

Section 4: The Justice System

Lesson Plan 4: Legal Independence and the Rule of Law

SNAPSHOT

Grade Level	8-10
Duration	1 period

Introduction

This lesson will introduce students to judicial and lawyer independence, as well as the rule of law. Judicial independence has been defined in many ways, but it basically involves the freedom to make judicial decisions without interference or influence from any source. It is the constitutional right of every Canadian to have his or her legal issues decided by a fair and impartial judicial decision-maker. The term “lawyer independence” means that lawyers are able to act in their client’s best interest without fear of interference. A lawyer must be free to put the client’s interest first, free from political or governmental influence, pressure or control. The legislature does not decide who can become a lawyer nor can it prevent a lawyer from practicing law or representing a particular client.

Objectives

By the end of this lesson, students will:

- Learn what the difference between rules and laws is.
- Learn that the concept of “the rule of law” is the foundation of Canadian society and ensures that everyone is treated equally before the law.
- Be able to explain the three principles of an independent judiciary in Canada – independence, impartiality and accountability.
- Know that the role of judges and lawyers in our society is to protect the rule of law.
- Understand that Lawyers and judges act independently of government/the state (e.g. the doctrine of separation of powers) and other external interests.

- Discover that Judges are free to make decisions about cases before them without fearing that their continued appointment as a judge depends on the “favour” of the state.
- Apply what they have learned to case studies.

Focus Questions

1. What is the difference between rules and laws?
2. Why is our legal system built on the rule of law?
3. Why is it important to have an independent judicial system?
4. What are the three principles of an independent judiciary in Canada?
5. How are judges appointed?
6. What is “lawyer independence” and why is it an important part of our justice system?

Teaching Summary

Topic 1: The Rule of Law

Students will discuss the difference between rules and laws and complete the questions on *Handout 1: Rules and Laws*. This topic is also covered in *Handout 2: The Rule of Law and Judicial Independence*.

Topics 2, 3 & 4: Judicial Independence, Judicial Appointment & Lawyer Independence

Students will play a game in groups. They will read *Handout 2: The Rule of Law and Judicial Independence* and *Handout 3: Lawyer Independence* in preparation for the game. It is similar to the game show Jeopardy (i.e. students are given answers and asked to provide the relevant questions).

Next, students will watch a video on legal independence which covers many of the issues using a fictitious curfew law.

Topic 5: Legal Independence Case Studies

Students will look at two cases studies on legal independence. The first case (*Smith vs. Jones*) is about a pub owner who sued the Attorney General of BC for seizing his liquor licence, which subsequently forced him to sell his business.

The second will cover looks at a case called Judges in Nazi Germany and will look at lawyer independence.

CONTENT

Topic 1: The Rule of Law

While some countries carry out their laws by intimidating or bullying their citizens (sometimes even arresting and throwing people into prison without a trial) here in Canada we expect our laws to operate and be carried out differently. We expect to be protected by our laws and treated fairly. We follow the rule of law, a principle of justice. This principle means that individuals must recognize and accept that we need laws to regulate society. We all live near other people and must find a way to live together peacefully. Laws exist to help us do this.

The rule of law expresses the principle that all people are equal under the law. No one is above the law, whether he or she is a politician, police officer, corporation or wealthy individual. The courts exist to ensure that everyone is accountable to the law. The role of judges and lawyers is to protect the rights and freedoms of citizens.

The role of judges is to protect the rights and freedoms guaranteed under the Canadian Charter of Rights and Freedoms (*Charter*).

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

— *Canadian Charter of Rights and Freedoms*

The Law Society of BC's Report of the Independence and Self-Governance Committee noted that the rule of law is a fundamental principle underlying Canadian democracy. The preamble of the *Charter* states that the rule of law is one of the principles upon which Canada was founded. The rule of law was recognized as a fundamental principle, however, even before the existence of the *Charter*. In *Roncarelli vs. Duplessis*, for example, the court noted that the rule of law is a "fundamental postulate of our constitutional structure."

The rule of law is required to provide impartial control of the use of power by the state. It guards against arbitrary governance. To be effective, the rule of law requires not only the submission of all to the law, but also the separation of powers within the state. Because the rule of law is needed to control the powers of the state, there must be a separation among those who make the law, those who interpret and apply it, and those who enforce it.

