, banking, broadcasting, uranium mining, shipping and ports and telecommunications.

(Source: Saskatchewan Labour.)

Teacher Information Sheet 5.11 - Game: Knowing Your Workplace Rights and Responsibilities Can Pay Off

Instructions

1. The objective of the Game is to win as much money as possible. The players do this by correctly answering the greatest number of questions. The game will help students understand that, as potential employers and employees, not knowing the labour standards that govern working conditions in Saskatchewan workplaces could mean a loss of money.
2. The game can be played individually or in groups. If played in groups, suggest students try to reach consensus in their group about the answer.
3. All questions are multiple choice. They are to choose the best answer.
4. If the time allotted to play the game is limited, players will need to determine the number of questions that can be asked in the time slot provided. It is recommended that at least two questions from each category be used.
5. Read each question aloud and provide the dollar amount assigned to the question. Groups or student can answer the question or pass. If the question is answered incorrectly the group or student lose the amount of money assigned to it. This amount is deducted from the amount of money they already have. If the question is correctly answered, the group or student wins the amount of money assigned to it. The individual or group with the greatest amount of money at the end of the session is the winner.
6. At the end of the game, debrief students by discussing:
 - How does *The Labour Standards Act* contribute to workers being treated fairly in the workplace?
 - Why is it important, as a potential employer or employee, to know your rights and responsibilities in the workplace?

(Source: Saskatchewan Labour.)

Category 1: Purpose and Scope of *The Labour Standards Act* (Each questions is valued at \$50.00)

Question	Answer
Which of the following workers are entitled to be paid minimum wage? a) farm workers b) workers working in their parents' gas stations c) casual babysitters d) bank tellers e) none of the above f) all of the above	e) none of the above All of the groups named are exempt from <i>The Labour Standards Act</i> . The groups who are exempt from <i>The Labour Standards Act</i> include: farm workers, employees in railways and airports, interprovincial pipelines, interprovincial transportation, radio and TV stations, banks, uranium mining, grain elevators, flour and feed mills, band councils on Indian reserves and casual babysitters.
I am 15 years of age and have been offered a summer job at my friend's convenience store. The job pays \$4.00/hour. My friend tells me, he can pay me less than minimum wage because I am underage and will be working part-time during the summer. Is this true? a) yes b) no c) maybe	b) no The only groups exempt from receiving minimum wage include farm workers, federal workers and casual babysitters who are exempt from <i>The Labour Standards Act</i> . Those who are exempt from the minimum wage provision include care providers and "persons with a physical or mental disability or impairment and who work for a non-profit organization or institution in programs that are educational, therapeutic or rehabilitative."
Which of the following are not governed by <i>The Labour Standards Act</i> ? a) annual holidays b) meal breaks c) coffee breaks d) sick leave	c) coffee breaks <i>The Labour Standards Act</i> sets minimum standards for annual and public holiday pay, sick leave, wages and hours of work. Coffee breaks are not covered by the Act.

Category 2: Hours of Work & Wages (Each Question is valued at \$100.00)

Question	Answer
How many unpaid meal breaks would a worker get if he/she worked 10 hours? a) 0 b) 1 c) 2	c) 2 Workers who are scheduled to work six hours or more are entitled to one half hour unpaid meal break within every five hours.
How much would a gas jockey making minimum wage earn after working 15 hours in a week? a) \$88.50 b) \$90.00 c) \$91.50 d) none of the above	Answer dependent upon current minimum wage.
A student gets a job working 20 hours per week at minimum wage in a restaurant. He is supplied with a uniform for which he must pay. A regular deduction of 2% of weekly gross earnings, including tips is taken off his paycheque. Does he have to pay for his uniform? a) yes b) no c) maybe	b) no An employer of employees in a restaurant, hotel, educational institution, hospital or nursing home that requires the employee to wear a uniform, other than a registered nurse, shall provide, repair and launder that uniform or special article of wearing apparel free of charge. The employer shall not make a deduction from the wages of the employee for providing, repairing or laundering that uniform or special article of wearing apparel. However, if the student worked for a gas station and was required to wear a uniform, he could be required to pay for his uniform.
After working 10 hours each day for three consecutive days in one week, a cashier earning \$7.00/hour is entitled to receive payment of: a) \$231.00 b) \$210.00 c) \$315.00 d) none of the above	a) \$231.00 The worker is entitled to 6 hours of overtime as well as her regular wage. Overtime is payable for most workers after they have worked 8 hours in a day at a rate of 1.5 the hourly rate. This worker worked 24 hours of straight time to earn $3 \times 8 = 24$ x \$7.00 = \$168.00 + 6 overtime hours at $6 \times \$7.00 \times 1.5 = \63 . Total wages earned for one week is \$168.00 + \$63.
Students must be 16 before they can get a job. a) true b) false c) it depends	c) it depends The minimum age at which employees may be employed in restaurants, hotels, educational institutions and nursing homes is 16. However, the Act does not define age limitations in other industries. There may be age restrictions in some industries where safety is a concern, such as mining and construction.

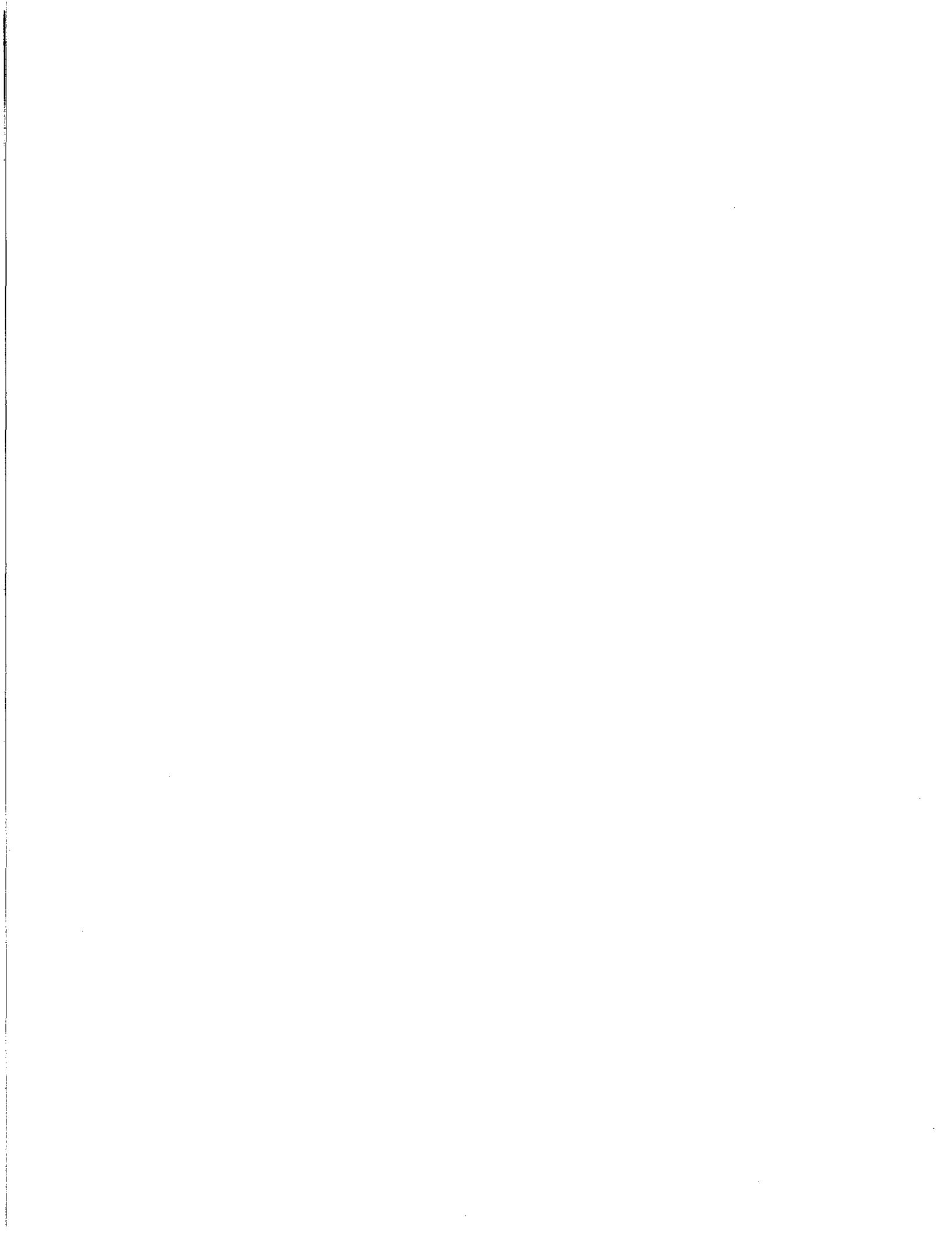
Question	Answer
If my employer changes the hours I work, he/she must tell me in advance. a) true b) false c) it depends	a) true Employer must provide posted work schedule identifying the hours workers are to work, when shifts begin and end and times for meal breaks over a period of one week. Employers must give at least one week's notice of a change in schedule, unless there is an unusual or unforeseen circumstance (emergency), then he/she can change the schedule.
A gas jockey earning minimum wage is scheduled to work 3-hour shifts on Tuesday, Wednesday and Friday evenings. In the last week, she was sent home after only two hours on two of those nights because business was slow. How much can she expect to earn for this week? a) \$18.00 b) \$21.00 c) \$54.00 d) \$42.00	c) \$54.00 Employees are entitled to receive a minimum payment of \$18.00 (minimum callout) every time their employer requires them to report for work (other than overtime) even if it turns out there is no work for them. If the employee does work, the employee must be paid either the minimum callout pay of \$18.00, or the employee's regular wages for the time worked. The gas jockey will receive \$18.00 for each day she worked only two hours (2 days x \$18.00) and her regular wage for 1 day (3 x \$6.00) \$18.00. Her total wage for this week will be (\$36.00 + \$ 18.00) = \$54.00. Students in regular attendance at school are exempt from minimum callout during the school term.
Only female employees working in a hotel after 12:30 a.m. are entitled to free transportation home. a) true b) false c) maybe	b) false An employer shall provide free transportation home for each employee, male or female working in a hotel, restaurant, educational institution, hospital or nursing home, who is required or permitted to finish work between the hours of 12:30 a.m. and 7:00 a.m.

Category 3: Payroll Administration (Each question is valued at \$200.00)

Question	Answer
An employer can deduct cash shortages and the cost to replace any goods I accidentally break or damage from my wages. a) true b) false c) maybe	b) false Only deductions required by law (CPP, Employment Insurance and Income Tax) or voluntary employee purchases can be deducted from an employee's wages. The employer may recover these costs if he/she takes the employee to court and wins.

Category 4: Holiday Pay (Each question is valued at \$300.00.)

Question	Answer
<p>As a casual employee, I am not entitled to receive annual holiday pay.</p> <p>a) true b) false c) maybe</p>	<p>b) false</p> <p>All employees, including part-time, casual, temporary or seasonal are entitled to annual holiday pay.</p>
<p>A security officer works part-time for a year and earns \$6000.00. Her annual holiday pay would be:</p> <p>a) \$346.15 b) \$300.00 c) \$360.00 d) \$0</p>	<p>a) \$346.15</p> <p>Annual holiday pay is calculated by multiplying the employee's total wages for a given 12 month period by 3/52. Total wage includes all salary, overtime, annual holiday pay, public holiday pay, commission, bonuses and any other payment for labour or personal service. This person will earn $(3/52 \times \\$4000.00) = \\346.15.</p>
<p>A student working for \$8.00/hour has earned \$400.00 over the past four weeks stocking shelves in a local grocery store. He worked 4 hours on Thanksgiving Day. How much money will he earn for that day?</p> <p>a) \$32.00 b) \$68.00 c) \$20.00 d) \$64.00</p>	<p>a) \$68.00</p> <p>Thanksgiving Day is a public holiday day in Saskatchewan. Most employees get 1/20 of their regular wages in the four weeks before a public holiday as public holiday pay, regardless of whether they work on that day. Employees who work on a public holiday are entitled to get public holiday pay plus premium pay (1.5 their regular wages for hours worked on that day). This employee will get \$20.00 holiday pay $(1/20 \times \\$400.00)$ plus \$48.00 premium pay $(4 \times \\$8.00 \times 1.5)$ for working on that day, for a total wage of \$68.00.</p>



Student Handout 5.17 - Game: Knowing Your Workplace Rights and Responsibilities Can Pay Off

Category 1: Purpose and Scope of *The Labour Standards Act* (Each question is valued at \$50.00)

Which of the following workers are entitled to be paid minimum wage?

- a) farm workers
- b) workers working in their parents' gas stations
- c) casual babysitters
- d) bank tellers
- e) none of the above
- f) all of the above

I am 15 years of age and have been offered a summer job at my friend's convenience store. The job pays \$4.00/hour. My friend tells me, he can pay me less than minimum wage because I am underage and will be working part-time during the summer. Is this true?

- a) yes
- b) no
- c) maybe

Which of the following are not governed by *The Labour Standards Act*?

- a) annual holidays
- b) meal breaks
- c) coffee breaks
- d) sick leave

Category 2: Hours of Work & Wages (Each Question is valued at \$100.00)

How many unpaid meal breaks would a worker get if he/she worked 10 hours?

- a) 0
- b) 1
- c) 2

How much would a gas jockey making minimum wage earn after working 15 hours in a week?

- a) \$88.50
- b) \$90.00
- c) \$91.50
- d) none of the above

A student gets a job working 20 hours per week at minimum wage in a restaurant. He is supplied with a uniform for which he must pay. A regular deduction of 2% of weekly gross earnings, including tips is taken off his paycheque. Does he have to pay for his uniform?

- a) yes
- b) no
- c) maybe

After working 10 hours each day for three consecutive days in one week, a cashier earning \$7.00/hour is entitled to receive payment of:

- a) \$231.00
- b) \$210.00
- c) \$315.00
- d) none of the above

Students must be 16 before they can get a job.

- a) true
- b) false
- c) it depends

If my employer changes the hours I work, he/she must tell me in advance.

- a) true
- b) false
- c) it depends

A gas jockey earning minimum wage is scheduled to work 3-hour shifts on Tuesday, Wednesday and Friday evenings. In the last week, she was sent home after only two hours on two of those nights because business was slow. How much can she expect to earn for this week?

- a) \$18.00
- b) \$21.00
- c) \$54.00
- d) \$42.00

Only female employees working in a hotel after 12:30 a.m. are entitled to free transportation home.

- a) true
- b) false
- c) maybe

Category 3: Payroll Administration (Each question is valued at \$200.00)

An employer can deduct cash shortages and the cost to replace any goods I accidentally break or damage from my wages.

- a) true
- b) false
- c) maybe

Category 4: Holiday Pay (Each question is valued at \$300.00.)

As a casual employee, I am not entitled to receive annual holiday pay.

- a) true
- b) false
- c) maybe

A security officer works part-time for a year and earns \$6000.00. Her annual holiday pay would be:

- a) \$346.15
- b) \$300.00
- c) \$360.00
- d) \$0

A student working for \$8.00/hour has earned \$400.00 over the past four weeks stocking shelves in a local grocery store. He worked 4 hours on Thanksgiving Day. How much money will he earn for that day?

- a) \$32.00
- b) \$68.00
- c) \$20.00
- d) \$64.00

Category 5: Termination (Each question is valued at \$500.00)

A salesman earns \$10.00/hour working 40 hours/week in a computer store. After two years, he was laid off without any notice. How much severance pay should he receive?

- a) \$400.00
- b) \$800.00
- c) \$0
- d) \$1200.00

An employer can terminate an employee without any notice:

- a) before the completion of one month of employment
- b) before the completion of two months of employment
- c) before the completion of three months of employment
- d) before the completion of four months of employment

Employees must give their employers notice when they leave their jobs.

- a) true
- b) false
- c) maybe

(Source: Saskatchewan Labour.)

Unit Six - Contract Law



"The law of contracts is concerned with expectations induced by the conduct of others."

S.M. Waddams

Overview – Unit Six: Contract and Consumer Law

The law of contract has developed as a result of increased complexity of commercial transactions. Until the 17th century, dispute between parties in the exchange of goods or services could be addressed only under tort law. However, as commerce increased and the range of products and services expanded, the need for specific law dealing with contracts became apparent, and the case law of contracts began to develop. The law of contract can be viewed as harsh and individualistic; however, not always addressing those issues seen as significant to the public good. As a result, governments have developed statute law to address matters such as consumer purchases, residential rental agreements, and ownership of copyright, patents, or trademarks. The statute law has been developed in the public interest, in order to afford protection for individuals against potentially more powerful business interests. The advent of the digital era poses new challenges and new circumstances against which the common law of contract and the statute law protecting consumers must be applied, practiced, refined and evaluated. Students will examine the nature, origins and sources of contract law, and assess current statute law in terms of its effectiveness.

Resources and Resource-Based Learning

Resource-based learning is an integral part of all units. The bibliography developed to support this curriculum will assist you in incorporating a variety of resources from different media into each unit. This annotated bibliography should be available from your teacher-librarian or the Learning Resource Distribution Centre. The bibliography contains annotations of current, useful resources including print, video, Internet sites, and other media selections. Teachers are encouraged to assess their current resource collection, identifying those that continue to be useful, and to acquire small quantities of each new title, rather than class sets, in order to provide students with a broad range of perspectives and information.

The following list of evaluated resource titles provides a starting point for developing a resource collection that is current and relevant, and that addresses students' various learning styles and abilities. Please refer to *Law 30 The Law and You: A Bibliography*, for a complete list of resources giving the full citation, annotation, and ordering information. Please note that many of these resources can be ordered through the Learning Resource Distribution Centre (<http://lrdc.sasked.gov.sk.ca/>). Videos may be available from Media Group (<http://www.sasked.gov.sk.ca/video>). At the time of publication all of the resources listed below and in the bibliography were in print and available.

Please note that LRDC will be closing effective March 31, 2003. If you need assistance acquiring Saskatchewan Learning materials after that date, please contact 787-5987.

Print Resources

Canadian Legal Guide for Small Business
Critical Concepts of Canadian Business Law
Cyberlaw Canada
Fundamentals of Contract Law
Make It Legal: What Every Canadian Entrepreneur Needs to Know about the Law

Non-Print Resources

Understanding the Law: The Coat
Understanding the Law: The Worm

Internet Sites

The following sites provide a brief overview of available websites. These sites were checked for availability in March 2002. To access formally evaluated sites that have been linked to the curriculum visit the Evergreen Curriculum at the Saskatchewan Learning website <http://www.sasked.gov.sk.ca/>.

Incorporating Current Events

Incorporating current events enhances students' understanding of the concepts under study and extends their learning experiences by relating the events to real life and making them more relevant. Sources for current event stories include newspapers, newsmagazines, daily and weekly television and radio newscasts, documentaries, and the Internet. Many Canadian daily newspapers are available online and are a useful source of current events. Select articles and news items to support the objectives and concepts as often as possible, and encourage students to contribute also.

Learning Objectives

Learning objectives of two types are identified for Law 30, including Foundational Objectives and Specific Learning Objectives. Foundational Objectives are designed to guide instruction and student learning throughout each unit of study, and indicate the broad learning outcomes in terms of content, skills and abilities, and values. Specific Learning Objectives identified in each lesson of the unit are designed to help students achieve the Foundational Objectives. The core Specific Learning Objectives are identified in bold font. This makes timelines for each lesson and unit flexible. Teachers can choose to focus on the core Specific Learning Objectives only, or to have students strive to achieve all of the stated Learning Objectives.

