

## HANDOUT 2: Key Concepts in “*Though the Heavens Fall*”

*Judicial independence:* When judges reach a decision, they must do so without regard to personal preferences and free from political or other outside influence. Their decisions must be based on the evidence and their understanding of the law.

*Purpose of the court:* The purpose of the court is to be a place where people who have a dispute can come and know that they will get an impartial decision on whatever it is that is dividing them. It may be a civil dispute between individuals or organizations/institutions, or it may be a criminal offence against the state.

*Rule of law:* Laws are passed by our democratically-elected representatives. If we have a dispute, we depend on having our rights determined according to the laws. When there is a disagreement about how a law should be interpreted, judges review the law and make a decision. In cases where there is no relevant law in the Constitution or other statute law, judges apply the common law.

*Evolution of the court:* The court has changed over the past 100 years. The court reflects changes in social values and attitudes, and to some extent helps define those changes. We see this evolution in the court’s decisions about major social issues such as Aboriginal rights, racial equality, and gender equality.

We also see this evolution in the composition of the court. As recently as thirty years ago, all of the judges in the Court of Appeal were men. Now about half of the judges sitting in the Court of Appeal are women.

The video looks at examples of decisions made by the Court of Appeal that illustrate how the court operates in the context of society at the time. These examples include:

- An appeal made in 1914 by an Indian man who was on the *Komagata Maru*. The boat arrived in the port of Vancouver with immigrants from India but was turned away. In this case the court was faced with a law made by Parliament that specifically authorized racial discrimination in immigration. The law reflected the dominant social attitudes of the time towards people from India.
- An appeal made in 1974 about an incident of rape. At that time in a rape case it was seen as being unsafe to convict on a woman's word alone. That's no longer the law, but the Court of Appeal decision reflected the law of the times and attitudes towards women.
- An appeal made in 1984 about logging on Meares Island. The Court of Appeal found that the issue of Aboriginal title had been postponed for too long and that it was time to resolve it.

- An appeal made in 2003 by the gay rights group, Egale. At stake was the very definition of marriage. The Court of Appeal found that the rights of gay people under the *Charter* included the right to marry.

*Impact of the Charter:* Whether seeking religious freedoms or natural resource rights, minority groups have always taken their struggles to the courts in search of impartiality, independence and greater equality in the future. The *Canadian Charter of Rights and Freedoms*, which became part of the Canadian Constitution in April 1982, empowered Canadians to challenge in court any law, regulation or action of government to ensure that the *Charter* rights of individuals are respected.