As has been pointed out in a discussion paper prepared by a past president of the International Bar Association, this separation of powers requires an independent judiciary; an efficient, functioning court system; and a strong, independent and properly qualified legal profession to support it. An independent legal profession is also essential to preserve citizens' rights and freedoms under the rule of law by guaranteeing them access to independent, skilled, confidential and objective legal advice.

A failure to maintain separation of powers can result in the executive branch of government interfering with the independence of the judiciary and lawyers. This erodes the rule of law and the protections it affords.

Topic 2: Judicial Independence

The concept of judicial independence is the cornerstone of our justice system and is necessary to protect the rule of law. As the Right Honourable Brian Dickson, P.C., C.C., former Chief Justice of the Supreme Court of Canada once explained:

“The tradition of law which we share is a living thing, built by lawyers and judges imbued with a love of individual freedom and a dedication to justice for all, according to the law. The legal doctrines that we have inherited constitute not the bare bones of a dead tradition but a vital body of living experience. It is only where the law is interpreted by an independent judiciary with vision, a sense of purpose and a profound sensitivity to society's values, that the rule of law, and therefore the citizen's rights and freedoms, are safe.”

Judges Must be Independent of Government

Judicial independence means that judges are free to make decisions without interference or influence from any source, including elected officials such as MLAs or MPs. The state cannot tell a court or judge how to decide a case, nor can it discipline a judge for deciding a case in a particular way.

Judges Must be Impartial

It is the constitutional right of every Canadian to have his or her legal issues decided by a fair and impartial judicial decision-maker.

Judges have a responsibility to listen to both sides of a case and then to make impartial, fair decisions based on the law and on the evidence before them. If a judge felt pressure from the government to decide a case in a particular way, the result would be

unfair to anyone with a competing interest in the case. The rights of individual citizens would not be protected.

Furthermore, since the government is frequently one of the parties in matters before a judge, the other parties must be confident that the judge is not influenced by the government. This judicial impartiality exists despite the fact that judges are appointed and paid by the government. All parties must be assured that judges make decisions based on the application of the law to the facts of the case and on no other considerations.

Judges Must be Accountable

Despite their independence, judges are accountable for their decisions. Their decisions can be examined by a higher court — they can be appealed.

Judges are also responsible to the courts. A judge would never refuse to hear a case because of its difficulty or unpopularity. Occasionally, however, a judge must refuse to hear a case because he or she has a connection with one of the parties or some other conflict of interest.

Where the conflict is minor, the judge may disclose the connection to both parties and allow the lawyers in the case to raise any concerns they have with the judge continuing to hear the case. It is important that both parties feel confident that the judge will be impartial. For example, if the case involved the judge's neighbour, then the neighbour or the judge might feel uncomfortable with the judge hearing the case because they have a relationship outside the courtroom. The other party might also be concerned that the relationship between the judge and the neighbour could, even unintentionally, influence the case. Even the appearance of bias can be important, and may justify disqualifying a judge from hearing a case.

Topic 3: Judicial Appointment

In Canada, judges are appointed by the Governor in Council following recommendations by committees made up of judges, lawyers and “lay persons” (people from the community). These committees make recommendations to either the provincial or federal government. Provincial Court judges are appointed by the Attorney General of the



provincial government, and judges in the Supreme Court of Canada, the Supreme Court of BC and the Court of Appeal for BC are appointed on the recommendation of the federal minister of justice or the Prime Minister.

Politicians and civil servants do not control judges, nor does the Prime Minister. Once appointed, judges must answer only to the law and their own conscience. No judge may hold any other remunerative office under the federal or provincial government, nor engage in any business enterprise. Judges must devote themselves exclusively to their judicial duties.

Judges must make decisions without being influenced by the government that appointed them or by society in general. For this reason, federally appointed judges are appointed to “the bench” until the age of 75; provincial court judges are appointed until age 70. They receive a fair salary that is not subject to control by those who might want to influence them.

Topic 4: Lawyer Independence

What Does “Lawyer Independence” Mean?

The term “lawyer independence” means that lawyers are able to act in their client’s best interest without fear of interference. A lawyer must be free to put the client’s interest first, free from political or governmental influence, pressure or control. The legislature does not decide who can become a lawyer nor can it prevent a lawyer from practicing law or representing a particular client.

Lawyer independence is often presumed to confer a right upon lawyers. In reality, however, it is a public right necessary to protect the rule of law. The public has a right to obtain legal advice from a lawyer whose primary duty is to his or her client, not to any other person and especially not to the state.