Objectives to achieve the Common Essential Learnings (C.E.L.s) are identified using the following abbreviations:

Communication	COM
Critical and Creative Thinking	CCT
Personal and Social Values and Skills	PSVS
Independent Learning	IL
Numeracy	NUM
Technological Literacy	TL

Foundational Objectives

Knowledge/Content	Skills	Values
<ul style="list-style-type: none">• Know the elements of a valid contract. (COM)• Know the position of minors in contract law. (CCT, COM)• Know that consumer protection exists as statute law. (CCT, COM)	<ul style="list-style-type: none">• Apply criteria for valid contract to common consumer transactions. (CCT, COM)• Differentiate between statutory warranties and express warranties. (COM, CCT)• Demonstrate application of the consumer complaint process in the retail industry. (PSVS, CCT, COM)	<ul style="list-style-type: none">• Appreciate the necessity of contracts. (CCT, PSVS)• Appreciate the value of consumer protection statutes. (CCT, COM, PSVS)• Assess the effectiveness of statute law in providing protection to consumers. (CCT, PSVS)

Content (Teacher Information)	Concepts and Knowledge Objectives
<h3>The Nature of Contract Law</h3>	<h3>Contract</h3>
<p>When parties intend to enter legal agreements, and meet certain criteria in the process of defining the nature of such agreements, contracts are formed. A contract is a process of negotiation of private rights and obligations between parties to a contract. These agreements may be written or verbal, or may be completed through actions of the parties involved. Individuals form contracts when they undertake common consumer transactions, whether as buyers or sellers, lessors or renters. The purpose of the law of contracts is to protect the reasonable expectations of the parties involved in an agreement, through application of contract law, and to provide an avenue for dispute settlement according to the rule of law. Under common law, only parties to a contract are entitled to contractual rights.</p>	<p>Know that a contract is a voluntary agreement between two or more parties, that creates a legal relationship and creates legally enforceable obligations upon the parties to a contract.</p>
<h3>Origins of Contract Law</h3>	<h3>Common Law</h3>
<p>Contract law developed to fulfill the need to resolve disputes in business transactions. Until the 17th century, the only legal remedy for individual commercial disputes was through the law of torts, whereby an individual could undertake tort action for harm caused by failure to repay debt. As commercial transactions increased in volume and complexity, the need to recognize a legal relationship in the exchange of goods and services became more apparent. In the latter 17th century, judges began to hear increasing numbers of cases regarding commercial transactions, resulting in the genesis of contract law.</p>	<p>Know that as individual cases were recorded over time, the common decisions of the courts came to constitute that body of law known as the common law of contract.</p>
<h3>Sources of Contract Law</h3>	<h3>Privity</h3>
<p>In all Canadian provinces and territories other than Quebec, contract law is based on English common law. In Quebec, the <i>Civil Code</i> governs contract law, with its main elements derived from common law. Very little contract law originates from legislated statutes, with statutes developed only in response to perceived shortcomings with existing case law. In Saskatchewan, as in many other jurisdictions in Canada, statute law has evolved particularly in relation to consumer protection matters.</p>	<p>Know that under common law doctrine of privity, only parties to a contract can enforce a term or condition of a contract.</p>
<h3>Elements of a Contract</h3>	<h3>Statute of Frauds</h3>
<p>A contract is an intention to create legal relations between parties, and must include certain elements in order to meet the criteria of a contract. Along with the intention of parties to create a legal relationship, a contract must include:</p> <ul style="list-style-type: none"> • offer • acceptance • consideration. 	<p>Know that an early example of statutory contract law was the <i>Statute of Frauds</i>, enacted in England in 1677.</p>
	<p>Know that some principles of the <i>Statute of Frauds</i> remain within contract law in Canada, including stipulation that the following types of contracts must be in written format:</p> <ul style="list-style-type: none"> • contracts for sale of land • contracts with obligation beyond one year • contracts whereby one promises to pay the debt of another • promise of an executor to pay the debts of a deceased • contracts for gifts in consideration of marriage.
	<h3>Offer</h3>
	<p>Know that an offer is a specific serious proposal, that, if accepted, leads to a contract.</p>
	<h3>Acceptance</h3>
	<p>Know that acceptance of an offer must include three aspects:</p> <ul style="list-style-type: none"> • it must be communicated clearly or indicated by action • it must occur in a fashion specified in the offer • it must be unconditional, without changes.
	<h3>Consideration</h3>
	<p>Know that consideration must include something of value given and received by each party.</p>

Skills/Abilities Objectives	Values Objectives
<p>Create a hypothetical contract, including elements of offer, acceptance and consideration.</p> <p>Assess common consumer contracts to identify the elements of a contract.</p> <p>Distinguish the differences between written, verbal and implied contracts.</p> <p>Differentiate between a contract and a social invitation.</p> <p>Identify the kinds of contracts that must be in writing.</p>	<p>Appreciate the private nature of contract law.</p> <p>Appreciate that the <i>Statute of Frauds</i> ensures the formality of certain types of contract.</p> <p>Appreciate the private nature of contract law.</p>

Instructional Notes

1. Have students list all of the contracts they have entered into in the previous week. Have them examine each to illustrate presence or absence of validity of the contracts.
2. Examine common consumer contracts, such as the type used by a video rental outlet, a record club, movie theatre, credit card promotion, or other contract. Have students identify each of the elements of the contracts, and any additional conditions included in the contract.
3. Teachers may choose to engage students in a performance contract as a means of illustrating and applying the elements of a valid contract.
4. Assess common consumer contracts to determine whose interests are being protected in the contract, the consumer or the retailer.
5. Examine why the *Statute of Frauds* has developed as an element of contract law.

Issues in the Law

1. How might the law of contract be affected by changes in technology?
2. Why are contracts needed in society?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Capacity to Contract</p> <p>According to common law, not all individuals are legally entitled to enter into contractual agreements. A diminished capacity to contract is applied to minors (those below statutory age of majority, which in Saskatchewan is 18 years of age), persons with mental disability and intoxicated persons. The intent is to protect individuals who may not have the ability to make decisions in their own best interest.</p>	<p>Capacity</p> <p>Know that capacity to contract requires understanding of the nature and effect of actions, as well as the legal ability to form a contract on one's own behalf.</p>
<p>Genuine Consent</p> <p>According to the common law, consent to a contract must be genuine. The common law calls this <i>consensus ad diem</i>, or a meeting of the minds. The contract must not occur under any of the following circumstances:</p> <ul style="list-style-type: none"> • misrepresentation • mistake • duress • undue influence. <p>When genuine consent is proven to be absent from a contract, the court may rescind the contract.</p>	<p>Genuine Consent</p> <p>Know that under the common law concept of <i>consensus ad diem</i>, there must be a meeting of the minds whereby parties to a contract have a mutual understanding of the terms of a contract, and intend to be bound by the terms.</p> <p>Misrepresentation</p> <p>Know that when a statement about a material fact, or key piece of information relating to a contract, is communicated creating a false impression, misrepresentation has occurred and genuine consent has not occurred.</p> <p>Know that misrepresentation may be innocent and unintended, or may be fraudulent and intentional.</p>
	<p>Mistake</p> <p>Know that a contract may be considered invalid in the event that any of three types of mistake occur:</p> <ul style="list-style-type: none"> • common mistake, whereby both parties to a contract are in error about the same key fact relating to the contract • mutual mistake, whereby both parties to a contract have different understanding of the material subject of the contract • unilateral mistake, whereby one party to a contract makes a mistake which will unfairly advantage the other party to a contract. <p>Duress or Undue Influence</p> <p>Know that a contract may be deemed lacking genuine consent, and be void, if threats or violence has influenced a party to the contract, or if a party to the contract has been in any other way improperly pressured into the terms of a contract.</p>

Skills/Abilities Objectives	Values Objectives
<p>Define and provide examples of necessities as they apply to minors entering contracts.</p> <p>Identify the elements necessary to illustrate genuine consent.</p>	<p>Examine why the concept of genuine consent is an essential element of a contract.</p> <p>Appreciate that common law governing capacity to contract provides protection to individuals who may not have the capacity to make decisions in their own best interests.</p>

Instructional Notes

1. See Teacher Information Sheet 6.1 - Minors and Contract Law for detailed information about the capacity of minors to contract.
2. Invite a lawyer to speak to students regarding minors and contract law.
3. Have students hypothesize and create scenarios reflecting contracts that may be set aside by the court because of misrepresentation, mistake, duress or undue influence.

Issues in the Law

1. Should the law of contract be modified in terms of age of consent for entering a contract? Why is the current provision in place regarding minors and contracts?
2. What is the legal position of the parties to a contract in the event that a minor (who is party to the contract) misrepresents his or her age?

Teacher Information Sheet 6.1 – Minors and Contract Law

Young people have a unique place in law. They are not yet adults, but they are developing many of the skills and abilities of adulthood. They are entitled to many of the same rights as adults, and can be held to many of the same responsibilities. They will not; however, always be treated in the same way as adults. This unique place in law is generally founded on two beliefs:

- that children do not have the ability to properly evaluate their options and make sound decisions
- that it is the parent's role in the family to guide and make decisions for their children.

In Saskatchewan, "the age of majority," the age at which people become adults in the eyes of the law, is 18. Each province determines its own age of majority, and can restrict the rights and responsibilities that go along with it. In Saskatchewan, upon reaching the age of majority, a person generally has the right to vote, get married, enter into contracts and otherwise participate fully in society.

Contract law provides special protection to minors. A contract can be defined as an agreement that the law will enforce. Generally, individuals under the age of 18 cannot be held liable for contracts that they enter into, unless the contract is for the "necessities of life" or the minor has derived a real advantage from it. Contracts that take unfair advantage of minors, or are not in their best interests, have no legal effect.

Necessities usually include things such as food, shelter, education and medical services, but can include a host of other things, depending on the circumstances. Saskatchewan law defines necessities as goods suitable to the condition of life of the minor and his actual requirements at the time of the sale and delivery.

Minors have the option of canceling contracts for non-necessities. This affords minors some protection against reckless or imprudent acts, but the law balances this special protection for minors against legitimate business interests.

For example, a minor may be tempted by a rent-to-own offer for a CD or video game player. The minor may come up with the required down payment and take the equipment home after entering into a contract that requires payments, plus interest, over time. After using the equipment for a week, the minor might regret the purchase for any number of reasons. While the minor cannot be held to the contract, he or she must return the merchandise.

And, the seller may have a right to keep some or all of the down payment to compensate for the benefit the minor obtained during the time he or she had possession of the merchandise.

Generally, when young people are considered mature enough (by law) to engage in "adult" activities, they will be subject to the same rights and responsibilities as adults. However, these rights and responsibilities may be modified by the underlying principle of law that states that young people require special guidance and protection. The special protection that contract law provides to minors is just one such example.

(Source: Public Legal Education Association.
Reprinted with permission.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Illegal Contracts</p> <p>In order to be a legally enforceable contract, the requirements of an offer, acceptance, consideration and genuine consent must be present, along with the intention to create an agreement that is legally binding. However, there are certain types of contracts that are void and unenforceable even when these criteria have been satisfied. Such contracts are considered illegal contracts, and include:</p> <ul style="list-style-type: none"> • contracts violating statute law • contracts against public policy. 	<p>Violation of Statute Law</p> <p>Know that a contract that violates the statute law is considered illegal and void. Examples of such contracts may include any contract requiring a party to breach the Criminal Code or Competition Act, or any other statute.</p>
<p>Ending a Contract</p> <p>In most cases, a contract is completed, or discharged, when both parties have completed their obligations under the terms of the contract. This is known as discharge by performance. However, contracts may also end in other manners, including by:</p> <ul style="list-style-type: none"> • agreement, whereby parties to a contract agree to release each other from contractual obligations • impossibility of performance, whereby conditions change to the extent that contractual fulfillment cannot result in the original intentions of the parties to a contract • breach of contract, whereby one party fails to fulfill obligations agreed upon in the contract. 	<p>Violation of Public Policy</p> <p>Know that a contract that is against public policy is one that is contrary to the interests of the general public, and is considered void. Examples of such contracts are rare, but include those that promote unnecessary litigation (in order to generate publicity), or are illegal.</p> <p>Discharge</p> <p>Know that the completion of a contract is called discharge.</p>
<p>Legal Remedies</p> <p>When a situation arises such that one party breaches a contract, the other party to the contract may apply to the court for a remedy. The courts may choose to:</p> <ul style="list-style-type: none"> • award damages to the injured party, although it is the obligation of the injured party to attempt to lessen or mitigate any damages where possible (the most common result) • order specific performance, whereby the court may order completion of an original contract • order an injunction, compelling a party to do, or not to do, some particular action associated with the contract. <p>In Canada, the law of contract focuses primarily upon private ordering between parties. The practice of the court is to stay out of private business dealings, to be involved only when necessary to provide interpretations and remedies according to the rule of law.</p>	<p>Discharge by Performance</p> <p>Know that completion of all obligations by parties to a contract results in discharge by performance, ending the contract.</p> <p>Mutual Agreement</p> <p>Know that when parties to a contract mutually agree not to complete a contract, the result is discharge by mutual agreement.</p> <p>Frustration</p> <p>Know that in the event of circumstances making completion of contractual obligations impossible, a contract is discharged by frustration.</p> <p>Breach of Contract</p> <p>Know that when one party fails, without legal cause, to complete obligations under a contract, the contract is discharged by breach of contract.</p> <p>Know that a party to a breach of contract may seek a remedy from the courts.</p>

Skills/Abilities Objectives	Values Objectives
Identify remedies available in situations where a contract has been breached.	Appreciate that the court will not validate any illegal contract.
Apply criteria of valid contracts to determine legality of a contract.	Appreciate the nature of contract law as private law, representing the interests of the parties to a contract.

Instructional Notes

1. Have students identify examples of illegal contracts. Begin by reviewing elements of a contract, and speculate on the consequences of an illegal contract.
2. Have students create and present scenarios of contracts ending in frustration.
3. Engage students in a contract they construct regarding some aspect of their Law 30 class. Conduct a mock trial in the event of a breach of a contract.

Issues in the Law

1. Is the cost of litigation a barrier to individual access to justice in contract law? Explain and/or give examples.

Content (Teacher Information)	Concepts and Knowledge Objectives
<h3>Consumer Contracts</h3> <p>While the law of contract is founded within the common law, statute law has been developed in order to clarify and to protect the interests of consumers against potentially more powerful commercial interests. Statutes associated with consumer protection are designed to provide a remedy to the consumer, that is not provided via the common law. One feature of statute law in consumer protection legislation is the absence of privity, allowing a consumer to hold a retailer accountable for a product, even if a third party supplier manufactured the product. At the provincial level, consumer protection legislation addresses issues related to the actual goods exchanged, while federal legislation addresses issues of pricing and advertising of goods and services.</p>	<h3>Caveat Emptor</h3> <p>Know that under common law principles, the rule of law is <i>caveat emptor</i>, meaning let the buyer beware and that consumer protection legislation has been enacted in Saskatchewan, and elsewhere in Canada, to mitigate the harshness of <i>caveat emptor</i>.</p>
<h3>Consumer Protection</h3> <p>In Saskatchewan, consumer protection is legislated under <i>The Consumer Protection Act</i>, while several other statutes impact upon the transactions between buyers and sellers, depending upon the specific nature of the transaction. Statutes such as <i>The Direct Sellers Act</i>, <i>The Collection Agents Act</i>, <i>The Agricultural Implements Act</i> and <i>The Motor Dealers Act</i> also affect the buying and selling of consumer products, although each is very specific in scope according to the specialized nature of a transaction. Application of <i>The Consumer Protection Act</i> is limited to transactions between consumers and those normally in the business of selling consumer goods and services. Provisions offered under <i>The Consumer Protection Act</i> address:</p> <ul style="list-style-type: none"> • protection from unfair marketplace practices • consumer product warranties • unsolicited goods and credit cards. <p>Remedies available to the consumer are detailed within the statute, but are predicated upon one distinct feature, the consumer must attempt to personally resolve a matter prior to addressing the matter in court. In cases where there is no satisfactory resolution reached between the parties, a consumer may then seek relief, usually through Small Claims Court, asking the court to enforce a judgement under <i>The Consumer Protection Act</i>.</p>	<h3>Absence of Privity</h3> <p>Know that under consumer protection legislation, the doctrine of privity is set aside, allowing a consumer to seek redress from a retailer even if products are unsatisfactory due to a manufacturer's fault.</p>
<h3>Warranties</h3> <p>When consumer purchase of a product occurs, the product automatically has a statutory warranty attached to it under Saskatchewan's <i>Consumer Protection Act</i>. While many consumer products may also have a written warranty from a manufacturer, the statutory warranty remains in effect by law. This statutory warranty is not optional, and applies to all consumer products sold in Saskatchewan by those individuals whose ordinary business it is to sell consumer products.</p>	<h3>Consumer Protection Act</h3> <p>Know that public interest has lead to statutes intended to mitigate the harshness of <i>caveat emptor</i>, in the form of consumer protection legislation.</p> <p>Know that in Saskatchewan, <i>The Consumer Protection Act (1996)</i> provides statute law that will be enforced by the court.</p>
	<h3>Right of First Remedy</h3> <p>Know that under Saskatchewan law, a supplier of a good or service must be afforded the first right to remedy the consumer complaint, prior to any court-imposed remedy being provided.</p>
	<h3>Unfair Practices</h3> <p>Know that under <i>The Consumer Protection Act (1996)</i>, Part II, it is unlawful for a supplier of goods or services to deceive, mislead, make a false claim or to take advantage of a consumer who is not in the position to protect his or her own interest.</p>
	<h3>Statutory Warranty</h3> <p>Know that in Saskatchewan, statutory warranty under Part III of <i>The Consumer Protection Act (1996)</i> provides that:</p>
	<ul style="list-style-type: none"> • ownership is assured without undisclosed liens or other claims • the goods must be of acceptable quality • the goods must be reasonably durable and fit the specific purpose stated, as well as their usual purpose • the product must match its description and the quality of any sample shown • spare parts and repair facilities must be available for a reasonable period of time, although not necessarily within Saskatchewan.

Skills/Abilities Objectives	Values Objectives
<p>Select and apply criteria in making judgements. Compare and contrast statutory and manufacturers' warranties.</p>	<p>Contemplate the adequacy of Saskatchewan's consumer protection legislation.</p>

Instructional Notes

1. See Student Handout 6.1 - Consumer Rights and Responsibilities for an overview of the philosophy of Saskatchewan's consumer protection legislation. Examine the statement of rights and responsibilities and assess them. Is the list adequate? Whose interests are being served with this approach? Have students provide evidence from the list to support the position taken.
2. See Student Handout 6.2 - A Summary of *The Consumer Protection Act* for detailed information regarding the consumer protection statutes in Saskatchewan. Have students identify examples of situations relating to the provisions of the Act.
3. See Teacher Information Sheet 6.2 - *The Consumer Protection Act*, for detailed background information regarding specific aspects of the consumer protection statutes and warranties. Use the data to engage students in a discussion of what constitutes fair practices in the marketplace. See also Student Handout 6.3 - Sellers' Responsibilities, for data.
4. Engage students in discussion regarding the purchase of a used automobile. Brainstorm factors that should be considered when entering the used car market. See Student Handout 6.4 - Buying a Used Car for details regarding the legal aspects of used-car purchases. Please note that *Life Transitions* curricula addresses the financial and personal planning aspects of purchasing an automobile, and this suggestion is meant to serve as a compliment for students who may be enrolled in both courses.
5. Engage students in discussion to draw out their perceptions about the law as it applies to retail purchases. Present the Student Handout 6.5 - Buying from a Retailer and Student Handout 6.6 - Returning Stuff. Compare the student perceptions to the reality of the law in Saskatchewan.
6. Ask students if they have ever made mail order purchases. Have them share experiences of both the positive and unsatisfactory nature. Check student perceptions regarding their views of the law in such matters. Provide Student Handout 6.7 - Buying Through the Mail as a means of assessing the reality against the perception.
7. Have students investigate the legal issues associate with Internet purchases.
8. Have students examine a number of different product warranties provided by manufacturers. Have students compare the product warranties to the statutory warranty provided in Saskatchewan law.
9. Engage students in a discussion of rental accommodation to illustrate their perceptions of rights and responsibilities of landlords and tenants. Next, provide Student Handout 6.8 - Landlord and Tenant - Frequently Asked Questions as a source of factual data to be used in comparing the perceptions with the reality of Saskatchewan law. Provide Student Handout 6.9 - Resolving Landlord Tenant Disputes as further data, if useful.

