

HANDOUT:

Defining the Rule of Law

The law applies to everyone. No person is exempt from the law because they hold a position of power.

This is the basis for the rule of law. It is the belief that it is better to be ruled by laws than ruled by leaders who can act any way they like. For example, dictators often exercise absolute power without restrictions. If the law rules us, leaders cannot use their powers any way they like. Politicians, police, and judges are subject to the same rules as everyone else. By having everyone follow the same rules, laws cannot be unfairly used to advantage one person over another.

The rule of law also requires that there be peaceful and orderly ways to create, administer, and change laws. These processes must be predetermined, and must be followed by everyone. Canada, as a liberal democracy, has these processes in place. Our laws are democratically constructed, and must respect the rights of minorities.

The concept of the rule of law—that the law applies to everyone and that legal processes must be respected—are reflected in how Canada is governed. In fact, the rule of law is written into the preamble to the *Charter of Rights and Freedoms*, declaring that Canada is founded upon the principle of the rule of law.

Who Decides if the Law is Being Followed?

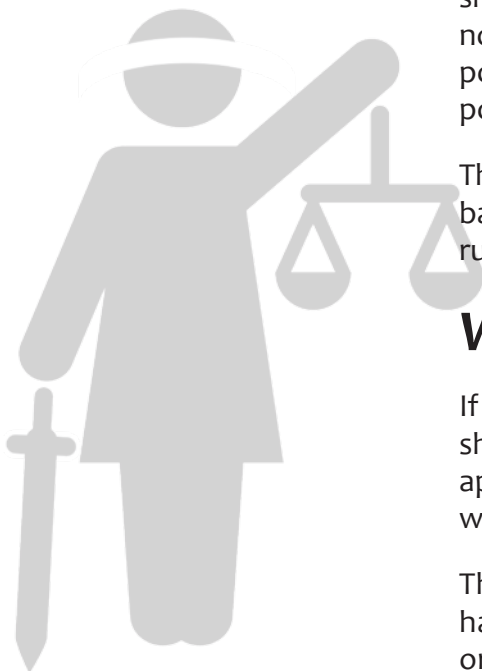
When a question arises as to whether or not a law has been broken—by a citizen or by the government—courts ultimately find an answer. To ensure that the answer is based on the law and the facts of the situation, courts operate independently of government. Courts are not subject to political pressures from the government of the day: political leaders cannot tell the courts how to decide cases, nor can political leaders be exempt from the rulings of courts.

The independence of the courts allows them to act as a check and balance on government. This independence helps to preserve the rule of law in Canada.

Why Care about the Rule of Law?

If we see leaders and governments not following the rule of law, we should be very concerned. If our leaders believe that the rules do not apply to them—and if they get away with breaking the rules—the whole structure of our society could collapse.

There are countless examples of countries where the rule of law has been ignored, with devastating consequences. Invariably, ordinary people suffer when these countries fall apart. Hitler's



Nazi rule of Germany in the 1930s and 1940s, and General Pinochet's military dictatorship of Chile in the 1970s and 1980s are just two examples in recent history.

Unfortunately, history sometimes repeats itself. Today, the rule of law is at risk in countries around the world. From Italy to Hungary to Brazil and beyond, political leaders are disrespecting long-established legal processes and acting as though they are above the law. Just a few of many, many recent examples include:

- Hungary's government arranged for tax inspections of businesses whose owners refused to sell their operations to government friends.
- Poland enacted laws that forced Supreme Court judges into retirement, so the government could fill the court with their preferred judges.
- Russian-Canadian political activist Pyotr Verzilov was allegedly poisoned after a court hearing in Moscow, joining a growing list of Russian government critics who have been harmed or died under mysterious circumstances.

Even the United States—long considered the world's leading liberal democracy—is witnessing events that suggest the rule of law is under threat.

These examples demonstrate just a few of the ways that society descends into chaos when the rule of law is disrespected.

The Rule of Law and Canada's Roncarelli Affair

Roncarelli v. Duplessis is widely considered a landmark case regarding the rule of law in Canada. In 1940s Quebec, tensions were high between the Roman Catholic majority and the Jehovah's Witness minority. Nearly 1,000 Jehovah's Witnesses were arrested in the province for distributing *The Watchtower* and *Awake* magazines, by claiming that Jehovah's Witnesses were violating local peddling bylaws. The peddling bylaws were later struck down by the Supreme Court.

Frank Roncarelli, a Montreal restaurateur who was a Jehovah's Witness, posted bail for almost 400 of the arrested Jehovah's Witnesses. The Premier of Quebec, Maurice Duplessis, was enraged. In retaliation, he had the liquor license revoked at Roncarelli's restaurant, and said that he would be forever banned from obtaining another one.

Duplessis's revocation of Roncarelli's liquor licence made his restaurant unprofitable. He was forced to sell it at a loss.

Roncarelli believed that Duplessis had no right to revoke the license. There were rules and processes in place to obtain and keep a liquor license, and rules governing the reasons that a liquor license could be revoked. Roncarelli had obeyed all the rules, so he sued for \$118,741 in damages.

The case eventually reached the Supreme Court of Canada. In a 6-3 decision, the court ruled in favour of Roncarelli. Justice Rand wrote in the majority judgment that allowing a public officer to act arbitrarily "would signalize the beginning of the disintegration of the rule of law as a fundamental postulate of our constitutional structure."

Roncarelli v. Duplessis is still pointed to today as a landmark legal ruling, affirming that political leaders in Canada cannot act any way they like. They must follow the rule of law.

THINK

1. Governments are elected. When an election is held, laws spell out who is eligible to vote, how much money candidates can spend, and the deadlines for nominating candidates, among other things.
 - a) How does a clear set of rules make for better elections?
 - b) Why must the rules apply equally to all candidates in an election?
 - c) What could happen to democracy if citizens did not care whether politicians followed the rules of an election?
2. When governments are elected, they cannot simply declare laws. Instead, laws are proposed to parliament or the legislature. A multi-staged, public process of debate and examination of the proposed law ensues. After debate and scrutiny, the proposed laws are voted on.
 - a) What could happen if laws were passed without parliamentary debate?
 - b) What could happen if laws were passed without public scrutiny?
3. When a law is broken, the police may investigate. However, the police's power to investigate is limited. Their investigation must follow strict rules. If the police do not follow these rules, then the evidence they provide will most likely not be admissible in court.
 - a) How do limits on the power of the police protect the rights of all citizens?
 - b) What could happen if the police were allowed to investigate in any manner that they pleased?
4. When cases go to court, trials follow orderly rules to establish the facts of the case. Judges then make their decisions based on the facts of the case and what the law says.
 - a) How do consistent rules help ensure that trials are fair?
 - b) What would happen if judges decided cases any way they wished, instead of following what the law says?
 - c) What would happen if elected officials could interfere with court decisions?