Lawyers owe a duty of loyalty (including confidentiality) to their clients. Loyalty, however, must be balanced with the lawyer’s professional obligations as a member of the legal profession and his or her duty of integrity and honesty as an officer of the court. For example, although lawyer-client communications are privileged (i.e. no one, including the state, can force a lawyer to disclose them), there is an exception where a crime involving death or serious bodily harm is imminent. In that case, public interest in preventing the crime takes precedence over public interest in protecting lawyer-client privilege.

In order to practice law in BC and at the same time preserve lawyer independence, a lawyer must be a member of the Law Society of BC, which is the self-regulating body of lawyers and is independent of the government. If concerns exist about a lawyer's conduct or competence, those concerns are investigated and adjudicated by the Law Society, which can fine, suspend, or (in the most serious cases) "disbar" a lawyer. If a lawyer is disbarred, his or her membership in the Law Society is terminated, meaning he or she may no longer practice law. Self-regulation carries with it responsibilities to ensure that appropriate sanctions are placed on lawyers who do not properly discharge their professional obligations.

Why is Lawyer Independence Important?

Lawyer independence is essential to a fair judicial system and to preserving Canadians' fundamental rights and freedoms. In *LaBelle vs. Law Society of Upper Canada*, the Ontario Superior Court held:

"The legal profession has a unique position in the community. Its distinguishing feature is that it alone among the professions is concerned with protecting the person and property of citizens from whatever quarter they may be threatened and pre-eminently against the threat of encroachment from the state. The protection of rights has been a historic function of the law, and it is the responsibility of lawyers to carry out that function. In order that they may continue to do so there can be no compromise in the freedom of the profession from interference, let alone control, by the government..."

Lawyers must be independent in order to advise citizens about their responsibilities regarding a law or a government action. It would be impossible to do this if the society that governs lawyers was under the is important that the public perceive the legal profession as separate from and independent of the government, otherwise it will not have confidence that lawyers can truly represent citizens in their dealings with government.

It is important to note, however, that lawyers are still expected to act professionally in connection with statements they make or positions they advance in court. There may be circumstances where allegations of unprofessional conduct by a lawyer in connection with such matters could be investigated by the Law Society (but not by the government or by the courts) and, if proven, disciplinary consequences could be imposed on the lawyer for professional misconduct. This is an example of how self-regulation works and protects the public interest.

Recently, the Law Society of Upper Canada's Task Force on the Rule of Law and Lawyer Independence concluded that the Canadian Constitution provides protection for the principle of lawyer independence.

The independence of lawyers should not be taken for granted. For example, when federal money-laundering legislation was passed requiring lawyers to report to the government certain financial transactions made by their clients, law societies across Canada took the position that this law would violate a lawyer's duty of confidentiality to the client. It would require the lawyer to act as an agent of the state against his or her client. The law societies sued the government, seeking a declaration that such legislation was unconstitutional. This case has not been heard at time of writing, although the law societies have been granted an order restraining the application of the law against lawyers, pending the hearing of the case.

To preserve lawyer independence, lawyers, judges, the public and the legislature must agree that independence is essential to the proper administration of justice in a democratic society.

Topic 5: Legal Independence Case Studies

Smith vs. Jones

(Case is based on the actual case of *Roncarelli vs. Duplessis*).

Facts

Plato Smith owned a popular Vancouver pub called the Philosopher's Stone. Smith was an environmentalist and belonged to an activist group called the "Green Warriors." With the proceeds from his pub, he posted bail for fellow Green Warriors who were arrested for various acts including chaining themselves to trees and office doors of forest product companies. Almost 500 charges were laid against the Green Warriors; some of them were charged many times if they refused to pay the \$2,500 fine.

Horace Jones was both the Premier and the Attorney General of BC. He was angered by Smith and warned him that he was in danger of losing his liquor licence if he did not stop posting bail for the Green Warriors. In December 2006, the pub's \$20,000 supply of liquor was seized and Smith's liquor licence was revoked. Smith was forced to sell his business six months later. He sued Jones for damages and hired Marcus Stark to represent him.

Stark, a sole practitioner, realized that he would require assistance in pursuing this case, so he approached other lawyers to act with him. Every lawyer refused, out of fear

that Jones might retaliate against him or her. Stark finally enlisted the aid of a UBC law professor, Matt Rule.

Decision

At trial, Smith argued that the cancellation of his liquor licence was an act of reprisal. He was awarded \$80,000 in a decision that amazed the legal community. Jones appealed and the case made its way to the Supreme Court of Canada who ruled in favour of Smith.