Issues in the Law

1. Should statute law protect consumers from the concept of *caveat emptor* (buyer beware)?
2. Do product warranties favour the consumer or the seller? Explain.

Student Handout 6.1 - Consumer Rights and Responsibilities

Consumer Rights

- The right to safety and protection from hazardous goods or services.
- The right to be informed and protected against fraudulent, deceitful or misleading practices, and to have access to accurate information and facts needed to make informed choices and decisions.
- The right to choose and have access to a variety of products and services at fair and competitive prices.
- The right to be heard, and to express and represent, consumer interests in the making of economic and political decisions.
- The right to consumer education, and to become a skilled and informed consumer capable of functioning effectively in the marketplace.
- The right to redress and to be compensated for misrepresentation, shoddy goods or unsatisfactory services.

Consumer Responsibilities

- The responsibility to be aware of, and alert to, quality and safety of goods and services before you buy.
- The responsibility to think independently and make decisions on real needs and wants.
- The responsibility to speak out and complain and inform businesses and other consumers in a fair and honest manner of your dissatisfaction or satisfaction with a product or service, and to communicate to manufacturers and governments your expectations of the marketplace.
- The responsibility to be an ethical consumer by not engaging in dishonest practices, which cost all consumers money.
- The responsibility to respect the environment to avoid waste, littering and contributing to pollution.

(Source: Consumer Protection Branch,
Saskatchewan Justice.)

Student Handout 6.2 - A Summary of The Consumer Protection Act

Unfair Practices

The *Act* makes it an offence for a supplier (retailer or distributor) to engage in an unfair practice and provides authority for the Director of Consumer Protection to take action before someone has actually suffered a loss as a result of an unfair practice. For example, it is an unfair practice for a supplier to:

- do or say, or fail to do or say, anything that may result in a consumer being deceived or misled, such as knowing there is a substantial defect in the product or service, of which the consumer is unaware, or using exaggeration, innuendo or ambiguity
- make false claims, such as a claim that goods or services are available if the supplier has no intention of supplying them or has no reasonable grounds for believing they will be available, or a claim that a price benefit or advantage exists, if it does not
- take advantage of a consumer who is not in a position to protect his or her own interests, such as a consumer's inability to understand the transaction, or including terms or conditions that are harsh or excessively one-sided
- exert undue pressure on a consumer to enter into a transaction
- charge a price that is grossly above the price being offered for similar products or services.

Remedies

By providing a series of options such as mediation, the *Act* encourages and provides remedies for consumers and businesses to resolve their own disputes without proceeding to litigation or charges. If these efforts fail, the *Act* provides for a series of remedies, depending on the severity of the breach.

For example, it provides for:

- the director to take action on behalf of disadvantaged or vulnerable consumers, including an action where the unfair practice occurred outside Saskatchewan
- voluntary agreements for compliance between a supplier and the director
- the court to order restitution
- an application by the director to the court for an injunction.

Warranties

Under Part III of the Act, Consumer Products

Warranties, retailers are deemed to give minimum warranties, known as statutory warranties, whenever

they sell a new or used consumer product. The minimum statutory warranties include:

- the product belongs to the buyer without undisclosed liens or other claims
- the product is of acceptable quality
- the product is reasonably durable and fit for the use intended as well as for any specific purpose stated by the retailer
- the product matches its description and the quality of any samples shown to the consumer
- spare parts and repair facilities will be available for a reasonable period of time.

Anyone who buys the product from the original consumer, receives it as a gift or receives it by law is deemed to be given the same warranties by the seller or manufacturer as the original purchaser.

Saskatchewan's legislation also sets out additional warranties and conditions. A seller or manufacturer may make an express warranty, either orally, in writing or through advertising. This warranty relates to the sale or to the quality, quantity, condition, performance, efficiency, use or maintenance of a product. A seller or manufacturer may make an additional written warranty, which is a written warranty to repair, replace or make a refund.

A seller is deemed to adopt any express warranties on labels or packages unless the consumer is told prior to the sale that the seller does not adopt them. A seller does not adopt warranties in advertising produced by the manufacturer, unless he or she expressly or implicitly adopts them.

Retail sellers, in turn, have the right to recover any losses suffered as a result of a consumer's claim against them from the manufacturer.

Unsolicited Goods and Credit Cards

Part IV of the *Act*, *Unsolicited Goods and Credit Cards*, provides that when unasked for goods or credit cards are received, the recipient has no legal obligation to the sender to pay for these unsolicited goods, or for any transaction made with the credit card, unless the recipient has first acknowledged in writing that he or she intends to accept the goods or credit card.

(Source: Saskatchewan Justice.)

Teacher Information Sheet 6.2 - The Consumer Protection Act

Saskatchewan's *Consumer Protection Act* provides increased protection for both consumers and business. It does this by making it an offence for a business to intentionally mislead or deceive consumers about a product or service, or take advantage of vulnerable consumers. The Act only deals with transactions between a consumer and a business, and does not remove the consumer's responsibility to shop around and to protect themselves. Further, the *Act* proceeds from the central idea that it is in the public interest, and in the interest of the parties to a dispute, to attempt to resolve the problem between themselves.

Outlined below are some of the key elements of the *Act* for your ease of reference when considering your own particular situation. Section 5 is important as it defines an "unfair practice." In reading this section, it is important to understand that a lot depends on the particulars of the situation as to whether an actual "unfair practice" has occurred. Section 7 provides the statement of the law the *Act* is based upon. Please note Section 7(5) states the Court will consider the "reasonableness" of the actions of both the supplier or the consumer in determining whether an unfair practice has occurred.

Section 5 – Unfair Practices

It is an unfair practice for a supplier, in a transaction or proposed transaction involving goods or services, to:

- (a) do or say anything, or fail to do or say anything, if as a result a consumer might reasonably be deceived or misled
- (b) make a false claim
- (c) take advantage of a consumer if the person knows or should reasonably be expected to know that the consumer:
 - is not in a position to protect his or her own interests
 - is not reasonably able to understand the nature of the transaction or proposed transaction
- (d) without limiting the generality of clauses (a) to (c), do anything mentioned in Section 6.

Section 6 – Specific Unfair Practices

The following are unfair practices:

- (a) representing that goods or services have sponsorship, approval, performance characteristics, accessories, ingredients, components, qualities, uses or benefits that they do not have

- (b) representing that the supplier has a sponsorship, approval, status, affiliation or connection that the supplier does not have
- (c) representing that goods or services are of a particular standard, quality, grade, style, model, origin or method of manufacture, if they are not
- (d) representing that goods are new or unused if they are not, or if they have deteriorated or been altered, reconditioned or reclaimed
- (e) representing that goods have been used to an extent different from the fact, or that they have a particular history or use, if the supplier knows it is not so
- (f) representing that goods or services are available if the supplier does not supply or intend to supply or otherwise dispose of the goods or services as represented
- (g) representing that goods or services are available for a particular reason, for a particular price, in particular quantities or at a particular time, if the supplier knows or can reasonably be expected to know it is not so, unless the representation clearly states any limitations
- (h) representing that a service, part, repair or replacement is needed if that is not so, or that a service has been provided, a part has been installed, a repair has been made or a replacement has been provided, if that is not so
- (i) representing that a price benefit or advantage does not exist
- (j) charging a price for goods or services that is substantially higher than an estimate provided to the consumer, except where the consumer has expressly agreed to the higher price in advance
- (k) representing that a transaction regarding goods and services involves or does not involve rights, remedies or obligations where that representation is deceptive or misleading
- (l) representing anything that gives a part of the price of specific goods or services, but does not give reasonable prominence to the total price of the goods or services
- (m) representing that a salesperson, representative, employee or agent has the authority to negotiate the final terms of a transaction involving goods or services, if that is not so
- (n) representing that the purpose or intent of a solicitation or communication with a consumer, by a supplier, is for a purpose or intent different from the fact
- (o) using exaggeration, innuendo or ambiguity in representing a material fact, or failing to disclose a material fact, if the representation or failure is deceptive or misleading

- (p) representing that goods or services have been made available in accordance with a previous representation, if they have not
- (q) taking advantage of a consumer, by including in a consumer agreement terms or conditions that are harsh, oppressive or excessively one-sided
- (r) taking advantage of a consumer by entering into an agreement where the price of the goods and services grossly exceeds the price at which similar goods or services are readily obtainable in a similar transaction by like consumers
- (s) taking advantage of a consumer by exerting undue pressure or undue influence on the consumer to enter into a transaction involving goods or services.

Section 7 – Unfair Practices Prohibited

- (1) No supplier shall commit an unfair practice.
- (2) No employee, agent, salesperson or representative of the supplier shall commit an unfair practice.
- (3) A supplier and the supplier's employee, agent, salesperson or representative are liable for an unfair practice of the employee, agent, salesperson or representative.
- (4) In determining whether or not a person has committed an unfair practice, the general impression given by the alleged unfair practice may be considered.
- (5) In determining whether or not a person has committed an unfair practice, the reasonableness of the actions of that person in those circumstances is to be considered.

Remedies

Sections 14 and 16 of the *Act* outline what action may be taken against a supplier by a consumer when feeling they have suffered a loss due to an unfair practice. Section 14(2) provides the consumer with the option of taking action in the court against the supplier. Section 16 outlines what the court may order if finding that a supplier has committed an unfair practice. Section 16(3) states the court, when finding an unfair practice has been committed, will consider whether the supplier took reasonable precautions and tried diligently to avoid an unfair practice. As well, the court will consider whether the consumer made a reasonable effort to minimize any loss resulting from the unfair practice and tried to resolve the dispute with the supplier before commencing any action.

Section 14 – Consumer May Commence Action

- (1) In this section and sections 15 and 16, "court" includes the Provincial Court of Saskatchewan, but only where the action or relief sought is within the jurisdiction of that court pursuant to *The Small Claims Act*.
- (2) A consumer who has suffered a loss as a result of an unfair practice may commence an action in the court against a supplier.
- (3) A consumer shall not commence an action where the director has made applications to the court on the consumer's behalf pursuant to section 15 respecting the same supplier and transaction.

Section 16 – Court Order

- (1) Where the court finds that a supplier has committed an unfair practice, the court may:
 - (a) order restitution of any money, property or other consideration given or furnished by the consumer
 - (b) award the consumer damages in the amount of any loss suffered because of the unfair practice, including punitive or exemplary damages
 - (c) grant an injunction restraining the supplier from continuing the unfair practice
 - (d) make an order of specific performance against the supplier
 - (e) order the supplier to comply with a voluntary compliance agreement entered into by the supplier
 - (f) make any other order the court considers appropriate.
- (2) An order pursuant to clause (1)(b) for exemplary or punitive damages may not be made against the supplier where the supplier took reasonable precautions and exercised due diligence to avoid the unfair practice.
- (3) Where the court finds that an unfair practice has occurred, for the purposes of making an order pursuant to this section, the court shall consider whether or not the consumer made a reasonable effort
 - (a) to minimize any loss resulting from the unfair practice
 - (b) to resolve the dispute with the supplier before commencing the action.

(Source: Saskatchewan Justice.)

Student Handout 6.3 - Sellers' Responsibilities

In Saskatchewan, *The Consumer Protection Act* (Part III) outlines the responsibility of sellers or manufacturers for losses that result from defects in consumer products, additional written warranties, and promises or statements made about their products.

What is a consumer product?	A consumer product is any new or used item purchased in Saskatchewan ordinarily used for personal, family or household purposes. Some products bought by farmers and fishermen for use in their operation are also considered as consumer products.
Who receives protection from the Act?	All persons who buy consumer products from Saskatchewan retail sellers, as well as persons who get the product second hand from the original purchaser, receive protection provided by the Act. Nonprofit organizations who purchase consumer products, and farmers and fishermen who buy products in Saskatchewan for use in their business.
	The Act does not apply to products sold between private individuals, or to products purchased by a business for business purposes.
How does the Act look after my interest?	Whenever you buy a product from a Saskatchewan retailer, you will receive several basic warranties known as Statutory Warranties that provide you with a minimum standard of protection. These warranties are considered by the Act to be given to you by the retail seller and the manufacturer, even though they may not be stated by the retailer verbally or in writing.
What are the Statutory Warranties I am entitled to receive?	You should be able to enjoy ownership of the goods without fear of undisclosed liens or other claims against them. That means that:
	<ul style="list-style-type: none">• The product must match its description.• The goods must be of acceptable quality.• The goods must be fit for any specific purpose stated by you, as well as for their usual purpose, unless it is obvious at the time of purchase that the goods could not meet their usual or specified purpose.• If you purchase a product based on a sample, then the product must match the quality of the sample and must be free from defects.• The goods must be durable for a reasonable period of time.• Spare parts and repair facilities must be reasonably available for a reasonable period of time (not necessarily within the province).
What does acceptable quality mean?	Acceptable quality means the product has the quality and characteristics that consumers can reasonably expect taking into account such things as price and description.
What does reasonable mean?	The Act relies on the word reasonable. To a consumer, reasonable is generally considered to be an expectation that would be acceptable to a majority of average, sane, ordinary and normal people when given the circumstances of a certain situation. It is not considered a perception of an individual.
	This is not to be interpreted as a legal definition. What is reasonable in a situation may ultimately be decided by the courts.

What does reasonable durability mean?	Reasonable durability means the product must last for a reasonable length of time taking into account the price and description as well as how the product has been used and maintained.
What am I entitled to if the product fails to meet the Statutory Warranties?	If something is substantially wrong with the product and it cannot be repaired, you may reject the product and recover your purchase price (less a deduction for use) from the retailer or manufacturer at fault. You will be required at this point to pay out any liens or encumbrances against the product.
Is it up to me to return a defective product to the party responsible for the defect?	If the product is faulty, but can be repaired, the Act says that you are entitled to have the goods repaired at no cost to you. If, after a reasonable period of time, the seller has failed to repair the product, you can have the product repaired elsewhere and recover your cost from the seller.
What are expressed warranties?	Yes, unless because of its size, weight or nature, the product cannot be easily returned without a great deal of effort or significant cost to you.
What are additional written warranties?	<p>Under the Act, manufacturers and retailers are responsible for any promises and statements they make either verbally, in writing or in advertising, about the product or its performance.</p> <p>These statements or promises will be considered binding whether you rely on them to make a decision, if such statements would usually induce a consumer to buy the product.</p> <p>The seller or manufacturer may give you an additional written warranty, for example, the card that comes with a toaster or in the glove compartment of a new car. The additional written warranties are considered to be given to you in addition to protection under the Statutory Warranties.</p> <p>Additional written warranties must be clear and fair. Such a warranty must contain:</p> <ul style="list-style-type: none"> • the name and address of the warrantor (e.g., seller, manufacturer) • the parts of the product covered • the duration of the warranty • what the warranty expects of you • any costs you must pay to make a claim under the warranty • the procedure you should follow to make a claim under the warranty • the location of repair facility. <p>An additional written warranty cannot be deceptively worded, limit your rights, unreasonably require you to return the goods or make the seller or manufacturer the sole judge of whether your claim is valid.</p> <p>In all cases, the seller must make it clear to you that he or she either does or does not adopt the additional written warranty that is included with the product.</p> <p>If you are the original buyer or subsequent owner, you are entitled to recover compensation for any losses you have suffered that could normally be expected to result from failure to meet the Statutory Warranties.</p>

What is the correct procedure to follow when I do have a problem?

The first thing you should do is discuss your concern with the seller and/or manufacturer. In most cases they will be more than willing to work out a satisfactory adjustment.

What if problems cannot be ironed out at this level?

When you have tried to obtain satisfaction but for some reason have not been able to solve the problem, you may seek a solution to your problem through the courts.

The above should not be considered a statement of law. The relevant sections of *The Consumer Protection Act* (Part III) should be consulted for any legal interpretation or application.

(Source: Consumer Protection Branch, Saskatchewan Justice.)

Student Handout 6.4 - Buying a Used Car

I am in the market for a good used car and will soon begin my search. I have never bought a car before. Since it is such a major purchase, I know there are things I should look into, or have checked out, before I buy. Of what sorts of things should I be aware?

You may first want to research your purchase at your local public library. There you will find books and consumer reports that tell you which vehicles are recommended buys, which are least expensive to repair, and the frequency and availability of repair work and parts.

It is wise to have a used car checked by a mechanic before you buy it. Have the mechanic check it thoroughly to see that it is mechanically sound and safe for operation. You can ask the mechanic for a written report to take back to the seller. If you do not have time or cannot get it checked right away, you may consider adding a term to the sales contract such as "subject to mechanic's approval." Anyone selling a used car should not object to a mechanic's inspection, unless they have something to hide.

If you buy the car from a dealer (that is, a business that sells cars), there are several basic warranties that the law applies to the purchase under *The Consumer Protection Act*. These include warranties that:

- you should be buying clear title to the car (no liens against it)
- the car should be of acceptable quality, depending on the price paid and whether defects were obvious or pointed out to you
- the car should be fit for the purpose it was bought
- the car should be durable for a reasonable time after purchase.

If you buy the car from someone other than a car dealer, these statutory warranties do not apply. So, cars bought from individuals, at auctions or from a farmer are not covered by the *Act*.

If your contract, or bill of sale, says you are buying the car "as is," this means that you accept the mechanical condition of the vehicle. Sellers may use this term to hold buyers responsible for losses caused by mechanical defects. If a defect is serious enough; though, a court might disregard the "as is" term, saying that the seller should have known of the defect at the time of the sale. Spoken representations made by the seller at the time of the sale may also be considered by a court.

You will want to be sure that the car has no liens attached to it. Even if a bill of sale says "clear of liens," the car still might be repossessed if a prior lien does exist. A lien is simply a legal claim against property or goods. For example, a mechanic might have a garage keeper's lien against a car for an unpaid repair bill. If the person you want to buy the car from has a lien registered against it, the car can be taken away from you even if your bill of sale says it is clear of liens. You

are responsible for checking for liens against any used vehicle you buy.

A buyer checks for liens through the Personal Property Registry in Regina. If a lien has not been registered, and you have no other notice of it, you should not have to worry about anyone repossessing the car because of a lien. If a lien is registered and you do not check the Registry, the car could be repossessed. If that happens, your only recourse is against the person from whom you bought it, which could turn out to be a frustrating pursuit.

Liens against a vehicle are registered by serial number, so you will need that number to check for registered liens. You can check directly at the Personal Property Registry. You can get a report over the telephone or a report in writing. There are fees charged for these services. The Personal Property Registry is listed under "Justice" in the blue pages of the telephone directory.

When a vehicle has been "written off" as a "total loss," meaning it has been damaged in an accident beyond economical repair, it cannot be legally operated unless it has been officially inspected and an inspection certificate has been issued in relation to it. It is illegal to sell a total loss vehicle for road use, unless it has passed inspection. You may contact SGI to inquire about a vehicle's status before making any used vehicle purchase.

You may also wish to check with the Consumer Protection Branch of the Department of Justice for information on buying used vehicles. For example, it offers an information sheet which includes helpful hints to keep in mind when looking for a vehicle, such as checking a car for a fresh paint job. The Consumer Protection Branch is also listed under "Justice" in the blue pages of the telephone directory.

This is intended to be general information only. People who need specific advice should consult a lawyer.

(Source: Public Education Association of Saskatchewan. Reprinted with permission.)

Student Handout 6.5 - Buying From a Retailer

Defective Products

Two months after the manufacturer's warranty had expired, Shirley discovered she needed the struts on her front-wheel drive car replaced. The cost was \$400.00.

In Saskatchewan, anyone purchasing a new or used product has some rights under *The Consumer Protection Act*. The Act gives you basic rights or Statutory Warranties each time you purchase a consumer product from sellers in Saskatchewan. These rights or Statutory Warranties are that:

- ownership is assured without undisclosed liens or other claims
- the goods must be of acceptable quality
- the goods must be reasonably durable and fit the specific purpose stated by you, as well as their usual purpose
- the product must match its description and the quality of any sample you are shown
- spare parts and repair facilities must be available for a reasonable period of time, although not necessarily within Saskatchewan.

The Consumer Protection Act gives you the right to expect that a product you purchase will last for a reasonable period of time, and do what it is supposed to do, given normal use and correct care.