Judges in Nazi Germany

Facts

In 1934, changes to Germany's Constitution resulted in Adolf Hitler controlling the entire legal system and becoming the "Supreme Head of the Judiciary." He introduced the "Fuhrer Principle," which mandated that judges were Hitler's surrogates and were expected to adhere to his will which included the systematic elimination of non-Aryans. Anyone failing to follow his orders was subject to removal. The Nazi regime effectively destroyed the independence, autonomy and diversity of both the legal profession and the judiciary, and created a court system that willingly implemented a series of decrees against humanity. This was accomplished through the participation of lawyers and judges in Nazi Germany.

Judge Oswald Rothaug served as the director of the district court in Nuremberg between 1937 and 1943. He presided over several cases where there was miscarriage of justice because the "Fuhrer Principle" was used.

In one case, two Polish teenagers were accused of starting a relatively harmless fire in an armaments plant. Rothaug refused to turn the youth over to a juvenile court. He appointed a defence attorney who was given only two hours to prepare and then conducted a trial that lasted between 30 and 60 minutes in total. The judge dismissed the claim that the defendants' confessions had been forcefully extracted, convicted them and sentenced them to death. The two youths were executed four days later.

In another case, an accused, Mosul Lopata, a Jewish man, was convicted of sexual assault and sentenced to two years in prison camp for inappropriately touching a German female worker. The Supreme Court overturned the decision and determined the case should have been prosecuted under the Decree Against Public Enemies. The Supreme Court concluded that the defendant was taking advantage of wartime conditions in that there was a shortage of police and that the defendant therefore acted in an impudent and insubordinate manner. Rothaug found that Lopata should not have been convicted of sexual assault, but rather assault against the "purity of the German

blood” and “an outrage against the defensive powers of the German people in the emergency of war.” He convicted Lopata under the Decree and sentenced him to death.

After the war, Rothaug was sentenced to life in prison for conspiracy to commit war crimes and crimes against humanity.

ACTIVITIES

Activity 1: The Rule of Law

Provide students with *Handout 1: Rules and Laws*. They can complete some of the handout as the discussion proceeds, and complete the rest as homework.

Begin with writing the word “law” on the board. Ask students to brainstorm and come up with other words that come to mind when they see the word “law” on the board. Write down responses. State the following: Laws are like rules: for example, sports have rules and there are penalties for breaking the rules.

See Answer Key for *Handout 1* in the Assessment section.

Activity 2: Legal Independence Quiz Game

Have students read *Handout 2: The Rule of Law and Judicial Independence* and *Handout 3: Lawyer Independence* before beginning the game

The game similar in concept to the television game show “Jeopardy” (i.e. students are given answers and asked to provide the relevant questions). The five-minute game sees how much your students have absorbed by reading the Student Handouts. You can provide students with the questions on *Handout 4: Legal Independence Quiz Game* for the students to complete individually or you can have the whole class play the game collectively.

See Answer Key for *Handout 4* in the Assessment section.

Activity 3: Legal Independence Video

For this activity you will be pausing the video in four places:

- First Discussion: Part way through Scene 2
- Second Discussion: At the end of Scene 2
- Third Discussion: At the end of Scene 3
- Final Discussion: At the end of the video

The *Handout 5: First Discussion*, *Handout 6: Second Discussion*, *Handout 7: Third Discussion* and *Handout 8: Final Discussion* contain questions for discussion with

students at each stop. You may ask the students to answer the questions individually or in groups or you may prefer to discuss them orally.

When you distribute the Discussion handouts to your students, you should only distribute the sheet that is relevant to each stop as it is reached.

See Answer Key for [Handouts 5-8](#) in the Assessment section.

First Discussion: Scene 2 -School Field

- Discussion: Talk about this scene with your students, keeping in mind the rule of law. A worksheet with the questions to discuss follows
- Prediction: Ask students to predict what will happen next
- Start the DVD

Second Discussion: End of Scene 2 - School Field

- Discussion: Talk about the arrest, stressing the points that everyone must obey the law, that no one is above the law and everyone is treated equally under the law (rule of law).The questions on the worksheet may assist in stimulating discussion
- Ask students to answer the questions
- Student Biographies: Ask your students to review the backgrounds of the students in the vignette before moving on to the next activity
- Lawyers' Advice: Ask students to talk about or write down the advice they would offer their client in response to the comments of Michael, Candace and Justin.
- Start the DVD: Listen to the advice that the lawyers gave to their respective clients and compare it to the students' responses during the next discussion.

Third Discussion: End of Scene 3 – Police Interview Rooms

- Discussion: Talk about the views (possibly misconceptions) students have about the justice system and the roles of judges and lawyers in that system. The worksheet sets out questions for discussion
- Ask students to answer the questions
- Start the DVD

Final Discussion: End of Scene 5 - Interview with a Teacher

- Discussion: Talk about the reason for the decision in this particular case.

Activity 4: Legal Independence Case Studies

For this activity there are two case studies. The first case study, *Smith vs. Jones*, relates to judicial independence and the second case study, *Judges in Nazi Germany* relates to lawyer independence.

Divide your classes into two groups and provide one group with Handout 9: Smith vs. Jones and the other group with Handout 10: Judges in Nazi Germany. Each of the groups will discuss the case that has been assigned to them and will work together to complete the questions. Afterwards, a speaker (or speakers) from each group will discuss their case study with the class.

Activity 5: Test Your Knowledge

You can assess your students to see how much they have learned by having them complete Handout 11: Legal Independence Test.

See Answer Key for Handout 11 in the Assessment section.

RESOURCES

Activity 1: The Rule of Law

Handout 1: Rules and Laws

Activity 2: Judicial Pursuit Game

Handout 2: The Rule of Law and Judicial Independence

Handout 3: Lawyer Independence

Handout 4: Legal Independence Quiz Game

Activity 3: Legal Independence Video

Video: Legal Independence – It's Your Right

Handout 5: First Discussion

Handout 6: Second Discussion

Handout 7: Third Discussion

Handout 8: Final Discussion

Activity 4: Legal Independence Case Studies

Handout 9: Smith vs. Jones – Case Study

Handout 10: Judges in Nazi Germany – Case Study

Activity 5: Test Your Knowledge

Handout 11: Legal Independence Test

ASSESSMENT

Activity 1: The Rule of Law

After students have completed Handout 1: Rules and Laws, it can be submitted for marking.

Answer Key: Handout 1: Rules and Laws

What is the Difference Between Laws and Rules?

Rules are different from laws because rules are not enforced by the courts. Laws also apply to everyone in society at all times.

Why do we Have Laws?

We have laws to regulate how we live in society, according to the principles of reason and fairness. We need laws to live peacefully together and, as society grows, we need more laws to control and limit people's behaviour.

Who is Protected by Laws? Who is Bound by Laws?

The law protects everyone in society, and we all have to abide by laws.

Other answers to the questions on the handout will vary.

Activity 2: Legal Independence Quiz Game

This game does not need to count for marks. If you wish, students with the correct answers may be given a small prize, such as candy. Make sure you go over the answers at the end to ensure that all students understand.

Answer Key: Handout 3: Legal Independence Quiz Game

1. All people are equal under the law without discrimination
What is the rule of law?
2. People who protect the rights and freedoms guaranteed by the Charter
Who are judges and lawyers?
3. There must be a division among those who make the law, those who interpret and apply it and those who enforce it
What is the Separation of Powers with the State?
4. Judges are free to make their decisions without interference or influence from any source including government
What is judicial independence?

5. Judges make decisions based on the evidence and the law and not by having an opinion.
What is judicial impartiality?
6. Judges are responsible to the courts and their decisions can be examined by higher courts
What is judicial accountability?
7. A judge may not hear a case because of a prior connection to the parties
What is a conflict of interest?
8. A lawyer can put his or her client's interests first without fear of constraint or punishment
What is lawyer independence?
9. One aspect of the duty of loyalty to the client that is very important to lawyer-client communication
What is privileged communication or confidentiality?
10. Where public interest in preventing a crime takes precedence over public interest in protecting lawyer-client communication
What is an exception to privileged communication between a lawyer and the client?
11. The government does not decide who can become a lawyer, nor can it prevent a lawyer from practicing law or representing a particular client
What is a self-regulated legal profession?

Activity 3: Legal Independence Video

Since the discussion questions on *Handout 5-8: Video Discussion Questions* will be reviewed as a class during the activity, it is not necessary to mark them. You may, however, have students submit them for completion marks.