The Act takes into account the price and description of the product, how the product has been cared for and the length of time you have had it. These factors help determine the amount of responsibility you and the business have for repair costs. It could result in you and the dealer sharing the cost of repairs.

New products purchased from a retailer may also come with a warranty or guarantee card. This guarantee, usually given by the manufacturer and sometimes the dealer, is called an additional written warranty. This warranty must specifically state what the article is guaranteed for, such as poor workmanship or faulty parts.

Any additional written warranties, such as a warranty card, are given to you in addition to the warranties you receive under *The Consumer Protection Act*. An additional written warranty cannot limit the rights you receive under the statutory warranties of the Act.

Deposits

Bill made a \$50.00 deposit to hold a camera he wished to purchase. Later in the day, he discovered the same camera in another store for less money. When he demanded his deposit back the store refused.

Merchants often ask for a prepayment, down payment or deposit to hold merchandise for a period of time for you. A deposit on goods is a binding commitment between buyer and seller, and is usually not refundable. Deposits protect the seller if a buyer changes his or her mind.

You should try to keep any deposit you make as small as possible, around 10 percent.

Incorrectly Priced Merchandise

Marlene discovered six cartons of orange juice that had been incorrectly marked at a price much lower than the regular one. However, the cashier refused to sell her the juice at that price.

A store is under no obligation to sell goods at the price marked. The price marked is only an invitation and not an offer to sell the item at the stated price. The store can, until the contract is made, withdraw the article from sale just as you can change your mind about the purchase of the item. A legal contract does not exist until there is an agreement of sale or an actual exchange of money and goods. If there is a mistake in pricing, the store has the right to change the price before you buy it.

Refunds/Exchanges/Returns

Sally bought a cashmere sweater for her mother's birthday gift, but it did not fit. When she returned it to the store for a refund, they refused to give her money back.

In Saskatchewan, with few exceptions, if you purchase goods such as shoes or a sweater from a retailer, you do not have the right to return them for a refund. The sales transaction is a legal, binding agreement and cannot be broken. The item cannot be returned simply because you have changed your mind.

The store must decide if it will provide consumers with a cash refund, exchange of goods or credit slip. This is usually outlined in a store policy. Store policies vary so you should ask before you buy. It is a good idea to ask the clerk to write the store policy on the bill and have it dated and signed.

Some sellers will allow refunds, but may charge a restocking fee. This is a fee for putting the article back on the shelf.

(Source: Consumer Protection Branch,
Saskatchewan Justice.)

Student Handout 6.6 - Returning Stuff

Contrary to popular belief, being able to return goods you bought is not a right comparable to those found in the *Charter of Rights and Freedoms*. While many stores do have a "money back guarantee," there is nothing in law that forces them to do this. In fact, your ability to return things to the store where you bought them will be limited by a number of factors.

The first, and most important, limitation is the return policy of the store where you bought your stuff. If you do not see the policy posted anywhere, you should ask about it. Some stores limit refunds to a certain time period after you have made a purchase. For example, you may have to bring the items back within three days to get a full refund. Another restriction could be that you are required to provide a sales receipt, and the original packaging of the item.

In other cases, the store may limit you to an exchange for other merchandise, instead of a refund. Some stores have a policy of not allowing any refunds or exchanges on certain types of merchandise. For example, many retailers will not allow you to return swimwear. If a broad return policy is important to you, then you should find out what it is well before you make your purchase. Generally speaking, unless the store has a clear policy, you will not be allowed to return an item that you purchased, just because you changed your mind about it.

Another restriction on your ability to return goods is in the wording of any warranties that came with the items. For example, you may be required to mail in a warranty card within a certain time period. If your product broke down, you may be able to claim only a repair or replacement, instead of an automatic refund. As well, you may have to ship the item, at your expense, to the factory for repair or replacement. The warranty may cover only parts, leaving you to pay for labour costs. Restrictions such as these will limit the value of a warranty. You need to be sure of what a warranty actually says, and whether it has any practical value to you.

However, even if a warranty is of little use, or perhaps does not exist at all, you still have some remedies if a recent purchase turns out to be a "lemon." *The Consumer Protection Act* sets out a number of rights available to you as a purchaser of consumer goods. Generally, a consumer product means any good that is ordinarily used for personal, family or household purposes. It is important to remember, though, these rights do not apply if you bought the goods from such people as an

auctioneer, a trustee in bankruptcy, a liquidator or in a private sale.

Although the *Act* does not give you an automatic right to a refund, it does define a number of automatic warranties, if you make an eligible purchase. Here are some of the warranties the law sets out for you:

- the product will be free from liens or other security interests not disclosed to the buyer
- the product is of acceptable quality
- the product will last for a reasonable period of time
- if the product requires repairs, spare parts and a service facility will be available for a reasonable time following the purchase
- the product will be reasonably fit for the purpose that you bought it for, if you relied on the seller's advice about its suitability.

However, if there is a breach of these warranties, before you are entitled to return defective items, in most cases you must first give the seller an opportunity to fix the problem. If the seller fails to fix the product, you would be able to have it fixed somewhere else, and claim the cost of repair, and any other losses, against the seller.

If the defect cannot be repaired, or if it is so major that repair is not practical, you would be able to cancel the purchase contract and claim a refund. If you suffered any other losses as a result of the defective product, you would be able to make a claim for that as well.

A store owner cannot take away your rights under *The Consumer Protection Act*, but, for most retail purchases, unless there is a major defect, you will have to rely upon the goodwill of the seller to be entitled to a refund for your purchases. The ability to return purchases may be more limited than you think, because your ability to return goods may vary from store to store, and purchase to purchase,. You should be sure as to the nature and extent of any limitations, before you finalize the deal. Doing your homework beforehand can save a lot of aggravation and frustration afterward.

(Source: Public Legal Education Association.
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Student Handout 6.7 - Buying Through the Mail

What is the best way to protect myself when making purchases through the mail?

What is the safest payment method for mail-order purchases?

I am overwhelmed by mail order catalogues and other promotions. What can I do?

Can I complain about mail order sales or is my "tough luck"?

The only real protection you have is the company's reputation. A legitimate company should send you a list of customers in your area. You can contact these people to see if they are satisfied with the company. If they do not provide a list, ask for one. Make sure you have the company's name and address.

The best way is to request the goods be sent COD (Cash on Delivery). You may want to make a small down payment, but only pay in full when you are familiar with the company and are confident they will honour the contract. If you pay using cheque or money order, keep copies as proof of payment. Never send cash through the mail.

The Canadian Direct Marketing Association (CDMA) offers the "Do Not Mail/Do Not Call Service" to individuals who prefer not to receive mail and telephone solicitations at home. You can write the CDMA and have your name removed from marketing lists held by CDMA members, who account for about 80 percent of direct-response sales in Canada.

You should complain when:

- you are billed for products you have not received
- the product is significantly different than the advertisement
- you receive merchandise for which you did not ask
- the merchandise is not received in a reasonable period of time.

"Operation Integrity" is a complaint handling system offered by the Canadian Direct Marketing Association for consumers who experience unsatisfactory dealings with direct response marketers.

Precautions when Buying Through the Mail

- Be aware of exaggerated or vague claims about products or unusually low prices in advertisements.
- Keep a complete record of your order, including a copy of the advertisement (newspaper issue, brochure or television channel that carried the advertisement), the company's name and address, date of order and a photocopy of all cheques or money orders.
- Contact the Better Business Bureau to check the reputation of the company.
- Place your order a few weeks before the date you hope to receive it. Delivery could be delayed for a number of reasons.
- Check the merchandise as soon as it arrives in case it is broken or faulty. Try to return defective or broken items in the original packaging.

Unsolicited Goods and Credit Cards

Kari received a package in her mail box containing a box of Christmas cards that she had not ordered, along with a bill requesting payment.

I received a credit card in the mail that I did not request. What should I do?

Under *The Consumer Protection Act*, consumers have no obligation to pay for goods that they did not order. To avoid problems in this area, such as persistent requests for payment, you should refuse delivery of goods you did not order.

Consumers are not liable for a credit card they did not request. However, you should destroy any unsolicited credit cards. Using the credit card constitutes acceptance of the card. If you use the card, you will have to pay the bill.

Music and Book Buying Clubs

People join music and book-buying clubs to get compact disks, tapes and books at a good price. As well as providing a specialized selection at a premium price, consumers also get the convenience of shopping by mail. However, there are several common complaints associated with these clubs that you should consider before joining.

Overspending

You might buy more than you normally would. New members are usually required to buy a specific number of items. A bonus purchase plan that offers drastically discounted prices may also tempt you to purchase more than the minimum amount.

Unwanted Merchandise

Under the negative option order system, you must, by a certain date, return a card indicating that you do not want the featured selection. You might forget to mail the card or fail to meet the deadline, resulting in unwanted merchandise and overspending.

Delivery Time

Music and books may take months to arrive.

Reliability

You may receive incorrect selections, or be billed for items you did not receive or for which you have already paid.

Physical Quality of Merchandise

Book clubs usually print the books they sell. You may be dissatisfied with the quality of paper, the printing or the binding.

To protect yourself:

- Carefully read and keep a copy of what you sign to join the club. It is a binding contract.
- Keep track of all your transactions with the club.
- Write the name of the book, tape, compact disk or video you are buying on the cheque.
- Note on your calendar the date that you return the featured selection order form.
- Register any items you return to the club and keep track of the dates they were returned.

(Source: Saskatchewan Justice.)

Student Handout 6.8 - Landlords and Tenants FAQ

What responsibilities do landlords have?

- The landlord must give tenants a written copy of the tenancy agreement within 20 days after the tenant has signed the agreement. The tenant's obligations to the landlord are posted until he or she is given a copy of the agreement.
- The landlord cannot ask a tenant to pay more than one month's rent in advance.
- The landlord must invest security deposits in a separate trust account in an authorized financial institution. He or she must return the tenant's security deposit with interest within five days of the tenant leaving, if the landlord has no claims for damage, cleaning or unpaid rent.
- The landlord must keep the residential dwelling and common areas in a good state of repair, and comply with all health, safety and housing standards set by law.
- The landlord must keep the appliances in good repair and make sure that the utilities (water, power, gas) work.
- The landlord cannot enter the tenant's premises unless he or she has made an appointment and has given the tenant at least 24 hours notice, except in cases of emergency or where the landlord has the right to show the premises after the tenant has given notice of termination.
- The landlord cannot increase the rent unless notice has been given to the tenant at least three weeks before the increase, if the tenancy is weekly, or three months if the tenancy is monthly or yearly.

What are the responsibilities of the tenant?

- The ordinary cleanliness of the dwelling and repair of any damage caused by themselves or their guests.
- To not carry on an illegal business in the dwelling, or cause a disturbance to other people on the premises.

What if I want to end the tenancy agreement?

- To discontinue a tenancy agreement a landlord or tenant must give a written notice of termination based on the rental period. For example, one week's notice is required for a weekly tenancy. However, a landlord may terminate a tenancy agreement immediately by serving notice of termination if:
 - the tenant fails to pay the rent for 15 days or longer
 - the tenant commits or permits an illegal act, or conducts an illegal business in the dwelling
 - the conduct of the tenant, or his or her guest, causes a disturbance

- after receiving seven days written notice, the tenant has failed to keep his or her dwelling or the common areas clean or to repair damage caused by the tenant or his or her guest.

My landlord and I are having a dispute. Who can help us resolve it?

An application for an order respecting any residential tenancy dispute may be made by the landlord or tenant to the Office of the Rentalsman for a \$20.00 application fee. The Rentalsman may direct an investigation into the matter, hold a hearing and issue a written notice of the hearing to all people concerned. Submissions to a hearing may be made orally, by telephone or in writing, and the other party must have the opportunity to counter the submission.

After the hearing the Rentalsman may make any order he or she considers fair, including:

- directing any person to comply with the legislation or a tenancy agreement
- requiring the payment of damages, or directing that repairs be made and costs be recovered from the person responsible
- ordering that the tenancy be terminated, and granting possession of residential premises
- making a further order enforcing tenants' rights or an order enforcing landlords' rights as the Rentalsman considers appropriate.

Any person who disagrees with a decision or order of the Rentalsman may appeal on a question of law or of jurisdiction of the Rentalsman to the Court of Queen's Bench within 30 days of the decision.

What is a security deposit?

A security deposit, or damage deposit, is money paid to a landlord by a tenant as security for damage, cleaning and unpaid rent.

How much can the security deposit be?

The security deposit can be up to one month's rent.

Does the entire amount of the deposit have to be paid at the beginning of the rental agreement?

No. A landlord may require the tenant to pay up to one-half of the security deposit at the beginning of the tenancy, or within 30 days of receipt of a written demand for payment. The remainder is due within two months or 60 days after receipt of demand for payment.

What happens to the deposit at the end of the tenancy?

After the tenancy agreement ends, the landlord has seven business days to return the security deposit to the tenant, along with any interest owed. If there is a disagreement, the landlord must file an application with the Rentalsman for a hearing to resolve the dispute. The Office of the Rentalsman will attempt to notify the tenant of the claim. If the tenant disputes the claim, a hearing will be convened, and the landlord pays the security deposit and interest in dispute into the Office of the Rentalsman.

If the landlord and tenant agree to withhold some or all of the security deposit, the tenant may consent in writing, and the Rentalsman will not be involved.

What happens if the landlord does not return the security deposit or ask for a hearing within seven business days of the end of tenancy?

The landlord can still make an application after the seven-business-day period. However, the Rentalsman will order that the security deposit and any interest be paid to the tenant, unless exceptional circumstances prevented the landlord from complying with the requirements. The Rentalsman must be satisfied that it would be unfair to release the security deposit to the tenant.

What types of circumstances does the Rentalsman consider exceptional?

The Act states that exceptional circumstances may exist where:

- the landlord is not in the business of rental residential tenancies
- the landlord has not previously been involved in an application to determine the disposition of a security deposit
- the landlord gives proof that they did not intentionally fail to comply with the requirements.

The Rentalsman may consider other circumstances exceptional, depending on the facts of each case.

Does the tenant have to wait for the landlord to make an application?

No. If the landlord and tenant have not agreed in writing about what to do with the security deposit and the landlord has not returned the deposit or made an application for a hearing within seven business days after the end of the tenancy, the tenant may apply for an *ex parte* order requiring the return of the security deposit. An *ex parte* order means the tenant does not need to give the landlord notice of the application.

(Source: Public Legal Education Association.
Reprinted with permission.)

Student Handout 6.9 - Resolving Landlord and Tenant Disputes

I moved out of my apartment last week. I gave a full month's notice to my landlord and thought that there would be no problems. However, my landlord will not give back my damage deposit. He claims that he needs the money to repair damage to my old apartment. I did not wreck anything, although the place could use a paint job. How can I get my money back?

Like many disagreements between a landlord and tenant, you will be able to handle this issue through the Office of the Rentalsman. This is an agency set up by *The Residential Tenancies Act*, and is intended to help protect the rights of both landlords and tenants under residential leases.

Either the landlord or the tenant can apply to the Rentalsman to decide an outstanding dispute. In your case, because the landlord wants to keep the deposit, he must file a notice with the Rentalsman's office. The Rentalsman would then send a notice to you, and give you the chance to object to the landlord's claim. If you do object, the Rentalsman will set a time for a hearing, and let you and the landlord know when it will be. At the hearing, the Rentalsman would listen to both sides and review any paperwork, before making a decision. If the landlord failed to follow the proper procedure, you would be able to apply to the Rentalsman for an order that the landlord pays the damage deposit to you, without having to go through a hearing. You would have to fill out an application form, but no fee is required for this kind of application.

If you had a different kind of claim against the landlord (not relating to the damage deposit), there would be an application fee for you. In either case, you can get any forms that you need from the Rentalsman's office.

If you did have a claim for something other than the damage deposit, once your application documents and the fee are received, the Rentalsman will issue a *Notice of Hearing*. You would have to deliver this *Notice* to the landlord, although the Rentalsman will tell you how this delivery should be done.

Depending on the circumstances of your claim, the Rentalsman also may order an investigation into the matter.

If the landlord has given the proper notice to the Rentalsman about your deposit, he also could make a further claim for such things as any unpaid rent or damage to the apartment beyond what the deposit would cover. Of course, he would have to prove to the Rentalsman that you did owe any extra money.

When a hearing is required, there are a number of different ways that it can be held:

- submissions made in person
- submissions may by telephone
- submissions made in writing.

Whatever method is used, the hearing process is fairly informal. There are not a lot of rigid rules about the procedure to follow, or regarding the evidence that you can submit. Once all the evidence has been received, the Rentalsman will make a decision, and send a written copy to you and the landlord.

If you get an order for the landlord to refund your deposit, but he still does not pay, the next step is to file a copy of the order with the Court of Queen's Bench. This lets you treat the order in the same way as a court judgement. You then would be able to use judgment enforcement measures, such as garnishment or seizure under a *Writ of Execution*, to enforce your claim. If you disagreed with the Rentalsman's decision, you could appeal it to the Court of Queen's Bench. Any appeal would be limited to questions of law or jurisdiction. This means that you could appeal only by claiming that the Rentalsman acted without proper authority or misinterpreted the law in your situation. You would not be able to appeal if you merely said that the Rentalsman got the facts wrong.

The procedure for resolving disputes under *The Residential Tenancies Act* is intended to be as simple and as inexpensive as possible. You should not hesitate to use the Office of the Rentalsman to resolve any disputes between you and your landlord.

(Source: Public Legal Education Association.
Reprinted with permission.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Unsolicited Goods and Credit Cards</p> <p>Consumers who receive unsolicited goods or credit cards in the mail are under no obligation, and have not entered a contract. However, consumers may put themselves under an obligation by using the product. For example, in the case of credit cards, a contract is in effect if the credit card is used.</p>	<p>Unsolicited Goods and Credit Cards</p> <p>Know that Section 72 to 75 of <i>The Consumer Protection Act</i> provides statute law regarding unsolicited goods and credit cards.</p>
<p>Advertising</p> <p>The regulation of advertising in Canada falls under both federal and provincial jurisdiction. Under federal law, <i>The Competition Act</i> addresses the standards for advertising of products, while provincially, <i>The Consumer Protection Act</i> regulates the representation of products. While advertising is designed to influence a consumer's choice in selection of products, both provincial and federal legislation ban false and misleading advertising. Advertisements are not offers for sale, but are intended to provide information to consumers who may wish to make an offer to purchase.</p>	<p>Invitation to Treat</p> <p>Know that advertising represents an invitation to do business, known as invitation to treat, and not a valid offer for contract purposes.</p>
<p>Renting Accommodation</p> <p>A rental agreement between a landlord and a tenant may be oral, written or understood from the circumstances. It may be informal, or may have many conditions or promises. Even when the rental agreement is not in writing, it is a legal contract. A rental agreement sets out what rent the tenant agrees to pay and what residence the landlord agrees to provide. In addition to a particular residence, the landlord may also agree to provide other services or facilities. For example, the landlord might agree to provide laundry facilities or parking spaces, and pay for the utilities. The rental agreement may be a month-to-month agreement, or for a set amount of time. The landlord or the tenant can end the lease by mutual agreement, or under terms set out in a written rental agreement. Any other approach to ending a rental agreement may be seen as breach of contract.</p>	<p>Statute Law</p> <p>Know that Saskatchewan statute law regulating residential rental accommodation is included in <i>The Residential Tenancies Act</i>.</p> <p>Know that protection from discrimination in the area of housing is included in <i>The Saskatchewan Human Rights Code</i>.</p>
<p>Statute law regulating the rental of accommodation includes <i>The Residential Tenancies Act</i> and <i>The Saskatchewan Human Rights Code</i>. These statutes were developed in the public interest, with a provincial Rentalsman having dispute resolution power under <i>The Residential Tenancies Act</i>. As well, the Saskatchewan Human Rights Commission provided with dispute resolution power under <i>The Saskatchewan Human Rights Code</i>. The statutes identify rights and responsibilities of tenants and landlords, as well as identifying dispute resolution mechanisms other than the court.</p>	<p>Lease</p> <p>Know that a written agreement to rent a place for a specified period of time is called a lease.</p>

Skills/Abilities Objectives	Values Objectives
<p>Identify components of a valid contract from a sample.</p> <p>Research the rights of tenants and landlords in rental accommodation relationships under Saskatchewan law.</p> <p>Identify and apply criteria to make judgements.</p>	<p>Appreciate that discrimination in the rental housing market is prohibited on the basis of protected grounds of the <i>Saskatchewan Human Rights Code</i>.</p> <p>Assess current advertising approaches in terms of their accuracy, and possible impact on the buyer.</p>

Instructional Notes

1. Have students create or select advertisements that:
 - meet the criteria of lawful advertising
 - would be illegal according to one or more criteria of statute law.
2. Gather some sample copies of rental accommodation contracts. Have students examine the terms and conditions of the contracts, and describe the terms of the contract in their own words. Have students assess the contracts according to criteria, which might include:
 - offer
 - acceptance
 - consideration.
3. Engage students in a process of writing a letter of complaint regarding a retail purchase, using the criteria presented in Student Handout 6.10 - Consumer Complaints, Student Handout 6.11- Complaint Checklist and Student Handout 6.12 - Letter of Complaint.