Answer Key: *Handout 5: Video Discussion Questions*

First Discussion: Scene 2 – School Field

1. Why do we have laws?
We have laws in order to have a functioning society.
2. Why must the rule of law be the same for everyone?
It must be the same for everyone so that everyone is treated equally under the law. How you are treated under the law does not depend on who you are or what work you do.
3. In this scene, was the Youth Gathering Act broken?
Yes. In the strict interpretation of the law, the students were gathering illegally.

4. What do you think of this new law? Explain.
Answers will vary.
5. How do we change a law that is flawed? Does violence or protest work?
In Canada, we may be able to change laws through peaceful protest if the government is sufficiently affected by such protest. Otherwise, we can challenge a law through the courts. If the challenge is successful, the government must amend the law. Violence is not an effective way to amend laws because it results in the law-breaker being charged with an offence.
6. Do you see any difficulties in enforcing the act?
No. Many students, however, will be charged under it if no discretion can be used by the police while enforcing it.
7. What safeguards are built into the justice system regarding flawed laws?
Judicial independence and lawyer independence will assist in the review of the constitutionality of a law. The appeal process in the courts also provides a safeguard for the person charged with breaking the law.
8. Just because we don't like a new law, does that mean that we don't have to obey it?
No, if the law is in effect it must be obeyed even if it may not be a sensible law.
9. Can individuals refuse to obey a law without consequences?
No. If an individual is charged with breaking the law and found guilty, there will be consequences. The charge itself is a consequence, as the person has to come to court, hire a lawyer and take time to present his or her case.
10. Did the students have a right to be annoyed when the officer searched their backpacks?
Answers will vary.
11. Did the students respond the right way? If not, what could have they done differently?
Answers will vary.
12. What is the role of the police officers in this situation?
Their role is to enforce the law or use discretion when investigating the incident.
13. Do the students have a factual defense to this charge?
No. Strictly speaking, by gathering after the curfew they are breaking the law.
14. What can the students do if this is a bad or unfair law?
Students can express their feelings in the appropriate way and appropriate setting by challenging the law in court.
15. Prediction: What do you think is going to happen next?
Answers will vary.

Answer Key: Handout 6: Video Discussion Questions

Second Discussion: End of Scene 2 - School Field

1. Did your prediction match what followed in the video?

Answers will vary.

2. What are the consequences for breaking a law?

The consequences for breaking a law could vary but a charge and a court appearance are likely.

Do you think the arrest was justified under the Youth Gathering Act? Why or why not?

Yes, the students were gathering illegally. However, they may have avoided the arrest if they had acted differently. By doing so, they may have been told to disperse or given an appearance notice to come to court rather than being arrested.

3. Do you think all three of the students should have been arrested? Why or why not?

Answers will vary. However, there might have been other options depending on how the police perceived the situation. Justin was the most aggressive so he may have been arrested while the police could have given Michael and Candace a Notice to Appear.

4. Do you think the Youth Gathering Act is fair?

Answers will vary. Some may say that where public security is threatened, laws such as this that restrain gatherings will protect public safety. Others may say that it is unfair to arbitrarily make it illegal for people who are nothing more than a group of friends to “hang out.”

5. How is the validity of a law challenged?

Challenges may be made to laws by making arguments to a court. In Canada, the federal government has authority to pass certain laws, and the provincial governments have authority to pass others. Challenges can be made if, for example, the federal government has created a law that only the provincial governments can pass. Other challenges can be made to argue that the law, as passed, is contrary to the Canadian Charter of Rights and Freedoms. Where challenges to laws are made, courts ultimately rule on the validity of the laws passed by the governments.

Answer Key: Handout 7: Video Discussion Questions

Third Discussion: End of Scene 3 - Police Interview Rooms

1. If you were one of the accused, what characteristics would you want your lawyer to have?
You would want your lawyer to be independent from influence from any source so he or she could fully represent you.
2. What does the term “lawyer independence” mean?
It means that lawyers are able to act in their client’s best interest without fear of interference from any source.
3. Do legal aid lawyers treat their clients differently because they are paid by the government?
No. A legal aid lawyer has the same duties to his/her client as one who is paid directly by the client.
4. Whose interests should a lawyer represent? Why?
The lawyer must represent the interests of his or her client. This concept is essential to preserve Canadians’ fundamental rights and freedoms in a fair judicial system.
5. Can a judge or government interfere with the relationship between a lawyer and client?
Neither should interfere with the relationship between a lawyer and a client. To do so would infringe on lawyer independence, which is the client’s right to be represented by a lawyer who acts on the client’s behalf free of influence by the state or the court.
6. If you were one of the accused, what characteristics would you want the judge to have? Why do we need judges?
The accused would want a judge who is intelligent, fair, independent and impartial.
7. What do we mean when we say the judiciary is independent? From whom?
We mean that judges are not influenced to make a decision in a particular way by any person or group. They are independent from government influence as well.
8. Why is it important to have an independent judiciary?
Judicial independence is necessary to protect the rule of law. Independence permits a judge to view the facts of the individual’s case in light of what the law requires. The judge does so regardless of the wealth of the individual or his/her influence in society. It is essential that the state or government or any person or group not influence the decisions of a judge.
9. Why is it important for a judge to be impartial?
It is the constitutional right of every Canadian to have his or her legal issues decided by a fair and impartial judicial decision-maker. Judges are required to

listen to both sides of the case and then to make impartial, fair decisions based on the evidence and the law. If a judge was influenced to decide in a particular way, he/she would be unfair to the competing interests in the case.

10. Should your social or financial status make a difference to how a judge treats you in court?

No. All should be treated equally under the rule of law.

11. Why should every person be treated equally by the judiciary?

Each person should be treated equally in order to maintain the rule of law and the protections under the Charter of Rights and Freedoms.

12. What do you think the judge should consider when making his or her decision?

Should a judge consider the views of government or public interest groups?

The judge should base the decision on the particular facts of the case being heard and then apply the law to those facts.

13. Why do we need judges to protect our rights from arbitrary arrest and our rights to legal representation and to a fair trial?

Judges are necessary in order to guard against the arbitrary governance of those making and enforcing the laws.

14. How is judicial independence relevant to Michael?

Even though judges are paid by the government, the government cannot easily fire a judge because it disagrees with a judge's decision. This ensures that a judge is able to decide a case based on his or her interpretation of the law rather than on what the government may wish the outcome to be.

Judges are therefore able to rule unconstitutional laws passed by the government are invalid without fear that the government will fire or punish them for their decisions. Thus, Michael can be assured that his defence, as presented by his lawyer (that the law is invalid), can be considered by the judge free of influence by the state.

15. What do you think the judge will do in this case?

Answers will vary.

Answer Key: [Handout 8: Video Discussion Questions](#)

Final Discussion: End of Scene 5

1. Do you think the right decision was made? Explain why or why not.

Answers will vary.

2. What was the basis for the decision?

The Youth Gathering Act was found to be unconstitutional.

3. If the lawyers had not argued that the law was unconstitutional, do you think the verdict would have been the same? Why or why not?

The verdict would have been different because, based on the strict interpretation of the law, the accused would have been found guilty.

4. What do you think Michael, Candace and Justin learned from their experience?

They learned that judges are independent, fair and impartial; that race or ethnicity has no bearing on the outcome of a case; and that a criminal record doesn't automatically affect the outcome of a case. They also learned about a lawyer's duty and responsibility to the client and that a lawyer acts impartially for the client in a manner that is independent of any other interests.

They also learned that a client can retain a lawyer to advise him or her on the validity of a law. If reasonable arguments exist to support the challenge, those arguments can be presented to a court which can rule on the law's validity. In addition, the three learned that lawyers can challenge a law - even a law that is of crucial importance to the government - without fear of retribution by the government. Judges can then rule on the validity of a law without fear of retribution by the government because they cannot be told how to decide a case. The decision of a judge is based on the law and nothing else.

Perhaps Candace did not learn anything. Like TS Elliott said, she "had the experience but missed the meaning." She still thinks that she should have been treated differently because of her dad's connections.

5. Why is the rule of law an important part of our justice system? Explain your answer incorporating the terms judicial independence and lawyer independence. *The rule of law is a necessary safeguard against the abuse of power by the state. It is a protection from arbitrary governance.*

To be effective, the rule of law requires not only the submission of all to the law, but also the separation of powers within the state. Because the rule of law is needed to control the powers of the state, there must be a division amongst those who make the law, those who interpret and apply it, and those who enforce it. Judicial independence and lawyer independence are required to protect the rights and freedoms of citizens.

Activity 5: Test Your Knowledge

This activity is meant to assess how much your students have learned in this lesson. Students can submit [Handout 11: Legal Independence Test](#) for marking.