Issues in the Law

1. To what degree should limits be placed on landlords regarding to whom accommodations should be rented?

Student Handout 6.10 - Consumer Complaints

When I encounter unsatisfactory services or products, I just chalk it up as a learning experience. Why should I complain?

How long after the incident should I issue my complaint?

To whom should I direct my complaint?

How can I complain effectively?

My friend claims that being loud and aggressive is the best way to get results when making complaints. Is this true?

What should I do if the seller refuses to recognize my complaint?

Legitimate complaints help everybody in the marketplace. Complaints help prevent unnecessary regulation and inferior goods in the marketplace. They also alert businesses to product quality, service and distribution problems.

The sooner the better! There are legal time limits, depending on the situation, so act quickly.

Always go to the seller first. All good businesses recognize a valid complaint as an opportunity rather than a bother. Be sure you are dealing with someone who has the authority to rectify the problem.

It is important to clearly identify the problem. You need to explain why you are dissatisfied, and what you would like done to correct the problem. Make sure you have proof of payment or proof of dealings with the business. Make copies of receipts, cancelled cheques, guarantees and any other correspondence between yourself and the business. Never give away the original copy.

The best approach is to be polite, but firm. Do not lose your temper or your sense of humour. Be persistent. Do not give up until you feel you have received a satisfactory response. It is important that you be reasonable and fair. You should determine the business's refund policy before making any purchases and ensure that you have properly complied with the terms and warranties. You have no legal right for a refund unless the goods are defective.

When dealing with the seller fails, you may want to take your complaint to the next level. If you are complaining about product quality, the next step is to complain to the manufacturer. Otherwise, you may want to contact a business or professional association.

Better Business Bureau of Saskatchewan Inc.

The Better Business Bureau collects and reports information to help prospective buyers make informed decisions in dealing with both businesses and charitable organizations. The Better Business Bureau facilitates communication between the company and the consumer to help both sides come to a satisfactory resolution of the complaint.

Consumer Protection Branch, Saskatchewan Justice

The Consumer Protection Branch administers laws governing motor dealers, agricultural implement dealers/distributors, auctioneers, collection agents, credit reporting agencies, direct sellers, sellers of training courses, credit unions, loan, trust and finance companies and insurance companies.

Corporations Branch, Saskatchewan Justice

The corporate registry is the official record of the company or business which is required for any legal action.

Industry Canada

Industry Canada handles complaints about misleading advertising, deceptive marketing practices, patents and copyrights, labelling, weights and measures and bankruptcy information.

(Source: Saskatchewan Justice. Consumer Protection Branch.)

Student Handout 6.11 - Complaint Checklist

Before you complain, ask yourself the following questions. They will help you decide if your complaint is valid.

1. Did you gather information about the product before purchasing it to make sure the product would serve your purposes?
2. Did you fully explain to the store staff the purpose for which you wanted the product?
3. Did you use the product only for the purpose described?
4. Did you examine the quality of the product before you purchased it?
5. Did you follow the instructions for the assembly, use and care of the product?
6. Are you unhappy with the product because it is a different size or colour than what you ordered?
7. Are you unhappy with the product because there are parts missing?
8. Are you unhappy with the product because it was delivered to you damaged or broken, or it didn't last very long?
9. Are you unhappy with the product because it does not match the description or sample?
10. Are you unhappy with the product because you changed your mind about the colour, size or model you wanted?

You have a valid complaint if:

- you answered "yes" to questions 1 through 5
- you answered "yes" to one of questions 6 through 9
- you answered "no" to question 10.

Student Handout 6.12 - Letter of Complaint

The following points will help you write an effective letter of complaint:

1. Type your letter. Keep it short, and keep a copy for your records.
2. Be sure you complain to the person who has the authority to do something about your complaint?
3. Identify the date and location of the purchase.
4. Give a complete description of the goods or service you purchased.
5. Explain the problem.
6. Outline the action you have taken.
7. Specify the action you expect, and allow a reasonable time period.
8. Provide a daytime telephone number.
9. Enclose copies of the relevant documents, and keep the originals.

(Source: Saskatchewan Justice. Consumer Protection Branch.)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Intellectual Property</p> <p>Intellectual property includes anything produced from an individual's creativity. In Canada, protection of the rights of the creators of intellectual property is provided via federal statute law. There are four primary area of intellectual property law:</p> <ul style="list-style-type: none"> • patent – rights to a new invention • industrial design – the right to manufacture a product of unique design • trade mark – a mark used to identify a product, and to increase the likelihood of consumer loyalty to a product • copyright – the right to copy and perform literary, musical or artistic work. 	<p>Intellectual Property</p> <p>Know that intellectual property is anything generated from an individual's creativity.</p> <p>Patent</p> <p>Know that a patent is a document that gives its owner the exclusive right to make, use and sell an item in Canada. In return, the patent holder must disclose how the invention is manufactured.</p> <p>Know that patent protection in Canada exists under the federal <i>Patent Act</i>.</p> <p>Know that a patent gives the inventor exclusive rights to a creation for 20 years.</p> <p>Know that under the <i>Patent Cooperation Treaty</i>, inventors may patent protection in 43 countries, using one international application.</p>
<p>Issues in Contract Law</p> <p>While the law of contract has developed over time through common law, emerging technologies provide challenges in the application of contract law. Issues such as the sale of human tissue (organs), ownership and patent of seed grains and access to health services all create new challenges for public policy and the application of contract law. Issues emerge regarding the degree to which private ordering of services should occur between two willing parties to a contract, as compared to the degree to which public policy and statute law should regulate such things as the sale of human organs, the rights of surrogate parents and ownership of grains for seed. Contract law has served as the guide to the allocation of rights in such matters, but public policy and personal beliefs may be in conflict with the law of contract.</p> <p>As well, emerging technologies such as facsimile machines and computers now cloud the issue of when a contract offer and acceptance actually occur, along with debate regarding which circumstances should be addressed under the common law of contract, and which circumstances should be addressed through statute law.</p>	<p>Industrial Design</p> <p>Know that an industrial design includes the shape, distinctive appearance or other design unique to a product.</p> <p>Know that protection of industrial design exists under the federal <i>Industrial Design Act</i>, which grants design rights for a period five years, with this period being renewable.</p> <p>Trade Mark</p> <p>Know that a trademark is a word, symbol or picture, used to distinguish products from others in the marketplace.</p> <p>Know that trade marks are protected under the federal <i>Trade Marks Act</i>.</p> <p>Copyright</p> <p>Know that copyright provides protection to the creators of literary, photographic, musical and artistic works, providing monopoly with respect to the sale, display, performance and control of the copyright work.</p> <p>Know that copyright is protected under the federal <i>Copyright Act</i>.</p>

Skills/Abilities Objectives	Values Objectives
Select and apply criteria to make decisions.	Appreciate the value of literary, artistic and other creative pursuits as valuable entities to the creator and society at large.

Instructional Notes

1. Examine the case of Saskatchewan farmer Percy Schmeiser, and his conflict with a multinational agricultural conglomerate regarding the ownership of patented seed grains.
2. Identify advantages and disadvantages to patent, industrial design, trade mark and copyright protection laws, from the perspective of a consumer, an inventor or creator, and the overall public interest.
3. Investigate the case of the organic food producers group in Saskatchewan against agricultural chemical corporations.

Issues in the Law

1. Should patents be available for new plants created through genetic engineering?
2. Should a patent be available with respect to the human genome? Explain.
3. What type of patent protection should pharmaceutical developers receive for new medications developed?

Unit Seven - Environmental Law



A good planet is hard to find.

Overview – Unit Seven: Environmental Law

Environmental law is a relatively new area of jurisprudence as a distinct area of law. Until the last half of the twentieth century, issues of environmental law were generally addressed through common law, enabling an individual to seek relief from the courts for damage suffered to individually owned property. This approach did not meet the needs of protecting the environment for the public good, and governments have since developed a number of legislative statutes designed to protect the environment, and subsequently, the public good. Protection of the pubic must consider not only the environmental issues, but also must address the need for economic development as an important part of the well-being of individuals and society at large. In this unit, students will examine common law, statute law and public policy approaches to environmental protection, and will address the tensions that exist between economic development and sustainability of the ecosystem in which all of humanity coexists.

Resources and Resource-Based Learning

Resource-based learning is an integral part of all units. The bibliography developed to support this curriculum will assist you in incorporating a variety of resources from different media into each unit. This annotated bibliography should be available from your teacher-librarian or the Learning Resource Distribution Centre. The bibliography contains annotations of current, useful resources including print, video, Internet sites, and other media selections. Teachers are encouraged to assess their current resource collection, identifying those that continue to be useful, and to acquire small quantities of each new title, rather than class sets, in order to provide students with a broad range of perspectives and information.

The following list of evaluated resource titles provides a **starting point** for developing a resource collection that is current and relevant, and that addresses students' various learning styles and abilities. Please refer to **Law 30 The law and You: A Bibliography** for a complete list of resources giving the full citation, annotation and ordering information. Please note that many of these resources can be ordered through the Learning Resource Distribution Centre (<http://lrdc.sasked.gov.sk.ca/>). Videos may be available from Media Group (<http://www.sasked.gov.sk.ca/video>). At the time of publication all of the resources listed here and in the bibliography were in print and available.

Please note that LRDC will be closing effective March 31, 2003. If you need assistance acquiring Saskatchewan Learning materials after that date, please contact 787-5987.

Print Resources

*Aboriginal Peoples and Natural Resources in Canada
Environmental Law
Social Conflict & Environmental Law: Ethics, Economics & Equity*

Internet Sites

The following sites provide a brief overview of available websites. These sites were checked for availability in March 2002. To access formally evaluated sites that have been linked to the curriculum visit the Evergreen Curriculum at the Saskatchewan Learning website <http://www.sasked.gov.sk.ca/>.

Canadian Environmental Law Association - <http://www.cela.ca/>
Environment Canada – Law - http://www.ec.gc.ca/envlaw_e.html
Saskatchewan Environment and Resource Management Legislation - <http://www.serminfo.gov.sk.ca/legislation.htm>

Incorporating Current Events

Incorporating current events enhances students' understanding of the concepts under study and extends their learning experiences by relating the events to real life and making them more relevant. Sources for current event

stories include newspapers, newsmagazines, daily and weekly television and radio newscasts, documentaries and the Internet. Many Canadian daily newspapers are available online and are a useful source of current events. Select articles and news items to support the objectives and concepts as often as possible, and encourage students to contribute also.

Learning Objectives

Learning objectives of two types are identified for Law 30, including Foundational Objectives and Specific Learning Objectives. Foundational Objectives are designed to guide instruction and student learning throughout each unit of study, and indicate the broad learning outcomes in terms of content, skills and abilities, and values. Specific Learning Objectives, identified in each lesson of the unit, are designed to help students achieve the Foundational Objectives. The core Learning Objectives are identified in bold font. This makes timelines for each lesson and unit flexible. Teachers can choose to focus on the core Learning Objectives only, or to have students strive to achieve all of the stated learning objectives.

Objectives to achieve the Common Essential Learnings (C.E.L.s) are identified using the following abbreviations:

Communication	COM
Critical and Creative Thinking	CCT
Personal and Social Values and Skills	PSVS
Independent Learning	IL
Numeracy	NUM
Technological Literacy	TL

Foundational Objectives

Knowledge/Content	Skills	Values
<ul style="list-style-type: none">• Know that tension often exists between environmental preservation interests and economic development interests. (CCT)• Know that environmental law is founded in common law and statute law. (COM)	<ul style="list-style-type: none">• Gather data from various resources. (IL)• Analyze numerical data regarding the environment. (NUM)• Analyze varied approaches to environmental assessment and protection. (CCT)• Express a personal viewpoint or position with regard to sustainable development. (CCT, COM)	<ul style="list-style-type: none">• Respect that many physical resources are finite in quantity and quality. (PSVS)• Appreciate the necessity of reconciling competing interests of environment and economy. (CCT, PSVS)• Appreciate alternative viewpoints regarding sustainable development. (PSVS)

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>The Need for Environmental Protection</p> <p>Significant empirical evidence exists to accept that environmental damage is occurring as a result of humanity's inhabitation of the planet earth. While the degree to which this degradation is occurring may be a matter of debate, the very existence of evidence necessitates both individual and collective action toward change.</p>	<p>Environment</p> <p>Know that the term environment refers to the total surroundings of any individual or thing.</p> <p>Know that environmental law addresses issues of the physical environment.</p>
<p>The Nature of the Environment</p> <p>Environment is a term used in a variety of contexts, all of which have associated the concept of physical place, including resources of land, water and air. Environmental law addresses the nature of the relationship between humanity and the physical environment, and is an area of law with both domestic and international implications.</p>	<p>Physical Environment</p> <p>Know that the physical environment includes the land, water and atmosphere, as well as all material objects.</p>
<p>Sources of Environmental Law</p> <p>Disputes and legal issues regarding the environment have historically been a matter of common law, as issues which arose were usually of a personal nature. Disputes arising from actions of one individual infringing upon another were raised on the basis of damages to personal property, and thereby proceeded under tort law. However, this approach to environmental law did not provide for recognition of the need to protect the collective interests of society. As well, no legal standing was permitted for the public interest in court decisions under common law jurisdiction.</p> <p>As rapid industrialization occurred in the latter half of the 20th century in Canada, governments recognized the need for statutory regulation to control environmental degradation. As a result, a numerous environmental statutes have become part of public policy in Canada at all levels of government. Environmental regulation continues to evolve in the 21st century, as tensions between the desire for economic development, and the recognition of resource depletion and environmental degradation, must be reconciled. The quest for solutions that provide a sustainable future become more urgent as ever increasing evidence of environmental degradation continues to be discovered.</p>	<p>Common Law</p> <p>Know that under the common law, individuals have access to relief from the court.</p> <p>Know that under common law, environmental issues are considered as either torts of nuisance or trespass, or as matters of negligence.</p> <p>Know that under common law, environmental damages are subject to rules of strict liability.</p> <p>Sustainability</p> <p>Know that sustainability is the process whereby economic development is able to progress over time without depleting resources and the natural environment.</p>

Skills/Abilities Objectives	Values Objectives
Differentiate between common law and statute law in the area of environmental protection.	Appreciate the conditions giving rise to the need for statute law in the area of environmental protection.
Identify and explore various statutes associated with environmental protection.	Appreciate that environmental law attempts to reconcile competing interests.
	Appreciate that environmental assessment attempts to define reasonable limits to economic development.

Instructional Notes

1. Have students gather current data regarding ozone depletion, species at risk of extinction, pollution rates or other current data to illustrate the state of stress upon the physical environment.
2. Explore the *Saskatchewan Environmental Management and Protection Act*. Have students create a grid indicating the various statutes under the jurisdiction of the provincial environment department to illustrate the complexity of environmental protection legislation.
3. Examine the concept of standing as it relates to environmental issues. Define the criteria for gaining legal standing in such matters.
4. Consider the significance of environmental stewardship in Aboriginal cultures. How does this compare to the approach of Canadian law makers?

Issues in the Law

1. What is the correct balance between economic development and environmental protection?
2. How might we collectively manage competing interests of environmental protection and economic prosperity?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Purpose of Environmental Law</p> <p>A significant challenge for jurists, for public policy makers, and for the public in general is the degree to which economic development is to be curtailed in the interests of environmental preservation. A Utopian model might offer a scenario of collective reduction in consumerism and a global redistribution of assets, as a means toward reversing the current pattern of human impact on the physical environment. However, realities of human nature and current perceptions of quality of life and standard of living necessitate development of models reflecting modern realities. Subsequently increasing tensions exist between competing interests in terms of the approach to be taken in economic development and interaction with the physical environment. Environmental law has moved from the realm of individual protection, tort and negligence-based law to the statutory, public policy arena in which case law has deemed that the interests of economic development will coexist with the interests of environmental protection. The challenge for law makers is achieving the appropriate balance of competing interests.</p>	<p>Models of Economic Development</p> <p>Know that a broad spectrum of models exist regarding economic development and the resulting impact upon the physical environment, including:</p> <ul style="list-style-type: none"> • hard ecology – supporters resist any economic activity having impact or potential impact on the natural environment as too costly • harmonious development – supporters advocate sustainable coexistence of industry and natural environments, recognizing that current practices must be altered immediately • status quo – supporters suggest that in the absence of what they consider to be reliable data, continuation of current practices offers continued economic prosperity • future sustainability – supporters recognize past practice as unsustainable, and future practices must change, but at a slow rate and at acceptable cost to standard of living and quality of life.
<p>Statutory Jurisdiction in Environmental Law</p> <p>Constitutional responsibility for environmental law is shared between the federal and provincial levels of government, with municipalities being granted jurisdiction in some matters by provincial governments. The federal government has implemented two primary statutes regulating environmental protection, including the <i>Canadian Environmental Protection Act</i> and the <i>Canadian Environmental Assessment Act</i>, while many other federal statutes are also related to environmental regulation. In Saskatchewan, statutes primarily associated with environmental regulation include <i>The Environmental Management and Protection Act</i> and <i>The Environmental Assessment Act</i>, while many other provincial statutes are related to environmental regulation as well. Local governments have responsibility for waste management, and also have jurisdiction over development permits and licencing. In Saskatchewan, the provincial government environmental department administers 20 separate statutes related to environmental regulation.</p> <p>The sharing of responsibility for environmental regulation occasionally yields tension between the various levels of government, as the policy objectives of one level of government may contradict policy objectives of another level of jurisdiction.</p>	<p>Federal Jurisdiction</p> <p>Know that the <i>Constitution Act (1867)</i> provides exclusive power to the federal government over shipping, navigation, trade and commerce, all of which relate to environmental issues.</p> <p>Provincial Jurisdiction</p> <p>Know that the <i>Constitution Act (1867)</i> provides provinces jurisdiction over property and civil rights, management of public lands, and private and local matters.</p> <p>Municipal Jurisdiction</p> <p>Know that by virtue of provinces granting powers to local governments, municipal law makers have varying levels of jurisdiction regarding matters of environmental law.</p> <p>Standing</p> <p>Know that when environmental issues arise, individuals and groups having definable interests in the issue may be granted legal standing at hearings or other legal proceedings.</p>

Skills/Abilities Objectives	Values Objectives
<p>Practise skill of classifying and categorizing.</p> <p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance – the ability of the model to perform constructively, efficiently and consistently in a variety of situations • consequences – the acceptability of the consequences of applying the model to various situations • accuracy – the ability of the model to predict future events accurately and consistently. <p>Develop and apply criteria as a basis for coming to conclusions.</p> <p>Apply the skills of dialectical evaluation:</p> <ul style="list-style-type: none"> • define relevant viewpoints within the information • test the view points for factual accuracy • test the viewpoints for their morality • evaluate the factual and moral testing • form a conclusion about the issues. 	<p>Appreciate that conflicting policy aims may arise between levels of government with respect to environmental protection.</p> <p>Appreciate that environmental legislation has emerged primarily as a regulatory instrument of environmental protection.</p> <p>Understand that environmental legislation is developed with an approach of inspection and monitoring for compliance.</p> <p>Appreciate that environmental protection included a variety of statute laws.</p>

Instructional Notes

1. Investigate federal environmental statutes. Compare federal legislation to provincial legislation. Identify similarities and differences between the two levels of jurisdiction.
2. Invite a speaker from the level of local government to speak to students about local bylaws in the area of environmental protection.
3. Identify issues of local importance regarding the environment, and inquire about the process for environmental assessment in considering these issues.
4. Investigate the Saskatchewan *Agricultural Operations Act* for an example of a nonenvironmental statute impacting upon environmental protection.
5. Investigate the issue of crop-burning in Saskatchewan. Identify why it is an issue, and determine local and provincial law in this area.

Issues in the Law

1. What challenges arise out of overlapping jurisdiction between levels of government with respect to environmental protection?
2. What limits should be placed on developments near preservation areas, such as provincial or national park areas?
3. What limitations should be placed upon large-scale livestock production in Saskatchewan?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Implementation and Enforcement</p> <p>Individuals may seek protection of common law regarding nuisance, trespass or negligence through civil action. The collective protection of the environment; however, is regulated and enforced through provincial or federal agencies mandated to this role.</p> <p>New developments impacting upon the physical environment are regulated through the environmental impact assessment processes, with statutory requirements identified by each level of governmental regulation. Much environmental legislation is directly or indirectly aimed at the reduction of pollution in waterways and the atmosphere.</p> <p>Existing entities must comply with regulations regarding environmental protection, while new proposed developments are subject to environmental impact assessment procedures.</p>	<p>Environmental Assessment</p> <p>Know that the environmental impact of economic development is regulated federally under <i>The Canadian Environmental Assessment Act</i> and in Saskatchewan under <i>The Environmental Assessment Act</i>.</p> <p>Polluter Pays Principle</p> <p>Know that in Canada, the law requires that those who pollute the environment are responsible for the costs of environmental cleanup.</p>
<p>Issues in Environmental Law</p> <p>While domestic legislation and common law are the primary focus of Canadian environmental protection, international implications exist in the domestic environmental policy of every nation. Sharing of a common ecosystem by all nations and individuals necessitates international cooperation and coordination. The 1996 <i>Kyoto Accord</i> on global warming and greenhouse gas emissions addressed global climate change. However, at the end of 2001, ratification of the <i>Accord</i> had not occurred. Delays in implementing domestic legislation have challenged the success of the Kyoto agreement in environmental protection. As well, the <i>Kyoto Accord</i> illustrated the challenges within Canada regarding environmental protection, as some provincial governments opposed the federal initiatives associated with the <i>Accord</i>.</p> <p>Another issue illustrating tensions with regard to environmental protection is that of genetic engineering in the food production industries, with varying international standards regulating the production of genetically modified foods.</p>	<p>Reasonable Limits</p> <p>Know that the challenge for environmental regulation is to define reasonable limits and reasonable risk in assessing environmental impact of developments.</p>
<p>On the local level, communities are faced with issues such as landfill management, water quality and pesticide use, all of which impact upon the daily living standards of individuals in communities. The challenges faced in environmental protection may be local or international; however, the need for resolution of competing interests continues to be a challenge for citizens.</p>	

Skills/Abilities Objectives	Values Objectives
<p>Analyze data to gather information.</p> <p>Identify criteria for environmental standards.</p> <p>Apply inquiry skills:</p> <ul style="list-style-type: none"> • act upon curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify and test hypotheses • draw inferences and generate possible solutions. 	<p>Consider various positions with regard to environmental protection.</p> <p>Appreciate the need for local environmental action.</p>

Instructional Notes

1. Investigate current environmental assessment projects in Saskatchewan. Define the major objectives of the environmental review process, and assess the effectiveness of the process.
2. Investigate local environmental issues, such as landfill needs, access to clean water, or pesticide use in local communities. Invite a speaker from local government to address students regarding the criteria followed by communities in such matters.
3. Investigate the law as it pertains to local communities setting standards for environmental protection.
4. Examine cases of environmental pollution to determine the processes for cleaning up the environments affected.
5. Examine issues associated with hunting and fishing rights of Aboriginal peoples in Saskatchewan, and investigate current approaches to reconciling rights with the need for environmental stewardship. A speaker from provincial or First Nations government may provide useful data in this regard.
6. Explore environmental regulation in the forestry industry in Saskatchewan and elsewhere in Canada. Assess the effectiveness of the Saskatchewan approach by both government (in terms of regulation) and industry (in terms of adherence to standards).
7. Explore resource development and ecological perspectives of Aboriginal Peoples in Saskatchewan, defining issues and challenges for First Nations and Métis people.
8. Inquire into the findings of the 1987 report, *Our Common Future: The World Commission on Environment and Development*, also known popularly as the Brundtland Report. Assess federal Canadian environmental law, as well as Saskatchewan environmental law, using the Brundtland Report as the criteria.

Issues in the Law

1. To what degree are economic development proposals in Saskatchewan subject to adequate review and regulation?
2. How should decisions be made regarding pesticide use in public areas, such as parks or schoolyards?

Unit 8 – International Law



Everyone has the right to seek and enjoy in other countries asylum from persecution.

Article 14
Universal Declaration of Human Rights
1948

Overview – Unit Eight: International Law

The study of international law is complicated by its very nature. To be implemented, international law requires domestic action within individual nation states. Thus, international compliance is dependent upon the domestic actions of independent, sovereign nation states. While international law regarding trade and commerce, the sovereignty of nation states and diplomatic immunity have existed for centuries, the area of international human rights and the treatment of refugees and internally displaced persons is relatively new to international law, emerging out of the atrocities of World War II. Also emerging from the devastation of World War II was the desire by nation states for a body to resolve international disputes in a peaceful manner, and for an international body to promote the collective security of humanity. The mechanism developed, the United Nations, has been guided by its *Charter* in promoting the positive development of human interests. In this unit, students will consider the history and sources of international law, the development of the United Nations, and the challenges and successes of the United Nations since its inception in 1945. Students are challenged to assess the status of international law in the 21st century, and to become aware of the continuing challenge to enable all of humanity to live in dignity and security.

Resources and Resource-Based Learning

Resource-based learning is an integral part of all units. The bibliography developed to support this curriculum will assist you in incorporating a variety of resources from different media into each unit. This annotated bibliography should be available from your teacher-librarian or the Learning Resource Distribution Centre. The bibliography contains annotations of current, useful resources including print, video, Internet sites, and other media selections. Teachers are encouraged to assess their current resource collection, identifying those that continue to be useful, and to acquire small quantities of each new title, rather than class sets, in order to provide students with a broad range of perspectives and information.

The following list of evaluated resource titles provides a starting point for developing a resource collection that is current and relevant, and that addresses students' various learning styles and abilities. Please refer to Law 30 **The Law and You: A Bibliography**, for a complete list of resources giving the full citation, annotation, and ordering information. Please note that many of these resources can be ordered through the Learning Resource Distribution Centre (<http://lrdc.sasked.gov.sk.ca/>). Videos may be available from Media Group (<http://www.sasked.gov.sk.ca/video>). At the time of publication all of the resources listed here and in the bibliography were in print and available.

Please note that LRDC will be closing effective March 31, 2003. If you need assistance acquiring Saskatchewan Learning materials after that date, please contact 787-5987.

Print Resources

Global Politics: Origins, Currents, Directions

Human Rights Encyclopedia

Our Elders Understand Our Rights: Evolving International Law Regarding Indigenous Rights

Teaching Human Rights

Trial of Adolf Eichmann: The Holocaust on Trial (Famous Trials)

War Crimes

War Criminals in Canada

Internet Sites

The following sites provide a brief overview of available websites. These sites were checked for availability in March 2002. To access these formally evaluated sites that have been linked to the curriculum, visit the Evergreen Curriculum at the Saskatchewan Learning website <http://www.sasked.gov.sk.ca/>.

Canada and International Human Rights - http://www.pch.gc.ca/ddp-hrd/inter/index_e.shtml
Canadian Human Rights Commission - <http://www.chrc-ccdp.ca/>

Incorporating Current Events

Incorporating current events enhances students' understanding of the concepts under study and extends their learning experiences by relating the events to real life and making them more relevant. Sources for current event stories include newspapers, newsmagazines, daily and weekly television and radio newscasts, documentaries and the Internet. Many Canadian daily newspapers are available online and are a useful source of current events. Select articles and news items to support the objectives and concepts as often as possible, and encourage students to contribute also.

Learning Objectives

Learning objectives of two types are identified for Law 30, including Foundational Objectives and Specific Learning Objectives. Foundational Objectives are designed to guide instruction and student learning throughout each unit of study, and indicate the broad learning outcomes in terms of content, skills and abilities, and values. Specific Learning Objectives, identified in each lesson of the unit, are designed to help students achieve the foundational objectives. The core Specific Learning Objectives are identified in bold font. This makes timelines for each lesson and unit flexible. Teachers can choose to focus on the core Learning Objectives only, or to have students strive to achieve all of the stated Learning Objectives.

Objectives to achieve the Common Essential Learnings (C.E.L.s) are identified using the following abbreviations:

Communication	COM
Critical and Creative Thinking	CCT
Personal and Social Values and Skills	PSVS
Independent Learning	IL
Numeracy	NUM
Technological Literacy	TL

Foundational Objectives

Knowledge/Content	Skills	Values
<ul style="list-style-type: none">Identify and communicate sources of international law. (COM)Know the variation in legal status of one who is an immigrant, a refugee or an internally displaced person. (CCT)	<ul style="list-style-type: none">Develop and apply criteria in making decisions. (CCT)Interpret data to make inferences. (N)Apply a dialectical reasoning model to make judgement. (IL, CCT)	<ul style="list-style-type: none">Appreciate that domestic legislation is required to enact compliance with international law by individual states. (PSSV)Appreciate that living by the rule of law internationally requires a degree of loss of sovereignty for each individual nation. (PSVS)Appreciate the need for human rights law. (PSVS)

Content (Teacher Information)	Concepts and Knowledge Objectives
The Nature of International Law	State
<p>The area of international law is unique, in that all other areas of law address domestic and national legal issues and questions within individual states. International law, however, attempts to address and resolve legal issues and questions arising between states. A system of cooperation between states is necessary for routine procedures, such as the delivery of mail or provision of other communications mechanisms, and for more complex issues, such as the protection of common ecosystems or to define terms and conditions of international trade.</p> <p>Subsequently, progress has been made toward clarification, common understanding and adoption of a body of international law to guide the increasing level of international interaction in the 21st century. The implementation of a system of international laws is much more tenuous than is the implementation of the rule of law system in an individual state, such as Canada. Cultural, ideological and religious diversity among nation states, combined with the recognition of the sovereignty of individual states, and the absence of an international instrument of legislative governance, are all factors complicating the area of international law. As well, international law only applies when nation states agree to live by that rule of law. Subsequently, domestic, internal action is required to ensure each state respects its international obligations under international law.</p>	<p>Know that a state is a sovereign territory recognized by other states and the United Nations. Under international law, each state has sovereignty over its domestic affairs.</p>
The Purpose of International Law	Sovereignty
<p>International law attempts to define the standard of conduct for international relationships between and among states, as well as addressing the application of domestic law to foreign persons within individual states. Two primary purposes of international law are to build cooperation between and among states, and to set standards and procedures to minimize conflict between states.</p>	<p>Know that sovereignty means that every nation in the world has complete control over its territory, its people and its government.</p>
Sources of International Law	Rule of Law
<p>While sources of domestic law in Canada include the common law, the <i>Constitution</i> and <i>Charter of Rights and Freedoms</i>, the Treaties with First Nations and statute law, international law does not have such a clearly defined delineation of sources of law. However, the Statute of the International Court of Justice, an organization of the United Nations, provides criteria for dispute resolution in Article 38(1). It identifies the following criteria for deciding upon resolution of international disputes submitted to the court:</p> <ul style="list-style-type: none"> • international conventions and treaties • international custom • general principles of law recognized by civilized states • legal decisions and teachings of international legal scholars and practitioners. 	<p>Know that if a nation's sovereignty is violated, the nation could launch a grievance with the United Nations.</p> <p>Know that sovereignty involves recognition of the independence of an individual nation state by other nation states.</p> <p>Rule of Law</p> <p>Know that in International law, the rule of law functions only as individual states enact domestic legislation to guide and direct the international activities of the state. Such domestic legislation may address international treaties of either bilateral or multilateral nature.</p> <p>Dualism</p> <p>Know that dualism is used to describe the status of international law as it requires domestic legislative action for international implementation. Therefore, domestic and international law must coexist.</p> <p>Treaty</p> <p>Know that a treaty is a written voluntary agreement made by two or more sovereign states.</p> <p>Convention</p> <p>Know that convention is another term to describe a treaty.</p>

Skills/Abilities Objectives	Values Objectives
<p>Compare and contrast international law with domestic law.</p> <p>Practice skills of classifying and categorizing.</p> <p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance – the ability of the model to perform constructively, efficiently and consistently in a variety of situations • consequences – the acceptability of the consequences of applying the model to various situations • accuracy – the ability of the model to predict future events accurately and consistently. <p>Develop and apply criteria as a basis for coming to conclusions.</p> <p>Apply the skills of dialectical evaluation:</p> <ul style="list-style-type: none"> • define relevant viewpoints within the information • test the view points for factual accuracy • test the viewpoints for their morality • evaluate the factual and moral testing • form a conclusion about the issues. 	<p>Appreciate the relationship between international law and domestic law.</p> <p>Appreciate the significance of sovereignty of the nation state as a principle of customary international law.</p> <p>Consider the importance of domestic law to enable the implementation of the system of international law.</p>

Instructional Notes

1. Survey recent newspapers, magazines and journals to become familiar with current issues in international law. Categorize issues according to the aspect of international law involved, such as international trade law, refugee law and international environmental law. This serves as a source of current, authentic data to illustrate concepts in the unit.
2. Examine the *United Nations Statute of the International Court of Justice*. Identify reasons for its establishment, and assess its effectiveness as an instrument of international law.
3. The United Nations was adopted as a model for enhancing international peace and security in 1945. Investigate the *Charter of the United Nations*. Using the mandate of the *Charter* as the criteria, assess the effectiveness of the *United Nations* as an ongoing project throughout this unit of study.
4. Throughout the unit, have students examine the adequacy of the current model of international law, with final assessment possibly involving a critique of the model.

Issues in the Law

1. To what degree should a sovereign nation relinquish legal authority to an international body?
2. In what ways might cultural differences affect the nature of international law?
3. Is international law real law? Explain.
4. In what ways is the United Nations an effective/ineffective agency in advancing the causes and addressing issues of international law?

Content (Teacher Information)	Concepts (Knowledge Objectives)
<p>Sources of Law (continued)</p> <p>International Treaties</p> <p>International treaties provide the greatest degree of clarity to international law. In attempts to increase the effectiveness of international treaties, the United Nations identified criteria for making treaties through the <i>Vienna Convention on the Law of Treaties</i> (1969). According to this convention, treaties may address any subject of international relations, and must meet certain criteria:</p> <ul style="list-style-type: none"> • treaties must be in written format • they must be voluntarily entered into between two (bilateral) or more (multilateral) sovereign states • parties are legally bound to the rights and obligations within the treaty. <p>International Customary Law</p> <p>Historically, prior to any formal treaty making or conventions being adopted by nations, customary law developed through the conduct of states over time. Customary law evolved as a result of common patterns of conduct by individual states, with these common patterns accepted as law. Examples include the concept of freedom of the seas, a practice that has been widely adopted and respected as customary law, as well as the concept of diplomatic immunity, a custom in practice since the era of ancient Greece.</p> <p>The international nature of customary practices has made codification of international law challenging. Some formal codification of customary law has occurred, primarily in response to international conflict. The desire to codify international law is included in the <i>Charter of the United Nations</i>, which identifies codification of international law within its mandate. <i>The Geneva Conventions</i> (1949) are an example of codification of customary international law with respect to the rules for war and armed conflict.</p> <p>General Principles and Other Sources of Law</p> <p>Occasionally, when no treaty, convention, or customary law appears applicable to an international dispute, the International Court of Justice may review and compare the domestic law of a variety of nations. It will use the commonality of ideals to guide decisions when no other sources are available. As well, judicial decisions of the International Court, the writings of international legal scholars and resolutions from the United Nations may serve as sources influencing the direction of international law.</p>	<p>Bilateral Treaties</p> <p>Know that a bilateral treaty is a voluntary agreement between two sovereign states.</p> <p>Multilateral Treaties</p> <p>Know that a multilateral treaty is a voluntary agreement between more than two sovereign states.</p> <p>Extradition</p> <p>Know that extradition is a process whereby one state will surrender, at the request of another state, a person accused or convicted of a violation of the requesting state's domestic law.</p> <p>Know that in Canada, our government will not allow the extradition of any individual facing a death penalty in the requesting state.</p> <p>Customary Law</p> <p>Know that a customary law exists when there is evidence of widespread and consistent practice among states, and there is a genuine belief among states that such practice is legally binding.</p> <p>Codification</p> <p>Know that <i>Article 13</i> of the <i>United Nations Charter</i> mandates the codification of international law by its General Assembly.</p> <p>Diplomatic Immunity</p> <p>Know that diplomatic immunity includes special rights or privileges that protect foreign diplomatic representatives from physical harm or civil or criminal proceedings under the laws of the host nation.</p>

Skills/Abilities Objectives	Values Objectives
<p>Differentiate between customary law and codified law.</p> <p>Identify rationale for the existence of diplomatic immunity.</p> <p>Investigate the nature of extradition treaties to which Canada is a party.</p> <p>Apply dialectical reasoning to assess the diplomatic immunity model.</p>	<p>Appreciate that cultural diversity exists within international customary law.</p> <p>Consider reasons for Canada's policy of not extraditing individuals to nations that employ the death penalty.</p> <p>Understand that diplomatic immunity has a very long tradition in international customary law.</p>

Instructional Notes

1. Investigate the concept of diplomatic immunity. Examine the reasons for this system of international recognition of diplomatic immunity.
2. In the year 2000, a Russian diplomat in Canada had been impaired while operating a motor vehicle, resulting in the death of a Canadian citizen. The diplomat, Andrey Knyazev, then left Canada and returned to Russia, where he faced trial for the offence. Examine the rule of law as it applies to this case. Have students engage in a dialectical reasoning activity to assess the importance of diplomatic immunity.
3. Investigate the status of extradition treaties Canada has with other nations. Identify any conditions associated with Canadian extradition treaties.

Issues in the Law

1. Should Canada be involved in extradition treaties? What is the extradition situation in Canadian law regarding the nature of the punishment facing an accused person in another country?
2. Is diplomatic immunity a just concept in international law? Why is this aspect of customary law important today?
3. Should Canada place conditions or limitations on the extradition of accused persons to a state requesting extradition?