Answer Key: Handout 11: Legal Independence Test

1. What is the rule of law?
The rule of law is the fundamental principle that all people are equal under the law. No one is above the law.
2. Why are judges crucial to the operation of the rule of law?
The role of judges is to protect the rights and freedoms of citizens under the rule of law.
3. Why are lawyers crucial to the operation of the rule of law?
Lawyers protect the rights and freedoms of citizens under the rule of law and are essential to a strong and functioning system of justice.
4. How does the rule of law affect the use of power by the state?
The rule of law guards against arbitrary governance.
5. What is judicial independence and why is it important?
Judicial independence is necessary for the protection of the rule of law where everyone must obey the law and where everyone is treated equally under the law. It is essential that the state, government or any person or group not be permitted to influence the decisions of the judiciary.
6. Give an example of a judge acting independently.
An example would be where a judge declares a law made by the legislators to be unconstitutional. This would be an indication to Parliament that the law should be changed.
7. Why is it important for a judge to be impartial? Explain using an example.
It is the constitutional right of every Canadian to have his or her legal issues decided by a fair and impartial judicial decision-maker. Judges must listen to both sides of a case and make impartial, fair decisions based on the evidence and the law before them in the case. If a judge were influenced to decide in a particular way, that could be very unfair to the competing interests in the case. An example of this would be where one of the parties to the action is the government. The other party would be compromised if the judge were unduly influenced by the government to rule in its favour.
8. How are judges accountable?
Judges are accountable for their decisions through the appeals process. Their decisions can be reviewed and overturned by a higher court.
9. Give an example of a situation in which a judge may have a conflict of interest.
The judge's brother is testifying as a witness in a case before the court. This may make the accused and the judge very uncomfortable so it would be disclosed and the judge would likely excuse himself or herself from the case.
10. What does the term "lawyer independence" mean?

It means that lawyers are able to act in their client's best interest without fear of interference from any source.

11. Why does the bar need to be self-regulated?

Lawyers should be self-regulated in order to maintain their independence from influence from any source. The government should not be responsible for deciding who is competent to practice law and who becomes a lawyer. Self-regulation carries with it the responsibility to appropriately sanction lawyers who do not properly discharge their professional obligations to ensure that the public is properly protected.

12. What duties does a lawyer owe to his or her client?

A lawyer's primary duty is to represent the client to the best of his/her ability. A lawyer owes a duty of loyalty to the clients. This duty includes keeping "privileged" communications confidential.

13. What are "privileged" communications? Are there any exceptions to privilege and if so what are they?

Generally, all communications between a lawyer and the client for the purpose of obtaining or giving legal advice are "privileged" in that the lawyer cannot be compelled to disclose them to anyone, not even the government. An exception to privilege would be a situation of a crime involving death or imminent and serious bodily harm. In such a case, the public interest in preventing a crime would take precedence over the public interest in protecting lawyer-client privilege.

14. What does the term "disbarred" mean and what is the role of the Law Society if a lawyer is disbarred?

If concerns exist about a lawyer's conduct or competence, those concerns are investigated and adjudicated by the Law Society. The Law Society is empowered to fine, suspend, or (in the most serious cases) "disbar" a lawyer. If a lawyer is disbarred, his or her membership in the Law Society is terminated, meaning he or she may no longer practice law.

15. Why is lawyer independence important?

Lawyer independence is essential to ensure a fair system of justice and to preserve Canadians' fundamental rights and freedoms. It is important for a lawyer to be able to advance his/her client's legal interests without fear of undue influence or control.

16. How does the money-laundering legislation mentioned in the handouts challenge lawyer independence?

If the legislation requires a lawyer to reveal privileged communications or the possibility of client misconduct, lawyers could become agents of the state acting against their clients. Clients may no longer tell their lawyer everything the lawyer needs to know in order to properly advise the client for fear that the lawyer would be required to divulge that information to the state.

ENRICHMENT

1. Review some of the cases on www.tryjudging.ca, a website published by the Public Education Committee of the Canadian Superior Courts Judges. These cases are presented in video format and have key questions that may be answered. You can watch the videos, answer the key questions, and submit them for marks.
2. Research the trial of Sir Walter Raleigh. Summarize the events leading to his arrest and how his trial was conducted. Describe in what ways the trial of Sir Walter Raleigh violated the rule of law.
3. Research and describe one country where there is concern over its lack of judicial independence. In what ways does that country lack judicial independence? What is the result of not having an independent judiciary?
4. For example, in Venezuela and Zimbabwe there is a lack of security of tenure. A lack of judicial independence could lead to the government overstepping its bounds and restricting or ignoring the rights and freedoms of its people.