Content (Teacher Information)	Concepts (Knowledge Objectives)
Implementation of International Law	Ratification
<p>The implementation of international law is a complicated matter, as individual states must enact domestic legislation internally to govern the nation's practices externally, and in relations with other states. However, absence of any international law enforcement agency, and recognition of the sovereignty of each individual state, present challenges in international law.</p>	<p>Know that in international law, ratification is a process whereby an agreement or treaty becomes binding on nations when the terms of the agreement or treaty are adopted as internal domestic law of the nation.</p>
<p>Prior to the 20th century, trade, commerce and conflict were localized matters, and were resolved on that basis. However, as the realities of globalized conflict emerged in the first half of the 20th century, and as technology, commerce and international trade have developed, so has the recognition among states of the need for a system of collective security. The result has been the development of international organizations and infrastructure to encourage peaceful settlement of disputes, enhance trade, promote human rights and provide an avenue for the collective security of nations, all of which have become part of the body of international law.</p>	Collective Security <p>Know that collective security involves the uniting of individual states against an aggressor state in order to maintain international peace and security.</p>
The United Nations <p>The United Nations was established in 1945, with its Charter identifying the objectives, purposes, principles and responsibilities for the organization. The function and authority of the U.N. is divided among its six branches, one of which is the International Court of Justice. Membership within the United Nations obligates countries to comply with the decisions of that Court.</p>	<p>Know that <i>Article 1</i> of the <i>Charter of the United Nations</i> identifies the maintenance of collective security as one of the organization's purposes.</p>
The International Court of Justice <p>The international Court of Justice was established to provide an avenue for nations of the world to resolve disputes in a peaceful manner according to the rule of law. The court has jurisdiction over international disputes presented to it by nations willing to accept its jurisdiction. No sovereign nation is obligated to submit a dispute to the International Court of Justice, and the court does not hear cases relating to individual citizens of any nation.</p>	

Skills/Abilities Objectives	Values Objectives
<p>Apply inquiry skills:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify and test hypotheses • draw inferences and generate possible solutions. 	<p>Appreciate the need for domestic ratification of international treaties and agreements.</p> <p>Understand that cultural diversity provides conflicting moral visions of the nature of human rights.</p>

Instructional Notes

1. Investigate the mandate of the United Nations, as it applies to international law. The *Preamble* and the *Charter* both provide data regarding the mandate in international law.
2. Study the United Nations International Criminal Tribunal for the former Yugoslavia or the United Nations International Criminal Tribunal for Rwanda. What is the purpose of these instruments?
3. Investigate the war crimes trials following World War II, including the International Military Tribunal at Nuremberg, and the Military Tribunal for the Far East. Were they successful?
4. See Student Handout 8.1 - The International Court of Justice, for information regarding this body. Investigate how the makeup of the Court, and its mandate, contribute to peaceful dispute resolution in international law.

Issues in the Law

1. Are war crimes tribunals effective instruments of justice in the 21st century?
2. Did the United Nations fail to fulfill its mandate in Rwanda in the 1990s? Explain.
3. What criteria should be used by the United Nations to determine what is the proper behaviour for a state in its relations with other states and in its treatment of its citizens?

Student Handout 8.1 - The International Court of Justice

The International Court of Justice is the principal judicial organ of the United Nations. Its seat is at the Peace Palace in The Hague (Netherlands). It began work in 1946, when it replaced the Permanent Court of International Justice that had functioned in the Peace Palace since 1922. It operates under a Statute largely similar to that of its predecessor, which is an integral part of the *Charter* of the United Nations.

Functions of the Court

The Court has a dual role: to settle in accordance with international law the legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies.

Composition

The Court is composed of 15 judges elected to nine-year terms of office by the United Nations General Assembly and Security Council sitting independently of each other. It may not include more than one judge of any nationality. Elections are held every three years for one-third of the seats, and retiring judges may be re-elected. The Members of the Court do not represent their governments but are independent magistrates. The judges must possess the qualifications required in their respective countries for appointment to the highest judicial offices, or be jurists of recognized competence in international law. As were, the composition of the Court has to reflect the main forms of civilization and the principal legal systems of the world. When the Court does not include a judge possessing the nationality of a State party to a case, that State may appoint a person to sit as a judge *ad hoc* for the purpose of the case.

Cases Between States

The Parties

Only States may apply to and appear before the Court. The States Members of the United Nations (at present numbering 189), and one State that is not a Member of the United Nations, but that has become party to the Court's Statute (Switzerland), are so entitled.

Jurisdiction

The Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways:

- (1) by the conclusion between them of a special agreement to submit the dispute to the Court
- (2) by virtue of a jurisdictional clause (e.g., typically, when they are parties to a treaty containing a provision whereby, in the event of a disagreement over its interpretation or application, one of them may refer the dispute to the Court. Several hundred treaties or conventions contain a clause to such effect.)
- (3) through the reciprocal effect of declarations made by them under the Statute whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration. The declarations of 64 States are at present in force, a number of them having been made subject to the exclusion of certain categories of dispute.

In cases of doubt as to whether the Court has jurisdiction, it is the Court itself that decides.

Procedure

The procedure followed by the Court in contentious cases is defined in its *Statute*, and in the Rules of Court adopted by it under the *Statute*. The latest version of the *Rules* dates from December 05, 2000. The proceedings include a written phase, in which the parties file and exchange pleadings, and an oral phase consisting of public hearings at which agents and counsel address the Court. As the Court has two official languages (English and French), everything written or said in one language is translated into the other.

Following the oral proceedings, the Court deliberates in camera, then delivers its judgment at a public sitting. The judgment is final and without appeal. Should one of the States involved fail to comply with it, the other party may have recourse to the Security Council of the United Nations.

The Court discharges its duties as a full court but, at the request of the parties, it may also establish a special chamber. The Court constituted such a chamber in 1982 for the first time, formed a second one in 1985 and constituted two more in 1987. A Chamber of Summary Procedure is elected every year by the Court in accordance with its Statute. In July 1993 the Court has also established a seven-member Chamber to deal with any environmental cases falling within its jurisdiction. Since 1946 the Court has delivered 73 Judgments on disputes concerning *inter alia* land frontiers and maritime boundaries, territorial sovereignty, the nonuse of force, noninterference in the internal affairs of States, diplomatic relations, hostage-taking, the right of asylum, nationality, guardianship, rights of passage and economic rights.

Sources of Applicable Law

The Court decides in accordance with international treaties and conventions in force, international custom, the general principles of law and, as subsidiary means, judicial decisions and the teachings of the most highly qualified publicists.

Advisory Opinions

The advisory procedure of the Court is open solely to international organizations. The only bodies at present authorized to request advisory opinions of the Court are five organs of the United Nations and 16 specialized agencies of the United Nations family. On receiving a request, the Court decides which States and organizations might provide useful information and gives them an opportunity of presenting written or oral statements. The Court's advisory procedure is otherwise modelled on that for contentious proceedings, and the sources of applicable law are the same.

In principle the Court's advisory opinions are consultative in character and are therefore not binding as such on the requesting bodies. Certain instruments or regulations can, however, provide in advance that the advisory opinion shall be binding. Since 1946 the Court has given 24 Advisory Opinions, concerning *inter alia* admission to United Nations membership, reparation for injuries suffered in the service of the United Nations, territorial status of South-West Africa (Namibia) and Western Sahara, judgments rendered by international administrative tribunals, expenses of certain United Nations operations, applicability of the United Nations Headquarters Agreement, the status of human rights rapporteurs, and the legality of the threat or use of nuclear weapons.

(Source: International Court of Justice, United Nations. Reprinted with permission.)

Focus Questions

1. Why is it necessary that nations mutually agree to have a dispute heard by the International Court of Justice?
2. Why would a nation choose to seek an advisory opinion from the Court? In what way would such an opinion be helpful to a nation attempting to resolve a dispute?
3. Why are there so many judges from so many different nations sitting on the International Court of Justice?

Content (Teacher Information)	Concepts and Knowledge Objectives
The International Criminal Court	Statute of the International Criminal Court
<p>While the International Court of Justice addresses disputes between nations, it is not mandated to address the actions of individuals. However, events in the 20th century, such as Nazi atrocities of World War II, the Rwandan genocide and the ethnic cleansing in the former Yugoslavia in the 1990s, highlighted the need for an avenue to bring to justice individuals responsible for such atrocities. The result was agreement to establish the International Criminal Court by the United Nations in 1998. Crimes within the jurisdiction of the court include:</p> <ul style="list-style-type: none"> • genocide • war crimes • crimes against humanity. 	<p>Know that the <i>Statute of the International Criminal Court</i> lists and defines crimes within its jurisdiction.</p>
<p>Established in principle in 1998, this International Criminal Court required ratification by at least 60 countries before coming into effect. This ratification process requires passage of domestic legislation within member nations. In April 2002, the International Criminal Court received the necessary ratification to come into effect in July of 2002.</p>	International Trade Law <p>Know that the United Nations Commission on International Trade Law (UNCITRAL) was established in 1966 to enhance the efficiency of international trade.</p>
International Trade <p>The legal basis for international trade is found in international treaties, international customary law, and the domestic laws formed by nations to regulate terms and conditions of international trade. Treaties may be bilateral or multilateral, and govern the exchange of goods and services between nations. As with other areas of international law, it is domestic trade legislation that directs the international actions of nations. There are four Canadian federal statutes to which international trade is subjected, including:</p> <ul style="list-style-type: none"> • <i>The Customs Act</i> • <i>The Customs Tariff Act</i> • <i>The Special Imports Measures Act</i> • <i>The Export and Import Permits Act</i>. 	The Customs Act <p>Know that <i>The Customs Act</i> identifies the powers and duties of customs officers, the procedures for importing goods, and the rules for the collection of customs duties.</p> The Customs Tariff Act <p>Know that the <i>Customs Tariff Act</i> identifies the rates of duties placed upon goods imported to Canada, as well as listing goods prohibited from being imported to Canada.</p> The Special Imports Measures Act <p>Know that <i>The Special Imports Measures Act</i> provides protection against dumping important products on Canadian markets.</p> Dumping <p>Know that dumping is the process whereby imports are sold into a domestic market at a price lower than the cost of production in the country of origin.</p>
<p>Other nations also have domestic legislation regulating the terms and conditions of international trade, all of which may restrict the flow of goods and services between nations. In attempts to enhance the free movement of goods and services on a global scale, many nation states have entered into trade agreements regulating the movement of goods and services across international borders. Examples of multilateral agreements include the <i>General Agreement on Tariffs and Trade</i> in 1947, and its successor, the World Trade Organization, established in 1995 with 128 member nations. <i>The North American Free Trade Agreement</i> of 1993 is an example of an agreement between individual nations concerning international trade. As with all areas of international law, concerns about the limits to national sovereignty resulting from international agreements exist within the domestic populations of the nations involved.</p>	 The Export and Import Permits Act <p>Know that <i>The Export and Import Permits Act</i> requires permits be obtained prior to importing or exporting particular goods, in order to protect Canadian producers from unfairly low pricing on imports, and to restrict export sale of controlled products (such as military hardware) and other products of strategic importance (such as water).</p>

Skills/Abilities Objectives	Values Objectives
<p>Identify reasons why countries trade with other countries.</p> <p>Apply basic vocabulary of international trade in communicating understandings.</p> <p>Practise the use of dialectical reasoning to decide between alternative viewpoints on an issue.</p>	<p>Appreciate that international trade issues often become domestic political issues impacting on domestic legislation, and subsequently international law.</p> <p>Understand that trade practices of one nation may have positive or negative affects on another nation.</p> <p>Appreciate that international trade law requires domestic ratification and enforcement to have international significance.</p> <p>Consider the impact of technology on international intellectual property rights.</p>

Instructional Notes

1. The International Criminal Court has been criticized by some nations as an infringement on domestic sovereignty. Examine the mandate of the International Criminal Court, and gather data regarding why some nations have reservations about supporting the Court.
2. Examine the mandate of the World Trade Organization (WTO). Gather data regarding its activities, and data regarding reasons some individuals have for opposing the work of the WTO.
3. Have students explore the web-based international trade activity of PLEA Saskatchewan. (<http://www.plea.org/teachers/trade/index>). Students will gain experience in working with terms and concepts associated with international trade.
4. Have students engage in a dialectical reasoning activity to assess the copyright provisions related to downloading music from the Internet.
5. Investigate Canada's position regarding the International Criminal Court of the United Nations.

Issues in the Law

1. Should copyright law prevent individuals from downloading music from the Internet? Explain reasons.
2. Do international trade agreements infringe too greatly upon national sovereignty? Explain.
3. Is the power of the multinational corporation becoming greater than desirable in the era of globalization? What might be the result?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Immigration</p> <p>The immigration of people to Canada is a matter of domestic law, but the movement of people across international borders is a matter of international legal importance. Under the Canadian constitution, domestic responsibility for citizenship and immigration lies with the federal government, and is administered under the <i>Immigration and Refugee Protection Act</i>. Under Canadian immigration policy, there are three basic classes of immigrants:</p> <ul style="list-style-type: none"> • family class, including close family members sponsored by a Canadian citizen or resident, including spouses, fiancés, dependent children, parents and grandparents • independent class, including those selected for their economic contribution (e.g., skilled workers and business immigrants) • refugee class, including Convention refugees and other displaced persons resettled from abroad, with government assistance or private sponsorship, and persons who have successfully claimed Convention refugee status in Canada. <p>Immigration law is a matter of domestic legislation, but the system of transportation, the passport system and the status of refugees in the world are all matters of international legal implication.</p>	<p>Asylum</p> <p>Know that asylum is a status offered by one nation to a citizen of another nation, because the individual fears harm from the nation of origin.</p> <p>Immigration Policy</p> <p>Know that immigration policy in Canada has historically been an instrument of economic policy, with many immigrants welcomed to Canada to further the objectives of the national government.</p>
<p>Refugees</p> <p>The movement of individuals and groups fearing persecution, or lack of protection from their own governments creates a unique migration situation for both domestic and international law. The flight of refugees from persecution has occurred frequently throughout modern history, with fear of religious persecution documented in early religious writings of various religious groupings. The Bible, the Koran and Hindu religious writings all refer to the concepts of exile and asylum as part of their religious traditions. In the 20th century, refugee situations have developed in response to various situations and conditions, including:</p> <ul style="list-style-type: none"> • religious persecution, such as the migration of individuals of Jewish faith in response to Nazi persecution • political persecution, such as the migration of dissidents from the former Soviet Union • ethnic persecution, such as occurred in Rwanda in 1994 • escape from areas devastated by war or natural disaster, such as the movement of civilian populations from Ethiopia to Sudan in the 1980s. 	<p>United Nations Convention on Refugees</p> <p>Know that according to the United Nations, a refugee is a person who is outside his/her country of nationality or habitual residence, has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion, and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution.</p> <p>Refugee</p> <p>Know that a refugee claimant receives Canada's protection when he or she is found to be a Convention refugee as defined by the United Nations' 1951 <i>Geneva Convention Relating to the Status of Refugees</i>, and its 1967 Protocol.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance – the ability of the model to perform constructively, efficiently and consistently in a variety of situations • consequences – the acceptability of the consequences of applying the model to various situations • accuracy – the ability of the model to predict future events accurately and consistently. <p>Develop and apply criteria as a basis for coming to conclusions.</p> <p>Apply the skills of dialectical evaluation:</p> <ul style="list-style-type: none"> • define relevant viewpoints within the information • test the view points for factual accuracy • test the viewpoints for their morality • evaluate the factual and moral testing • form a conclusion about the issues. <p>Apply the moral tests of:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. 	<p>Understand that according to the rule of international law, Canada has a commitment to support refugees.</p> <p>Appreciate that immigration has contributed greatly to cultural diversity in Canada.</p> <p>Appreciate that immigration to Canada has had a significant historical, economic impact.</p>

Instructional Notes

1. Investigate the United Nations' *1951 Geneva Convention Relating to the Status of Refugees*, and its 1967 Protocol. Identify the major objectives of this *Convention*, and illustrate how Canada's model of supporting refugees reflects the *Convention*, and/or deviates from it.
2. See Student Handout 8.2 - The 1951 Refugee Convention – Q & A, for background information regarding refugees.
3. Investigate the response of Australia to refugee claimants who arrived in their waters in 2000, but were not welcomed as refugees. Why did Australia not accept these persons as refugees? Would they be accepted under the Canadian model? What is the responsibility of humanity toward people in such circumstances?
4. Have students trace the patterns of immigration into Canada. Have them identify reasons that immigrants came to Canada and reasons why Canada welcomed them. Next, investigate current immigration criteria in Canada. Have students apply the current criteria to themselves, in their current circumstances, in terms of education and skills, to see if they would be welcomed as new Canadians. Have students generate a written generalization about immigration criteria based upon their experience and knowledge from the activity.

Issues in the Law

1. What should be Canada's approach to immigration policy? On what criteria should we make decisions about immigration? What role should economics, history, humanitarianism or self interest play?
2. The legislation addressing immigration and refugee policy in Canada was changed in 2001. Why? What was the result?

Student Handout 8.2 - The 1951 Refugee Convention: Questions and Answers

The Convention's History

The process of developing a body of international law, conventions and guidelines to protect refugees began in the early part of the 20th century under the League of Nations, the predecessor of the United Nations. It culminated on July 28, 1951, when a special UN conference approved the *Convention* relating to the status of refugees. The *Convention* clearly spells out who is a refugee and the kind of legal protection, other assistance and social rights he or she should receive from states party to the document. Equally, it defines a refugee's obligations to host governments and certain categories of persons, such as war criminals, who do not qualify for refugee status.

Several months before the *Convention's* passage, the fledgling United Nations High Commissioner for Refugees had begun its work on January 01, 1951. In the subsequent decades, the document has been the foundation of the agency's efforts to help and protect an estimated 50 million refugees. This first instrument was limited to protecting mainly European refugees in the aftermath of World War II, but a 1967 Protocol expanded the scope of the *Convention* as the problem of displacement spread around the world. The original document also inspired regional instruments such as the 1969 *Africa Refugee Convention* and the 1984 *Latin American Cartagena Declaration*. A total of 143 states have acceded to one or both of the UN instruments. But as the pattern of global migration changed and the number of people on the move increased dramatically in recent years, the relevance of the 1951 *Convention* has been called into question, especially in Europe, ironically its very birthplace. UNHCR currently helps more than 21 million people and the *Convention*, which has proved to be remarkably flexible in rapidly changing times, continues to be the cornerstone of refugee protection. Following are some of the most common questions about the *Convention*.

Who is a refugee?

Article 1 of the *Convention* defines a refugee as "a person who is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution."

Why is the *Convention* important?

It was the first truly international agreement covering the most fundamental aspects of a refugee's life. It spelled out a set of basic human rights which should be at least equivalent to freedoms enjoyed by foreign nationals living legally in a given country, and in many cases those of citizens of that state. It recognized the international scope of refugee crises and the necessity of international cooperation, including burden-sharing among states, in tackling the problem.

What is contained in the 1951 *Convention*?

It defines what the term 'refugee' means. It outlines a refugee's rights including such things as freedom of religion and movement, the right to work, education and accessibility to travel documents, but it also underscores a refugee's obligations to a host government. A key provision stipulates that a refugee should not be returned, or repatriated, to a country where he or she fears persecution. It also spells out people or groups of people who are not covered by the *Convention*.

What is contained in the 1967 *Protocol*?

It removes the geographical and time limitations written into the original *Convention*, under which mainly Europeans involved in events occurring before January 01, 1951 could apply for refugee status.

What is protection?

Governments are responsible for enforcing a country's laws. When they are unable or unwilling to do so, often during a conflict or civil unrest, people whose basic human rights are threatened flee their homes, often to another country, where they may be classed as refugees and be guaranteed basic rights.

Who protects refugees?

Host governments are primarily responsible for protecting refugees and the 143 parties to the Convention and/or the Protocol are obliged to carry out its provisions. UNHCR maintains a 'watching brief,' intervening if necessary to ensure *bona fide* refugees are granted asylum, and are not forcibly returned to countries where their lives may be in danger. The agency seeks ways to help refugees restart their lives, either through local integration, voluntary return to their homeland or, if that is not possible, through resettlement in 'third' countries.

Is the *Convention* still relevant for the new millennium?

Yes. It was originally adopted to deal with the aftermath of World War II in Europe and growing East-West political tensions. The Convention has proved remarkably resilient in helping to protect an estimated 50 million people in all types of situations, though the nature of conflict and migration patterns have changed in the intervening decades. As long as persecution of individuals and groups persists, there will be a need for the *Convention*.

Is the *Convention* meant to regulate migratory movements?

No. Millions of 'economic' and other migrants have taken advantage of improved communications in the last few decades to seek new lives in other, mainly western, countries. However, they should not be confused, as they sometimes are, with *bona fide* refugees who are fleeing life-threatening persecution, and not moving as a result of economic hardship. Modern migratory patterns can be extremely complex and contain a mix of economic migrants, genuine refugees and others. Governments face a daunting task in separating the various groupings and treating genuine refugees in the appropriate manner through established and fair asylum procedures.

How are refugees and economic migrants different?

Economic migrants normally leave a country voluntarily to seek a better life. Should they elect to return home, they would continue to receive the protection of their government. Refugees flee because of the threat of persecution and cannot return safely to their homes in the prevailing circumstances.

Does the *Convention* cover internally displaced persons?

Not specifically. Refugees are people who have crossed an international border into a second country seeking sanctuary. Internally displaced persons (IDPs) may have fled for similar reasons, but remain within their own territory; therefore still are subject to the laws of that state. In specific crises, UNHCR assists several million, but not all, of the estimated 20-25 million IDPs worldwide. There is widespread international debate currently underway about how this group of uprooted people can be better protected, and by whom.

Can the *Convention* resolve refugee problems?

People become refugees, either on an individual basis or as part of a mass exodus, because of political, religious, military and other problems in their home country. The *Convention* was not designed to tackle these root causes, but rather to alleviate their consequences by offering victims a degree of international legal protection, and other assistance, and eventually to help them begin their lives anew. Protection can contribute to an overall solution, but as the number of refugees increased dramatically in recent decades, it has become clear that humanitarian work cannot act as a substitute for political action in avoiding or solving future crises.

What obligations does a refugee have?

Refugees are required to respect the laws and regulations of their country of asylum.

Is a Convention signatory required to give permanent asylum to all refugees?

The Convention does not provide automatic or permanent protection. There will be situations where refugees will integrate permanently in their country of asylum, but alternatively a person may cease to be a refugee when the basis for his or her refugee status ceases to exist. Voluntary repatriation of refugees to their country of origin is UNHCR's 'preferred' solution, but only when conditions in that state permit their safe return.

Can non-Convention countries refuse to admit would-be refugees?

The principle of non-refoulement ? refoulement is the forcible return of people to countries where they face persecution ? is part of customary international law and is binding on all states. Therefore no government should expel a person in those circumstances.

Who is not covered by the Convention?

Persons who have committed crimes against peace, war crime, crimes against humanity or a serious non-political crime outside the country of refuge are not covered by the *Convention*.

Who or what is an 'agent of persecution'?

This refers to a person or organization ? governments, rebels or other groups ? which force people to flee their homes. The origin of the persecution, however, should not be decisive in determining whether a person is eligible for refugee status. What is important is whether a person deserves international protection because it is not available in the country of origin.

What is 'temporary protection'?

Nations at times offer 'temporary protection' when they face a sudden mass influx of people, as happened during the conflict in the former Yugoslavia in the early 1990s, and their regular asylum systems would be overwhelmed. In such circumstances people can be speedily admitted to safe countries, but without any guarantee of permanent asylum. Thus 'temporary protection' can work to the advantage of both governments and asylum-seekers in specific circumstances. This arrangement complements, but does not substitute for the wider protection measures, including refugee asylum, offered by the *Convention*.

Can a soldier be a refugee?

A refugee is a civilian. Former soldiers may qualify, but a person who continues to take part in military activities cannot be considered for asylum.

Are some countries, such as those in Europe, being swamped by asylum-seekers?

Countries around the world, including some in Europe, believe they are being overwhelmed by asylum-seekers. It is true that numbers have increased inexorably in the last few decades in many areas; however, the concerns of individual states are all relative. The bottom line is that some nations in Africa and Asia, states with far fewer economic resources than industrialized countries, sometimes host larger numbers of refugees for far longer periods of time.

But does the very fact of accession to the Convention provide a 'pull' factor for increasing numbers of asylum-seekers?

No. Some states hosting the largest refugee populations are not parties to refugee instruments. Geopolitical considerations or family links play a more crucial role as far as 'attractiveness' of destination is concerned.

Does accession infringe upon state sovereignty?

Sovereignty is never absolute. International relations imply a reasonable and acceptable level of compromise. The refugee instruments reconcile state interests with protection. The granting of asylum, for instance, has not been incorporated into the refugee instruments and continues to be at the discretion of individual governments.

Can any country be declared 'safe' in the sense that it cannot produce refugees?

No. Even in states where there is generally no serious risk of persecution, claims by nationals must still be considered. These may be channelled through an 'accelerated procedure' provided that the asylum-seeker is given a fair hearing.

How can accession be presented to a concerned government or local population?

Some domestic concerns are linked to a misreading or misconception. The *Convention* and *Protocol* are nothing more than a general legal framework on which states can build their refugee policy and obligations imposed on governments are not as constraining as often suggested. To tolerate refugees, instead of giving them legal existence, might create a 'grey zone' that could fester and turn into a serious security or political problem.

(Source: United Nations High Commission on Refugees. Reprinted with permission.)

Focus Questions

1. In what ways does Canada's approach to assisting refugees comply with the 1951 *Convention*?
2. What are the implications for Canadians when Canada assists refugees?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Internal Displacement</p> <p>While movement of peoples across international borders continues to create significant refugee issues, the internal displacement of peoples within nation states has also created large refugee movements. Internal displacement has been of two types in the 20th century, including:</p> <ul style="list-style-type: none"> • those who have fled warfare or extreme environmental conditions, such as in the former Yugoslavia • those who have been displaced by governments for purposes of economic policy, such as the resettlement of approximately six million people in Indonesia from the main island of Java to outlying islands. <p>These movements of people occur internally within sovereign nations, so the application of international law and the involvement of international organizations, is often precarious in such situations. It does not lessen the hardship and suffering resulting from the mass movement of people; however, and the challenges and issues arising from the displacement of peoples, domestically and internationally, continues in the 21st century.</p>	<p>Internal Displacement</p> <p>Know that the movement of mass numbers of people within a nation, known as internal displacement, may cause hardship for both the displaced and nondisplaced citizens of a nation.</p>
<p>Assisting Refugees</p> <p>While individual nation states exercise sovereignty within their borders, the mandate in international law for support of refugees comes from the <i>United Nations Charter</i> and the <i>Universal Declaration of Human Rights</i>. The United Nations High Commissioner for Refugees advocates one of three possible solutions in assisting refugees:</p> <ul style="list-style-type: none"> • voluntary repatriation – assumes that the conditions causing the original refugee movement have improved to permit the safe return of refugees • integration locally – attempts to integrate refugees into the country to which the refugees have fled initially, linking refugees with local populations who have cultural or linguistic ties to the refugees. This is often a border nation to the country of origin of the refugees • third country resettlement – used to assist particularly vulnerable populations for whom nations outside of the region may have humanitarian concern. <p>While one of the three solutions to assist refugees continues to be the preferred approach to supporting displaced persons, the existence of refugee camps illustrates the continued challenges faced by refugees and relief agencies attempting to support their needs.</p>	<p>NonRefoulement</p> <p>Know that a fundamental principle of international refugee law is that of nonrefoulement, prohibiting the forced return of a refugee to the territory where life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion.</p> <p>Know that not every nation state adheres to the principle of nonrefoulement.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance – the ability of the model to perform constructively, efficiently and consistently in a variety of situations • consequences – the acceptability of the consequences of applying the model to various situations • accuracy – the ability of the model to predict future events accurately and consistently. <p>Develop and apply criteria as a basis for coming to conclusions.</p> <p>Apply the skills of dialectical evaluation:</p> <ul style="list-style-type: none"> • define relevant viewpoints within the information • test the view points for factual accuracy • test the viewpoints for their morality • evaluate the factual and moral testing • form a conclusion about the issues. <p>Apply the moral tests of:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. 	<p>Understand that according to the rule of international law, Canada has a commitment to support refugees.</p> <p>Appreciate that the custom of nonrefoulement has great significance for refugees.</p> <p>Appreciate that models change over time.</p>

Instructional Notes

1. Study the work of the United Nations Relief and Works Agency for Palestine Refugees in the Near East. Research the circumstances leading to the Palestinian situation, and why the United Nations has developed a specialized agency to address this particular situation.
2. Have students survey the current refugee situation in the world. Have them identify areas in which:
 - there are refugee camps (including refugees and internally displaced persons)
 - areas in which the United Nations is actively working with refugees in resettlement
 - areas in which the United Nations has been involved in past refugee resettlement programs, such as India and Pakistan in the late 1940s and early 1950s, or again in 1971, the Palestinian resettlement initiatives in the Middle East, or the African refugee situation during the Ethiopian famine of the 1980s.
3. Examine the Canadian model of assisting refugees. Assess the model in terms of its effectiveness, using the *United Nations Convention on Refugees* and the *Declaration of Human Rights* as the criteria.

Issues in the Law

1. Should individuals arrested in Canada be protected through the principle of nonrefoulement when facing extradition to another nation? Explain reasons.

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Human Rights</p> <p>The concept of universally applicable human rights has been acknowledged in customary international law for centuries, but the creation of a universal code of human rights occurred more recently. In response to the atrocities of World War II, the <i>United Nations Declaration of Human Rights</i> was adopted in 1948. However, the nature of rights to be protected, and mechanism for the implementation and enforcement of the <i>Declaration</i>, was not defined at that time. As a result, the United Nations continued work to address the actualization of the <i>Declaration of Human Rights</i>, resulting in two treaties designed to enact the <i>Declaration</i>. They included:</p> <ul style="list-style-type: none"> • <i>The International Covenant on Economic, Social, and Cultural Rights</i> • <i>The International Covenant on Civil and Political Rights</i>. <p>While these two covenants have been adopted as treaties by signatory nations, some states continue to believe that human rights are a matter of domestic concern, and therefore should not be a matter of international interference. Subsequently, the status of human rights recognition, and adherence of governments to the <i>Universal Declaration of Human Rights</i>, varies from nation state to nation state.</p> <p>Issues in International Law</p> <p>The creation of the United Nations, and the desire among nations of the world to exist within an international system of harmony and cooperation, has lead to the creation of treaties to enhance and liberalize the global movement of people, goods and services. However, the inequitable distribution of wealth and incidence of poverty illustrate that not all individuals receive benefit from the efficiencies of liberalized international trade. Perceived threats to the sovereignty of the nation state from multinational conglomerates have yielded increasing levels of citizen protest and demonstration in response to globalization.</p> <p>Environmental protection, as well as distribution of wealth, continues to be an economic related issue in international law.</p> <p>Included within the array of issues associated with international law is the of self determination of peoples, a principle included in the <i>United Nations Charter</i>, the <i>International Covenant on Civil and Political Rights</i>, and the <i>International Covenant on Economic, Social and Political Rights</i>.</p>	<p>Human Rights</p> <p>Know that human rights are claims for recognition by an individual that take precedence over other claims, and that other individuals, groups and societies are duty bound to recognize.</p> <p>Know that the concept of human rights has a number of critical attributes, including:</p> <ul style="list-style-type: none"> • Universality - human rights are universal and, as such, apply to everyone regardless of nationality, race, religion, political beliefs, age or gender • Morality - human rights are not simply demands for rights; they involve a moral entitlement to the right in question that other individuals and society must honour • Humanity - the moral basis for human rights is the humanity and inherent dignity of the individual • Obligations - a human rights claim by (an) individual(s) mean(s) that a set of responsibilities and obligations on the duty bearer(s) come into play, governing the kinds of interactions that can occur within a particular situation. <p>Economic, Social and Cultural Rights</p> <p>Know that, under terms of the <i>International Covenant on Economic, Social, and Cultural Rights</i>, each party to the treaty agrees to protection of workers' rights, family rights, rights to health and an adequate standard of living, educational rights and cultural rights.</p> <p>Civil and Political Rights</p> <p>Know that, under terms of the <i>International Covenant on Civil and Political Rights</i>, each party to the treaty agrees to protect the sanctity of life, rights protecting accused persons and criminals, mobility rights and civil rights.</p> <p>Self Determination</p> <p>Know that both the <i>International Covenant on Civil and Political Rights</i>, and the <i>International Covenant on Economic, Social and Political Rights</i>, have in common Article One that identifies the right to self determination.</p> <p>Know that claims for self determination by a group of people may be contrary to the objectives of national governments.</p>

Skills/Abilities Objectives	Values Objectives
<p>Assess the need for human rights laws.</p> <p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance – the ability of the model to perform constructively, efficiently and consistently in a variety of situations • consequences – the acceptability of the consequences of applying the model to various situations • accuracy – the ability of the model to predict future events accurately and consistently. <p>Develop and apply criteria as a basis for coming to conclusions.</p> <p>Apply the skills of dialectical evaluation:</p> <ul style="list-style-type: none"> • define relevant viewpoints within the information • test the view points for factual accuracy • test the viewpoints for their morality • evaluate the factual and moral testing • form a conclusion about the issues. <p>Apply the moral tests of:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. <p>Recognize those human rights protected by law in Canada and under international law.</p>	<p>Recognize that variance in domestic application of international human rights law by nations is often culturally based.</p> <p>Appreciate the tensions created by those striving for self determination within a nation state.</p> <p>Consider the effectiveness of the United Nations as an international instrument of peace and security.</p>

Instructional Notes

1. Have students research the history and intent of the *International Covenant on Civil and Political Rights* or the *International Covenant on Economic, Social and Cultural Rights*. Assign a brief editorial writing that will inform the reader about the significance of the selected *Covenant*, and identify areas for improvement in the implementing of the *Covenant* in Canadian society.
2. Have students research human rights violations, and present a summary regarding the nature of the human rights violation as judged against the *Universal Declaration of Human Rights* or one of the related *International Covenants*.
3. See Student Handout 8.3 - The History of Human Rights for background information regarding the history of human rights. Research Canada's participation in the formation of the *Universal Declaration of Human Rights*.

Issues in the Law

1. Should limitations be placed upon groups striving for self determination within a nation state? What does international law dictate in this regard?

Student Handout 8.3 - The History of the Human Rights

The idea that all people have certain rights just because they are people is a relatively new idea. At one time, people believed that kings, or rulers were gods. They had total power over the people and could do with them what they liked. They could even order people to worship them. Not only were kings above the law, they were the law and could change the law at their whim. As early as the year 1215, a British king, King John, agreed to a major change in the way he ruled. This came about because a group of barons who were large landowners were fed up with the arbitrary way King John exercised power over their property and lives. They drew up a list of demands. Among these were the rights to be free from unfair or unlawful detainment, imprisonment or exile. The king agreed. The document was the *Magna Carta*.

The *Magna Carta* established a very important principle called the rule of law. This principle says that no one, not even a king, is above the law. It was the beginning of the idea that rulers have some responsibility to the people they rule. While this document was a very important milestone in the development of human rights, it was limited. The *Magna Carta* only gave rights to barons. It did not help the people who lived under the barons. They still had no rights.

It was not until the enlightenment of the 1700s that people began pressing for rights for the individual. In 1776, the people of the American colonies rebelled against the British king who denied them representation in the House of Commons and taxed them on luxury items. In their *Declaration of Independence*, the American people went to war on the basis of human rights doctrine. The famous words of the *Declaration of Independence* read:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness.

Remember; however, that white Americans owned black slaves at that time, and for over 100 years after. It would be over a hundred years before women could vote or own property. Even when the Americans established their own representative government, only those who owned property could vote.

In 1789, shortly after the American Revolution, the French rebelled against the tyranny of King Louis XVI. The rebels forced the king to sign *The Declaration of the Rights of Man*. This statement guaranteed freedom of speech and freedom of the press and basic rights to liberty, property, equality and security. Unfortunately, the new government did not follow this declaration. The King and thousands of other French citizens were killed by the guillotine. It was years before the battle cry of the revolution, "liberté, égalité, fraternité," became a reality.

Over the next 150 years, many countries adopted human rights legislation. During this period, slavery was abolished. Women gained many rights, including the right to own property and the right to vote.

The next step taken in the development of human rights was global. Regrettably, it resulted from the loss of millions of lives. At the end of World War II, in 1945, the Holocaust shocked and appalled people all over the world. The Nazi government had systematically killed six million people, adults and children, solely because they were Jews. Many others were killed because they were homosexuals, physically or mentally challenged or because they opposed the Nazis. These people were taken from their homes and transported on cattle trains to concentration camps. They were starved, tortured, used in medical experiments and killed in gas chambers. It was barbaric. The numbers involved are emotionally and mentally overwhelming.

In response to this human catastrophe, 45 nations created an international organization that pledged to promote "universal respect for and observance of human rights and fundamental freedoms." That organization is the United Nations. It was founded in 1945. Most countries in the world now belong to the United Nations.

There are still many human rights violations around the world. Some countries have dictators who abuse the rights of citizens. Other countries, such as East Timor, continue to face violence and human rights violations as they struggle for independence. And long-standing civil wars, such as the one that continues to plague the Middle East, continue to be the source of countless human rights violations. Even here in Canada, treatment of our aboriginal people continues to raise many human rights issues as disputes over things such as treaty rights, taxation, land claims, hunting and fishing rights and self determination persist. However, recent history also provides us with some positive human rights milestones. In 1989 and 1990 the world saw the end of the totalitarian regimes of the Eastern Bloc, as those countries became open to democracy. The fall of the Berlin wall was symbolic of this change. Where once citizens of countries such as Czechoslovakia and the former U.S.S.R.

could not leave their countries, and were subject to arbitrary imprisonment, people could now move freely across the borders and elect their own governments. About this time the world also saw the first steps to end the oppressive apartheid regime in South Africa. In 1995, South Africa had its first multi-racial election in decades, ending 80 years of white-only rule.

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Focus Questions

1. What are some milestones in Canada's human rights history?
2. How did the *Magna Carta* influence the human rights movement?
3. What human rights issues exist in Canada today? What are some possible solutions?

Content (Teacher Information)	Concepts and Knowledge Objectives
<p>Issues in International Law (continued)</p> <p>The issue of terrorism is an important matter of international law, with the creation of the International Criminal Court providing an international mechanism of due process for individuals allegedly involved in terrorist activity. This new avenue for bringing charges against individuals may prove to be a valuable deterrent to international terrorist actions.</p> <p>As with all aspects of international law, among the greatest challenges is the approach of domestic legislators regarding international actions of their particular nation. The degree of strength and commitment of individual nation states to the international rule of law is an important factor in the effectiveness of international law. Nations must continue to pass domestic legislation to guide their actions in the international community, in order for a system of international law and the achievement of international human rights, to be realized.</p>	<p>Terrorism</p> <p>Know that terrorism is the unlawful use of or threat of, violence against persons or property to further political or social objectives.</p> <p>Sovereignty</p> <p>Know that according to international law, every nation state has complete control over its territory, its people, and its choice of government, subject to the rules of international law.</p>

Skills/Abilities Objectives	Values Objectives
<p>Apply inquiry skills:</p> <ul style="list-style-type: none"> • act upon their curiosity and interests • develop questions • think through controversies or dilemmas • look at problems analytically • inquire into preconceptions about what is already known • develop, clarify, and test hypotheses • draw inferences and generate possible solutions. <p>Apply criteria as a basis for testing models:</p> <ul style="list-style-type: none"> • performance – the ability of the model to perform constructively, efficiently and consistently in a variety of situations • consequences – the acceptability of the consequences of applying the model to various situations • accuracy – the ability of the model to predict future events accurately and consistently. <p>Develop and apply criteria as a basis for coming to conclusions.</p> <p>Apply the skills of dialectical evaluation:</p> <ul style="list-style-type: none"> • define relevant viewpoints within the information • test the view points for factual accuracy • test the viewpoints for their morality • evaluate the factual and moral testing • form a conclusion about the issues. <p>Apply the moral tests of:</p> <ul style="list-style-type: none"> • role exchange • universal consequences • new cases. 	<p>Appreciate the complexity of issues arising in the arena of international law.</p> <p>Appreciate the importance of the application of human rights to all individuals.</p>

Instructional Notes

1. Explore research regarding the causes of terrorism, and suggest solutions to the issue of terrorism that would be in accordance with international law.
2. Investigate present-day movements for self determination in the world. Identify common issues, grievances and aims of groups agitating for self determination.

Issues in the Law

1. Should accused terrorists be provided protections as prisoners of war, as offered under the Geneva Conventions? Explain.
2. What alternatives exist for addressing international disputes while at the same time respecting the sovereignty of the individual nation state?

